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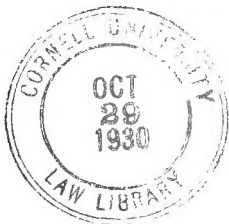
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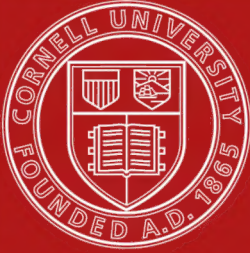
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## NOTICE.

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In every case after consulting the Main Table, look also under the same name in the Supplementary Table following page 872.





ABBOTT'S NEW YORK DIGEST.

TABLE  
OF  
CASES CRITICISED

PRESENTING

DECISIONS OF THE COURTS OF THE STATE OF NEW YORK, WHICH  
HAVE BEEN AFFIRMED, REVERSED OR MODIFIED  
IN ERROR OR ON APPEAL,

OR

EXAMINED AND EXPLAINED, LIMITED, QUESTIONED, OVERRULED,  
OR APPROVED AND FOLLOWED IN LATER DECISIONS OF  
AMERICAN OR ENGLISH COURTS, OR BY  
COMMENTATORS AND TEXT  
WRITERS;

FROM THE EARLIEST PERIOD,  
TO  
JANUARY 1, 1887.

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EDITED

BY

AUSTIN ABBOTT.

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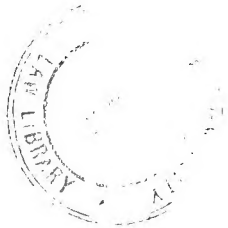
**1887:**

**BY AUSTIN ABBOTT.**



## ADVERTISEMENT.

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THIS is not a mere Table of Cases cited. It is a Table of Cases weighed and confirmed or qualified. Mere citations and reiterations which add no new significance to the original case are discarded, and the reader is thus saved the labor of running down decisions of little interest; and the space thus gained has enabled the editor to present in intelligible but concise form a clue to the opinions of the ablest jurists and commentators throughout the country, upon the subject in question.

The reports of the Courts of all the States and of the United States, as well as a selection of those of England, have been included in the examination made for this purpose; and that which the editor deemed most worthy the attention of the practitioner has been sifted out, and cited with sufficient fullness to enable the reader to see at once whether the criticising authority bears on the subject which he is looking up. And numerous references to the Code and other Statutes have also been included.

The useful annotations in the well-known series of the *American Reports*, *American Decisions*, *American Law Register*, *Moak's English Reports*, and others have been also frequently referred to.

The various well-known collections of Leading American Cases, such as those of HARE & WALLACE, SEDGWICK, BIGELOW, THOMPSON, and others of equal value, have been included; and numerous references have been made to the best comments in the Leading Periodicals, such as the *Albany Law Journal*, the *Central Law Journal*, and the *American and Southern Law Reviews*.

Perhaps more important still are the references to Leading Text-Writers, including the works of ANGEL & AMES, BENJAMIN, BIGELOW, BISHOP, IRVING BROWNE, JUDGE COOLEY, JUDGE DILLON, GREENLEAF, HIGH, HOFFMAN, JONES, CHANCELLOR KENT, MOAK, MORAWETZ, PROF. PARSONS, PROF. POMEROY, REDFIELD, JUDGE STORY, JUDGE SEYMOUR D. THOMPSON, PROF. WASHBURN, DR. WHARTON, and many other writers on special subjects.

The object of the work is to give the reader a ready clue to the position which the Case occupies in American Jurisprudence, and thus afford a guide to all the best authorities on the subject.

The work is complete in one volume. It has been thought that as the citations would give the means of pursuing the subject to any extent, it was better to curtail the statements, so far as necessary to present the whole in a single volume.

Inasmuch as the annual volumes issued by the editor in continuation of the New York Digest embody a full collection not only of criticisms, but also of all the recent citations, all these being there stated much more at large than would be possible in a volume like this, the editor has been able, by referring, in the Supplementary Table following page 872, to those Annuals, to give the reader immediate clue to all the later criticism much more fully than in the main table.



Therefore in every case, after consulting the Main Table, look also under the same name in the Supplementary Table.

The editor desires to acknowledge valuable assistance from FREDERICK H. COOKE, Esq., in aiding the execution of the work, and seeing it through the press.





# ABBOTT'S CASES CRITICISED.

## A TABLE

OF

CASES AFFIRMED, APPROVED, EXPLAINED, DISTINGUISHED,  
DOUBTED, DISAPPROVED, OVERRULED OR REVERSED, &c.,

BY SUBSEQUENT DECISIONS IN NEW YORK, OR ELSEWHERE, OR BY THE  
LEADING TEXT WRITERS;

WITH NOTICES OF CASES INCORRECTLY REPORTED, OR OF WHICH THERE ARE  
TWO OR MORE DIFFERING REPORTS, AND OF DECISIONS  
SUPERSEDED BY STATUTE.

A CASE which has been carried by appeal or otherwise, to another tribunal for review, is described as having been Affirmed, Modified, or Reversed, as the case may be. A case, the soundness of which has been discussed in the determination of some *other cause*, is described either as having been Approved, Explained or Distinguished, or, if unfavorably noticed, as having been Doubted, Disapproved, Limited, or Overruled, according to the decisiveness of the criticism, and its weight as a countervailing authority.

We have presented an indication of what point in the case in chief, is affected by the criticism, except in some cases, where, with the necessary conciseness, it was not possible to indicate it so completely that the reader might at once judge whether a reference to the critical authority would throw any light on the subject under his examination.

**Abbe v. Allen**, 39 *How. Pr.* 481. Aff'd *it seems*, in 52 *N. Y.* 636; but no opinion reported.

**Abbe v. Eaton**, 51 *N. Y.* 410; following *Wolfe v. Myers*, 3 *Sandf.* 7; and *Meyer v. Peck*, 28 *N. Y.* 590; is cited, with others, in 2 *Whart. on Ev.* § 1070, n., as to bills of lading, like any receipts, being open to explanation by parol evidence.

**Abbey v. Abbey**, 6 *How. Pr.* 340, n. *Contra*, see *Leslie v. Leslie*, 6 *Abb. Pr. N. S.* 193; (Alimony) where it is said to be imperfectly reported, and decided when the Code did not make orders appealable which "affect a substantial right."

— **v. Steamboat R. L. Stevens**, 22 *How. Pr.* 78; *Wells v. Steam Navigation Co.*, 2 *N. Y.* 204; and 8 *N. Y.* 375; *Merrick v. Brainard*, 38 *Barb.* 574, 585; *Merrick v. Van Santvoord*, 34 *N. Y.* 208; and others, followed and approved in *Brown v. Clegg*, 63 *Penn. St.* 51; s. c., 3 *Am. R.* 522; as in harmony with the Penn. doctrine, and that of the U. S. courts, as to steam tow-boats not being common carriers of the vessels they tow.

**Abbott v. Allen**, 2 *Johns. Ch.* 519; s. c., 7 *Am. Dec.* 554, with note, collecting citations thereof. See another proceeding in the same case,—doubtless that suggested by the chancellor at p. 525, in 14 *Johns.* 248.

That a grantee of land, in undisturbed possession, will not be relieved against his purchase money bond and mortgage, merely for defect of title, without fraud, or evic-

tion, but must rely upon the covenants in his deed.

Followed in 5 *Johns. Ch.* 30; *Id.* 80; 2 *Edw. Ch.* 37; 3 *Id.* 124; *Clarke Ch.* 571; 26 *Wend.* 109; 9 *Pai. Ch.* 443; 2 *Sandf. Ch.* 344; 3 *Sandf.* 118; 20 *Barb.* 429; 39 *Id.* 661; 2 *Abb. Ct. App. Dec.* 93; 74 *N. Y.* 88; 81 *Id.* 277; 14 *Week. Dig.* 564. See 2 *Kent Com.* 471, 472; where the author substantially reiterates this doctrine as laid down by him in the principal case, which he cites as authority, but does not that of *Johnson v. Gere*, 2 *Johns. Ch.* 546; which was an *ex-parte* allowance of an injunction made by him out of court some two weeks later. Compare, as to this, *Woodruff v. Bunce*, 9 *Pai. Ch.* 442, 444; *Banks v. Walker*, 2 *Sandf. Ch.* 344, 349; *Platt v. Gilchrist*, 3 *Sandf.* 118, 121. See *Bumpus v. Platner*, 1 *Johns. Ch.* 213; *Potter v. Kitchen*.

The principal case is also cited and applied, as to equity's reluctance to try titles to land undetermined at law, in *Stuarts' Heirs v. Coalter*, 4 *Rand. (Va.)* 74; s. c., 15 *Am. Dec.* 731; with elaborate note, collating and reviewing the authorities.

— **v. —**, 14 *Johns.* 248. See another and apparently earlier proceeding in this case, by a bill in equity, in 2 *Johns. Ch.* 519; *above*.

Examined and followed (Pleading—averments of title; burden of proof; action for breach of covenant of seizin) in 5 *Bosw.* 566; but distinguished, as under the common law rules and before the recording acts,

in *Woolley v. Newcombe*, 58 *How. Pr.* 480; which is aff'd in 87 *N. Y.* 605.

— *v. American Hard Rubber Co.* See *Abbott v. Hard Rubber Co.*

— *v. Broome*, 1 *Cat.* 292; s. c., 2 *Am. Dec.* 187; 2 *N. Y. Com. L., Law. Ed.* 157; with brief note as to right and effect of abandonment. See *Saidler v. Church*. Reviewed at length (Ins.—abandonment; and waiver of loss of voyage) in 2 *Cat.* 280, 290; where it is approved and thought to have shaken the authority of *McMasters v. Shoalbred*, 1 *Esp.* 237. Relied on (Waiver of abandonment) in *Walden v. Phoenix Ins. Co.*, 5 *Johns.* 310, 325; and in *Ogden v. N. Y. Fire Ins. Co.*, 10 *Id.* 177, 180. There are conflicting views expressed throughout these cases, as to whether the principal case shakes, or is distinguishable from, the case of *Saidler & Craig v. Church*, July Term, 1799; the substance of which is stated in 2 *Cat.* 286; and compare statement there with that at p. 291 of same.

— *v. Draper*, 4 *Den.* 51. See *Lockwood v. Barnes*. As to part performance; vendor and purchaser; vendee of land seeking to recover money paid on oral contract; and what will sustain such a suit,—its principles affirmed in *Collier v. Coates*, 17 *Barb.* 471, 473; quoted from and applied in *Thomas v. Dickinson*, 12 *N. Y.* 364, 371; in *Fraser v. Child*, 4 *E. D. Smith*, 153, 161; followed in *Marsh v. Wyckoff*, 10 *Bosw.* 202, 208; and followed in *Campbell v. Campbell*, 65 *Barb.* 639, 642, 644. Its principles applied (Part-performance of oral contract) in *Van Valkenburg v. Croffut*, 15 *Hun.* 147, 151. Distinguished (Demand in cases of fraud) in *Sharkey v. Mansfield*, 90 *N. Y.* 227, 229. Limited in 26 *Mich.* 421. Explained and distinguished (Measure of damages) with *Lisk v. Sherman*, 25 *Barb.* 433. Approved in *Browne on Stat. of Frauds*, (4th ed.) § 122.

— *v. Hard Rubber Co.*, 11 *Abb. Pr.* 204; s. c., 20 *How. Pr.* 199, where it is entitled *Abbott v. American Hard Rubber Co.*, and as *Abbott v. Judson*. Affirmed (Corp.—power of directors; assent of stockholders; *ultra vires*; injunction) as *Abbot v. American Hard Rubber Co.*, in 33 *Barb.* 578; s. c., 21 *How. Pr.* 193. The affirming case is quoted and collated with others, in *Field on Ultra Vires*, 314. Is distinguished (Where a Corp. had virtually ceased to exist) in *Murray v. Vanderbilt*, 39 *Barb.* 140, 157. Followed (Corp.—fraudulent assignment; stockholder's action) in *Smith v. N. Y. Consolidated Stage Co.*, 18 *Abb. Pr.* 419, 421. Relied on (Stockholder's remedies—accounting) in *Dyckman v. Valiente*, 28 *How. Pr.* 346, 348; also (Corp.—officers' duties and powers) in *Madison Ave. Baptist Church v. Baptist Church*, 1 *Sweeney*, 109, 128; (Corp.—its transfer of assets) in *Meade v. St. Louis Mutual Life Ins. Co.*, 51 *How. Pr.* 1, 6; and highly approved as to principles governing the power and

duties of directors and trustees of corporations, with numerous citations of cases sustaining its doctrines, though distinguished as to facts, in *Sheldon Hat Blocking Co. v. Eickmeyer Hat Blocking Co.*, 56 *Id.* 70, 79; and quoted from (R. R. & R. R. Co's—directors) in *Metropolitan El. R'y Co. v. Manhattan R'y Co.*, 14 *Abb. N. C.* 103, 239.

— *v. Johnstown, &c., Horse R. R. Co.*, 80 *N. Y.* 27; s. c., 36 *Am. R.* 572. Compare to the same effect, *Singleton v. Southwestern R. R.*, 70 *Ga.* 464; s. c., 48 *Am. R.* 574, with note. Explained and distinguished (R. R. & R. R. Co's—power to lease; respective rights of parties) in *Woodruff v. Erie R'y Co.*, 93 *N. Y.* 609, 617.

Plaintiff subsequently recovered a verdict against the company; see *Abbott v. Johnstown, &c. Horse R. R. Co.*, 12 *Week. Dig.* 189; s. c. more fully, 24 *Hun.* 135.

— *v. Judson*. See *Abbott v. Hard Rubber Co.*

— *v. People*, 15 *Hun.* 437. Aff'd (False pret. Indict. Conflict of law) in 75 *N. Y.* 602.

— *v. —*, 12 *Weekly Dig.* 282. Aff'd (Trial—jurors; challenge. Evidence. Q. of L. & F.) in 13 *Id.* 471; s. c. more fully, 86 *N. Y.* 460.

— *v. Sebor*, 3 *Johns. Cas.* 39, with notes; s. c., 2 *Am. Dec.* 139; 1 *N. Y. Com. L., Law. Ed.* 610; with brief note on insuring profits and freight. Explained and distinguished (Ins. on profits; and question as to necessary proofs) in *Patapco Ins. Co. v. Coulter*, 3 *Pet. (U. S.)* 222, 240.

— *v. Smith*, 8 *How. Pr.* 463. Relied on (Appearance. Notice. Default. Security for costs) in *Carpenter v. N. Y. & N. H. R. R. Co.*, 11 *How. Pr.* 481, 483. Distinguished and doubted (as to notice of retainer after default being effective) in *Pearl v. Robitscheck*, 2 *Daly*, 50, 53. See also, on s. r., *White v. Featherstonhaugh*, 7 *How. Pr.* 357.

*Abeel v. Radcliff*, 13 *Johns.* 297; s. c., 7 *Am. Dec.* 377, with note. See a further proceeding in the same case to determine the amount of rent, in 15 *Johns.* 505. Said in *Stewart v. Hanley*, 21 *Wend.* 651, 663, (Covenant to renew—certainty in written instruments) to have been clearly a case of *patent ambiguity*, within Lord Bacon's rule, the clause rejected for uncertainty having no reference to a subsisting object. Reviewed at length, with others, to the same effect, in *Western Transportation Co. of Buffalo v. Lansing*, 49 *N. Y.* 499, 504-5. Relied on to the same effect in *Holmes v. Evans*, 48 *Miss.* 247; s. c., 12 *Am. R.* 372. See 6 *Am. L. Rev.* p. 1 to 36, Oct., 1871, for an article upon estoppel of a tenant to deny his landlord's title, collating many cases.

— *v. —*, 15 *Johns.* 505. See earlier proceeding in the same case, 13 *Johns.* 297; s. c., 7 *Am. Dec.* 377. Approved as to the effect of holding over, upon which the court

is said not to have been divided, in *Sherwood v. Phillips*, 13 *Wend.* 479, 483. Distinguished (s. p.—as of slight bearing) in *Conway v. Starkweather*, 1 *Den.* 118, 115; and (s. p.—as a case where the first rent was for the lot only) in *Bradley v. Covel*, 4 *Cow.* 349; also in *Holsman v. Abrams*, 2 *Duer*, 435, 448; where it is doubted, and said to be alone in principle and not easy to be reconciled with prior authorities, and inapplicable when the improvements made by a tenant during his term at its expiration belong to him and not to his landlord. On the point that accruing rent belongs to the heir,—approved in 17 *Ill.* 493; citing 13 *Id.* 364; 4 *McLean*, 572; and 4 *Cush.* 386.

**Abell v. Douglass**, 4 *Den.* 305. See *Robinson v. Dauchy*.

**Abels v. Westervelt**, 24 *How. Pr.* 284; s. c. more fully, 15 *Abb. Pr.* 230. Explained (Attachment of partnership property. Sheriff's liability) and distinguished as a case involving creditor's rights,—in *Smith v. Orser*, 43 *Barb.* 187, 191. Not authority for attaching partnership credits and balances,—see *Barry v. Fisher*, 8 *Abb. Pr. N. S.* 369, 379; reviewing the cases. Collated with others, in *Thomp. on Prov. Rem.* 37.

**Abercrombie, Matter of**, 4 *Hun.* 141. Aff'd (Surrogate's court—his power to direct auditor to bring in additional report) in 63 *N. Y.* 628; as *Abercrombie v. Holder*.

— *v. Holder*, 63 *N. Y.* 628. See *Abercrombie, Matter of*.

**Aberdeen v. Blackmar**, 6 *Hill.* 324. Approved (Covenant of indemnity—when not broken) in *Lathrop v. Atwood*, 21 *Conn.* 117, 125. Compare *Booth v. Starr*, 1 *Id.* 244; *Gilbert v. Wiman*, 1 *N. Y.* 550; *Churchill v. Hart*, 3 *Den.* 321.

**Abernethy v. Society of Church of Paritans**, 3 *Daly*, 1. Collated (Relig. Corp.—pews) in 12 *Am. L. Reg. N. S.* 542, n.

**Abham v. Boyd**, 5 *Daly*, 321. See further proceeding, 7 *Id.* 80.

**Abraham v. Plestoro**, 3 *Wend.* 538; s. c., 10 *N. Y. Com. L., Law. Ed.* 460, with brief note, citing conflicting English and American authorities; and 20 *Am. Dec.* 738, with note; reversing 1 *Paige*, 236. See *Johnson v. Hunt*. Followed (Conf. of L. Jurisd. Comity—title under foreign bankrupt law) in *Mosselman v. Caen*, 34 *Barb.* 66, 67. Relied on (Foreign bankrupt law. Comity) in *Willits v. Waite*, in 25 *N. Y.* 577, 583, 586; and see *Olyphant v. Atwood*, 4 *Bosw.* 459. Its effect considered in *Johnson v. Hunt*, 23 *Wend.* 89; *Hoyt v. Thompson*, 5 *N. Y.* 320, 341, 353; *Bell v. Hunt*, 3 *Barb. Ch.* 391. Explained (Comity) in *Ackerman v. Cross*, 40 *Barb.* 465, 485; together with the distinction between voluntary and compulsory assignments in this respect; but compare *Mosselman v. Caen*, 1 *Hun.* 647, 649. Followed (Comity, etc.) in *Hibernia Nat. Bk. v. Lacombe*, 21 *Id.* 166, 176; collecting approving comments and analogous cases from U. S. and other

courts. Compare *Crapo v. Kelly*, 16 *Wall. (U. S.)* 610, 626, *et seq.*, where the principal case was reviewed at length and great stress was laid upon the character or nationality of the vessel, upon the high seas, in which the goods were shipped. Cited in 2 *Kent Com.* 409, n., as in conformity with the general doctrine prevailing in the U. S.

**Abrahams v. Bensen**, 11 *Week. Dig.* 329; s. c., 22 *Hun.* 605; and more fully in 60 *How. Pr.* 208. There is a previous proceeding in 76 *N. Y.* 629.

**Abrahams v. Mitchell**, 8 *Abb. Pr.* 123. Approved (Service, and proof of) in *Brooklyn Trust Company v. Bulmer*, 49 *N. Y.* 84.

**Abrams v. People**, 6 *Hun.* 491. See *People v. Cogdell*.

**Acer v. Wescott**, 1 *Lans.* 193. Rev'd (Deed—when recital in is constructive notice of defect of title) in 46 *N. Y.* 384.

**Achley's Case**, 4 *Abb. Pr.* 35. As to mayor not being a member of common council. (Mun. Corp.—officers.) But compare *Cassidy v. City of Brooklyn*, 10 *Id. N. S.* 297; aff'd in 47 *N. Y.* 659; also *People ex rel. Ennis v. Schroeder*, 76 *Id.* 160; and *North v. Cary*, 4 *Supm. Ct. (T. & C.)* 357.

**Ackart v. Lansing**, 48 *How. Pr.* 374; mem. of s. c. as *Ackert v. Lansing*, in 59 *N. Y.* 646. See further decision in 6 *Hun.* 476.

**Acker v. Acker**, 16 *Hun.* 173. Rev'd (Lim. of a. Married women) in 81 *N. Y.* 143; which is followed, on same points, in *Clarke v. Gibbons*, 83 *Id.* 107, 110; and in *Howell v. Leavitt*, 95 *Id.* 617, 623; and disting'd (Statutes—construction of) in *Williams v. City of Chicago*, 25 *Hun.* 36, 38; and in *Watson v. Forty-second St., &c. R. R. Co.*, 93 *N. Y.* 522.

— *v. Burrall*, 21 *Wend.* 605. Aff'd (Sheriffs—color of office. Pleading) in 23 *Id.* 606, as *Burrall v. Acker*. Disting'd as a case of estoppel by deed and its dictum criticised, in dissenting opinion to *Dezell v. Odell*, 3 *Hill.* 215, 226. Relied on (Officers—securities taken by; color of office) in *Decker v. Judson*, 16 *N. Y.* 439, 442.

— *v. Campbell*, 23 *Wend.* 372. Questioned in *Barrett v. Warren*, 3 *Hill.* 348, 349, 354, as to its application of the rule that one who takes goods by trespass from a trespasser is liable in trespass to the owner, which is elaborately discussed. See *Com. Dig.*, Tresp. D. Disting'd in *Lees v. Richardson*, 2 *Hill.* 164, 175, as being decided upon the ground of fraud.

— *v. Ledyard*, 8 *Barb.* 514. Rev'd (Sheriffs) in 8 *N. Y.* 62; but the remarks there as to unauthorized appearance of att'y, cited as *obiter* in dissenting opinion of *Grover, J.*, in *Brown v. Nichols*, 42 *Id.* 26, 36. Compare *Ferguson v. Crawford*, 70 *Id.* 253, 255; s. c., 26 *Am. R.* 589.

— *v. Phoenix*, 4 *Pai.* 305. Followed (Ev.—parol, to vary written contract) in *N. Y. Exchange Co. v. De Wolf*, 5 *Bosw.* 593, 607. Disting'd (Debt. and Cred.—composition deeds) in *Renard v. Tuller*, 4 *Id.* 107,

- 118; as a case of an explicit condition in the instrument. Collated with Renard v. Tuller, 4 *Bosw.* 107; and other cases in a note, as to the effect of composition deeds, in 28 *Am. R.* 293.
- **v. White**, 25 *Wend.* 614. Explained and disting'd (Replevin of goods that have been levied upon) in *Burkle v. Luce*, 1 *N. Y.* 163, 168. Applied (Lien on chattels held under replevin process) with *Manning v. Keenan*, 73 *N. Y.* 45; in Second Nat. Bk. of Oswego v. Dunn, 2 *Civ. Pro. R.* (Browne) 259.
- Ackerman v. Ackerman**, 11 *Abb. Pr.* 256. Rev'd (Attorney's lien) in 14 *Id.* 229.
- **v. Emott**, 3 *N. Y. Leg. Obs.* 337. Aff'd (Trusts and Trustees—investments) 4 *Barb.* 626; where the opinion of the V. C. is also reported. In *King v. Talbot*, 50 *Id.* 453, 483, SUTHERLAND, J., infers from the opinions in the above case, that the judges meant to approve of a rule which, as to public stocks, would exclude an investment in the stocks of any other State.
- **v. —**, 4 *Barb.* 626. Disting'd (Trusts and Trustees—investments) as a case where there was no discretion, in *Weston v. Ward*, 4 *Redf.* 438. Collated with other cases in 13 *Am. L. Reg. N. S.* 201; where the rules in different States are given. Collated (Selection of securities by trustee) with other cases in other jurisdictions holding a less strict rule, in *Lamar v. Micou*, 112 *U. S.* 452, 468.
- **v. Finch**, 15 *Wend.* 652. Disting'd (Security for costs) and *Bank of Michigan v. Jessup*, 19 *Id.* 10, followed,—in *Parks v. Goodwin*, 1 *Doug. (Mich.)* 58. Explained in reference to the construction of *L. 1831*, c. 300, § 33, in *Bates v. Relyea*, 23 *Wend.* 336. Collated with other cases (Attachment—non-residents) in *Throop's Justice's Manu.* (2 ed.) 25.
- **v. Gorton**, 6 *Hun.* 301. Rev'd (Wills—vested remainders. Powers) in 67 *N. Y.* 63.
- **v. Hunsicker**, 21 *Hun.* 53. See *Truscott v. King*. Rev'd (Mortgage to secure future advances) in 85 *N. Y.* 43. In *Tompkins v. Little Rock & F't S. R'y*, 15 *Fed. Rep.* 15, its doctrine applied to the case of a State binding itself to issue bonds in aid of a railroad.
- Ackert v. Lansing**, 59 *N. Y.* 646; s. c. more fully as *Ackert v. Lansing*, 48 *Hov. Pr.* 374. See further decision in 6 *Hun.* 476.
- **v. Pultz**, 7 *Barb.* 386. Approved (Delivery of deed executed by husband and wife) in *Baldwin v. Showden*, 11 *Ohio St.* 313; citing, also, *Shoenberger v. Zook*, 34 *Penn.* 24.
- Ackley's Case**. See *Achley's Case*.
- Ackley v. Dygert**, 33 *Barb.* 176. Appeal said in 30 *Hov. Pr.* 592; n., to have been dismissed. See *Throop's Code Civ. Pro.* § 2789, n. (Sale of decedent's real estate) The present statute gives power. Cited with other cases in *Tyler Inf. & Cov.* (2 ed.) § 54; as to when an infant is estopped by his acquiescence in an irregular sale of his lands.
- **v. Kellogg**, 8 *Cow.* 223. See *Van Santvoord v. St. John*, and *St. John v. Van Santvoord*. Discussed (Common carrier—responsibility beyond his own route) in 2 *Para. on Contr.* 213, n. Explained (Termination of responsibility by delivery) in *Ang. on Carr.* (5 ed.) § 281. Collated (Carrier—delivery) with other cases in 2 *Redf. Am. Railw. Cases*, 61.
- **v. Tarbox**, 29 *Barb.* 512. Rev'd on the ground that the error was amendable, in 31 *N. Y.* 564.
- **v. —**, 31 *N. Y.* 564. Followed (Amendments in justices' courts) in *Lowe v. Rommell*, 5 *Daly*, 17. Explained (s. p.) in *Lapham v. Rice*, 55 *N. Y.* 472, 477. Not authority on the question of joint legal rights averred in a complaint.—see *Pomerooy on Remedies*, § 211, note 1. Disting'd (Amendment—power to substitute a party defendant) in *N. Y. & C. Milk Pan Co. v. Remington's Agr. Works*, 25 *Hun.* 475, (dissenting opinion) 481; which see below.
- **v. Westervelt**, 10 *Weekly Dig.* 391; mem. s. c., 21 *Hun.* 617. Aff'd (Former Adj. Land. & T. Coverture) in 13 *Weekly Dig.* 227; s. c., 86 *N. Y.* 448.
- **v. —**, 86 *N. Y.* 448. Quoted and discussed (Married woman contracting with reference to separate estate) in *Benj. on Sales* (Corbin's 4 *Am. ed.*), § 36, n., 39, 49.
- Acome v. American Mineral Co.**, 11 *Hov. Pr.* 24. See *Getty v. Hudson River R. R. Co.* Overruled in *Dorman v. Kellam*, 14 *Hov. Pr.* 184, as to the remedy in case of separate causes of action not being separately stated in a pleading.
- Adair v. Brimmer**, 74 *N. Y.* 539. See *Clark v. Clark*; *Cumberland Coal & Iron Co. v. Sherman*; *Evarts v. Evarts*. There is reported, in this case, in 95 *N. Y.* 35, a cross appeal from the judgment in 15 *Weekly Dig.* 421, from which this also appeals. Applied (Ratification by *cestui qui trust* of trustee's purchase must be with full knowledge of facts and of right to impeach sale in equity) in *Luers v. Brunjes*, 5 *Redf.* 32, 42. Disting'd (Liability of executor for error of judgment) in *Weston v. Ward*, 4 *Id.* 415, 437. Disting'd (Executor's debt to estate) in *Bancus v. Stover*, 24 *Hun.* 109, 113; also on the reversal of s. c., in 89 *N. Y.* 1, 8, in the dissenting opinion of MILLER, J.,—as inapplicable to the case presented. Said to have examined the subject of a trustee's duty and liability as to investing, in a most able and masterly manner; 2 *Pom. Eq. Jur.* 649 n. Disting'd (Liability of trustee for default of co-trustee) in *Dixon v. Storm*, 5 *Redf.* 419, 424. See cases collected by ARTHUR G. SEDGWICK, in 15 *Am. L. Rev.* 175, 179. Collated with others and relied on (Executor's liability for wasting estate) in *Lacey v. Davis*, 5 *Redf.* 301, 307. Relied on (Trustee's liability for negligence) in *Storm, Matter of*, 28 *Hun.* 499. Relied on



- (Trusts and Trustees—investments) in *Mills v. Hoffman*, 26 *Id.* 594, 600; (s. p., negligence) in *Earle v. Earle*, 48 *Super. Ct. (J. & S.)* 18, 27.
- *v. Lott*, 3 *Hill*, 182. Disting'd (Seizin. Dower. Curtesy) in *Gibbs v. Esty*, 22 *Hun*, 266, 269.
- Adams v. Alstyne**, 25 *N. Y.* 236; and *Wright v. Wright*, 21 *Conn.* 329; are cited as authorities in *Jones v. Perry*, 50 *N. H.* 134; as to when a new division of a fence between adjoining land-owners becomes necessary.
- *v. Bissell*, 28 *Barb.* 382. (An elaborate attempt at an analysis and definition of the question of joinder of causes of action) *Pomeroy on Remedies*, § 468. Disting'd (Joinder of a.) in *Bonnell v. Wheeler*, 1 *Hun*, 336.
- *v. Bush*, 23 *How. Pr.* 262. Aff'd (New Trial—Ev., newly discovered and cumulative) in 2 *Abb. Pr. N. S.* 104,—where, however, the doctrine below was somewhat disapproved, and the above affirmance by the majority was on the ground of the plaintiff's defective moving papers.
- *v. Couover*, 22 *Hun*, 424. See *Parsons v. Johnson*. Aff'd (Deed—appurtenances passing with; water privilege to mill-site) in 87 *N. Y.* 422, Disting'd and limited (Deed, with metes, bounds, and covenants—right to use of sewer) in *Green v. Collins*, 86 *N. Y.* 246; s. c., 13 *Weekly Dig.* 179; rev'g 20 *Hun*, 474; s. c., 40 *Am. R.* 531, with note upon easements. Criticised in the last named note, at p. 279, and in *Abb. L. J.* 279. Compare *Baker v. Bessey*, 73 *Me.* 472; s. c., 40 *Am. R.* 377, 381. Collated, with *Green v. Collins*, 86 *N. Y.* 246, and others, in 31 *Moak. Eng.* 677, n.
- *v. Curtis*, 4 *Lans.* 164. Disting'd (Husb. & W.—who may sue for latter's services) as a case where the husband was aware of the services; in *Bean v. Kiah*, 4 *Hun*, 171; s. c., 6 *Supm. Ct. (T. & C.)* 464; though relied on in the dissenting opinion of *BOARDMAN, J.*,—who also says the principal case was approved by *Perkins v. Perkins*, 62 *Barb.* 531, 540. Not sustainable except on the grounds taken in *Hogebom's* opinion,—see *Perkins v. Perkins*, 62 *Barb.* 531, 540. Compared (Husb. & W.—validity of contracts between) in *Van Order v. Van Order*, 8 *Hun*, 315. Explained and applied (Competency of wife to contract with husband) in *Zimmerman v. Erhard*, 8 *Daly*, 311, 313; which is aff'd in 83 *N. Y.* 74.
- *v. Davidson*, 10 *N. Y.* 309. See *Vrooman v. King*. Disting'd and doubted (Admissibility of declarations of assignor) in *Bullis v. Montgomery*, 50 *N. Y.* 352; where it is thought to have been doubted in *Cuyler v. McCartney*, 40 *Id.* 221, 235; also (Vendor and Purchaser—and former's declarations) in *Tabor v. Van Tassel*, 86 *N. Y.* 642, 643. Disting'd (Admissibility of assignor's declarations) as a case where assignor continued in possession after the sale,—in *Coyne v. Weaver*, 84 *Id.* 386, 393. Also on same point and reasons, in *Peck v. Crouse*, 46 *Barb.* 151, 156. Also (Admissibility of declarations of assignor of an assign. for b. of c.—after its execution and delivery and entry of trustees) in *Cuyler v. McCartney*, 40 *N. Y.* 221, 235. Also (Vend. and Pur.—and admissibility of former's declarations) as a case where assignor continued in possession after sale,—in *Tilson v. Terwilliger*, 56 *Id.* 273, 277. Disting'd and limited (Upon s. p.) as a case where vendor continued in possession,—in *Roebur v. Bowe*, 30 *Hun*, 379; and as not quite consistent with the principle which has been applied under like circumstances of continued possession when the subject of the sale has been real instead of personal property. Compare, in this connection, *Abb. Trial Ev.* pp. 10, 11, 12, 13, 14, 286, 503, 740.
- *v. Dyer*, 8 *Johns.* 347; s. c., 5 *Am. Dec.* 344, with note; where, as to priority of executions, it is said to have been followed as an authority in the cases there cited. Cited, with *Lemon v. Staats*, 1 *Cov.* 592; and applied (Judgments—priority of; and fractional parts of a day) in *Biggam v. Merritt*, *Walker (Miss.)* 430; s. c., 12 *Am. Dec.* 576, with note. Thought in *Metzler v. Kilgore*, 3 *Penr. & W. (Pa.)* 245; s. c., 23 *Am. Dec.* 76, 81, with note; (Judgments—and priorities) not to be supported by *Attorney General v. Andrew*, *Hardr.* 23, on which the court relied. Collated (as to when courts will inquire into fractions of a day) with *Lemon v. Staats*, 1 *Cov.* 592; *Small v. McChesney*, 3 *Id.* 19; *Rogers v. Beach*, 18 *Wend.* 533; *People v. Central City Bank*, 53 *Barb.* 412; *Safford v. Douglas*, 4 *Edw. Ch.* 537; *Fitch v. Smith*, 10 *Paige*, 1; *Clute v. Clute*, 3 *Denio*, 263; s. c., 4 *Id.* 241; *Blydenburgh v. Cotheal*, 4 *Coms.* 418; s. c., 5 *How. Pr.* 200; and *Jones v. Porter*, 6 *Id.* 286; in a note by *W. W. Thornton*, to *Arrowsmith v. Hormening*, 23 *Am. L. Reg.* 258.
- *v. Farmer*, 1 *E. D. Smith*, 588. Questioned (Harbor-master's discretion) in *Hoeft v. Seaman*, 38 *Super. Ct. (J. & S.)* 62, 71.
- *v. Fort Plain Bank*, 23 *How. Pr.* 45. Rev'd on the ground that interest should have been allowed; but otherwise approved, in 36 *N. Y.* 255.
- *v. —*, 36 *N. Y.* 255. Explained and compared (Interest) in *White v. Miller*, 78 *Id.* 393, 396. Applied (Interest) in *Prouty v. Mich. S. & N. Ind. R. R. Co.*, 1 *Hun*, 656, 667; s. c., 4 *Supm. Ct. (T. & C.)* 230. Disting'd (Interest) and its relations to other cases explained, in *Gallup v. Perue*, 10 *Hun*, 525, 527. Relied on in *Gustine v. Stoddard*, 23 *Hun*, 101, and disting'd in *Mygatt v. Wilcox*, 45 *N. Y.* 306, as to when the statute of limitations begins to run against an attorney's claim for services. Relied on (Interest on attorney's fees) in

- Jackson v. N. Y. Central R. R. Co., 2 *Supm. Ct. (T. & C.)* 653, 656.
- v. Fox, 40 *Barb.* 442; s. c., differently reported, 27 *How. Pr.* 409. An appeal taken, was dismissed (as premature until final judgment. Jurisdiction) in 27 *N. Y.* 640; subsequently the decision of the supreme court was reversed (Joinder of actions. Parties. Pleading) in 40 *N. Y.* 576.
- v. —, 27 *N. Y.* 640. Compare (What is final judgment) Weaver v. Barden, 49 *N. Y.* 286; rev'g in part, 3 *Lans.* 338.
- v. Freeman, 12 *Johns.* 408; s. c., 7 *Am. Dec.* 327, with note. Its dictum (Trespass *ab initio*) said in Dumont v. Smith, 4 *Den.* 319, to be overruled by Allen v. Crofoot, 5 *Wend.* 506, and Van Brunt v. Scheck, 13 *Johns.* 414.
- v. Gilbert, 9 *Wend.* 499. Examined (Judgment of another State) with Jackson v. Stewart, 6 *Johns.* 34; Denton v. Noyes, *Id.* 296; Green v. Ovington, 16 *Id.* 55; in Wilcox v. Kassick, 2 *Mich.* 177.
- v. Greenwich Ins. Co., 9 *Hun.* 45. Affirmed (Ins.—waiver of condition. Witnesses) in 70 *N. Y.* 166.
- v. Honness, 62 *Barb.* 326. Said in *Pomeroi on Remedies*, § 239, note 10, to be a virtual repeal of the statute authorizing a married woman to maintain an action for services, and to be directly opposed to Brooks v. Schwerin, 54 *N. Y.* 343; Bean v. Kiah, 6 *Supm. Ct. (T. & C.)* 464, being also referred to as contrary.
- v. Hopkins, 5 *Johns.* 252. See Hildreth v. Ellice. Said to be a leading case, but disting'd (Attorney not liable for Referee's fees. The doctrine of agency as applied to attorneys) in Judson v. Gray, 11 *N. Y.* 408; and as one which disregarded the doctrine, that a rule, which is in conflict with general principles, should not be extended by analogy. Followed in Van Kirk v. Sedgwick, 23 *Hun.* 37, 39. Questioned, but followed, in Campbell v. Cothran, 56 *N. Y.* 279, 281. Disting'd (as an action of assumpsit by Sheriff against attorney) in Geib v. Topping, 83 *N. Y.* 46, 48. Opposed and disting'd with Ousterhout v. Day, 9 *Johns.* 114, in Wires v. Briggs, 5 *Vt.* 101; s. c., 26 *Am. Dec.* 284; and the Vermont rule preferred. Examined and collated (Attorney's liability for officer's fees) with Ousterhout v. Day, 9 *Johns.* 114; Trustees of Watertown v. Cowen, 5 *Pai.* 510; Camp v. Carr, 6 *Wend.* 535; Judson v. Gray, 11 *N. Y.* 408; Campbell v. Cothran, 56 *Id.* 279; in 27 *Alb. L. J.* 124; the first three cases being approved in Tilton v. Wright, 74 *Me.* 214; s. c., 22 *Am. Law Reg. N. S.* 466, with note. Quoted and collated with other cases in Smith on Sheriffs, 524. Disting'd (Sheriff, when entitled to poundage) in Bowe v. Campbell, 2 *Civ. Pro. R. (Irmone)* 232.
- v. Houghton, 3 *Abb. Pr. N. S.* 46. Distinguished, but approved (Assignment for benefit of creditors) in Darrow v. Bruff, 36 *How. Pr.* 479. Said to apply only to such assignments as cannot be upheld unless executed by all the partners, in National Bank v. Sackett, 2 *Abb. Pr. N. S.* 286.
- v. Ives, 1 *Hun.* 457; s. c., 3 *Supm. Ct. (T. & C.)* 471. Aff'd in 63 *N. Y.* 650.
- v. Leland, 5 *Bosw.* 411. Aff'd in 30 *N. Y.* 309.
- v. —, 30 *N. Y.* 309. Commented upon (Bills, Notes, etc.—presentation of note for payment) in Bigel. on B. & N. (2 ed.) 247; and is included in 2 *Ames' Cases on B. & N.* 513.
- v. McPartlin, 11 *Abb. N. C.* 369. Questioned (Foreclosure—prior incumbrancers as parties) in 27 *Alb. L. J.* 80.
- v. Mills, 38 *Super. Ct. (J. & S.)* 16. Aff'd in 60 *N. Y.* 533.
- v. Nellis, 59 *How. Pr.* 385. Confirmed in effect, in 24 *Hun.* 605; (no opinion reported) which reversed another decision.
- v. Oaks, 20 *Johns.* 282. Followed in Torrington v. Norwich, 21 *Conn.* 549; as to the effect of an agreement whereby a parent seeks to release a child from his charge and control.
- v. People, 3 *Den.* 190. Aff'd in 1 *N. Y.* 173. See arguments of counsel in 1 *How. App. Cas.* 365.
- v. —, 1 *N. Y.* 173. Explained (Evidence. Crimes—principal and accessory) in 3 *Greenleaf on Ev.* (14 ed.) § 46, note d., 50.
- v. —, 3 *Hun.* 654. Aff'd on the point last discussed in the opinion, without passing on that stated in the head-note, in 63 *N. Y.* 621.
- v. —, 63 *N. Y.* 621. Followed (Motion to strike out denied because too broad) in Larkin v. Mitchell. &c. Lumber Co., (*Mich. Supm. Ct.* 1879,) 3 *Northw. Rep.* 598, 604.
- v. Perkins, 25 *How. Pr.* 368. Referred to in Hakes v. Peck, 30 *Id.* 104; as not having been affected by the amendment of *Code Civ. Pro.* § 307, subd. 7, in respect to the number of term fees in the court of appeals.
- v. Perry, 43 *N. Y.* 487. Collated (Trusts. Charities) with other cases, in Gerard Titles to Real Est. (2 ed.) 305.
- v. Rivers, 11 *Barb.* 390. See Dygert v. Schenck. Quoted and explained (Trespass. Damages—measure of) in Moak's Underhill's Torts, (1st Am. Ed.) 93. Explained and disting'd in Murray v. McShane, 52 *Md.* 217; s. c., 36 *Am. R.* 367, 370; as to what is not a trespass on the part of one traveling in the street.
- v. Roberts, 25 *Hun.* 118; mere mem.; abridgt' s. c., 12 *Weekly Dig.* 462; more fully in 62 *How. Pr.* 253.
- v. Rockwell, 16 *Wend.* 285, 303. Discussed (Estoppel in pais. Abandonment—loss of title by) in 3 *Washb. on R. P.* (4 Ed.) 65, 76, 89. Confirmed in Van Wyck v. Wright, 18 *Wend.* 157, 168. Commented on at length in Clark v. Wethey, 19 *Id.* 320. Applied in Ratcliffe v. Cary, 4 *Abb. Ct. App. Dec.* 4; s. c., as Ratcliffe v. Gray, 3 *Keyes*,

- 510, 514; *Smith v. McAllister*, 14 *Barb.* 484; *Williams v. Montgomery*, 16 *Hun.* 50. Applied, though limited, in *Clark v. Baird*, 9 *N. Y.* 183, 204. Approved and applied in *O'Donnell v. Kelsey*, 4 *Sandf.* 202, 213. Disting'd on question of title in *Terry v. Chandler*, 16 *N. Y.* 354. Followed (Boundaries—acquiescence) in *Hunt v. Johnson*, 19 *Id.* 279, 290, 291, in *Miner v. Mayor, &c. of N. Y.*, 37 *Super. Ct. (J. & S.)* 171, 188. Said in *Hubbell v. McCulloch*, 47 *Barb.* 287, not to have been overruled or shaken.
- *v. Sage*, 28 *N. Y.* 103. Disting'd in *Baker v. Spencer*, 47 *N. Y.* 564; as to when a right of action for fraud is not barred.
- *v. Saratoga & Washington R. R. Co.*, 11 *Barb.* 414. See *Stanton v. Crosby*. Rev'd (New Trial—Ev.) 10 *N. Y.* 328. Overruled (as to point that ejectment would not lie) in *Etz v. Daily*, 20 *Barb.* 32.
- *v. Sherrill*, 14 *How. Pr.* 207. See *Gay v. Paine*. Followed (Pleading conditions precedent in action on promissory note) in *Ferner v. Williams*, 14 *Abb. Pr.* 215, 219.
- *v. Stevens*, 26 *Wend.* 451. Followed (Remedies. Attorney's lien) in *Knapp, Matter of*, 85 *N. Y.* 284, 300. Disapproved (Recovery by counsel of greater fees than allowed by statute) in *Major v. Gibson*, 1 *Pat. & H. (Va.)* 48, 91.
- *v. Supervisors of Columbia*, 8 *Johns.* 323. Overruled (Mandamus to compel supervisors to audit expenses for maintenance of paupers), *Exp. Overseers of Gates*, 4 *Cow.* 137.
- *v. Van Alstyne*, 35 *Barb.* 9. Aff'd on somewhat different grounds, in 25 *N. Y.* 232.
- *v. —*, 25 *N. Y.* 232, 235. Followed with *Blain v. Taylor*, 19 *Abb. Pr.* 228; *Duffy v. N. Y. & Harlem R. R. Co.*, 2 *Hilt.* 496; and other cases, in *Bronson v. Coffin*, 108 *Mass.* 175; s. c., 11 *Am. R.* 335, 344; on the point that the right to require an adjoining land-owner to maintain a division fence runs with the land.
- *v. Willoughby*, 6 *Johns.* 65. Disting'd (Agreements to refer to arbitration) in *Gibbs v. Continental Ins. Co.*, 13 *Hun.* 611, 617.
- *v. Winne*, 7 *Paige*, 97. Followed (Legacy—revocation) in *Dowd's Will*, 8 *Abb. N.* C. 118, 120, 121.
- Adderly v. Storm**, 6 *Hill*, 624. Approved (Liability as stockholder) in *Rosevelt v. Brown*, 11 *N. Y.* 148. Disting'd (as not reaching a case where the creditor has the means of knowing by an examination of the books of the company whether the stock has been transferred) in *Cutting v. Damerel*, 88 *N. Y.* 410, 415; which disting'd the *Rosevelt Case*, *supra*, and *Mann v. Currie*, 2 *Barb.* 244; also limiting the latter.
- Addington v. Allen**, 11 *Wend.* 374. See *Marsh v. Falker*. See further proceedings, as *Allen v. Addington*, 7 *Wend.* 215. Explained and questioned in part, but followed (New Trial. Damages. Charge to jury) in *Fry v. Bennett*, 1 *Abb. Pr.* 289, 302, 303. Followed (Pleading—practice) in *Clark v. Dales*, 20 *Barb.* 42, 66. Collated with others, and followed (Fraud—intent. Pleading) in *Wakeman v. Dalley*, 44 *Id.* 498, 501; and in *Barber v. Morgan*, 51 *Id.* 116, 132; and in *Zabriskie v. Smith*, 13 *N. Y.* 322, 330. Disting'd and limited (as a case where the point of intent was purely a question of pleading) in *Gough v. St. John*, 16 *Wend.* 646, 649. Followed (New Trial) in *Thompson v. People*, 23 *Id.* 537, 604. Followed (Pleading. Cause of Action) in *Wells v. Jewett*, 11 *How. Pr.* 242, 244. As to liability for recommendations for credit, collated with others in note to 25 *Am. Dec.* 447.
- Addison v. Burckmyer**, 4 *Sandf. Ch.* 498. Discussed (Partnership—partner's interest in stock) in 1 *Collyer on Partn. (Wood's Am. Ed.)* § 109, n. 2, p. 186.
- Adee v. Adee**, 16 *Hun.* 46. See a further decision sustaining the undertaking, but on a different ground, in *Toles v. Adee*, 84 *N. Y.* 222.
- *v. Bigler*, 81 *N. Y.* 349. Applied (Remedy against fraudulent conveyance) in *Barton v. Hosner*, 24 *Hun.* 467, 471.
- *v. Campbell*, 14 *Hun.* 551. Aff'd in 79 *N. Y.* 52. See *Foster v. Hawley*.
- *v. Cornell*, 12 *Weekly Dig.* 472; more fully, 25 *Hun.* 78.
- *v. Demorest*, 54 *Barb.* 433. Explained (Partnership—firm liability for individual partner's acts) in 1 *Collyer on Part. (Wood's Am. Ed.)* § 414, n. 3, p. 657.
- *v. Howe*, 15 *Hun.* 20. For charge of judge on second trial, see 59 *How. Pr.* 459.
- Addins v. Brewer**, 3 *Cow.* 206. Examined (Liability of justice for exceeding his jurisdiction) in *Shadbolt v. Bronson*, 1 *Mich.* 87; citing *Colvin v. Luther*, 9 *Cow.* 61; *Bigelow v. Stearns*, 19 *Johns.* 39; *Lewis v. Palmer*, 6 *Wend.* 367; *Beach v. Botsford*, 1 *Doug.* 199; *Wight v. Warner*, *Id.* 384.
- Adolph v. Central Park, North & East River R. R. Co.**, 33 *Super. Ct. (J. & S.)* 186. Rev'd (Ev.—of negligence for jury) in 65 *N. Y.* 554. See further decision in 43 *Super. Ct. (J. & S.)* 199; aff'd in 76 *N. Y.* 530.
- Adriance v. Lagrave**, 59 *N. Y.* 110. See *Adriance v. Lagrave*, and *Williams v. Bacon*. Compare (Extradition) *Pooley v. Whetham*, 22 *Ab. L. J.* 470; and note, p. 474. Cited in *Commonwealth v. Hawes*, 13 *Bush (Ky.)* 697; s. c., 26 *Am. R.* 243, 251; as to when a person extradited on account of one crime may be tried for another.
- *v. Mayor, &c. of New York*, 1 *Barb.* 19. Disapproved (Right of a tax-payer as such to maintain proceedings to restrain the action of the public authorities) with *Brower*

v. The Same, 3 *Id.* 254; Christopher v. The Same, 13 *Id.* 567; Milhau v. Sharp, 15 *Id.* 193, and 17 *Id.* 435; Stuyvesant v. Pearsall, 15 *Id.* 244; De Baun v. Mayor, &c., 16 *Id.* 392; Wetmore v. Story, 22 *Id.* 414; in Doolittle v. Supervisors of Broome, 18 *N. Y.* 155, 163, and Roosevelt v. Draper, 16 *How. Pr.* 137. Davis v. Mayor, &c. of N. Y., 2 *Duer*, 563, being approved on this point.

**Adrience v. Lagrave**, 15 *Abb. Pr. N. S.* 272; s. c., 47 *How. Pr.* 71. Rev'd as Bacharach v. Lagrave, 1 *Hun*, 689; s. c., 4 *Supm. Ct. (T. & C.)* 215, and 47 *How. Pr.* 385; but this decision was in turn reversed as Adriance v. Lagrave, 59 *N. Y.* 110; s. c., 17 *Am. R.* 317.

**Adsit v. Adsit**, 2 *Johns. Ch.* 448; s. c., 7 *Am. Dec.* 539, with note, wherein it is shown to have been extensively cited as an authority. Followed and approved (Legacy—when not considered in lieu of dower) in Gordon v. Stevens, 2 *Hill Ch. (S. C.)* 46; s. c., 27 *Am. Dec.* 445, with note. Approved (Dower—what provisions bar) with Sanford v. Jackson, 10 *Pai.* 266; Lewis v. Smith, 9 *N. Y.* 502, 517; and Van Arsdale v. Van Arsdale, 2 *Dutcher (N. J.)* 404. See Savage v. Burnham.

— **v. Brady**, 4 *Hill*, 630. See Mayor v. Furze; Rochester White Lead Co. v. City of Rochester, and Weaver v. Devendorf. Followed (Officer's liability for consequences of negligence) in Connors v. Adams, 13 *Hun*, 427; where it is said to have received emphatic approval in Robinson v. Chamberlain, 34 *N. Y.* 389, by which (if shaken by Weet v. Trustees of Brockport, 16 *N. Y.* 168, n.) it was restored to full vigor. Relied on in French v. Donaldson, 5 *Lans.* 293, and Conroy v. Gale, *Id.* 344; as applicable to the case of a canal contractor. Disting'd (as a case where the injury was proximate and consequent) in Day v. Crossman, 1 *Hun*, 572. Said in Clark v. Miller, 47 *Barb.* 38, to have been, with Shepherd v. Lincoln, 17 *Wend.* 250; Smith v. Wright, 24 *Barb.* 170, and 27 *Id.* 621,—overruled, in substance, by Garlinghouse v. Jacobs, 29 *N. Y.* 297, 311, 312, (where it is severely criticised) on the ground that defendants owed no duties to any individual; but compare Robinson v. Chamberlain, 34 *N. Y.* 389. And see Hover v. Barkhoof, 44 *N. Y.* 113. Followed (Cause of Action. Pleading) in Griffith v. Follet, 20 *Barb.* 620, 629. Followed (Officers. Munic. Corp.—Highways) in Smith v. Wright, 24 *Id.* 170, 172. Carefully explained as to the obligation and duty of municipal corporations towards individuals, in Peck v. Village of Batavia, 32 *Id.* 634, 639, with the opinion that existing doubts and questions arising from previous dicta and decisions, especially *Adsit v. Brady*, are settled to some extent by the case of Weet v. Trustees of Village of Brockport, 16 *N. Y.* 161, 168, note. In Robinson v. Chamberlain, 34 *Id.* 389, 391,

it is said that that portion of the opinion in 16 *Id.* 168, note, referring to *Adsit v. Brady*, was dictum. In French v. Donaldson, 57 *Id.* 496, 498, which is aided by statutes, *Adsit v. Brady* is said to be followed and affirmed in Robinson v. Chamberlain. The reader will observe that while PECKHAM, J., in the last named case, at p. 391, considers part of the *Adsit* case dictum, he yet approves its rule of law; and HUNT, J., at p. 389, says it is authority; and the three judges concur in an expression that, exclusive of judicial action, all officers are responsible, for a violation of official duty, to him who sustains special damage thereby. Disting'd (Pleading) in Ryatt v. Trustees of Village of Rondout, 44 *Barb.* 385, 391. Followed (Munic. Corp.—Officers) in Hutson v. Mayor, &c. of N. Y., 9 *N. Y.* 163, 169. Its principle applied to a case where the commissioner, though without funds, undertook to build; in Rector v. Pierce, 3 *N. Y. Supm. Ct. (T. & C.)* 416. Disting'd with Robinson v. Chamberlain (Officers—judicial acts; duty to public) in East River Gas Light Co. v. Donnelly, 93 *N. Y.* 557–561. Collated with other cases in *Cook Highw. L.* (4 ed.) 48, 49.

— **v. Wilson**, 7 *How. Pr.* 64. Followed in Kasson v. Mills, 8 *How. Pr.* 377, on the point that on appeal from a judgment of a justice's court to the county court, the judgment cannot be reviewed on questions of fact arising from the evidence.

**Aeby v. Rapelye**, 1 *Hill*, 9. Explained (Evidence—quantum of, in civil cases) in Johnson v. Agricultural Ins. Co., 25 *Hun*, 251, 253. Disapproved, with Holmes v. Williams, 10 *Paige*, 326; Jones v. Hake, 2 *Johns. Cas.* 60; Wilkie v. Roosevelt, 3 *Id.* 66; Munn v. Commission Co., 15 *Johns.* 44; Powell v. Waters, 17 *Id.* 176; Cram v. Henricks, 7 *Wend.* 569; Dowe v. Schutt, 2 *Den.* 621; Dix v. Van Wyck, 2 *Hill*, 522; Holford v. Blatchford, 2 *Sandf. Ch.* 149; Bossange v. Ross, 29 *Barb.* 576; Catlin v. Gunter, 11 *N. Y.* 368; Clark v. Sisson, 22 *Id.* 312, and other cases;—and Jackson v. Fassitt, 33 *Barb.* 645, being with other cases, approved, in Dickerman v. Day, 31 *Iowa*, 444; s. c., 7 *Am. R.* 156; on the point that the defense of usury is not available in an action against the accommodation maker of a note, by a purchaser in good faith from the payee at a greater discount than legal interest, unless such purchaser had knowledge of its character.

**Ætna Fire Ins. Co. v. Tyler**, 16 *Wend.* 385; s. c., 30 *Am. Dec.* 90, with note; where it is said to be regarded by many cases there collated as an authority both in N. Y. and elsewhere on its various points respecting insurance. See Inman v. Western Fire Ins. Co., and Robert v. Trader's Ins. Co. Limited (Mortgagee, who has insured his interest, may recover for loss, without first exhausting his remedy on the mortgage) in Excelsior Fire Ins. Co. v. Royal Ins. Co., 55

- N. Y.* 343, 356. Explained (Insurer's right to be subrogated) in 2 *Pars. on Contr.* 440, n. t. Examined, with *O'Neil v. Buffalo Fire Ins. Co.*, 3 *N. Y.* 122 (Waiver of defect in proofs required by insurance policy) in *Troy Fire Ins. Co. v. Carpenter*, 4 *Wisc.* 26. Approved (Upon the point that defects in proofs of loss may be waived by the silence or conduct of the underwriters) with *Dawes v. North River Ins. Co.*, 7 *Cow.* 462; in *St. Louis Ins. Co. v. Kyle*, 11 *Mo.* 278; s. c., 49 *Am. Dec.* 74-79, with note. Followed (s. r.) with *Peacock v. N. Y. Ins. Co.*, 1 *Bosw.* 338; in *Jones v. Mechanics' Fire Ins. Co.*, 36 *N. J.* (7 *Vroom*) 29; s. c., 13 *Am. R.* 405, 411, 414; *Kimball v. Hamilton Ins. Co.*, 8 *Bosw.* 495; being distinguished in this respect. Cited as authority (Ins.—and what is sole ownership of property for the purpose of obtaining insurance thereon) in *Manhattan Fire Ins. Co. v. Weill*, 28 *Gratt. (Va.)* 389; s. c., 26 *Am. R.* 364. Followed (Ins.—that one in possession of real estate under a contract of purchase, has an insurable interest) in *Franklin Fire Ins. Co. v. Martin*, 11 *Vroom (N. J.)* 568; s. c., 29 *Am. R.* 271, 273. Followed (Ins.—insurable interest) in *Acer v. Merchant's Ins. Co.*, 57 *Barb.* 68, 82. Relied on (Ins.—waiver of defects in preliminary proofs) and collated with others to same effect, in *Kimball v. Hamilton Fire Ins. Co.*, 8 *Bosw.* 495, 501. Approved (Ins.—subrogation and remedy over) in *Pentz v. Receivers of Ætna Fire Ins. Co.*, 3 *Edw. Ch.* 341, 344. Relied on (Insurable interest—assignment) in *Manley v. Ins. Co. of N. A.*, 1 *Lans.* 20, 30. Relied on (Re-insurance—construction of clause in restraint of; insurer's interest) in *Mutual Safety Ins. Co. v. Howe*, 2 *N. Y.* 235, 242. Approved (Ins.—waiver of defects in preliminary proof) in *O'Neil v. Buffalo Fire Ins. Co.*, 3 *Id.* 122, 128. Approved (Subrogation—its application to insurance) in *Connecticut Fire Ins. Co. v. Erie Railw. Co.*, 10 *Hun.* 59, 61; but see *Clinton v. Hope Ins. Co.*, 45 *N. Y.* 454, 466, where its doctrine as to subrogation is not conceded, and that case is distinguished therefrom as not within it. Approved and relied on with others (Waiver of defects in preliminary proofs) in *Miller v. Eagle Life & Health Ins. Co.*, 2 *E. D. Smith*, 268, 286. Disting'd (What constitutes a trust) as a case of a direction merely, and of special circumstances fully disclosed in the opinion,—in *Rogers Locomotive, &c. Works v. Kelley*, 88 *N. Y.* 234, 239.
- Ætna Ins. Co. v. Aldrich**, 26 *N. Y.* 92. Rev'd (Validity of mortgage on ship) in U. S. Supreme Court, 8 *Wall.* 491. See *Lunt v. B'k of North America*; *Commercial B'k v. Hughes*, and *Oneida Central B'k*. Explained (Conflict of Law.) in *Nichols v. Mase*, 25 *Hun.* 640, 641.
- *v. Wheeler*, 5 *Lans.* 480. Aff'd in 49 *N. Y.* 616. See *Van Santvoord v. St. John*.
- *v.* —, 49 *N. Y.* 616. Followed (Liability of carrier) in *Edsall v. Camden & Amboy R. R. & Trans. Co.*, 50 *N. Y.* 661.
- Ætna Nat'l B'k v. Fourth Nat'l B'k**, 46 *N. Y.* 82. Disting'd (Right of depositor) in *Van Alen v. American Nat'l B'k*, 52 *N. Y.* 1. Disting'd (as a case of direction merely, proceeding upon special circumstances) in *Rogers' Locomotive, &c. Works v. Kelley*, 88 *N. Y.* 234, 239. Followed (Grantee's liability to lienor) in *Pardee v. Treat*, 82 *N. Y.* 385, 392. See cases reviewed (Payment of notes payable at bank) in 17 *Alb. L. J.* 500. Cited as authority (Bills N. & C.) with *Nat'l B'k of Fishkill v. Speight*, 47 *N. Y.* 668; in *Bank v. Henninger*, (Penn. April, 1884,) 1 *Am. L. J.*; s. c., 15 *Pittsb. L. J.* 114. See (Rights of payee of unaccepted check against drawee) *Union Nat'l B'k v. Oceana County B'k*, 80 *Ill.* 212; s. c., 22 *Am. R.* 185, and cases cited in note; also 13 *Am. R.* 752, n.
- African Society v. Varick**, 13 *Johns.* 38. Explained (Necessity that a corporation should act by its corporate name) in *Glass v. Tipton, &c. Turnp. Co.*, 32 *Ind.* 376. Cases collected (Devise or purchase for unincorporated society) in 12 *Am. L. Reg. N. S.* 354, note.
- Agan v. McManus**, 11 *Johns.* 180. See *Berry v. Robinson*.
- Agate v. King**, 17 *Abb. Pr.* 159. Disapproved (Counter-claim in foreclosure) in *Seligman v. Dudley*, 14 *Hun.* 186. Disting'd (As a case of counter-claim, not of defense) in *Smith v. Hathorn*, 25 *Hun.* 159, 162.
- *v. Lowenbein* (No. 1), 4 *Daly*, 62; subsequent decision at p. 262, was rev'd in 57 *N. Y.* 604; subsequent appeal as *Agate v. Morrison*, in 12 *Week. Dig.* 254; s. c., 84 *N. Y.* 672, which, see below, aff'g 6 *Daly*, 291.
- *v.* —, 57 *N. Y.* 604. (Right to materials) Compare *Morgan v. Stevens*, 6 *Abb. N. C.* 356, 357, n.
- *v. Morrison*, 12 *Week. Dig.* 254; less fully, 84 *N. Y.* 672; aff'g 6 *Daly*, 291. The case is reported on a former appeal in 57 *N. Y.* 604, as *Agate v. Lowenbein*, which see, above.
- *v. Sands*, 8 *Daly*, 66. Aff'd in 73 *N. Y.* 620; mem. of opinion.
- Agawam Bank v. Strever**, 16 *Barb.* 82. It seems this cause was tried three times. After the first, when plaintiffs recovered, a new trial was ordered, 16 *Barb.* 82. After another trial, on which plaintiff was nonsuited, the cause was carried to the court of appeals, and a new trial again ordered (see 18 *N. Y.* 511), which decision, however, is not reported; and after another trial, when plaintiff recovered again, the cause was carried to the court of appeals, and the judgment affirmed, which decision is reported, 18 *N. Y.* 502.
- *v.* —, 18 *N. Y.* 502. Approved and followed (Admissibility of extrinsic evidence to explain a contract) with *Hinton v. Locke*, 5 *Hill*, 437; in *Goodrich v. Stevens*,

- 5 *Lana*. 230. *Contra*, Walker v. Crawford, 56 Ill. 444; s. c., 8 *Am. R.* 701. But see *Abb. Tr. Ev.* 412. Explained and followed (Accommodation note) in Berenbroick v. Stephens, 8 *Daly*, 249, 250. Collated (Guaranty—covering successive sales) with other cases, in 2 *Hare & W. Am. Lead. Cas.* (5 ed.) 140.
- Agnew, Matter of**, 4 *Hun*, 435. Aff'd, it seems, in 63 *N. Y.* 635; but no opinion.
- Aguirre v. Allen**, 10 *Barb.* 74. Aff'd in 7 *N. Y.* 543.
- Ahern v. Goodspeed**, 9 *Hun*, 263. Aff'd in 72 *N. Y.* 108.
- *v.* —, 72 *N. Y.* 108. See Nelson v. Cowing. Followed (Morgagor, when estopped by statements made by mortgagee acting as his agent) in Platt v. Newcomb, 27 *Hun*, 186; as overruling *N. Y. Life Ins. Co. v. Beebe*, 7 *N. Y.* 364. Explained (Sales. Warranty) in *Benj. on Sales (Corbin's 4th Am. Ed.)* vol. 2, § 945, note 16.
- *v. Nat'l Steamship Co.*, 39 *How. Pr.* 403; s. c., 8 *Abb. Pr. N. S.* 283. Overruled on re-argument, in Same *v. Same*, 3 *Daly*, 399; s. c., 11 *Abb. Pr. N. S.* 356.
- *v. Standard Life Ins. Co.*, 9 *Abb. Pr. N. S.* 69. *Contra* (Costs on appeal) Van Alen *v. American Nat'l B'k*, 10 *Abb. Pr. N. S.* 331. See *Throop's Code Civ. Pro.* 1881, § 3239, note.
- Ahrenfeldt v. Ahrenfeldt**, 1 *Hoff. Ch.* 47. Quoted (Divorce—intent to desert) in 1 *Bish. on Mar. & D.* (6 ed.) § 784. Discussed (Custody of children, as between parents) with many authorities, in 2 *Kent Com.* 195, n. c. Cited (Parent & child) with *Mercein v. People*, 25 *Wend.* 64, and 3 *Hill*, 399; in *Tyler Inf. & Cov.* (2 ed.) § 183, as holding the same rule as that recognized by the courts of England.
- Aiken v. Albany, Vt & Canada R. R. Co.**, 26 *Barb.* 289. Disting'd (Corp.—the effect of dissolution upon its property) as deciding other and entirely different questions,—in *Owen v. Smith*, 31 *Barb.* 641, 647.
- *v. Benedict*, 39 *Barb.* 400. Followed (Ejectment to prevent encroachment) in *Vrooman v. Jackson*, 6 *Hun*, 326. Collated (Nuisance) with other cases in *McAdam Land. & T.* (2 ed.) § 163, 376. Explained in *Wood on Nuisances* (2 ed.) §§ 98, 100, 104, 107.
- *v. Buck*, 1 *Wend.* 466; s. c., 19 *Am. Dec.* 535, with note.
- *v. Wasson*, 24 *N. Y.* 482. Approved (Laborer, &c., their lien) in *Balch v. N. Y. & Oswego Midland R. R. Co.*, 46 *N. Y.* 521, 525. Disting'd (Master & servant) in *Williamson v. Wadsworth*, 49 *Barb.* 294. Compare *Coffin v. Reynolds*, 37 *N. Y.* 640. Applied (Manuf. Comp.—servant; laborer) in *Dean v. De Wolf*, 16 *Hun*, 186; and in *Coffin v. Reynolds*, 37 *N. Y.* 640., 644 (R. R. & R. R. Cos.—laborer), in *Balch v. N. Y. & Oswego Midland R. R. Co.*, 46 *Id.* 521, 525. Relied on (Manuf. Comp.—who servant of) in *Hill v. Spencer*, 61 *Id.* 274. Limited (s. r.) in *Hovey v. Ten Broeck*, 3 *Robt.* 316, 320. Disting'd (R. R. & R. R. Co's—employee; claim of counsel) in *Gurney v. Atlantic & Gt. W. Ry. Co.*, 58 *N. Y.* 358, 367, and (Mech. Liens—laborers or servant) in *Stryker v. Cassidy*, 76 *N. Y.* 50, 53; s. c., 32 *Am. R.* 262, with pertinent note; and (Manuf. Corp.—laborer, servant) in *Short v. Medberry*, 29 *Hun*, 39; and, with others, (Manuf. Corp.—miner's lien) in *Mining Co. v. Cullins*, 104 *U. S.* (14 *Otto*) 176.
- Aikin v. Western R. R. Co.**, 20 *N. Y.* 370. Discussed (Private Corp.—Powers relating to property) in *Ang. and A. on P. Corp.* 11 ed. § 154. Disting'd (Ferry franchise invaded, by ferry maintained by a railroad company for transport of any persons, whether its passengers or not) in *Mayor, &c. of N. Y. v. New England Transfer Co.*, 14 *Blatchf. C. Ct.* 159, 168.
- Ainsley v. Mead**, 3 *Lans.* 116. Disting'd (Liability of married woman) in *Treman v. Allen*, 15 *Hun*, 4; *Husted v. Mathes*, 77 *N. Y.* 388, 390.
- Ainslie v. Boynton**, 2 *Barb.* 258. (Not authority for upholding the attorney's lien against an action for a set-off.) *Martin v. Kanouse*, 9 *Abb. Pr.* 370, note; s. c., 17 *How. Pr.* 146.
- *v. Mayor, &c. of N. Y.*, 1 *Barb.* 177. Opposed (Judgment not conclusive against landlord) in *Valentine v. Maheny*, 37 *Cul.* 389. Followed (Recovery in action for mesne profits) in *Boardway v. Scott*, 31 *Hun*, 378.
- *v. Wilson*, 7 *Cow.* 662; s. c., 17 *Am. Dec.* 532. *Contra* (Pleading—What will sustain recovery under money counts) *Stroud v. Pierce*, 6 *Allen*, 413. See also *Abb. Tr. Ev.* 263. Followed (Pleading. B. N. etc.—Recovery under money counts) in *Frazer v. Carpenter*, 2 *McLean*, 237. Said in 17 *Am. Dec.* 537, n., to have been frequently relied on as authority.
- Aitken v. Clark**, 15 *Abb. Pr.* 319. Further decision on demurrer to answer, 16 *Id.* 328, note.
- Akerley v. Haines**, 2 *Cai.* 292. Confirmed in *Coon v. Moffett*, 2 *Penn. (N. J.)* 583; s. c., 4 *Am. Dec.* 392, 399, with extended note; as to the loss of service being the ground of an action for seduction.
- Akin v. Western R. R.**, 30 *Barb.* 305. Rev'd (Ferries—Restriction as to R. R. and R. R. Co.'s franchise therefor) in 20 *N. Y.* 370.
- Akrill v. Seldon**, 1 *Barb.* 316. Applied (No injunction granted to restrain trespass, unless injury irreparable) in *Troy & Boston R. R. Co. v. Boston & Hoosac T. & Western Ry. Co.*, 86 *N. Y.* 107, 126; different proceeding 13 *Hun*, 60; and 57 *How. Pr.* 181.
- Albany & Schneectady R. R. Co. v. Osborn**, 12 *Barb.* 223. Dissented from (R. R. & R. R. Co.'s.—and taxation of their real estate) in *People v. Fredericks*, 48 *Barb.* 181.
- Albany & Vermont R. R. Co. v. People**, 15 *Hun*, 126; rev'd in 77 *N. Y.* 232.



**Albany & West Stockbridge R. R. Co. v. Cady**, 6 *Hill*, 265. Explained (Several bills of costs) in *Williams v. Cassady*, 22 *Hun*, 180, 183.

**Albany City B'k v. Schermerhorn**, *Clarke*, 303, with note. Rev'd (Officers—Contempt of sheriff. Receivers proceedings by attachment. Defective order) in 9 *Pai*. 372; s. c., 38 *Am. Dec.* 551, with note; where the decretal order is rev'd and the proceedings remitted to the vice-chancellor with directions, and whose subsequent and unreported decision it apparently is which is rev'd (the chancellor on the facts there appearing being satisfied that the receiver's possession had not been disturbed) in 10 *Pai*. 263; where the chancellor said that if the facts had appeared when the case was formerly before him on appeal, he should have directed the sheriffs to have been dismissed without further useless expense.

— *v.* —, 9 *Pai*. 372. See preceding case. See Bergh's case, in the note to 38 *Am. Dec.* 553. It is said to have been frequently cited in N. Y. and elsewhere, chiefly on questions of practice; and to have been followed (Contempt proceedings) in Poertner *v.* Russell, 33 *Wisc.* 201; Witter *v.* Lyon, 34 *Id.* 578; and Mann *v.* Brophy, 38 *Id.* 426. Disting'd and explained (Creditors' suit. Redemption) in Farnham *v.* Campbell, 10 *Pai*. 598. Disting'd and criticised (Contempt—necessity of personal service) in Pitt *v.* Davison, 37 *Barb.* 97, 108. Disting'd as to facts, but relied on (Contempt—correct procedure and service) in Smethurst, Matter of, 4 *How. Pr.* 369. Relied on (s. p. and as to sufficiency of service) in Clark *v.* Bininger, 43 *Super. Ct. (J. & S.)* 126. Relied on (Contempt—propriety of personal service) in Fischer *v.* Raab, 56 *Id.* 219. Explained (Contempt) with reference to the statute under which decided, in Woods *v.* De Figaniere, 16 *Abb. Pr.* 1, 7. Explained (Contempt—as to service, whether personal or upon attorney) in Pitt *v.* Davison, 3 *Abb. Pr. N. S.* 398. Relied on (Contempt proceedings—and construction of the statute as to costs, expenses, &c. thereunder) in Sudlow *v.* Knox, 7 *Id.* 411, 419. Reviewed (collating and reconciling the cases, upon s. p., and as to exercise of discretionary powers in cases of civil and criminal contempts) in People *v.* Compton, 1 *Duer*, 512, 523. Reviewed, with others, as to construction of and compliance with statute under which contempt proceedings are initiated, as to procedure, &c., in dissenting opinion to Nichols, Matter of, 54 *N. Y.* 62, 73. Quoted from (Contempt—receiver's proceedings for) in Bowers Sav'gs B'k *v.* Richards, 6 *Supm. Ct. (T. & C.)* 59. Quoted (Executors enforcing final surrogate's decree) in *Willard on Executors*, 439. But distinguished as being a proceeding in a court of record, by an order to show cause, under section 5 of the statute, and to that extent inapplicable to surrogate's courts, though relied on as to

its application, of those sections as to the necessity of filing interrogatories, in contempt procedure,—in Watson, Matter of, 3 *Lans.* 408, 412, 415. The reader will perceive that this last distinguishing criticism loses its force under the present *Code Civ. Pro.* § 2, which makes a surrogate's court in each county a court of record.

— *v.* —, 10 *Pai*. 263. See the two preceding cases.

**Albany City Sav'gs Inst. v. Burdick**, 20 *Hun*, 104. Rev'd (Foreclosure. Reformation of instrument) in 87 *N. Y.* 40. The case of Albany Sav'gs Bk. *v.* Martin, 56 *How. Pr.* 500, involves like questions.

— *v.* —, 87 *N. Y.* 40. Approved and followed (Negligence in execution in execution of instrument) in Silbar *v.* Ryder (*Wisc.* 1885), 23 *Northw. Rep.* 106, 108.

**Albany Dutch Church v. Vedder**, 14 *Wend.* 165. See People *v.* Jansen. Followed (Sureties) in McKecknie *v.* Ward, 58 *N. Y.* 541, 549; in Atlantic & Pacific Tel. Co. *v.* Barnes, 39 *Super. Ct. (J. & S.)* 40, 45.

**Albany Fire Ins. Co. v. Bay**, 4 *Barb.* 407. Aff'd as Fireman's Ins. Co. of Albany *v.* Bay, in 4 *N. Y.* 9, though generally cited as first reported. Cited (H. & W.) in *Willard's Eq'ty Jurisprudence*, 640. Relied on (Husb. & W.) in Cramer *v.* Comstock, 11 *How. Pr.* 486.

— *v.* —, 4 *N. Y.* 9. Approved (Conveyance by Married Woman) in De Pierres *v.* Thorn, 4 *Bow.* 266, 293, 294, 296; and see Winans *v.* Peebles, 31 *Barb.* 371, 376. Approved (as to power to sell not including power to mortgage), with Coutant *v.* Servoss, 3 *Id.* 128; in Trough *v.* Bunnell, *Supm. Ct. Oregon* (M'ch, 1883), 4 *Pacific Rep.* 590. Relied on (Husb. & W.) 11 *How. Pr.* 486. Cited (Husb. & W.) as settling the doubts as to a married woman's powers to convey her separate estate by deed without the concurrence of her husband,—in Colvin *v.* Currier, 22 *Barb.* 371, 381.

**Albany Northern R. R. Co. v. Brownell**, 24 *N. Y.* 345. Followed (Compensation) in Boston & A. R. R. Co. *v.* Village of Greenbush, 52 *N. Y.* 510, 511. Disting'd (Injunction to restrain commissioners from opening highway) in Prospect Park & C. I. R. R. Co. *v.* Williamson, 24 *Hun*, 216, 218. Disting'd (as to when an amendment to the charter of a corporation is permissible) in Detroit *v.* Detroit & Howell Plank Road Co., 43 *Mich.* 146, 147.

— *v.* Lansing, 16 *Barb.* 68. Applied (Damages for land taken for railroad) in Henderson *v.* N. Y. Central R. R. Co., 78 *N. Y.* 423, 433. Disapproved (Eminent domain,—and rule of compensation) in Utica, &c. R. R. Co., Matter of, 56 *Barb.* 456; and likewise, on s. p. in N. Y., Lackawanna, &c. R. R. Co., Matter of, 29 *Hun*, 1.

**Albany Street**, Matter of, 11 *Wend.* 149; s. c., 25 *Am. Dec.* 618, with note containing numerous citations of the case on the points

- decided respecting eminent domain. See *Beekman v. Saratoga & Schenectady R. R. Co.* Qualified (Eminent domain) in *Embury v. Conner*, 3 *N. Y.* 511. Followed (Eminent domain—limits upon a city's exercise thereof), with *John and Cherry Streets, Matter of*, 19 *Wend.* 659; in *Bradshaw v. Omaha*, 1 *Neb.* 16. Explained, with *Beekman Street, Matter of*, 4 *Bradf.* 503; in *Evergreen Cemetery Ass'n v. City of New Haven*, 43 *Conn.* 234; s. c., 21 *Am. R.* 643, 645, with note. Explained in 3 *Washb. on R. P.* (4th ed.), 214. Quoted (Eminent domain) in *Cooley on Constitutional Lim.* (5th ed.), 670, n. 1. Disting'd (Eminent domain—rule of damages) with *Wyman v. Mayor*, 11 *Wend.* 486; *Matter of Furman St.*, 17 *Id.* 649; *Matter of William etc. Sts.*, 19 *Id.* 678; *Matter of John etc. Sts.*, *Id.* 659; *Matter of Wall St.*, 17 *Barb.* 639, —in *Munson, Matter of*, 29 *Hun.* 335. Cited (Constitutionality of act) in *Heath v. Hubbell*, 6 *Daly*, 183, 186. Followed (Eminent domain), with *Owners of Grounds, &c. v. Mayor, &c. of Albany*, 15 *Wend.* 374, in *City of Bridgeport v. N. Y. & New Haven R. R. Co.*, 36 *Conn.* 255; s. c., 4 *Am. R.* 63, 70,—as to land improperly assessed for benefits.
- Albert v. Bleecker St. R. R.**, 2 *Daly*, 389. Explained (Negligence—untied horse) in *Gottwald v. Bernheimer*, 6 *Daly*, 212, 214.
- Alcock v. Giberton**, 5 *Duer*, 76. See *Van Marter v. Babcock*. Recognized as authority (Contracts—validity of provisions) in *Arnot v. Pittston & Elmira Coal Co.*, 2 *Hun.* 591, 594. Not authority that it was necessary to allege that the art and mystery sold was a secret. *Hard v. Seeley*, 47 *Barb.* 428.
- Alden v. Clark**, 11 *How. Pr.* 209. Disapproved (Execution cannot issue after the death of the defendant, without leave of the court) as a *dictum* in *Flanagan v. Tinen*, 53 *Barb.* 587. *Contra*, *Marine Bank v. Van Brunt*, 61 *Barb.* 361.
- *v. N. Y. Cent. R. R. Co.*, 26 *N. Y.* 102; s. c., 3 *Am. L. Reg. (N. S.)* 498. (Carriers of passengers—duty to provide safe vehicles.) Criticised and disapproved in *McPadden v. N. Y. Cent. R. R. Co.*, 44 *N. Y.* 478; but considered as authority for cases coming directly within it; also distinguished. Limited in *Carroll v. S. I. R. R. Co.*, 58 *N. Y.* 126, 139. Questioned in *Readhead v. Midland R'y Co.*, *L. R.* 4 *Q. B.* 392; s. c., 1 *Alb. L. J.* 318. Denied in *Meier v. Pennsylvania R. R. Co.*, 64 *Penn. St.* 229. Collated, with other cases in reporter's note, 31 *Am. R.* 324; and said to be no longer law in *N. Y.* Included with notes in 2 *Redf. Am. Railw. Cases*, 418. Quoted and collated with other cases in 1 *Id.* 482.
- Alderman v. Tirrell**, 8 *Johns.* 418. Followed (appearance of infant plaintiff or defendant) in *McMurray v. McMurray*, 60 *Barb.* 117.
- Aldrich v. Manton**, 13 *Wend.* 458. Overruled (Aliens—power to convey) in *Duke of Cumberland v. Graves*, 7 *N. Y.* 305.
- *v. Reynolds*, 1 *Barb. Ch.* 613. Followed (Mortgagor's liability for rents, &c.) in *Holt-haus v. Hart*, 9 *Mo. App.* 3.
- *v. Sager*, 9 *Hun.* 337. Collated with *Volans v. Owen*, 74 *N. Y.* 526; *Jackson v. Brookins*, 5 *Hun.* 534; *Baker v. Pope*, 2 *Id.* 556; *Bertholf v. O'Reilly*, 8 *Id.* 16; *Mead v. Stratton*, *Id.* 151; *Hayes v. Phelan*, 4 *Id.* 733; 5 *Id.* 335; and other cases, in 25 *Am. R.* 362, n., as to the statutory liability for injuries arising from the sale, &c., of intoxicating liquors.
- Alexander's Will, Matter of**, 16 *Abb. Pr. (N. S.)* 9. See *Hartnett v. Wandell*. Aff'd (Wills—delegation by of power to appoint executor) in 60 *N. Y.* 346; s. c., 16 *Abb. Pr. (N. S.)* 383; and 19 *Am. R.* 194, which rev'd 2 *Hun.* 552; s. c., 5 *Supm. Ct. (T. & C.)* 98.
- Alexander v. Bennett**, 38 *Super. Ct. (J. & S.)* 492. Rev'd (Removal of Causes. Const. L.) in 60 *N. Y.* 204. Opposed (Appeal—right of on order involving constitutional questions and affecting substantial rights) in *De Hart v. Hatch*, 6 *Supm. Ct. (T. & C.)* 186; s. c., 3 *Hun.* 375.
- *v. —*, 60 *N. Y.* 204. This opinion is also reported in 6 *Supm. Ct. (T. & C.)* 193, n. Explained (Removal of Cases. Const. L.) in *Heath v. Hubbell*, 6 *Daly*, 183, 185. Disting'd (Where parties consented) in *Anderson v. Reilly*, 66 *N. Y.* 191.
- *v. Chamberlain*, 1 *Supm. Ct. (T. & C.)* 600. See *Jackson v. Browner*.
- *v. Dutcher*, 7 *Hun.* 439. Aff'd in 70 *N. Y.* 385.
- *v. Esten*, 1 *Cai.* 152. Explained (M. & O.—granting relief not asked for) in *Jones v. Cook*, 11 *Hun.* 230.
- *v. Germania Fire Ins. Co.*, 2 *Hun.* 655; s. c., 5 *Supm. Ct. (T. & C.)*, 208. Rev'd (on both points) in 66 *N. Y.* 464.
- *v. —*, 66 *N. Y.* 464; s. c., 23 *Am. R.* 76, with note. That this case has been overruled (Ins.—knowledge of insurer's agent) by *Van Schoick v. Niagara Fire Ins. Co.*, 68 *N. Y.* 434,—see *Broadhead v. Lycoming Fire Ins. Co.*, 14 *Hun.* 452; *Chase v. People's Fire Ins. Co.*, *Id.* 456. Disting'd (Ins.—condition as to agent) in *Whited v. Germania Fire Ins. Co.*, 76 *N. Y.* 415, 419. Disting'd (“Building occupied as a dwelling”) in *Woodruff v. Imperial F. Ins. Co.*, 83 *N. Y.* 133, 140.
- *v. Greene*, 3 *Hill.* 9. See *Hollister v. Nowlen*. Rev'd (Carriers—liability for negligence under contract to tow a boat) in 7 *Hill.* 533; and see *Wells v. Steam Navigation Co.*, 2 *N. Y.* 204; 8 *N. Y.* 375. Quoted in 2 *Story on Contr. (5 ed.)* § 916, n. 1, 78. Explained in *Ang. on Carr.* § 59; (5 ed.) §§ 59, 668. Quoted and explained in 2 *Pars on Contr.* 170, n. r. Disting'd (as to the mode of employment) with *Caton v. Rumney*, 13 *Wend.* 387; *Wells v. Steam Navigation Co.*, 2 *N. Y.* 207.

- **v. —**, 7 *Hill*, 533. Followed (Carriers—liability for negligence under contract to tow a boat) with other cases in *Bussey v. Mississippi Valley Transportation Co.*, 24 *La. Ann.* 165; s. c., 13 *Am. R.* 120.
- **v. Hard**, 42 *How. Pr.* 131. Corrected on p. 384 of same vol.
- **v. Hoyt**, 7 *Wend.* 89. Overruled (Trustee's liability) in *Hill v. Sellick*, 21 *Barb.* 207. (Not an authority that entire judgment may be reversed as to one defendant, and affirmed as to another.) *Cruikshank v. Gardner*, 2 *Hill*, 333.
- **v. Sun Mut. Ins. Co.**, 49 *Barb.* 475. Rev'd (unless plaintiff should consent to a reduction of his recovery) in 51 *N. Y.* 253.
- **v. —**, 51 *N. Y.* 253. Disapproved, with *Schmidt v. United Ins. Co.*, 1 *Johns.* 249, in *Matheson v. Equitable Marine Ins. Co.*, 118 *Mass.* 209; s. c., 19 *Am. R.* 441, 445,—in so far as they conflict with the doctrine holding a marine insurer liable not only for a total loss, but for a partial loss, repaired before the happening of the total loss,—*Barker v. Phoenix Ins. Co.*, 8 *Johns.* 307, 318, being cited as overruling *Schmidt v. United Ins. Co.*, *above*.
- Alexander Presb. Ch. v. The Presb. Ch.**, 46 *How. Pr.* 312. Aff'd in 64 *N. Y.* 274.
- Alfaro v. Davidson**, 39 *Super. Ct. (J. & S.)* 408. See further proceedings in *Id.* 463, and 40 *Id.* 87, and 289.
- Algeo v. Duncan**, 39 *N. Y.* 313; s. c., 7 *Transc. App.* 106. Reported below as *Allgro v. Duncan*, in 24 *How. Pr.* 210. Disting'd (New Tr.—as a case where the damages were capable of being rendered certain) in *Wavle v. Wavle*, 9 *Hun.* 125. Followed (Motion for new trial before trial judge) in *Platz v. City of Cohoes*, 8 *Abb. N. C.* 392, 395. Followed (Motion for new trial for inadequate damages and court's jurisdiction to grant) in *McDonald v. Walter*, 40 *N. Y.* 551. Followed (New Tr.—granted upon judge's minutes) in *Duden v. Waitzfelder*, 2 *Abb. N. C.* 295, 299. Explained in *Clark v. Mechanics' Nat'l Bk. of N. Y.*, 8 *Daly*, 481, 501. Followed (New Tr.—granting of) in *Pollock v. Wannamaker*, 65 *How. Pr.* 508.
- Alger v. Conger**, 17 *Hun.* 45. Aff'd, it seems, in 79 *N. Y.* 633, but no opinion. Compare (Costs against one in representative capacity) *Code Civ. Pro.* § 3246.
- **v. Johnson**, 4 *Hun.* 412; s. c., 6 *Supm. Ct. (T. & C.)* 632.
- **v. Raymond**, 7 *Bosw.* 418. We are informed that this decision was affirmed in the Court of Appeals in October, 1863.
- **v. Scott**, 54 *N. Y.* 14. Followed (Rights of payee) in *Risley v. Smith*, 39 *Super. Ct. (J. & S.)* 137; which was rev'd in 64 *N. Y.* 576. Reviewed, with other cases, in *Brill v. Tuttle*, 81 *N. Y.* 451.
- **v. Seville**, 6 *How. Pr.* 131. See, in accord therewith (Joinder of causes of action), *Cahoon v. Bank of Utica*, 7 *How. Pr.* 134, which, however, was rev'd in 7 *N. Y.* 486.
- Algie v. Wood**, 43 *Super. Ct. (J. & S.)* 46. Appeal dismissed, it seems, in 75 *N. Y.* 610. No opinion.
- Algur v. Gardner**, 54 *N. Y.* 360. Followed (How usury by agent affects principal) in *Estevez v. Purdy*, 6 *Hun.* 46, which was rev'd in 66 *N. Y.* 446, where *Algur v. Gardner* was distinguished. Followed (Usury—bonus being part of the contract of loan) in *Wyeth v. Braniff*, 84 *N. Y.* 627, 632. Distinguished (Usury—bonus not being part of the contract of loan) in *Wood v. Bogart*, 19 *Hun.* 227. Disapproved (How usury by agent affects principal), with *Condit v. Baldwin*, 21 *N. Y.* 219, in *New Eng. Mortgage Security Co. v. Hendrickson*, *Supm. Ct. Neb.* June, 1882, 14 *Reporter*, 405. Disapproved, with *Estevez v. Purdy*, 6 *Hun.* 46, in *Gray v. Van Blarcom*, 29 *N. J. Eq.* 454, as contrary to *Condit v. Baldwin*, 21 *N. Y.* 219.
- Alien, Matter of an**, 7 *Hill*, 137. Appears to be denied in *State v. Whittemore*, 50 *N. H.* 245; s. c., 9 *Am. R.* 196, 201, respecting the admissibility of affidavits as to residence in naturalization cases.
- Alkenbrack v. People**, 1 *Den.* 80. Relied on (Indictment—proof of allegations in) in *Commonwealth v. Gavin*, 121 *Mass.* 54; s. c., 23 *Am. R.* 255.
- Allaire v. Ouland**, 2 *Johns. Cas.* 52. Explained (Indemnity—promise to indemnify against trespass) in 2 *Chitty on Contr.* 999; n. t., 11 *Am. Ed.* Followed (s. p. and validity of) with *Coventry v. Barton*, 17 *Johns.* 162; s. c., 8 *Am. Dec.* 376, with note, and other cases, in *Davis v. Arledge*, 3 *Hill (S. C.)* 170; s. c., 30 *Am. Dec.* 360, with note.
- Allaire v. Whitney**, 1 *Hill*, 484. Approved (Fraud) in *Whitney v. Allaire*, 4 *Den.* 554, which see, *below*. See *Crooker v. Bragg*. Disting'd (Damages—malice) in *Allaire Works v. Guion*, 10 *Barb.* 58. Disting'd (Damages—not a case of waiver) in *Nailor v. Schenck*, 3 *E. D. Smith*, 135. Quoted (Damage—showing degree of) in *Searles v. Cronk*, 38 *How. Pr.* 320, 326. Relied on (Ins. Fraud. Damages) in *Harris v. Equitable Life Assurance Soc.*, 3 *Hun.* 724, 732. Relied on (Fraud—in cases of, may retain and sue for damages) in *Laxon v. Julian*, 14 *Id.* 152. Criticised and disting'd (Fraud. Damages) as a case of an executed contract, and said to be of doubtful authority so far as it enunciates a principle applicable to executory contracts, in *People v. Stephens*, 51 *How. Pr.* 235, 249. Approved and applied (Fraud. Damages—as to grounds of action and procedure) in *Northrop v. Hill*, 57 *N. Y.* 351, 354.
- Allan v. Smith**, 1 *Cov.* 180. Collated with other cases (Dower—valuation of land for) in *Sharsw. & B. Cases on Real Prop.* 399.
- Allard v. Greaser**, 61 *N. Y.* 1. See *Rogers v. Phillips*; *Krudler v. Ellison*.

- Allcott v. Barber**, 1 *Wend.* 526. Explained and followed (Recovery for medicines furnished) in *Smith v. Tracy*, 2 *Hall*, 465.
- Allegany Oil Co. v. Bradford Oil Co.**, 21 *Hun.* 26. Aff'd in 86 *N. Y.* 638, on opinion below.
- Allen, Matter of**, 24 *Hun.* 408; s. c., as *Straus & Co., Matter of*, in 61 *How. Pr.* 248. The proceedings in bankruptcy in this case are reported in 17 *Nat. Bankr. Reg.* 157; s. c., 17 *Alb. L. J.* 170.
- Allen v. Addington**, 7 *Wend.* 9; s. c., 11 *N. Y. Com. Law ed.* 35, with brief note. Rev'd for error in instructions to jury, in 11 *Id.* 374. See *Addington v. Allen*. Relied on (Fraud—intent of general recommendation of credit) in *Williams v. Wood*, 14 *Wend.* 127. Relied on (to s. p. and equitable jurisdiction of) in *Mayne v. Griswold*, 3 *Sandf.* 463, 475. Relied on (Damages—exemplary, allowed in civil suit. Action for libel) in *Fry v. Bennett*, 4 *Duer*, 247, 260. Relied on (Fraudulent representations—privity between the parties; sustaining the complaint and action and dismissing the demurrer) in *Bank of Wilmington v. Barnes*, 4 *Abb. Pr.* 226. Explained and disting'd (Fraud—representations, &c., and as to the action's character, whether in tort or assignable) in *Byrbie v. Wood*, 24 *N. Y.* 607. Relied on with others (Fraud in representations—and the necessity of intent to deceive) in *Wakeman v. Dalley*, 44 *Barb.* 498.
- **v. Aguirre**, 7 *N. Y.* 543. Reported below, in 10 *Barb.* 74. Explained (Statute of Frauds) in *Dow v. Way*, 64 *Barb.* 255, 262. Discussed (Statute of Fraud) in *Browne on Stat. of Frauds*, § 117, b, 4 ed.
- **v. Allen**, 11 *How. Pr.* 277. Overruled (Designating unknown owners, in partition) by *Sanford v. White*, 56 *N. Y.* 359; aff'g 1 *Supm. Ct. (T. & C.)* 647; s. c., 46 *How. Pr.* 205.
- **v. —**, 14 *How. Pr.* 248. See *Boington v. Lapham*, 14 *How. Pr.* 360, for a contrary case as to the relief to which a defendant is entitled, when a complaint does not conform to the summons.
- **v. —**, 8 *Abb. N. C.* 175; s. c., (1st) 59 *How. Pr.* 27; (2d) 58 *How. Pr.* 381. Compare *Walker v. Walker*, 8 *Abb. N. C.* 436; s. c., 82 *N. Y.* 260. Opposed (Alimony) in *Bloodgood v. Bloodgood*, 59 *How. Pr.* 42, on authority of *Bartlett v. Bartlett, Clarke*, 460. See cases collated in 60 *Am. Dec.* 665, 676, n.
- **v. Atlantic Telegraph Co.**, 21 *Hun.* 22. See *Ward v. Atlantic, etc. Telegraph Co.*
- **v. Bishop**, 25 *Wend.* 414. See (Action by or against executor, &c.) *Code Civ. Pro.* 1881, ch. XV. tit. III. art. 1, note.
- **v. Brown**, 51 *Barb.* 86. Aff'd in 44 *N. Y.* 228. See *Myers v. Davis*. Decision in 44 *N. Y.*, disting'd (Recovery by transferee) in *Hays v. Hathorn*, 74 *N. Y.* 486, 489. See (Burden of proof in action on municipal bonds) *McCall v. Town of Hancock (U. S. Circuit Ct. N. D. N. Y.* January, 1882), 13 *Reporter*, 419; s. c., 10 *Fed. R.* 8, as contrary to the principal case, and to *Cagwin v. Hancock*, 84 *N. Y.* 532; *Starin v. Town of Genoa*, 23 *Id.* 439; *Gould v. Sterling, Ill.* 456, and as following *Town of Venice v. Murdock*, 92 *U. S.* 494, as binding upon the court.
- **v. —**, 5 *Lans.* 280. See subsequent decisions in 60 *Barb.* 39, and 5 *Lans.* 511. Disting'd (Effect of forfeiture of life estate) in *Moore v. Pitts*, 53 *N. Y.* 85, 91.
- **v. —**, 5 *Lans.* 511. Followed (Costs of motion to remove injunction) in *Langdon v. Gray*, 22 *Hun.* 512.
- **v. City of Buffalo**, 39 *N. Y.* 286. Another decision in 38 *N. Y.* 280. Disting'd (Irregular assessments) in *Tilden v. Mayor, &c. of N. Y.*, 56 *Barb.* 340.
- **v. Cook**, 26 *Barb.* 374. Disapproved (Judgment lien on homestead) in 1 *Am. L. Reg. N. S.* 714, citing cases. Approved in *Smith v. Brackett*, 36 *Barb.* 571, 574. Disapproved (Statutes of exemption—not liberally construed) in 1 *Am. L. Reg. N. S.* 647. Collated with other cases in 20 *Am. R.* 150, n., as to the right and effect of disposal by a debtor, of his exempt property.
- **v. Cowan**, 28 *Barb.* 99. Rev'd on the ground that the delivery was sufficient, in 23 *N. Y.* 502. Decision in 23 *N. Y.*, applied (H. & W.—possession by) in *Porter v. McGrath*, 41 *Super. Ct. (J. & S.)* 84, 102.
- **v. Crary**, 10 *Wend.* 349; s. c., 25 *Am. Dec.* 566, with note. Explained (Replevin, what sufficient taking to sustain) in *Chapman v. Douglas*, 5 *Daly*, 244, 252. Applied in *Green v. Burke*, 23 *Wend.* 494; *Latimer v. Wheeler*, 3 *Abb. Ct. App. Dec.* 42; *Neff v. Thompson*, 8 *Barb.* 215. Disapproved in *Brockway v. Burnap*, 12 *Barb.* 351; which was, however, rev'd in 16 *Id.* 309. Disting'd in *Hymann v. Cook, How. App. Cas.* 436. Followed in *Knapp v. Smith*, 27 *N. Y.* 277. Reaff'd in *Boyce v. Brockway*, 31 *Id.* 490. Followed (Liability of plaintiff for levy) in *Marsh v. Backus*, 16 *Barb.* 483. Disting'd in *Chapman v. Douglas*, 15 *Abb. Pr. N. S.* 428. Approved with *Stewart v. Wells*, 6 *Barb.* 70; and *Brockway v. Burnap*, 12 *Barb.* 347 being disapproved in *Mitchell v. Roberts*, 50 *N. H.* 486. Denied (Replevin lies wherever trespass de bonis would) in *Richardson v. Reed*, 4 *Gray (Mass.)* 441.
- **v. Crofoot**, 2 *Wend.* 515; s. c., 20 *Am. Dec.* 647; *Garr v. Selden*, 4 *N. Y.* 91. Approved (Question for the jury) in *Perkins v. Mitchell*, 31 *Barb.* 461.
- **v. —**, 5 *Wend.* 506; s. c., 10 *N. Y. Com. L. Law ed.* 930, with brief note citing other cases. Quoted (Trespass upon property—essentials of) in *Bigelow Cases on Torts*, 386.
- **v. Culver**, 3 *Den.* 284. Applied (Application of payments) in *Dows v. Morewood*, 10 *Barb.* 189. Distinguished (Cove-

- nant running with land) in *Tallman v. Coffin*, 4 *N. Y.* 137.
- *v. Devlin*, 6 *Bosw.* 1. Aff'd in 23 *N. Y.* 363. Decision in 6 *Bosw.* commented upon (Statute of Frauds—surrender of lease) in *Browne on Stat. of Frauds*, § 34, n. 3, 4 Ed.
- *v. Dykers*, 3 *Hill*, 593. Aff'd in 7 *Id.* 497. See *Dykers v. Allen*; *Nourse v. Prime*. Dicta of Walworth, Ch., in latter decision as to power of sale, commented on in *Milliken v. Dehon*, 27 *N. Y.* 364. Examined (Power of pledgee of shares of stock) with other cases in 21 *Am. L. Reg. N. S.* 454, n.
- *v. Eighmie*, 14 *Hun*, 559. Aff'd it seems in 79 *N. Y.* 632, but no opinion.
- *v. Franklin Fire Ins. Co.*, 9 *How. Pr.* 501. See *Catlin v. Hansen*. Followed (Assignor for creditors, competency of, as witness) in *Symonds v. Peck*, 10 *How. Pr.* 395. See also in accord therewith, *Davidson v. Miner*, 9 *How. Pr.* 524.
- *v. Fourth Nat. Bank*, 37 *Super. Ct. (J. & S.)* 137. Aff'd in 59 *N. Y.* 12; which latter decision was extended and applied in *U. S. v. Nat. Park Bank*, 6 *Fed. Rep.* 854, as to the effect of negligence in making payment.
- *v. Fox*, 51 *N. Y.* 562. Included (Damages in replevin) in *Sedgwick Cases on Damages*, 650. See *Code Civ. Pro.* 1881, § 1722, n. Followed in *Yandle v. Kingsbury*, 17 *Kan.* 195; s. c., 22 *Am. R.* 282; *Bell v. Campbell*, 17 *Kan.* 211; s. c., 22 *Am. R.* 284, n.
- *v. Hudson River Mut. Ins. Co.*, 19 *Barb.* 442. Collated (Clauses in fire policies restraining mortgages, &c.) with other cases in 59 *Am. Dec.* 311, n.
- *v. Jaquish*, 21 *Wend.* 628. Quoted (Statute of Frauds—conveying lands—seal) in *Browne on Stat. of Frauds*, § 7, n. 3, 4 Ed.; *Id.* § 47.
- *v. Mapes*, 20 *Wend.* 633; *Grant v. McCaughlin*, 4 *How. Pr.* 216. Disapproved (Admitting defense of usury on opening judgment by default) in *Farish v. Corlies*, 1 *Daly*, 274. But compare *McQueen v. Babcock*, 13 *Abb. Pr.* 268, which was aff'd in 3 *Keyes*, 428, as to the right to set up new defenses on amending a pleading.
- *v. Martin*, 10 *Wend.* 300; s. c., 25 *Am. Dec.* 564, with note.
- *v. Mayor, &c. of N. Y.*, 4 *E. D. Smith*, 404. Disting'd (Recovery of money paid on assessment) in *Perdue v. Mayor, &c. of N. Y.*, 12 *Abb. Pr.* 31. Followed in *Mayer v. Mayor, &c. of N. Y.*, 2 *Hun*, 306; s. c., 4 *Supm. Ct. (T. & C.)* 490.
- *Mercantile Mutual Ins. Co.*, 46 *Barb.* 642. Rev'd in 44 *N. Y.* 437.
- *v. Meyer*, 7 *Daly*, 229. Appeal dismissed, it seems, in 71 *N. Y.* 594, but no opinion. Re-argument denied in 73 *Id.* 1. Decision in 71 *N. Y.* followed (Order not appealable) in *Claffin v. Baere*, 80 *N. Y.* 642.
- *v. Merchants' Bk. of N. Y.*, 22 *Wend.* 215. Followed (Liability of collecting bank) in *Montgomery County Bk. of Penn. v. Albany City Bk.*, 7 *N. Y.* 459, which aff'd in part 8 *Barb.* 399; *Commercial Bk. of Penn. v. Union Bk. of N. Y.*, 11 *N. Y.* 211, aff'g 19 *Barb.* 395; *Indig v. Nat. City Bk.*, 16 *Hun*, 201, which was however rev'd in 80 *N. Y.* 100; *Ayrault v. Pacific Bk.*, 47 *N. Y.* 573, aff'g 6 *Rob.* 337. Discussed at length in *Britton v. McColls*, 104 *U. S.* 757. Cited as establishing the doctrine in *Exchange Nat. Bk. v. Third Nat. Bk.*, 112 *Id.* 276, 282. Applied in *Hoard v. Garner*, 10 *N. Y.* 261 (aff'g 3 *Sandf.* 179) to case of covenant for collection of mortgage. Reviewed in *State Bk. of Troy v. Bank of Capitol*, 41 *Barb.* 350. Explained in *Bank of Orleans v. Smith*, 3 *Hill*, 563. Applied (Evidence of usage) in *Fabbri v. Mercantile Mut. Ins. Co.*, 64 *Barb.* 101; *Dalton v. Daniels*, 2 *Hill*, 472; *Bowen v. Newell*, 2 *Duer*, 595. Explained (Liability for notary's neglect) in *Commercial Bk. of Ky. v. Varnum*, 3 *Lans.* 90, n. See contra, cases cited, in 7 *South. L. J. N. S.* 47.
- *v. Mille*, 17 *Wend.* 202. See *Troup v. Smith*. Commented on (Statute of Limitations—fraudulent concealment) in *Angell on Limitations*, § 185, 6 ed. Followed and approved, with *Troup v. Smith*, 20 *Johns.* 33; *Leonard v. Pitney*, 5 *Wend.* 30; *Humbert v. Trinity Church*, 24 *Id.* 587, in *Freeholders of Somerset v. Veghte*, 44 *N. J. Eq.*; s. c., 28 *Alb. L. J.* 29, 33. Compare *Code Civ. Pro.* § 410.
- *v. N. J. Southern R. R. Co.*, 49 *How. Pr.* 14. See (Necessity that action for injuries caused by acts of officers of a corporation be brought in name of corporation) *Greaves v. Gouge*, 69 *N. Y.* 154; s. c., 54 *How. Pr.* 272.
- *v. Patterson*, 7 *N. Y.* 476; s. c., 57 *Am. Dec.* 542. Commented on (What constitutes a sufficient pleading) in *Chesbrough v. N. Y. & Erie R. R. Co.*, 26 *Barb.* 914; *Roediger v. Simmons*, 14 *Abb. Pr. N. S.* 260; *Acome v. American Mineral Co.*, 11 *How. Pr.* 27. Followed in *Adams v. Holley*, 12 *How. Pr.* 329; *Betts v. Bache*, 14 *Abb. Pr.* 285; *Simser v. Cowan*, 56 *Barb.* 397; *Cudlipp v. Whipple*, 4 *Duer*, 610; *Merwin v. Hamilton*, 6 *Id.* 253; *Moffet v. Sackett*, 18 *N. Y.* 522; *Hosley v. Black*, 28 *Id.* 444; *Solomon v. Vinson*, 31 *Minn.* 205. Disting'd in *Drake v. Cockcroft*, 5 *E. D. Smith*, 34; *Witherhead v. Allen*, 4 *Abb. Ct. App. Dec.* 628; *Keteltas v. Myers*, 1 *Abb. Pr.* 410, which was, however, rev'd in 19 *N. Y.* 231.
- *v. Pell*, 4 *Wend.* 505. Explained (Set off in action for rent) in *Whitbeck v. Skinner*, 7 *Hill*, 53.
- *v. People*, 57 *Barb.* 338. Rev'd in 43 *N. Y.* 28.
- *v. Public Administrator*, 1 *Bradf.* 221. Further decision in *Id.* 378, said to be aff'd in *Seld. Notes*, Apl. 1853, p. 57. See *Johnson v. Johnson*; *Sprague v. Duel*. With decision in 1 *Bradf.* 221; compare (Privilege of attorney) *Sheridan v. Houghton*, 6 *Abb.*

- N. C.* 234, *n.* Applied in *Pearsall v. Elmer*, 5 *Redf.* 181, 182, 184, 190.
- *v. Reynolds*, 36 *Super. Ct. (J. & S.)* 297. Doubtful (Acknowledgment by married woman) in 41 *Am. Dec.* 180, *n.* Compare *Gilraith v. Gallivan, Mo.*, Nov. 5, 1883, 29 *Alb. L. J.* 14.
- *v. Rightmere*, 20 *Johns.* 365; *s. c.*, 11 *Am. Dec.* 288. Followed (Right of guarantor to demand and notice) with *Brown v. Curtis*, 2 *N. Y.* 225; *Union B'k v. Coster*, 3 *Id.* 203; *Luquer v. Prosser*, 1 *Hill*, 256, in *Donley v. Camp*, 22 *Ala.* 659; *s. c.*, 58 *Am. Dec.* 274. Disting'd, with *Douglass v. Howland*, 24 *Wend.* 35; in *Lowe v. Beckwith*, 14 *B. Monr. (Ky.)* 184; *s. c.*, 58 *Am. Dec.* 665.
- *v. Sackrider*, 37 *N. Y.* 341. Followed (Essential characteristics of common carriers) in *Fish v. Clark*, 2 *Lans.* 176. Included with note in 2 *Redf. Am. Railw. Cases*, 33.
- *v. St. Louis Ins. Co.*, 46 *Super. Ct. (J. & S.)* 175. Aff'd in 85 *N. Y.* 473.
- *v. Scandinavian Nat. B'k*, 46 *How. Pr.* 71. See *Tracy v. First Nat. B'k of Selma*. Disting'd (Special appearance to vacate attachment) as decided prior to *Code Civ. Pro.* § 682, in *People's B'k of N. Y. v. Mechanic's Nat. B'k of Newark*, 62 *How. Pr.* 422, 425; *National Shoe, &c. B'k v. Mechanic's Nat. B'k of Newark*, 89 *N. Y.* 440.
- *v. Scarff*, 1 *Hill*. 209. Applied (Guaranty) in *Post v. Geoghegan*, 5 *Daly*, 216, 218.
- *v. Sewall*, 2 *Wend.* 327. Rev'd in 6 *Id.* 325. See *King v. Lenox*.
- *v. Starring*, 26 *How. Pr.* 57. Followed (Adjournment of supplementary proceedings) in *Kaufman v. Thrasher*, 10 *Hun*, 438, 442.
- *v. Suydam*, 17 *Wend.* 368. Rev'd in 20 *Id.* 321; *s. c.*, 13 *N. Y. Com. L., Law. Ed.* 868, with brief note. See *Blot v. Boiceau*; *Smedes v. Bank of Utica*. Cited approvingly (Liability of agent who fails to present negotiable paper for acceptance) in *Exchange Nat. B'k v. Third Nat. B'k*, 112 *U. S.* 276, 291. Included in *Sedgwick Cases on Damages*, 393; *Bigel on B. & N.* 2 ed. 185. Discussed, *Id.* 240. Collated with other cases in *Holcombe Lead. Cas. on Com. Law*, 24. Included with notes in *Redf. & B. Lead. Cas. on B. of Ex.* 26; also in 32 *Am. Dec.* 555, with note containing citations. Explained (Presenting bill for acceptance on the day it becomes due) in *Plato v. Reynolds*, 27 *N. Y.* 536.
- *v. Webster*, 15 *Wend.* 284; *s. c.*, 12 *N. Y. Com. L., Law. Ed.* 866, with brief note. See *Utica Ins. Co.*
- *v. Williamsburgh Sav. B'k*, 2 *Abb. N. C.* 342. Aff'd, 69 *N. Y.* 314. Decision in 69 *N. Y.* followed (Duties and liabilities of savings banks) in *Boone v. Citizen's Savgs. B'k of N. Y.*, 9 *Abb. N. C.* 146, 150; *s. c.*, 84 *N. Y.* 83, 87.
- Allerton v. Allerton*, 50 *N. Y.* 670. Explained (Tender of amount received on application for rescission of contract) in *Gould v. Cayuga, &c. Nat. B'k*, 21 *Hun*, 293, 302; *Metropolitan, &c. R'y Co. v. Manhattan R'y Co.*, 14 *Abb. N. C.* 229; *Anthony v. Day*, 52 *How. Pr.* 85. Explained (Deceit by partners) in *Moak's Underhill's Torts*, 1 *Am. ed.* 544.
- *v. Belden*, 3 *Lans.* 492; rev'd in 49 *N. Y.* 373. See *Cole v. Savage*. Decision in 49 *N. Y.* followed (Equitable relief by Cancellation) in *Hoffman v. Treadwell*, 39 *Super. Ct. (J. & S.)* 183, 188; *Metropolitan, &c. R'y Co. v. Manhattan R'y Co.*, 14 *Abb. N. C.* 103, 204.
- *v. Lang*. See *Millspaugh v. Putnam*.
- Allgro v. Duncan*, 24 *How. Pr.* 210. Aff'd as *Algeo v. Duncan*, in 39 *N. Y.* 313; *s. c.*, 7 *Transc. App.* 106.
- Allis v. Leonard*, 46 *N. Y.* 688; *s. c.* more fully, 22 *Alb. L. J.* 28. Cited (Admissions and denials in answer) in *Fellows v. Muller*, 38 *Super. Ct. (J. & S.)* 137, 141; *Haines v. Herrick*, 9 *Abb. N. C.* 379; *Calhoun v. Hallen*, 25 *Hun*, 155. Reluctantly followed in *Smith v. Gratz*, 59 *How. Pr.* 274, 276. Disting'd in *Potter v. Frail*, 67 *How. Pr.* 445. Supported in *Burley v. German Am. Bk.*, 111 *U. S.* 216.
- *v. —*, 58 *N. Y.* 288. Disting'd (Expression of opinion in charging the jury) in *Massoth v. Delaware & Hudson Canal Co.*, 6 *Hun*, 314, 318.
- *v. Read*, 45 *N. Y.* 142. Explained (Payment taking contract out of statute of frauds) in *Hunter v. Wetsell*, 57 *N. Y.* 375, 379.
- *v. Wheeler*, 56 *N. Y.* 50. Followed (Allowance of costs to one of several defendants) in *Park v. Spaulding*, 10 *Hun*, 128; *Pierce v. Brown*, 40 *Super. Ct. (J. & S.)* 398. Disting'd in *Williams v. Cassaday*, 22 *Hun*, 182. Explained in *Royce v. Jones*, 23 *Hun*, 452, 453. See *Code Civ. Pro.* 1881, § 3229, *n.*
- Allison v. Matthieu*, 3 *Johns.* 234. Followed (Evidence of fraudulent intent) in *People v. Shulman*, 80 *N. Y.* 374, *n.* Explained (Effect on fraud on contract of sale) in *Stevens v. Hyde*, 32 *Barb.* 171, 175, 179.
- *v. Weller*, 6 *Sup'm. Ct. (T. & C.)* 291; mem. in 3 *Hun*, 608. Aff'd it seems in 66 *N. Y.* 614 but without opinion. See mem. of another decision in 3 *Hun*, 620; also aff'd it seems in 66 *N. Y.* 614.
- Allyn v. Thurston*, 53 *N. Y.* 622. Mem. of decision below on injunction in 3 *Alb. L. J.* 302. See *Chautauqua Co. Bk. v. White*; *Estes v. Wilcox*. Applied (Relief against fraudulent conveyance) in *Adsit v. Sanford*, 23 *Hun*, 45, 48. Followed in *Estes v. Wilcox*, 67 *N. Y.* 264. Explained (Effect of L. 1858, c. 314) in *Barton v. Hosner*, 24 *Hun*, 467, 471.
- Almgren v. Dutilh*. See *Walrath v. Thompson*.
- Almy v. Harris*, 5 *Johns.* 175; *s. c.*, 3 *N. Y. Com. L. Law. ed.* 985, with brief note of

- other cases. See *Dudley v. Mayhew*. Applied (Construction of remedial statute) in *People v. Hickey*, 5 *Daly*, 365, 377. Disting'd in *Jordan v. Skaneateles Plank-road Co. v. Morley*, 23 *N. Y.* 552. Approved in *Fletcher v. State Capital Bank*, 37 *N. H.* 369, 392.
- Alsop v. Caines**, 10 *Johns.* 396. Aff'd, as *Caines v. Brisbane*, in 18 *Id.* 9.
- Alston v. Conger**, 66 *Barb.* 272. Applied (Bond of indemnity given to sheriff) in *Reilly v. Coleman*, 62 *How. Pr.* 289.
- *v. Jones*, 3 *Barb. Ch.* 397. See previous decision in 10 *Paige*, 98; subsequent decision in 17 *Barb.* 276. See *Grant v. Van Schoonhoven*.
- *v. Mechanics' Mutual Ins. Co.*, 1 *Hill*, 510. Rev'd in 4 *Hill*, 329. See *Farmers' Ins. & Loan Co. v. Snyder*. Decision in 4 *Hill* disapproved (Representations and warranties) in *Bilbrough v. Metropolis Ins. Co.*, 5 *Duer*, 587. Examined, also, in *Glendale Manuf. Co. v. Protection Ins. Co.*, 21 *Conn.* 34.
- Altamus v. Mayor, &c.**, 6 *Duer*, 446. Disting'd (Corporation—when liable without previous appropriation) in *Jones v. Mayor, &c. of N. Y.*, 7 *Robt.* 209.
- Althof v. Wolf**, 2 *Hill.* 344. Aff'd in 22 *N. Y.* 355. Decision in 22 *N. Y.* disting'd (Mitigation of damages in action for personal injury) in *Drinkwater v. Dinsmore*, 80 *N. Y.* 390, 392. Cited and approved as most in harmony with the principles established by decided cases, in *Harding v. Town of Townshend*, 43 *Vt.* 536; s. c., 5 *Am. R.* 304. Discussed (Liability of master for acts done by servants employed by other servants) in 1 *Addison on Torts*, 590, n., Wood's Ed.
- Alvord v. Baker**, 9 *Wend.* 323. See *Rawson v. Adams*. See to the contrary (Proof of delivery) *Blount v. Starkey*, 1 *Tayl. (N. C.)* 110; s. c., 2 *Hayw.* 75. But see *Abb. Tr. Ev.* 315.
- *v. Haynes*, 13 *Hun.* 26. Followed (Sheriff's liability for wrongful seizure) in *Masten v. Webb*, 24 *Hun.* 90, 92; rev'g 60 *How. Pr.* 302.
- American Bible Society v. Hebard**, 51 *Barb.* 552. Said in 41 *N. Y.* 619, to have been aff'd by Ct. of App. See (Action by legatee against executor) *Civ. Code Pro.* 1881, § 1819, n., where the rule of law laid down in this case as to the statute of limitations is said to be changed.
- *v. Stark*, 45 *How. Pr.* 160. Discussed (Wills. Perpetuities) in 1 *Jarman on Wills*, Randolph and Talcott Ed. 512, n.
- American Dock, &c. Co. v. Staley**, 40 *Super. Ct. (J. & S.)* 539. Questioned (Motion to compel election between causes of action) in *Wheelock v. Lee*, 5 *Abb. N. C.* 72, 75, n.
- American Exchange Bk. v. City Bank**, 5 *N. Y. Leg. Obs.* 18. Applied (Fictitious payee) in *Merchants' L. & T. Co. v. Bk. of Metropolis*, 7 *Daly*, 137, 141.
- *v. Webb*, 15 *How. Pr.* 193. Rev'd in 36 *Barb.* 291.
- American Exchange Fire Ins. Co. v. Britton**, 8 *Bosw.* 148. Applied (Action for restitution of illegal fees) in *American Steamship Co. v. Young*, 89 *Penn. St.* 186; s. c., 33 *Am. R.* 748.
- American Express Co., Matter of**, 2 *Month. L. Bul.* 63. Rev'd, it seems, in 22 *Hun.* 609.
- American Home Missionary Society v. Wadhams**, 10 *Barb.* 597. Rev'd in 12 *N. Y.* 415.
- American Ins. Co. v. Bryan**, 1 *Hill.* 25. Aff'd in 26 *Wend.* 563. Decision in 26 *Wend.* discussed (Clause in marine policy against loss by thieves) in 3 *Kent Com.* 503, n. e. Explained in *Spinetti v. Atlas Steamship Co.*, 80 *N. Y.* 71, 79. Approved (Loss incurred by default of master or mariners) in *Matthews v. Howard Ins. Co.*, 11 *N. Y.* 1, 21. Applied (Theft as simple larceny) in *People ex rel. Jourdan v. Donohue*, 84 *N. Y.* 433, 442.
- *v. Center*, 4 *Wend.* 45; aff'g 7 *Cow.* 564. Explained and distinguished (What constitutes an actual total loss of freight) in *Hubbell v. Great Western Ins. Co.*, 74 *N. Y.* 246, 253. Doubted (Authority of master to sell, in case of technical total loss) in *Hall v. Franklin Ins. Co.*, 9 *Pick.* 466; and see *Freeman v. East India Co.*, 5 *Barnwell & Ald.* 617; 3 *Kent Com.* 173, n. c; *Schooner Tilton*, 5 *Mass.* 481.
- *v. Dunham*, 12 *Wend.* 463. Aff'd in 15 *Id.* 9.
- *v. Griswold*, 14 *Wend.* 390. Commented on (Liability of successive insurers) in 3 *Kent Com.* 281, n. e. Said in 28 *Am. Dec.* 123, n., to have been doubted (referring to *Whiting v. Independent Ins. Co.*, 15 *Md.* 295). Followed (Effect of landing portion of goods covered by marine policy) in *Chadsey v. Guion*, 48 *Super. Ct. (J. & S.)* 267.
- *v. Hutton*, 24 *Wend.* 330. Aff'd in 7 *Hill.* 321. Explained (Vessel, when at sea) in *Union Ins. Co. v. Tysen*, 3 *Hill.* 118.
- *v. Oakley*, 9 *Paige*, 259. Other proceedings in *Id.* 496. Decision on p. 259 followed (Re-sale in foreclosure, &c.) in *Gould v. Mortimer*, 16 *Abb. Pr.* 448. Reviewed with other cases in *Lefevre v. Laraway*, 22 *Barb.* 174. Applied in *Kellogg v. Howell*, 62 *Barb.* 284. Criticised in *Wolcott v. Schlenck*, 23 *How. Pr.* 388. Decision on p. 496 applied (Corporation, when bound) in *Isaacs v. Beth Hamedash Society*, 1 *Hill.* 471; *Lee v. Pittsburgh Coal, &c. Co.*, 56 *How. Pr.* 378; *Peterson v. Mayor, &c. of N. Y.*, 17 *N. Y.* 454. Followed (Unauthorized appearance by attorney) in dissenting opinion in *Brown v. Nichols*, 42 *N. Y.* 32.
- *v. Ogden*, 15 *Wend.* 532. Rev'd in 20 *Id.* 287. See *Ruckman v. Merchants' Louisville Ins. Co.* Decision in 20 *Wend.*

- explained (Want of funds, as cause of abandonment) in 3 *Kent Com.* 322, n. c.; *Ruckman v. Merchants' Louisville Ins. Co.*, 5 *Duer*, 342, 359. See (Implied warranty of seaworthiness in time policies) *Thompson v. Hopper*, 6 *El. & Bl.* 172, 937; and cases cited; *Hoxie v. Pacific Mut. Ins. Co.*, 7 *Allen*, 211, and cases cited. Followed (What constitutes unseaworthiness) in *Lapene v. Sun Mut. Ins. Co.*, 8 *La. Ann.* 1; s. c., 58 *Am. Dec.* 668.
- American Life Ins. & Trust Co. v. Van Epps**, 14 *Abb. Pr. N. S.* 253. Rev'd in 56 *N. Y.* 601. See also (Costs against trustee personally) *Code Civ. Pro.* § 3246.
- American Medicine Co. v. Kessler**, 38 *Super. Ct. (J. & S.)* 407. Rev'd in 66 *N. Y.* 637. See further decision in 44 *Super. Ct. (J. & S.)* 557.
- American Nat'l Bank of N. Y. v. Wheelock**, 45 *Super. Ct. (J. & S.)* 205. Appeal dismissed in 82 *N. Y.* 118.
- American Seaman's Friend So. v. Hopper**, 43 *Barb.* 625. Aff'd in 33 *N. Y.* 619.
- American Silk Works v. Salomon**, 4 *Hun.* 135; s. c. more fully in 6 *Sup'm. Ct. (T. & C.)* 352.
- American Transportation Co. v. City of Buffalo**, 23 *Barb.* 272. Aff'd in 20 *N. Y.* 388.
- American Union Tel. Co. v. Middleton**, 80 *N. Y.* 408. Compare (Jurisdiction in actions for injuries to land without the State), 22 *Alb. L. J.* 47, 119, 147, 219. Explained in *Atl. & Pac. Tel. Co. v. Balt. & Ohio R. R. Co.*, 46 *Super. Ct. (J. & S.)* 377, 386.
- Ames v. Belden**, 17 *Barb.* 513. Disting'd (Performance of covenants in charter-party—when excused) in *Steele v. Buck*, 61 *Ill.* 343; s. c., 14 *Am. Dec.* 60, 65.
- **v. Duryea**, 6 *Lans.* 155. Aff'd in 61 *N. Y.* 609.
- **v. Jones**, 77 *N. Y.* 614. Reviewed and collated (Production of sample not necessarily a sale by sample) with other cases to same effect in 22 *Am. L. Reg. N. S.* 242.
- **v. Merriman**, 9 *Wend.* 498. Explained (Who to make affidavit on motion for judgment as for nonsuit) in *Bird v. Moore*, 3 *Hill*, 447.
- **v. N. Y. Union Ins. Co.**, 14 *N. Y.* 253. See *Masters v. Madison Co. Mut. Ins. Co.*; *Mayor of N. Y. v. Hamilton Fire Ins. Co.* Followed (Waiver by insurer) in *Rowley v. Empire Ins. Co.*, 4 *Abb. Ct. App. Dec.* 134; *Liddle v. Market Fire Ins. Co.*, 4 *Bosw.* 188, 191; *Van Allen v. Farmers' Joint Stock Ins. Co.*, 10 *Hun.* 399, and 6 *Sup'm. Ct. (T. & C.)* 593; *Whitwell v. Putnam Fire Ins. Co.*, 6 *Lans.* 167. Disting'd in *Underwood v. Farmers' Joint Stock Ins. Co.*, 57 *N. Y.* 506. Followed (Effect of acts, &c. of insurance agent) in *Hodgkins v. Montgomery Co. Mutual Ins. Co.*, 34 *Barb.* 214; *Huntley v. Perry*, 38 *Barb.* 571. Reviewed with other cases in *Van Schoick v. Niagara Fire Ins. Co.*, 68 *N. Y.* 438. Followed, with *Rowley v. Empire Ins. Co.*, 36 *N. Y.* 550, in *Alexander v. Germania Fire Ins. Co.*, 5 *Sup'm. Ct. (T. & C.)* 208; s. c., 2 *Hun.* 655. Followed (Effect of condition limiting action on fire policy) in *Mayor, &c. of N. Y. v. Hamilton Fire Ins. Co.*, 39 *N. Y.* 46, which aff'd 10 *Bosw.* 547. Explained in *Ripley v. Aetna Ins. Co.*, 30 *N. Y.* 163. Reaff'd in *Wilkinson v. First Nat. Fire Ins. Co.*, 72 *N. Y.* 502. Applied in *Young v. Western Union Tel. Co.*, 34 *Super. Ct. (J. & S.)* 396; *Ripley v. Astor Ins. Co.*, 17 *How. Pr.* 445; *Mayor, &c. of N. Y. v. Hamilton Fire Ins. Co.*, 39 *N. Y.* 45; and the latter applied in *Killips v. Putnam Fire Ins. Co.*, 28 *Wis.* 472; s. c., 9 *Am. R.* 506, 513.
- **v. Webber**, 11 *Wend.* 186. Explained (Motion to dismiss writ of error) in *Boyd v. Weeks*, 6 *Hill*, 71.
- Amidon v. Wheeler**, 3 *Hill*, 137. Disting'd (Restitution) in *Matter of Guardian Sav'gs Inst'n*, 78 *N. Y.* 408, 413.
- Ammidon v. Walcott**, 15 *Abb. Pr.* 314. Followed (Adjournment of supplementary proceedings) in *Kauffman v. Thrasher*, 10 *Hun.* 438, 441.
- Amory v. Amory**, 36 *Super. Ct. (J. & S.)* 520. Aff'd, it seems, in 58 *N. Y.* 684, mem.; and that aff'd in 95 *U. S. (5 Otto)* 186.
- **v. Flynn**, 10 *Johns.* 102. See *People v. McGarren*. Relied on (Rights of finder of lost property) in *Sheldon v. Sherman*, 42 *N. Y.* 489.
- **v. Lord**, 9 *N. Y.* 403. See *Savage v. Burnham*. Disting'd (Suspension of power of alienation) in *Woodruff v. Cook*, 61 *N. Y.* 641. *Harrison v. Harrison*, 36 *N. Y.* 543.
- **v. McGregor**, 15 *Johns.* 24; s. c., 8 *Am. Dec.* 205. See *Fontaine v. Phoenix Ins. Co.* Explained (Common carrier—measure of damages in actions against) in *Ang. on Carr.* § 484, n. 1, 5, ed. Cases collected (Inter-course between citizens of belligerent nations) in 10 *Am. L. Reg. N. S.* 228. Cited approvingly in 1 *Kent Com.* 66, n. a. Followed, with *Brackett v. McNair*, 14 *Johns.* 171; s. c., 7 *Am. Dec.* 260, in *McGregor v. Kilgore*, 6 *Ohio*, 363. Said in 8 *Am. Dec.* 211, n., to have been noticed elsewhere as to allowance of interest where there is fraud.
- Amoskeag Manuf. Co. v. Mayor, &c. of Albany**, 63 *N. Y.* 637. Disting'd (Power to reduce claim presented for audit) in *Matter of Murphy*, 24 *Hun.* 596, rev'g 60 *How. Pr.* 258, where the case was relied on.
- **v. Spear**, 2 *Sandf.* 599. See *Hier v. Abrahams*; *Matsell v. Flanagan*; *Popham v. Wilcox*; *Stokes v. Landgraff*. Approved (Trade-mark and injunction) in *Samuel v. Berger*, 24 *Barb.* 164; s. c., 4 *Abb. Pr.* 88; 13 *How. Pr.* 342; *Petridge v. Merchant*, 4 *Abb. Pr.* 161; *Petridge v. Wells*, 13 *How. Pr.* 383; *Wolfe v. Goulard*, 18 *Id.* 67; *Corwin v. Daly*, 7 *Bosw.* 222; *Williams v. Johnson*, 2 *Bosw.* 1; *Morgan's Sons' Co. v. Troxell*, 23 *Hun.* 638, 640; *Burnett v.*



- Phalon**, 3 *Keyes*, 594; s. c., 5 *Abb. Pr. N. S.* 212. Followed in Congress Spring Co. v. High Rock Spring Co., 45 *N. Y.* 291; s. c., 10 *Abb. Pr. N. S.* 348; rev'g 57 *Barb.* 526; *Gillott v. Esterbrook*, 17 *Barb.* 463, and 48 *N. Y.* 377; *Newman v. Alvord*, 49 *Barb.* 593; *Gillott v. Kettle*, 3 *Duer*, 624. Disting'd in *Meneely v. Meneely*, 1 *Hun.* 375; *Godillot v. Hazard*, 44 *Super. Ct. (J. & S.)* 427, 430. Followed with *Stokes v. Landgraff*, 17 *Barb.* 608; *Fetridge v. Wells*, 4 *Abb. Pr.* 144; *Williams v. Johnson*, 2 *Bosw.* 1, and other cases in *Burke v. Cassin*, 45 *Cal.* 467; s. c., 13 *Am. R.* 204. Applied in *Manuf. Co. v. Trainer*, 101 *U. S.* (11 *Otto*) 51, 61. Quoted in 2 *Pars. on Contr.* 257 *bn. n.* 4; *Id.* 257, *cc. n.* t.
- Amsbey v. Hinds**, 46 *Barb.* 622. Aff'd in 48 *N. Y.* 57. Decision in 48 *N. Y.* disting'd (Retroactive effect of statute) with *McCahill v. Hamilton*, 20 *Hun.* 388; *Watkins v. Haight*, 18 *Johns.* 138; *Berley v. Rampacher*, 5 *Duer*, 188, in *Matter of Lauterjung*, 48 *Super. Ct. (J. & S.)* 308.
- Amsdell v. McCaffrey**, 16 *Hun.* 255. Disting'd (Sufficiency of notice of appeal from justice's judgment) in *Andrews v. Long*, 19 *Hun.* 303. See *Code Civ. Pro.* 1881, § 3070, *n.*
- Amsinck v. Northrup**, 12 *Weekly Dig.* 573. Reported as *Amsinck v. North*, 62 *How. Pr.* 114.
- Anable v. Anable**, 24 *How. Pr.* 92. See (Verification of pleadings in action for divorce) *Olney v. Olney*, 7 *Abb. Pr.* 350; *Sweet v. Sweet*, 15 *How. Pr.* 169; *Code Civ. Pro.* 1881, § 1757, *n.*
- **v. Steam Engine Co.**, 16 *Abb. Pr.* 286; Aff'd, as *Anable v. Conklin*, in 25 *N. Y.* 470.
- Anchor Life Ins. Co. v. Pease**, 66 *Barb.* 360; s. c., more fully, 44 *How. Pr.* 385.
- Anderson, Matter of**, 48 *How. Pr.* 279; Mem. of s. c., 2 *Hun.* 377, and 4 *Sup'm. Ct. (T. & C.)* 658. Modified in 60 *N. Y.* 457. Decision in 60 *N. Y.* disting'd (Designation of corporation papers) in *Matter of Burneister*, 76 *N. Y.* 174.
- **v. Dickie**, 1 *Robt.* 700; s. c., more fully, 17 *Abb. Pr.* 83; 26 *How. Pr.* 199. Overruled (Granting new trial after judgment) in *Tracey v. Altmeyer*, 46 *N. Y.* 598.
- **v. Drake**, 14 *Johns.* 114; s. c., 7 *Am. Dec.* 442, with note containing citations; s. c., 5 *N. Y. Com. L. Law. Ed.* 795, with brief note.. Included (Effect of removal of maker of note in excusing holder from presentment and demand) in 2 *Ames Cases on B. & N.* 334. Examined in *Foster v. Julien*, 24 *N. Y.* 28, 30, 39; and see *Niagara District Bank v. Fairman, &c. Manuf. Co.*, 31 *Barb.* 403, 406. Seems to be disting'd, though approved, in *Hepburn v. Toledano*, 10 *Mart. (La.)* 643; s. c., 13 *Am. Dec.* 345.
- **v. Hill**, 53 *Barb.* 238. Criticised and doubted (Remedy for misjoinder of causes of action) in *Henderson v. Jackson*, 2 *Sweeney*, 324; s. c., 40 *How. Pr.* 168; s. c., 9 *Abb. Pr. N. S.* 293.
- **v. Jackson**, 16 *Johns.* 382. See *Jackson v. Blanshan*. Explained (Executory devises) in *Wilkes v. Lion*, 2 *Cow.* 333, 392, as turning on the word "survivor." Result of the litigation stated in *Waldron v. Gianini*, 6 *Hill*, 601. Rule laid down, followed in *Jackson v. Chew*, 12 *Wheat.* 513, as a local rule of property. Discussed in 4 *Kent Com.* 279, and *n. e.* Cited as authority in *Roach v. Martin's Lessee*, 1 *Harr. (Del.)* 548; s. c., 27 *Am. Dec.* 746, 755.
- **v. James**, 4 *Robt.* 35, Said, in 6 *Abb. L. J.* 166, to have been aff'd by Court of Appeals, in April, 1871. See *Wetmore v. Law.*
- **v. Lemon**, 4 *Sundf.* 552. Rev'd in 8 *N. Y.* 236. Decision in 8 *N. Y.* doubted (Right of partner to purchase reversion of real estate occupied by partnership) in *Mitchell v. Reed*, 61 *N. Y.* 123, 142.
- **v. Mather**, 44 *N. Y.* 249. Explained (Jurisdiction of court of equity to direct sale of infants' real estate) in 2 *Perry on Trusts*, 3 Ed. § 610, *n.* 1.
- **v. Nicholas**, 5 *Bosw.* 121. Aff'd in 28 *N. Y.* 600. See *Bush v. Lathrop*. Decision in 5 *Bosw.* followed, as to agency and transfer, in *McNeil v. Tenth National Bank of N. Y.*, 55 *Barb.* 59. Cited (Distinction between conversion of certificate of stock and of the stock itself) with *Reynolds v. Shuler*, 5 *Cow.* 323; *Packard v. Getman*, 6 *Id.* 757; *Hawkins v. Hoffman*, 6 *Hill*, 586; in *Daggett v. Davis*, 53 *Mich.* 37.
- **v. Prindle**, 23 *Wend.* 616. Commented on (Questions arising on certiorari) with *Buck v. Binninger*, 3 *Barb.* 391, in *Haviland v. White*, 7 *How. Pr.* 154.
- **v. Rapelye**, 9 *Paige*, 483. Rev'd in 4 *Hill*, 472.
- **v. Rochester, &c. R. R. Co.**, 9 *How. Pr.* 553. Explained and followed (Property dedicated to public use) in *Burnet v. Bagg*, 67 *Barb.* 154. Limited in *Matter of Boston, &c. R. R. Co.*, 53 *N. Y.* 574.
- **v. Rome, Watertown, &c. R. R. Co.**, 54 *N. Y.* 334. Followed (Declarations of witness) in *People ex rel. Tenth Nat. Bk. of N. Y. v. Green*, 5 *Sup'm. Ct. (T. & C.)* 376, 379; *mem. s. c.*, 3 *Hun.* 208. Disting'd in *Casey v. N. Y. Central, &c. R. R. Co.*, 8 *Daly*, 220, 222; *Water Comm'rs v. Burr*, 56 *N. Y.* 665, 667. Followed with *Luby v. Hudson River R. R. Co.*, 17 *N. Y.* 131, and other cases, in *Whart. Com. on Ag.* § 160. Approved and followed (Admission of immaterial evidence as ground for reversal) in *Oleson v. Telford*, 37 *Wis.* 327. Followed in *O'Sullivan v. Roberts*, 39 *Super. Ct. (J. & S.)* 360, 371; *Havemeyer v. Havemeyer*, 43 *Id.* 522.
- **v. Speers**, 8 *Abb. N. C.* 383; s. c., 58 *How. Pr.* 68. Rev'd in 21 *Hun.* 568; s. c., 59 *How. Pr.* 421.
- **v. Allen**, 12 *Johns.* 343. See *Andrews v. Beecker*. Approved with *Johnson v. Bloodgood*, 1 *Johns. Cas.* 51 (Actual notice of assignment of chose in action, not necessary) in *Tritt v. Colwell*, 31 *Penn.* 228.

- Andres v. Wells**, 7 *Johns*. 260. Collated (Liability for libel) with other cases in *Bigge Cases on Torts*, 111. Followed and approved in *King v. Root*, 4 *Wend.* 136.
- Andrew v. Dietrich**, 14 *Wend.* 31; s. c., 12 *N. Y. Com. L. Law. ed.* 527, with brief note. Criticised (False pretenses and larceny) in 15 *Am. L. Rev.* 567.
- **v. Newcomb**, 32 *N. Y.* 417. Quoted (Sale of things not yet in existence or not yet acquired by vendor) in 1 *Benj. on Sales*, § 78, n. 3 (Corbin's 4 *Am. Ed.*), with *Seymour v. Canandaigua, &c. R. R. Co.*, 25 *Barb.* 284; *Field v. Mayor, &c. of N. Y.*, 6 *N. Y.* 179. Collated in 30 *Am. R.* 56, n., as to the validity of chattel mortgages upon crops or property not in existence or to be acquired.
- **v. N. Y. Bible and Prayer-Book Society**, 4 *Sandf.* 156; s. c., 8 *N. Y. Leg. Obs.* 361. Rev'd, on another ground, in 8 *N. Y.* 559, n.; and see *Yates v. Yates*, 9 *Barb.* 324. Compare (Bequest to society) *Betts v. Betts*, 4 *Abb. N. C.* 317. Cited (Trust for illegal object not executed) with other cases in 13 *Am. L. Reg. N. S.* 66. Quoted (Perpetuities) in 1 *Jarman on Wills*, *Randolph and Talcott Ed.* 514, n. Commented upon (Execution of trusts by corporations) in 1 *Perry on Trusts*, 3 *Ed.* § 45, n. 3.
- Andrews, Matter of**, 22 *Hun.* 608, n. Followed (Defects in assessment) in *Matter of Dennis*, 22 *Hun.* 608.
- **v. Etna Life Ins. Co.**, 18 *Hun.* 163. Rev'd in 85 *N. Y.* 334.
- **v. Beecker**, 1 *Johns Cas.* 411. Followed (Effect of release by assignor of chose in action) in *Raymond v. Squire*, 11 *Johns.* 49. Disregarded as a foreign authority, with *Wardell v. Eden*, 2 *Johns. Cas.* 121, n. a; *Littlefield v. Storey*, 3 *Johns.* 425; *Anderson v. Van Alen*, 12 *Id.* 343; in *Mansfield v. Mansfield*, 6 *Conn.* 559; s. c., 16 *Am. Dec.* 76, 81. Denied in *Bulkley v. Landon*, 3 *Conn.* 76. See *contra* cases in the court of Kings Bench: *Bauerman v. Radenius*, 7 *Term R.* 663; *Crail v. D'Aeth*, *Id.* 670. See in accord in the English Common Pleas: *Legh v. Legh*, 1 *Bos. & P.* 447. And see 1 *Campb.* 492. Cited with *Raymond v. Squire*, 11 *Johns.* 47; *Littlefield v. Storey*, 3 *Johns.* 425; *Dawson v. Coles*, 16 *Johns.* 51; *Kimball v. Huntington*, 10 *Wend.* 675, and other cases, in 1 *Taylor Ev.* 653, to show that, contrary to the practice of the English trial courts, the equitable jurisdiction exercised by the trial courts in America enables them to exclude admissions of a nominal plaintiff as evidence against the real plaintiff.
- **v. Betts**, 8 *Hun.* 322. Cited as authority (Power of court of equity to direct sale of property held in common) in *Story on Partn.* 7 *ed.* § 439, n. Followed in *Shchan v. Mahar*, 17 *Hun.* 130.
- **v. Bond**, 16 *Barb.* 633. Approved in *Pomeroy on Remedies*, § 660, as accurately describing the office of the general denial.
- **v. Durant**, 11 *N. Y.* 35. See *Hubbell v. Denison*; *McConihe v. N. Y. & Erie R. R. Co.*; *Reubens v. Joel*. Commented upon (Sale of goods) in 1 *Chitty on Contr.* 531; n. 2, 11 *Am. ed.* Discussed (Sale of specific chattels conditionally) in *Benj. on Sales*, § 351, (Bennett's 4 *Am. ed.*). Explained in 1 *Id.* §§ 398, 408, 410, 411, 412 (Corbin's 4 *Am. ed.*) Disting'd (When title to goods passes) in *Higgins v. Murray*, 73 *N. Y.* 252, 254; *Burrows v. Whitaker*, 71 *Id.* 291, 295; s. c., 27 *Am. R.* 42. Relied on in *Clarkson v. Stevens*, 106 *U. S.* 505, 514. Followed and approved in *McConihe v. N. Y. & Erie R. R. Co.*, 20 *N. Y.* 495, 497. Explained in *Hiscox v. Harbeck*, 2 *Bosw.* 506, 514. But compare 1 *Parsons Mar. L.* 75. Approved in *Edwards v. Elliott*, 36 *N. J. L.* 449, 452.
- **v. —**, 18 *N. Y.* 496. Qualified (Right of creditor to attack fraudulent assignment) with *Reubens v. Joel*, 13 *N. Y.* 488, in *Rinchev v. Stryker*, 28 *N. Y.* 45. Explained in *Thayer v. Willet*, 5 *Bosw.* 344, 360; s. c., 9 *Abb. Pr.* 325, as not an authority as to sheriff's lien.
- **v. Glenville Woolen Co.**, 11 *Abb. Pr. N. S.* 78. Compare *O'Brien v. Glenville Woolen Co.*, 50 *N. Y.* 128. See subsequent decision in 50 *N. Y.* 282. See *Edwards v. Bodine*. Decision in 50 *N. Y.* disting'd (Damages on injunction) in *McDonald v. James*, 38 *Super. Ct. (J. & S.)* 76, 78; *Troxell v. Haines*, 5 *Daly*, 389, 390; s. c., 19 *Abb. Pr. N. S.* 1; *Hovey v. Rubber Tip Pencil Co.*, 50 *N. Y.* 335; *Langdon v. Gray*, 22 *Hun.* 512; *Disbrow v. Garcia*, 52 *N. Y.* 655. Disting'd with *Corcoran v. Judson*, 24 *N. Y.* 106; *Newton v. Russell*, 87 *Id.* 527; which was followed in *Randall v. Carpenter*, 88 *N. Y.* 293.
- **v. Harrington**, 19 *Barb.* 343. Disting'd (Reference to statute in action for penalty) in *Schoonmaker v. Brooks*, 24 *Hun.* 553, 555.
- **v. Herriot**, 4 *Cow.* 508; s. c., 8 *N. Y. Com. L. Law. ed.* 468, with brief note. See *Warren v. Lynch*. Cited (Limitation of actions—what law governs) in *Perkins v. Guy*, 55 *Miss.* 153; s. c., 30 *Am. R.* 510, as having appended an elaborate note on the subject. Approved (What gives jurisdiction of the person) in *Fiske v. Anderson*, 33 *Barb.* 71, 75. Approved (Personal property as having no locality) in *People v. Comm'rs of Taxes, Id.* 116.
- **v. Keeler**, 19 *Hun.* 87. Aff'd, it seems, in 90 *N. Y.* 678. Applied (Interest) in *Assoc. for Relief of Females v. Eagleson*, 60 *Hov. Pr.* 9, 12.
- **v. Long**, 19 *Hun.* 303. Rev'd in 79 *N. Y.* 573. Further proceeding in 23 *Hun.* 24. See (Notice of appeal from justice's judgment) as to effect of *Code Civ. Pro.* §§ 3046, &c., *Bishop v. Van Vechten*, 10 *Abb. N. C.* 220, 224. Decision in 79 *N. Y.* followed in *Payne v. Terry*, 21 *Hun.* 281, but without opinion. Followed (Appeals in actions com-

- menced in justices' courts) in *Kincaid v. Richardson*, 24 *Hun*, 137. Disting'd in *Horv v. Seaton*, 18 *Weekly Dig.* 510; *Perry v. Round Lake Camp Meeting Assoc.*, 22 *Hun*, 294. Cited in *Cook v. Darrow*, *Id.* 306.
- **v. Montgomery**, 19 *Johns.* 162; s. c., 10 *Am. Dec.* 213, with note. See *Borden v. Fitch*; *Hitchcock v. Aiken*; *Starbuck v. Murray*. Followed (Effect of judgments of sister States) in *Gulick v. Loder*, 1 *Green Lav.* (N. J.) 63; s. c., 23 *Am. Dec.* 711, with note, as having overruled *Hubbel v. Cowdry*, 5 *Johns.* 132. Followed in *Aldrich v. Kinney*, 4 *Conn.* 380; s. c., 10 *Am. Dec.* 151; where however *Hitchcock v. Aiken*, 1 *Cal.* 460; *Kilburn v. Woodworth*, 5 *Johns.* 41; s. c., 4 *Am. Dec.* 321, and other cases are followed, as to when such judgments are invalid.
- **v. Murray**, 33 *Barb.* 354. See *Corning v. McCullough*; *Miller v. Fenton*. See (Nature of liability of stockholders, &c.) other cases collected in *Chase v. Lord*, 6 *Abb. N. C.* 253, 253, n. Otherwise (Contribution among trustees) now by statute (L. 1871, c. 657, am'd'g L. 1848, c. 40, § 12). So also on general principles, *Nickerson v. Wheeler*, 118 *Mass.* 295; *Thomps. on Liab. of Off.* 442. *Contra*, *Potter on Corp.* 401, § 319.
- **v. Raymond**, 2 *Supm. Ct. (T. & C.)* 661. Aff'd in 58 *N. Y.* 676, but with no further opinion on the question of law.
- **v. Rowan**, 28 *How. Pr.* 126. See *Mallory v. Norton*. Opposed (Judgment for interfering with exempt property) to *Mallory v. Norton*, 21 *Barb.* 424.
- **v. Wallege**. See *Bank of Poughkeepsie v. Hasbrouck*.
- Andrus v. Waring**. See *Buel v. Gordon*; *Woods v. Rowan*.
- Angel v. Town of Hume**, 17 *Hun*, 374. Approved and followed (Validity of town bonds) in *Rich v. Town of Seneca Falls*, 3 *Fed. Rep.* 852. Approved and followed (Town bonds issued under L. 1869, c. 907, not nullified by L. 1871, c. 925) in *Syracuse Savings B'k v. Town of Seneca Falls*, 21 *Hun*, 304; aff'd in 86 *N. Y.* 317, 321.
- Angell v. Lawton**, 14 *Hun*, 70. Appeal dismissed in 76 *N. Y.* 540.
- Angevine's Estate**, 1 *Tuck.* 178, 195. First decision of the Supreme Court reported as *Angevine v. Angevine*, 48 *Barb.* 417.
- Angevine v. Angevine**, 48 *Barb.* 417. See later decision reported in *Angevine's Estate*, 1 *Tuck.* 178, 195, denying authority for ordering new trial before jury.
- Angrave v. Stone**, 25 *How. Pr.* 167. Aff'd in 45 *Barb.* 35; *Angus v. Dunscomb*, 8 *How. Pr.* 14. Collated (Arrest of person acting in fiduciary capacity) with other cases in *Thompson on Prov. Rem.* 33.
- Anibal v. Hunter**, 6 *How. Pr.* 255. See, in accord (Answer in libel or slander), *Budington v. Davis*, 6 *How. Pr.* 401.
- Annett v. Foster**, 1 *Daly*, 502. Followed (Liability of carrier) in *Speed v. Atlantic & Pacific R. R. Co.*, 71 *Mo.* 303, 310.
- **v. Kerr**, 2 *Robt.* 556; s. c., 28 *How. Pr.* 324. Aff'd, in 35 *N. Y.* 256, as *Annett v. Terry*, on the ground that the evidence tended to show fraud as against the sureties, and without passing on the other questions. See *Stilwell v. Mills*. Approved (Limitations on proceedings against sureties on bonds of executors, &c.) in *Scofield v. Adriance*, 1 *Dem.* 196; s. c., as *Estate of Scofield*, 3 *Civ. Pro. R. (Browne)*, 323 (Surrogate's authority to order removed administrator to account). Disting'd (Surrogate's authority to decree payment of assets) in *Gerould v. Wilson*, 81 *N. Y.* 573, 583.
- **v. Terry**, 35 *N. Y.* 256. See *Annett v. Kerr*; *Bartlett v. Campbell*. Relied on (Surrogate's decree, when not to be impeached), in *Thayer v. Clark*, 4 *Abb. Ct. App. Dec.* 391, 395. Upheld (Effect of judgment against principal), citing many cases, in *Stevens v. Shafer*, 48 *Wis.* 54; s. c., 33 *Am. Dec.* 793, with note.
- Amsinck v. Northrop**, 2 *Month. L. Bul.* 67. Motion to vacate order denied in *Amsinck v. North*, 62 *How. Pr.* 114; abridg't s. c., 12 *Weekly Dig.* 573.
- Anonymous**, 2 *Abb. N. C.* 56. See also ("Exception" in a deed) *Langdon v. Mayor*, &c. of *N. Y.*, 6 *Abb. N. C.* 314, n.
- , 3 *Abb. N. C.* 161. Reviewed (References in divorce cases) with other cases, in *McCleary v. McCleary*, 30 *Hun*, 156. See (Judgment in matrimonial causes), *Code Civ. Pro.* 1881, § 1229, n.
- , 6 *Abb. Pr.* 319, n. Disting'd (Liability of partner for fraud of copartner) in *Hanover Co. v. Sheldon*, 9 *Id.* 240, 241; *Contra*, *Wetmore v. Earle*, 9 *Abb. Pr.* 58, n.
- , 17 *Abb. Pr.* 48. Disting'd (Pleading in actions for divorce) in *Mitchell v. Mitchell*, 61 *N. Y.* 398, 410. See (Counter-claim in matrimonial action) *Code Civ. Pro.* 1881, § 1770, n.
- , 18 *Abb. Pr.* 87. Compare (Creditor's actions) *Kerr v. Blodgett*, 48 *N. Y.* 62; modifying 10 *Abb. Pr.* 137; s. c., 25 *How. Pr.* 303.
- , 2 *Cal.* 261. Overruled (Amendment of declaration in ejectment) in *Jackson v. Smith*, 6 *Cow.* 39.
- , 1 *Duer*, 613; *Tracy v. Leland*, 2 *Sandf.* 729. Examined and disapproved (Right of arrest for tort of wife) in *Solomon v. Waas*, 2 *Hilt.* 179. Opposed with *Schaus v. Putscher*, 16 *Abb. Pr.* 353; *Solomon v. Waas*, 2 *Hilt.* 179, in *Muser v. Miller*, 12 *Abb. N. C.* 306, n.
- , 4 *How. Pr.* 112. Overruled (Validity of judgment taken without process served, or appearance by attorney) in *Williams v. Van Valkenburgh*, 16 *How. Pr.* 145, 152.
- , 6 *How. Pr.* 160. Disapproved (Evidence of character, in action for slander) in *Anonymous*, 8 *How. Pr.* 424.
- , 59 *N. Y.* 513; reported below as *Froude*

- v. Froude, 1 *Hun.* 76. Followed (Order not appealable) in *Claffin v. Baere*, 80 *N. Y.* 642.
- , 67 *N. Y.* 598. Reported below as *Roebing v. Duncan*, in 8 *Hun.* 502. Disting'd (Arrest for fraud) in *Ellison v. Bernstein*, 60 *How. Pr.* 148.
- , 10 *Paige*, 20. Dissented from (Assignees in bankruptcy as parties to foreclosure proceedings) in *Oliver v. Cunningham*, 6 *Fed. Rep.* 60. Doubted (Rights of one who acquires title from mortgagor after commencement of suit to foreclose mortgage) in *Stout v. Lye*; 13 *Otto (U. S.)* 69.
- , 1 *Wend.* 90. Overruled (Length of notice) in *Olcott v. Robinson*, 21 *N. Y.* 150, 154; *Sheldon v. Wright*, 5 *N. Y.* 517, 523.
- , 1 *Wend.* 108. Doubted (Attorney's authority in conducting suit) in *Horton v. Champlin*, 12 *R. I.* 550; s. c., 34 *Am. R.* 723.
- , 5 *Wend.* 82. Cited (Motion—time of making) with other cases, in *Whipple v. Williams*, 4 *How. Pr.* 30.
- , 18 *Wend.* 578. Followed (Service by leaving papers in office) in *Haight v. Moore*, 36 *Super. Ct. (J. & S.)* 294.
- , 19 *Wend.* 225. See (Increased costs) *Code Civ. Pro.* 1881, § 3258, n.
- Anonymous v. Gelpcke**, 5 *Hun.* 245. See other cases collated (Trustees' compromises) in *Matter of Youngs*, 5 *Abb. N. C.* 346, 354, n. Quoted in *Burrill on Assign.* § 427, n. 2, 4 Ed. See form of exceptions to referee's report in 1 *Abb. N. C.* 188, n.
- Ansonia Brass, &c. Co. v. Babbitt**, 8 *Hun.* 157. See a further decision in 74 *N. Y.* 395. Decision in 74 *N. Y.* disting'd (Proof of debt in bankruptcy, when waiver of creditor's right to share in dividends of assigned estate) in *Matter of Woodward*, 67 *How. Pr.* 359. Disting'd (Effect of order of U. S. court staying sheriff's proceedings) in *Ansonia Brass & Copper Co. v. Conner*, 67 *How. Pr.* 157; s. c., 6 *Civ. Pro. R. (Browne)* 173.
- **v. New Lamp Chimney Co.**, 64 *Barb.* 435. Aff'd in 53 *N. Y.* 123; s. c., 13 *Am. R.* 476; without passing on the question of jurisdiction, and the latter decision aff'd in 91 *U. S.* 656; s. c., 13 *Alb. L. J.* 74, as *New Lamp Chimney Co. v. Ansonia Brass, &c. Co.* See *Haxton v. Corse*. Decision in 53 *N. Y.* 123, followed (Effect of proof of debt against bankrupt corporation) in *Birmingham Nat. B'k v. Keck*, 55 *How. Pr.* 230. Applied (Constructing section of bankrupt law) in *Libbey v. Strasburger*, 14 *Hun.* 120.
- **v. Pratt**, 10 *Hun.* 443. Compare (Bankruptcy—jurisdiction). *Wheelock v. Lee*, 5 *Abb. N. C.* 72.
- Anthoine v. Coit**, 2 *Hall*, 40; *Marquand v. Webb*, 16 *Johns.* 89; *Osgood v. Manhattan Ins. Co.*, 3 *Cow.* 612; *Davis v. Darrow*, 12 *Wend.* 65. Doubted (New trial because of admission of improper evidence) in *Crary v. Sprague*, 12 *Wend.* 41.
- Anthony v. Brouwer**, 31 *How. Pr.* 128. Aff'd, as *Gill v. Brouwer*, in 37 *N. Y.* 549; s. c., 5 *Transc. App.* 86.
- **v. Harrison**, 14 *Hun.* 198. Aff'd in 74 *N. Y.* 613, on opinion of GILBERT, J.
- **v. Smith**, 4 *Bow.* 503. Overruled (New trial not to be granted after judgment) in *Tracey v. Altmeyer*, 46 *N. Y.* 598.
- Anthony Street, Matter of**, 20 *Wend.* 618. See also (Discontinuance) *Matter of Washington Park*, 56 *N. Y.* 144, 156.
- Appleby v. Brown**, 24 *N. Y.* 143; s. c., less fully, 23 *How. Pr.* 207, where, however, the opinion of DAVIES, J., is given in full.
- **v. Erie Co. Savings Bank**, 62 *N. Y.* 12. Disting'd (Negligence in payment by savings banks) in *Allen v. Wmsburgh Savings B'k*, 69 *N. Y.* 320.
- **v. Robinson**, 44 *Barb.* 316. Disting'd (Effect of giving bail) in *Wemple v. Glavin*, 5 *Abb. N. C.* 360, 367.
- Appleton v. Bowles**, 2 *Sup'm. Ct. (T. & C.)* 568. Rev'd as *Miller v. Bowles*, in 58 *N. Y.* 253.
- **v. Water Comm'rs of N. Y.**, 2 *Hill*, 432. Compare (Liability of city officers) *Sage v. City of Brooklyn*, 8 *Abb. N. C.* 279. Explained in *Clarissay v. Metropolitan Fire Department*, 7 *Abb. Pr. N. S.* 352, 363; s. c., 1 *Sweeney*, 224.
- Appley v. Trustees of Montauk**, 38 *Barb.* 275. Followed (Construction of L. 1852, c. 139, incorporating proprietors of Montauk lands) in *Grinnell v. Minturn*, 16 *Hun.* 184.
- Apthorpe v. Comstock**, *Hopk.* 143. Aff'd in 8 *Cow.* 386.
- Archer v. O'Brien**, 7 *Hun.* 146. Quoted (Assignment for benefit of creditors, to creditors) in *Burrill on Assign.* § 12, n. 2, 4 ed.
- Arcularius v. Gaisenheimer**, 3 *Bradf.* 64; *Sweet v. Gaisenheimer*, *Id.* 114. Aff'd as *Arcularius v. Sweet*, in 25 *Barb.* 403.
- Arctic Fire Ins. Co. v. Austin**, 3 *Hun.* 195; s. c., 6 *Sup'm. Ct. (T. & C.)* 63; rev'd in 69 *N. Y.* 470; s. c., 25 *Am. R.* 221; modifying 54 *Barb.* 559; and see 66 *Barb.* 257. Contrary to decision in 69 *N. Y.* (Tow-boats as carriers; see *Bussey v. Mississippi Val. Transp. Co.*, 24 *La. Ann.* 165; s. c., 13 *Am. R.* 120; and see *Abb. Tr. Ev.* 561. Approved with *Silliman v. Lewis*, 49 *N. Y.* 379, and *Milton v. Hudson Riv. Steamboat Co.*, 37 *N. Y.* 210, as in substantial accord with the federal authorities, in *The M. J. Cummings*, U. S. Dis. Ct. N. D. N. Y. 1883, 18 *Fed. Rep.* 184. Disting'd (Imputing negligence of carrier) in *Perry v. Lansing*, 17 *Hun.* 34, 37.
- Arden v. Arden**, 1 *Johns. Ch.* 313. See *Ellison v. Moffatt*. See to the contrary (Presumption of payment) *Dedlake v. Robb*, 1 *Woods*, 680; see also *Abb. Tr. Ev.* 812.
- **v. Patterson**, 5 *Johns. Ch.* 44. Explained and criticised (Champerty and maintenance) in *Story on Eq.* 11 ed. 1050, n. Compare *Thalheimer v. Brinckerhoff*, 3 *Cow.* 623.
- Arend v. Liverpool, N. Y. & Phil. Steam-**

- ship Co., 6 *Lans.* 457; s. c., more fully, in 64 *Barb.* 118; aff'd, it seems, in 53 *N. Y.* 606; but without opinion.
- Arent v. Squire**, 1 *Daly*, 347. See *Platt v. Hibbard*. Compare (Burden of proof in action against carrier) *Lamb v. Camden & Amboy R. R. & Trans. Co.*, 46 *N. Y.* 271.
- Areson v. Areson**, 5 *Hill*, 410. Rev'd in 3 *Den.* 458.
- Argall v. Jacobs**, 56 *How. Pr.* 167. Aff'd in 21 *Hun.* 114, which was aff'd in 87 *N. Y.* 110. Followed (Motion for new trial) in *Newhall v. Appleton*, 46 *Super. Ct. (J. & S.)* 6, 8.
- **v. Pitts**, 78 *N. Y.* 243. Disting'd (Judgment by default) in *Bullard v. Sherwood*, 85 *N. Y.* 253, 256.
- **v. Smith**, 3 *Denio*, 435. Discussed (Limited partnership—error in publication of amount contributed by special partner) in 1 *Par. on Contr.* 216, n. r.
- Argus Co. v. Mayor, &c. of Albany**, 7 *Lans.* 264. Approved, and in effect aff'd by ordering judgment on the stipulation, in 55 *N. Y.* 495; s. c., 14 *Am. R.* 296. Decision in 55 *N. Y.* quoted and explained (Statute of Frauds—note or memorandum in writing—consideration) in 1 *Benj. on Sales*, § 251, n. 46 (Corbin's 4 *Am. Ed.*)
- Arkell v. Commerce Ins. Co.**, 7 *Hun.* 455; Aff'd in 69 *N. Y.* 191; s. c., 25 *Am. R.* 168.
- Armour v. Michigan Cent. R. R. Co.**, 65 *N. Y.* 111. See *Dickerson v. Seelye*. Said (Negotiability of bills of lading) in 9 *Weekly Cinn. L. B.* 1, to be unsupported by authority in other States.
- Armsby v. People**, 2 *Sup'm. Ct. (T. & C.)* 157. Aff'd as *Kelley v. People*, 55 *N. Y.* 565; s. c., 14 *Am. R.* 342.
- Armstrong v. Byrne**, 1 *Edw. Ch.* 79. Discussed (Assignment for benefit of creditors—releases) in *Burrill on Assign.* § 192, 4 *Ed.* Quoted in *Id.* § 196. Commented upon in *Bishop on Assign.* § 198.
- **v. Craig**, 18 *Barb.* 387. Disapproved (New trial in justice's court) by *SHELDON, J.*, in *Sume v. Morrison*, 1 *Sheld.* 385. See *Code Civ. Pro.* 1881, § 3064, n.
- **v. Cummings**, 2 *Monthly L. Bul.* 14. Rev'd in 20 *Hun.* 313; s. c., more fully, 53 *How. Pr.* 313. Compare (Injunction against summary proceedings) *Code Civ. Pro.* § 2265.
- **v. —**, 2 *Monthly L. Bul.* 94; s. c., more fully, in 1 *Civ. Pro. R.* 38, n. Disting'd (Supplementary proceedings) in *Bean v. Tonnele*, 24 *Hun.* 553; s. c., 1 *Civ. Pro. R.* 33, 38.
- **v. —**, 22 *Hun.* 570. Disting'd (Set off of costs) in *Moloughney v. Kavanagh*, 3 *Civ. Pro. R. (Browne)* 253; *Tunstall v. Winton*, 5 *Monthly L. Bul.* 42.
- **v. Cushman**, 43 *Barb.* 340. See (Proof of assignment) for the stricter common law rule, *Palmer v. Merrill*, 6 *Cush.* 282; see also *Abb. Tr. Ev.* 2.
- **v. Dubois**, 1 *Abb. Ct. App. Dec.* 11.
- Disting'd (Liability for acts of attorney) in *Clark v. Woodruff*, 83 *N. Y.* 518, 526.
- **v. Foote**, 19 *How. Pr.* 237. Rev'd in 11 *Abb. Pr.* 384.
- **v. Garrow**, 6 *Cow.* 465. Examined (Ratification of act done under authority conferred by law) in *Farmer's Loan & Trust Co. v. Walworth*, 1 *N. Y.* 433, 445. Applied in *Townsend v. Olin*, 5 *Wend.* 210. Disting'd (Effect of giving note as payment) in *Van Ostrand v. Reed*, 1 *Wend.* 430; *Lewis v. Lozee*, 3 *Wend.* 82. Followed (Action against official collecting money) in *Murdock v. Atkin*, 29 *Barb.* 66. Disting'd in *Dybert v. Crane*, 1 *Wend.* 541; *Every v. Edgerton*, 7 *Wend.* 262. Disting'd (Discharge of sheriff by acts of party) in *Shelden v. Paine*, 10 *N. Y.* 401; *Walden v. Davison*, 15 *Wend.* 580; *Webber v. Blunt*, 19 *Wend.* 189; see also *Hilliard v. Austin*, 17 *Barb.* 144. Disting'd (Affirmance of security taken by sheriff) in *Cook v. Freudenthal*, 80 *N. Y.* 211.
- **v. Gilchrist**, 2 *Johns. Cas.* 424; s. c., 1 *N. Y. Com. L. Law. ed.* 564, with brief note on jurisdiction of courts of chancery.
- **v. McDonald**, 10 *Barb.* 300. Opposed (Evidence of legitimacy necessary) in *Haight v. Wright*, 20 *How. Pr.* 91. Criticised (Proof necessary to sustain father's action for child's services) as unsound in *Abb. Tr. Ev.* 382. Cited with other cases in 12 *Am. L. Reg. N. S.* 720.
- **v. N. Y. Central, &c. R. R. Co.**, 66 *Barb.* 437. Aff'd, it seems, in 53 *N. Y.* 623.
- **v. People**, 70 *N. Y.* 38. See (Communications between attorney and client) *Code Civ. Pro.* 1881, § 835, n.
- **v. Percy**, 5 *Wend.* 536. Examined (Rule of damages) in *Brichard v. Booth*, 4 *Wisc.* 74.
- **v. Smith**, 44 *Barb.* 120. Disting'd (Opinion of witness) in *Townsend v. Brundage*, 4 *Hun.* 264.
- **v. Wing**, 10 *Hun.* 520. Disting'd (Evidence to sustain action against heir at-law for debt of ancestor) in *Blossom v. Hatfield*, 24 *Hun.* 275.
- Arnold, Matter of**, 60 *N. Y.* 26. Approved (Assessments, when not vacated) in *Dolan v. Mayor, &c. of N. Y.*, 62 *N. Y.* 472. Disting'd in *Astor v. Mayor, &c. of N. Y.*, *Id.* 580. Followed in *Matter of Furniss*, 4 *Hun.* 624.
- **v. Angell**, 38 *Super. Ct. (J. & S.)* 27. Rev'd in 62 *N. Y.* 508. Decision in 62 *N. Y.* followed (Recovery must be on cause of action in complaint) in *Hollister v. Englehart*, 11 *Hun.* 446. Disting'd (Accounting, as between partners), in *Smith v. Bodine*, 74 *N. Y.* 30, 33. Quoted and collated (Lease to married woman) with other cases in *McAdam Landl. & T.* 2 ed. § 52.
- **v. Camp**, 12 *Johns.* 409; s. c., 7 *Am. Dec.* 328, with note. See *Olcott v. Rathbone*. Shown in note in 7 *Am. Dec.* to have been followed in several States—*Millard v. Thorn*, 56 *N. Y.* 406, being referred to as

- showing the principle on which its decision rests. Disapproved (Partner's note given for firm debt) in *Cole v. Sackett*, 1 *Hill*, 516, which see *below*. Overruled, also, by *Waddell v. Luer*, 5 *Hill*, 448, which was, however, rev'd in 3 *Den.* 410, where *Arnold v. Camp* was re-aff'd. Collated with *Van Eps v. Dillaye*, 6 *Barb.* 244, and other cases, in 1 *Am. Dec.* 5, *n.*, as according with the well established doctrine.
- *v. Crane*, 8 *Johns.* 79. See *Roget v. Merritt*; *Wilson v. Force*. Followed, with *Pierce v. Crafts*, 12 *Id.* 90 (Action for money had and received, against maker or indorser), in *Eagle Bank v. Smith*, 5 *Conn.* 71; *s. c.*, 13 *Am. Dec.* 37.
- *v. Foot*, 12 *Wend.* 330. See *Merritt v. Brinkerhoff*. Followed (Right of land-owner to stop flow of water-course, having origin on his land), in *Howe v. Norman*, 13 *R. I.* 488.
- *v. Gilbert*, 3 *Sandf. Ch.* 531. Rev'd, in part, in 5 *Barb.* 190; *s. c.*, 7 *N. Y. Leg. Obs.* 209.
- *v. Halenbrake*, 5 *Wend.* 33. Explained (Canal-boatmen as common carriers) in *Ang. on Varr.* § 81, 5 ed. Collated (Agency implied from course of dealing) with other cases, and commented upon, in 1 *Hare & W. Am. Lead. Cas.* 5 Ed. 692.
- *v. Hudson River R. R. Co.*, 49 *Barb.* 108; rev'd, on all the points, in 55 *N. Y.* 661. See *Bellinger v. N. Y. Central R. R. Co.*
- *v. Kinlock*, 50 *Barb.* 44. Said in 6 *Alb. L. J.* 196 to have been rev'd, by Court of Appeals, in Sept. 1870.
- *v. Nichols*, 64 *N. Y.* 117. Cited, with other cases, in *Story on Partn.* 7 ed. § 143, *n.*, to show when a partnership may be made liable for debts contracted prior to its existence.
- *v. Pacific Mut. Ins. Co.*, 14 *Hun.* 83. Rev'd in 78 *N. Y.* 7.
- *v. Patrick*, 6 *Paige*, 310. Approved (General lien of a judgment subordinate to equity) in *Sieman v. Austin*, 33 *Barb.* 9, 20.
- *v. Rees*, 18 *N. Y.* 57. Points of counsel in 17 *How Pr.* 35.
- *v. Robertson*, 3 *Daly*, 298. Appeal dismissed, it seems, in 50 *N. Y.* 683.
- *v. Rock River Valley Union R. R. Co.*, 5 *Duer*, 207. Included (Negotiable note, containing other provisions besides that for payment of money) in 1 *Ames Cases on B. & N.* 61. Followed in *Collins v. Bradbury*, 64 *Me.* 37; *Heard v. Dubuque County Bank*, 8 *Neb.* 10; *s. c.*, 30 *Am. R.* 811, 813.
- *v. Sandford*, 14 *Johns.* 417. Explained (Judgment of revocatur) in *Camp v. Bennett*, 16 *Wend.* 48. Followed (Appearance by infant without guardian, error in fact) in *McMurray v. McMurray*, 60 *Barb.* 117.
- *v. Suffolk Bank*, 27 *Barb.* 424. Disting'd (Lien on stock) in *Driscoll v. West, &c. Manuf'g Co.*, 59 *N. Y.* 96, 108. Followed (Damages—valuation of stock) in *Continental Tel. Co. v. Nelson*, 49 *Super. Ct. (J. & S.)* 197.
- *v. Tallmadge*, 19 *Wend.* 527. Overruled (Parties in action on bond given to several) in *Pearce v. Hitchcock*, 2 *N. Y.* 388.
- *v. Thomas*, 2 *How. Pr.* 91. Approved (Order of arrest, when extinguished) in *People ex rel. Roberts v. Bowe*, 81 *N. Y.* 45; *s. c.*, 8 *Abb N. C.* 284.
- Arnot v. Erie Ry. Co.*, 5 *Hun.* 608. Aff'd in 67 *N. Y.* 315.
- *v. McClure*, 4 *Den.* 41. See (Necessity of affidavits on foreclosure by advertisement) *Code Civ. Pro.* 1881, § 2400, *n.*
- *v. Pittston & E. Coal Co.*, 2 *Hun.* 591; *s. c.*, 5 *Sup'm. Ct. (T. & C.)* 143. Rev'd in 68 *N. Y.* 558; *s. c.*, 23 *Am. R.* 190. See *Hull v. Ruggles*, 68 *N. Y.* 558. Decision in 68 *N. Y.* followed (Contracts against public policy) in *Raymond v. Leavitt*, 46 *Mich.* 447; *s. c.*, 41 *Am. R.* 170; *McBirney & Johnston White Lead Co. v. Consolidated Lead Co.*, 9 *Cin. Law Bul.* 310. Disting'd in *Lewin v. Johnson*, 32 *Hun.* 408.
- *v. Post*, 6 *Hill*, 65. Rev'd in 2 *Den.* 344. See *Jackson v. Crafts*. The latter judgment explained in *Kortright v. Cady*, 21 *N. Y.* 343, as not conflicting with the doctrine that tender before foreclosure discharges the lien.
- Arnoux v. Phelan*, 21 *How. Pr.* 88. Approved (Taxing stenographer's fees as costs) in *Gilman v. Oliver*, 14 *Abb. Pr.* 174, 176.
- Artcher v. Douglass*, 5 *Den.* 509. See *Hubbard v. Gurney*. Cited with other cases as authority (Admissibility of parol evidence to show that party to note signed as surety) in *Ward v. Stout*, 32 *Ill.* 399.
- *v. Whalen*, 1 *Wend.* 179; *Jackson v. Catlin*, 2 *Johns.* 248; *s. c.*, 3 *Am. Dec.* 415. Reviewed with other cases in *State Bank v. Evans*, 3 *Green (N. J.)* 155; *s. c.*, 28 *Am. Dec.* 400-404, with note, as to what is an escrow.
- *v. Zeh*, 5 *Hill*, 200; *s. c.*, 16 *N. Y. Com. L. Law. ed.* 102, with brief note on agreements not to be performed within a year. Disting'd and applied (Part payment, &c. required by statute of frauds) in *Brabin v. Hyde*, 30 *Barb.* 265, which was rev'd in 32 *N. Y.* 523, applying *Artcher v. Zeh*. Applied in *Mattice v. Allen*, 33 *Barb.* 545. Followed in *Ely v. Ormsby*, 12 *Barb.* 571; *Brand v. Brand*, 49 *Barb.* 348. Approved in *Shindler v. Houston*, 1 *N. Y.* 270. Quoted and discussed in *Brown on Stat. of Frauds*, § 342, 4 ed.; 3 *Pars. on Contr.* 41, *n. n.*; 1 *Benj. on Sales*, § 139, *n. 1* (Corbin's 4 *Am. ed.*). Applied (Contracts not to be performed within a year) in *Dresser v. Dresser*, 35 *Barb.* 576. Relied on in *Gault v. Brown*, 48 *N. H.* 183; *s. c.*, 2 *Am. R.* 210, 213.
- Arthur v. Arthur*, 10 *Barb.* 9. See *Shotwell v. Murray*. Approved (Inadmissibility of parol evidence to control will) in *Myres v. Myres*, 23 *How. Pr.* 410, 411. Limited (Reformation of will) in *O'Donnell v. Harmon*, 3 *Daly*, 424.

- **v. Brooks**, 14 *Barb.* 533. Opposed (Form of denial) in *Jones v. Ludlum*, 74 *N. Y.* 61. Disapproved (Fivolous answer) with *Blake v. Eldred*, 18 *How. Pr.* 240, in *Chapman v. Chapman*, 34 *How. Pr.* 281. Criticised and disapproved (Hypothetical pleadings) with *Boyce v. Brown*, 7 *Barb.* 80, in *Brown v. Ryckman*, 12 *How. Pr.* 313.
- **v. Case**, 1 *Paige*, 447. Aff'd, as *Case v. Haight*, in 3 *Wend.* 632. Quoted and discussed (Diversion and detention of water), in *Wood on Nuisances*, 2 ed. § 364.
- **v. Griswold**, 2 *Hun.* 606; s. c., 16 *Abb. Pr. N. S.* 235; mem. of s. c., 5 *Sup'm. Ct. (T. & C.)* 696. Appeal dismissed, in 60 *N. Y.* 143. See former decision, in 55 *N. Y.* 400.
- **v. Homestead Fire Ins. Co.**, 78 *N. Y.* 462. For "defendant's," in ninth line from bottom, read "plaintiff's."
- Arthurton v. Dalley**, 20 *How. Pr.* 311. See to the contrary, as to the effect of a judgment in merging the original cause of action, so as to prevent the defendant therein from being arrested on the ground of fraud, *McButt v. Hirsch*, 4 *Abb. Pr.* 441; *Mallory v. Leach*, 23 *How. Pr.* 510, 511; s. c., 14 *Abb. Pr.* 449, n. *Arthurton v. Dalley* is, however, cited in and appears to accord with *Baxter v. Drake*, 61 *How. Pr.* 365; s. c., 85 *N. Y.* 502; s. c., 1 *Civ. Pro. R.* 228; see it also cited in 8 *Abb. N. C.* 197, n., and relied on in *Greenbaum v. Stein*, 2 *Daly*, 223. See also, *Code Civ. Pro.* 1881, § 552, n.
- Artisans' Bank v. Backus**, 31 *How. Pr.* 242. Aff'd in 36 *N. Y.* 100; s. c., 3 *Abb. Pr. N. S.* 273. See *Cook v. Litchfield*. See authorities cited (Negotiable paper—alterations) in *Abb. Tr. Ev.* 406, n. 9.
- **v. Treadwell**, 34 *Barb.* 553. Confirmed by subsequent decision reported as *Van Alstyne v. Cook*, 25 *N. Y.* 489. See *Innes v. Lansing*; *Van Alstyne v. Cook*. Discussed (Partnership—appointment of receiver) in 1 *Collyer on Partn.* § 384, *Wood's Am. ed.*
- Ash v. Coleman**, 24 *Barb.* 645. Disting'd (Action for construction of will—when maintainable) in *Onderdonk v. Mott*, 34 *Id.* 106, 113.
- **v. Putnam**, 1 *Hill*, 302. Opposed (Effect of fraud in invalidating transfer) in *Stevens v. Hyde*, 32 *Barb.* 171, 175, 177, 179. Followed in *Chaffee v. Fort*, 2 *Lans.* 81, 89. Commented on in *Rawles v. Deshler*, 1 *Buffalo Super. Ct.* 48; *Sturtevant v. Orser*, 24 *N. Y.* 542. Explained (Rescission of contract of sale) in *Blanchard v. Trim*, 38 *N. Y.* 228.
- Ashley v. Marshall**, 30 *Barb.* 426; s. c., 9 *Abb. Pr.* 361; 19 *How. Pr.* 110. Aff'd, in 29 *N. Y.* 494. Decision in 29 *N. Y.* applied (Counter-claims arising after commencement of action) in *Howard v. Johnston*, 82 *N. Y.* 271, 275.
- Ashton v. Jones**, 3 *Barb. Ch.* 397. See *Grant v. Vanschoonhoven*, *below*.
- Aspinwall v. Balch**, 7 *Daly*, 200; s. c., more fully, 4 *Abb. N. C.* 193. Cited and compared (Depreciation of purchase at judicial sale) in 25 *Moak Eng.* 71.
- **v. Meyer**, 2 *Sandf.* 180. Aff'd, as *Howland v. Myer*, 3 *N. Y.* 290. Followed (Validity of transfer of note by officer of insurance company, without previous resolution of directors), in *Brookman v. Metcalf*, 5 *Bosw.* 429, 442.
- **v. Torrence**, 1 *Lans.* 381. As to right to contribution, confirmed on further decision in *Aspinwall v. Sacchi*, 57 *N. Y.* 331.
- Astle v. Leeming**, 53 *How. Pr.* 397; s. c., 3 *Abb. N. C.* 25. See (Effect of verified answer on application to dissolve injunction) *Code Civ. Pro.* 1881, § 630, n.
- Astor, Matter of**, 50 *N. Y.* 363. Disting'd (Effect of failure to publish ordinance) in *Moore v. Mayor, &c. of N. Y.*, 73 *N. Y.* 249; s. c., 29 *Am. R.* 134. Followed (Designation of newspaper) in *Matter of Phillips*, 60 *N. Y.* 16, 24. Disting'd in *Matter of Anderson*, 60 *N. Y.* 457, 461; *Matter of Burke*, 62 *N. Y.* 224, 227.
- , 2 *Sup'm. Ct. (T. & C.)* 488. Aff'd in 56 *N. Y.* 625.
- , 53 *N. Y.* 617. Disting'd (Validity of assessments) in *Matter of Peugnet*, 67 *N. Y.* 443; *Matter of Marsh*, 21 *Hun.* 582.
- **v. Hoyt**, 5 *Wend.* 603. Explained (Continuous breach of covenant in lease) and disting'd in *Coffin v. Talman*, 3 *N. Y.* 465. Applied (Jurisdiction of equity to adjust rights in relation to sums assessed) in *Williams v. Craig*, 2 *Edw. Ch.* 303. Followed (Covenant to pay assessments runs with land) in *Kearny v. Post*, 1 *Sandf.* 110. Applied (Apportioning amount assessed for damage in opening street) in *Coutant v. Catlin*, 2 *Sandf. Ch.* 485; *Matter of John St.*, 19 *Wend.* 661. Applied (Rights of mortgagee of term) in *Walton v. Cronly*, 14 *Wend.* 65. Applied (Effect of adverse claim to award made for damages to property) with *Hatch v. Mayor, &c. of N. Y.*, 82 *N. Y.* 436; and *Matter of Dept. of Parks*, 73 *N. Y.* 560; disting'd in *Barnes v. Mayor, &c. of N. Y.*, 27 *Hun.* 236.
- **v. L'Amoreux**, 4 *Sandf.* 524. Rev'd, in 8 *N. Y.* 107. See *Marquat v. Marquat*. Decision in 8 *N. Y.* explained (Judgment on reversal) in *Edmonston v. McLoud*, 16 *N. Y.* 543; *Griffin v. Marquardt*, 17 *N. Y.* 28. See also *Marquat v. Marquat, below*. Explained (Assignment of lease) in *Tate v. McCormick*, 23 *Hun.* 218, 221.
- **v. Mayor, &c. of N. Y.**, 37 *Super. Ct. (J. & S.)* 539. Rev'd in 39 *Super. Ct. (J. & S.)* 120; which was aff'd in 62 *N. Y.* 580. Decision in 62 *N. Y.*; cited (Construction of statute) in dissenting opinion of *MILLER, J.*, in *Matter of Deering*, 85 *N. Y.* 1, 12, 17. Followed (Vacation of assessments for want of publication) in *Dolan v. Mayor, &c. of N. Y.*, 62 *N. Y.* 472.
- **v. Miller**, 2 *Paige*, 68. Rev'd as *Astor v. Hoyt*, in 5 *Wend.* 603, which see, *above*. Disting'd (Jurisdiction of equity in adjust-

- ing claims for taxes) in *Petty v. Fogle*, 16 *W. Va.* 497, 520. Approved (Covenants running with the land) and cases cited, in 2 *Am. L. Reg. N. S.* 262.
- *v. Turner*, 11 *Paige*, 436. Disting'd (Receiver in foreclosure) in *Syracuse City Bank v. Tallman*, 31 *Barb.* 201, 210. Applied in *Rider v. Vrooman*, 12 *Hun*, 299.
- *v. Union Ins. Co.*, 7 *Cow.* 202. See *Coit v. Commercial Ins. Co.* Cited (Evidence of usage) with other cases, in 2 *Taylor on Ev.* 1004.
- Atcherson v. Troy & Boston R. R. Co.**, 6 *Abb. Pr. N. S.* 329. Followed (Remedy of laborer against railroad company, for indebtedness of contractors) on principle, notwithstanding that the precise point was not held by a majority of the court, in *Balch v. N. Y. & Oswego Midland R. R. Co.*, 46 *N. Y.* 521.
- Atcheson v. Mallon**, 43 *N. Y.* 147; s. c., 3 *Am. R.* 678. See *Doolin v. Ward*. Disapproved (Contracts concerning bidding for public works), as against principle and authority, in *Breslin v. Brown*, 24 *Ohio St.* 565; s. c., 15 *Am. R.* 632. Disting'd in *Marsh v. Russell*, 66 *N. Y.* 292.
- Atkins v. Barrett**, 19 *Barb.* 643. See *Gazley v. Price*. Quoted (Contract for sale of real property) in *Chitty on Contr.* 429, n. o, 11 *Am. ed.*
- *v. Elwell*, 45 *N. Y.* 753. Compared and discussed (False representations) in *Livingston v. Keech*, 34 *Super. Ct. (J. & S.)* 557. Compared in *Morehouse v. Yeager*, 41 *Super. Ct. (J. & S.)* 135, 148.
- *v. Kinnan*, 20 *Wend.* 241; s. c., 32 *Am. Dec.* 534, with note respecting statutory authority to convey title of another, and on other points. Collated (Form and contents of administrator's deed) with *Sheldon v. Wright*, 5 *N. Y.* 497, and other cases, in 56 *Am. Dec.* 55, n.
- *v. Lefever*, 5 *Abb. Pr. N. S.* 221. Disting'd (Several bills of costs) in *Williams v. Cassidy*, 22 *Hun*, 180, 182.
- *v. Saxton*, 77 *N. Y.* 196. See *Menagh v. Whitwell*. For "plaintiff," in third line of statement of case, read "defendant."
- Atkinson v. Great Western Ins. Co.**, 4 *Daly*, 1. Rev'd in 65 *N. Y.* 532. Decision in 4 *Daly*; cited (*Barratry—fraud*) in 3 *Kent Com.* 305, n. 1 (Holmes ed.), as containing an elaborate examination of the cases on the subject. Explained in *Borland v. Mercantile Mutual Ins. Co.*, 46 *Super. Ct. (J. & S.)* 445.
- *v. Manks*, 1 *Cow.* 691. See *Cook v. Satterlee*. Cited as authority (Consideration of bill payable in specific articles) in *Greenlees Ransom Co. v. Berne*, 12 *Weekly L. B.* 100.
- *v. Sewine*, 11 *Abb. Pr. N. S.* 384. See (Relation back of title of receiver in supplementary proceedings) *Code Civ. Pro.* 1881, § 2469, n.
- Atlantic & Pacific Tel. Co. v. Barnes**, 39 *Super. Ct. (J. & S.)* 40. Aff'd in 64 *N. Y.* 385. See another decision in 39 *Super. Ct.* 357. Decision in 64 *N. Y.* applied (Liability of sureties on official bond) with *Supervisors of Monroe v. Otis*, 62 *N. Y.* 88, in *Bostwick v. Van Voorhis*, 91 *N. Y.* 353. Approved; with *Hunt v. Roberts*, 45 *N. Y.* 691, in *City Ins. Co. v. Roberts*, *Hamilton Co. Ohio Distr. Ct.* 12 *Am. L. Rec.* 746. A motion in a case of this name said in 12 *Alb. L. J.* 335, to have been granted by the Court of Appeals, Nov. 16, 1875.
- Atlantic Bank v. Franklin**, 64 *Barb.* 449. Rev'd on the ground that there was no definite and valid agreement for forbearance, such as to constitute plaintiffs *bona fide* holders, in 55 *N. Y.* 235. See *Stalker v. McDonald*. Decision in 55 *N. Y.* explained and disting'd (*Bona fide* holder of bills and notes) in *First Nat. Bank v. Wood*, 71 *N. Y.* 405, 411. Disting'd in *Mutual Life Ins. Co. v. Smith*, 23 *Hun*, 535, 540.
- Atlantic Dock Co. v. City of Brooklyn**, 1 *Abb. Ct. App. Dec.* 24; s. c., 3 *Keyes*, 444; aff'g *Luke v. City of Brooklyn*, 43 *Barb.* 54. See a decision in further litigation in *Same v. Mayor, &c. of N. Y.*, 53 *N. Y.* 64.
- *v. Leavitt*, 50 *Barb.* 135. Aff'd in 54 *N. Y.* 35; s. c., 13 *Am. R.* 556. Decision in 54 *N. Y.*, followed (Effect of mortgage assumption clause) in *Wales v. Sherwood*, 52 *How. Pr.* 413; *Bowen v. Beck*, 94 *N. Y.* 86.
- *v. Libby*, 45 *N. Y.* 499. See *People v. Albany & Susquehanna R. R. Co.* Commented upon and disting'd (Extra allowance) in *Burke v. Candee*, 63 *Barb.* 552, 553. Applied in *Conaughty v. Saratoga County B'k*, 92 *N. Y.* 401, 405. See to the contrary (Opinions as to materiality of risk) cases cited in *Abb. Tr. Ev.* 494, n. 1.
- *v. Mayor, &c. of N. Y.*, 53 *N. Y.* 64. See *Same v. City of Brooklyn*. Disting'd (Effect of payment by stranger) in *Hun v. Van Dyck*, 26 *Hun*, 567.
- Atlantic Ins. Co. v. Bird**, 2 *Bosw.* 195. Explained and disting'd (Right of shipper to take property free of freight) in *Allen v. Mercantile Mutual Ins. Co.*, 44 *N. Y.* 437.
- *v. Storrow*, 1 *Edw.* 621. Aff'd in 5 *Paige*, 285. Latter decision adopted (Effect of abandonment) in *Rogers v. Hosack's executors*, 18 *Wend.* 319; *Aetna Fire Ins. Co. v. Tyler*, 16 *Id.* 385. See *Mercantile Mutual Ins. Co. v. Calcebs*, 20 *N. Y.* 173. Discussed and criticised (Provision in policy against loss by thieves) in 3 *Kent Com.* 303, n. e. Explained in *Spinetti v. Atlas Steamship Co.*, 80 *N. Y.* 71, 79.
- Atlantic Mutual Ins. Co. v. McLoon**. See (Attachment of property) *Code Civ. Pro.* 1881, c. 7, tit. 3, art. 1, n.
- Atlantic Mutual Life Ins. Co. v. People**. See *Attorney-General v. Atlantic Mut. Life Ins. Co.*; *People v. Atlantic Mutual Life Ins. Co.*



- Atlantic Savings Bank v. Hetterick**, 5 *Sup'm. Ct. (T. & C.)* 234; s. c., less fully, as *Atlantic Savings Bank v. Hiler*, 8 *Hun*, 209. Explained (Lien of attorney on judgment, which is lien on surplus) as resting on special circumstances, in *Thomas on M.* 381.
- **v. Hiler**. See *Atlantic Savings Bank v. Hetterick*.
- Atlantic State Bk. v. Savery**, 18 *Hun*, 36. Aff'd in 82 *N. Y.* 291. See *Cram v. Hendricks*. Compare (Power of national bank to purchase negotiable paper) *Lazeur v. Nat. Union B'k of Baltimore*, 52 *Md.* 78; s. c., 36 *Am. R.* 355, with note. Relied on in *First Nat. B'k v. Sherburne*, 14 *Bradw. (Ill.)* 566. To same effect see *National Bank v. Johnson*, 104 *U. S.* (14 *Otto*) 271, 277, aff'g 74 *N. Y.* 329.
- Attorney-General v. Atlantic Mut. Life Ins. Co.**, 53 *How. Pr.* 227. See further proceedings in *Id.* 300, the latter being modified and aff'd, it seems, in 74 *N. Y.* 177, as *People v. Atlantic Mut. Life Ins. Co.* See further decision in 56 *How. Pr.* 391. See also proceedings in 11 *Abb. N. C.* 139; aff'd without opinion, in 93 *N. Y.* 632. See *People v. Atlantic Mutual Life Ins. Co.*
- **v. Bank of Columbia**, 1 *Paige*, 511. Aff'd in 3 *Wend.* 588.
- **v. Bank of Niagara**. See *Attorney-General v. Utica Ins. Co.*
- **v. Continental Life Ins. Co.**, 68 *N. Y.* 343 (1877). (Appealable order.)
- **v.** —, 53 *How. Pr.* 16 (1877). Disting'd in *People v. Globe Mutual Life Ins. Co.*, 60 *Id.* 87; *Attorney-General v. Atlantic Mutual Life Ins. Co.*, 11 *Abb. N. C.* 139; and followed in *Attorney-General v. North Am. Life Ins. Co.*, 56 *Id.* 165; s. c., 6 *Abb. N. C.* 293, as to what is the proper mode of dissolution of an insurance company.
- **v.** —, 71 *N. Y.* 325; s. c., 27 *Am. R.* 55 (1877). See *Harris v. Clark*; *Lunt v. B'k of North America*. Compare (Appropriation of fund) *Matter of Le Blanc*, 14 *Hun*, 8; s. c., 4 *Abb. N. C.* 221. Dissented from (Assignment of fund) in *German Sav'gs Inst'n v. Adee*, 1 *McCreary*, 504. See other cases in 21 *Moak Eng.* 196. Disting'd in *Coates v. First Nat'l B'k of Emporia*, 91 *N. Y.* 20.
- **v.** —, 88 *N. Y.* 77 (1882); s. c., 14 *Weekly Dig.* 73. (Revaluation of policies.)
- **v.** —, 64 *How. Pr.* 73 (1882). (Revaluation of policies.)
- **v.** —, *Id.* 93 (1882). (Reference.)
- **v.** —, *Id.* 519 (1882). (Lapse of policy.)
- **v.** —, 88 *N. Y.* 571; s. c., 14 *Weekly Dig.* 163 (1882). (Compensation of special counsel.)
- **v.** —, 62 *How. Pr.* 130. Rev'd in 27 *Hun*, 195; s. c., 63 *How. Pr.* 129; 14 *Weekly Dig.* 450. Appeal therefrom dismissed in 90 *N. Y.* 45; s. c., 15 *Weekly Dig.* 247 (1882). (Allowance to counsel for creditors.)
- **v.** —, 28 *Hun*, 360; s. c., 15 *Weekly Dig.* (1882) 568. (Receiver.)
- **v.** —, 16 *Weekly Dig.* 164 (1883). (Surrender of policies.)
- **v.** —, 91 *N. Y.* 647 (1883). (Revaluation of policies.)
- **v.** —, 27 *Hun*, 524; s. c., 15 *Weekly Dig.* 239. Appeal dismissed in 93 *N. Y.* 45 (1883). (Fees of referee.)
- **v.** —, *Id.* 70 (1883). (Forfeiture of policy.)
- **v.** —, *Id.* 630 (1883).
- **v.** —, 4 *Civ. Pro. R.* 214; s. c., 66 *How. Pr.* 51 (1883). (Depositions.)
- **v.** —, 94 *N. Y.* 199 (1883). (Purchase at receiver's sale.)
- **v.** —, 18 *Weekly Dig.* 260 (1883). (Reference's fees.)
- **v.** —, 31 *Hun*, 623; s. c., 18 *Weekly Dig.* 493 (1884). (Compensation of attorney for policy-holders.)
- **v.** —, 32 *Id.* 223 (1884). (Commissions of receiver.)
- **v. Guardian Mut. Life Ins. Co.**, 77 *N. Y.* 272. Applied (Receivers) in *Eddy v. Co-operative Dress Assoc'n*, 3 *Civ. Pro. R. (Browne)* 484.
- **v. Mayor, &c. of N. Y.**, 3 *Duer*, 119. See *Davis v. Mayor, &c. of N. Y.*, 14 *N. Y.* 506.
- **v. North Amer. Life Ins. Co.**, 15 *Hun*, 18. Rev'd in 77 *N. Y.* 297; s. c., 6 *Abb. N. C.* 293, with note. See previous proceeding in 56 *How. Pr.* 160; s. c., 6 *Abb. N. C.* 293, and further proceedings in 58 *How. Pr.* 197; aff'd in 18 *Hun*, 470; which was aff'd in 80 *N. Y.* 152. Other proceedings in 82 *N. Y.* 172, also in 26 *Hun*, 294, modified in 89 *N. Y.* 94; also in 91 *N. Y.* 57; also in 92 *N. Y.* 654; also in 93 *N. Y.* 387. Decision in 6 *Abb. N. C.* disting'd (Action by attorney-general) in *People v. Globe Mut. Life Ins. Co.*, 60 *How. Pr.* 82, 87. Followed (Proceeds of securities deposited with superintendent of insurance department—when assets in hands of receiver) in decision in 89 *N. Y.* 94, which was itself disting'd as to compensation of receivers, in *Matter of Security Life Ins. Co.*, 31 *Hun*, 36. Decision in 82 *N. Y.* 172, followed (Constitutionality of *L. 1869, c. 902, § 7*) in *Att'y-Gen'l v. Globe Mut. Life Ins. Co.*, 60 *How. Pr.* 92, 94. Decision in 82 *N. Y.* followed (Forfeiture) with other cases in *Ewald v. Northw. Mut. Life Ins. Co.*, *Supm. Ct. Wisc.*, May, 1884, 19 *Northw. Rep.* 513. Followed in *Hay v. Star Fire Ins. Co.*, 13 *Hun*, 497; 77 *N. Y.* 235. Disting'd in *Clausen v. Russell*, 18 *Weekly Dig.* 10.
- **v. Purmort**, 5 *Paige*, 620. Aff'd as *McCrea v. Purmort*, in 16 *Wend.* 460.
- **v. Reformed Dutch Church**, 33 *Barb.* 303. Aff'd in 36 *N. Y.* 452. See statements and points bound up in Court of App. Cases for March, 1867, in Law Inst. Libr., N. Y. City.
- **v. Utica Ins. Co.**, 2 *Johns. Ch.* 371. See

- Davis v. Mayor of N. Y.*; Orphan Asylum Society *v. McCartee*. Reaff'd (Jurisdiction of equity over corporations) in *Verplanck v. Mercantile Ins. Co.*, 1 *Edw.* 88; *People v. Utica Ins. Co.*, 15 *Johns.* 378; *Attorney General v. Bank of Niagara*, *Hopk.* 354; *Robertson v. Bullions*, 11 *N. Y.* 252. Explained in *Bangs v. Duckinfield*, 18 *Id.* 595; *Robertson v. Smith*, 3 *Paige*, 232. Examined with other cases, in *Thompson Liability of Officers, &c. of Corporations*, 274. Relied on in *Taylor v. Miami Exporting Co.*, 5 *Ohio*, 162; s. c., 22 *Am. Dec.* 785. Reviewed at length, with *Verplanck v. Mercantile Ins. Co.*, 1 *Edw.* 84; 2 *Paige*, 438; and other cases, in *Hodges v. New England Screw Co.*, 1 *R. I.* 312; s. c., 53 *Am. Dec.* 624 (with elaborate note). Questioned, with *Attorney-Gen'l v. Bank of Niagara*, *Hopk.* 354, in *State v. Mobile*, 5 *Port. (Ala.)* 279; s. c., 30 *Am. Dec.* 564, 570, with note, in so far as they deny the jurisdiction of courts of equity in affording preventive relief in cases of public nuisances. Disting'd (Enjoining public nuisance) in *Corning v. Lowerre*, 6 *Johns. Ch.* 440. Disting'd (Power of attorney-general to sue for the people) in *People v. Lowber*, 7 *Abb. Pr.* 175. Criticised and disting'd in *People v. Tweed*, 13 *Abb. Pr. N. S.* 50. But compare *Superv's of N. Y. v. Tweed*, *Id.* 152, and note; *People v. Ingersoll*, 58 *N. Y.* 1. Approved as containing a very able and elaborate review of the authorities in *People v. Miner*, 2 *Lans.* 396, 407. Approved (Jurisdiction of equity over offense against public statute) in *Smith v. Lockwood*, 13 *Barb.* 219. Applied in *De Baun v. Mayor, &c. of N. Y.*, 16 *Barb.* 394. Collated (*Quo warranto*) with other cases, in *Field on Ultra Vires*, 340. Relied on in *Hagner v. Heyberger*, 7 *Watts & S. (Pa.)* 104; s. c., 42 *Am. Dec.* 220. Quoted and explained (*Dissolution of corporations*) in *Morawetz on Priv. Corp.* § 658. Reaff'd (*Remedy for non-user or mis-user of charter powers*) in *Slee v. Bloom*, 5 *Johns. Ch.* 381. Followed and approved in *Attorney-General v. Tudor Ice Co.*, 104 *Mass.* 239; s. c., 6 *Am. R.* 227. Followed in *People v. Metropolitan B'k*, 7 *How. Pr.* 146. Quoted and explained (*Injunction*) in 1 *High on Inj.* 2 ed. § 20, n. 4; *Id.* § 907, n. 3.
- Atwater v. Atwater**, 53 *Barb.* 621; s. c., 3 *How. Pr.* 431. See *Fry v. Fry*. Approved and followed (*Power to grant alimony*) in *Davis v. Davis*, 3 *Sup'm. Ct. (T. & C.)* 455; s. c., 1 *Hun.* 444. Followed in *Ramsden v. Ramsden*, 91 *N. Y.* 281, as to no action being maintainable by a wife for maintenance and support merely.
- *v. Diraaci*, 24 *Hun.* 340. Abridg't in 12 *Weekly Dig.* 405. Aff'd, it seems, in 89 *N. Y.* 638.
- *v. Fowler*, 1 *Edw.* 417. Disting'd (*Equitable relief in cases of partnership accounts*) in *Harris v. Hillegas*, 54 *Cal.* 469.
- Atwell v. Brown**, 1 *Hun.* 439; mem. of s. c., 3 *Sup'm. Ct. (T. & C.)* 779. Aff'd, it seems, 59 *N. Y.* 655, but without opinion.
- Atwood v. Lynch**, 37 *Super. Ct. (J. & S.)* 5. Disting'd (*Illegal levy*) in *Parker v. Connor*, 44 *Super. Ct. (J. & S.)* 416, 422.
- Anbery v. Fiske**, 36 *N. Y.* 47. Cited (*Agent not to dispute title of principal*) in *Whart. Com. on Ag.* § 242, n.
- Auburn & Cato Plank-road Co. v. Douglass**, 12 *Barb.* 553. Rev'd in 9 *N. Y.* 444. Explained and applied (*Extent of corporate franchises*) in *Prime v. Twenty-third S. R. R. Co.*, 1 *Abb. N. C.* 63, 66. Disting'd in *Aiken v. Western R. R. Co.*, 20 *N. Y.* 370, 382.
- Auburn City Bank v. Leonard**, 20 *How. Pr.* 193. Disting'd (*Stay of proceedings*) in *Liftchild v. Smith*, 7 *Robt.* 306. Further decision on the merits in 40 *Barb.* 119. Decision in 40 *Barb.* said in *Babbett v. Young*, 51 *N. Y.* 238, to have been aff'd by the Court of Appeals.
- Auchmuty, Matter of**, 11 *Hun.* 76. Subsequent proceedings in 18 *Hun.* 324, appeal in which was dismissed in 79 *N. Y.* 622. Decision in 11 *Hun.* compared (*Defective assessment*) with *Matter of Casey*, 5 *Id.* 463, in *Matter of N. Y. Prot. Epis. Pub. School*, 75 *N. Y.* 326.
- *v. Ham*, 1 *Den.* 405. See (*Trespassing animals*) *Code Civ. Pro.* 1881, § 3109, n. Followed in *Strang v. Newlin*, 38 *How. Pr.* 364.
- Audubon v. Excelsior Ins. Co.**, 27 *N. Y.* 216. See *First Baptist Church v. Brooklyn Fire Ins. Co.* Commented on (*Dismissal of complaint*) in *People v. Smith*, 51 *Barb.* 363. See *Code Civ. Pro.* 1881, § 1209, n. Applied (*Parol contract of insurance*) in *Pratt v. N. Y. Central Ins. Co.*, 64 *Barb.* 592. Followed in *Fish v. Cottenet*, 44 *N. Y.* 543.
- Augustine v. Britt**, 15 *Hun.* 395. Aff'd in 80 *N. Y.* 647.
- Austin, Matter of**, 44 *Barb.* 434. Rev'd as *Austin v. Rawdon*, 42 *N. Y.* 155.
- *v. Bell*, 20 *Johns.* 442. See *De Caters v. De Chaumont*; *Grover v. Wakeman*; *Hyslok v. Clarke*; *McDermutt v. Strong*. Quoted and discussed (*Fraudulent assignment*) in *Burrill on Assign.* § 192, 4 ed.; *Id.* § 209. Followed, with *Mackie v. Cairns*, 5 *Cow.* 566; s. c., 15 *Am. Dec.* 477, with note, in *Sommerville v. Horton*, 4 *Yerg. (Tenn.)* 541; s. c., 26 *Am. Dec.* 242, with note.
- *v. Daniels*, 4 *Den.* 300. Disting'd (*Bank cashier's liability for dealing in outside matters at loss to the bank*) in *Van Dyck v. McQuade*, 86 *N. Y.* 38, 45.
- *v. Dye*, 46 *N. Y.* 500. Followed (*Conditional sale*) in *Powell v. Preston*, 1 *Hun.* 513, 515. Disting'd in *Comer v. Cunningham*, 77 *N. Y.* 391, 398; *Hintermister v. Lane*, 27 *Hun.* 497.
- *v. Hall*, 13 *Johns.* 286; s. c., 7 *Am. Dec.* 376, with note. Followed (*Joinder of tenants in common as plaintiffs*) with *Decker v. Livingston*, 15 *Johns.* 479; in *May v. Slade*,

- 24 *Tex.* 205, 208. D'sapproved with Decker v. Living ton, 15 *Johns.* 479; Hill v. Gibbs, 5 *Hill*, 56; in Smith v. Wiley, 22 *Ala.* 396; s. c., 58 *Am. Dec.* 262. Said in Gock v. Keneda, 29 *Barb.* 120, no. to be applicable to tenants in common of personality.
- **v. Hudson River R. R. Co.**, 25 *N. Y.* 334. Explained (Measure of damages to buildings) in Agate v. Lowenbein, 6 *Daly*, 291. Explained (Torts on lands against reversioners) in *Moak's Underhill's Torts*, 1 *Am. ed.* 513.
- **v. Monroe**, 4 *Lans.* 67. Aff'd in 47 *N. Y.* 360. Decision in 47 *N. Y.* referred to (Liability of executors and administrators) in 15 *Am. L. Rev.* 449, 456 (citing cases), as stating a well-settled doctrine, and not inconsistent with Cater v. Everleigh, 4 *Desaut.* (S. C.) 19. Discussed in 1 *Addison on Contracts*, 130, n. 1, Abb. ed. Followed with Ferrin v. Myrick, 41 *N. Y.* 315; Reynolds v. Reynolds, 3 *Wend.* 244; Demott v. Field, 7 *Cov.* 58; Christopher v. Stockholm, 5 *Wend.* 36; Mcritt v. Seaman, 6 *N. Y.* 168, in Wetmore v. Porter, 92 *N. Y.* 76. Followed in Cary v. Gregory, 38 *Super. Ct. (J. & S.)* 127, 130; Lunt v. Lunt (No. 2), 8 *Abb. N. C.* 83, 90; Hill v. Richardson, 23 *Hun*, 449. Applied in New v. Nicoll, 12 *Hun*, 433, to case of trustees. Cited as authority in Lucht v. Behrens, 28 *Ohio St.* 231; s. c., 22 *Am. R.* 378, 383.
- **v. Rawdon**, 44 *N. Y.* 63. Rev'g Matter of Austin, 44 *Barb.* 434. Disting'd (Actions on contract and in tort) in Smith v. Hall, 67 *N. Y.* 48, 51; Smith v. Frost, 70 *N. Y.* 65, 71. Followed in Harden v. Corbett, 6 *Hun*, 523; Vilmar v. Schall, 61 *N. Y.* 568; Church of the Redeemer v. Crawford, 36 *Super. Ct. (J. & S.)* 319. Disting'd in Wood v. Hope, 2 *Abb. N. C.* 189.
- **v. Sawyer**, 9 *Cov.* 39. See Bank of Lansingburgh v. Cray; Green v. Armstrong; Hurd v. West; Stewart v. Doughty; Waring v. Warren. Reporter's note criticised, in Whittaker v. Brown, 8 *Wend.* 490. Said (Inadmissibility of parol reservation to contradict deed) in Wintermute v. Light, 46 *Barb.* 278, never to have been questioned by any court in this State. Criticised (Validity of verbal sales of unsevered crops) in Tripp v. Hasceig, 20 *Mich.* 254; s. c., 4 *Am. R.* 389.
- **v. Searing**, 16 *N. Y.* 112. See Tibbets v. Blood. Explained (Actions by or against unincorporated associations) in Poultney v. Bachman, 10 *Abb. N. C.* 252, 255; Bridenbecker v. Hoard, 32 *How. Pr.* 289; Dewitt v. Chandler, 11 *Abb. Pr.* 459, 471. See also Ebbringhausen v. Worth Club, 4 *Abb. N. C.* 300. Disting'd (Decisions of ecclesiastical tribunals) in Connitt v. Reformed Prot. Dutch Church, 54 *N. Y.* 551, 564.
- **v. Tompkins**, 3 *Sandf.* 22. Disting'd (Action on judgment) in Malloy v. Vanderbilt, 4 *Abb. N. C.* 127, 132.
- Averill v. Loucks**, 6 *Barb.* 19. See Meech v. Allen. Disting'd and criticised (Parol evidence to any consideration) in Anthony v. Harrison, 14 *Hun*, 198, 212. Decision in 6 *Barb.* 470, discussed (Assignment for benefit of creditors—schedules) in *Burrill on Assign.* § 153, 4 ed.; *Id.* § 179. Reviewed and relied on (Rights of suretyship created, when a partner mortgages his private property for a firm's debt) in *National Bank v. Cushing*, 53 *Vt.* 321.
- **v. Patterson**, 10 *How. Pr.* 85; s. c., 10 *N. Y.* 500. Disapproved (Costs) in Weigan v. Held, 3 *Abb. Pr.* 462. Followed (Entry by plaintiff of order of discontinuance) in Schenck v. Fancher, 14 *How. Pr.* 95.
- **v. Williams**, 1 *Den.* 501. Subsequent decision in 4 *Den.* 295. See Coventry v. Barton; Newberry v. Lee. See to the contrary (Proof of defendant's sanction of wrongful levy) Newberry v. Lee, 3 *Hill*, 523. Compare Copley v. Rose, 2 *N. Y.* 115. See *Abb. Tr. Ev.* 631. Decision in 4 *Den.* disting'd (Liability of client for attorney's acts) in Oestrich v. Gilbert, 9 *Hun*, 242. Disting'd with Welsh v. Cothran, 63 *N. Y.* 181, in Guilleaume v. Rowe, 48 *Super. Ct. (J. & S.)* 169; s. c., 63 *How. Pr.* 175.
- Avery v. Foley**, 4 *Hun*, 415. Followed (Exceptions to finding of referee) in Wilson v. Knapp, 42 *Super. Ct. (J. & S.)* 25, 31.
- **v. Slack**, 17 *Wend.* 85. Subsequent decision in 19 *Wend.* 50. Cited and applied (Action for penalty—what is sufficient reference in summons to statute) in Schoonmaker v. Brooks, 24 *Hun*, 553, 555. With decision in 19 *Wend.* see (Execution against officer) *Code Civ. Pro.* 1881, § 1931, n.
- **v. Smith**, 9 *How. Pr.* 349. See Boyd v. Bigelow. See to the contrary (Right of prevailing party to costs, in case of reference of claim against estate of decedent) Munson v. Howell, 12 *Abb. Pr.* 77; s. c., 20 *How. Pr.* 59; Linn v. Clow, 14 *Id.* 508.
- **v. Willson**, 81 *N. Y.* 341. Explained (Implied contracts of sale) in 1 *Benj. on Sales*, § 48, n. 12 (Corbin's 4 *Am. Ed.*). Commented upon (Delivery of less than is required—acceptance) in 2 *Id.* § 1032, n. 19 (Corbin's 4 *Am. Ed.*). Disting'd with Perlee v. Beebe, 13 *Hun*, 89; Matthews v. Hobby, 48 *Barb.* 167, in Hill v. Heller, 27 *Lun*, 416.
- **v. Woodbeck**, 62 *Barb.* 557; s. c., with brief opinions, by MILLER, P. J., and PARKER, J., in 5 *Lans.* 498.
- Ayer v. Kobbe**, 36 *Super. Ct. (J. & S.)* 158; s. c., 45 *How. Pr.* 373. Aff'd in 59 *N. Y.* 454.
- Ayers v. Lawrence**, 63 *Barb.* 454. Followed in a further decision in 1 *Sup'm. Ct. (T. & C.)* Add. 5; but the latter rev'd in 59 *N. Y.* 192. Reversal solely because of the act of 1872. Decision in 59 *N. Y.* followed (Right of tax-payer to maintain proceedings to prevent levying or paying over of tax) in Newton v. Keech, 9 *Hun*, 338, 362. Limited in Clark v. Village of Dunkirk, 12 *N. Y.* 186.
- Aymar v. Astor**, 6 *Cov.* 266. Overruled

- (Liability of masters of vessels as carriers) in *Allen v. Sewall*, 2 *Wend.* 327; *Sewall v. Allen*, 6 *Id.* 335; *McArthur v. Sears*, 21 *Id.* 190; and see *Merritt v. Earle*, 31 *Barb.* 38, 43. Disapproved in *Crosby v. Fitch*, 12 *Conn.* 410; s. c., 31 *Am. Dec.* 745, 747, with note; *Jones v. Pitcher*, 3 *Stew. & P. (Ala.)* 135; s. c., 24 *Am. Dec.* 716, 738, with note, as not being sound law, and as inconsistent with the later decision of *Allen v. Sewall*, 2 *Wend.* 327; and was so considered in 2 *Kent Com.* 473, and *Story on Bailm.* 323. Denied in *Hale v. N. J. Steam Nav. Co.*, 15 *Conn.* 539; s. c., 39 *Am. Dec.* 398, with note, as unsound and anomalous, and repugnant to the decisions of its own and other States. Commented upon (Extent of liability for goods carried) in *Angell on Carr.* § 80, 5 ed., and in *Id.* § 168, as to distinction between "perils of navigation" and "act of God" in bills of lading. Approved (Evidence of mercantile usage to explain bill of lading) in *Lawson on Usages and Customs*, 436.
- **v. Beers**, 7 *Cow.* 705; s. c., 17 *Am. Dec.* 538, with note, wherein it is shown to have been generally followed and approved in N. Y. as to what is a reasonable time being a question of law; see many other citations in note.
- **v. Bill**, 5 *Johns. Ch.* 570. See *Jackson v. Willard*. Followed (Effect of mortgage executed by mortgagee) in *Power v. Lester*, 23 *N. Y.* 527, 533, 535, 536.
- **v. Sheldon**, 12 *Wend.* 439; s. c., 27 *Am. Dec.* 137; s. c., 12 *N. Y. Com. L. Law. Ed.* 187, with brief note. Included (Law governing bill drawn in one country and indorsed or payable in another) in *Bigelow on Bills and Notes*, 333, with note. See in 27 *Am. Dec.* 142, *n.*, citations from various jurisdictions. Included, with notes, in 2 *Ames Cases on B. & N.* 206; *Redf. & B. Lead. Cas. on B. of Ex.* 709. Explained in 1 *Pars. on Contr.* 277, *n. f.* Followed in *Faulkner v. Hart*, 82 *N. Y.* 418, as holding what is now a well established principle, that in this State we cannot break in upon the settled principles of our commercial law, to accommodate them to those of any other jurisdiction.
- Ayrault v. Chamberlin**, 26 *Barb.* 83. See *Williams v. Fitzhugh*. Collated, with other cases, in 53 *Am. Dec.* 147, *n.*, on the subject of dormant partners.
- **v. Chamberlain**, 33 *Barb.* 229. Compare previous decision, reported as *Williams v. Ayrault*, in 31 *Barb.* 364, and later decision as *Williams v. Fitzhugh*, in 44 *Id.* 321, which was modified and aff'd on appeal, in 27 *N. Y.* 444.
- **v. Pacific Bank**, 6 *Robt.* 337. Aff'd in 47 *N. Y.* 570. Previous decision in 1 *Abb. Pr. N. S.* 381. Decision in 47 *N. Y.* followed (Exceptions too general) in *Daly v. Byrne*, 43 *Super. Ct. (J. & S.)* 261, 274. Disting'd in *Betz v. Conner*, 7 *Daly*, 550. See to the contrary (Admissibility of usage) *Warren v. Suffolk Bank*, 10 *Cush.* 532. Followed as settled law (Liability of collecting bank) in *Indig v. National City Bank*, 16 *Hun.* 201. Disapproved in *Guelich v. Nat. State Bank of Burlington*, 56 *Iowa*, 434. Cited as establishing the doctrine—in *Exchange Nat. B'k v. Third Nat. B'k*, 112 *U. S.* 276, 282. Followed in *Davay v. Jones*, 13 *Fr. (N. J.)* 31.
- **v. Sackett**, 17 *How. Pr.* 461; s. c., 9 *Abb. Pr.* 154, *n.* Aff'd in 17 *How. Pr.* 507. See *Kissam v. Hamilton*.
- Ayres v. Covill**, 18 *Barb.* 260. See *Niven v. Munn*. Compare (Proof of mitigating circumstances, in slander or libel) *Bush v. Prosser*, 11 *N. Y.* 347. Explained (Words used against one in his business or professional capacity) in *Moak's Underhill's Torts*, 1 *Am. Ed.* 143.
- **v. Lawrence**. See *Ayers v. Lawrence*.
- **v. Methodist Episcopal Church**, 3 *Sandf.* 351. See *Yates v. Yates*. Approved (Charitable trusts) in *Beekman v. People*, 27 *Barb.* 260, 273; *Bascom v. Albertson*, 34 *N. Y.* 584. Dissented from, in part, in *Boyce v. City of St. Louis*, 29 *Id.* 650; see *Williams v. Williams*, 8 *N. Y.* 551. Quoted in 1 *Jarman on Wills*, *Randolph & Talcott Ed.* 468. Collated, with other cases, in *Gerard Titles to Real Est.* 2 ed. 298. Commented upon in 1 *Perry on Trusts*, 3 ed. § 45, *n.* 3; 2 *Id.* § 748, *n.* 391.
- **v. O'Farrell**, 10 *Bosw.* 144. Further decision in 4 *Robt.* 668. Said in 6 *Alb. L. J.* 166, to have been aff'd by the Court of Appeals, in May, 1871, but appears in *Carpenter v. Manhattan Life Ins. Co.*, 22 *Hun.* 52, to be regarded as overruled (Effect of reply to counter-claim as waiver) by 67 *N. Y.* 51.
- **v. Western R. R. Co.**, 48 *Barb.* 132; s. c., 32 *How. Pr.* 351. Appeal in subsequent proceedings reported in 45 *N. Y.* 260. Direction that reversal be without costs erroneous, and corrected in 49 *N. Y.* 660. Decision in 48 *Barb.* relied on (Removal of cause to Federal court—entry of appearance) in *Chat. Nat. Bank of N. Y. v. Merchants' Nat. Bank of West Virginia*, 4 *Sup'm. Ct. (T. & C.)* 196, 200. Decision in 43 *N. Y.* explained (Removal to Federal court) in *Leutze v. Butterfield*, 7 *Daly*, 24, 28; s. c., 1 *Abb. N. C.* 367. Decision in 49 *N. Y.* applied in *Commissioners of Pilots v. Spofford*, 3 *Hun.* 52, 54.

## B.

- B. v. B.**, in 11 *N. Y. Leg. Obs.* 350. See (Matrimonial action—Counter-claim) *Code Civ. Pro.* 1881, § 1770, *n.*
- Babbett v. Young**, 51 *Barb.* 466. Aff'd in 51 *N. Y.* 238.
- Babcock v. Beman**, 1 *E. D. Smith*, 593. Aff'd in 11 *N. Y.* 200. See *Mott v. Hicks*; *Peck v. Mallams*. Reported in *Thomps. Liab. of Off. & A.* 36, with notes, on p. 77, &c. Decision in 11 *N. Y.* followed (Bill or note signed or indorsed by officer or agent) with *Waterliet Bank v. White*, 1 *Den.* 603

- Wright v. Boyd, 3 *Barb.* 523, in Vater v. Lewis, 36 *Ind.* 288; s. c., 10 *Am. R.* 29, 33. Followed in Hager v. Rice, 4 *Col.* 90; s. c., 34 *Am. R.* 68, 70. Included in 2 *Ames Cases on B. & N.* 224.
- v. **Bonnell**, 44 *Super. Ct. (J. & S.)* 568. Aff'd in 80 *N. Y.* 244. Decision in 80 *N. Y.* with Ruse v. Mutual Benefit Life Ins. Co., 23 *N. Y.* 523; 24 *Id.* 653; Shotwell v. Jefferson Ins. Co., 5 *Bosw.* 247; Murdock v. Chenango Ins. Co., 2 *N. Y.* 210; Fowler v. N. Y. Ins. Co., 26 *Id.* 422; Freeman v. Fulton Fire Ins. Co., 14 *Abb. Pr.* 398; Mutual Life Ins. Co. v. Wager, 27 *Barb.* 359; disting'd (Necessity of insurable interest) in Ferguson v. Mass. Mut. Ins. Co., 32 *Hun.* 306. Commented upon (Sale—stoppage in transitu) in 2 *Benj. on Sales*, § 1298, n. 31 (Corbin's 4 *Am. ed.*). Quoted in *Id.* § 1299, n. 31. Collated with other cases in 27 *Moak Eng.* 346, n.
- v. **Booth**, 2 *Hill*, 185, 186; s. c., 38 *Am. Dec.* 578. See Osborne v. Moss. Explained (Executor of his own wrong) in Willard on *Executors*, 140. Thought in 38 *Am. Dec.* 583, n., to have settled in N. Y. right of personal representative to attack sales in fraud of creditor; see other citations in note.
- v. **City of Buffalo**, 1 *Sheldon*, 317. Aff'd in 56 *N. Y.* 268. Latter decision explained (Torts—municipality abating nuisances) in *Moak's Underhill's Torts*, 1 *Am. ed.* 509. Approved in Chenango Bridge Co. v. Paige, 83 *N. Y.* 190.
- v. **Eckler**, 24 *N. Y.* 623. Cited (Voluntary conveyances as against creditors) as the correct rule, and compared with other authorities pro and con. in 2 *Kent Com.* 441, n. 1 (Holmes' Ed.). Relied on in Childs v. Connor, 38 *Super. Ct. (J. & S.)* 471. Followed in Dygert v. Remerschneider, 32 *N. Y.* 629, 648; McCartney v. Welch, 44 *Barb.* 277; Carr v. Breese, 81 *N. Y.* 591. Applied in Newman v. Cordell, 43 *Barb.* 456. Approved and applied (Question of fraudulent intent as one of fact) in Kavanagh v. Beckwith, 44 *Barb.* 194. Followed (Legality of preference given by husband to wife) in Savage v. O'Neil, 44 *N. Y.* 302; Jaycox v. Caldwell, 51 *N. Y.* 398.
- v. **Lake Shore & M. S. R. R. Co.**, 43 *How. Pr.* 317; s. c., 49 *N. Y.* 491. Statement in latter case that it is reported below in former, is incorrect. See Van Santvoord v. St John. Followed (Effect of special contract to limit liability of carrier) in Edsall v. Camden and Amboy R. R. & Transp. Co., 50 *N. Y.* 661.
- v. **Lamb**, 1 *Cov.* 238. Applied (Execution of public trust) in First Nat. Bk. of North Bennington v. Town of Mt. Tabor, 52 *Vt.* 87; s. c., 36 *Am. R.* 734, 741. Followed (Imputing negligence to one that allows animals to stray on highway) with Griffin v. Martin, 7 *Barb.* 297, in Trow v. Vermont Central R. R. Co., 24 *Vt.* 487; s. c., 58 *Am. Dec.* 191, with note.
- v. **Libbey**, 53 *How. Pr.* 255. Aff'd in 17 *Hun.* 131; and that aff'd in 82 *N. Y.* 144.
- v. **Montgomery County Mut. Ins. Co.**, 6 *Barb.* 637. Aff'd in 4 *N. Y.* 326. Relied on (Extent of losses covered by policy) with City Ins. Co. v. Corlies, 21 *Wend.* 367, in White v. Republic Fire Ins. Co., 57 *Me.* 91; s. c., 2 *Am. R.* 22. Decision in 4 *N. Y.* referred to (Insurance and loss by lightning) as one of the best considered cases, by Editor of *Ins. L. J.* in 11 *Ins. L. J.* 371. Both decisions criticised at length and explained in Spensley v. Lancashire Ins. Co., 54 *Wis.* 440.
- v. **Utter**, 1 *Keyes*, 397. Not the decision of the court. See full report in 1 *Abb. Ct. App. Dec.* 27; s. c., less fully, in 1 *Keyes*, 115. Compared (Easement by license) with other cases in Wiseman v. Lucksinger, 84 *N. Y.* 31, 40, 42.
- Baccio v. People**, 41 *N. Y.* 265. (See also (Declarations of prosecutrix in rape) 20 *Moak Eng.* 395, citing other cases.)
- Bacharach v. Lagrave**, 1 *Hun.* 689; s. c., 4 *Sup'm. Ct. (T. & C.)* 215; 47 *How. Pr.* 385. Rev'd in *Adrian v. Lagrave*, 59 *N. Y.* 110; s. c., 17 *Am. R.* 317, aff'g 15 *Abb. Pr.* 272; s. c., 47 *How. Pr.* 71.
- Bache v. Doscher**, 41 *Super. Ct. (J. & S.)* 150. Aff'd in 67 *N. Y.* 429, which, with Hanover Fire Ins. Co. v. Tomlinson, 3 *Hun.* 630, was disting'd (Evidence of deficiency judgment in foreclosure) in Springsteene v. Gillett, 30 *Hun.* 260.
- v. **Lawrence**, 17 *How. Pr.* 554. Collated (Attachment—domicil), with other cases, in *Thomps. on Prov. Rem.* 359.
- v. **Purcell**, 51 *How. Pr.* 270. Aff'd in 6 *Hun.* 518.
- Backus v. Shipherd**. See Coddington v. Davis.
- Bacon v. Burnham**, 37 *N. Y.* 614. See Moore v. Cross. Followed (Presumption arising from indorsement of note payable to another or order) in Woodruff v. Leonard, 1 *Hun.* 632; Hull v. Marvin, 2 *Sup'm. Ct. (T. & C.)* 421. Followed (Liability of indorser of note before delivery) in Schwarzsansky v. Averill, 7 *Daly*, 256; Coulter v. Richmond, 59 *N. Y.* 481; Phelps v. Vischer, 50 *N. Y.* 73.
- v. **Frisbie**, 15 *Hun.* 26. Rev'd in part in 80 *N. Y.* 394; s. c., 36 *Am. R.* 627, with note. See Edington v. Mut. Life Ins. Co.; Whiting v. Barney. See (Communications between attorney and client) *Code Civ. Pro.* 1881, § 835, n. Decision in 80 *N. Y.* cited in Pearsall v. Elmer, 5 *Redf.* 181, 190.
- v. **Gilman**, 4 *Lans.* 456; s. c., 60 *Barb.* 640. Aff'd in 57 *N. Y.* 656.
- v. **Reading**, 1 *Duer*, 622. Followed in Hibbard v. Burwell, 11 *How. Pr.* 572, as to an appeal from an order not operating as a stay of proceedings without an undertaking; but see to the contrary Emerson v. Burney, 6 *Id.* 32; Trustees of Penn Yan v. Forbes, 8 *Id.* 285; Stewart v. Saratoga & Whitehall R. R. Co., 12 *Id.* 435. Explained (Suspend-

- sion of entry of judgment) in *Alfaro v. Davidson*, 39 *Super. Ct. (J. & S.)* 408.
- *v. Van Schoonhoven*, 19 *Hun.* 158. Aff'd in 87 *N. Y.* 446. Compare (Priority of mortgages) 22 *Abb. L. J.* 199, 238, 239, and cases cited.
- Badeau v. Mead**, 14 *Barb.* 328. See *Underwood v. Stuyvesant*. Applied (Evidence of dedication to public use) in *Gould v. Glass*, 19 *Barb.* 194. Explained (Sale of land bounded upon street) in *Matter of Sixty-seventh Street*, 60 *How. Pr.* 275. Followed in *Cox v. James*, 59 *Barb.* 144; *Fonda v. Borst*, 2 *Abb. Ct. App. Dec.* 157; *Grinnell v. Kirtland*, 6 *Daily*, 356.
- *v. Rogers*, 2 *Paige*, 209. Followed (Object of action of interpleader) in *N. Y. & Harlem R. R. Co. v. Haws*, 35 *Super. Ct. (J. & S.)* 372.
- Badger v. Benedict**, 4 *Abb. Pr.* 176. Aff'd in 1 *Hilt.* 414.
- Badgley v. Bruce**, 4 *Paige*, 98. Followed (Remedy for dower) under the Code, in *Van Name v. Van Name*, 23 *How. Pr.* 247, 249.
- *v. Decker*, 44 *Barb.* 577. See *Ingersoll v. Jones*. Approved (Real gravamen of action of seduction) in *Holliday v. Parker*, 23 *Hun.* 72. Disting'd (Effect of statute on married woman's liability, &c.) in *Tait v. Culbertson*, 57 *Barb.* 9.
- *v. Halsey*, 4 *Paige*, 98. Disting'd (Remedy, when right to dower is disputed), in *Jordan v. Van Epps*, 85 *N. Y.* 427, 433.
- Baer v. Leppert**, 5 *Hun.* 453. See further proceedings in 12 *Hun.* 516.
- Bagg v. Jefferson Com. Pleas**, 10 *Wend.* 615. Followed (Set-off against judgment) with other cases in *Ferguson v. Bassett*, 4 *How. Pr.* 168, 172.
- Baggerly v. Farmers' Joint Stock Ins. Co.**, 3 *Weekly Dig.* 113. Aff'd in 72 *N. Y.* 601. Latter decision followed (Waiver of proof of loss) in *Goodwin v. Massachusetts Mut. Life Ins. Co.*, 73 *N. Y.* 480, 495.
- Baggott v. Boulger**, 2 *Duer*, 160. Disting'd (In whose name action on bond of foreign executor or administrator to be brought) in *People ex rel. Becar v. Struller*, 16 *Hun.* 234. Explained in *Hood v. Hood*, 85 *N. Y.* 561, 573. Disting'd (Conclusiveness of judgment on one not party or privy) in *Thomson v. MacGregor*, 81 *N. Y.* 597. See to the contrary (Improper joinder of parties as ground of demurrer) *Gregory v. Oaksmith*, 12 *How. Pr.* 134.
- Bagley v. Blackman**, 2 *Lans.* 41. Followed (Publication of will) in *Neugent v. Neugent*, 2 *Redf.* 369, 373.
- *v. Clarke*, 7 *Bosw.* 94. Disting'd (Liabilities of sureties) in *Western N. Y. Life Ins. Co. v. Clinton*, 66 *N. Y.* 332.
- *v. Peddie*, 5 *Sandf.* 192. Rev'd in 16 *N. Y.* 469; s. c., 1 *Am. Dec.* 335. See *Denнис v. Cummins*. Question (Liquidated damages and penalties) said in 2 *Sedgw. Meas. of Dam.* 7 ed. 245, n., to have been very thoroughly discussed in both courts. Principles of case (5 *Sandf.* 192) said in 1 *Am. Dec.* 335, n., to have commanded general approval, although overruled in 16 *N. Y.* Discussed in 3 *Para. on Contr.* 161, n. h. Quoted in 2 *Story on Contr.* 5 ed. § 1472, n. 4. Decision in 16 *N. Y.* followed in *Wooster v. Kisch*, 26 *Hun.* 61. Included with note in *Sedgw. Cases on Dam.* 444. Both cases with *Dakin v. Williams*, 17 *Wend.* 447; 22 *Id.* 201; *Smith v. Smith*, 4 *Wend.* 468; *Slosson v. Beadle*, 7 *Johns.* 72; *Spencer v. Tilden*, 5 *Cow.* 150; *Hasbrook v. Tappan*, 15 *Johns.* 200; *Knapp v. Matthy*, 13 *Wend.* 587; *Pearson v. Williams*, 26 *Id.* 630; *Esmond v. Benschoten*, 12 *Barb.* 366; *Farnham v. Ross*, 2 *Hall*, 167; *Colwell v. Lawrence*, 38 *Id.* 71; *Cothéal v. Talmage*, 9 *Id.* 551; *Noyes v. Phillips*, 60 *Id.* 408; *Leggett v. Mut. Life Ins. Co. of N. Y.*, 53 *Id.* 394; *Greer v. Tweed*, 13 *Abb. Pr. (N. S.)* 427; *O'Donnell v. Rosenberg*, 14 *Id.* 59; *Kemp v. Knickerbocker Ice Co.*, 69 *N. Y.* 45, and other cases collated in 30 *Am. R.* 28, n.
- *v. Smith*, 10 *N. Y.* 489. Disting'd (Damages, when partnership is wrongfully compelled to dissolve) in *Neudecker v. Kohlberg*, 81 *N. Y.* 296, 304. Explained in *Van Ness v. Fisher*, 5 *Lans.* 236, as not conflicting with rule in *Griffin v. Colver*, 16 *N. Y.* 489, as to speculative and contingent profits. Disting'd (Damages for loss of profits) in *Mitchell v. Cornell*, 44 *Super. Ct. (J. & S.)* 401, 405.
- Bahrenburgh v. Brooklyn City, &c. R. R. Co.**, 56 *N. Y.* 652. See other cases collected (Contributory negligence of parent, &c.) in *Casey v. N. Y. Central, &c. R. R. Co.*, 6 *Abb. N. C.* 104, 113, n.
- Bailey v. Adams**, 14 *Wend.* 201. Disting'd (Discharge of mechanic's lien) in *Montandon v. Deas*, 14 *Ala.* 33; s. c., 43 *Am. Dec.* 84, 90, with note.
- *v. Bancker*, 3 *Hill*, 183. See *Corning v. McCullough*. Cited (Suit by partner on security given by firm) in *Story on Partn.* (7 ed.) § 237. Disting'd (Actions between stockholders) in *Sanborn v. Lefferts*, 16 *Abb. Pr. N. S.* 55. Explained in *Woodruff & Beach Iron Works v. Chittenden*, 4 *Bosw.* 417. Followed in *Beers v. Waterbury*, 8 *Bosw.* 413. Explained in *Aspinwall v. Torrance*, 1 *Lans.* 384. Followed in *Wait v. Ferguson*, 14 *Abb. Pr.* 385. Applied to case of partners in *Englis v. Furniss*, 4 *E. D. Smith*, 599. Regarded as settled law in *Deming v. Puleston*, 33 *Super. Ct. (J. & S.)* 235. Applied to suits between trustees in *Andrews v. Murray*, 33 *Barb.* 355. Reviewed (Judgment against corporation, as evidence against stockholders), with other cases, in *Conklin v. Furman*, 57 *Barb.* 486; *Belmont v. Coleman*, 1 *Bosw.* 200. Reviewed (Nature of liability of stockholders) at length with other cases in *Lowry v. Inman*, 2 *Sweeney*, 117, 141. Applied by *Bronson, J.*, in *Corning v. McCullough*, 1 *N. Y.* 76. Explained in *Witherhead v. Allen*, 28 *Barb.* 661, 668, as applying, with respect to lia-

- bility to costs, only to cases arising under the statute under which it arose. See *Fisk v. Keeseville Manuf. Co.*, 10 *Paige*, 592. Explained and criticised, in *Lowry v. Inman*, 2 *Sweeney*, 117. See latter case below.
- *v. Bergen*, 4 *Sup'm. Ct. (T. & C.)* 642; mem. in 2 *Hun*, 520. On second trial plaintiff recovered; judgment aff'd, except, as to costs in 5 *Hun*, 555, which was aff'd in 67 *N. Y.* 346.
- *v. Briggs*, 56 *N. Y.* 407. See (Termination of claims to real property) *Code Civ. Pro.* 1881, §§ 1638, n., 1639, n. Quoted and discussed (Ejectment as disting'd from action to construe will) in *Sedgw. & W. on Tr. of Tit. to Land*, § 163. Disting'd (Action under L. 1853, c. 238) in *Wager v. Wager*, 23 *Hun*, 439, 442.
- *v. Buell*, 59 *Barb.* 158. Rev'd in 50 *N. Y.* 662. Decision in 50 *N. Y.* reluctantly followed (Voluntary payment of taxes) in *Drake v. Shurtliff*, 24 *Hun*, 422, 425. Disting'd (Liability of Assessors of taxes for error) in *Dorn v. Backer*, 61 *Barb.* 597.
- *v. Dean*, 5 *Barb.* 303. Explained (Examination before trial, in action for libel or slander) in *Phoenix v. Dupuy*, 7 *Daly*, 238, 245.
- *v. Freeman*, 11 *Johns.* 221; s. c., 6 *Am. Dec.* 371. See *Leonard v. Vredenberg*. Said (Promise to pay debt of another, when not within statute of frauds) in 6 *Am. Dec.* 372, n., to have been recognized and followed in many cases in *N. Y.* and elsewhere.
- *v. Homestead Fire Ins. Co.*, 16 *Hun*, 503. Aff'd in *Baley v. Homestead F. Ins. Co.*, 80 *N. Y.* 21.
- *v. Hudson River R. R. Co.*, 49 *N. Y.* 77. See *Bank of Rochester v. Jones*; *Krulder v. Ellison*. Followed (Conditional delivery) in *Dodge v. Johnson*, 3 *Sup'm. Ct. (T. & C.)* 237. Quoted and explained in 1 *Benj. on Sales*, § 573 (Corbin's 4 *Am. ed.*).
- *v. Jackson*, 16 *Johns.* 210; s. c., 8 *Am. Dec.* 309, with note. See *Jackson v. Pierce*. See to the contrary (Presumption of payment) *Dedlake v. Robb*, 1 *Woods*, 680. See also *Abb. Tr. rev.* 812. Collated with *Jackson v. Pierce*, 10 *Johns.* 415, and other authorities in 30 *Alb. L. J.* 107. See citations in 8 *Am. Dec.* 311, n. Discussed in *Angell on Limitations*, § 87, 6 ed.
- *v. Johnson*, 9 *Cow.* 115. Approved (Modification of contract) in *Morgan v. Butterfield*, 3 *Mich.* 623; citing *Mead v. Degolyer*, 16 *Wend.* 640.
- *v. —*, 1 *Daly*, 61. Followed (Mechanics' lien, as against succeeding owner), in *Meyers v. Bennett*, 7 *Daly*, 471, 475.
- *v. Lane*, 21 *Howe. Pr.* 475. Modified on appeal, in 13 *Abb. Pr.* 354.
- *v. Mayor, &c. of N. Y.*, 3 *Hill*, 531, with note, wherein are collected citations of the case; s. c., 15 *N. Y. Com. L. Law. ed.* 674, with analytic list of cases citing this case. Aff'd in 2 *Den.* 433. See *Bartlett v. Crozier*; *Gardner v. Trustees of Newburgh*; *Hay v. Cohoes Co.*; *Maximilian v. Mayor, &c. of N. Y.*; *Mayor, &c. of N. Y. v. Furze*; *Rochester White Lead Co. v. City of Rochester*; *Wilson v. Mayor, &c. of N. Y.* (Liability of municipal corporations, when in the prosecution of public works). Doctrine of supreme court said in *Darlington v. Mayor, &c. of N. Y.*, 31 *N. Y.* 164, 199, to have been substantially repudiated in court of errors. Explained in *Hickok v. Trustees of Plattsburgh*, 15 *Barb.* 442; *Norton v. Wiswall*, 26 *Barb.* 624; *King v. City of Brooklyn*, 42 *Barb.* 634; *Van Valkenburgh v. Mayor, &c. of N. Y.*, 43 *Barb.* 115; *Garrison v. Same*, 5 *Bow.* 503; *Terry v. Same*, 8 *Bow.* 509; *Russell v. Same*, 2 *Den.* 432; *Blake v. Ferris*, 5 *N. Y.* 64; *Roosevelt v. Draper*, 23 *N. Y.* 318. Followed in *Rochester White Lead Co. v. City of Rochester*, 3 *N. Y.* 467; *Delmonico v. Mayor, &c. of N. Y.*, 1 *Sandf.* 226. By *MONELL*, Ch. J., in *Ham v. Same*, 37 *Super. Ct. (J. & S.)* 474. Disting'd in *Kelley v. Mayor, &c. of N. Y.*, 11 *N. Y.* 436. By *DENIO*, J., in *Howell v. City of Buffalo*, 15 *N. Y.* 522. Approved in *West. Sav. Fund v. City of Phila.*, 31 *Penn.* 175, 185. Cited with *Hay v. Cohoes Co.*, 2 *N. Y.* 159; *St. Peter v. Dennison*, 53 *Id.* 416, in support of dissenting opinion in reporter's note, 33 *Am. R.* 302. Approved in *Aldrich v. Tripp*, 11 *R. I.* 141; s. c., 23 *Am. R.* 438; *City of Toledo v. Cone*, 41 *Ohio*, 15; *Rowe v. Portsmouth*, 56 *N. H.* 291; s. c., 22 *Am. R.* 467; *People ex rel. Dunkirk, &c. R. R. Co. v. Batchelor*, 53 *N. Y.* 123, 141. Approved and applied in *Hart v. City of Bridgeport*, 13 *Blatchf. C. Ct.* 289, 293. Followed in *Winn v. Rutland*, 52 *Vt.* 481, 493; *Oliver v. Worcester*, 102 *Mass.* 489; s. c., 3 *Am. R.* 485, 489. Followed with *Storrs v. City of Utica*, 17 *N. Y.* 109, in *City of Jacksonville v. Drew*, 19 *Fla.* 106; s. c., 45 *Am. R.* 5. Explained in *Alamango v. Supervisors of Albany*, 25 *Hun*, 551, 552. Cited as authority in *Donovan v. McAlpin*, 85 *N. Y.* 185, 188. Decision in 2 *Den.* 433; disting'd in *Maximilian v. Mayor*, 62 *N. Y.* 170. Cited in illustration in *City of Coldwater v. Tucker*, 36 *Mich.* 474; s. c., 24 *Am. R.* 601; *People ex rel. Park Comm'rs v. Common Council of Detroit*, 28 *Mich.* 228; s. c., 15 *Am. R.* 202, 209. Reviewed and criticised with *Mayor &c. v. Furze*, 3 *Hill*, 612; *Weet v. Trustees of Brockport*, 16 *N. Y.* 162; *Hutson v. Mayor, &c. of N. Y.*, 5 *Sandf.* 289; *Hickok v. Trustees of Plattsburgh*, 16 *N. Y.* 161; in *City of Navasota v. Pearce*, 46 *Tex.* 525; s. c., 26 *Am. R.* 279-283. Limited in *Smith v. City of Rochester*, 76 *N. Y.* 506, 510. Compare *Sage v. City of Brooklyn*, 8 *Abb. N. C.* 279. Criticised and limited in *Wright v. Holbrook*, 52 *N. H.* 120. Disting'd in *Bryant v. City of St. Paul (Minn. 1885)*, 23 *Northw. Rep.* 221. Quoted and discussed in *Coolley on Const. Lim.* 5 ed. 306. Compared in 3 *Am. L. Reg. N. S.* 359. Included in 2 *Thomps.*

- on *Negl.* 652. Commented upon in *Wood on Nuisances*, 2 ed. § 750. Discussed in *Ang. & A. on Corp.* § 33, 11 ed. Applied (Private rights and interests of municipal corporations) in *Mayor, &c. of N. Y. v. Britton*, 12 *Abb. N. C.* 367, *n.*; *Benson v. Mayor, &c. of N. Y.*, 10 *Barb.* 234; *Milhau v. Sharp*, 15 *Barb.* 213. Re-aff'd in *Lloyd v. Mayor, &c. of N. Y.*, 5 *N. Y.* 374. Approved by *SANDFORD, J.*, in *Hutson v. City of N. Y.*, 5 *Sandf.* 323. Explained (Contracts made by legislative authority) in light of *N. Y. Const. art. 8, § 11*, in *Matter of Buffalo & Jamestown R. R. Co.*, 5 *Hun.* 485.
- *v. Ogden*, 3 *Johns.* 399; *s. c.*, 3 *Am. Dec.* 509, with note on p. 515, showing it to be a leading case on the statute of frauds, and to have been frequently cited in *N. Y.* and elsewhere; *s. c.*, 3 *N. Y. Com. L. Law. ed.* 647, with brief note on signature under statute of frauds. See *Clason v. Bailey; Lansing v. Turner*. Explained (Memorandum) in *Browne on Stat. of Frauds*, § 374, 4 ed. Quoted and explained in 1 *Benj. on Sales*, § 234, *n.* 33 (*Corbin's* 4 *Am. ed.*). Approved in *Calkins v. Falk*, 38 *How. Pr.* 62. Followed (Constructive delivery) in *Shindler v. Houston*, 1 *N. Y.* 261, 272. Explained (Subscription) in *Justice v. Lang*, 42 *N. Y.* 493, 503. Followed (Auctioneer as agent of both parties) in *Davis v. Robertson*, 1 *Mill. (S. C.)* 71; *s. c.*, 12 *Am. Dec.* 611. On same point, see *Benj. on Sales*, § 268, and cases there cited.
- *v. O'Mahony*, 10 *Abb. Pr. N. S.* 270. Limited (Conflicting receiverships) in *O'Mahoney v. Belmont*, 62 *N. Y.* 133, 149.
- *v. Ryder*, 10 *N. Y.* 363. Followed in *Rome Exchange Bank v. Eames*, 4 *Abb. Ct. App. Dec.* 83, 88, as in harmony with law now existing, that a party must recover according to case made by his complaint.
- *v. Southwick*, 6 *Lans.* 356. Aff'd in *Bailey v. Briggs*, 56 *N. Y.* 407. Disting'd (Infant, as party to proceeding to remove cloud on title) in *Mutual Life Ins. Co. v. Holloday*, 13 *Abb. N. C.* 16.
- *v. Stewart*, 2 *Redf.* 212. Aff'd in *Bailey v. Hilton*, 14 *Hun.* 3.
- *v. Stone*, 41 *How. Pr.* 346. Disting'd (Inserting costs in judgment, without application to court) in *Lultgor v. Rogers*, 64 *Barb.* 417.
- *v. Wakeman*, 2 *Den.* 220. See *Stafford v. Rice*. Cited (*Indorsee*, when chargeable with admissions of *indorser*) with *Paige v. Cagwin*, 7 *Hill*, 361, in 2 *Whart. Com. on Ev.* § 1163, *a*, as denying position there taken.
- *v. Warden*, 20 *Johns.* 129. Approved (Attorney not to be special bail) in *Miles v. Clarke*, 4 *Bosw.* 632, 635.
- Bailis v. Cochran**, 2 *Johns.* 417. Disting'd (Validity of commission issued to take testimony) in *Goodyear v. Vosburgh*, 41 *How. Pr.* 421.
- Bain v. Brown**, 7 *Lans.* 506. Aff'd in 56 *N. Y.* 285. Decision in 56 *N. Y.* applied (Duty of one acting in fiduciary character) in *Farmer's and Merchant's Bank v. Downey*, 53 *Cul.* 466; *s. c.*, 31 *Am. R.* 62.
- Bainbridge, Matter of**, 4 *Hun.* 674; *s. c.*, more fully, 67 *Barb.* 293.
- Bainbridge v. Richmond**, 17 *Hun.* 391. Aff'd, it seems, in 78 *N. Y.* 618, on opinion below.
- Baine v. City of Rochester**, 12 *Weekly Dig.* 419. Reported in 1 *Civ. Pro. R.* 269.
- Baird v. Daly**, 4 *Lans.* 426. Rev'd in 57 *N. Y.* 236; *s. c.*, 15 *Am. R.* 488. Further decision in 68 *N. Y.* 547. See *Dougan v. Champlain Transp. Co.* Decision in 57 *N. Y.* disting'd (Jurisdiction of State courts in admiralty proceedings) in *Bartlett v. Spicer*, 75 *N. Y.* 528, 534. Decision in 68 *N. Y.* followed (Evidence of subsequent act to show negligence) in *Morrell v. Peck*, 24 *Hun.* 37, 38.
- *v. Gillette*, 47 *N. Y.* 186. Followed (Effect of admission of illegal evidence) in *Havemeyer v. Havemeyer*, 43 *Super. Ct. (J. & S.)* 522.
- *v. Mayor, &c. of N. Y.*, 74 *N. Y.* 386. See *Moore v. Mayor, &c. of N. Y.* Followed (Waiver of right of trial by jury) in *People ex rel. Yale v. Eckler*, 19 *Hun.* 609.
- *v. Pridmore*, 29 *How. Pr.* 253. Aff'd, on other grounds, in 31 *How. Pr.* 359. Decision in 31 *How. Pr.* approved (Summons, when subject to stamp duty) in *Cole v. Bell*, 48 *Barb.* 194.
- *v. Walker*, 12 *Barb.* 298; *s. c.*, 1 *Code Rep. N. S.* 329. Compare (Limitations—when demand is necessary) *Code Civ. Pro.* § 410. Collated, with other cases, in *Throop, Justice's Man.* 2 ed. 189.
- Bakeman v. Pooler**, 15 *Wend.* 637. Disting'd (Essentials of tender) in *Lawrence v. Miller*, 86 *N. Y.* 131, 138. Explained in 2 *Pars. on Contr.* 642, *n. h.*
- *v. Rose*, 14 *Wend.* 105. Aff'd in 18 *Id.* 146. See *Jackson v. Lewis*.
- *v. Talbot*. See *Huson v. Young*.
- Baken v. Harder**, 4 *Hun.* 272. Reported in 6 *Sup'm. Ct. (T. & C.)* 440. Explained (Estate of married woman, when chargeable) in *Covert v. Hughes*, 8 *Hun.* 305.
- Baker, Matter of**. See *Holmes, Matter of*.
- *v. Arnold*, 1 *Cai.* 258. Explained (What facts attorney or counsel may testify to) in *Brandt v. Klein*, 17 *Johns.* 338. Error in marginal note pointed out in *Brown v. Payson*, 60 *N. H.* 443. Commented on in *Dietrich v. Mitchell*, 43 *Ill.* 40.
- *v. —*, 3 *Cai.* 279; 2 *N. Y. Com. L. Law. ed.* 644, with brief note.
- *v. Arnot*, 5 *Sup'm. Ct. (T. & C.)* 215; mem. in 2 *Hun.* 682. Non-suit aff'd in 67 *N. Y.* 448.
- *v. Baker*. See *Lansing v. Lansing; People v. Gates*.
- *v. Barney*, 8 *Johns.* 72; *s. c.*, 5 *Am. Dec.* 326; 4 *N. Y. Com. L. Law. ed.* 471, with brief note. Approved (Suits by or against married woman, while living apart



- from husband under deed of separation) in *Tyler Inf. & Con.* 2 ed. § 352. Cited in 2 *Kent Com.* 162, as following *Nurse v. Craig*, 5 *Bos. & P.* 148.
- *v. Bliss*, 39 *N. Y.* 70. Commented upon (Constructive notice) in *Wait on Fraud Conv.* §§ 374, 376, 378. Reviewed and applied with *Stearns v. Gage*, 79 *N. Y.* 102; *Deed v. Gannon*, 50 *N. Y.* 345; *Pringle v. Phillips*, 5 *Sandf.* 157; *Magee v. Badge*, 34 *N. Y.* 247; *Belmont Branch Bank v. Hoge*, 35 *N. Y.* 65, in *Parker v. Conner*, 93 *N. Y.* 118.
- *v. Bourcicault*, 1 *Daly*, 23. Explained (Sales—reservation of *jus disponendi*) in 1 *Benj. on Sales*, § 587 (Corbin's 4 *Am. ed.*). Disting'd in *Higgins v. Murray*, 73 *N. Y.* 252, 254.
- *v. Braman*, 6 *Hill*, 471. Applied (Waiver of constitutional, &c. provision) in *Keator v. Ulster, &c. Plank Road Co.*, 7 *How. Pr.* 41; *Requa v. Holmes*, 19 *Id.* 444. Approved and applied in *Embury v. Conner*, 3 *N. Y.* 518. Applied with *Embury v. Conner*, 3 *N. Y.* 511; *Eaton v. Aspinwall*, 19 *Id.* 119; *Mead v. Keeler*, 24 *Barb.* 25, in *McCarthy v. Lavasche*, 89 *Ill.* 270; s. c., 31 *Am. R.* 83; with note collating cases, and regarding *Bartlett v. Drew*, 57 *N. Y.* 587, as rather extreme. Applied (Statute operative in part) in *People ex rel. Ryan v. Green*, 58 *N. Y.* 303.
- *v. Brill*, 15 *Johns.* 260. Cited (Proof by parol of incidents collateral to records) in 1 *Whart. Com. on Ev.* § 64.
- *v. Chase*, 6 *Hill*, 482. Quoted and explained (Dower as affected by conveyance before marriage) in 1 *Washb. on R. P.* 4 ed. 217. Referred to in 39 *Am. Dec.* 218, n., as containing what is a mere dictum.
- *v. Cuyler*. See *Seymour v. Davis*.
- *v. Disbrow*, 3 *Redf.* 348. Aff'd in 18 *Hun*, 29; and that aff'd, it seems, in 79 *N. Y.* 631, on opinion below. Decision in 3 *Redf.* explained (Improper investments by trustees) in 1 *Perry on Trusts*, 3 ed. § 466, n. 5.
- *v. Drake*, 53 *N. Y.* 211; s. c., 13 *Am. R.* 507. Further decision in 66 *N. Y.* 518; s. c., 23 *Am. R.* 80. See *Coytelyou v. Lansing*; *Kingsbury v. Kirwan*; *Markham v. Jaudon*; *Nourse v. Prime*. Followed (Damages) in *Mechanics' & Trad. Bank v. Farmers' & Mech. Nat. Bank*, 60 *N. Y.* 40, 52. Explained in *Gruman v. Smith*, 81 *N. Y.* 27, as overruling *Markham v. Jaudon*, 41 *N. Y.* 235. Followed in *Burridge v. Anthony*, 1 *City Ct.* 245; *Devlin v. Pike*, 5 *Duly*, 85, 86, 108. Approved with *Mechanics' & Trad. Bank of Buffalo v. Farmers' and Mechanics' Nat. B'k*, 6 *N. Y.* 40, in *Ingram v. Rankin*, 47 *Wis.* 106; s. c., 32 *Am. R.* 762; 2 *Sedgw. on Meas. of Duma.* 7 ed. 384-5, n. Applied in *Ladd v. Arkell*, 40 *Super. Ct. (J. & S.)* 150, 159, 160; *Colt v. Owens*, 47 *Id.* 430, 435. Aff'd in 90 *N. Y.* 368, which see. Relied on in *Hubbard v. Western Union Telegraph Co.*, 33 *Wis.* 558; s. c., 14 *Am. Dec.* 775, 781. Disting'd in *Hopper v. Smith*, 63 *How. Pr.* 34, 37, 39. Included with notes in *Sedgw. Cases on Dama.* 613.
- *v. Freeman*, 9 *Wend.* 36; s. c., 24 *Am. Dec.* 117, with note. Followed (Rule of damages in case of illegal seizure and sale) in *Forsyth v. Palmer*, 14 *Penn. St.* 96; s. c., 53 *Am. Dec.* 519, with note.
- *v. Gilman*, 52 *Barb.* 38. Quoted and explained (Rights of subsequent creditors against fraudulent conveyance) in *Wait on Fraud. Conv.* §§ 105-6.
- *v. Hoag*, 3 *Barb.* 203. Explained (Lien for salvage in case of property wrecked in navigable river) in *Baker v. Hoag*, 7 *Barb.* 113, which was overruled in 7 *N. Y.* 555; s. c., 59 *Am. Dec.* 431, with note. Decision in 7 *Barb.* referred to with *Sturgis v. Law*, 3 *Sandf.* 451, and other cases, in *Waples Proc. in Rem* § 511, as contrary to spirit of the maritime law, and the more liberal practice now prevailing. Followed in *N. Y. & Harlem R. R. Co. v. Haws*, 35 *Super. Ct. (J. & S.)* 372, as to finder of lost chattel having no lien thereon.
- *v. Home Life Ins. Co.*, 2 *Hun*, 402; s. c., 4 *Sup'm. Ct. (T. & C.)* 582; aff'd in 64 *N. Y.* 648. Another proceeding in 63 *N. Y.* 630.
- *v. Johnson*, 2 *Hill*, 342. See *Brinckerhoff v. Wemple*. Disting'd and limited (Trespass by canal contractor) in *St. Peter v. Denison*, 58 *N. Y.* 416, 422.
- *v. —*, 2 *Robt.* 570. Aff'd in 42 *N. Y.* 126.
- *v. Judges of Ulster*, 4 *Johns.* 191; *Wetmore v. Law*, 34 *Barb.* 515; *Clark v. Rowling*, 3 *N. Y.* 226. Approved (Disposition of defense arising after judgment; when same available on motion) in *Heckling v. Allen*, 15 *Fed. Rep.* 198.
- *v. Kenworthy*, 41 *N. Y.* 215. Followed (Application of moneys by sheriff to payment of debt owed by plaintiff in execution) in *Adams v. Welsh*, 43 *Super. Ct. (J. & S.)* 52, 56. Disting'd (Levy on property in hands of officer of court) in *Dunlop v. Patterson Fire Ins. Co.*, 74 *N. Y.* 145, 150.
- *v. Lamb*, 11 *Hun*, 522. Followed (Married woman's contract) in *Wilson Sew. Mach. Co. v. Fuller*, 60 *How. Pr.* 480.
- *v. Lever*, 5 *Hun*, 114. Aff'd in 67 *N. Y.* 304; s. c., 23 *Am. R.* 123.
- *v. Lorillard*, 4 *N. Y.* 257. Explained (Jurisdiction of equity to direct sale of infants' real estate) in 2 *Perry on Trusts*, 3 ed. § 610, n. 1.
- *v. Mayor, &c. of N. Y.*, 9 *Abb. Pr.* 82. Followed (Powers of supervisors of N. Y. county to legislate for city of N. Y.) in *Davies v. Mayor, &c. of N. Y.*, 45 *Super. Ct. (J. & S.)* 373.
- *v. People*, 3 *Cow.* 686. Applied (Imposition by legislature of additional qualifications to office seeking) in *Black v. Trower*, *Sup'n. Ct. App., Va., May*, 1884, 18 *Reporter*, 189.

- *v.* —, 15 *Hun.* 256. Rev'd in *People v. Baker*, 76 *N. Y.* 78; s. c., 32 *Am. R.* 274. Discussed (Conflict of divorce laws) in 2 *Bish. on Mar. and Div.* 6 ed. §§ 163, n. 3, 167, n. 1, 168, n. 1; also in *Tyler Inf. & Cov.* 2 ed. § 688.
- *v. Pope*, 5 *Sup'm. Ct. (T. & C.)* 102. See *Aldrich v. Sager*. Compare (Action under civil damage act where no action lies against the intoxicated person) in *Quain v. Russell*, 8 *Hun.* 319.
- *v. Spencer*, 58 *Barb.* 248. Aff'd in 47 *N. Y.* 562.
- *v. Squier*, 1 *Hun.* 448. See other cases collected (Usage to vary contract) in 1 *Abb. N. C.* 470, 472, n.
- *v. Stackpoole*, 9 *Cow.* 420; s. c., 18 *Am. Dec.* 508. Said in note thereto at p. 515, citing cases, to have been frequently approved and followed as to power of partner to bind copartners after dissolution, and as to application of payments. On first point, see note to 6 *Am. Dec.* 574, and 13 *Id.* 505. Reported in 9 *N. Y. Com. L. Law. ed.* 689, with brief note. Reviewed (Power of partner to bind copartners) with *Hackley v. Patrick*, 3 *Johns.* 536; *Walden v. Sherburne*, 15 *Id.* 424; *Van Keuren v. Parmelee*, 2 *N. Y.* 523; *Shoemaker v. Benedict*, 11 *N. Y.* 176; *National Bank v. Norton*, 1 *Hill.* 572; in *Tate v. Clements*, 16 *Fla.* 339; s. c., 26 *Am. R.* 709, 712, 714, 720. Followed in *Hart v. Woodruff*, 24 *Hun.* 510, 512.
- *v. Thrasher*, 4 *Den.* 493. Followed (Deed accompanied by agreement to re-convey) in *Macaulay v. Porter*, 71 *N. Y.* 173, 179. Relied on in *Randall v. Sanders*, 23 *Hun.* 614.
- *v. Union Mutual Life Ins. Co.*, 6 *Robt.* 393; s. c., 6 *Abb. Pr. N. S.* 144; 37 *How. Pr.* 126. Rev'd in 43 *N. Y.* 283. See *Roehner v. Knickerbocker Life Ins. Co.* Decision in 43 *N. Y.* followed (Insurance by husband for benefit of wife) in *Thompson v. American Tontine Life, & C. Ins. Co.*, 46 *N. Y.* 674; *Estes v. World Mut. Life Ins. Co.*, 6 *Hun.* 349. Applied (Wrongful act of agent) in *Krumm v. Beach*, 25 *Hun.* 293, 296. To the contrary (Evidence of payment of premium) see authorities cited in *Abb. Tr. Eo.* 481, n. 3. Disting'd (Non payment of premium note) in *Pendleton v. Knickerbocker Ins. Co.*, 7 *Fed. Rep.* 175, 176; s. c., 12 *Rep.* 457. Relied on with *Wall v. Home Ins. Co.*, 36 *N. Y.* 167; *Beadle v. Chenango Co. Mutual Ins. Co.*, 3 *Hill.* 161; in *Joliffe v. Madison Mut. Ins. Co.*, 39 *Wis.* 111; s. c., 20 *Am. R.* 35, 37.
- *v. Van Epps*, 58 *How. Pr.* 401. Aff'd in 60 *Id.* 79; mem. s. c., 22 *Hun.* 460.
- *v. Wheeler*, 8 *Wend.* 505. See *Brown v. Sax*. Criticised and disting'd (Liability of one tenant in common to another for waste in cutting timber) in *Elwell v. Burnside*, 44 *Barb.* 447. Approvingly reviewed (Recovery of enhanced value of property that has been tortiously taken) with *Brown v. Sax*, 7 *Cow.* 95; *Rice v. Hollenbeck*, 19 *Barb.* 664; *Walther v. Wetmore*, 1 *E. D. Smith*, 7; *Pierce v. Schenck*, 3 *Hill.* 28, in a lengthy note 24 *Am. Dec.* 70-73, and shown to maintain a doctrine which is not confined to the *N. Y.* courts, though it is, one which has not met with universal favor. Cited in *Woodenware Co. v. U. S.*, 105 *U. S. (Otto)* 432.
- *v. Woodbridge*, 1 *Sup'm. Ct. (T. & C.)* Add. 11; s. c. more fully in 66 *Barb.* 261.
- *v. Woodruff*, 2 *Barb.* 520. Aff'd in 2 *N. Y.* 153.
- Bakewell v. Ellsworth**, 6 *Hill.* 484. See (Sheriff's sale of bailor's interest) *Code Civ. Pro.* 1881, §§ 1412, n., 1428, n. Followed in *Stief v. Hart*, 1 *N. Y.* 20, 24, 29, 30, 38.
- Balbo v. People**, 19 *Hun.* 424. Aff'd in 80 *N. Y.* 424. Compare (Disqualification of juror) *State v. Spaulding*, 24 *Kans.* 1. Applied in *Abbott v. People*, 86 *N. Y.* 460, 468. Followed in *Cox v. People*, 80 *N. Y.* 513. Followed with *Cox v. People*, 80 *N. Y.* 500; *People v. Cornetti*, 92 *Id.* 85 (Review of decision of trial judge overruling challenge for bias) in *People v. Casey*, 96 *N. Y.* 115.
- Baleh v. N. Y. & Oswego Midland R. R. Co.**, 46 *N. Y.* 521. See *Aikin v. Wasson*. Followed (Labor performed, for which stockholders are liable) in *Viele v. Wells*, 9 *Abb. N. C.* 278. Relied on (Extent of statutory lien for personal services) with *Stryker v. Cassidy*, 10 *Hun.* 18; *Ericsson v. Brown*, 38 *Barb.* 390; *Aikin v. Wasson*, 24 *N. Y.* 482; in *Hale v. Brown*, 59 *N. Y.* 551; s. c., 47 *Am. R.* 224.
- Balcom v. Woodruff**, 9 *Barb.* 13. Applied (Amendment) in *Hatch v. Central Nat'l B'k*, 78 *N. Y.* 487, 490. Explained in *Englis v. Furniss*, 3 *Abb. Pr.* 82.
- Baldwin v. Barrett**. See *Larkin v. Robbins*.
- *v. Brown*, 37 *How. Pr.* 385. See (Costs on appeals from justice's judgment) *Code Civ. Pro.* § 3070, n. Denied in *Humiston v. Ballard*, 39 *How. Pr.* 93. Explained in *Kelly v. Bonesteel*, 29 *Hun.* 546.
- *v.* —, 16 *N. Y.* 359. Applied (Boundary line,—when established by acquiescence) in *Ratcliffe v. Cary*, 4 *Abb. Ct. App. Dec.* 8; *Pierson v. Mosher*, 30 *Barb.* 84; *Corkhill v. Landers*, 44 *Barb.* 228; *Robinson v. Phillips*, 65 *Barb.* 425; *Reed v. Farr*, 35 *N. Y.* 116. Explained in *Hubbell v. McCulloch*, 47 *Barb.* 299; *Coon v. Smith*, 29 *N. Y.* 399. Followed with *Dibble v. Rogers*, 13 *Wend.* 539; *Rockwell v. Adams*, 7 *Cow.* 762; *McCormick v. Barnum*, 10 *Wend.* 104; *Kip v. Norton*, 12 *Id.* 130; *Jackson v. McConnell*, 19 *Id.* 176; *Turner v. Baker*, 64 *Mo.* 218; s. c., 27 *Am. R.* 226, 238, with note.
- *v. Calkins*, 10 *Wend.* 166. Questioned (Reviewing principle of assessment on certiorari) in *Matter of Mt. Morris Square*, 2 *Hill.* 14. Reviewed (Limit of review on certiorari) with other cases in *People v. Board of Police*, 39 *N. Y.* 509. Applied (Court of review to assume truth of facts not disputed below) in *Oakley v. Van Horn*, 21 *Wend.* 308; *Paige v. Fazackerly*, 36 *Barb.* 396; *Colver v.*

- Van Valen, 6 *How. Pr.* 105; Jencks v. Smith, 1 *N. Y.* 92. Explained (Limit of recovery for continuing nuisance) in Waggoner v. Germaine, 3 *Den.* 318.
- **v. City of Buffalo**, 29 *Barb.* 396. Subsequent decision in 35 *N. Y.* 375, overruling in part that in 29 *Barb.* See Stone v. Mayor, &c. of N. Y. Decision in 35 *N. Y.* explained (Evidence brought up on certiorari) in People v. Board of Police, 39 *N. Y.* 506. Decision in 29 *Barb.* followed (Injunction to restrain opening of street) in Miller v. Mayor, &c. of Mobile, 47 *Ala.* 163; s. c., 11 *Am. R.* 768.
- **v. City of Oswego**, 1 *Abb. Ct. App. Dec.* 62. See also (Municipal contract) Bigler v. Mayor, &c. of N. Y., 5 *Abb. N. C.* 51, 66, n. Also (Limit of cost of public works) People *ex rel.* Murphy v. Kelly, *Id.* 383, 468.
- **v. Liverpool & Great Western Steamship Co.**, 11 *Hun.* 496. Aff'd in 74 *N. Y.* 125; s. c., 30 *Am. R.* 277.
- **v. McArthur**, 17 *Barb.* 414. Disting'd (Disqualification of judge by relationship) in Matter of Dodge & Stevenson Manuf. Co., 77 *N. Y.* 101.
- **v. Martin**, 14 *Abb. Pr. N. S.* 9; s. c., 35 *Super. Ct. (J. & S.)* 85. Approved and followed (Burden and pleading of proof when statute of limitations is set up) in Barlow v. Arnold, 6 *Fed. Rep.* 355. Explained in 8 *Abb. N. C.* 198, n., 199, n., 200, n.
- **v. Mayor, &c., of N. Y.**, 42 *Barb.* 549. Aff'd in 45 *Barb.* 359; s. c., 30 *How. Pr.* 289, which was aff'd in 2 *Keyes*, 387; s. c., 1 *Abb. Ct. App. Dec.* 75. See Darlington v. Mayor, &c. of N. Y.; Milhau v. Sharp.
- **v. Munn**, 2 *Wend.* 399; s. c., 10 *N. Y. Com. L. Law. ed.* 173, with brief note. See Bush v. Cole; Stants v. Ten Eyck. Examined (Damages for breach of covenants to convey, &c.) in Fletcher v. Button, 6 *Barb.* 651. Explained and applied in Noyes v. Anderson, 1 *Duer*, 352. Approved in Cockcroft v. N. Y. & H. R. R. Co., 69 *N. Y.* 204. Criticised and disapproved with Peters v. McKeon, 4 *Den.* 546, in Doherty v. Dolan, 65 *Me.* 87; s. c., 20 *Am. R.* 677, 679. Said in 20 *Am. Dec.* 632, n., to have been frequently approved in N. Y. Disting'd in Brinkerhoff v. Phelps, 24 *Barb.* 100, with which it is reconciled by later decision in 43 *Barb.* 474. Explained in Conger v. Weaver, 20 *N. Y.* 140, 144. Disting'd (What will support averment of performance) in Holmes v. Holmes, 9 *N. Y.* 528.
- **v. N. Y. Life Ins. & Trust Co.**, 3 *Bosw.* 530. Explained (Insured going beyond territorial limits) in 2 *Pars. on Contr.* 474, n. c. Disting'd (Non-performance of express condition in contract) in Wheeler v. Conn. Mut. Life Ins. Co., 82 *N. Y.* 543, 552, and said to have been overruled by Evans v. U. S. Life Ins. Co., 64 *N. Y.* 304.
- **v. Palmer**, 10 *N. Y.* 232. Discussed (Statute of Frauds—verbal contracts—collateral agreements) in *Browne on Stat. of Frauds*, § 117, b, 4 ed. Recognized as authority (Part payment of purchase money) in Morrill v. Cooper, 65 *Barb.* 512, 517.
- **v. Perry**, 1 *Civ. Pro. R.* 32. Rev'd in 25 *Hun.* 72; s. c., 61 *How. Pr.* 289; 1 *Civ. Pro. R.* 118.
- **v. Ryan**, 3 *Sup'm. Ct. (T. & C.)* 251. Relied on (Fraudulent conveyance) in Childs v. Connor, 38 *Super. Ct. (J. & S.)* 471.
- **v. Tynes**. See Robinson v. McIntosh.
- **v. U. S. Tel. Co.**, 54 *Barb.* 505; s. c., more fully, 6 *Abb. Pr. N. S.* 405. Subsequent decision in 1 *Lans.* 125. Aff'd in 45 *N. Y.* 744. See De Rutte v. N. Y., &c. Tel. Co.; Hamilton v. McPherson; Landsberger v. Magnetic Tel. Co.; Leonard v. N. Y., Albany, &c. Tel. Co. Decision in 1 *Lans.* reviewed (Liability of telegraph companies) with De Rutte v. N. Y., Albany & Buffalo Tel. Co., 1 *Daly*, 547; Breese v. U. S. Tel. Co., 45 *Barb.* 274; Leonard v. N. Y., Albany & Buffalo Tel. Co., 41 *N. Y.* 544; s. c., 1 *Am. R.* 46; Rittenhouse v. Independent Line of Telegraph, 1 *Daly*, 474, in Western Union Tel. Co. v. Reynolds, 77 *Va.* 173; s. c., 46 *Am. R.* 715; Griffin v. Colver, 16 *N. Y.* 489, being with other cases relied on, on the question of measure of damages. Decision in 45 *N. Y.* cited with approval in Hubbard v. Western Union Tel. Co., 33 *Wis.* 558; s. c., 14 *Am. R.* 775. Followed in Daniel v. Western Union Tel. Co., 61 *Tex.* 452; s. c., 48 *Am. R.* 305. Decision in 1 *Lans.* 125, explained in 2 *Pars. on Contr.* 257, j., n. p.
- Baley v. Homestead Fire Ins. Co.** See Bailey v. Homestead F. Ins. Co. Followed (Condition in policy) in Green v. Homestead Fire Ins. Co., 82 *N. Y.* 517.
- Balja v. Rawley**, 37 *How. Pr.* 120. See (Return on appeal from justice's judgment) *Code Civ. Pro.* 1881, § 3053, n.
- Ball v. Bullard**, 52 *Barb.* 141. Disapproved (Statute of limitations as to married women) in Clark v. McCann, 18 *Hun.* 13, 15.
- **v. Gardner**, 21 *Wend.* 270. Followed (Liability on bond given to obtain attachment from justice's court) in Bennett v. Brown, 20 *N. Y.* 99, 102. Applied to case of bond given on appeal, in Hinckley v. Kreitz, 36 *Super. Ct. (J. & S.)* 413, 423, but disting'd in 58 *N. Y.* 583, 588; which rev'd 36 *Super. Ct. (J. & S.)* 413.
- **v. Goodenough**, 37 *How. Pr.* 479. See to the contrary (Assignment to receiver) Clan Ranald v. Wyckoff, 41 *Super. Ct. (J. & S.)* 527.
- **v. Liney**, 44 *Barb.* 505. Rev'd in 48 *N. Y.* 6. See Higgins v. Whitney. Decision in 48 *N. Y.*; relied on (Mitigation of damages in trespass) in Parker v. Conner, 44 *Super. Ct. (J. & S.)* 416.
- **v. Loomis**, 29 *N. Y.* 412. Disting'd (Liability of indemnitors of sheriff) in Chapman v. Douglas, 5 *Daly*, 244, 253.
- **v. Miller**, 17 *How. Pr.* 300. Disting'd (Sale of real estate of decedent) in East River Nat. Bk. v. McCaffrey, 3 *Kedf.* 97.

- **v. Ryers**, 3 *Cal.* 84. Followed (Control of court over surplus moneys arising on sheriff's sale) with *Van Nest v. Yeomans*, 1 *Wesd.* 87; in *Stebbins v. Walker*, 2 *Green (N. J.)* 90; s. c., 25 *Am. Dec.* 499, 505, with note; *Williams v. Rogers*, 5 *Johns.* 163, cited as authority, and *Sandford v. Roosa*, 12 *Johns.* 162, disting'd. See, also, *Cox v. Marlett*, 7 *Vroom (N. J.)* 390.
- Ballard v. Burgett**, 47 *Barb.* 646. Aff'd in 40 *N. Y.* 314. See *Herring v. Hoppock*; *McNeil v. Tenth Nat. Bk.*; *Steelyards v. Singer*; *Wait v. Green*. Decision in 40 *N. Y.* followed (Conditional sales) in *Powell v. Preston*, 1 *Hun.* 513. Disting'd in *Fitzgerald v. Fuller*, 19 *Hun.* 180; *Hoyt v. Baker*, 15 *Abb. Pr. N. S.* 412; *Moore v. Miller*, 6 *Lans.* 401. Followed in *Maynard v. Anderson*, 54 *N. Y.* 641; *Cole v. Berry*, 13 *Vroom (N. J.)* 308; s. c., 36 *Am. R.* 511, 513, 516; *McNeil v. Tenth National Bank of N. Y.*, 55 *Barb.* 59, 69; *Austin v. Dye*, 46 *N. Y.* 500. Explained in *City Bank v. Rome, &c. W. & O. R. Co.*, 44 *N. Y.* 136; *Moore v. Metropolitan Nat. Bk.*, 55 *N. Y.* 46; *Farmers' & Merchants' Nat. Bk. v. Logan*, 74 *N. Y.* 584; 1 *Benj. on Sales*, § 427 (*Corbin's* 4 *Am. ed.*); *Id.* §§ 437, 448. Disting'd in *Conner v. Cunningham*, 77 *N. Y.* 391, 398. Followed in *Singer Mfg. Co. v. Graham*, 8 *Oreg.* 17; s. c., 34 *Am. R.* 572, 575.
- **v. Lockwood**, 1 *Daly*, 158. To the contrary (Testimony of parties as to intent) *Pope v. Hart*, 35 *Barb.* 630. See also *Abb. Tr. Ev.* 620.
- **v. Walker**. See *Lattimore v. Harsen*.
- Ballin v. Dillaye**, 37 *N. Y.* 35. See *Yale v. Dederer*. Applied (Liability of separate estate of married woman) in *Corn Exchange Ins. Co. v. Babcock*, 42 *N. Y.* 633; *Cashman v. Henry*, 75 *N. Y.* 110; s. c., 5 *Abb. N. C.* 230, 236. Explained in *Coakley v. Chamberlain*, 8 *Abb. Pr. N. S.* 44. Approved, as a decision of right and principle, in *Jackson v. Rutledge*, 3 *Lea (Tenn.)* 626; s. c., 31 *Am. R.* 655.
- Ballou v. Boland**, 14 *Hun.* 355. See (Discontinuance of supplementary proceedings) *Code Civ. Pro.* 1881, § 2454, n.
- **v. Cunningham**, 60 *Barb.* 425. Approved (Sale under mortgage containing condition to sell) in *Jones on Ch. M.* § 791. Reviewed with other cases in *Thomas on M.* 452. See *Huggans v. Fryer*, 1 *Lans.* 276, and dissenting opinion of *MILLER, J.*, in 4 *Lans.* 74. Cited with approval (Power of mortgagee of chattels to sell without notice) in *Harris v. Lynn*, 25 *Kans.* 281.
- **v. Parsons**, 67 *Barb.* 19, s. c., 52 *How. Pr.* 164. Aff'd in 55 *N. Y.* 673, on opinion of *BOCKES, J.*, below. Another decision on merits in 11 *Hun.* 602.
- Baltzer v. Nicolay**, 35 *Super. Ct. (J. & S.)* 203. Rev'd in 53 *N. Y.* 467. Decision in 53 *N. Y.* commented on (Remedy for Assumption of authority) in *Noe v. Gregory*, 7 *Daly*, 283, 285. Commented on (Memorandum required by Statute of Frauds) in *Browne on Stat. of Frauds*, § 135, a, 4 ed. Cited in *Whart. Com. on Ag.* § 655.
- Bamberg v. Stern**, 76 *N. Y.* 555. Compare (Appeal to Common Pleas) for the present statute *Code Civ. Pro.* § 3191.
- Baneroft v. Shannon**, 42 *How. Pr.* 1. See (Justices' Court—Appeal—Offer to compromise) *Code Civ. Pro.* 1881, § 3670, n.
- **v. Wardwell**, 13 *Johns.* 489; s. c., 7 *Am. Dec.* 396. See *Smith v. Stewart*. Said in 7 *Am. Dec.* 397, n., to have been followed in Pa., Me., Mo. and Cal., citing the cases on the point, that an action for use and occupation will not lie against one holding as a purchaser, and not as a tenant.
- Baneroft v. White**, 1 *Cal.* 185. See *Sparrow v. Kingman*. Overruled (*Estoppel by deed*) in *Sparrow v. Kingman*, 1 *N. Y.* 242, 255; but compare *McClure v. Engelhardt*, 17 *Ill.* 50.
- Bander v. Bander**, 7 *Barb.* 560. Followed (Duty to pay interest on notes annually) in *Koehring v. Muemminghoff*, 61 *Mo.* 403; s. c., 21 *Am. R.* 402.
- Banfield v. Haegar**, 45 *Super. Ct. (J. & S.)* 428; s. c., 7 *Abb. N. C.* 318. Compare (Allegation of conversion, &c., in replevin) *Code Civ. Pro.* § 1721.
- **v. Rumsey**, 2 *Hun.* 112; s. c., 4 *Sup'm. Ct. (T. & C.)* 322.
- Bangs, Matter of**, 15 *Barb.* 264. Rev'd as *Bangs v. Gray*, in 12 *N. Y.* 477. See *Thomas v. Whallon*.
- **v. Bailey**, 37 *Barb.* 630. Disting'd (Allowance of interest) in *Sands v. Annesley*, 56 *Barb.* 598.
- **v. Duckinfield**, 18 *N. Y.* 592. Followed (Jurisdiction to appoint receiver) in *Palmer v. Clark*, 4 *Abb. N. C.* 25, 28.
- **v. Gray**. See *Thomas v. Whallon*.
- **v. McIntosh**, 23 *Barb.* 591. Overruled in effect (Jurisdiction of proceedings against corporations) in *Bangs v. Duckinfield*, 18 *N. Y.* 592.
- **v. Skidmore**, 24 *Barb.* 29. Aff'd in 21 *N. Y.* 136.
- **v. Strong**, 10 *Paige*, 11. Aff'd in 7 *Ill.* 250; s. c., 42 *Am. Dec.* 64, with note. Applied (Discharge of surety) in *Hagey v. Hill*, 75 *Penn. St.* 108; s. c., 15 *Am. R.* 583. Subsequent decision in 4 *N. Y.* 315.
- **v. Wait**, 37 *Barb.* 29, 43. Disting'd (Allowance of interest) in *Sands v. Annesley*, 56 *Barb.* 598.
- Bank Commissioners v. Bank of Buffalo**, 6 *Pai.* 497. Applied (Dissolution of corporation) in *Kincaid v. Dwinelle*, 52 *N. Y.* 548, 553. Explained and disting'd with *Verplanck v. Mercantile Ins. Co.*, 7 *Paige*, 438; *Davenport v. City Bank of Buffalo*, 9 *Paige*, 12; in *Dewey v. St. Albans Trust Co.*, 56 *Vt.* 476; s. c., 48 *Am. R.* 803.
- **v. St. Lawrence Bank**, 3 *Barb.* 436. Rev'd in 7 *N. Y.* 513.
- Bank for Savings v. Frank**, 51 *How. Pr.* 403. Aff'd in 45 *Super. Ct. (J. & S.)* 404.
- Bank of Albion v. Burns**, 2 *rns.* 52. Aff'd

- in 46 *N. Y.* 170. Decision in 46 *N. Y.* applied (Mortgage by wife) in *Smith v. Fellows*, 41 *Super. Ct. (J. & S.)* 36, 49; *Hassey v. Wilke*, 55 *Cal.* 525. Followed (Presumption arising from husband having possession of a deed or mortgage of wife's property) in *Hoffman v. Treadwell*, 2 *Sup'm. Ct. (T. & C.)* 60.
- *v. Smith*, 27 *Barb.* 489. Recognized (Evidence to vary indorsement) with *Seabury v. Hungerford*, 2 *Hill*, 80; *Hall v. Newcomb*, 7 *Id.* 416; in *Downer v. Chesebrough*, 36 *Conn.* 39; s. c., 4 *Am. R.* 29, as holding what is the law in *N. Y.* Relied on with *Thompson v. Ketcham*, 8 *Johns.* 146; *Patterson v. Hull*, 9 *Cov.* 747; *Payne v. Ladue*, 1 *Hill*, 116; *Hall v. Newcomb*, 7 *Id.* 416, in *Dale v. Gear*, 38 *Conn.* 15; s. c., 9 *Am. R.* 353, 359. Followed with *Fassin v. Hubbard*, 55 *N. Y.* 465; *Seabury v. Hungerford*, 2 *Hill*, 80–82, in *Charles v. Denis*, 42 *Wis.* 56; s. c., 24 *Am. R.* 383. Followed with *Fassin v. Hubbard*, 55 *N. Y.* 465, in *Doolittle v. Ferry*, 20 *Kans.* 230; s. c., 27 *Am. R.* 167. Cited in *Rodney v. Wilson*, 67 *Mo.* 123; s. c., 29 *Am. R.* 499. See to the contrary, 1 *Dan. Neg. Instr.* § 717. See *Abb. Tr. Eo.* 415.
- Bank of America v. Pollock**, 4 *Edw. Ch.* 415. See *Pascoag Bank v. Hunt*. Explained (Resulting trust) in 1 *Perry on Trusts*, 3 ed. § 135, n. 2.
- *v. Woodworth*, 18 *Johns.* 315. Rev'd in *Woodworth v. Bank of America*, 19 *Id.* 301. Explained (Alteration of note) in *Benedict v. Cowden*, 49 *N. Y.* 403. Cited as authority with *Nazro v. Fuller*, 24 *Wend.* 374, in *Toomer v. Rutland*, 57 *Ala.* 379; s. c., 25 *Am. R.* 722.
- Bank of Attica v. Manufacturers' & Trad. Bank**, 20 *N. Y.* 501. Applied (Validity of by-law inhibiting transfer of stock) in *Driscoll v. West, & Co. Man'g Co.*, 59 *N. Y.* 96, 104. Disting'd in *Leggett v. Bank of Sing Sing*, 24 *N. Y.* 283. Applied in *Lockwood v. Mechanics' Nat'l Bank*, 9 *R. I.* 308; s. c., 11 *Am. R.* 253, 260. Explained in *Ang. & A. on Corp.* § 535, n. 5, 11 ed. Relied on (Compelling transfer of stock) in *Cushman v. Thayer Mfg. Jewelry Co.*, 7 *Daly*, 330, 332. Applied (Damages in proceeding of equitable nature) in *Seeley v. N. Y. Nat. Exch. B'k*, 8 *Daly*, 400, 405.
- *v. Wolf*, 18 *How. Pr.* 102. See in accord (Right of a defendant, answering separately, to costs) *Wilklow v. Bell*, 18 *How. Pr.* 397.
- Bank of Auburn v. Aikin**, 18 *Johns.* 137. See *Jackson v. Plumble*. Overruled (Plea of *nul tuel corporation*,—when good) in *Bank of Auburn v. Weed*, 19 *Id.* 300.
- *v. Roberts*, 45 *Barb.* 407. Aff'd in 44 *N. Y.* 192. See *Wilson v. Maltby*.
- *v. Weed*. See *Bank of Michigan v. Williams*; *Bank of Utica v. Smalley*; *Dutchess Cotton Manufactory v. Davis*; *Jackson v. Plumble*.
- Bank of Beloit v. Beale**, 11 *Abb. Pr.* 375;

s. c., 20 *How. Pr.* 331. Aff'd in 7 *Bosc.* 611, which was aff'd in 34 *N. Y.* 473. See *Lloyd v. Brewster*; *Thurst v. West*. Applied with *Morris v. Rexford*, 18 *N. Y.* 542; *Rodermund v. Clark*, 46 *Id.* 354; *Taussig v. Hart*, 49 *Id.* 301; *Fields v. Bland*, 81 *Id.* 239 (Election of remedies) in *Avila v. Manhattan Chemical Co. of N. Y.*, 32 *Hun.* 1. Cited (Prosecution of suit by principal as ratification of unauthorized act) in *Whart. Com. on Ag.* § 90, n.

**Bank of California v. Collins**, 5 *Hun.* 209. Further decision, it seems, in 7 *Id.* 336. Doctrine in 5 *Hun* not accepted (Survival of right of action against trustee for failure to file report) in *Carley v. Hodges*, 19 *Hun.* 187. With decision in 7 *Hun*, compare *Whitney Arms Co. v. Barlow*, 63 *N. Y.* 62. See *Garrison v. Howe*.

**Bank of Chenango v. Hyde**, 4 *Cov.* 567. See *Grandin v. Le Roy*. Explained and followed (Collateral security) in *Bank of State of New York v. Vanderhorst*, 32 *N. Y.* 553. Approved (Action on note for benefit of another) with *Bank of Rutland v. Buck*, 5 *Wend.* 66, in *Bank of Newbury v. Rand*, 38 *N. H.* (1 *Chand.*) 166. Approved (Suit on note in name of bank) in *Elliot v. Abbot*, 12 *N. H.* 549; s. c., 37 *Am. Dec.* 227, with note.

**Bank of Commerce v. Rutland & Wash. R. Co.**, 10 *How. Pr.* 1. See *Hulbert v. Hope Mut. Ins. Co.* Approved (Foreign corporations) in *Cumberland Coal & Iron Co. v. Hoffman Steam Coal Co.*, 30 *Barb.* 159, 164.

— *v. Union Bank*, 3 *N. Y.* 230. Followed (Recovery of money paid by mistake) in *Marine Nat. Bank v. Nat. City Bank*, 33 *Super. Ct. (J. & S.)* 470, which was, however, rev'd in 59 *N. Y.* 67, 77; *Allen v. Fourth Nat. Bank of N. Y.*, 37 *Super. Ct. (J. & S.)* 137, 149. Applied in *Nat. B'k of Commonwealth v. Grocer's Nat. B'k*, 2 *Daly*, 291; *Kingston B'k v. Eltinge*, 40 *N. Y.* 395; *Security B'k v. Nat. B'k*, 67 *N. Y.* 463. Disting'd in *Susquehanna Valley Bank v. Pickering*, 19 *Hun.* 230; in dissenting opinion of *Ruggles, J.*, in *Goddard v. Merchants' B'k*, 4 *N. Y.* 156; in dissenting opinion of *Seawick, J.*, in *Nat. B'k of Commerce v. Nat. Mech. B'k*, 35 *Super. Ct. (J. & S.)* 295. Criticised with *Goddard v. Merchants' Bank*, 4 *N. Y.* 147, as containing dicta respecting payment of bill where signature is forged, in *National Park Bank v. Fourth National Bank*, 7 *Abb. Pr. N. S.* 138. Followed with *National Park Bank v. Ninth Nat'l Bank*, 55 *Barb.* 124; which was aff'd in 46 *N. Y.* 77; s. c., 7 *Am. R.* 310, in *Redington v. Woods*, 45 *Cal.* 406; s. c., 13 *Am. R.* 190, 196.

**Bank of Commonwealth v. Mayor, & Co. of N. Y.**, 43 *N. Y.* 184. See *Peyser v. Mayor, & Co. of N. Y.*; *Stone v. Mayor, & Co. of N. Y.* Followed (Recovery of money paid on assessment) in *Newman v. Livingston County*, 45

- N. Y.* 682; *Union Nat. B'k v. Mayor, &c.* of *N. Y.*, 51 *N. Y.* 638. Applied in *People v. Ingersoll*, 67 *Barb.* 478. Disting'd in *Dewey v. Supervisors of Niagara*, 2 *Hun.* 392, 395, 398; *Peyser v. Mayor, &c.* of *N. Y.*, 8 *Hun.* 416; *Nash v. Mayor, &c.* of *N. Y.*, 9 *Hun.* 218. Disting'd (Review of assessment collaterally) in *Strusburgh v. Mayor, &c.* of *N. Y.*, 45 *Super. Ct. (J. & S.)* 511. See, also, *Merchants' Nat. Bank of N. Y. v. Supervisors of N. Y.*, 5 *Sup'm. Ct. (T. & C.)* 393, 399, 400.
- *v. Mudgett*, 44 *N. Y.* 514. Disting'd (Comparison of hands) in *Hardy v. Norton*, 66 *Barb.* 527, 536.
- Bank of Genesee v. Field**, 19 *Wend.* 643. Overruled (Severance of action against two or more parties to note or bill) in *Miller v. McCagg*, 4 *Hill.* 35.
- *v. Patchin B'k*, 13 *N. Y.* 309. Subsequent decision in 19 *Id.* 312. See *N. Y. African Society v. Varick*. Included with notes in 2 *Ames Cases on B. & N.* 559. Disting'd (Execution of written instrument by agent) in *Booth v. Farmers' & Mechanics' Nat. Bk.*, 4 *Lans.* 306. Applied in *Barbour v. Litchfield*, 4 *Abb. Ct. App. Dec.* 655; *Randall v. Snyder*, 1 *Lans.* 166. Disting'd in *Dabney v. Stevens*, 40 *How. Pr.* 349. Followed (Indorsement by cashier) in *Bank of N. Y. v. Bank of Ohio*, 29 *N. Y.* 619; *Robb v. Ross Co. Bk.*, 41 *Barb.* 592. Applied (Estoppel from representation of agent) in *Griswold v. Haven*, 25 *N. Y.* 603; *N. Y. & N. H. R. R. Co. v. Schuyler*, 34 *N. Y.* 59. Approved (Power of bank to make accommodation indorsement) in *Bridgeport City B'k v. Empire Stone Dressing Co.*, 30 *Barb.* 423. Applied in *Central B'k v. Same*, 26 *Barb.* 33. Compare *Bank of State of N. Y. v. Farmers' Branch, &c.* of *Ohio*, 36 *Barb.* 332, 334. Explained in *Farmers' & Mechanics' B'k v. Empire Stone Dressing Co.*, 5 *Bosw.* 288, 289. Collated with other cases in *Field on Ultra Vires*, 93. Applied (Enforcing contracts *ultra vires*) in *Farmers', &c. B'k v. Butchers' & Drovers' B'k*, 16 *N. Y.* 129. Approved in *Bissell v. Mich. Southern, &c. R. R. Co.*, 22 *N. Y.* 278. Applied (Sufficiency of pleading) in *Betts v. Bache*, 14 *Abb. Pr.* 279. Explained in *Abbott v. N. Y. Central R. R. Co.*, 12 *Abb. Pr. N. S.* 468. Followed (Estoppel against defense of usury) in *Ferguson v. Hamilton*, 35 *Barb.* 437. Compare *Mason v. Anthony*, 3 *Keyes*, 609. Denied in *Payne v. Burnham*, 62 *N. Y.* 72. Followed (Plea of corporate existence) in *Shoe & Leather B'k v. Brown*, 18 *How. Pr.* 308; *Phenix B'k v. Donnell*, 41 *Barb.* 573; *Stone v. Western Transp. Co.*, 38 *N. Y.* 242. Explained (Appel) in *Cook v. N. Y. Floating Dry Dock Co.*, 18 *N. Y.* 239. Decision in 19 *N. Y.* followed (Liability of corporation on negotiable paper) in *Bank of Auburn v. Putnam*, 1 *Abb. Ct. App. Dec.* 83; *Thompson v. Tioga R. R. Co.*, 36 *Barb.* 79; *Bank of N. Y. v. B'k of Ohio*, 29 *N. Y.* 630; *First Nat. B'k of Angelica v. Hall*, 44 *N. Y.* 395. Explained in *Farmers' & Merchants' B'k v. Empire Stone Dressing Co.*, 5 *Bosw.* 289.
- Bank of Geneva v. Hotchkiss**, 5 *How. Pr.* 478. See, to same effect (Beginning of time limited to take appeal to Court of Appeals), *Wells v. Danforth*, 7 *How. Pr.* 197.
- *v. Howlett*, 4 *Wend.* 328; s. c., 10 *N. Y. Com. L. Law. ed.* 626, with brief note. Followed (Notice of dishonor sent by mail) with *Downer v. Remer*, 21 *Id.* 10; s. c., 23 *Id.* 620; *Reid v. Payne*, 16 *Johns.* 218; s. c., 8 *Am. Dec.* 311, in *Hazleton Coal Co. v. Ryerson*, 1 *Spencer (N. J.)* 129; s. c., 40 *Am. Dec.* 217, with note.
- *v. Reynolds*, 12 *Abb. Pr.* 81; s. c., 20 *How. Pr.* 18. Rev'd in 33 *N. Y.* 160. Decision in 38 *N. Y.* followed (Appealability of order allowing bail to surrender principal) in *Hall v. Emmons*, 8 *Abb. Pr. N. S.* 451.
- Bank of Havana v. Magee**, 20 *N. Y.* 355. Followed (Amendment of misnomer) in *Traver v. Eighth Ave. R. R. Co.*, 4 *Abb. Ct. App. Dec.* 422, 424. Explained and applied in *Merriam v. Wolcott*, 61 *How. Pr.* 377, 394. See cases cited in *Abb. Tr. Ev.* 31, n. 3; also *N. Y., &c. Milk Pan Co. v. Remington's Agric. Works*, 25 *Hun.* 475, 477, and (dissenting opinion) 481. Followed (Private banker not a corporation) in *Hallett v. Harrower*, 33 *Barb.* 537, 542.
- *v. Wickham*, 7 *Abb. Pr.* 134; s. c., 16 *How. Pr.* 97. Aff'd as *Bank of Havana v. Magee*, 20 *N. Y.* 355. Decision in 7 *Abb. Pr.* collated (Pleadings in actions by or against corporations), with other cases, in *Throop Justice's Man.* 2, ed. 289. See *Code Civ. Pro.* 1881, § 1775, n.
- Bank of Ithaca v. Bean**, 1 *Code R.* 133. Overruled (Stockholder of bank as witness) in *Montgomery Co. Bank v. Marsh*, 11 *Barb.* 651.
- Bank of Kinderhook v. Gifford**, 40 *Barb.* 659. Applied (Amendment of answer) in *Barnett v. Meyer*, 10 *Hun.* 109, 110. Approved (All defenses to be equally favored) in *Union National Bank of Troy v. Bassett*, 3 *Abb. Pr. N. S.* 359.
- Bank of Lansingburgh v. Crary**, 1 *Barb.* 542. See *Milliman v. Neher*; *Phillips v. Cook*. Cited and *Whipple v. Foote*, 2 *Johns.* 418; *Stewart v. Doughty*, 9 *Id.* 108; *Frear v. Hardenburgh*, 5 *Id.* 276; *Austin v. Sawyer*, 9 *Cow.* 39, disting'd (Sale, &c. of growing crops, &c.) in *Owens v. Lewis*, 46 *Ind.* 488; s. c., 15 *Am. R.* 295, 301, 314, 315, which also cited *Green v. Armstrong*, 1 *Den.* 550; *Warren v. Leland*, 2 *Barb.* 613; *Pierrepoint v. Barnard*, 5 *Barb.* 371; 6 *N. Y.* 279; *McGregor v. Brown*, 10 *N. Y.* 117; *Silvernail v. Cole*, 12 *Barb.* 685; *Bennett v. Scutt*, 18 *Id.* 347; *Killmore v. Howlett*, 48 *N. Y.* 569. Said in 46 *Am. Dec.* 714, n., to have been superseded as to validity of mortgage of future crops.
- *v. McKie*, 7 *How. Pr.* 360. Aff'd in

- Niles v. Vanderzee**, 14 *Id.* 547. See *N. Y. & New Haven R. R. Co. v. Schuyler*. Denied (Counter affidavits upon motion to vacate attachment) in *Houghton v. Ault*, 16 *How. Pr.* 78.
- Bank of Lyons v. Demmon**, *Hill & D. Supp.* 398. Disting'd (Return of securities given for capital stock) in *Tuckerman v. Brown*, 11 *Abb. Pr.* 389, 396.
- Bank of Michigan v. Ely**, 17 *Wend.* 508. Approved (Fraud not to be presumed) in *Bissell v. Lewis*, 4 *Mich.* 457. Commented upon (Acceptance of bill of exchange) in *Bige. on B. & N.* 2 ed. 53.
- **v. Jessup**, 19 *Wend.* 10. See *Ackerman v. Finch*. Cited as authority (Security for costs—when given in time) in *Parke v. Goodwin*, 1 *Doug. (Mich.)* 58.
- **v. Williams**, 5 *Wend.* 478. Aff'd in 7 *Id.* 539. See *Dutchess Cotton Manufactory v. Davis*; *Bank of Utica v. Smalley*. Decision in 5 *Wend.* followed (Allegations of corporate existence) with *Jackson v. Plumb*, 8 *Johns.* 378; *Bank of Auburn v. Weed*, 19 *Id.* 300; *Dutchess Cotton Manuf'y v. Davis*, 14 *Johns.* 238; s. c., 7 *Am. Dec.* 459; and *Farmers' & Mechanics' B'k v. Rayner*, 2 *Hall*, 19, in *Lewis v. B'k of Kentucky*, 12 *Ohio*, 132; s. c., 40 *Am. Dec.* 469, with note.
- Bank of Monroe, Matter of**, 7 *Hill*, 177; s. c., 42 *Am. Dec.* 61, with note. Questioned (Affidavit by attorney in judgment) in *People v. Ransom*, 2 *N. Y.* 490.
- Bank of Monroe v. Culver**, 2 *Hill*, 531. See *Lawrence v. Barker*; *Merrill v. Ithaca & Oswego R. R. Co.* Followed (Books of account in evidence) in *Burke v. Wolfe*, 38 *Super. Ct. (J. & S.)* 263, 272. Reviewed with *Merrill v. Ithaca & Oswego R. R. Co.*, 16 *Wend.* 600; s. c., 30 *Am. Dec.* 130; *Brewster v. Doane*, 2 *Hill*, 537, in *Vinal v. Gilman*, 21 *W. Va.* 301; s. c., 45 *Am. R.* 562. Disting'd in *Derham v. Lee*, 47 *Super. Ct. (J. & S.)* 174, 183; s. c., 60 *How. Pr.* 334.
- **v. Schermerhorn**, *Clarke*, 297. Rev'd in 9 *Paige*, 372. See *Osborn v. Heyer*.
- **v. Widner**, 11 *Paige*, 529. Compare (Effect of statute of arbitration) *Bulson v. Lohnes*, 29 *N. Y.* 291.
- Bank of Newburgh v. Seymour**, 14 *Johns.* 219; *Whichester v. Cande*, 3 *Cow.* 39. Approved (Amendment of judgment) in *Shirley v. Phillips*, 17 *Ill.* 471. Disting'd in *Grant v. Griswold*, 21 *Hun.* 509, 511.
- Bank of New Orleans v. Matthews**, 49 *N. Y.* 12. Cited (Validity of partnership dealings with alien enemies) in *Whart. Com. on Ag.* 16, n.
- Bank of N. Y. v. Bank of Ohio**, 36 *Barb.* 332. Rev'd in *Ct. of App.*, April, 1863, on the ground that the question of intention should have been left to the jury. See *N. Y. African Society v. Varick*.
- **v. —**, 29 *N. Y.* 619. See *N. Y. African Society v. Varick*. Disting'd (Liability on note made by agent or trustee) in *Storrs v. Flint*, 46 *Super. Ct. (J. & S.)* 498, 517.
- **v. Livingston**, 2 *Johns. Cas.* 409; *Cumpston v. McNair*, 1 *Wend.* 457. Disting'd (Necessity of demand and notice to give effect to guaranty) in *Lane v. Levillian*, 4 *Ark.* 76; s. c., 37 *Am. Dec.* 769, 771. See also *Read v. Cutts*, 7 *Greenl. (Me.)* 186; s. c., 22 *Am. Dec.* 184, with note.
- **v. Vanderhorst**, 32 *N. Y.* 553. Aff'g 1 *Robt.* 211. See *Bank of State of N. Y. v. Vanderhorst*. Followed (Taking note as collateral security) in *Moody v. Andrews*, 39 *Super. Ct. (J. & S.)* 302, 305. Followed (Holder for value) in *Weaver v. Barden*, 49 *N. Y.* 286. Cited (Continuance of authority of agent of firm after dissolution) in *Whart. Com. on Ag. §§* 97, 104. Cited (Dissolution of partnership by death) in *Story on Partn. §* 319, n.
- Bank of Niagara, Matter of**, 6 *Paige*, 216. Followed (Executors' commissions) in *Betts v. Betts*, 4 *Abb. N. C.* 317, 342.
- **v. McCracken**, 18 *Johns.* 493; *Hartun v. Bishop*, 3 *Wend.* 1. Disapproved (Proof of demand of payment of note payable on demand) in *Thurston v. Wolfborough B'k*, 18 *N. H.* 391; s. c., 45 *Am. Dec.* 382, as conflicting with *Jefferson County B'k v. Chapman*, 19 *Johns.* 323. See *Hendricks v. Judah*, below.
- Bank of Ogdensburgh v. Arnold**, 5 *Pai.* 40; *Lafsky v. Maujer*, 3 *Sandf. Ch.* 69; *Quincy v. Cheeseman*, 4 *Id.* 405. Applied (Receiver in foreclosure) in *Hollenbeck v. Donnell*, 94 *N. Y.* 342. Compare *Syracuse City Bank v. Tallman*, 31 *Barb.* 202, 209.
- Bank of Orange Co. v. Brown**, 3 *Wend.* 158. Followed (Nature of action against carrier) in *Wood v. Milwaukee & St. Paul R'y Co.*, 32 *Wis.* 398. Approved and applied (Joinder of defendants in actions against carriers) in *Jones v. Pitcher*, 3 *Stew. & P. (Ala.)* 135; s. c., 24 *Am. Dec.* 706, 729.
- **v. Haight**, 14 *Wend.* 83. Discussed (Statute of Limitations—judicial process) in *Angell on Lim. §* 320, 6 ed.
- Bank of Orleans v. Barry**, 1 *Den.* 116; *Loomis v. Mowry*, 8 *Hun.* 311; *Catlin v. Hausen*, 1 *Duer*, 323; *Vallet v. Parker*, 6 *Wend.* 615; *Morton v. Rogers*, 14 *Wend.* 576; *Rogers v. Morton*, 12 *Id.* 484; *Hendricks v. Judah*, 1 *Johns.* 319. Collated (Presumption as to regularity of negotiable paper) in 29 *Alb. L. J.* 145.
- **v. Flagg**, 3 *Barb. Ch.* 316. Criticised (Who bound by judgment of foreclosure) in *Payn v. Grant*, 23 *Hun.* 137.
- **v. Merrill**, 2 *Hill*, 295. Included (Note—promise to pay) in 1 *Ames Cases on B. & A.* 20.
- **v. Smith**, 3 *Hill*, 560, though said in 7 *Hill*, 595, to have been reversed, is yet said to have the force of a precedent, as the reversal was upon points raised by the pleadings and not appearing upon the bill of exceptions. Reported in 15 *N. Y. Com. L. Law. Ed.* 684, with brief note. Discussed (Liability of bank for note deposited for collection) 3 *Kent Com.* 93, n. d. Cited as

- establishing the doctrine laid down in Exchange Nat. B'k v. Third Nat. B'k, 112 U. S. 276, 282. Disapproved in Montgomery County Bank v. Albany City Bank, 7 N. Y. 459; Reeves v. State Bank, 8 Ohio (N. S.) 465; also in 3 Am. L. Reg. N. S. 273.
- Bank of Poughkeepsie v. Hasbrouck**, 6 N. Y. 216. Disting'd (Effect of payment of note by executor, where payee does not surrender it) in Matter of Benedict, 13 Abb. N. C. 67. Explained (Jurisdiction of surrogate as to disputed claims) as not overruling doctrine in Magee v. Vedder, 6 Barb. 352; Wilson v. Baptist Ed. Society of N. Y., 10 Id. 308; Disoway v. Bank of Washington, 24 Id. 60; Curtis v. Stillwell, 32 Id. 354; Andrews v. Wallege, 17 How. Pr. 263, and Magee v. Vedder, followed in Tucker v. Nucker, 4 Keyes, 136.
- **v. Ibbotson**, 24 Wend. 472. Subsequent proceeding in 5 Hill, 461. See *Slee v. Bloom*. Approved (Nature of rights of creditor of corporation against stockholders) in Weeks v. Love, 50 N. Y. 560. Reviewed in Jones v. Jarman, 34 Ark. 323. Followed (Dissolution of corporation) in Bruce v. Platt, 80 N. Y. 473. Relied on (Set-off by stockholder in proceedings by creditor of corporation) in Webber v. Leighton, 8 Mo. App. 505, 507. Discussed (Liability of members of private corporation) in *Angell & A. on Corp.* § 625, 11 ed. With decision in 5 Hill, see (Composition—joint debtors) *Code Civ. Pro.* 1881, § 1942, n.
- Bank of Rochester v. Bowen**, 7 Wend. 153. Disting'd (Liability on firm note issued by one partner) in Osgood v. Glover, 7 Daly, 367, 371. Cited with other cases in 11 Am. L. Reg. N. S. 543.
- **v. Emerson**, 10 Paige, 115. Followed (Confirmation of referee's report) in Bache v. Doscher, 41 Super. Ct. (J. & S.) 150, 156.
- **v. Gould**, 9 Wend. 279. Disting'd (Sufficiency of notice of non-payment of note) in Gilbert v. Dennis, 3 Metc. (Mass.) 395; s. c., 38 Am. Dec. 329, 337.
- **v. Gray**, 2 Hill, 227. Doubted (Certificate of notary) in Bank of Vergennes v. Cameron, 7 Barb. 143. See Halliday v. McDougall, 20 Wend. 81, 87. Cited in Richard v. Boller, 6 Daly, 460, 462. See *Code Civ. Pro.* 1881, § 923, n.
- **v. Jones**, 4 N. Y. 497; s. c., 55 Am. Dec. 290, with note containing numerous citations. See Dows v. Greene. Followed (Delivery of bill of lading) in Cayuga County Nat. B'k v. Daniels, 47 N. Y. 631; First Nat. B'k of Cincinnati v. Kelly, 57 N. Y. 34, 37; Rawls v. Deshler, 4 Abb. Ct. App. Dec. 12, 18; Indiana Nat. B'k v. Colgate, 4 Daly, 49; Farmers' and Mechanics' Nat. B'k v. Logan, 74 N. Y. 579; City Bank v. Rome, Watertown, &c. R. R. Co., 44 N. Y. 186. Explained in Bailey v. Hudson River R. R. Co., 49 N. Y. 70; Ceas v. Bramley, 18 Hun, 187. Applied in Manufacturers', &c. B'k of Buffalo v. Farmers', &c. Nat. B'k of Buffalo, 2 Sup'm. Ct. (T. & C.) 401; Armour v. Mich. Cent. R. R. Co., 65 N. Y. 120. Followed in First Nat. B'k of Green Bay v. Dearborn, 115 Mass. 219; s. c., 15 Am. R. 92, 96. Followed in Holbrook v. Wight, 24 Wend. 169; Grosvenor v. Phillips, 2 Hill, 147; Bailey v. Hudson River R. R. Co., 49 N. Y. 70; Krudler v. Ellison, 47 Id. 36; s. c., 4 Am. R. 402. Disting'd in Hodges v. Kimball, 49 Iowa, 477; s. c., 31 Am. R. 158, 162. Followed (What is bill of lading) in Dows v. Greene, 32 Barb. 502. Explained (Sales—reservation of *jus disponendi*) in 1 Benj. on Sales, § 584 (Corbin's 4 Am. ed.). Collated (Necessity of actual possession in order to create factor's lien) with Winter v. Colt, 7 N. Y. 238, and other cases, in 58 Am. Dec. 168, n.
- **v. Monteath**, 1 Den. 402; s. c., 43 Am. Dec. 681, with note. See Crocker v. Coldwell. Cited (Paper of firm using an individual name) with other cases, in 11 Am. L. Reg. N. S. 541. Explained with Oliphant v. Mathews, 16 Barb. 608, as not opposed to rule in Yorkshire B'k'g Co. v. Beaton (Ct. of App., Aug., 1880), 28 Weekly Rep. 883. Approved in Wright v. Hooker, 10 N. Y. 51.
- Bank of Rome v. Curtiss**. See Patterson v. Westervelt.
- **v. Mott**, 17 Wend. 554. See Butler v. King; Lane v. Hitchcock. Applied with Strong v. Campbell, 11 Barb. 135, (Officer—to whom responsible) in Bennett v. Whitney, 94 N. Y. 302.
- **v. Village of Rome**, 27 Barb. 65. Aff'd in 19 N. Y. 20. Prior decision in 18 N. Y. 38. See Gould v. Town of Sterling; Starin v. Town of Genoa. Decision in 18 N. Y. adhered to (Town bonding) in Clarke v. City of Rochester, 28 N. Y. 605, 633. Explained and re-aff'd in Williams v. Town of Duaneburgh, 66 N. Y. 129. Cited and compared in Thompson v. Perrine, 103 U. S. 806, 812. Collated, with other cases, in Town of Duaneburgh v. Jenkins, 57 N. Y. 177. Followed with Starin v. Town of Genoa, 23 Id. 439; Clarke v. City of Rochester, 32 Id. 605; People v. Mitchell, 35 Id. 551, in Commissioners of Leavenworth County v. Miller, 7 Kans. 479; s. c., 12 Am. R. 425, 444. Disting'd in People, *ex rel.* Dunkirk, Warren, &c. R. R. Co. v. Batchellor, 53 N. Y. 128, 138. Followed in People v. Hulbert, 59 Barb. 446. Followed (Constitutionality of act of April 16, 1852) in Gould v. Town of Venice, 29 Barb. 442. Followed (Control of power of taxation by municipal corporation) in Matter of Livingston, 82 N. Y. 622. Applied in People v. Mitchell, 45 Barb. 211. Criticised and disting'd in Sweet v. Hulbert, 51 Barb. 319. Applied in Davidson v. Mayor, &c. of N. Y., 27 How. Pr. 352; Townsend v. Mayor, &c. of N. Y., 16 Hun, 364. Followed (Committing power to make local regula-



tions to people of locality) in *Village of Gloversville v. Howell*, 7 *Hun*, 348. Applied in *Bank of Chenango v. Brown*, 26 *N. Y.* 471. Applied (Delegation of legislative power) in *Currier v. West Side Elev. Pat. Ry. Co.*, 6 *Blatchf. C. Ct.* 487, 494. Decision in 19 *N. Y.* explained (Town bonding) in *Starin v. Town of Genoa*, 23 *N. Y.* 452. Disting'd in *Cagwin v. Town of Hancock*, 84 *N. Y.* 532, 540. Cited and compared in *Thompson v. Perrine*, 103 *U. S.* 806, 812. Adhered to in *People v. Mead*, 24 *N. Y.* 129. Disting'd in dissenting opinion of ALLEN, J., in *People ex rel. Martin v. Brown*, 55 *N. Y.* 180, 199.

**Bank of Rutland v. Buck**, 5 *Wend.* 66. See *Bank of Chenango v. Hyde*; *Grandin v. Le Roy*. Explained and followed (Collateral security) in *Bank of State of N. Y. v. Vanderhorst*, 32 *N. Y.* 553. Followed (Liability of surety on promissory note) with *Utica B'k v. Ganson*, 10 *Wend.* 314, in *Smith v. Moberly*, 10 *B. Monr. (Ky.)* 266; s. c., 52 *Am. Dec.* 543, with note.

**Bank of St. Albans v. Gilliland**, 23 *Wend.* 311. See *Spear v. Myers*. Collated (Consideration of negotiable paper) with other cases in 1 *Hare & W. Am. Lead. Cas.*, 5 ed. 423. Collated (*Bona fide* holder of bill or note) with other cases, in 2 *Id.* 5 ed. 240. Disting'd in *Harger v. Worrall*, 69 *N. Y.* 373; *Phoenix Ins. Co. v. Church*, 81 *N. Y.* 218. Followed in *Starin v. Kelly*, 36 *Super. Ct. (J. & S.)* 366, 370.

**Bank of Salina v. Abbott**, 3 *Den.* 181. Disting'd and questioned (Assignment of judgment to indorser) in *Corey v. White*, 3 *Barb.* 12.

— *v. Alvord*, 31 *N. Y.* 473. See *Pratt v. Short*. Disting'd (Usury) in *Moore v. Bogart*, 19 *Hun*, 227.

— *v. Babcock*, 21 *Wend.* 499. See *Bristol v. Sprague*; *Coddington v. Bay*. Included (*Bona fide* holder of negotiable paper) in 1 *Ames Cases on B. & N.* 637. Disting'd in *Stewart v. Small*, 2 *Barb.* 565; *Prentiss v. Graves*, 33 *Barb.* 626. Followed in *Youngs v. Lee*, 18 *Barb.* 192; which was aff'd in 12 *N. Y.* 555, which see; *Mohawk B'k v. Corey*, 1 *Hill*, 513; *White v. Springfield B'k*, 3 *Sandf.* 224; *Bank of Sandusky v. Scoville*, 24 *Wend.* 115. Explained in *Clark v. Ely*, 2 *Sandf. Ch.* 170. Reviewed and explained in *Farrington v. Frankfort B'k*, 24 *Barb.* 564; 31 *Id.* 190; *Stalker v. McDonald*, 6 *Hill*, 98. Applied in *Mead v. Merchants' B'k of Albany*, 25 *N. Y.* 149; *Brown v. Leavitt*, 31 *N. Y.* 113. Re-aff'd in *Pratt v. Coman*, 37 *N. Y.* 442; *Phoenix Ins. Co. v. Church*, 81 *N. Y.* 223. Reviewed with *Bank of Sandusky v. Scoville*, 24 *Wend.* 115; *Stalker v. McDonald*, 6 *Hill*, 93; s. c., 40 *Am. Dec.* 389, with note, in *Blanchard v. Stevens*, 3 *Cush. (Mass.)* 162; s. c., 50 *Am. Dec.* 723, with note. Disting'd (Merger of debt in note) in *Jagger Iron Co. v. Walker*, 76 *N. Y.* 521, 526.

— *v. Henry*, 1 *Hill*, 555. Rev'd in 5 *Id.* 523. Another decision in 2 *Den.* 155; aff'd in 3 *Id.* 593; 1 *N. Y.* 83. See *People v. Mather*. Decision in 2 *Den.* 155, commented on (Questions tending to disgrace witness) in 1 *Best on Ev.* § 130 n. a, et seq. Wood's *Fd.*

**Bank of Sandusky v. Scoville**, 24 *Wend.* 115. See *Bank of Salina v. Babcock*; *Bristol v. Sprague*; *Coddington v. Bay*. Included (*Bona fide* holder of negotiable paper) in 1 *Ames Cases on B. & N.* 639. Followed in *Youngs v. Lee*, 18 *Barb.* 192; which was aff'd in 12 *N. Y.* 553, which see; *White v. Springfield B'k*, 3 *Sandf.* 224. Applied in *Purchase v. Mattison*, 3 *Bosw.* 312; *Farmers' B'k v. Watson*, 32 *N. Y.* 584. Disting'd in *Stewart v. Small*, 2 *Barb.* 566; *Prentiss v. Graves*, 33 *Barb.* 626; *Phoenix Ins. Co. v. Church*, 81 *N. Y.* 226. Reviewed and explained in *Farrington v. Frankfort B'k*, 24 *Barb.* 564; 31 *Barb.* 190; *Stalker v. McDonald*, 6 *Hill*, 98. Applied in *Brown v. Leavitt*, 31 *N. Y.* 113. Explained in *Clark v. Ely*, 2 *Sandf. Ch.* 170.

**Bank of Silver Creek v. Talcott**, 22 *Barb.* 550. Discussed (Assignment for benefit of creditors—designation of debts to be paid) in *Burrill on Assign.* § 313, 4 ed.

**Bank of State of Georgia v. Lewin**, 45 *Barb.* 340. Cited as authority (Usury—law of place) in *Wayne Co. Sav'gs B'k v. Low*, 6 *Abb. N. C.* 76, 89; which was aff'd in 81 *N. Y.* 566, which see. Compared in *First Nat. B'k of N. Y. v. Morris*, 1 *Hun*, 680, 682; s. c., 4 *Sup'm. Ct. (T. & C.)* 182. Disting'd in *Dickinson v. Edwards*, 77 *N. Y.* 573, 580.

**Bank of State of Indiana v. Bugbee**, 1 *Abb. Ct. App. Dec.* 86. Cited (Limitations on authority of broker) in *Whart. Com. on Ag.* § 712.

**Bank of State of N. Y. v. Vanderhorst**, 1 *Robt.* 211. Aff'd in 32 *N. Y.* 553. Latter decision followed (*Bona fide* character of one taking note, &c. as collateral security) in *Brookman v. Metcalf*, 32 *N. Y.* 591.

**Bank of Syracuse v. Hollister**, 17 *N. Y.* 46. Explained (Presentment of note for payment) in 2 *Greenl. on Ev.* 14 ed. § 178, n. b.

**Bank of Troy v. Topping**, 9 *Wend.* 273. Subsequent decision in 13 *Wend.* 557. Decision in 9 *Wend.* reviewed and explained (Promissory note of executor or administrator) in *McGrath v. Barnes*, 13 *S. C.* 328; s. c., 36 *Am. R.* 687, 693. Decision in 13 *Wend.* followed (Presumption of consideration) in *Paine v. Noelke*, 43 *Super. Ct. (J. & S.)* 176, 184.

**Bank of U. S. v. Davis**, 2 *Hill*, 451, 463. See *Hawley v. Keeler*; *N. Y. & New Haven R. R. Co. v. Schuyler*. Followed (Notice to director or other agent of corporation) in *Holden v. N. Y. & Erie B'k*, 72 *N. Y.* 295; *Lothian v. Wood*, 55 *Cal.* 162. Disting'd in *Westfield B'k v. Cornen*, 37 *N. Y.* 323. Examined and explained in 17

- Am. Law Rev.* 840, 871. Cited in *Whart. Com. on Ag.* § 673. Followed (Notice to agent) in *Bank of Savings v. Frank*, 56 *How. Pr.* 414. Doubted with *Westfield B'k v. Cornen*, 37 *N. Y.* 320; *Jackson v. Sharp*, 9 *Johns.* 163; in *Whart. Com. on Ag.* § 178. Applied (Liability for fraudulent act of agent) in *N. Y. & N. H. R. R. Co. v. Schuyler*, 38 *Barb.* 551; *Sharp v. Mayor, &c. of N. Y.*, 40 *Barb.* 272; *Durst v. Burton*, 2 *Lans.* 143. Disting'd (Recovery on bill or note discounted in violation of law) in *Atlantic State B'k v. Savery*, 82 *N. Y.* 306; *Cuyler v. Sanford*, 13 *Barb.* 339. Applied (Defense to action on note) in *Holbrook v. Wilson*, 4 *Bosw.* 79. Followed (Notice to indorser) in *Clarke v. Ward*, 4 *Duer.* 208.
- *v. Housman*, 6 *Pai.* 635; *Hildreth v. Sands*, 2 *Johns.* Ch. 43. Approved and applied (Inadmissibility of parol evidence of blood and affection to support deed reciting valuable consideration) in *Burrage v. Beardsley*, 16 *Ohio*, 438; s. c., 47 *Am. Dec.* 382. Compare 30 *Am. Dec.* 116, *n.* See also *Hildreth v. Sands*.
- *v. Jenkins*. See *Cable v. Cooper*.
- Bank of Utica v. Bender**, 21 *Wend.* 643; s. c., 34 *Am. Dec.* 281, with note, where it is said to have been frequently referred to as authority. See *Bank of Utica v. Phillips*. Included (Sufficiency of notice to charge indorser) in *Bigel. on B. & N.* 2 ed. 329; *Redf. & B. Lead. Cas. on B. of Ex.* 410. Approved in *Beale v. Parish*, 20 *N. Y.* 407. Explained and followed in *Requa v. Collins*, 51 *N. Y.* 144, 148.
- *v. Childs*, 6 *Cow.* 238. Compare (Limitations in action by principal against agent) *Code Civ. Pro.* § 407.
- *v. City of Utica*, 4 *Paige*, s. c., 27 *Am. Dec.* 72, with note, wherein it is said to have been frequently followed in *N. Y.*, as to what property of a bank is subject to taxation.
- *v. Davidson*, 5 *Wend.* 588. Explained and followed (Notice sufficient to charge indorser) in *Requa v. Collins*, 51 *N. Y.* 144, 148.
- *v. Finch*, 3 *Barb. Ch.* 293; s. c., 49 *Am. Dec.* 175, with note, collecting citations. See *Brinkerhoff v. Marvin*; *Townsend v. Stone Dressing Co.* Questioned (Mortgage to secure future advances) in *Monnot v. Ibert*, 33 *Barb.* 24, 27.
- *v. Hillard*, 5 *Cow.* 153. Cited (What must appear to enable the production of papers to be compelled) in 1 *Whart. Com. on Ev.* § 377. Subsequent decisions in 5 *Cow.* 419; 6 *Id.* 62. Decisions in 5 *Cow.* 153; *Id.* 419; 6 *Cow.* 62, disting'd (Compelling agent to produce principals' papers) in *Robbins v. Davis*, 1 *Blatchf.* 238, 240. Decisions in 5 *Cow.* 153; *Id.* 419, approved in *Wertheimer v. Continental Railway & Trust Co. (U. S. Circ. Ct., S. D. N. Y., Feb'y, 1883)*, 15 *Reporter*, 294, as conceding power to compel production of books by officer of corporation where it is not a party,
- La Farge v. La Farge Fire Ins. Co.*, 14 *How. Pr.* 26, and other *N. Y.* cases being disapproved in so far as they make a contrary application of the doctrine of these decisions. Decision in 5 *Cow.* 419, quoted and explained (Process, pleadings, &c. in case of corporations) in *Angell & A. on Corp.* § 682, 11 ed.
- *v. Ives*, 17 *Wend.* 501. Disapproved and questioned (Usurious agreement for extension of time) in *Wies v. Sultzter*, 1 *City Ct.* 3.
- *v. McKinster*. See *Smedes v. Bank of Utica*.
- *v. Magher*, 18 *Johns.* 314. Collated (Signature by agent of corporate and official documents) with other cases, in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 763.
- *v. Mersereau*, 3 *Barb. Ch.* 528; s. c., 49 *Am. Dec.* 189, with note, wherein it is said to have been frequently approved and followed. See *Varick v. Tallman*. Applied (Effect of covenant of warranty as estoppel) in *Tefft v. Munson*, 57 *N. Y.* 99. Followed in *Doe v. Dowdall*, 3 *Houst. (Del.)* 369; s. c., 11 *Am. R.* 757, 765. Applied (Form of comptroller's tax deed) in dissenting opinion of *Cady, J.*, in *Leggett v. Rogers*, 9 *Barb.* 414. Applied (Remedy for imperfect tax deed) in *McCready v. Sexton*, 29 *Iowa*, 356; s. c., 4 *Am. R.* 214, 222. Disting'd (Production of documents) in *Peck v. Williams*, 13 *Abb. Pr.* 68. Cited as authority (Communications by two or more clients jointly) in *Whiting v. Barney*, 38 *Barb.* 397. Disting'd (Privileged communication) in *Sanford v. Sanford*, 61 *Barb.* 305; *Graham v. People*, 63 *Barb.* 484. Cited as authority in *Pierson v. People*, 18 *Hun.* 249. Followed in *Edington v. Mut. Life Ins. Co.*, 5 *Hun.* 11. Re-aff'd in *Williams v. Fitch*, 18 *N. Y.* 551. Followed (Who are bound by or may take advantage of estoppel) in *Mickles v. Townsend*, 18 *N. Y.* 583.
- *v. Phillips*, 3 *Wend.* 408. Included (Notice of protest) in 2 *Ames Cases on B. & N.* 401. Applied in *Requa v. Collins*, 51 *N. Y.* 144, 147. Applied with *Gawtry v. Doane*, 51 *N. Y.* 84; *Bank of Utica v. Bender*, 21 *Wend.* 643, in *Saco Nat'l B'k v. Sanborn*, 63 *Me.* 340; s. c., 18 *Am. R.* 224. Approved in *Marvine v. Hymers*, 12 *N. Y.* 223.
- *v. Smalley*, 2 *Cow.* 770. Aff'd in 8 *Id.* 398, without opinion. Decision in 2 *Cow.* reported in 14 *Am. Dec.* 526, with note, wherein it is referred to as settling the law in *N. Y.* Also reported in 7 *N. Y. Com. L. Law. ed.* 960, with brief note, on transfer of stock. See *Barker, Matter of*; *Jackson v. Plumble*; *U. S. B'k v. Haskins*. Cited as authority (Regulation by corporation of transfer of stock) in *Mann v. Currie*, 2 *Barb.* 299; *Worrall v. Judson*, 5 *Barb.* 210; *N. Y. & N. H. R. R. Co. v. Schuyler*, 38 *Barb.* 540; *Comeau v. Guild Farm Oil Co.*, 3 *Daly*, 220. Cited as settled law in *Bank of Attica v. Man'f. & Traders'*

- B'k, 20 *N. Y.* 511. Recognized as authority with *Mechanics' Bank v. N. Y. & New Haven R. R. Co.*, 13 *N. Y.* 624; *N. Y. & New Haven R. R. Co. v. Schuyler*, 34 *Id.* 80; *Gilbert v. Manchester Iron Man'g Co.*, 11 *Wend.* 528; *Kortright v. Buffalo Commercial Bank*, 20 *Wend.* 91, in *Baltimore City Passenger R'y Co. v. Sewell*, 35 *Md.* 288; s. c., 6 *Am. R.* 402. Disapproved (Effect of plea of general issue, in action by corporation) the cases of *Jackson v. Plumb*, 8 *Johns.* 378; s. c., 14 *Am. Dec.* 526; *Bank of Auburn v. Weed*, 19 *Johns.* 300; *Bill v. Fourth Great Western Turnpike Road*, 14 *Id.* 416; *Bank of Michigan v. Williams*, 5 *Wend.* 482; 7 *Id.* 541; *U. S. B'k v. Stearns*, 15 *Id.* 314 being followed, and *Dutchess Cotton Manufactory v. Davis*, 14 *Johns.* 245; s. c., 7 *Am. Dec.* 459 being disting'd in *Phoenix B'k of N. Y. v. Curtis*, 14 *Conn.* 487; s. c., 36 *Am. Dec.* 492. Followed (Averring corporate existence) in *Bank of Waterville v. Beltser*, 13 *How. Pr.* 272. Followed (Witness made competent by transfer of stock) in *Utica Ins. Co. v. Cadwell*, 3 *Wend.* 300; *Gilbert v. Manchester Iron Manf. Co.*, 11 *Wend.* 629. Applied in *Cates v. Wacters' Heirs*, 2 *Hill (S. C.) Law*, 442, which was cited in *Stall v. Catskill B'k*, 18 *Wend.* 473.
- *v. Smith*, 18 *Johns.* 230. Compare (Presentment and demand) *Salt Springs Nat. B'k v. Burton*, 58 *N. Y.* 430, 435.
- *v. Wager*, 2 *Cow.* 712. Aff'd. in 8 *Id.* 398. Opinion of *Savage, J.*, compared (Discount by bank, when usurious) in 3 *Parsons on Cont.* 115, n. p. Explained in *Bank of Utica v. Phillips*, 3 *Wend.* 408; *Marvine v. Hymers*, 12 *N. Y.* 223. Applied (Usury—intent) in *Fiedler v. Darrin*, 50 *N. Y.* 437.
- Bank of Vergennes v. Cameron**, 7 *Barb.* 143. Quoted and explained (Power of partners after dissolution of partnership) in 1 *Collyer on Partn.* § 107, n. 1, *Wood's Am. ed.* Disting'd (Rights of holder of paper indorsed in partnership name) in *Crim v. Starkweather*, 88 *N. Y.* 339.
- *v. Warren*, 7 *Hill*, 91. Applied (Presumption of authority of cashier) in *Chemical Nat. B'k v. Kohner*, 85 *N. Y.* 189, 193; *Thatcher v. B'k of State of N. Y.*, 5 *Sandf.* 130. Applied (Validity of redemption proceedings) in *Hall v. Fisher*, 9 *Barb.* 25; *People v. Ransom*, 4 *Den.* 148. Followed in *Chautauque Co. B'k v. Risley*, 4 *Den.* 484. Disting'd in *People v. Rathbun*, 15 *N. Y.* 531. Cited as authority (Right of purchaser at sheriff's sale to release his interest) in *Miller v. Lewis*, 4 *N. Y.* 560.
- Bank of Watertown v. Assessors of Watertown**. Report in 25 *Wend.* 686, said in 2 *Hill*, 353, not to contain opinion of court, the *C. J.* and *Cowen, J.*, being said to have concurred in that of *Bronson, J.*, in *People ex rel. Bank of Watertown v. Assessors of Watertown*, 1 *Hill*, 616.
- Bank of Waterville v. Beltser**, 13 *How. Pr.* 270. Approved (Averment or proof of existence by corporation plaintiff) in *La Fayette Ins. Co. v. Rogers*, 30 *Barb.* 491, 492.
- Banker v. Banker**, 4 *Hun.* 259. Aff'd in 63 *N. Y.* 409, on other points. See *Lewis v. Jones*. Decision in 63 *N. Y.* quoted (Personal disabilities of testators) in 1 *Jarm. on Wills*, *Rand. & T.* ed. 106, n.
- Banks v. Phelan**, 4 *Barb.* 80, 89. Compared (Bequest to unincorporated society) 4 *Am. L. Reg. N. S.* 274.
- *v. Walker*, 3 *Sandf. Ch.* 344. Aff'd in 3 *Barb. Ch.* 438. Latter overruled, in *McCarthy v. Marsh*, 5 *N. Y.* 263. See *Eagle Fire Ins. Co. v. Lent*.
- *v. Wilkes*, 2 *Sandf. Ch.* 99. See *Bates v. Underhill*. Applied (Responsibility for co-trustee's default) to executor in *Lacey v. Davis*, 5 *Redf.* 301, 305. See cases collected in 15 *Am. L. Rev.* 175.
- Banlec v. N. Y. & Harlem R. R. Co.**, 48 *How. Pr.* 399; s. c., as *Baulec v. N. Y. & Harlem R. R. Co.*, 59 *N. Y.* 356; 17 *Am. R.* 325; aff'g in effect 12 *Abb. Pr. N. S.* 310; s. c., 5 *Lans.* 436, and 62 *Barb.* 623.
- Banta, Matter of**, 60 *N. Y.* 165. Disting'd in *People ex rel. Ross v. City of Brooklyn*, 69 *Id.* 605, as considering other provisions of *L. 1859, c. 213*, not repugnant to those *L. 1861, c. 169*.
- Banta v. Garmo**, 1 *Sandf. Ch.* 383. See *Sandford v. McLean*. Disting'd (Subrogation to prior mortgage) in *Snelling v. McIntyre*, 6 *Abb. N. C.* 469, 472.
- Baptist Church v. Bigelow**, 16 *Wend.* 28. Followed (Nature of perpetual lease of pew) in *St. Paul's Church v. Ford*, 34 *Barb.* 16, 18.
- *v. Brooklyn Fire Ins. Co.*, 28 *N. Y.* 153. Applied (Necessary elements in contract of insurance) in *Stockton v. Fireman's Ins. Co.*, 33 *La. Ann.* 577.
- *v. Wetherell*, 3 *Paige*, 296, 301; s. c., 24 *Am. Dec.* 223. Quoted (Power over religious corporations) in *Cooley on Const. Lim.* 5 ed. 577, n. Followed with *Lawyer v. Cipperly*, 7 *Paige*, 281; *Miller v. Gable*, 2 *Den.* 492; *Robertson v. Bullions*, 9 *Barb.* 64; *Dieffendorf v. Reformed Calvinist Church*, 20 *Johns.* 12, in *Chase v. Cheney*, 58 *Ill.* 509; s. c., 11 *Am. R.* 95, 104. Disting'd in *Grimes v. Harmon*, 35 *Ind.* 193; s. c., 9 *Am. R.* 690, 700.
- Barber v. Case**, 12 *How. Pr.* 351. Overruled (Examination of parties on a motion) in *Meyer v. Lent*, 7 *Abb. Pr.* 225.
- *v. Crossett*, 6 *How. Pr.* 45. Adopted as the opinion of the court at *Gen. T.* (Right of officer to double costs) in *Saratoga & Washington R. R. Co. v. McCoy*, 8 *Id.* 526. See to the contrary, *Nestle v. Jones*, 6 *How. Pr.* 172.
- *v. Harris*, 15 *Wend.* 615. Quoted and explained (Effect of recitals in mortgage as estoppel) in 3 *Washb. R. P.* 4 ed. 106. Disting'd (Right of husband to incur property held by him and his wife) in *Chandler v. Cheney*, 37 *Ind.* 391. Followed

- (Effect of conveyance, &c. to husband and wife and others) in *Johnson v. Hart*, 6 *Watts & S. (Pa.)* 319; s. c., 40 *Am. Dec.* 565, 567, with note. Cited in *Hall v. Stephens*, 65 *Mo.* 670; s. c., 27 *Am. R.* 302. Approved (Right of husband to control of his wife's estate—Estoppel by mortgage) with *Jackson v. McConnell*, 19 *Wend.* 175; s. c., 32 *Am. Dec.* 439, with note, in *Wyckoff v. Gardner*, 1 *Spencer (N. J.)* 556; s. c., 45 *Am. Dec.* 389, with note.
- *v. Hubbard*, 3 *Code R.* 156. Aff'd in 3 *Id.* 169.
- *v. Marble*, 2 *Sup'm. Ct. (T. & C.)* 114. Disting'd (Amendments of pleadings) in *Decker v. Saltzman*, 1 *Hun.* 421, 428; s. c., 3 *Sup'm. Ct. (T. & C.)* 595.
- *v. People*, 17 *Hun.* 366. Compare (Examination as evidence) *Code Civ. Pro.* § 2460.
- *v. Rose*, 5 *Hill*, 76. Disting'd (Waiver of damages for non-performance) in *McCormick v. Penn. Central R. R. Co.*, 80 *N. Y.* 362.
- *v. Sterling*, 68 *N. Y.* 273. Followed (Effect of discharge in bankruptcy, &c.) in *Hardenbrook v. Colson*, 61 *How. Pr.* 426, 431.
- *v. Winslow*, 12 *Wend.* 102. Followed (Effect of recital of jurisdictional facts) in *Bolton v. Jacks*, 6 *Robt.* 166, 202.
- Barbour v. Everson**, 16 *Abb. Pr.* 366. Explained (Directory provisions in assignment act) in *Hardman v. Bowen*, 5 *Abb. Pr. N. S.* 333, 337; s. c., 39 *N. Y.* 196. Limited in *Rennie v. Bean*, 24 *Hun.* 123, 127.
- Barclay v. Quicksilver Mining Co.**, 9 *Abb. Pr. N. S.* 283. Confirmed by further decision in 6 *Lans.* 25, as to which (Action by foreign assignee) compare *Mosselman v. Caen*, *Sup'm. Ct. (T. & C.)* 171.
- *v. Talman*, 4 *Edw.* 123. Aff'd 3 *Ch. Sent.* 56, on the same grounds and for an additional reason that the corporation was a necessary party to such an application, and its assignment did not dissolve it so as to render it unnecessary to make it a party.
- *v. Wilcox*. See *Barkley v. Wilcox*.
- Bard v. Poole**, 12 *N. Y.* 495. Approved (Suit by party deriving title to chose in action from foreign administrator or executor) in *Petersen v. Chemical Bank*, 32 *N. Y.* 21.
- Barger v. Durvin**, 22 *Barb.* 68. Overruled (Authority of assignee for creditors to take debt out of statute of limitations) in *Pickett v. King*, 34 *Barb.* 193; which was aff'd as *Pickett v. Leonard*, 34 *N. Y.* 178, which see.
- Barhydt v. Valk**, 12 *Wend.* 145; s. c., 27 *Am. Dec.* 124, with note.
- Barhyte v. Shepherd**, 35 *N. Y.* 238. See *Mygått v. Washburn*; *Weaver v. Devendorf*. Applied (Jurisdiction of assessors) in *Bell v. Pierce*, 51 *N. Y.* 12, 15, 18; *Foster v. Van Wyck*, 1 *Abb. Ct. App. Dec.* 172; *Dorn v. Backer*, 61 *Barb.* 609. Criticised and limited with *Swift v. City of Poughkeepsie*, 37 *N. Y.* 511, in *National Bank of Chemung v. City of Elmira*, 53 *N. Y.* 49, 56. Disting'd in *Palmer v. Lawrence*, 6 *Lans.* 292. Followed in *Swift v. City of Poughkeepsie*, 37 *N. Y.* 513. Cited as authority (Liability for assessing non-resident) in *Wade v. Matheson*, 4 *Lans.* 163. Criticised as correctly decided, but unsatisfactory in reasoning (Judicial character of office of assessor) in *Auditor of State v. Atchison*, *Topeka, &c. R. R.*, 6 *Kan.* 500, 508. Explained in *Cruger v. Dougherty*, 43 *N. Y.* 122, as not changing strict rule as to statutory proceedings to divest property.
- Barker, Matter of**, 6 *Wend.* 509. See *Holmes, ex parte*. Explained (Private corporation—admission and election) in *Ang. & A. on Corp.* § 132, 11 ed. Cited as authority with *Gilbert v. Manuf'g Iron Co.*, 11 *Wend.* 627; *Bank of Utica v. Smalley*, 2 *Cow.* 770, 778; *Kortright v. Commercial Bank of Buffalo*, 22 *Wend.* 348, 362; *Hoagland v. Bell*, 36 *Barb.* 57 (Recording transfers of stock) in *Hoppin v. Buffum*, 9 *R. I.* 513; s. c., 11 *Am. R.* 291.
- Barker v. Barker**, 15 *How. Pr.* 568. Followed (Contempt—striking out pleading) in *Walker v. Walker*, 82 *N. Y.* 260, 264.
- *v. Bradley*, 42 *N. Y.* 316. Disting'd and criticised (parol evidence to vary consideration) in *Anthony v. Harrison*, 14 *Hun.* 198, 213. Cited with *Hope v. Balen*, 58 *N. Y.* 382 (Parol proof of oral part of mixed contract) in 2 *Whart. Com. on Ev.* § 1015. Disting'd (Promise to third person) in *Johnson v. Morgan*, 6 *Daly*, 333, 337.
- *v. Bucklin*, 2 *Den.* 45; s. c., 43 *Am. Dec.* 726, with note, containing citations. See *Leonard v. Vredenbergh*; *Mallory v. Gillett*; *Mersereau v. Lewis*; *Schemerhorn v. Vanderheyden*; *Westfall v. Parsons*. Examined and limited (Promise to pay debt of another) in *Mallory v. Gillett*, 21 *N. Y.* 412, 427, 442, which aff'd 23 *Barb.* 610, which see. Applied in *Cailleux v. Hall*, 1 *E. D. Smith*, 7. Approved in *Blunt v. Boyd*, 3 *Barb.* 209. Followed in *Ely v. McNight*, 30 *How. Pr.* 102; *Phillips v. Gray*, 3 *E. D. Smith*, 69. Disting'd in *Brisbane v. Beebe*, 48 *N. Y.* 636. Cited as authority in *Stern v. Drinker*, 2 *E. D. Smith*, 404. See also *Eddy v. Roberts*, 17 *Ill.* 508. Quoted and discussed in *Broune on Stat. of Frauds*, § 166 b, 4 ed.; *Id.* §§ 167, 169, 171. Quoted and explained in 2 *Chitty on Contr.* 1373, n. g, 11 *Am. ed.* Applied (Promise to pay third party) in *Hamilton & Deansville Plank Road Co. v. Rice*, 7 *Barb.* 165; *May v. Nat. B'k of Malone*, 9 *Hun.* 112. Disting'd in *Bigelow v. Davis*, 16 *Barb.* 565; *Dolph v. White*, 12 *N. Y.* 300. Reviewed with other cases and applied in *Hale v. Boardman*, 27 *Barb.* 85.
- *v. Cassidy*, 16 *Barb.* 177. See (Joinder of persons, severally liable, as co-defendants) *Code Civ. Pro.* § 454.
- *v. Cocks*, 50 *N. Y.* 689. Compare (Appeal after denial of new trial on interlocutory judgment) *Code Civ. Pro.* § 1336.
- *v. Coffin*, 31 *Barb.* 556. For similar cases

- (Rights of passenger riding on through ticket) see *McClure v. Philadelphia, W. & B. R. R. Co.*, 34  *Md.* 532; s. c., 6  *Am. R.* 345; *Shedd v. Troy, & C. R. R. Co.*, 41  *Vt.* 88.
- *v. Cook*, 25  *How. Pr.* 190; s. c., 40  *Barb.* 254; s. c., more fully, in 16  *Abb. Pr.* 83. Decision in 40  *Barb.* followed (Vacating order of arrest for defects in copies of papers served) in *Bank of Havana v. Moore*, 5  *Hun.* 624.
- *v. Havens*, 17  *Johns.* 234; s. c., 8  *Am. Dec.* 393. Approved (Consignor's liability for freight) in *Holt v. Westcott*, 43  *Me.* 449. Explained in *Blanchard v. Page*, 8  *Gray (Mass.)* 299. Followed in *Grant v. Wood*, 1  *Zab. (N. J.)* 292; s. c., 47  *Am. Dec.* 162, with note. Reviewed and disting'd (Duty of carrier as to delivery) in *McEwen v. Jeffersonville, Madison, & C. R. R. Co.*, 33  *Ind.* 375; s. c., 5  *Am. R.* 216.
- *v. Hoff*, 7  *Hun.* 284. Further decision in 52  *How. Pr.* 382.
- *v. Mechanics' Fire Ins. Co.*, 3  *Wend.* 94; s. c., 20  *Am. Dec.* 664, with note. See *Hills v. Bannister*. Applied (Personal liability of agent executing contract) in *Simonds v. Heard*, 23  *Pick. (Mass.)* 120; s. c., 34  *Am. Dec.* 41, 43, with note; *Fogg v. Virgin*, 19  *Me.* 352; s. c., 36  *Am. Dec.* 757, with note. Followed with *Moss v. Livingston*, 4  *N. Y.* 208, in *Revolver Scraper Co. v. Tuttle*, 61  *Iowa*, 423; s. c., 47  *Am. R.* 816, with note. Examined in *Farmers' & Mechanics' Bank v. Troy City Bank*, 1  *Doug. (Mich.)* 468. Explained in *Stanton v. Camp*, 4  *Barb.* 274. Applied (Personal liability of maker of note) in *Wing v. Glick*, 56  *Iowa*, 473. Cited with *Hills v. Bannister*, 8  *Conn.* 31; *Moss v. Livingston*, 4  *N. Y.* 208; *Dewitt v. Walton*, 9  *N. Y.* 271, in *Powers v. Briggs*, 79  *Ill.* 493; s. c., 22  *Am. R.* 175.
- *v. Millard*, 16  *Wend.* 572. Explained (Statute of Limitations—judicial process) in *Angell on Limitations*, § 329, 6 ed.
- *v. People*, 20  *Johns.* 457. Aff'd in 3  *Conn.* 686; s. c., 15  *Am. Dec.* 322. Compare (Power of legislature to provide punishment for crimes) *Wynehamer v. People*, 13  *N. Y.* 378, 418. Decision in 3  *Conn.* cited with approval in *People v. Clute*, 50  *N. Y.* 451.
- *v. Phoenix Ins. Co.*, 8  *Johns.* 307; s. c., 5  *Am. Dec.* 339. See *Alexandre v. Sun Ins. Co.*
- *v. Russell*, 1  *Code R. N. S.* 5. Rev'd in 1  *Id.* 57; s. c., 11  *Barb.* 303.
- *v. Savage*, 1  *Sweeney*, 288. Rev'd in 45  *N. Y.* 191. See *Baxter v. Second Ave. R. R. Co.*; *Stackus v. N. Y. Central, & C. R. R. Co.* Decision in 1  *Sweeney* approved (Right of railroad to use of highway) in *Adolph v. Central Park, & C. R. R. Co.*, 33  *Super. Ct. (J. & S.)* 185. Decision in 45  *N. Y.* followed (Rights of foot-passengers) in *Myers v. Dixon*, 35  *Super. Ct. (J. & S.)* 392. Followed (Non-suit for contributory negligence) with *Harnett v. Blecker St., & C. R. R. Co.*, 49  *Super. Ct. (J. & S.)* 185, in *Smith v. Smith*, 50  *Super. Ct. (J. & S.)* 503.
- *v. Wing*, 58  *Barb.* 73. See (Appeal from judgment) *Code Civ. Pro.* 1881, § 1845, n.
- Barkley v. Wilcox**, 19  *Hun.* 320; s. c., as *Barclay v. Same*, 9  *Weekly Dig.* 298. Aff'd in 86  *N. Y.* 140. Decision in 19  *Hun.* explained (Improvements on realty damaging neighbors' lands) in *Moak's Underhill's Torts*, 1  *Am. ed.* 458. Decision in 86  *N. Y.* said in *Boyd v. Conklin*, *Sup'm. Ct. Mich.*, 1884, 20  *Northw. Rep.* 597, to leave the door open to deal with cases involving the natural flow of water, upon the particular facts of each.
- Barlow v. Myers**, 3  *Hun.* 720; s. c., 6  *Sup'm. Ct. (T. & C.)* 183. Rev'd in 64  *N. Y.* 41; s. c., 21  *Am. R.* 582. Decision in 64  *N. Y.* relied on (Promise to third person) in *Dunning v. Leavitt*, 85  *N. Y.* 30, 39. See to the contrary, *Exchange B'k of St. Louis*, 107  *Mass.* 37; s. c., 9  *Am. R.* 1. But see *Abb. Tr. Ex.* 386.
- *v. Scott*, 24  *N. Y.* 40. Explained (Allowance of damages to one seeking equitable relief) in *Bradley v. Aldrich*, 40  *N. Y.* 504, 509. Applied in *Genet v. Howland*, 45  *Barb.* 570, to allowance of jury trial. Followed in *Matthews v. Del. & Hud. Canal Co.*, 20  *Hun.* 437. Explained in *Waterm. Sp. Perf.* § 515, n. Disting'd (Relief against contract) in *Anonymous*, 2  *Abb. N. C.* 65; *Bearns v. Columbian Ins. Co.*, 48  *Barb.* 454. Applied (Waiver of jury trial) in *McKeon v. See*, 4  *Robt.* 465. Explained (Judgment in accordance with nature of action) in *Lewis v. Mott*, 36  *N. Y.* 399. Applied (Interpretation of promise) in *Talcot v. Arnold*, 61  *N. Y.* 617.
- *v. Yeomans*, 50  *Barb.* 187. Compare (Preference of *cestui que trust* to creditors, in case of commingling of trust funds with others) *Hooley v. Gieve*, 9  *Abb. N. C.* 8; *Graham v. Van Duzer*, 2  *Redf.* 322.
- Barnaman v. Williams**, 8  *Abb. Pr.* 158; s. c., as *Williams v. Barnaman*, 28  *How. Pr.* 59. Further decision in 19  *Abb. Pr.* 69.
- Barnard, Trial of**, on impeachment. Reported in 3 vols. published at Albany, 1874. Trial and remarks of judges commented on as extremely valuable, by G. Willett Van Nest, in article on "Impeachable Offenses under the Constitution of U. S.," 16  *Am. Law. Rev.* 798, 815.
- Barnard v. Campbell**, 65  *Barb.* 286. Aff'd in 55  *N. Y.* 456; s. c., 14  *Am. R.* 289. Re-aff'd in 58  *N. Y.* 73; s. c., 17  *Am. R.* 208. See *Stalker v. McDonald*. Decision in 55  *N. Y.* disting'd (Estoppel) in *Voorhees v. Olmstead*, 3  *Hun.* 744, 755; s. c., 6  *Sup'm. Ct. (T. & C.)* 172. Compare 2  *Pomeroy Eq. J.* 266. Quoted (Fraudulent vendee—valid title from) in *Wait on Fraud. Conv.* § 448, n. 1. Decision in 58  *N. Y.* disting'd (Precedent debt, when not a consideration) in *Archer v. O'Brien*, 7  *Hun.* 146. Quoted (Fraud on vendor) in 1  *Benj. on Sales*, § 649,

- n.* 15 (Corbin's 4 Am. ed.). Compare (Rights of *bona fide* purchaser) 15 Am. L. Rev. 386. Both decisions disting'd (Absolute delivery of goods sold) in *Parker v. Baxter*, 86 N. Y. 586, 596.
- *v. Darling*, 1 Barb. Ch. 218. Applied (Presumption that oath was taken within jurisdiction of officer administering it) in *People ex rel. Mosher v. Stowell*, 9 Abb. N. C. 456, 461.
- *v. Heydrick*, 49 Barb. 62; s. c., 2 Abb. Pr. N. S. 47, and as *Brainerd v. Heydrick*, 32 How. Pr. 97. Approved (Use of old affidavit) in *Morjarieta v. Saenz*, 80 N. Y. 547, 551.
- *v. Kobbe*, 3 Daly, 373. Aff'd in 54 N. Y. 516. Order for judgment because of frivolousness of answer aff'd in 3 Daly, 35. Decision in 54 N. Y., cited (Dispute of principal's titles by factor) in *Whart. Com. on Ag.* § 761. See (Application of property to satisfaction of judgment) *Code Civ. Pro.* 1881, § 2450, *n.*
- *v. Monnot*, 34 Barb. 90. Rev'd in 1 Abb. Ct. App. Dec. 108; s. c., 3 Keyes, 203; 33 How. Pr. 440. See *Knapp v. Wallace*. Decision in 1 Abb. Ct. App. Dec. cited as authority (Broker's commissions) in *Sibbald v. Bethlehem Iron Co.*, 83 N. Y. 378, 381. Applied in *Fiero v. Fiero*, 52 Barb. 292. Followed in *Heinrich v. Korn*, 4 Daly, 74; *Beebe v. Ranger*, 35 Super. Ct. (J. & S.) 456. Explained in *Satterthwaite v. Vreeland*, 48 How. Pr. 510. Disting'd (Parol agreements for transfer of real estate) in *Badenhop v. McCahill*, 42 How. Pr. 195.
- *v. Pierce*, 28 How. Pr. 232. See (Justices' court—appeal—offer to compromise) *Code Civ. Pro.* 1881, § 3070, *n.*
- *v. Viele*, 21 Wend. 88. Applied (Invalidity of unauthorized security taken by sheriff) in *Cook v. Freudenthal*, 80 N. Y. 202, 209.
- *v. Wheeler*, 3 How. Pr. 71, 73. Explained (Time of motion to change place of trial) in *Schenck v. McKie*, 4 How. Pr. 246; *Mixer v. Kuhn*, *Id.* 409; s. c., 3 Code R. 106; the cases of *Beardsley v. Dickerson*, 4 How. Pr. 81; *Lynch v. Mosher*, *Id.* 86; *Myers v. Feeter*, *Id.* 240; *Schenck v. McKie*, *Id.* 246, being also explained and commented on in *Mixer v. Kuhn*.
- Barnes v. Allen**, 30 Barb. 663. Rev'd (Enticing away wife) in 1 Keyes, 390; s. c., 1 Abb. Ct. App. Dec. 111.
- *v. Atlantic, &c. R. R. Co. of Brooklyn*, Sup'm. Ct. MSS. Followed (Right of the Long Island R. R. Co. to operate a railroad by steam over certain lands) in *People v. Long Island R. R. Co.*, 9 Abb. N. Cus. 184; s. c., 6 How. Pr. 400.
- *v. Barnes*, 13 Hun, 233. Compare (Application for payment of legacy) *Code Civ. Pro.* § 2719.
- *v. Barrow*, 6 Alb. L. J. 94. Rev'd in 61 N. Y. 39.
- *v. Brown*, 11 Hun, 315. Aff'd in part, and rev'd in part in 80 N. Y. 527. See *Hoyle v. Plattsburgh & Montreal R. R. Co.* Decision in 80 N. Y. explained (Issue of stock) in *Hatch v. Western Union Tel. Co.*, 9 Abb. N. C. 430, 435.
- *v. Buck*, 1 Lans. 268. Said in *Throop's Code Civ. Pro.* ch. VII. tit. III. *n.*, to be incorporated into § 635, as to when a warrant of attachment may be granted.
- *v. Camack*, 1 Barb. 392. Approved (Reinstating prior mortgage procured to be canceled by fraud) in *Farmers' and Drovers' Ins. Co. v. German Ins. Co.*, 79 Ky. 598. Approved (Widow as witness) in *Jackson v. Barron*, 37 N. H. 494. Disting'd and *Ratcliff v. Wales*, 1 Mill, 63, followed (Divorced wife as witness) in *Dickerman v. Graves*, 3 Cush. (Mass.) 308; s. c., 53 Am. Dec. 41, with note.
- *v. Greenzeback*, 1 Edw. 41. See another case on this will, in *Cutter v. Doughty*, 23 Wend. 513, which was rev'd in 7 Hill, 305.
- *v. Harris*, 3 Barb. 603. Aff'd in 4 N. Y. 374. Decision in 4 N. Y. and *Brown v. Cady*, 19 Wend. 477, 479, examined and approved (Jurisdiction of justice's court) in *Reno v. Pinder*, 20 N. Y. 298, 304. Commented on and limited in *Willins v. Wheeler*, 8 Abb. Pr. 119.
- *v. Hathaway*, 66 Barb. 452. Applied (Limitation of absolute gift to a life estate) in *Colt v. Heard*, 10 Hun, 189, 193. Followed (When devise takes fee) in *Coe v. De Witt*, 22 Hun, 428.
- *v. McAllister*, 18 How. Pr. 534. See to the contrary (Refusing injunction in case of contract providing remedy in damages) *Phenix Ins. Co. v. Continental Ins. Co.*, 14 Abb. Pr. N. S. 266. Disting'd with *Nessle v. Resse*, 29 How. Pr. 382; *Mott v. Mott*, 11 Barb. 127; *Trenor v. Jackson*, 46 How. Pr. 389, in *McCarell v. Braham* (U. S. Cir. Ct., S. D. N. Y., Mch., 1883), 15 Reporter, 485.
- *v. Morgan*, 3 Hun, 703. Followed (Reaching patent rights in supplementary proceedings) in *Pacific B'k v. Robinson*, 57 Cal. 520; s. c., 40 Am. R. 120.
- *v. Mott*, 16 Abb. Pr. N. S. 57. Aff'd in effect in 6 Daly, 150; s. c., 51 How. Pr. 27, which was aff'd in 64 N. Y. 397; s. c., 21 Am. R. 625. Decision in 64 N. Y. followed (Subrogation to rights of mortgagee) in *Gatewood v. Gatewood*, 75 Va. 407, 414. Applied in *Snelling v. McIntyre*, 6 Abb. N. C. 469, 472. Limited (Action by grantee paying off incumbrance) in 3 Am. Dec. 249, *n.*
- *v. Ontario Bank*, 19 N. Y. 152. Followed (Certificate of deposit) in *Pardee v. Fish*, 60 N. Y. 265, 268. Discussed (Mode of making corporate contract) in *Ang. & A. on Corp.* § 253, *a*, 11 ed.
- *v. Perine*, 9 Barb. 202. Aff'd in 15 *Id.* 249; which was aff'd in 12 N. Y. 18, the question of amendment not being raised on the appeals. See *Trustees of Hamilton College v. Stewart*. Decision in 9 Barb. collated (Guaranty—notice to promisee), with other cases, in 2 Hare & W. Am. Lead.

- Cas.* 96, 5 ed. Decision in 12 *N. Y.* followed (Necessity of taking objection on trial) in *Voorhees v. Burchard*, 55 *N. Y.* 93, 104; *Holloway v. Stephens*, 2 *Sup'm. Ct. (T. & C.)* 565. Disting'd (Right to have question submitted to jury) in *Westcott v. Keeler*, 4 *Bosw.* 564, 573; *Astor v. Lent*, 6 *Bosw.* 620; *Sheldon v. Atlantic Fire & Marine Ins. Co.*, 26 *N. Y.* 465; *Stone v. Flower*, 47 *N. Y.* 568; *Clemence v. City of Auburn*, 65 *N. Y.* 338; *Wombough v. Cooper*, 2 *Hun.* 432. Followed in *Hagaman v. Burr*, 41 *Super. Ct. (J. & S.)* 423, 425; *White v. Talmage*, 35 *Super. Ct. (J. & S.)* 223. Applied (Binding effect of subscription) in *Eastern Plank Road Co. v. Vaughan*, 20 *Barb.* 160; *Kennedy v. Cotton*, 23 *Barb.* 65. Applied (Request as consideration) in *Hurd v. Green*, 17 *Hun.* 334.
- *v. Quigley*, 59 *N. Y.* 265. Disting'd (Action when *ex contractu*, notwithstanding allegations of fraud) in *Ross v. Terry*, 63 *N. Y.* 613. Disting'd (Amendment of complaint) in *Rhemke v. Clinton*, 2 *Utah T.* 235.
- *v. Roberts*, 5 *Bosw.* 73. Overruled (Granting new trial after judgment) in *Tracey v. Altmeyer*, 46 *N. Y.* 598.
- *v. Smith*, 1 *Robt.* 699; s. c., more fully, 16 *Abb. Pr.* 420.
- *v. Stoughton*, 2 *Sup'm. Ct. (T. & C.)* 675. Appeal dismissed, it seems, in 58 *N. Y.* 645. Further decisions in 6 *Hun.* 254; 10 *Id.* 14.
- *v. Underwood*, 3 *Lans.* 526. Rev'd in 47 *N. Y.* 351. Decision in 47 *N. Y.* followed (Husband's right to administer on estate of deceased wife) in *Gilman v. McArdle*, 12 *Abb. N. C.* 414. Followed (Husband's right to personal property of deceased wife) in *Fry v. Smith*, 10 *Abb. N. C.* 224, 229, 231. Followed with *Fry v. Smith*, and *Kearney v. Missionary Society of St. Paul*, 10 *Abb. N. C.* 274; disting'd in *Robins v. McClure*, 67 *How. Pr.* 83. Disting'd in *Taplin v. Wilson*, 4 *Hun.* 246. Collated (Estate by curtesy—how affected by statute), with other cases, in *Sharnv. & B. Cases on Real Prop.* 289.
- *v. West*, 16 *Hun.* 68. Applied (Compulsory reference) in *Cassedy v. Wallace*, 61 *How. Pr.* 240, 242.
- *v. Willett*, 11 *Abb. Pr.* 225; s. c., 19 *How. Pr.* 564. Aff'd in 35 *Barb.* 514; s. c., 12 *Abb. Pr.* 448.
- Barnesciotta v. People**, 10 *Hun.* 137. Aff'd in 69 *N. Y.* 612, on opinion of DAVIS, J., below.
- Barnett, Matter of**, 52 *How. Pr.* 73. Modified and aff'd in 11 *Hun.* 463; s. c., 53 *How. Pr.* 247.
- *v. Kincaid*, 2 *Lans.* 320. Disting'd and explained (Power of surrogate to pass upon disputed claims on application to sell land to pay debts) in *Hopkins v. Van Valkenburgh*, 16 *Hun.* 3.
- *v. Lichtenstein*, 39 *Barb.* 194. Disapproved (Power of married woman to charge separate estate) in *Corn Exchange Ins. Co. v. Babcock*, 8 *Abb. Pr. N. S.* 246, which was, however, rev'd in 9 *Id.* 156, as contrary to *Kelso v. Tabor*, 52 *Barb.* 125. Disapproved, and the dissenting opinion approved, in *Kelso v. Tabor*. Approved in *Stockton v. Farley*, 10 *W. Va.* 175.
- *v. Pardow*, 10 *Wend.* 615. Disting'd (Bail) in *Miles v. Clarke*, 4 *Bosw.* 632, 636.
- *v. Selling*, 9 *Hun.* 236. Modified (Replevin for check), on appeal, in 70 *N. Y.* 492; s. c., 3 *Abb. N. C.* 83; 54 *How. Pr.* 118. See *Eaton, Cole & Burnham Co. v. Avery*. Decision in 70 *N. Y.* followed (Arrest for fraudulent purchase) in *Lippman v. Shapiro*, 50 *Super. Ct. (J. & S.)* 367.
- Barnewall v. Church**, 1 *Cai.* 217; s. c., 2 *Am. Dec.* 180, with note, showing it to be a leading case as to various points relating to marine policies. See *Moses v. Sun. Mut. Ins. Co.*
- *v. Burstenbinder*, 64 *Barb.* 212; s. c., more fully, 7 *Lans.* 210. Discussed, with other cases (Liability for carriage of articles whose inherent defects have not been disclosed) in 1 *Add. on Torts*, 713, n. 1, Wood's ed. Explained in 2 *Id.* 449, n. Discussed in 1 *Add. on Contr.* 419, n. 1, *Abb. ed.*
- *v. City of Buffalo*, 15 *Barb.* 457. But see (Assessment proceedings under Buffalo charter) *Howell v. City of Buffalo*, 15 *N. Y.* 512, where a contrary view seems to be taken.
- *v. Dewey*, 13 *Johns.* 224; s. c., 7 *Am. Dec.* 372, with note, collecting cases. Applied (Setting out contract in action founded on fraud) in *Corwin v. Davison*, 9 *Conn.* 22.
- *v. Griffin*, 2 *N. Y.* 305. See *Goodrich v. Downs*; *Grover v. Wakeman*; *Litchfield v. White*. Explained in *Curtis v. Leavitt*, 15 *N. Y.* 9, 118, 176 (modifying 17 *Barb.* 309, 370, which see), as not authority (Assignments for creditors) as to construction of 2 *R. S.* 135, § 1, and in *Nicholson v. Leavitt*, 9 *N. Y. Leg. Obs.* 105; s. c., 4 *Sandf.* 252, 293, as not authority that a power to sell on credit vitiates an assignment. See also *Whitney v. Krows*, 11 *Barb.* 200. But see *Nicholson v. Leavitt*, rev'd in 6 *N. Y.* 521, 10 *N. Y.* 591, where *Barney v. Griffin* was cited as authority. Disting'd (Validity of assignment) in *Benedict v. Huntington*, 32 *N. Y.* 219; *Kellogg v. Slawson*, 11 *N. Y.* 805, which aff'd 15 *Barb.* 57, which see; *Wynkoop v. Shardlow*, 29 *How. Pr.* 368; *Townsend v. Stearns*, 32 *N. Y.* 216. Followed (Provision for sale on credit) in *Porter v. Williams*, 9 *N. Y.* 142; which aff'd 5 *How. Pr.* 445, which see; *Wilson v. Lamont*, 10 *How. Pr.* 177; *Burdick v. Post*, 12 *Barb.* 171. Followed and approved in *Billings v. Billings*, 2 *Cal.* 107; s. c., 56 *Am. Dec.* 319. Quoted and commented upon in *Bishop on Assign.* § 211. Quoted and discussed (Terms of sale) in *Burrill on Assign.* § 221, n. 5, 4 ed. Disting'd (Reservations in

- debtor's favor) in *Bishop v. Halsey*, 3 *Abb. Pr.* 403. Explained in *Doremus v. Lewis*, 8 *Barb.* 126. Disting'd in *Van Rossum v. Walker*, 11 *Barb.* 240. Disting'd and questioned in *Powers v. Graydon*, 10 *Bosw.* 645. Followed in *Smith v. Howard*, 20 *How. Pr.* 128; *Collomb v. Caldwell*, 16 *N. Y.* 486. Quoted in *Wait on Fraud. Conv.* § 327. Quoted (Preferences) in *Burrill on Assign.* §§ 166, 169, 4 ed. Explained and limited (Provisions for benefit of assignee) in *Campbell v. Woodworth*, 24 *N. Y.* 805, which aff'd 33 *Barb.* 427, which see. Followed in *Matter of Shaw*, 18 *Hun.* 196.
- *v. Oyster Bay & Huntington Steamboat Co.*, 2 *Sup'm. Ct. (T. & C.)* 598. Further decision aff'g this in effect, in 67 *N. Y.* 301; s. c., 23 *Am. R.* 115.
- Barns v. Barrow**, 61 *N. Y.* 39, 41. See *Trevor v. Wood*. Applied (Strict construction of guaranty) in *Evansville Nat. B'k v. Kauffmann*, 93 *N. Y.* 273, 288, which rev'd 24 *Hun.* 615, where *Barns v. Barrow* was disting'd.
- *v. Graham*, 4 *Cow.* 452; s. c., 15 *Am. Dec.* 394. See *Newton v. Galbraith*; *Thomas v. Roosa*. Quoted and discussed (Demand and tender) in 2 *Chitty on Contr.* 1211, n. k, 11 *Am. ed.*
- Barnum v. Childs**, 1 *Sandf.* 58. Aff'd in 11 *Barb.* 14.
- *v. Hempstead*, 7 *Paige*, 568. See (Trust permissible on assignment for benefit of creditors) *Darling v. Rogers*, 22 *Wend.* 483. Followed with *Grover v. Wakeman*, 11 *Wend.* 203; s. c., 25 *Am. Dec.* 624 (Assignment for creditors—when void as tending to hinder and delay them) in *Gazram v. v. Poyntz*, 4 *Ala.* 374; s. c., 37 *Am. Dec.* 745, 748, with note. Explained (Preferences) in *Burrill on Assign.* § 179, 4 ed. Explained (Designation of debts) in § 313.
- *v. Seneca County Bank*, 6 *How. Pr.* 82. Followed (Motion to dismiss appeal to general term—where heard) in *Harris v. Clark*, 10 *How. Pr.* 415, 420.
- Barrere v. Barrere**, 4 *Johns. Ch.* 187, 191. See *Mason v. Mason*. Approvingly cited (Divorce from bed and board) in 1 *Bish. on Mar. & D. n.* 3, § 29, 6 ed.
- Barrett v. Carter**, 3 *Lans.* 68. See also (Absolute deed, when a mortgage) *Thompson v. Hickey*, 6 *Abb. N. C.* 159, 163.
- *v. Third Av. R. R. Co.*, 8 *Abb. Pr. N. S.* 205; s. c., 1 *Sweeny*, 568. Aff'd in 45 *N. Y.* 628. Decision in 45 *N. Y.* disting'd (Joint action against wrong-doers) in *Jackson v. Brookins*, 5 *Hun.* 535; *Chipman v. Palmer*, 77 *N. Y.* 51. Applied (Contributory negligence of one having charge of conveyance) in *Arctic Fire Ins. Co. v. Austin*, 3 *Hun.* 198. Explained in dissenting opinion in *Perry v. Lansing*, 17 *Hun.* 41. Explained (Recovery for negligence concurring with other causes) in *Pollet v. Long*, 56 *N. Y.* 205. See (Restoration of lien) *Code Civ. Pro.* 1881, § 1260, n.
- *v. Warren*, 3 *Hill*, 348. See *Hoffman v. Carow*. Cited as authority (Trespass or replevin for taking of chattel) in *Simmons v. Jenkins*, 76 *Ill.* 479. Dissented from in *Farley v. Lincoln*, 51 *N. H.* 577; s. c., 12 *Am. R.* 182. Approved (Demand before suit) in *Twinam v. Swart*, 4 *Lans.* 263, 268. See, to the contrary, *Harpending v. Myers*, 55 *Cal.* 538. Disapproved with *Tallman v. Turck*, 26 *Barb.* 167, in *Surles v. Sweeney*, 11 *Oreg.* 21.
- Barretto v. Snowden**, 5 *Wend.* 131; s. c., 10 *N. Y. Com. L. Law. ed.* 815, with brief note, on compensation, as usury. See *Condit v. Baldwin*.
- Barrie v. Dana**. See *Jackson v. Hasbrouck*.
- Barringer v. Delaware & Hudson Canal Co.**, 19 *Hun.* 216. Disting'd (Fellow servants) in *McCosker v. Long Island R. R. Co.*, 21 *Hun.* 500.
- *v. N. Y. Central, & C. R. R. Co.*, 18 *Hun.* 398. Explained (Contributory negligence) as put on the ground that defendant's negligence did not contribute, in *Masterson v. N. Y. Central, & C. R. R. Co.*, 84 *N. Y.* 247, 254.
- Barron v. People**, 1 *N. Y.* 386; s. c., more fully, in 6 *N. Y. Leg. Obs.* 308.
- *v. Richard*, 3 *Edw.* 96. Aff'd as *Barrow v. Richards*, in 8 *Paige*, 351.
- Barrow v. Paxton**, 5 *Johns.* 258; s. c., 4 *Am. Dec.* 354; 3 *N. Y. Com. L. Law. ed.* 1011, with brief note. Disting'd (Retention of possession by vendor) with *Beals v. Guernsey*, 8 *Johns.* 446; s. c., 5 *Am. Dec.* 348, the case of *Sturtevant v. Ballard*, 9 *Johns.* 339; s. c., 6 *Am. Dec.* 281, being cited as authority in *Coburn v. Pickering*, 3 *N. H.* 415; s. c., 14 *Am. Dec.* 875, with note. Criticised as unsound in reason and *Sturtevant v. Ballard*, preferred and applied in *Clow v. Woods*, 5 *Serg. & R. (Pa.)* 275; s. c., 9 *Am. Dec.* 346, with note. Reviewed with *Beals v. Guernsey*, 8 *Johns.* 446; s. c., 5 *Am. Dec.* 348; *Sturtevant v. Ballard*, 9 *Id.* 337; s. c., 6 *Am. Dec.* 281; *Ludlow v. Hurd*, 19 *Johns.* 218; *Bissell v. Hopkins*, 3 *Cow.* 166; s. c., 15 *Am. Dec.* 295; *Diver v. McLaughlin*, 2 *Wend.* 596; s. c., 2 *Am. Dec.* 655, and other cases, in *Watson v. Williams*, 4 *Blackf. (Ind.)* 26; s. c., 28 *Am. Dec.* 36, 40, with note. Cited in 2 *Pars. on Contr.* 112, n. a, as containing *KENT*, Ch. J.'s discussion of *Cortelyou v. Lansing*, 2 *Caines Cas.* 200.
- *v. Rhinelander*, 1 *Johns. Ch.* 550. Further decision in 3 *Id.* 614. Rev'd as to fifth exception. Aff'd, as to others, in 17 *Johns.* 538.
- *v. Richard*, 8 *Paige*, 351; s. c., 35 *Am. Dec.* 713; with note, collecting cases, where it is said to have been frequently cited and approved. See *Hills v. Miller*. Cited as authority (Covenants running with land) in *Northfleet v. Cromwell*, 70 *N. C.* 634; s. c., 16 *Am. R.* 787, 792. Collated, with other cases, in *McAdam Landl. & T.* 2 ed. § 98. Discussed in 2 *Washb. on R. P.* 4 ed.



812. . . Quoted (Injunction—restraining violation of covenants) in 2 *High on Inj.* 2 ed. § 1157, n. 1.

**Barruso v. Madan**, 2 *Johns.* 145; s. c., 3 *N. Y. Com. L. Law. ed.* 332, with brief note, on the rules for determining whether covenants are dependent or independent.

**Barry v. Brune**, 71 *N. Y.* 261. Aff'd 8 *Hun.* 395, which aff'd *Barry v. Mutual Life Ins. Co.*, 49 *How. Pr.* 504. See *Barry v. Equitable Life Ins. Co.* Decision in 71 *N. Y.* disting'd with *Wilson v. Lawrence*, 8 *Hun.* 523; 13 *Id.* 238; *Barry v. Equitable Life Ins. Co.*, 59 *N. Y.* 587; *Eadie v. Slimmon*, 26 *Id.* 9 (Right of wife to insurance policy in her favor) in *Britton v. Mutual Life Ins. Co.*, *N. Y. Daily Reg.*, Aug. 8, 1883. Disting'd in *Pilcher v. N. Y. Life Ins. Co.*, 33 *La. Ann.* 322. Followed (Determination of conflicting claims to insurance moneys) in *Mutual Life Ins. Co. v. Blake*, *N. Y. Daily Reg.*, Dec. 27, 1881.

— **v. Equitable Life Ins. Co.**, 14 *Abb. Pr. N. S.* 385, n. Aff'd in 59 *N. Y.* 587. See *Barry v. Brune*; *Eadie v. Slimmon*. See (Stay pending foreign action) *Barry v. Mutual Life Ins. Co.*, 2 *Sup'm. Ct. (T. & C.)* 15. Decision in 59 *N. Y.* disting'd with *Barry v. Brune*, 71 *Id.* 261; *Wilson v. Lawrence*, 76 *Id.* 585; *Brummer v. Cohn*, 86 *Id.* 11 (Assignment of policy issued to wife on the life of her husband) in *Living v. Domett*, 26 *Hun.* 150. Followed in *Barry v. Brune*, 71 *N. Y.* 261; *Snillie v. Quinn*, 25 *Hun.* 332, 335. Disting'd and explained in *Robinson v. Mutual Benefit Life Ins. Co.*, 16 *Blatchf. C. Ct.* 194, 207, 213, as not applicable if the policy is expressly payable to her assigns. Disting'd in *Olmsted v. Keyes*, 85 *N. Y.* 593, 606. Applied (Liability of such policy to creditors) in *Bloomington v. Lisberger*, 24 *Hun.* 355, 359.

— **v. Kennedy**, 11 *Abb. Pr. N. S.* 421. Compare (Property that passes to receiver) *Ritterband v. Baggett*, 4 *Abb. N. C.* 67. Disting'd from case of assignee in bankruptcy in *Matter of Gallagher*, 16 *Blatchf. C. Ct.* 410, 416.

— **v. Merchants' Exchange Co.**, 1 *Sandf. Ch.* 280. See *Burrall v. Bushwick R. R. Co.*; *Ketchum v. City of Buffalo*; *Partridge v. Badger*. Commented on (Right of corporation to borrow) in *Curtis v. Leavitt*, 15 *N. Y.* 9, 62, 219, 262; *Smith v. Law*, 21 *Id.* 296, 299. Applied as to the capital stock mentioned in the charter of a corporation not being a limitation of the amount of property which it may own,—in *Williams v. Western Union Tel. Co.*, 61 *How. Pr.* 216, 221; s. c., 9 *Abb. N. C.* 437, 444. Applied (Security for future advances) in *Ackerman v. Hunsicker*, 21 *Hun.* 53; which was rev'd in 85 *N. Y.* 43, 51, which sec. Quoted (Construction of charters) in *Morawetz on Priv. Corp.* § 152. Quoted (Shareholders—profits) in *Morawetz on Priv. Corp.* § 346.

— **v. Mutual Life Ins. Co.**, 49 *How. Pr.*

504. Aff'd as *Barry v. Brune*, in 8 *Hun.* 395, which was aff'd in 71 *N. Y.* 261. Other decisions in 53 *N. Y.* 536, and 2 *Sup'm. Ct. (T. & C.)* 15. See *Barry v. Equitable Life Ins. Co.* Decision in 53 *N. Y.* followed (Determination of conflicting claims to insurance moneys) in *Mutual Life Ins. Co. v. Blake*, *N. Y. Daily Reg.*, Dec. 27, 1881.

— **v. Ransom**, 12 *N. Y.* 462. See *Chapin v. Merrill*; *Coleman v. First Nat. Bank of Elmira*; *Hubbard v. Gurney*; *Pechner v. Phoenix Ins. Co.*; *Sisson v. Barrett*. Examined (Parol evidence of contract) in *Thomas v. Truscott*, 53 *Barb.* 204. Disting'd in *Campbell v. Tate*, 7 *Lans.* 372. Applied in *Easterly v. Barber*, 66 *N. Y.* 436, overruling 3 *Sup'm. Ct. (T. & C.)* 423, which see; *Coleman v. First Nat. B'k of Elmira*, 53 *Barb.* 393. Approved in *White v. Boyce*, U. S. Cir. Ct. S. D. N. Y., Aug. 1884, 21 *Fed. Rep.* 232. Explained d (Contribution among sureties) in *Tobias v. Rogers*, 13 *N. Y.* 66. Discussed in 8 *Am. L. Reg. N. S.* 451. Applied with *Easterly v. Barber*, 66 *N. Y.* 433 (Arrangement of liability of indorsers among themselves) in *Fraley v. Starr*, 17 *West. Jur.* 193; abstr. s. c., 16 *Weekly Dig.* 338. To the contrary (Parol proof of promise to indemnify) see *Bissig v. Britton*, 59 *Mo.* 204; s. c., 21 *Am. R.* 379. See also *Abb. Tr. Ev.* 255.

**Barteau v. Phoenix Mut. Life Ins. Co.**, 3 *Sup'm. Ct. (T. & C.)* 576; s. c., 67 *Barb.* 354; mem. of s. c., 1 *Hun.* 430. Aff'd in 67 *N. Y.* 595, with mem. of opinion.

**Bartholomew v. Finnemore**, 17 *Barb.* 423. See *Green v. Green*. Commented upon (Infant avoiding contract) in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 319.

— **v. Jackson**, 20 *Johns.* 28; s. c., 6 *N. Y. Com. L. Law. ed.* 921, with brief note, citing other cases. Also reported in 11 *Am. Dec.* 237, with note. See *Frear v. Hardenbergh*. Followed with *Everts v. Adams*, 12 *Johns.* 352; *Dunbar v. Williams*, 10 *Id.* 249 (Creation of relation of debtor and creditor) in *Fitch v. Newberry*, 1 *Doug. (Mich.)* 1; s. c., 40 *Am. Dec.* 33, 43. Applied (Recovery for gratuitous services) in *Hewitt v. Bronson*, 5 *Daly*, 1, 6. Discussed in 1 *Pars. on Contr.* 446, n. u. Included (Contract—formal requisites) in *Lawson's Lead. Com. Law Cas. Simplified* 2.

— **v. Yaw, Clarke**, 16. Rev'd in 9 *Paige*, 165.

**Bartle v. Gilman**, 18 *N. Y.* 260. Facts more fully stated in 17 *How. Pr.* 1.

**Bartlett, Exp.**, 4 *Bradf.* 221, 224. Approved but disting'd (Power of guardian to change domicile of ward) in *Marheineke v. Grot-haus*, 72 *Mo.* 204.

**Bartlett, Matter of**, 9 *How. Pr.* 414. Followed (Proceedings to compel delivery of books and papers pertaining to an office) in *People v. Allen*, 42 *Barb.* 206.

**Bartlett v. Bartlett**, *Clarke*, 460. See *Allen v. Allen*. Approved (Denial of alimony, in

action to annul marriage for impotency) in *Bloodgood v. Bloodgood*, 59 *How. Pr.* 42.

— *v. Campbell*, 1 *Wend.* 50. Upheld, citing many cases (Judgment against principal as evidence against surety) with *Fay v. Ames*, 44 *Barb.* 327; *Lee v. Clark*, 1 *Hill*, 56; *Franklin v. Hunt*, 2 *Id.* 671; *Westervelt v. Smith*, 2 *Duer*, 449; *Annott v. Terry*, 35 *N. Y.* 256,—the cases of *Thomas v. Hubbell*, 15 *N. Y.* 405, and *Douglass v. Howland*, 24 *Wend.* 35, being disting'd, and the latter criticised, in *Stephens v. Shafer*, 48 *Wis.* 54; s. c., 33 *Am. R.* 793, with note collating authorities. Questioned in *Thomas v. Hubbell*, 15 *N. Y.* 405.

— *v. Crozier*, 15 *Johns.* 250. Rev'd in 17 *Johns.* 439; s. c., 8 *Am. Dec.* 428, with note, showing it to have been largely cited. See *Pack v. Mayor, &c. of N. Y.*; *Weet v. Trustees of Brockport*. Reviewed at length (Liability of overseers of highway to civil action) in *Frecholders of Sussex v. Strader*, 3 *Harr. (N. J.)* 108; s. c., 35 *Am. Dec.* 530-538, with note. Thought in *Garlinghouse v. Jacobs*, 29 *N. Y.* 297, to be, with *Weet v. Trustees of Brockport*, 16 *N. Y.* 161, authority against liability of commissioners also, only *Smith v. Wright*, 24 *Barb.* 170, being to the contrary. But see *Garlinghouse v. Jacobs*, overruled on this point, and *Bartlett v. Crozier* explained and criticised, in *Hover v. Barkhoof*, 44 *N. Y.* 119. Reviewed (Liability of municipal corporation for negligence) with *Bailey v. Mayor, &c. of N. Y.*, 3 *Hill*, 531; 2 *Den.* 433; *Mayor, &c. of N. Y. v. Furze*, *Id.* 612; *Wilson v. Mayor, &c. of N. Y.*, 1 *Den.* 595; *Lloyd v. Mayor, &c. of N. Y.*, 5 *N. Y.* 369; *Barton v. City of Syracuse*, 36 *Id.* 54; *Rochester White Lead Co. v. City of Rochester*, 3 *Id.* 463; *Mills v. City of Brooklyn*, 32 *Id.* 489; *Hutson v. Mayor, &c. of N. Y.*, 5 *Sandf.* 289; 9 *N. Y.* 163; *Weet v. Trustees of Brockport*, 16 *N. Y.* 161, 171; *Morcy v. Town of Newfane*, 8 *Barb.* 645, and many other cases, in *Hill v. City of Boston*, 122 *Mass.* 344; s. c., 23 *Am. R.* 332, 339, 347, 362, 363. Explained and approved in *Peck v. Village of Batavia*, 32 *Barb.* 634, 641, 645, 646. Applied in *Hollenbeck v. Winnebago Co.*, 95 *Ill.* 148; s. c., 35 *Am. R.* 151, 155, with note. Disting'd (Personal liability of public officers) in *Donovan v. McAlpin*, 46 *Super. Ct. (J. & S.)* 114; *Adsit v. Brady*, 4 *Hill*, 634; *Wall v. Eastman*, 1 *Mich.* 170. Explained and applied (Liability for injury caused by defects in highways) in *Smith v. Wright*, 24 *Barb.* 170; 27 *Id.* 631. Regarded as settled law in *Hill v. Supervisors of Livingston*, 12 *N. Y.* 57. Applied in *Hutson v. City of N. Y.*, 5 *Sandf.* 297. Reviewed in *Flynn v. Canton Co.*, 40 *Md.* 312; s. c., 17 *Am. R.* 608. Cited as authority with *Townsend v. Susquehanna S. R. Co.*, 6 *Johns.* 90, in *Eric City v. Schwingler*, 10 *Harris (Pa.)* 384; s. c., 60 *Am. Dec.* 87, with note. Quoted and collated, with other cases, in *Cook Highw. L.* 4 ed. 47. Fol-

lowed (Duty of commissioners as to repairs) in *People v. Comm'rs of Hudson*, 7 *Wend.* 477. Disting'd in *Commissioners of Jefferson Co. v. Lineberger*, 3 *Mont.* 231; s. c., 35 *Am. R.* 462, which cited *Muzzy v. Shattuck*, 1 *Den.* 233, as not applicable to case of liability of county treasurer. Same point in *Ward v. School District*, 10 *Neb.* 293; s. c., 35 *Am. R.* 477. Disting'd as inapplicable to turnpike company in *President, &c. of Waterford Turnpike Co. v. People*, 9 *Barb.* 174. See citations in 8 *Am. Dec.* 442, n., of cases where it has been relied on as showing that a cause of action must be stated.

— *v. Drew*, 4 *Lans.* 444; s. c., 60 *Barb.* 648. Aff'd in 57 *N. Y.* 587. See *Baker v. Braman*. Disting'd (Common law liability of stockholders), in *Griffith v. Mangam*, 73 *N. Y.* 611. See, also (Parties to creditor's action against stockholder) *Hatch v. Dana*, 101 *U. S.* 205, 212. Commented on and applied in *Thompson v. Reno Sav'gs B'k (Nev. 1885)*. Disting'd (Enforcing creditors' lien on assets of insolvent corporation) in *McLean v. Eastman*, 21 *Hun.* 312. Followed in *National Trust Co. v. Miller*, 33 *N. J. Eq.* 155. Decision in 60 *Barb.* said, in *Code Civ. Pro.* 1881, § 2463, n., to be overruled by that section.

— *v. Gale*, 4 *Paige*, 503. Examined (Effect of answer in equity) in *Smith v. Potter*, 3 *Wisc.* 438.

— *v. Hatch*, 17 *Abb. Pr.* 461. See to the contrary, as to dictum that trustee who concurred cannot have relief, *Baynard v. Woolley*, 20 *Beav.* 583.

— *v. Judd*, 23 *Barb.* 262. Aff'd in 21 *N. Y.* 200. See *Kane v. Bloodgood*. Decision in 21 *N. Y.* cited (Collateral impeachment of sheriff's deeds) in 2 *Whart. Com. on Ec.* § 981. See (Application of statute of limitations to defenses) *Code Civ. Pro.* 1881, § 414, n.

— *v. McNeil*, 49 *How. Pr.* 55; mem. of s. c., 3 *Hun.* 221; 5 *Sup'm. Ct. (T. & C.)* 675. Aff'd in 60 *N. Y.* 53.

— *v. Robinson*, 9 *Low.* 305. Aff'd in 39 *N. Y.* 187.

— *v. Spicer*, 12 *Hun.* 398. Aff'd in 75 *N. Y.* 528.

— *v. Wheeler*, 44 *Barb.* 162. Disting'd (Recovery where contract is void under statute of frauds), in *Van Valkenburgh v. Crofut*, 15 *Hun.* 147, 150. Followed, in *Weir v. Hill*, 2 *Lans.* 278.

— *v. Wyman*, 14 *Johns.* 261. See *Geer v. Archer*. Quoted and explained (Seamen's contracts—Act of Congress of July 20, 1790) in 1 *Pars. on Contr.* 391, n. r. Quoted in 1 *Story on Contr.* 5 ed. § 197, n. **Bartley v. Richtmeyer**, 4 *N. Y.* 38; s. c., 53 *Am. Dec.* 338; with extended note. See *Hewitt v. Prime*; *Martin v. Payne*. Disting'd (Who can maintain action for seduction) in *Certwell v. Hoyt*, 6 *Hun.* 575, 578, 581. Limited, in *Furnan v. Van Sise*, 56 *N. Y.* 435, 438. Criticised, in *Gray v.*

- Durland, 50 *Barb.* 100, 211, as to standing alone in denying mother's right to maintain action. Followed (Action for seduction of daughter not in parent's employ), in *Dain v. Wycoff*, 7 *N. Y.* 195. Disting'd and applied, in *Mulvehall v. Millward*, 11 *N. Y.* 345. Followed, with *White v. Nellis*, 31 *N. Y.* 405; *Martin v. Payne*, 9 *Johns.* 387; *Clark v. Fitch*, 2 *Wend.* 459; *Mulvehall v. Millward*, 11 *N. Y.* 343; *Furman v. Van Sise*, 56 *Id.* 435; in *Lavery v. Crooke*, 52 *Wisc.* 612; 38 *Am. Cases on Torts*, 201. Commented upon in *Id.* 297. Disapproved (Damages for seduction of daughter of full age) in *Davidson v. Abbott*, 52 *Vt.* 510; s. c., 36 *Am. R.* 767. Applied (Gravamen of action for seduction), in *Badgley v. Decker*, 44 *Barb.* 589. Approved (Exemplary damages for seduction, when denied) in *Hogan v. Cregan*, 6 *Robt.* 138, 154. Cited as authority, in *Damon v. Moore*, 5 *Lans.* 457. Applied (Action for injury to child, in child's name) in *Robalina v. Armstrong*, 15 *Barb.* 247. Applied (Amount of verdict in action for seduction) in *Travis v. Barger*, 24 *Barb.* 629.
- Barto v. Himrod**, 8 *N. Y.* 483; s. c., 59 *Am. Dec.* 506, with note. See *Gould v. Town of Sterling*; *Starin v. Town of Genoa*; *Thorne v. Cramer*. Followed (Unlawful delegation of legislative power) in *Lamert v. Lidwell*, 62 *Mo.* 188; s. c., 21 *Am. R.* 411, 414. Disting'd in *Currier v. West Side Elev. Pat. Ry. Co. of N.Y.*, 6 *Blatchf. Ct. Ct.* 487, 493; *Matter of Gilbert Elevated R. R. Co.*, 70 *N. Y.* 361, 364; *People v. Fire Assoc. of Phila.*, 92 *N. Y.* 311. Quoted and collated with other cases, in *Brightly Cases on Elect.* 24. Criticised and limited, in *State v. O'Neil*, 24 *Wisc.* 149. Examined and approved, with *Bradley v. Baxter*, 15 *Barb.* 123; *Clark v. City of Rochester*, 28 *N. Y.* 605, 633; *People v. Collins*, 3 *Mich.* 373; *Mesheier v. State*, 11 *Ind.* 432. Compare *Johnson v. Rich*, 9 *Barb.* 680. Disting'd in *Starin v. Town of Genoa*, 23 *N. Y.* 439, 447. See, in this connection, *Fell v. State*, 42 *Md.* 71; s. c., 20 *Am. R.* 83. Examined and disting'd (Special findings by jury) in *Jones v. Brooklyn Life Ins. Co.*, 61 *N. Y.* 79, 83.
- Barton v. Beer**, 21 *How. Pr.* 309. Followed (Enforcing liability of married woman carrying on business on her own account) in *Klen v. Gibney*, 24 *How. Pr.* 31.
- **v. City of Syracuse**, 37 *Barb.* 292. Aff'd in 36 *N. Y.* 54. See *Bartlett v. Crozier*; *Mayor, &c. of N. Y. v. Furze*; *Mills v. City of Brooklyn*; *Rochester White Lead Co. v. City of Rochester*; *Wilson v. Mayor, &c. of N. Y.* Decision in 37 *Barb.* disting'd (Injuries through defective public works) in *Mills v. City of Brooklyn*, 32 *N. Y.* 489, 500. Applied in *Bastable v. City of Syracuse*, 8 *Hun.* 592. Followed in *Nims v. Mayor, &c. of Troy*, 59 *N. Y.* 503, which aff'd 3 *Sup'm. Ct. (T. & C.)* 7, which see. Followed (Right of citizen to use of public streets) in *Wendell v. Mayor, &c. of Troy*, 4 *Abb. Ct. App. Dec.* 563, 568, 571. Decision in 36 *N. Y.* applied (Injuries through defective public works) in *McCarthy v. City of Syracuse*, 46 *N. Y.* 194.
- **v. Fort Jackson, &c. Plank Road Co.**, 17 *Barb.* 397. Reviewed, with other cases (Contract growing out of previous illegal contract, when also illegal) in 7 *Bradw. (Ill.)* 564.
- **v. Hermann**, 11 *Abb. Pr. N. S.* 378. Followed (Effect of payments made on building contract without production of architect's certificate) in *Haden v. Coleman*, 42 *Super. Ct. (J. & S.)* 256.
- **v. N. Y. Central, &c. R. R. Co.**, 1 *Sup'm. Ct. (T. & C.)* 297. Aff'd, it seems, in 56 *N. Y.* 660, but no opinion.
- **v. Speis**, 5 *Hun.* 60. Further action in 73 *N. Y.* 133. Decision in 5 *Hun.*, qualified (Remedy for misjoinder) in *Harris v. Eldridge*, 5 *Abb. N. C.* 278, 280.
- Bartow v. People**, 18 *Hun.* 22. Rev'd in 78 *N. Y.* 377. Decision in 78 *N. Y.* disting'd (Liability of bank for deposit received by officer who is officer of another institution) in *Fiskill Sav'gs Inst. v. Bostwick*, 92 *N. Y.* 564.
- Bascom v. Albertson**, 34 *N. Y.* 584. Aff'g *Bascom v. Nichols*, 5 *Redf.* 340. See *Shotwell v. Mott*; *Tucker v. Rector, &c. of St. Clements' Church*; *Williams v. Williams*. Explained and applied (Charitable uses) in *Holmes v. Mead*, 52 *N. Y.* 332, 338. Followed in *White v. Howard*, 52 *Barb.* 310; *Gram v. Prussia, &c. Society*, 36 *N. Y.* 162; *Matter of Abbott*, 3 *Redf.* 305. Explained in *Church of Redemption v. Grace Church*, 6 *Hun.* 171. Explained as not overruling *Williams v. Williams*, 8 *N. Y.* 525,—in *Power v. Cassidy*, 16 *Hun.* 303. Collated, with other cases, in *Gerard Titles to Real Est.* 2 ed. 304. Discussed in 2 *Perry on Trusts*, 3 ed. § 748, n. Commented upon in 3 *Washb. on R. P.* 4 ed. 18, n. Applied (Devises to corporations) in *Curriu v. Fanning*, 13 *Hun.* 472. Followed in *Chamberlain v. Chamberlain*, 3 *Lans.* 353, which was, however, rev'd on this point in 43 *N. Y.* 434, which see. Followed (Effect of L. 1860, c. 360, regulating charitable, &c. bequests) in *Curran v. Sears*, 2 *Redf.* 526, 529.
- **v. Nichols**. See *Bascom v. Albertson*.
- Baskin v. Baskin**, 48 *Barb.* 200. Aff'd in 36 *N. Y.* 416. Decision in 36 *N. Y.* explained and disting'd (Sufficiency of execution and attestation of will) in *Hewitt v. Hewitt*, 5 *Redf.* 261, 275. Followed in *Taylor v. Brodhead*, 5 *Redf.* 624. Disting'd in *Mitchell v. Mitchell*, 16 *Hun.* 97, 100; *Sisters of Charity v. Kelly*, 67 *N. Y.* 413. Approved with *Gilbert v. Knox*, 52 *Id.* 125, in *Ludlow v. Ludlow*, 8 *Stew. (N. J.)* 480; s. c., 14 *Reporter*, 790. Cited and considered with *Chaffee v. Baptist Missionary Convention*, 10 *Paige*, 85; in *Haynes v. Haynes*, 33 *Ohio St.* 598; s. c., 31 *Am. R.* 579, 581.

- Baskins v. Shannon**, 3 *N. Y.* 310. Cited, (Proof to show that chattel mortgage was given in good faith) in *Wray v. Fedderke*, 43 *Super. Ct. (J. & S.)* 335.
- Bass v. Comstock**, 36 *How. Pr.* 382. Additional opinion by CLERKE, J., in 38 *N. Y.* 21, which was disting'd (Demurrer to complaint containing different causes of action) in *Goldberg v. Utley*, 60 *N. Y.* 427, 429.
- **v. White**, 7 *Lans.* 171. Rev'd in 65 *N. Y.* 565. Mem. of opinion. Explained (Payment and tender by vendee) in *Benj. on Sales*, § 709, *n. f.* (Bennett's 4 *Am. ed.*); *Id.* § 1057, *n.* (Corbin's 4 *Am. ed.*).
- Bassett v. Bassett**, 55 *Barb.* 505. Said, in 6 *Alb. L. J.* 166, to have been aff'd by Ct. of App., Sept. 12, 1871.
- **v. Fish**, 12 *Hun.* 209. Rev'd in 75 *N. Y.* 303. Decision in 75 *N. Y.* disting'd (Individual liability of members of a board) in *Babcock v. Gifford*, 29 *Hun.* 186; *Donovan v. McAlpin*, 46 *Super. Ct. (J. & S.)* 115. Followed, with *Shaw v. Cock*, 78 *N. Y.* 194 (Amendment by adding or striking out name of party) in *N. Y. Monitor Milk Pan Assoc. v. Remington Agr. Works*, 89 *N. Y.* 22; which rev'd 26 *Hun.* 475, 481, which see.
- **v. Lederer**, 1 *Hun.* 274; *s. c.*, 3 *Sup'm. Ct. (T. & C.)* 671. Compare *Gallup v. Lederer*, 1 *Hun.* 282; *s. c.*, 3 *Sup'm. Ct. (T. & C.)* 710. See to the contrary (Evidence of good character of agent, where evidence is circumstantial) *Bigelow on Fr.* 478. See *Abb. Tr. Ev.* 621.
- **v. Spofford**, 2 *Daly*, 432. Aff'd, in 45 *N. Y.* 387. Decision in 45 *N. Y.* followed (Goods, whether obtained by larceny or by false pretenses) in *Zink v. People*, 6 *Abb. N. C.* 413, 427. Followed (Right of owner of stolen property to follow it or its proceeds) in *Newton v. Porter*, 5 *Lans.* 424.
- Bassford, Matter of**, 63 *Barb.* 161. Aff'd in 50 *N. Y.* 509. Decision in 50 *N. Y.* followed (Presumption as to regularity of assessment) in *Matter of Agnew*, 4 *Hun.* 439. Disting'd in *Matter of Gantz*, 85 *N. Y.* 536, 539.
- Bassil v. Elmore**, 65 *Barb.* 627. Aff'd, as *Bassell v. Elmore*, 48 *N. Y.* 561.
- Bastable v. City of Syracuse**, 8 *Hun.* 587. Appeal dismissed, in 72 *N. Y.* 64. Decision in 8 *Hun.* disting'd (Causing surface water to flow on adjacent land) in *Lynch v. Mayor, &c. of N. Y.*, 76 *N. Y.* 60, 62.
- Batchelor v. Albany City Ins. Co.**, 6 *Abb. Pr. N. S.* 240. Collated (Reference—involving examination of long account) with other cases, in *Hoffm. on Referees*, 12.
- Batchellor v. Schuyler**, 3 *Hill*, 386. On first point discussed in opinion, overruled, in effect, in *People v. Schuyler*, 4 *N. Y.* 173.
- Bate v. Graham**, 11 *N. Y.* 237. Applied (Action by creditor to set aside fraudulent conveyance) in *Bates v. Bradley*, 24 *Hun.* 84, 86. Relied on in dissenting opinion in *Dewey v. Moyer*, 9 *Hun.* 491. Compared in *Henderson v. Brooks*, 3 *Sup'm. Ct. (T. & C.)* 443. Dictum explained in *Leonard v. Clinton*, 26 *Hun.* 288. Applied (Right of administrator to impeach fraudulent conveyance made by intestate) in *Barton v. Hosmer*, 24 *Hun.* 467. Disting'd as inapplicable to real estate, in *Phelps v. Platt*, 50 *Barb.* 430; *Chillingworth v. Freeman*, 67 *Barb.* 383. Applied (Right to equitable remedy) in *Haines v. Meyer*, 25 *Hun.* 414, 417. Reviewed (Supplying defect in pleading) with other cases, in *Bowdoin v. Coleman*, 3 *Abb. Pr. N. S.* 441. Disting'd in *Tooker v. Arnoux*, 76 *N. Y.* 400; *Scofield v. Whitelegge*, 49 *N. Y.* 261. Applied in *Cythe v. La Fontain*, 51 *Barb.* 194. Disting'd in *Volkeng v. De Graaf*, 81 *N. Y.* 272; *Williams v. Birch*, 6 *Bosw.* 677; *Egert v. Wicker*, 10 *How. Pr.* 197. Followed in *Pratt v. Hudson River R. R. Co.*, 21 *N. Y.* 313; *Iladdow v. Lundy*, 59 *N. Y.* 328.
- Bates v. Cherry Valley, &c. R. R. Co.**, 3 *Sup'm. Ct. (T. & C.)* 16. Aff'd in 59 *N. Y.* 641, on opinion below.
- **v. Conkling**, 10 *Wend.* 389. Said, in *Schindler v. Houston*, 1 *N. Y.* 261, 266, not to be authority as to delivery of goods.
- **v. Coster**, 1 *Hun.* 400. Followed (Distinction between contracts of sale, and agreements for work and labor) in *Kellogg v. Witherhead*, 4 *Hun.* 273. Explained in *Benj. on Sales*, § 109, *n. y.* (Bennett's 4 *Am. ed.*).
- **v. Delavan**. See *Van Eps v. Mayor, &c. of Schenectady*.
- **v. James**, 3 *Duer*, 45. Disting'd and explained (Nullity of execution) in *Winebrenner v. Johnson*, 7 *Abb. Pr. N. S.* 202.
- **v. Merrick**, 5 *Sup'm. Ct. (T. & C.)* 701; *s. c.*, 2 *Hun.* 568.
- **New Orleans, &c. R. R. Co.**, 13 *How. Pr.* 516; *s. c.*, 4 *Abb. Pr.* 72. Disapproved (Action against foreign corporation) in *Cumberland Coal & Iron Co. v. Hoffman Steam Coal Co.*, 30 *Barb.* 159, 163; *s. c.*, 20 *How. Pr.* 62. See (Attachment—levy) *Code Civ. Pro.* 1881, § 643, *n.*
- **v. N. Y. Ins. Co.**, 3 *Johns. Cas.* 238; *s. c.*, 1 *N. Y. Com. L. Law. ed.* 681, with brief note on the liability of stock for debts of shareholders. Explained (Transfer of stock) in *Angell & A. on Corp.* § 569, 11 *ed.* Approved in *Sargent v. Franklin Ins. Co.*, 8 *Pick. (Mass.)* 90; *s. c.*, 19 *Am. Dec.* 306, 310. Applied (When money paid may be recovered) in *Tutt v. Ide*, 3 *Blatchf. Ct. Ct.* 249, 252.
- **v. Relyea**, 23 *Wend.* 336. Overruled (Validity of attachment against non-resident) in *Taylor v. Heath*, 4 *Den.* 592; *Bennett v. Brown*, 4 *N. Y.* 254. Collated in *Throop, Justice's Manual*, 2 *ed.* 25.
- **v. Rosekraus**, 23 *How. Pr.* 98. Aff'd in 37 *N. Y.* 409; *s. c.*, 4 *Abb. Pr. N. S.* 276. Decision in 37 *N. Y.* followed (Defense, when not to be regarded as a counterclaim) in *Simmons v. Kayser*, 43 *Super. Ct. (J. & S.)* 131.
- **v. Tymason**, 13 *Wend.* 300. Rev'd in *Tymason v. Bates*, 14 *Id.* 671.

- **v. Underhill**, 3 *Redf.* 365. Disapproved (Liability for acts of co-executor, &c.) in *Ormiston v. Olcott*, 84 *N. Y.* 339, 346. Reviewed, with *Earle*, 48 *Super. Ct. (J. & S.)* 18; *Burt v. Burt*, 41 *N. Y.* 46; *Wood v. Brown*, 34 *Id.* 343; *Croft v. Williams*, 23 *Hun.* 102; *Weetjen v. Vibbard*, 5 *Id.* 265; *Paulding v. Marvin*, 3 *Id.* 365, *n.*; *People v. Townsend*, 37 *Barb.* 520; *Sutherland v. Brush*, 7 *Johns. Ch.* 17; *Monell v. Monell*, 5 *Id.* 283; *Kip v. Deniston*, 4 *Johns.* 23; *Johnson v. Corbett*, 11 *Paige*, 265; *Clarke v. Clarke*, 8 *Id.* 162; *Banks v. Wilkes*, 3 *Sandf. Ch.* 99; *Kirby v. Turner*, *Hopk. Ch.* 309; in *Lacey v. Davis*, 5 *Redf.* 301.
- Bathgate v. Haskin**, 5 *Daly*, 361. Rev'd in 59 *N. Y.* 533. Further decision in 63 *Id.* 261. See *Stevens v. Veriane*. Decision in 59 *N. Y.* followed (Running of statute of limitations against attorney's claim) in *Gustine v. Williams*, 23 *Hun.* 99, 101. Compare (*Set-off*) *Seymour v. Dunham*, 24 *Hun.* 93.
- Battell v. Burrill**, 10 *Abb. Pr. N. S.* 97. Aff'd in 50 *N. Y.* 18.
- **v. Torrey**, 65 *N. Y.* 294. Followed (Necessity for reference in case of sale of property of insane person) in *Matter of Valentine*, 3 *Abb. N. C.* 285, 288.
- Battermann v. Finn**, 34 *How. Pr.* 108. Opinion here given as opinion of court, is the dissenting opinion. Opinion of court reported in 32 *How. Pr.* 501.
- **v. —**, 40 *N. Y.* 340. See *N. Y. & New Haven R. R. Co. v. Ketcham*. Applied (Appeal from order adjudging party guilty of contempt) in *Carrington v. Florida R. R. Co.*, 52 *N. Y.* 583, 586. Disting'd, with *N. Y. & N. H. R. R. Co. v. Ketcham*, 3 *Keyes*, 24, in *Brinkley v. Brinkley*, 47 *N. Y.* 44, 46.
- **v. Pierce**, 3 *Hill*, 171; *s. c.*, 15 *N. Y. Com. L. Law. ed.* 553, with brief analysis of subsequent cases, citing this case. See *Pechner v. Phoenix Ins. Co.* Applied (Recoupment) in *Barth v. Burt*, 17 *Abb. Pr.* 354. Disting'd, in *Cram v. Dresser*, 2 *Sandf.* 120. Examined with *McAllister v. Reab*, 4 *Wend.* 482; 8 *Id.* 109; *Still v. Hall*, 20 *Id.* 51, in *Ward v. Fellers*, 3 *Mich.* 288; citing *Ives v. Van Epps*, 22 *Wend.* 155; *Nichols v. Dusenbury*, 2 *N. Y.* 283; *Hinsdell v. Weed*, 5 *Den.* 172. Approved and applied, in *Getty v. Rountree*, 2 *Pinn. (Wisc.)* 379; *s. c.*, 2 *Chand.* 28; 54 *Am. Dec.* 138, with note. Followed, in *Hill v. Southwick*, 9 *R. I.* 299; *s. c.*, 11 *Am. R.* 250. Followed (Parol proof of agreement) in *Van Brunt v. Day*, 81 *N. Y.* 251. Applied, in *Unger v. Jacobs*, 7 *Hun.* 223; *Chapin v. Dobson*, 78 *N. Y.* 79. Disting'd in *City of N. Y. v. Price*, 5 *Sandf.* 550. Explained, in *Bull's Head Bk. v. Kohler*, 1 *City C.* 267. Applied (Defense to action on note) in *Al-laire Works v. Guion*, 10 *Barb.* 57. Disting'd in *Carter v. Hamilton*, 11 *Barb.* 151. Followed in *McDonald v. Christie*, 42 *Barb.* 40; *Gleason v. Moen*, 2 *Duer*, 644.
- Battersou v. Sandford**, 45 *Super. Ct. (J. & S.)* 127. Followed (Affidavits on application for examination before trial) in *Russ v. Campbell*, 1 *Civ. Pro. R.* 41.
- Battle v. Coit**, 19 *Barb.* 68. Aff'd in 26 *N. Y.* 404. See *Bolen v. Crosby*. Decision in 26 *N. Y.* thought, in *Dintruff v. Crittenden*, 1 *Sup'm. Ct. (T. & C.)* 143, to be overruled (Effect of transfer of evidence of right to debt) in *Bolen v. Crosby*, 49 *N. Y.* 187.
- **v. Rochester City Bank**, 5 *Barb.* 414. Aff'd in 3 *N. Y.* 88. Decision in 3 *N. Y.* cited and approved (Recovery back of money paid under contract) with *Ketchum v. Evertson*, 13 *Johns.* 359; *Green v. Green*, 9 *Cow.* 47, in *Wheeler v. Mather*, 56 *Ill.* 241; *s. c.*, 8 *Am. R.* 683, 685. Disting'd (Case of contract to sell land) in *Tice v. Zinsser*, 76 *N. Y.* 549, 553. Decision in 5 *Barb.* collated with *Gillett v. Maynard*, 5 *Johns.* 85, and other cases, in *Boston v. Clifford*, 68 *Ill.* 67; *s. c.*, 18 *Am. E.* 547.
- Batty v. Carswell**, 2 *Johns.* 48; *s. c.*, 3 *N. Y. Com. L. Law. ed.* 295, with brief note. Applied (Authority under special power) in *Wakefield v. Campbell*, 20 *Me.* 393; *s. c.*, 37 *Am. Dec.* 60, 63, with note. Included in *Lawson's Lead. Com. Law Cas. Simplified*, 139; 1 *Hare & W. Am. Lead. Cas.* 5 ed. 653.
- Baulee v. N. Y. & Harlem R. R. Co.**, 12 *Abb. Pr. N. S.* 310; *s. c.*, 5 *Lans.* 436; 62 *Barb.* 623. Aff'd in effect in 48 *How. Pr.* 399; *s. c.*, 59 *N. Y.* 356. Decision in 59 *N. Y.* cited as authority (Liability of railroad company to employee for negligence of a co-employee) in *Ohio & Mississippi R'way Co. v. Collarn*, 73 *Ind.* 261, 273.
- Baum v. Clause**, 5 *Hill*, 196. Compared and doubted (Effect of pardon) in 8 *Am. L. Reg. N. S.* 517.
- **v. Mullen**, 47 *N. Y.* 577. Applied and disting'd with *Rowe v. Smith*, 45 *Id.* 233 (Husband's liability for torts of wife) in *Muser v. Lewis*, 14 *Abb. N. C.* 333. Explained in *Berrien v. Steel*, 62 *How. Pr.* 335, 336, *n.* Approved (Liability of married woman) in *Cashman v. Henry*, 75 *N. Y.* 103.
- Bausinger v. Guenther**, 66 *Barb.* 186. Compare (Certificate of incorporation) *Raisbeck v. Oesterricher*, 4 *Abb. N. C.* 444.
- Baxter v. Arnold**, 9 *How. Pr.* 445. Followed (Notice of motion, when equivalent to notice of retainer generally) in *Dole v. Manley*, 11 *How. Pr.* 138. Disapproved (Variance between summons and complaint) in *City of Fond Du Lac v. Bonesteel*, 22 *Wisc.* 251.
- **v. Bell**, 19 *Hun.* 367. Rev'd in 86 *N. Y.* 195. Decision in 86 *N. Y.* disting'd (Effect of composition agreement) in *Hadley Falls Nat. B'k v. May*, 29 *Hun.* 404.
- **v. Drake**, 22 *Hun.* 565. Aff'd in 85 *N. Y.* 502. Decision in 85 *N. Y.* followed (Arrest in action on foreign judgment) in *Carter v. Hoffman*, 2 *Civ. Pro. R. (Browne)* 328.
- **v. Lansing**, 7 *Paige*, 350. Approved (Negligence of solicitor as ground for setting aside a default) in *Babcock v. Perry*,

- 4 *Wisc.* 40; citing *Millsbaugh v. McBride*, 7 *Paige*, 509; *Tripp v. Vincent*, 8 *Id.* 176.
- *v. Missouri, K. & T. R. R. Co.*, 4 *Hun*, 630; s. c., more fully, in 67 *Barb.* 283. Followed (Attachment—examination of third person) in *Glen Cove Starch Mfg Co. v. Gotthold*, 1 *Civ. Pro. R.* 366, n. Compare *Code Civ. Pro.* § 651.
- *v. Putney*, 37 *How. Pr.* 140. See *Dawson v. Horan*. Overruled (Number of jury) in *Knight v. Campbell*, 62 *Barb.* 16, citing *Dawson v. Horan*, 51 *Id.* 459. See, also, to the contrary, *Crouse v. Walrath*, 41 *How. Pr.* 86.
- *v. Ryers*, 13 *Barb.* 267. Opposed (Implication of covenant for quiet enjoyment in lease) in *Mack v. Patchin*, 29 *How. Pr.* 20.
- *v. Second Ave. R. R. Co.*, 3 *Robt.* 510; *Barker v. Savage*, 1 *Sweeny*, 288. Approved (Rights of foot passengers in streets) in *Belton v. Baxter*, 33 *Super. Ct. (J. & S.)* 182; *Adolph v. Central Park, &c. R. R. Co.*, *Id.* 186. Reversal of *Barker v. Savage*, in 45 *N. Y.* 191, explained in note to *Belton v. Baxter*, as not conflicting with latter case.
- *v. Smack*, 17 *How. Pr.* 183. Disting'd (Suit against guarantor pending foreclosure) in *Schaaf v. O'Brien*, 8 *Daly*, 181.
- *v. Troy & Boston R. R. Co.* See *Dascomb v. Buffalo & State Line R. R. Co.*
- Bay v. Coddington**, 5 *Johns.* *Ch.* 54; s. c., 9 *Am. Dec.* 268. Aff'd in 20 *Johns.* 637. See *Coddington v. Bay*; *Grandin v. Leroy*. See note to report in *Am. Dec.*, in which its doctrine is said (*Bona fide* holder of negotiable paper) to be favored in *Bramhall v. Beckett*, 31 *Me.* 205; *Bailey v. Smith*, 14 *Ohio St.* 396; *Garrard v. Pittsburgh, &c. R. R. Co.*, 29 *Pa. St.* 154; *Bowman v. Van Kuren*, 29 *Wisc.* 209. Re-aff'd in *Lawrence v. Clark*, 36 *N. Y.* 129. Applied to transferee of stock, in *Weaver v. Barden*, 49 *N. Y.* 294. Applied to transferee of goods in *Barnard v. Campbell*, 58 *N. Y.* 77. Approved in *Farrington v. Frankfort Bank*, 31 *Barb.* 183; *Cook v. Helms*, 5 *Wisc.* 110; *Reddick v. Jones*, 6 *Ired. L. (N. C.)* 107; s. c., 44 *Am. Dec.* 68, with note. Cited and discussed in *Bank of Mobile v. Hall*, 6 *Ala.* 639; s. c., 41 *Am. Dec.* 72, with note. Criticised in *Maitland v. Citizen's Nat'l B'k of Baltimore*, 40 *Md.* 540; s. c., 17 *Am. R.* 620, 628, as contrary to weight of authority. Criticised at length, with *Wardell v. Howell*, 9 *Wend.* 170; *Rosa v. Brotherson*, 10 *Id.* 85; *Root v. French*, 13 *Id.* 570; *Payne v. Cutler*, *Id.* 605; *Dickerson v. Tillinghast*, 4 *Paige Ch.* 215, 222; *Fulton Bank v. Phoenix Bank*, 1 *Hall*, 562; *Driggs v. Rockwell*, 11 *Wend.* 509; *Morton v. Rogers*, 14 *Id.* 575, in *Brush v. Scribner*, 11 *Conn.* 388; s. c., 29 *Am. Dec.* 303, 317, 319. Reviewed with *Stalker v. McDonald*, 6 *Hill*, 93, the cases on both sides of this question being contrasted and the contrary rule urged in 5 *Ky. L. Rep.* & *J.* 412, 413. Included in 1 *Ames Cases on B. & N.* 631; *Bigel. on B. & N.* 2 ed. 460. Discussed in *Id.* 497. Also included in *Redf. & B. Lead. Cas. on B. of Ex.* 165. Collated, with other cases, in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 223. Discussed in 3 *Kent Com.* 81; also *Id.* 81, n. b.
- *v. Tallmadge*, 5 *Johns. Ch.* 305–315. Disapproved (Effect of judgment against principal and surety) in *M. & M. Bank v. Bank of Pa.*, 7 *Watts & S. (Pa.)* 335; s. c., 42 *Am. Dec.* 240–244, with note.
- Bayard, Matter of**, 61 *How. Pr.* 294. Disting'd (Extent of power of recorder of Cohoes to punish) in *Matter of Coughlin*, 62 *How. Pr.* 34, 36; *Matter of Trimble*, 62 *How. Pr.* 61, 63. Cited as an interesting decision in 24 *Alb. L. J.* 21.
- Bayard v. Hoffman**, 4 *Johns.* 450. Though said to be overruled by *Storm v. Davenport*, 1 *Sandf. Ch.* 135; *Brownell v. Curtis*, 10 *Paige*, 210, is cited as authority (Action by assignee for creditors to set aside fraudulent transfer) in *Pillsbury v. Kingon*, 33 *N. J. Eq.* (6 *Stew.*) 287; s. c., 36 *Am. R.* 556, the cases of *Mackie v. Cairns*, 5 *Cow.* 547; *Osborne v. Moss*, 7 *Johns.* 161; s. c., 5 *Am. Dec.* 252, being disting'd. Collated, with other cases, in *Bishop on Assign.* § 170. Disapproved (Power of chancery to aid creditor) in *Creswell v. Smith*, 2 *Tenn. Ch.* 416, 421. Compare note to *Donovan v. Finn*, 14 *Am. Dec.* 531, and to *Tolles v. Wood*, 16 *Abb. N. C.* 1.
- *v. Malcom*, 1 *Johns.* 453. Rev'd in 2 *Johns.* 550; s. c., 3 *Am. Dec.* 450, with note wherein it is shown have been confirmed (Pleading fraud or deceit) in *Ross v. Mather*, 51 *N. Y.* 114; *Thomas v. Beebe*, 25 *N. Y.* 249. See *Mumford v. McPherson*.
- *v. Smith*, 17 *Wend.* 88. Explained (Necessity for reference to statute in action for damages given by statute) in *Palmer v. York Bank*, 18 *Me.* 166; s. c., 36 *Am. Dec.* 710.
- Bayland v. City of N. Y.**, 1 *Sandf.* 27. Followed and approved (Liability of municipal corporation for injury caused by violence, &c., of individuals) in *Campbells' Adm'r v. City Council of Montgomery*, 53 *Ala.* 527; s. c., 25 *Am. R.* 656, 659.
- Bayley v. Onondaga Mut. Ins. Co.**, 6 *Hill*, 476. Applied to case of devise to trustees in *Curran v. Sears*, 2 *Redf.* 526, 532.
- Baylis v. Scudder**, 6 *Hun*, 300. Aff'd, it seems, in 67 *N. Y.* 600, but no opinion.
- Bayliss v. Cockroft**, 8 *Weekly Dig.* 153. Aff'd, in 81 *N. Y.* 363.
- Beach v. Allen**, 7 *Hun*, 441. See, to the contrary (Payment) *Orr v. Jackson*, 1 *Ill. App.* 439. See, also, *Abb. Tr. Ev.* 810.
- *v. Bay State Co.*, 27 *Barb.* 248; s. c., 16 *How. Pr.* 1; more fully, 6 *Abb. Pr.* 415. Rev'd in 10 *Id.* 71; s. c., 30 *Barb.* 433; 18 *How. Pr.* 335. See *Vanderwerken v. N. Y. & N. Haven R. R. Co.*
- *v. Beach*, 2 *Hill*, 260. Applied (Interest of husband in action of slander for words

- spoken of his wife) in *Gibson v. Gibson*, 43 *Wisc. 23*; s. c., 28 *Am. R.* 527.
- *v. Bowery Ins. Co.* See *Herkimer v. Rice*.
- *v. Bradley*, 8 *Paige*, 146. Explained (Necessity for joining a lunatic with his committee as a party in a suit affecting his real estate) in *Gorham v. Gorham*, 3 *Barb. Ch.* 24, 39.
- *v. Child*, 13 *Wend.* 343. Aff'd in 22 *Id.* 558.
- *v. Cooke*, 39 *Barb.* 360. Aff'd in 28 *N. Y.* 508. Decision in 28 *N. Y.* disting'd and explained (Power of general term as to rendering judgment on appeal), in *Cuff v. Dorland*, 57 *N. Y.* 560, 565.
- *v. Crain*, 2 *Barb.* 120. Aff'd in 2 *N. Y.* 86; s. c., 49 *Am. Dec.* 369, with note. Decision in 2 *N. Y.* disting'd (Recovery for breach of continuing covenant) in *Schell v. Plumb*, 55 *N. Y.* 592, 598; *Jex v. Jacob*, 19 *Hun*, 111; Reformed Prot. Dutch Church of Westfield *v. Brown*, 54 *Barb.* 191. Disting'd and explained in *Shaffer v. Lee*, 8 *Barb.* 412. Followed in *Turner v. Hadden*, 62 *Barb.* 482. Applied (Covenant to repair) in *Myers v. Burns*, 33 *Barb.* 406. Explained in *Flynn v. Hatton*, 43 *How. Pr.* 350. Included in *Sedgw. Cases on Dama.* 493. Collated with other cases (Private rights of way) in *Moak's Underhill's Torts*, 1 *Am. ed.* 495.
- *v. Endress*, 51 *Barb.* 570. Disting'd (Cancellation of obligation) in *Roe v. Conway*, 74 *N. Y.* 201, 206.
- *v. Fulton Bank*, 7 *Cow.* 485. Followed (Liability of corporation for conversion) in *Fishkill Sav'gs Inst. v. National Bk. of Fishkill*, 80 *N. Y.* 162, 170.
- *v. —*, 3 *Wend.* 573. Discussed (Assignment for benefit of creditors—doubtful and disputed claims), in *Burrill on Assign.* § 428, 4 ed. Approved (Defendants confined to grounds set up in answer) in *Van Dyke v. Davis*, 2 *Mich.* 150.
- *v. Furman*, 9 *Johns.* 229. Disting'd (Power of justice to inquire into legality of assessment under 2 *R. L.* 272, § 9) from powers under 1 *R. S.* 510, § 42, in *Rinehart v. Young*, 2 *Lans.* 354.
- *v. Gray*, 2 *Den.* 84. Examined and qualified (Recovery for use and occupation) in *Hoffman v. Delihanty*, 13 *Abb. Pr.* 388, 392.
- *v. Gregory*, 2 *Abb. Pr.* 203. Aff'd in 3 *Id.* 708; s. c., as *Beach v. Raymond*, 1 *Hill.* 201. Opposed (Time to file exceptions) in *Bortle v. Mellen*, 14 *Abb. Pr.* 228. Approved (Effect of death of party) in *Adams v. Nellis*, 59 *How. Pr.* 389.
- *v. Hollister*, 3 *Hun.* 519; s. c., more fully, 5 *Sup'm. Ct. (T. & C.)* 568. See *Goellet v. Gori*. Disapproved (Effect of married woman's acts on tenancy by entirety) by *DANFORTH, RAPALLO and MILLER, JJ.*, in *Meeker v. Wright*, 76 *N. Y.* 262, 270. Collated, with *Rogers v. Benson*, 5 *Johns.* 427; *Jackson v. Stevens*, 16 *Johns.* 110; *Goellet v. Gori*, 31 *Barb.* 814; *Farmers' Bank v. Gregory*, 49 *Id.* 155; *Miller v. Miller*, 9 *Abb. Pr. N. S.* 448; *Freeman v. Barber*, 3 *Sup'm. Ct. (T. & C.)* 575, and other cases (Effect of conveyance to husband and wife) in 26 *Am. R.* 65, n.
- *v. Mayor, &c. of N. Y.*, 3 *Abb. N. C.* 113. Rev'd in 14 *Hun.* 79; s. c., 4 *Abb. N. C.* 236. Decision in 14 *Hun* approved (Affidavit for examination before trial) in dissenting opinion of *DYKMAN, J.*, in *Sweeney v. Sturgis*, 24 *Hun.* 168. Disting'd with *Chapin v. Thompson*, 16 *Hun.* 53; *Crooke v. Corbin*, 23 *Id.* 176, in *Fogg v. Fisk*, 30 *Hun.* 61.
- *v. Nixon*, 9 *N. Y.* 35. Collated (Estates on condition and conditional limitations), with other cases, in *McAdam Landl. & T.* 2 ed. § 27. Collated (Summary proceedings) with other cases, in *Id.* § 260.
- *v. Ranney*, 2 *Hill.* 309. Followed with *Terwilliger v. Wands*, 17 *N. Y.* 54, and other cases (Slander—damages) in *Gough v. Goldsmith*, 44 *Wis.* 262; s. c., 28 *Am. R.* 579, 581. Explained in 3 *Par. on Contr.* 177, n. r. Collated, with other cases, in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 120.
- *v. Raritan, &c. R. R. Co.*, 37 *N. Y.* 457. See *Beach v. Roberts*. Disting'd (Proof of price paid, as evidence of value) in *Jones v. Morgan*, 24 *Hun.* 373, which was aff'd in 90 *N. Y.* 4, which see. Cited (Insulated telegram not proof of contract) in 1 *Whart. Com. on Ev.* § 617. Cited (Parol proof of written proposal, accepted by parol) in 2 *Id.* § 1016.
- *v. Raymond*. See *Beach v. Gregory*. Explained (Amendment of case) in *O'Gorman v. Kamak*, 5 *Daly*, 517, 519.
- *v. Reynolds*, 64 *Barb.* 506. Aff'd in 53 *N. Y.* 1. Decision in 53 *N. Y.* followed (Revival of action) in *Soher v. Fargo*, 47 *How. Pr.* 288. Disting'd in *Greene v. Martine*, 21 *Hun.* 136, 138. Followed in *Stewart v. James*, 38 *Super. Ct. (J. & S.)* 366. Disting'd in *Evans v. Cleveland*, 72 *N. Y.* 486, 490. Explained in *Coit v. Campbell*, 82 *N. Y.* 509, 513. Compare *Code Civ. Pro.* §§ 544, 757.
- *v. Smith*, 28 *Barb.* 254. Aff'd in 30 *N. Y.* 116. See *Jenkins v. Union Turnpike Co.* Explained and applied (Payment of stock subscription) in *Excelsior Grain Binding Co. v. Stayner*, 25 *Hun.* 91, 94, 96; s. c., 61 *How. Pr.* 456, 459, 462. Disting'd in *Tasker v. Wallace*, 6 *Daly*, 364, 367. Collated with other cases (Calls for subscription) in 1 *Redf. Am. Railw. Cases*, 198.
- *v. Southworth*, 6 *Barb.* 173. Followed (Power of court to amend defective undertaking) in *Bellinger v. Gardiner*, 12 *How. Pr.* 381.
- *v. Wise*, 1 *Hill.* 612. Not followed (Declarations of former owner of chose in action) in *Williams v. Judy*, 3 *Gilm. (Ill.)* 282; s. c., 44 *Am. Dec.* 699, 701.
- Beacham v. Eckford*. 2 *Sandf. Ch.* 116. See *Johnson v. Hartshorne*. Followed and

- approved (Allowance of interest in taking partnership accounts) in *Johnson v. Harts-horne*, 52 *N. Y.* 173; *Buckingham v. Ludlum*, 29 *N. J. Eq.* 350; *Gyger's Appeal*, 62 *Pa.* 73; s. c., 1 *Am. E.* 382, the case of *Stoughton v. Lynch*, 2 *Johns. Ch.* 209, being criticised as differing from rule in *Dexter v. Arnold*, 3 *Mason*, 289. Commented upon in 1 *Collyer on Partn.* § 351, *Wood's Am. ed.*
- Beadle v. Chenango Mutual Ins. Co.** See *Baker v. Union Mutual Life Ins. Co.*
- Beal v. Finch**, 11 *N. Y.* 128. Explained (Defendant as witness for co-defendant) in *Blodgett v. Morris*, 14 *N. Y.* 482. Commented on in *Montfort v. Hughes*, 3 *E. D. Smith*, 595. Criticised but followed in *Lefever v. Brigham*, 10 *How. Pr.* 385, where, however, the practice suggested in *Beal v. Finch*, as to receiving testimony of parties *de bene esse* in doubtful cases, is condemned. Explained, as ruling only upon the admissibility of the witness, in *Dean v. Thornton*, 13 *N. Y.* 266.
- Beale v. Hayes**, 5 *Sandf.* 640. Discussed (Liquidated damages) in 3 *Parsons on Contr.* 161, *n. h.*
- **v. Parish**, 24 *Barb.* 243. Rev'd in 20 *N. Y.* 407. Decision in 20 *N. Y.* included (Service of notice of protest) in 2 *Ames Cases on B. & N.* 411.
- Beales v. Finch**, 9 *How. Pr.* 385; s. c., more fully, 11 *N. Y.* 128.
- Beals v. Allen**, 18 *Johns.* 363; s. c., 9 *Am. Dec.* 221, with note. See *Haggerty v. Wilber*. Applied (Authority of special agent) in *Mangum v. Ball*, 43 *Miss.* 288; s. c., 5 *Am. E.* 488.
- **v. Benjamin**, 29 *How. Pr.* 101. See, to the contrary (Time of application for extra allowance) *Clarke v. City of Rochester*, 29 *How. Pr.* 97.
- **v. Congregation B'nai Jeshurun**, 1 *E. D. Smith*, 654. Superseded with *Conklin v. Wood*, 3 *Id.* 662 (Correcting errors in notice of mechanic's lien) *Hubbell v. Schreyer*, 15 *Abb. Pr. N. S.* 304, being followed, and *McElwee v. Sanford*, 53 *How. Pr.* 89, not followed in *Leigues v. Schwarzer*, 10 *Daly*, 547. Applied (Defective notice of lien) in *Donnelly v. Libby*, 1 *Sweeney*, 259, 275.
- **v. Home Ins. Co.**, 36 *Barb.* 614. Aff'd in 36 *N. Y.* 522.
- **v. Guernsey**, 8 *Johns.* 446; s. c., 5 *Am. Dec.* 348, with note, containing citations. See *Barrow v. Paxton*; *Fullerton v. Viall*. Reviewed and applied (Retention of possession by vendor) with *Sturtevant v. Ballard*, 9 *Johns.* 337; s. c., 6 *Am. Dec.* 281, with note; *Dickenson v. Cook*, 17 *Johns.* 334; *Ludlow v. Hurd*, 19 *Id.* 218; *Bissell v. Hopkins*, 3 *Cow.* 166; s. c., 15 *Am. Dec.* 259, in *Callen v. Thompson*, 3 *Ferg. (Tenn.)* 475; s. c., 24 *Am. Dec.* 587, with note. Approved (Purchase by one having notice of judgment) in *Wickham v. Miller*, 12 *Johns.* 324.
- **v. Peck**, 12 *Barb.* 245. Reported below, in 9 *N. Y. Leg. Obs.* 226. Approved and followed (Sufficient notice of dishonor) in *Youngs v. Lee*, 18 *Barb.* 187.
- **v. Stewart**, 6 *Lans.* 408. See *Marshall v. Peters*. See also (Rights in pond) *Myer v. Whitaker*, 5 *Abb. N. C.* 172.
- Beamish v. Hoyt**, 2 *Robt.* 307. Collated (Estate by curtesy—how affected by statute) with other cases, in *Sharsv. & B. Cases on Real Prop.* 289. See *Matter of Winno*, 1 *Lans.* 508, 522, which was rev'd in 2 *Lans.* 21.
- Beams, Matter of**, 17 *How. Pr.* 459. See in accord therewith (Effect of ordinance of common council passed by one board in one year and concurred in by another board in a succeeding year) *Matter of Beekman*, 19 *How. Pr.* 518. Followed (Application of statute to assessments made prior to its passage) in *Matter of Treacy*, 59 *Barb.* 525.
- Bean v. Edge**, 46 *Super. Ct. (J. & S.)* 455. Aff'd in 84 *N. Y.* 510.
- **v. Pettingill**, 2 *Abb. Pr. N. S.* 58. Aff'd in 7 *Robt.* 7.
- **v. Renway**, 17 *How. Pr.* 90; s. c., as *Bean v. Wells*, 28 *Barb.* 466.
- Bear v. Snyder**, 11 *Wend.* 592. See *Reynolds v. Reynolds*. Compare to the contrary (*Dower*) *Dunham v. Osborn*, 1 *Paige*, 634; *Reynolds v. Reynolds*, 5 *Id.* 161; *Safford v. Safford*, 7 *Id.* 259; *Matter of Cregier*, 1 *Barb. Ch.* 598. Commented upon (*Dower upon dower*) in *Sharsv. & B. Cases on Real Prop.* 318. Commented upon in *Washb. on Real Prop.* 4 ed. 259, *n.* Referred to in *Tyler Inf. & Cov.* 2 ed. § 284, as overruled by *Matter of Cregier*.
- Beard v. City of Brooklyn**, 31 *Barb.* 142. Disting'd (Negligent omission to collect assessment) in *Richardson v. City of Brooklyn*, 34 *Barb.* 569, 577.
- **v. Sinnott**, 35 *Super. Ct. (J. & S.)* 51. Another decision in 38 *Id.* 536.
- **v. Yates**, 1 *Sup'm. Ct. (T. & C.)* Add. 21. Further decision in 2 *Hun*, 466; s. c., 5 *Sup'm. Ct. (T. & C.)* 76.
- Beards v. Wheeler**, 11 *Hun*, 539. Appeal dismissed in 76 *N. Y.* 213. Decision in 76 *N. Y.* explained as not authority against general term's reviewing discretion in *Rogers v. Ivers*, 23 *Hun*, 424, 428.
- Beardslee v. Beardslee**, 5 *Barb.* 324. Discussed (*Dower*—eviction of husband during coverture by title paramount, or entry for breach of condition) in 1 *Washb. on Real P.* 4 ed. 257.
- **v. Richardson**, 11 *Wend.* 25; s. c., 11 *N. Y. Com. L. Law. ed.* 1009, with brief note; s. c., 25 *Am. Dec.* 596, with note. Followed with *Lamb v. Camden & Amboy R. R. Co.*, 46 *N. Y.* 271 (Proof of bailee's negligence) in *Wilson v. Southern Pacific R. R. Co.*, 62 *Cal.* 164. Applied in *Beckman v. Shouse*, 5 *Rauke (Pa.)* 179; s. c., 28 *Am. Dec.* 653, 656, with note. Discussed in *Ang. on Carr.* § 38, 5 ed. Cited, with other authorities, in 1 *Taylor on Ev.* 529, as showing extreme application of doctrine of *res gesta*.



- Beardsley v. Dickerson**, 4 *How. Pr.* 81. See *Barnard v. Wheeler*. Explained (Time of motion to change place of trial) with *Myers v. Feeter*, *Id.* 240; *Schenck v. McKie*, *Id.* 246, in *Mixer v. Kuhn*, *Id.* 409; s. c., 3 *Code R.* 106. See *Code Civ. Pro.* 1881, § 986, n.
- **v. Maynard**, 4 *Wend.* 336. Aff'd in 7 *Id.* 560.
- **v. Ontario Bank**, 31 *Barb.* 619. Followed (Rolling-stock personal property) in *Randall v. Elwell*, 52 *N. Y.* 521, 525.
- **v. Root**, 11 *Johns.* 464; s. c., 6 *Am. Dec.* 386, with note, where it is said to have been extensively recognized, as an authority. Cited with *Williams v. Walker*, 2 *Sandf. Ch.* 535; *Clark v. Richards*, 3 *E. D. Smith*, 89 (Attorney when not authorized to bind his client) in *Whart. Com. on Ag.* §§ 581, 582.
- **v. Warner**, 6 *Wend.* 610. Aff'd in 8 *Id.* 194. See *Trimble v. Thorne*. Decision in 164 *Wend.* followed (Discharge of surety by failure to sue principal) in *Bullit v. Thatcher*, 5 *How. (Miss.)* 689; s. c., 37 *Am. Dec.* 175, 177, as to application of rule in *Pain v. Packard*, 13 *Johns.* 144; s. c., 7 *Am. Dec.* 369, with note, and *King v. Baldwin*, 17 *Id.* 384; s. c., 8 *Am. Dec.* 415, with note.
- Beardsley Seythe Co. v. Foster**, 36 *N. Y.* 561. Followed (Parties to action to reach property fraudulently disposed of) in *Miller v. Hall*, 40 *Super. Ct. (J. & S.)* 262, 268. Re-aff'd (Creditor, when entitled to equitable remedy to reach assets) in *Adee v. Bigler*, 81 *N. Y.* 351.
- Bearss v. Columbian Ins. Co.**, 48 *Barb.* 445. Explained and disting'd (Warranties in time policies of insurance) in *Snow v. Columbian Ins. Co.*, *Id.* 469.
- **v. Gould**, 8 *Daly*, 384. Aff'd in 77 *N. Y.* 455. Mem. of another proceeding in 77 *Id.* 595. Further proceeding in 81 *N. Y.* 228 reported as *Fisher v. Gould*.
- Bearss v. Copley**. See *Tinney v. N. J. Steamboat Co.*
- Beattie, Matter of**, *N. Y. Daily Reg.*, Jan. 12, 1880. See *Merrill v. Townsend*. Said to be imperfectly reported, and disting'd (Enforcing executor's contract) in *Bulkley v. Staats*, 4 *Redf.* 524, 526.
- Beattie v. Niagara Sav'gs B'k**, 41 *How. Pr.* 137. Overruled (Vacating of order for hearing case and exceptions) in *Post v. Hathorn*, 54 *N. Y.* 147, 150.
- Beatty v. Marine Ins. Co.**, 2 *Johns.* 109; s. c., 3 *Am. Dec.* 401. Explained (Private corporation—making contract) in *Ang. & A. on Corp.* § 279, 11 ed.
- **v. Myers**, 6 *Sup'm. Ct. (T. & C.)* 456; s. c., 4 *Hun.* 266. Followed (Appeal in cases originating in county court) in *Tallman v. American Exp. Co.*, 6 *Hun.* 377.
- **v. Perkins**, 6 *Wend.* 382. Disting'd (Trespass for the wrongful use of legal process) in *Breck v. Blanchard*, 20 *N. H.* 323; s. c., 51 *Am. Dec.* 222, 224, with note. Dissented from in *Chipman v. Bates*, 15 *Vt.* 60. Applied in *Day v. Bach*, 46 *Super. Ct. (J. & S.)* 460, 465.
- Beavers v. Lane**, 6 *Duer*, 232. See *Steel-yards v. Singer*. Authorities collected (Validity of conditional sale as to third persons) in *Lewis v. McCabe*, 49 *Conn.* 141; s. c., 21 *Am. Law Reg. N. S.* 217, with extended note.
- Bebee v. B'k of N. Y.**, 1 *Johns.* 529; s. c., 3 *Am. Dec.* 353, with note, wherein it is shown to have been fully accepted by the N. Y. courts as an authority respecting the rights of an assignee, and is said to have been particularly noticed by chancery courts on the subject of relief under a general prayer. Opinions of *SPENCER* and *TOMPKINS, JJ.*, approved (Rights of assignee of chose in action) in *Trustees of Union College v. Wheeler*, 61 *N. Y.* 88, 105. Opinion of *KENT, Ch.*, as to distinction between latent equities and equities of the obligor referred to as overruled,—in *Thomas on M.* 106, citing *Bush v. Lathrop*, 22 *N. Y.* 535.
- **v. People**. See *People v. Rathbun*.
- Bebinger v. Sweet**, 6 *Hun.* 478; fully reported 1 *Abb. N. C.* 263. Not an action for malicious prosecution, but *sui generis*, the abuse of process being alleged as part of a concerted scheme of fraud. Disting'd (What amounts to abuse of process) in *Buffalo Lubricating Oil Co. v. Everest*, 30 *Hun.* 586.
- Becar v. Flues**, 64 *N. Y.* 518. Followed (Validity of lease) in *Whiting v. Ohlert*, 52 *Mich.* 462.
- Beech v. Ruggles**, 6 *Abb. N. C.* 69. Followed (Actions to foreclose mortgages not to be consolidated) in *Kipp v. Delamater*, 58 *How. Pr.* 183, 184.
- Beck v. Allison**, 4 *Daly*, 421. Rev'd in 56 *N. Y.* 366; s. c., 15 *Am. R.* 430. Decision in 56 *N. Y.* applied, with *Murtha, v. Curley*, 90 *N. Y.* 377 (Demand for relief as criterion of cause of action) in *Marie v. Garrison*, 13 *Abb. N. C.* 210, 318.
- **v. Burdett**, 1 *Paige*, 305. Explained (Reservations in favor of debtor making assignment for creditors) in *Burrill on Assign.* § 207, n. 3, 4 ed. Approved (Lien created by execution) in *Stewart v. Beale*, 7 *Hun.* 305.
- **v. Carter**, 6 *Hun.* 604. Aff'd in 68 *N. Y.* 283; s. c., 23 *Am. R.* 175, with note. Decision in 68 *N. Y.* cited, with other authorities (Excavation of land adjoining public highway) in *Hayes v. Michigan Cent. R. R. Co.*, 111 *U. S.* 236, as being consistent with the rule said to be generally adopted in this country as well as England. Applied in *Graves v. Thomas*, 95 *Ind.* 361; s. c., 48 *Am. R.* 727.
- **v. East River Ferry Co.**, 6 *Robt.* 82. See *Chapman v. New Haven R. R. Co.* Disting'd (Contributory negligence of third person) in *Robinson v. N. Y. Central, &c. R. R. Co.*, 66 *N. Y.* 13; *Platz v. City of Cohoes*, 24 *Hun.* 101, 103. Followed in *Bronk v. N. Y. & New Haven R. R. Co.*, 5

- Daly*, 454, 457. Compared, with other cases, in 13 *Cent. L. J.* 387.
- *v. McGillis*, 9 *Barb.* 35. Quoted and collated (Effect of agreement to sell lands devised in will), with other cases, in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 537. Applied (Ademption of bequests for payment of money) in *Abernethy v. Catlin*, 2 *Dem.* 341.
- *v. Stephani*. See *Hornfager v. Hornfager*.
- Becker, Ex parte**, 4 *Hill*, 613. Relied on (Statutory proceedings, when not invalidated by slight irregularities) in *Colman v. Shattuck*, 2 *Hun*, 497.
- Becker v. Boon**, 61 *N. Y.* 317. Approved (Tender before suit—when available) in 1 *Am. Dec.* 24, n., as correctly stating the rule. Disting'd (Award—when void for uncertainty) in *Cutter v. Cutter*, 48 *Super. Ct. (J. & S.)* 470.
- *v. Hager*, 8 *How. Pr.* 68. See (Service on attorney) *Code Civ. Pro.* 1881, § 799, n.
- *v. Hallgarten*, 86 *N. Y.* 167. Explained (Stoppage in transitu) in *Benj. on Sales*, § 847, n. n. (Bennett's 4 Am. ed.). Also in 2 *Id.* § 1286, n. 27 (Corbin's 4 Am. ed.).
- *v. Howard*, 47 *How. Pr.* 423. Rev'd in 4 *Hun*, 359; s. c., 6 *Sup'm. Ct. (T. & C.)* 603, that aff'd in 66 *N. Y.* 5. See (Notice of his pendens—effect of) *Code Civ. Pro.* 1881, § 1671, n.
- *v. People*, 18 *N. Y.* 487. Commented on (Writ of error and appeals—effect of L. 1859, c. 174, as to mandamus) in *People v. Church*, 20 *Id.* 529, 530.
- *v. Torrance*, 31 *N. Y.* 631–643. Discussed (Creditor enforcing debtor's agreement with third persons) in *Wait on Fraud. Conn.* § 43, n. 2.
- Beckett v. Lawrence**, 7 *Abb. Pr. N. S.* 403. Compare (Partial defense) *Code Civ. Pro.* § 508.
- Beckwith, Matter of**, 3 *Hun*, 443; s. c., 6 *Sup'm. Ct. (T. & C.)* 13. See subsequent proceedings in *Carter v. Beckwith*, 82 *N. Y.* 83; also in 87 *N. Y.* 503. Appeal dismissed in 90 *N. Y.* 667. Compare (Costs) *Code Civ. Pro.* § 2336.
- Beckwith v. N. Y. Central R. R. Co.**, 64 *Barb.* 299. Said in 9 *Alb. L. J.* 45, to have been rev'd in Court of Appeals, Nov. 1872.
- *v. Smith*, 4 *Lans.* 182. See (Ne exeat) *Code Civ. Pro.* 1881, § 548, n.
- *v. Union Bank, & Sandf.* 604. Aff'd in 9 *N. Y.* 211. See *Coster v. Griswold*. Decision in 9 *N. Y.* approved (Set-off against assignee of insolvent) in *Seymour v. Dunham*, 24 *Hun*, 93. Collated with other cases in *Bishop on Assign.* § 318.
- *v. Whalen*, 5 *Lans.* 376. Rev'd in 65 *N. Y.* 322. Further decision in 9 *Hun*, 408, which was aff'd in 70 *N. Y.* 430. Decision in 5 *Lans.* followed (Obligation upon two towns separated by creek, to build and maintain a bridge thereover) in *Bryan v. Landon*, 3 *Hun*, 502. Decision in 65 *N. Y.* disting'd in decision in 70 *N. Y.*
- Beddoe v. Wadsworth**, 21 *Wend.* 120. Followed (Action on covenant of warranty) in *Moore v. Merrill*, 17 *N. H.* 75; s. c., 43 *Am. Dec.* 593–596, with note. Cited with *Fowler v. Poling*, 2 *Barb.* 306; 6 *Barb.* 166, and other cases, as authorities in *Wead v. Larkin*, 54 *Ill.* 489; s. c., 5 *Am. R.* 149, 153. Limited and disting'd in *Shattuck v. Lamb*, 65 *N. Y.* 505. Discussed and authorities collated (Covenants running with the land) in 2 *Am. L. Reg. N. S.* 269.
- Bedell v. Hoffman**, 2 *Paige*, 200. Cited with other authorities (Principle of bills of interpleader) in *McDonald v. Allen*, 37 *Wis.* 103; s. c., 19 *Am. R.* 754.
- *v. Long Island R. R. Co.*, 44 *N. Y.* 367; s. c., 4 *Am. R.* 688. Collated (Negligent emission of sparks from locomotive engine with other cases, in note to *Flynn v. San Fran. & San Jose R. R. Co.*, 40 *Cal.* 14; s. c., 6 *Am. R.* 597. Collated (Opinions of experts as evidence) with *Schmidt v. Herford*, 5 *Robt.* 145; *Westlake v. St. Lawrence Mutual Ins. Co.*, 14 *Barb.* 206; *Todd v. Warner*, 48 *How. Pr.* 234, and many other cases, in note to *Wood v. Barker*, 22 *Am. L. Reg.* 323.
- *v. Shaw*, 59 *N. Y.* 46. Quoted (Adverse possession) in *Sedgw. & W. on Tr. of Tit. to Land*, § 749, n. 2; *Id.* §§ 751, 755. Compare (Allowance for improvements) *Code Civ. Pro.* § 1531.
- *v. Sturta*, 1 *Boss.* 634; *Cousland v. Davis*, 4 *Id.* 620. Dissented from (Discharge from arrest) by *BARBOUR, J.*, in *Swift v. Wylie*, 5 *Robt.* 680, 692.
- Bedford v. Terhune**, 1 *Daly*, 471. Aff'd in 30 *N. Y.* 453; s. c., with points of counsel, in 27 *How. Pr.* 422. Decision in 30 *N. Y.* explained (Sublease and assignment) in *Collins v. Hasbrouck*, 56 *N. Y.* 163. Re-aff'd and approved in *Woodhull v. Rosenthal*, 61 *N. Y.* 391. Followed in *Constantine v. Wake*, 1 *Sweeny*, 251. Authorities reviewed in 16 *Am. L. Rev.* 30. Quoted and explained in 1 *Washb. on Real P.* 513, 4 ed. Followed (Amendment at the trial) in *Knapp v. Roche*, 37 *Super. Ct. (J. & S.)* 395, 406.
- Beebe, Matter of**, 20 *Hun*, 462. Disting'd (Proceedings to discover property) in *Matter of Curry*, 25 *Hun*, 321. Followed in *Matter of Rosenthal*, 59 *How. Pr.* 327. See *Code Civ. Pro.* 1881, § 2706, n.
- Beebe v. Ayers**, 28 *Barb.* 278. See *Hamilton v. N. Y. Central R. R. Co.* Approved (Rights of passenger who has stopped over) in *Dietrich v. Penn. R. R. Co.*, 71 *Penn. St.* 432; s. c., 10 *Am. R.* 711, 718, with note.
- *v. Bank of N. Y.*, 1 *Johns.* 529. See *Stafford v. Van Rensselaer*. Overruled, in part, with *Murray v. Lylburn*, 2 *Johns. Ch.* 441; *Livingston v. Dean*, *Id.* 479; *James v. Morey*, 2 *Cov.* 246; (Equity of assignee) in *Bush v. Lathrop*, 22 *N. Y.* 535, 539, 541. Explained and followed in *Booth v. Farmers' & Mechanics' National Bank*, 4 *Lans.* 301, 308.
- *v. Bull*, 12 *Wend.* 504; s. c., 27 *Am. Dec.* 150, with note, containing citations.

- **v. Dowd**, 22 *Barb.* 255. Followed (What matter may be set up in answer) in *Reimer v. Doerge*, 61 *How.* *Pr.* 143.
- **v. Estabrook**, 11 *Hun.* 523. Aff'd in 79 *N. Y.* 246.
- **v. Hutton**, 47 *Barb.* 187. See *New Haven & Northampton Co. v. Quintard*. Disapproved (Admissibility of unstamped instrument in evidence) in *Schermerhorn v. Burgess*, 38 *How.* *Pr.* 123. Disapproved [citing *Vorbeck v. Roe*, 50 *Barb.* 302], in *New Haven & Northampton Co. v. Quintard*, 6 *Abb. Pr. N. S.* 128; s. c. 37 *How.* *Pr.* 29. Commented on (Effect of act of Mar. 24, 1867) in *Miller v. Larmon*, 38 *How.* *Pr.* 417. See, however, *People ex rel. Barbour v. Gates*, 43 *N. Y.* 40. Followed in *Dailey v. Coker*, 33 *Tex.* 815; s. c., 7 *Am. R.* 279; *Bumpass v. Taggart*, 26 *Ark.* 398; s. c., 7 *Am. R.* 623. Relied on with *New Haven & Northampton Co. v. Quintard*, 37 *How.* *Pr.* 23; *Vorbeck v. Roe*, 50 *Barb.* 302; *Howe v. Carpenter*, 53 *Id.* 382, and other cases, in *Rheinstrom v. Cone*, 26 *Wis.* 163; s. c., 7 *Am. R.* 48.
- **v. Johnson**, 19 *Wend.* 500. See *Harmony v. Bingham*; *Oakley v. Morton*. Applied (Non-performance of express condition in contract) in *Wheeler v. Conn. Mut. Life Ins.*, 82 *N. Y.* 543, 551.
- **v. Kenyon**, 5 *Sup'm. Ct. (T. & C.)* 271. See (Order for payment in supplementary proceedings) *Code Civ. Pro.* 1881, § 2450, n.
- **v. Mead**, 33 *N. Y.* 587. Cited in *Whart. Com. on Ag.* § 766, as to the nature of a factor's lien.
- **v. Pyle**, 1 *Abb. N. C.* 412. Aff'd in 71 *N. Y.* 20. Decision in 1 *Abb. N. C.* not followed (Effect of composition in bankruptcy) in *Hewes v. Rand*, 129 *Mass.* 523.
- **v. Robert**, 12 *Wend.* 413; s. c., 27 *Am. Dec.* 132, with note, containing citations. Reviewed and reconciled, with other *N. Y.* cases (Implied warranty on sale by sample) in 32 *Am. Dec.* 439, n. See 27 *Am. Dec.* 166, n.
- Beecher v. Allen**, 5 *Barb.* 169. Overruled in *Kundolf v. Thalheimer*, 12 *N. Y.* 593, as to "cases," as used in *N. Y. Const.* 1846, art. 6, § 14, subd. 4, being synonymous with "actions."
- **v. Conradt**, 13 *N. Y.* 108. Explained (Contract—performance) in 2 *Chitty on Contr.* 1086, n. o, 11 *Am. ed.* Reported in 2 *Langdell's Cas. on Contr.* 2 ed. 767.
- **v. Crouse**, 19 *Wend.* 306. See *McDowl v. Charles*. Followed (Guardian in socage) in *Sylvester v. Ralston*, 31 *Barb.* 286, 289. See *McCray v. McCray*, 30 *Id.* 633. Explained d (Action for intermeddling with rents and profits) in *Sedgw. & W. on Tr. of Tit. to Land*, § 196.
- Beecker v. Beecker**, 7 *Johns.* 99; s. c., 4 *N. Y. Com. L. Law. ed.* 262, with brief note on devisees' liability for legacies. Also reported in 5 *Am. Dec.* 246, with note, containing citations. See *Livingston v. Livingston*. Explained with *Van Orden v. Van Orden*, 10 *Johns.* 30; *Tole v. Hardy*, 6 *Cow.* 333, as not preventing an action at law, —in *Gridley v. Gridley*, 24 *N. Y.* 130, 134.
- **v. Vrooman**, 13 *Johns.* 302; *Grant v. Button*, 14 *Id.* 377. Reviewed, with other cases (Showing partial failure of consideration in mitigation of damages) in *Peden v. Moore*, 1 *Stew. & P. (Ala.)* 71; s. c., 21 *Am. Dec.* 649. See also 13 *Am. Dec.* 378, n.
- Beekman's Petition**, 19 *Abb. Pr.* 245. Aff'd, but ground of decision in part overruled, in 1 *Abb. Pr. N. S.* 449.
- Beekman Matter of**. See *Beams Matter of Beekman v. Bemus*, 7 *Cow.* 30. Rev'd in 3 *Wend.* 667.
- **v. Bond**, 19 *Wend.* 444. Overruled (Effect of retention of possession by vendor, &c.) in *Smith v. Acker*, 23 *Id.* 653.
- **v. Bonsor**, 23 *N. Y.* 298, aff'g *Beekman v. People*, 27 *Barb.* 260. See argument of counsel in an appendix to 23 *N. Y.* See *Downing v. Marshall*; *Shotwell v. Mott*; *Williams v. Williams*. Decision in 23 *N. Y.* explained (Charitable uses) in *Levy v. Levy*, 33 *N. Y.* 120. Followed in *Bascom v. Albertson*, 34 *N. Y.* 590; *Clemens v. Clemens*, 37 *N. Y.* 76; *Heiss v. Murphy*, 40 *Wisc.* 276; *Pringle v. Dorsey*, 3 *S. C.* 502. Cited from in *Zeisweiss v. James*, 63 *Penn. St.* 465; s. c., 3 *Am. R.* 558. Quoted in 1 *Jarm. on Wills*, Rand. and T. ed. 409, n. Commented upon in 3 *Washb. on E. P.* 4 ed. 519, n. Collated with other cases in *Gerard Titles to Real Est.* 2 ed. 296; *Id.* 303. Explained (Trustee—whether able to renounce) in 1 *Perry on Trusts*, 3 ed. § 259, n. 1. Limited (Power, when invalid as suspending power of alienation) in *Blanchard v. Blanchard*, 4 *Hun.* 287, 291. Applied in *Garvey v. McDevitt*, 11 *Hun.* 461. Applied (Trust to receive rents and profits) in *Verdin v. Slocum*, 9 *Hun.* 152. Applied (Bequest of residue, of residue) in *Kerr v. Dougherty*, 79 *N. Y.* 346.
- **v. Frost**, 18 *Johns.* 544; s. c., 9 *Am. Dec.* 246, with note, wherein it is referred to (Recording deeds) as similar to *Torrell v. Andrew County*, 44 *Mo.* 309, and contrary to *Mims v. Mims*, 35 *Ala.* 23. Compare *Heister's Lessee v. Fortner*, 2 *Binn. (Pa.)* 40; s. c., 4 *Am. Dec.* 417, with note. See *Gelston v. Hoyt*. Disting'd in *Dishop v. Schneider*, 46 *Mo.* 472; s. c., 2 *Am. R.* 533, 536; *Mutual Life Ins. Co. v. Dake*, 1 *Abb. N. C.* 381, 391. Reviewed in *Sawyer v. Adams*, 8 *Verm.* 172; s. c., 30 *Am. Dec.* 459.
- **v. Gibbs**, 8 *Paige*, 511. Followed (Decree of sale in foreclosure) in *Barnes v. Stoughton*, 10 *Hun.* 14, 16.
- **v. Hale**, 17 *Johns.* 134. See *Moakelcy v. Riggs*; *Stafford v. Low*. Collated with other cases (Consideration for guaranty), in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 102. Collated with other cases (Conditional guaranty) in *Id.* 103.
- **v. Kirk**, 15 *How. Pr.* 228. See *Moody*

*v. Townsend*. Followed (Statement of indebtedness in confession of judgment) in *Claffin v. Sanger*, 31 *Barb.* 36.

— *v. Lansing*, 3 *Wend.* 446. Reviewed and approved (Sufficiency of levy) in *Quackenbush v. Henry*, 42 *Mich.* 79; *Camp v. Chamberlain*, 5 *Den.* 198, being also relied on. Disting'd in *Rodgers v. Bonner*, 55 *Barb.* 9, 24. Explained (Notice of rent due, under 1 *R. S.* 746, § 12) in *Bussing v. Bushnell*, 6 *Hill*, 382.

— *v. People*, 27 *Barb.* 260. Aff'd as *Beekman v. Bonsor*, in 23 *N. Y.* 208. See *Ayres v. Meth. Episc. Church*. Decision in 27 *Barb.* sustained (Restrictions upon gifts by will to benevolent, &c. societies) and *Lawrence v. Elliott*, 3 *Redf.* 235, overruled, in *Stephenson v. Short*, 92 *N. Y.* 433.

— *v. Saratoga & Schenectady R. R. Co.*, 3 *Pai.* 45; s. c., 22 *Am. Dec.* 679, with extended note, wherein it is said to be regarded as a leading authority. See *Gardner v. Trustees of Newburgh*; *Livingston v. Mayor, &c. of N. Y.* Applied (Eminent domain) in *Clarke v. City of Rochester*, 5 *Abb. Pr.* 124. Cited as recognized in § 18 of general railroad act, in *Ellicottville, &c. Plank Road Co. v. Buffalo, &c. R. R. Co.*, 20 *Barb.* 650. Followed in *Bloodgood v. Mohawk & H. R. R. Co.*, 14 *Wend.* 58; 18 *Id.* 13; *Hartwell v. Armstrong*, 19 *Barb.* 169. Followed with *Bloodgood v. Mohawk & Hudson R. R. Co.*, 14 *Wend.* 51; in *Whiteman's Exec'x v. Wilmington & Susquehanna R. R. Co.*, 2 *Harr. (Del.)* 514; s. c., 33 *Am. Dec.* 411, 418, with note. Followed with *Varick v. Smith*, 5 *Paige*, 159; *Taylor v. Porter*, 4 *Hill*, 140; *Matter of Albany Street*, 11 *Wend.* 149; in *Witham v. Osburn*, 4 *Or.* 318; s. c., 18 *Am. R.* 287. Referred to in *Stewart v. Supervisors of Polk County*, 30 *Iowa*, 9; s. c., 1 *Am. R.* 238, 246, 248, 250, 251, 252, as the leading American case on the subject. Cited and criticised in *Whiting v. Sheboygan & Fond du Lac R. R. Co.*, 25 *Wis.* 167; s. c., 3 *Am. R.* 30, 38. Approved in *West River Bridge Case*, 6 *How. (U. S.)* 507. Quoted in *Cooley on Const. Limits*, 5 ed. 649, n. 1. Applied (What constitutes franchise, in *Davis v. Mayor, &c. of N. Y.*, 14 *N. Y.* 523; *Delaware & Hudson C. Co. v. Lawrence*, 9 *Hun.* 193. Disting'd (Evidence of public use) in *Matter of Deansville Cemetery Assoc.*, 66 *N. Y.* 572. Relied on (Extent of legislative control over railroads) in *Railroad Comm'r's v. Portland & Oxford Central R. R. Co.*, 63 *Me.* 269; s. c., 18 *Am. R.* 208, 213. Followed as to compensation, in *Livingston v. Mayor, &c. of N. Y.*, 8 *Wend.* 101. Followed and approved in *Blake v. Winona & St. Peter R. R. Co.*, 19 *Minn.* 418; s. c., 18 *Am. R.* 345, 350. Quoted (Action for refusal by carrier to transport individual passenger) in *Ang. on Carr.* § 525, n. 2, 5 ed.

— *v. Satterlee*, 5 *Cow.* 519. Commented on (Statute of limitations—judicial process)

in *Angell on Limits*, § 312, 6 ed. Questioned, in *Jackson v. Brooks*, 14 *Wend.* 649.

**Beekman Street, Matter of**, 20 *Johns.* 269. See *Matter of Albany Street*. Approved with *Stafford v. Mayor, &c. of Albany*, 7 *Id.* 541; *Matter of Third Street*, 6 *Cow.* 571; *Matter of Canal Street*, 11 *Wend.* 154; *Matter of Mt. Morris Square*, 2 *Hill*, 14, in *Striker v. Kelly*, 2 *Den.* 323, as to court acting as commissioners. Said, in *People v. Common Council of Syracuse*, 20 *How. Pr.* 491, 494, not to have been overruled, as to the power to discontinue, by later cases. Disting'd in *Matter of Washington Park*, 56 *N. Y.* 144, 155.

—, 4 *Bradf.* 503. Collated (Rights of burial) with other cases, in 21 *Am. L. Reg.* 512, n.; Commented on (Legal control of dead body) as holding doctrine that prevails in most of the States,—in article by Francis King Carey on "The disposition of the Body after Death," 19 *Am. L. Rev.* 263.

**Beers, Ex parte**. See *Brinckerhoof v. Remsen Beers v. Hendrickson*, 6 *Robt.* 53. Modified in 45 *N. Y.* 665. See (Acknowledgment of satisfaction of judgment) *Code Civ. Pro.* 1881, § 1260, n.

— *v. Phoenix Glass Co.* See *Partridge v. Badger*.

— *v. Reynolds*, 12 *Barb.* 288. Aff'd in 11 *N. Y.* 97.

— *v. Shannon*, 12 *Hun.* 161. Rev'd in 73 *N. Y.* 292. Decision in 73 *N. Y.* disting'd (Omission of word "as" after name of plaintiff suing in representative capacity) in *Bennett v. Whitney*, 94 *N. Y.* 302. Compare (Jurisdiction of surrogate) *Code Civ. Pro.* §§ 2476, 2478, 2695.

**Beggs v. Butler, Clarke**, 517. Rev'd in 9 *Paige*, 226. Decision in 9 *Paige*; approved (Parties) in *Vilas v. Jones*, 1 *N. Y.* 274, 284.

**Behan v. People**, 17 *N. Y.* 516. Examined and declared a binding authority (Vending strong liquors without license a misdemeanor) in *Hill v. People*, 20 *N. Y.* 363, 366; s. c., 18 *How. Pr.* 289. Criticised at length in *Foot v. People*, 56 *N. Y.* 321. Disting'd in *People v. Hislop*, 77 *N. Y.* 331. Followed (Exclusive nature of penalty prescribed by statute) in *Brown v. Buffalo & State Line R. R. Co.*, 22 *N. Y.* 191, 197. Compare *Jetter v. N. Y. & Harlem R. R. Co.*, 2 *Keyes*, 154. Followed (Legislative intent in remedial statutes) in *First Nat. B'k of Whitehall v. Lamb*, 57 *Barb.* 429.

**Beirne v. Dord**, 5 *N. Y.* 95; s. c., 55 *Am. Dec.* 321, with note, containing citations. See *Dike v. Reitlinger*; *Frith v. Barker*. Cited as an excellent case, and explained (Sales by sample) in 1 *Pars. on Contr.* 585, n. t. Reviewed and collated, with other cases to same effect, in 22 *Am. L. Reg. N. S.* 243.

**Beisiegel v. N. Y. Central R. R. Co.**, 34 *N. Y.* 622, rev'g 33 *Barb.* 429. Further decision in 40 *N. Y.* 9; also in 14 *Abb. Pr. N. S.* 29. See *Dascomb v. Buffalo State Line R.*

- R. Co.; *Grippen v. N. Y. Central R. R. Co.*; *Johnson v. Hudson River R. R. Co.* Decision in 34 *N. Y.* approved as to negligence being relative in dissenting opinion of MONELL, J., in *Gonzales v. N. Y. & Harlem R. R. Co.*, 6 *Robt.* 93, 297, with *Ernst v. Hudson River R. R. Co.*, 35 *N. Y.* 9. Disapproved in *Dodge v. Burlington, &c. R. R. Co.*, 34 *Iowa*, 276, as partially overruled (Effect of neglect to give statutory signals at railway crossing) by later *N. Y.* cases. Decision in 40 *N. Y.* criticised in *Gonzales v. N. Y. & Harlem R. R. Co.*, 39 *How. Pr.* 407, as showing a great diversity of sentiment in the court. Applied in *Dyer v. Erie R'y Co.*, 71 *N. Y.* 231, as to error in submitting question as to signals to jury. Applied in *Richardson v. N. Y. Central R. R. Co.*, 45 *N. Y.* 850. Explained in *Weber v. N. Y. Central R. R. Co.*, 58 *N. Y.* 458. *McGrath v. N. Y. Central, &c. R. R. Co.*, 63 *N. Y.* 522, 525. Followed in *Cullaghan v. Rome, W. & O. R. R. Co.*, 13 *Weekly Dig.* 395; *Casey v. N. Y. Central, &c. R. R. Co.*, 6 *Abb. N. C.* 104, 125; s. c., 8 *Daly*, 220, which was aff'd in 78 *N. Y.* 523, which see. Followed with *Weber v. N. Y. Central R. R. Co.*, 58 *N. Y.* 459, in *Welsch v. Hannibal & St. Joseph R. R. Co.*, 72 *Mo.* 451; s. c., 37 *Am. R.* 440. Decision in 14 *Abb. Pr.* followed (Violation of ordinance as evidence of negligence) in *Ryan v. Thomson*, 38 *Super. Ct. (J. & S.)* 183, 185. Applied in *Devlin v. Gallagher*, 6 *Daly*, 494. Approved in *Knupfle v. Knickerbocker Ice Co.*, 84 *N. Y.* 488, 491.
- Belden v. Davies**, 2 *Hall*, 433. See *Dorr v. Munsell*. See to same effect (Power of judge to direct verdict to settle question of right, and then order a reference to determine amount) *Buchanan v. Cheesebrough*, 5 *Duer*, 238. So done in *Bartels v. Redfield*, 16 *Fed. Rep.* 336. But it is only in actions triable by the court with a jury, that an interlocutory judgment may be demanded.
- *v. Devoe*, 12 *Wend.* 223, n. Explained and applied (Oath and jurat) in *People ex rel. Mosher v. Stowell*, 9 *Abb. N. C.* 456, 461.
- *v. Meeker*, 2 *Lans.* 470. Aff'd in 47 *N. Y.* 307. See *Munroe v. Merchant*. Decision in 2 *Lans.* cited as authority (Record of proceedings before surrogate, as proof of death) in *Carroll v. Carroll*, 2 *Hun.* 610. Decision in 47 *N. Y.* followed (Effect of letters of administration) in *Farley v. McConnell*, 52 *N. Y.* 630. See to the contrary (Assignment of corporate assets valid, without evidence of vote) *Houghton v. McAuliffe*, 2 *Abb. Ct. App. Dec.* 409. See also *Abb. Tr. Ev.* 7.
- Belding v. Conkling**, 4 *How. Pr.* 196. Followed (Recovery of disbursements by one not entitled to costs) in *Wheeler v. Westgate*, 4 *How. Pr.* 269, the contrary cases of *Taylor v. Gardner*, *Id.* 67, and *Newton v. Sweet*, *Id.* 134, being disapproved.
- *v. Leichardt*, 2 *Sup'm. Ct. (T. & C.)* 52. Aff'd in 56 *N. Y.* 680.
- *v. Pitkin*, 2 *Caines*, 147; s. c., 2 *N. Y. Com. L. Law. ed.* 362, with brief note. See *Woodworth v. Bennett*. Limited and distinguishing'd (Contract relating to soldiers' claims) in *Brooks v. Martin*, 2 *Wall.* 70.
- Belger v. Dinsmore**, 51 *Barb.* 69; s. c., 34 *How. Pr.* 421. Rev'd in 51 *N. Y.* 166; s. c., 10 *Am. R.* 575. See *Dorr v. N. J. Steam Nav. Co.* Decision in 51 *N. Y.* applied (Effect of limitations in carrier's contract) in *Magnin v. Dinsmore*, 56 *N. Y.* 168, 173. Followed in *Steers v. Liverpool, N. Y., &c. S. S. Co.*, 57 *N. Y.* 1. Explained in *Kirkland v. Dinsmore*, 2 *Hun.* 49. Reluctantly followed in *Soumet v. National Ex. Co.*; 66 *Barb.* 284. Disting'd in *Woodruff v. Sherard*, 9 *Hun.* 322. Reviewed (Proof of negligence on the part of a carrier) in *Magnin v. Dinsmore*, 35 *Super. Ct. (J. & S.)* 182. Explained with *Magnin v. Dinsmore*, 62 *N. Y.* 35; 70 *Id.* 410, the case of *Westcott v. Fargo*, 61 *N. Y.* 543, being cited as authority in *Black v. Goodrich Transportation Co.*, 55 *Wis.* 319; s. c., 42 *Am. R.* 638.
- Belknap v. Belknap**. See *Hartwell v. Armstrong*.
- *v. Bender*, 6 *Sup'm. Ct. (T. & C.)* 611; mem. of s. c., 4 *Hun.* 414. Decision on appeal from judgment on second trial reported in 75 *N. Y.* 446; s. c., 31 *Am. R.* 476, wherein the appeal is incorrectly stated to be from an order affirming a judgment, it having been from a judgment and order reversing; &c. Decision in 6 *Sup'm. Ct. (T. & C.)* disting'd (Parol agreement to pay another's debt, when rendered valid) in *Tisdale v. Morgan*, 7 *Hun.* 583, 585. Decision in 75 *N. Y.* followed in *Ackley v. Parmenter*, 31 *Hun.* 476.
- *v. Hasbrouck*, 13 *Abb. Pr.* 418. Compare to the contrary ("Place of business") *Bank of Commonwealth v. Mudgett*, 44 *N. Y.* 514.
- *v. North American Life Ins. Co.*, 11 *Hun.* 282. Followed (Remedies of creditors of a corporation) in *Bewley v. Equitable Life Ass. Soc.*, 61 *How. Pr.* 349; *Cole v. Knickerbocker Life Ins. Co.*, 23 *Hun.* 255.
- *v. Sealey*, 2 *Duer*, 570. Aff'd in 14 *N. Y.* 143. See *Hosley v. Black*. Decision in 14 *N. Y.* disting'd (Amendment of variance) in *Field v. Syms*, 2 *Robt.* 35. Explained (Recovery inconsistent with complaint) in *Ross v. Mather*, 51 *N. Y.* 108, 111. Followed (Effect of words "more or less" in conveyance or contract for sale of lands) in *Paine v. Upton*, 87 *N. Y.* 327, which aff'd 21 *Hun.* 306, 311, which see. Disting'd in *Callmeyer v. Mayor, &c.* of *N. Y.*, 83 *N. Y.* 116, 120.
- *v. Trimble*, 3 *Paige*, 577. See *Gardner v. Trustees of Newburg*. Approved (Power of chancery to regulate use of water-power) in *Norris v. Hill*, 1 *Mich.* 211.
- *v. Waters*, 11 *N. Y.* 477. Approved (What is a remedy) in *Matter of Cooper*,

- 22 *N. Y.* 67, 87; s. c., 11 *Abb. Pr.* 301; 19 *How. Pr.* 97. See (Definition of "special proceedings") *Code Civ. Pro.* 1881, § 3334, *n.*
- Bell's Case, MS. Comm. of App.** Disting'd (When county court may order tax refunded) in *People ex rel. Hermance v. Supervisors of Ulster*, 10 *Hun.* 545.
- Bell v. Birdsall**, 19 *How. Pr.* 491; s. c., as *Betts v. Birdsall*, 11 *Abb. Pr.* 222.
- **v. Chapman**, 10 *Johns.* 183. See *Sanderson v. Morgan*. Cited (Effect of war on right of action) in *Kershaw v. Kelsey*, 100 *Mass.* 561; s. c., 1 *Am. R.* 142, 144. Cited with *Bradwell v. Weeks*, 13 *Johns.* 1, in *Blackwell v. Willard*, 65 *N. C.* 555; s. c., 6 *Am. R.* 749. Quoted in 1 *Story on Contr.* 5 ed. § 96, *n.* Cases collected in 10 *Am. L. Reg. N. S.* 230.
- **v. Dagg**, 2 *Sup'm. Ct. (T. & C.)* 623. Rev'd in 60 *N. Y.* 528. Decision in 60 *N. Y.* disting'd (Implied warranty) in *Ross v. Terry*, 63 *N. Y.* 615; *Littauer v. Goldman*, 72 *N. Y.* 506, 511.
- **v. Day**, 32 *N. Y.* 165. See *Condit v. Baldwin*; *Lee v. Chadsey*. Followed (Usury—agency) in *Van Buren v. Stokes*, 3 *Sup'm. Ct. (T. & C.)* 511; *Lee v. Chadsey*, 3 *Abb. Ct. App. Dec.* 49; *Elmer v. Oakley*, 3 *Lans.* 37; *Moore v. Bogart*, 19 *Hun.* 230. Disting'd in *Estevez v. Purdy*, 6 *Hun.* 46, which rev'd 50 *How. Pr.* 350; but was rev'd in 66 *N. Y.* 449, which see. Approved in *Palmer v. Call, U. S. Circ. Ct. Dist. of Iowa*, 1881; 12 *Reporter*, 194, citing cases.
- **v. Dix**. See *Stevens v. Phoenix Ins. Co.*
- **v. Holford**, 1 *Duer*, 58, 78. Explained (Additions to assignment for benefit of creditors) in *Burrill on Assign.* § 264, 4 ed.
- **v. Leggett**, 2 *Sandf.* 450. Rev'd in 7 *N. Y.* 176.
- **v. Locke**, 8 *Pai.* 75; s. c., 34 *Am. Dec.* 371, with note, where it is said to be cited as authority (Property in good will) in *Jerome v. Bigelow*, 66 *Ill.* 455; *Moorehead v. Hyde*, 38 *Iowa*, 385; *Perkins v. Currier*, 3 *Woodb. & M.* 94, and frequently in *N. Y.* Approved, in *Taylor v. Carpenter*, 11 *Paige*, 297. Cited with other cases, in 9 *Am. L. Reg. N. S.* 71. Approved (Relief against fraudulent use of trade mark) in *Coffeen v. Burton*, 4 *McLean*, 516. Explained (Restraining use of name of publication) in *Potter v. McPherson*, 21 *Lun.*, 559, 564; *American Grocer v. Grocer Pub. Co.*, 25 *Hun.*, 398, 401.
- **v. Mayor, &c. of N. Y.** 10 *Paige*, 49. See *Titus v. Neilson*. Examined (Dower in mortgaged lands) in *Mills v. Van Voorhies*, 20 *N. Y.* 412, 420, which rev'd 23 *Barb.* 134, which see; *Smith v. Gardner*, 42 *Barb.* 367; *Wheeler v. Morris*, 2 *Bosw.* 534; *Blydenburgh v. Northrup*, 13 *How. Pr.* 295. Followed (Charge to be borne by life-tenant) in *Moseley v. Marshall*, 22 *N. Y.* 200, 206. Followed (Mode of computing amount that widow must pay to redeem from mortgage) in *Raynor v. Raynor*, 21 *Hun.*, 36. Explained (Allowance to mortgagee in possession for new improvements) in 4 *Kent Com.* 167, *n. c.*
- **v. —**, 53 *How. Pr.* 334. Further proceeding in 11 *Hun.* 511.
- **v. Palmer**, 6 *Cow.* 128; s. c., 8 *N. Y. Com. L. Law. ed.* 856, with brief note. Followed (Liability of factor for loss from disobeying principal's instructions) in *Kelly v. Smith*, 1 *Blatchf. Ct.* 290, 294.
- **v. Pierce**, 48 *Barb.* 51; aff'd in 51 *N. Y.* 12. See *Matter of Nichols*.
- **v. Quin**. See *Hickok v. Trustees of Plattsburgh*.
- **v. Richmond**, 4 *Abb. Pr. N. S.* 44; s. c., 50 *Barb.* 571. Followed (Examination of parties before issue) in *Morgan v. Whittaker*, 14 *Abb. Pr. N. S.* 127, 129. Disapproved, in *Hadley v. Fowler*, 12 *Abb. Pr. N. S.* 244. Said, in 1 *Civ. Pro. R.* 84, *n.* to have been overruled, in 64 *N. Y.* 120. See to the contrary *McVickar v. Ketchum*, 1 *Abb. Pr. N. S.* 452; *Havermeyer v. Ingersoll*, 12 *Id.* 306; *Fullerton v. Gaylord*, 7 *Robt.* 551.
- **v. Smith**, 2 *Johns.* 98. Commented on (General average—adjustment) in 3 *Kent Com.* 244.
- **v. Spotts**, 50 *How. Pr.* 162. Aff'd in 40 *Super. Ct. (J. & S.)* 552, but no opinion.
- **v. Town of Esopus**, 49 *Barb.* 506. Limited (Action, when maintainable against a town on a claim or debt) in *Marsh v. Town of Little Valley*, 1 *Hun.* 554, 556; s. c., 4 *Sup'm. Ct. (T. & C.)* 116. Limited in *Brown v. Town of Canton*, 4 *Lans.* 409, 411.
- **v. Yates**, 33 *Barb.* 627. See *Howland v. Edmonds*. Applied with *Fisher v. Pond*, 1 *Hill*, 672; 2 *Id.* 338 (Sufficiency of plea of statute of limitations) in *Budd v. Walker*, 29 *Hun.* 344.
- Bellinger v. Bentley**, 1 *Hun.* 562; s. c., 4 *Sup'm. Ct. (T. & C.)* 71. Disting'd (Individual liability of one assuming to contract for association) in *Whitford v. Laidler*, 25 *Hun.* 136, 140.
- **v. Craigue**, 31 *Barb.* 534. See *Gates v. Preston*; *Winfield v. Bacon*. Disting'd (Effect of former adjudication) in *Schwinger v. Raymond*, 83 *N. Y.* 192, 197. Approved (Action for malpractice, when barred) in *Gates v. Preston*, 41 *N. Y.* 113. Opposed in *Resseque v. Byers*, 9 *Northw. Rep.* 779, 780.
- **v. Ford**, 14 *Barb.* 250. Further decision in 21 *Id.* 311.
- **v. Gray**, 51 *N. Y.* 610. See *Merritt v. Village of Portchester*. Disting'd (Defects in tax proceedings) in *First Nat'l B'k of Utica v. Waters*, 7 *Fed. Rep.* 158; 23 *Abb. L. J.* 471. Disting'd (Defects in tax-roll) in *Bradley v. Ward*, 58 *N. Y.* 401, 409; *Colman v. Shattuck*, 62 *N. Y.* 848, 361, 363, which aff'd 2 *Hun.* 497, 504; s. c., 5 *Sup'm. Ct. (T. & C.)* 134, which see. Disting'd with *Peyser v. Mayor, &c.*, 70 *N. Y.* 500 (Recovery back of money paid on tax or assessment) in *Sexton v. Pepper*, 28 *Hun.* 31.

— **v. Martindale**, 8 *How. Pr.* 113. Followed (Granting of new trials in ejectment) in *Harris v. Waite*, 54 *How. Pr.* 114.

— **v. N. Y. Central R. R. Co.**, 23 *N. Y.* 42. See *Radcliff v. Mayor*, &c. of Brooklyn; *Selden v. Delaware & Hudson Canal Co.* Explained (Liability for trespass) in *Losee v. Buchanan*, 51 *N. Y.* 476, 480. Disting'd in *St. Peter v. Denison*, 53 *N. Y.* 416, 423. Followed (Liability as affected by evidence of care and skill) in *Conchocton Stone Road Co. v. Buffalo, N. Y. &c. R. R. Co.*, 3 *Hun.* 523; s. c., 5 *Sup'm. Ct. (T. & C.)* 651. Referred to with *Arnold v. Hudson River R. R. Co.*, 49 *Barb.* 108, 121, and other cases, in *Eaton v. Boston, Concord & Montreal R. R.*, 51 *N. H.* 504; s. c., 12 *Am. R.* 147, 152, as in conflict with the conclusions there reached as to what is a taking of private property within the constitutional meaning of the term. *Lansing v. Smith*, 8 *Conn.* 146, 151-168; *Steele Western Inland Lock Nav. Co.*, 2 *Johns.* 283; *Gould v. Hudson River R. R. Co.*, 6 *N. Y.* 522; 12 *Barb.* 616; *People v. Tibbetts*, 19 *N. Y.* 523, 528; *Coster v. Mayor of Albany*, 43 *Id.* 399, 415; *Matter of Water Comm'rs*, 3 *Edw. Ch.* 290; *Canal Commissioners, &c. v. People*, 17 *Wend.* 571; 13 *Id.* 355; 5 *Id.* 423; *People v. Canal Appraisers*, 33 *N. Y.* 461; *Polly v. Saratoga & Washington R. R. Co.*, 9 *Barb.* 449; *Bloodgood v. Mohawk & Hudson River R. R. Co.*, 18 *Wend.* 9, 17; *Waffle v. N. Y. Central R. R. Co.*, 58 *Barb.* 413; *Benedict v. Goit*, 3 *Barb.* 459; *Waddell v. Mayor of N. Y.*, 8 *Barb.* 95, 99; *Wilson v. Mayor of N. Y.*, 1 *Den.* 595, and many other cases being disting'd in this respect, and *Radcliff's Ex'rs v. Mayor of Brooklyn*, 4 *N. Y.* 195, being criticised and questioned. See also numerous *N. Y.* cases cited in support of the opinion. Explained (*Private nuisance*) in *Moak's Underhill's Torts*, 1 *Am. ed.* 453.

**Bellinger v. Shafer.** See *Green v. Winter*.

**Bellows v. Elmendorf**, 7 *Lans.* 462. Expained (*Violation of game law*) in *Phelps v. Racey*, 5 *Daly*, 235, 237.

— **v. Folsom**, 2 *Robt.* 138. Disting'd (*Failure of consideration*) in *Bookstaver v. Jayne*, 60 *N. Y.* 146, 151.

— **v. Partridge**, 19 *Barb.* 176. Collated with other cases (*Assignment for benefit of creditors—compounding debts*), in *Bishop on Assign.* § 214. Collated (*Selling on credit*) with other cases, in *Id.* § 211. Discussed (*Terms of sale*) in *Burrill on Assign.* § 224, and n. 1, 4 ed. Collated (*Conditional preferences*) with other cases, in *Bishop on Assign.* § 240. Explained (*Preferences*) in *Burrill on Assign.* § 173, n. 4, 4 ed.

— **v. Sackett**, 15 *Barb.* 96. Quoted and explained (*Dripping water*) in *Wood on Nuis.* 2 ed. §§ 118, 119. Explained in *Moak's Underhill's Torts*, 1 *Am. ed.* 461. Followed (*Flow of surface water*) in preference to *Massachusetts cases*, in *Ogburn v.*

*Connor*, 46 *Cal.* 346. Applied with *Foot v. Bronson*, 4 *Lans.* 47, in *Field v. West Orange*, 9 *Stew. (N. J.)* 118, to case of municipal authorities.

**Belmont v. Coleman**, 1 *Bosw.* 188. Aff'd in 21 *N. Y.* 96. Decision in 21 *N. Y.* approved (*Judgment against corporation as evidence of debt in action against stockholder*) in *Lewis v. Ryder*, 13 *Abb. Pr.* 1, 5. Applied to case of trustees in *Squires v. Brown*, 22 *How. Pr.* 35, 39. Criticised, as to trustees, in *Miller v. White*, 50 *N. Y.* 143. Compared in *McMahon v. Macy*, 51 *N. Y.* 155, 163.

— **v. Coman**, 22 *N. Y.* 438. See *Trotter v. Hughes*. Disting'd (*Effect of transfer of property subject to payment of a certain demand*) in *Dingeldein v. Third Ave. R. R. Co.*, 37 *N. Y.* 575, 578, which aff'd 9 *Bosw.* 94, which see. Also disting'd in *Douglass v. Cross*, 56 *Barb.* 330. Applied to case of deed-poll in *Atlantic Dock Co. v. Leavitt*, 54 *N. Y.* 39. Reviewed in *Lewis v. Day*, 53 *Iowa*, 575, 579.

— **v. Cornen**, 82 *N. Y.* 256. Disting'd (*Service by publication*) in *Carleton v. Carleton*, 85 *N. Y.* 313, 316.

— **v. Erie Ry Co.**, 52 *Barb.* 637. Disting'd (*Cross-motion on application for mandamus*) in *People ex rel. Vandervoort v. Cooper*, 24 *Hun.* 238.

— **v. Lane**, 22 *How. Pr.* 365. Opinion of ALLEN, J., said in *Achelis v. Kalman*, 60 *Iow.* Pr. 491, 496, to be the prevailing opinion, and that of SUTHERLAND, J., dissenting.

— **v. O'Brien**, 12 *N. Y.* 394, 396. Disting'd (*Trust to receive rents and profits of land*) in *Heermans v. Robertson*, 3 *Hun.* 464, 469; s. c., more fully, 5 *Sup'm. Ct. (T. & C.)* 596, which was aff'd in 64 *N. Y.* 332, which see. Followed (*Inalienability of trust estates*) in *Roosevelt v. Roosevelt*, 6 *Hun.* 31, 44. Applied (*Validity of trust coupled with power of sale*) in *Brewer v. Brewer*, 11 *Hun.* 152. Applied (*Presumption as to payment of mortgage*) in *Pangburn v. Miles*, 10 *Abb. N. C.* 42, 47. Reviewed (*Presumption of payment*) in dissenting opinion of HUNT, C., in *Central B'k of Troy v. Heydorn*, 48 *N. Y.* 272.

— **v. Ponvert**, 3 *Robt.* 693. Aff'd in *Id.* 698, n. Subsequent proceedings in 35 *Super. Ct. (J. & S.)* 425. Decision in 35 *Super. Ct.* re-aff'd in subsequent decision in 38 *Id.* 425, and rev'd in effect in 63 *N. Y.* 547. Decision in 63 *N. Y.* applied (*"Proceeds" of estate, as including rents*) in *Kearney v. Missionary Socy. of St. Paul*, 10 *Abb. N. C.* 274, 278.

**Belmont Branch Bank v. Hoge**, 7 *Bosw.* 543. Aff'd in 35 *N. Y.* 65. See *Baker v. Bliss*. Decision in 35 *N. Y.* reviewed, with other cases (*Effect of statute respecting defense of usury by corporation*) in *Strong v. N. Y. Laundry M'fg Co.*, 37 *Super. Ct. (J. & S.)* 279, 283.

**Belton v. Baxter**, 33 *Super. Ct. (J. & S.)* 182. Rev'd in 54 *N. Y.* 243; s. c., 14 *Abb. Pr. N. S.* 404; 13 *Am. R.* 578. Further

- decision in 58 *N. Y.* 411 disting'g decision in 54 *N. Y.* as to evidence of negligence.
- Bement v. Plattsburgh, &c. R. R. Co., 47 Barb.** 104. Aff'd as *Hoyle v. Plattsburgh, &c. R. R. Co.*, 51 *Barb.* 45, which was rev'd in 54 *N. Y.* 314; s. c., 13 *Am. R.* 595.
- **v. Smith**, 15 *Wend.* 493. See *Coit v. Houston*. Explained (Damages for buyer's refusal to accept) in *Golden Gate Concentrator Co. v. Jackson*, 13 *Abb. N. C.* 476. Followed in *Shawhan v. Van Nest*, 25 *Ohio St.* 490; s. c., 18 *Am. R.* 313, 316. Disting'd in *Moline Scale Co. v. Beed*, 52 *Iowa*, 307; s. c., 35 *Am. R.* 272. Criticised and questioned in *Moody v. Brown*, 34 *Me.* 107; s. c., 56 *Am. Dec.* 640, with note; wherein *Bement v. Smith* is shown to accord with the main current of authorities. Cited as a leading case and explained in 2 *Benj. on Sales*, § 1125, n. 6 (Corbin's 4<sup>th</sup> Am. ed.) Quoted and explained (Acceptance of chattel made to order) in 1 *Id.* § 536. Reviewed with *Dustan v. McAndrews*, 44 *N. Y.* 72, 78, and other cases (Remedy of vendor against purchaser in case of breach of contract to purchase) in *Pittsburgh, Cincinnati & St. Louis R'y Co. v. Heck*, 50 *Ind.* 303; s. c., 19 *Am. R.* 713, 715; *McConihe v. N. Y. & Erie R. R. Co.*, 20 *N. Y.* 405, being followed as a case in point.
- Bemus v. Beekman**, 7 *Cow.* 29. Rev'd in 3 *Wend.* 667. Decision in 7 *Cow.* cited as authority (Amendment of verdict) in *Van Schoening v. Buchanan*, 14 *Abb. Pr.* 468.
- Bench v. Sheldon**, 14 *Barb.* 66. Explained (Fraud on vendor) in 1 *Benj. on Sales*, § 668, n. 24 (Corbin's 4<sup>th</sup> Am. ed.).
- Bend v. Georgia Ins. Co.**, 1 *N. Y. Leg. Obs.* 12 (Sup'm. Ct. *N. Y.* 1842). Cited in *Greenl. on Ev.* § 292, and 2 *Taylor on Ev.* 1008, to show when parol evidence is inadmissible to vary the plain meaning of words.
- Bendernagle v. Cocks**, 19 *Wend.* 207; s. c., 32 *Am. Dec.* 448, with note. See *Guernsey v. Carver*. Explained (Cause of action, when entire) in *Hughes v. Alexander*, 5 *Duer*, 488; *Law v. McDonald*, 62 *How. Pr.* 340, 343. Applied in *Shaffer v. Lee*, 8 *Barb.* 416. Followed and approved in *Jex v. Jacob*, 19 *Iun.* 105. Disting'd in *O'Dougherty v. Remington Paper Co.*, 81 *N. Y.* 496; *Perry v. Dickerson*, 85 *Id.* 345, 348, 352, which aff'd 7 *Abb. N. C.* 466, which see. Criticised at length in *Secor v. Sturgis*, 2 *Abb. Pr.* 75, which was aff'd in 16 *N. Y.* 549, 557, where *Bendernagle v. Cocks* was examined at length with other cases. Reviewed and criticised in *Burritt v. Belfy*, 47 *Conn.* 326. Relied on in *Bourgesser v. Harrison*, 12 *Wisc.* 548. Disapproved in *McIntosh v. Lown*, 49 *Barb.* 550.
- Bendetson v. French**, 44 *Barb.* 31. Rev'd in 46 *N. Y.* 266. Decision in 46 *N. Y.* disting'd (Liability of landlord for loss of guest's property) in *Rosenplaenter v. Roesle*, 54 *N. Y.* 262, 266.
- Benedict v. Benedict**, 15 *Iun.* 305. Aff'd in 76 *N. Y.* 600. Subsequent decision in 9 *Weekly Dig.* 123; aff'd in 85 *N. Y.* 625.
- **v. Caffé**, 3 *Duer*, 669. To same effect (Costs against executors) *Tindal v. Jones*, 11 *Abb. Pr.* 258, 259. Disting'd in *Burnham v. Harrison*, 3 *Redf.* 345.
- **v. Cowden**, 49 *N. Y.* 396; s. c., 10 *Am. R.* 382. See *Cowee v. Cornell*. Disting'd (Material alteration of note) in *Redlich v. Doll*, 54 *N. Y.* 234, 240; *Palmer v. Largent*, 5 *Neb.* 223; s. c., 25 *Am. R.* 479. Followed in *Scotfield v. Ford*, 56 *Iowa*, 370. Collated with other cases, in 14 *Am. Dec.* 232, n. Followed (Memorandum on note, as part of it) in *Grimison v. Russell*, 14 *Neb.* 521; s. c., 45 *Am. R.* 126. Applied in *Cushing v. Field*, 70 *Me.* 50; s. c., 35 *Am. R.* 293, 295. Disting'd in *Overbaugh v. Van Pelt*, 16 *Weekly Dig.* 9.
- **v. De Groot**, 45 *How. Pr.* 384. Fully reported in 1 *Abb. Ct. App. Dec.* 125.
- **v. Dixon**, 47 *Super. Ct. (J. & S.)* 379. Appeal dismissed in 86 *N. Y.* 640. Subsequent decision in 47 *Super. Ct. (J. & S.)* 477. Decision in 47 *Super. Ct.* disting'd (Recovery of damages caused by injunction) in *Fourth Nat. B'k of N. Y. v. Scott*, 31 *Iun.* 301.
- **v. Field**, 4 *Duer*, 154. Aff'd in 16 *N. Y.* 595. See *Kelty v. Second Nat. B'k.* Decision in 16 *N. Y.* followed (Note or bill taken for debt) in *Kipp v. Munroe*, 18 *How. Pr.* 383; *Bruce v. Burr*, 5 *Daly*, 510. Quoted and collated with other cases, in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 304.
- **v. Gilman**, 4 *Paige*, 58. Approved (Action for strict foreclosure) in *Ross v. Boardman*, 22 *Iun.* 531. Applied (Rights of purchaser at foreclosure sale) in *Smith v. Gardner*, 42 *Barb.* 367. Applied in dissenting opinion of MULLEN, J., in *Gage v. Brewster*, 31 *N. Y.* 224. Applied (Remedy of judgment creditor after foreclosure) by PORTER, Senator, in *Post v. Arnot*, 2 *Den.* 352. Approved in *Wetmore v. Roberts*, 10 *How. Pr.* 55. Followed in *Brainard v. Cooper*, 10 *N. Y.* 362. Followed (Allowance for improvements) in *Mickles v. Dillaye*, 17 *N. Y.* 86. Explained by EMOTT, J., dissenting, in *Dows v. Congdon*, 28 *N. Y.* 132. Applied (Deduction from interest in surplus moneys) in *Raynor v. Selmes*, 52 *N. Y.* 579, 582. Disting'd (Right of one who has not been made party to foreclosure suit, to redeem) in *Peabody v. Roberts*, 47 *Barb.* 100. Followed with *Vroom v. Ditmas*, 4 *Paige*, 526, in *Bradley v. Snyder*, 14 *Ill.* 263; s. c., 58 *Am. Dec.* 464; *Benedict v. Gilman*, being also followed (Allowance for improvements). Followed (Liability of party redeeming, for costs of foreclosure) in *Vroom v. Ditmas*, 4 *Paige*, 531.
- **v. Goit**, 3 *Barb.* 459. See *Bellinger v. N. Y. Central R. R. Co.*; *Williams v. N. Y. Central R. R. Co.* Distinguished and limited (Effect of converting highway into turnpike) in *Craig v. Rochester City & Brighton R. R. Co.*, 39 *N. Y.* 404.



- **v. Harlow**, 5 *How. Pr.* 347. See *McDowell v. Second Ave. R. R. Co.* Approved (Attorney's right defeated by settlement) in *Pulver v. Harris*, 62 *Barb.* 500, 505.
- **v. Howard**, 31 *Barb.* 569. Disting'd (Conversion as between tenants in common) in *Osborn v. Schenck*, 83 *N. Y.* 201, 206.
- **v. Huntington**, 32 *N. Y.* 219, 227. See *Brigham v. Tillinghast*. Collated with other cases (Assignment for benefit of creditors—directions as to time of sale) in *Bishop on Assign.* § 209. Discussed (Terms of sale) in *Burrill on Assign.* § 224, 4 ed.
- **v. Lansing**, 5 *Den.* 283. Explained (Private corporations—agents) in *Ang. & A. on Corp.* § 298, 11 ed.
- **v. Lynch**, 1 *Johns. Ch.* 370; s. c., 7 *Am. Dec.* 484. See *Clason v. Bailey*; *Ellis v. Hoskins*; *Hatch v. Cobb*; *Parkhurst v. Van Cortlandt*. Overruled (Enforcing agreement not mutual) in *McCrea v. Purnmort*, 16 *Wend.* 460; *Clason v. Bailey*, 14 *Johns.* 484. Also dissented from in *Matter of Hunter*, 1 *Edw. Ch.* 1; *Woodward v. Aspinwall*, 3 *Sandf.* 272. Disapproved in *Old Colony R. R. v. Evans*, 6 *Gray*, 25. Followed (Time, when of essence of contract) in *Rogers v. Saunders*, 16 *Me.* 92; s. c., 33 *Am. Dec.* 635, 640, with note; *Lewis v. Woods*, 4 *How. (Miss.)* 86; s. c., 34 *Am. Dec.* 110, with note. Approved in *Pom. on Sp. Perf.* § 390, n. Said, in 7 *Am. Dec.* 492, n., not to be followed generally now, on its doctrine as to the necessity of mutuality in a contract for the purpose of specific performance; but see many citations of the case by courts of other States as to time being of the essence of a contract.
- **v. Seymour**, 6 *How. Pr.* 298. Approved (Statements of actions and defenses) in *Lippencott v. Goodwin*, 8 *How. Pr.* 242; *Gooding v. McAlister*, 9 *Id.* 123. See in accord (Abolition of curtesy by laws of 1848, 1849) *Matter of Winne*, 1 *Lans.* 503, 522, which was rev'd in 2 *Lans.* 21, which see.
- **v. Stuart**, 23 *Barb.* 420; *Ogden v. Des Arts*, 4 *Duer*, 283. Cited as authorities (Champerty) in *Duke v. Harper*, 66 *Mo.* 51; s. c., 27 *Am. R.* 314, with note. See *Sedgwick v. Stanton*.
- **v. Warriner**, 14 *How. Pr.* 568. Disting'd (Sheriff's fees) in *Crofut v. Brandt*, 58 *N. Y.* 106, 112.
- **v. Western Union Tel. Co.**, 9 *Abb. N. C.* 221. Followed (Consolidation of companies) in *Hatch v. Amer. Union Tel. Co.*, 9 *Abb. N. C.* 223, 228.
- **v. Wright**, 19 *Hun.* 27. See (Sheriff's fees) *Code Civ. Pro.* 1881, § 3307, n.
- Benedict & B. Mfg Co. v. Thayer**, 20 *Hun.* 547. Further proceeding in 21 *Id.* 614; s. c., less fully, 59 *How. Pr.* 272. Motion to dismiss appeal denied in 82 *N. Y.* 610.
- Benham v. Cary**, 11 *Wend.* 83; *Jackson v. Roberts*, 11 *Id.* 422. Followed (Duty of counsel to explain object of introducing evidence apparently irrelevant) in *Crenshaw v. Davenport*, 6 *Ala.* 390; s. c., 41 *Am. Dec.* 556, with note.
- Benjamin v. Arnold**, 2 *Hun.* 447; s. c., 5 *Sup'm. Ct. (T. & C.)* 54. See *Campbell v. Tate*. Overruled (Parol proof that maker of note signed as surety) in *Hubbard v. Gurney*, 64 *N. Y.* 461.
- **v. Benjamin**, 5 *N. Y.* 383. Disting'd (Who may be removed in summary proceedings) in *Michenfelder v. Gunther*, 66 *How. Pr.* 464. Followed (Extent of remedy by certiorari to review summary proceedings) in *Bokee v. Hammersley*, 16 *How. Pr.* 461.
- **v. De Groot**, 1 *Den.* 151. Examined and followed (Limitations of causes arising outside of the State) in *Olcott v. Tioga R. R. Co.*, 20 *N. Y.* 210, 224. Approved in *Davis v. Garr*, 6 *N. Y.* 124. Collated with other cases, in *Throop Justice's Man.* 2 ed. 185. But see *Code Civ. Pro.* § 391. See also *Id.* § 401, n.
- **v. Elmira, &c. R. R. Co.**, 49 *Barb.* 441. Disting'd (Party to foreclosure suit, when bound by judgment therein) in *Payn v. Grant*, 23 *Hun.* 136.
- **v. Saratoga County Mutual Ins. Co.**, 17 *N. Y.* 415; *Kernochan v. N. Y. Bowery Fire Ins. Co.*, *Id.* 428. Disting'd (Transfer of interest in policy) in *Shotwell v. Jefferson Ins. Co.*, 5 *Bosw.* 247, 262.
- **v. Smith**, 4 *Wend.* 332. Subsequent decision in 12 *Wend.* 404; s. c., 12 *N. Y. Com. L. Law. ed.* 174, with brief note of other cases, on verdict not affected by harmless evidence. Decision in 4 *Wend.* followed (Return to execution—description therein of lands sold thereunder) in *Webb v. Bumpass, Port. (Ala.)* 201; s. c., 33 *Am. Dec.* 310. See also note to 27 *Am. Dec.* 312, collecting cases.
- **v. Taylor**, 12 *Barb.* 328. Explained in *Ross v. Harden*, 44 *Super. Ct. (J. & S.)* 26, as not being an authority for joining a cause of action founded upon the contract of an intestate with one founded upon the contract of his personal representative.
- Bennet v. Hurd**. See *Teel v. Fonda*.
- **v. Jenkins**. See *Pitcher v. Livingston*; *Staats v. Ten Eyck*.
- Bennett v. Abrams**, 41 *Barb.* 619. Followed (Specific performance of oral agreement) in *Green v. Green*, 2 *Redf.* 408, 410.
- **v. American Art Union**, 5 *Sandf.* 614. See *City of Utica v. Churchill*; *Kennedy v. Strong*. See also *People v. American Art Union*, 7 *N. Y.* 240. Commented upon (What constitutes lottery) in 1 *Add. on. Contr.* 1158, n., *Abb. ed.*
- **v. Austin**, 5 *Hun.* 536. Motion to dismiss appeal after new trial denied in 10 *Hun.* 451. Plaintiff's recovery on new trial again modified by disallowing the \$22,000 item, in 81 *N. Y.* 308, which superseded decision in 9 *Weekly Dig.* 308.
- **v. Brooke**. In case of this name, re-argument ordered in *Ct. of App. Nov.* 22, 1881. See *affirmance* in 87 *N. Y.* 619.

- **v. Brown**, 4 *N. Y.* 254; s. c., 1 *Code R. N. S.* 267. See *Van Kirk v. Wilds*. Further decision holding defendant liable, in 20 *N. Y.* 99; aff'g 31 *Barb.* 158. Decision in 4 *N. Y.* collated with other casts (Attachment—non-residence) in *Throop Justice's Man.* 2 ed. 26. Followed (Liability for costs covered by undertaking) in *Hinckley v. Kreitz*, 36 *Super. Ct. (J. & S.)* 413, 424, which was rev'd in 58 *N. Y.* 583, 587, which see.
- **v. Buchan**, 53 *Barb.* 578; s. c., 5 *Abb. Pr. N. S.* 412. Modified in effect on further decision in 61 *N. Y.* 222. Further decision in 76 *N. Y.* 386. See *Holden v. N. Y. & Erie B'k*.
- **v. Byrne**, 2 *Barb. Ch.* 216. Applied (Wishes of deceased parent as to guardianship of child to be considered) in *Burmester v. Orth*, 5 *Redf.* 259, 262.
- **v. Cook**, 43 *N. Y.* 537. See *Cole v. Jessup*. Followed (Computation of time under statute of limitations) in case of non-resident) in *Bell v. Lamprey*, 57 *N. H.* 168. Collated, with other cases, in *Throop Justice's Man.* 2 ed. 185. See *Code Civ. Pro.* 1881, § 401, *n.*
- **v. Erving**, 4 *Robt.* 671. See (Place of trial) *Code Civ. Pro.* 1881, § 982, *n.*
- **v. Garloch**, 10 *Hun.* 328. Rev'd in 79 *N. Y.* 302; s. c., 35 *Am. R.* 517.
- **v. Hull**, 10 *Johns.* 364; *Jackson v. Covert*, 5 *Wend.* 141; *Crookshank v. Burrill*, 18 *Johns.* 57; *Sewall v. Fitch*, 8 *Cow.* 215; *Robertson v. Vaughan*, 5 *Sandf.* 1; *Brown v. Winan*, 10 *Barb.* 406; *Donovan v. Wilson*, 26 *Id.* 138; *Parker v. Schenck*, 28 *Id.* 30; *Mead v. Case*, 33 *Id.* 202; *Downs v. Ross*, 23 *Wend.* 270. Collated in *Pitkin v. Noyes*, 48 *N. H.* 294; s. c., 2 *Am. R.* 218, 222, as illustrating the rule said to prevail in *N. Y.*, that a contract for the sale of goods not in existence, is a contract for work and labor, and not within the statute of frauds, this rule being said, however, to exclude from the operation of the statute a large class of cases that are within its mischiefs.
- **v. Ingersoll**, 24 *Wend.* 113. Limited (Issues on appeal from justice's decision) in *Wood v. Randall*, 5 *Hill.* 264.
- **v. Judson**, 21 *N. Y.* 238. See *Mead v. Bunn*. Limited (Liability for fraudulent representations) in *Craig v. Ward*, 3 *Keyes*, 387; s. c., 3 *Abb. Pr. N. S.* 235. Followed in *Kennedy v. Thorp*, 3 *Abb. Pr. N. S.* 136. Disting'd in *Pope v. Hart*, 35 *Barb.* 637; *Binard v. Spring*, 42 *Barb.* 477; *Oberlander v. Spiess*, 45 *N. Y.* 178; *Morehouse v. Yeager*, 41 *Super. Ct. (J. & S.)* 147. Doubted in *Wakeman v. Dalley*, 51 *N. Y.* 27, 33, which aff'd 44 *Barb.* 498, which see. Doubted as extreme,—in *Weed v. Case*, 55 *Barb.* 548. Explained in *Marsh v. Falker*, 40 *N. Y.* 562. Referred to in *Indianapolis, Peru, &c. R'y Co. v. Tyng*, 4 *Sup'm. Ct. (T. & C.)* 531; s. c., 2 *Hun.* 311; 48 *How. Pr.* 193, 201, as having been modified in its doctrine. Referred to in *Van Vliet v. McLean*, 23 *Hun.* 208, as having been explained and questioned by the Court of Appeals. Followed in *Sharp v. Mayor, &c. of N. Y.*, 25 *How. Pr.* 389, 392, as holding what is settled law. Followed in *Brown v. Tuttle*, 66 *Barb.* 169, 174; but see *Meyer v. Amidon*, 45 *N. Y.* 169, 174. Followed in *Foot v. Aetna Life Ins. Co.*, 4 *Daly*, 294. Compared and discussed in *Livingston v. Keech*, 34 *Super. Ct. (J. & S.)* 555. Relied on in *Cabot v. Christie*, 42 *Vt.* 121; s. c., 1 *Am. R.* 313. Referred to in *Rolfes v. Russell*, 5 *Oreg.* 400, as overruled, or, at least, severely criticised in several later decisions in *N. Y.* Explained with *Craig v. Word*, 36 *Barb.* 377, in *Marshall v. Gray*, 57 *Barb.* 414; *Craig v. Ward* being said to be based on *Bennett v. Judson*. Also explained and limited in *Chester v. Comstock*, 6 *Robt.* 22, which was aff'd in 40 *N. Y.* 575, *n.*, which see. Cited in 2 *Am. Dec.* 79, *n.*, as clearly determining liability for fraudulent representations as to location of land. Disting'd (Liability for wrongful act of agent) in *Baldwin v. Burrows*, 47 *N. Y.* 215; *Hathaway v. Johnson*, 55 *N. Y.* 93, 96. Disting'd in dissenting opinion of *GILBERT, J.*, in *Chester v. Dickerson*, 52 *Barb.* 366. Explained and reconciled with *Condit v. Baldwin*, 21 *N. Y.* 219,—in *Smith v. Tracy*, 36 *N. Y.* 79. Applied in *Sherman v. Smith*, 42 *How. Pr.* 198; *Stewart v. Strasburger*, 51 *How. Pr.* 400. Applied to contract made by officers of corporation,—in *Alexander v. Brown*, 9 *Hun.* 647. Referred to as unquestionably sound, in *Estevez v. Purdy*, 6 *Hun.* 46, a case of usury. Applied in *Krumm v. Beach*, 25 *Hun.* 293, 296. Relied on with *Ellwell v. Chamberlain*, 4 *Bosw.* 320; 31 *N. Y.* 611; *Crans v. Hunter*, 28 *N. Y.* 389, in *Mundorff v. Wickersham*, 63 *Penn. St.* 87; s. c., 3 *Am. R.* 581. Quoted and explained in 1 *Bish. on Mar. & D.* § 173, *n.* 4, 6 ed. Quoted and commented upon in *Bigel. Cases on Torts*, 24. Applied (Supplying defect in pleading) in *Morton v. Pinckney*, 8 *Bosw.* 138.
- **v. Lake**, 47 *N. Y.* 93. Relied on (Power to allow amendments of pleadings; upon motion) in *Hochstetter v. Isaacs*, 44 *How. Pr.* 495.
- **v. Leach**, 25 *Hun.* 178. Discussed (Judgment against tenant in ejectment, whether binding upon landlord) in *Sedgw. & W. on Tr. of Tit. to Land*, § 537.
- **v. Pratt**, 4 *Den.* 275. Cited (Necessity that consideration appear in memorandum required by statute of frauds) as sustaining English doctrine,—in *Benj. on Sales*, § 232, *n.* (4 *Am. ed.*).
- **v. McGuire**, 5 *Lans.* 183; s. c., more fully, 58 *Barb.* 625. See (Discontinuance of supplementary proceedings) *Code Civ. Pro.* 1881, § 2454, *n.*
- **v. N. Y. Central, &c. R. R. Co.**, 5 *Hun.* 539. Aff'd in 69 *N. Y.* 594; s. c., 25 *Am. R.* 250. See *Townsend v. Same*.
- **v. North British, &c. Ins. Co.**, 8 *Daly*,

471. Aff'd in 81 *N. Y.* 273. Decision in 81 *N. Y.* followed (Waiver of condition in policy against use of oils) in *Couch v. Rochester German Fire Ins. Co.*, 25 *Hun.* 469, 471.
- *v. Scutt*, 18 *Barb.* 347. See *Bank of Lansingburg v. Crary*; *Pierpont v. Barnard*. Followed (Nature of license to cut timber) with *Pierpont v. Barnard*, 6 *N. Y.* 279, in *Jenkins v. Lykes*, 19 *Fla.* 148; s. c., 45 *Am. R.* 19. Compare *Hobbs v. Wetherwax*, 38 *How. Pr.* 385. Explained in 3 *Pars. on Contr.* 34, n. v.
- *v. Vansyckel*, 4 *Duer.* 462. Appeal dismissed in 18 *N. Y.* 481. See *Glackin v. Zeller*. Followed (One taking renewal of a lease when to be considered as holding it as trustee) in *Davis v. Hamlin*, 108 *Ill.* 39; s. c., 48 *Am. R.* 541. Decision in 18 *N. Y.* followed (Waiver of right to appeal) in *Knapp v. Brown*, 45 *N. Y.* 207; s. c., 11 *Abb. Pr. N. S.* 118, 123. Disting'd in *Barker v. White*, 58 *N. Y.* 204, 210. See *Code Civ. Pro.* 1881, § 1294, n.
- Bensel v. Galt**, 2 *Hun.* 678; s. c., in full, 5 *Sup'm. Ct. (T. & C.)* 186. Collated with other cases (What cases are referable), in 1 *Abb. N. C.* 109, n.
- *v. Gray*, 38 *Super. Ct. (J. & S.)* 447. Overruled in effect (Contract for sale of tax leases) in 62 *N. Y.* 632. Further decision in 44 *Super. Ct. (J. & S.)* 372, which was aff'd in 80 *N. Y.* 517.
- Bensell v. Lynch**, 2 *Robt.* 448. Aff'd in 44 *N. Y.* 162. Decision in 44 *N. Y.* cited in 2 *Whart. Com. on Ev.* § 828, as showing when, for evidential purpose, portions of a record may be admitted.
- Bensen v. Perry**, 17 *Hun.* 16. Aff'd, it seems, in 77 *N. Y.* 625, but no opinion.
- Benson, Exp.**, 6 *Cov.* 593; *People v. Judges of Madison*, 7 *Id.* 423. See *Ex parte Davis*. Explained (As not authorities refusing judgment for costs on dismissing action for want of jurisdiction) in *King v. Poole*, 36 *Barb.* 242, 249.
- Benson v. Berry**, 55 *Barb.* 620. Questioned (Levy on property in custody of another officer) in *Jones Stat. & P. Co. v. Case*, 26 *Kans.* 299; s. c., 40 *Am. R.* 310.
- *v. Cromwell*. See *Hall v. Nelson*.
- *v. Le Roy*, 4 *Johns. Ch.* 651. Disting'd (Trust, when created by charge upon land devised) in *Dill v. Wisner*, 23 *Hun.* 127.
- *v. Mayor, &c. of N. Y.*, 10 *Barb.* 223, 245. See *Britton v. Mayor, &c. of N. Y.* Approved with *Hegeman v. Western R. Co.*, 16 *Id.* 353 (Police power of State) in *Davidson v. State*, 4 *Tex. Ct. App.* 545; s. c., 30 *Am. R.* 166. Quoted in *Cooley on Const. Limits*, 5 ed. 712, n. 1. Explained (Rights of N. Y. City in ferries) in *Mayor, &c. of N. Y. v. Staten Island Ferry Co.*, 40 *Super. Ct. (J. & S.)* 232. Reviewed (Effect of legislative enactment on municipal property) in *Darlington v. Mayor, &c. of N. Y.*, 31 *N. Y.* 202. Commented upon (Legislative enactment—when to be declared unconstitutional) in *Cooley on Const. Limits*, 5 ed. 199. Explained (Contracts as affected by Statelaws) in 3 *Pars. on Contr.* 530, n. h.
- *v. Suarez*, 28 *How. Pr.* 511; s. c., 19 *Abb. Pr.* 61. Quoted and explained (Liability for injury resulting from condition of dilapidated building) in *Wood on Nuisances*, 2 ed. §§ 118, 119. Limited (Liability of lessor for injury resulting from condition of premises) in *Clancy v. Byrne*, 56 *N. Y.* 129, 135.
- *v. Tilton*, 24 *How. Pr.* 494. Said in 41 *N. Y.* 619, to have been aff'd in Court of Appeals, December, 1869.
- Bentley v. Columbia Ins. Co.**, 19 *Barb.* 595. Aff'd in 17 *N. Y.* 421.
- *v. Jones*, 4 *How. Pr.* 335; s. c., 3 *Code R.* 37. Disapproved (Distinction between judgment and order) in *Smith v. Lewis*, 1 *Daly*, 452. See, in accord therewith, as to decision on demurrer *King v. Stafford*, 5 *How. Pr.* 30; 6 *Id.* 127. But see *Nellis v. De Forrest*, 6 *Id.* 413, 417.
- *v. Morse*, 14 *Johns.* 468; s. c., 5 *N. Y. Com. L. Law. ed.* 944, with brief note. Disting'd (Moral obligation, as support for promise) in *Gier v. Archer*, 2 *Barb.* 420, 425.
- Benton v. Martin**, 31 *N. Y.* 382. Further decision in 40 *N. Y.* 345. Both decisions explained and disting'd as to the effect of the duplicate draft, in further decision in 52 *N. Y.* 570, which rev'd 3 *Alb. L. J.* 212. See *Pechner v. Phoenix Ins. Co.*; *People v. Bostwick*. Decision in 52 *N. Y.* applied (Parol evidence of conditions) in *McCulloch v. Hoffman*, 10 *Hun.* 133, 136. Disting'd in *Willse v. Whitaker*, 22 *Hun.* 242, 244; *Bull's Head B'k v. Koehler*, 1 *City Ct.* 272. Collated with *Seymour v. Cowing*, 4 *Abb. Ct. App. Dec.* 400, among other cases in *Westerman v. Krumweide*, 15 *Northw. Rep.* 256.
- *v. Pratt*, 2 *Wend.* 385. Denied (Damages for fraud) in *Rice v. Manley*, 2 *Hun.* 492; s. c., 5 *Sup'm. Ct. (T. & C.)* 14, as overruled by *Dung v. Parker*, 52 *N. Y.* 494. Approved, however, in *Rice v. Manley*, 66 *N. Y.* 85, which rev'd 2 *Hun.* 492. Relied on in *March v. Wilson*, *Busb. L. (N. C.)* 147. Explained in 1 *Benj. on Sales*, § 647 (Corbin's 4 Am. ed.).
- *v. Wickwire*, 54 *N. Y.* 226. Disting'd (Mechanics' lien) in *Fox v. Kidd*, 77 *N. Y.* 489, 492. Explained (Personal judgment in proceedings to enforce mechanic's lien) in *Burroughs v. Fosteran*, 2 *Abb. N. C.* 333, 340.
- Berdan v. Sedgwick**, 40 *Barb.* 359. Aff'd in 44 *N. Y.* 626.
- Berdell v. Berdell**, 58 *How. Pr.* 102; s. c., more fully, as *Berdell v. Parkhurst*, 19 *Hun.* 358. Decision on reversal of order for examination before referee reported in 86 *N. Y.* 519.
- Berg v. Narragansett S. S. Co.**, 5 *Daly*, 395. Followed (Exoneration of carrier by delivery to connecting lines) in *Weil v. Merchants' Despatch Transp. Co.*, 7 *Daly*, 456, 460.

- Bergen v. Bennett**, 1 *Cal. Cas.* 1; s. c., 2 *Am. Dec.* 281, with note, where it is shown to have been extensively cited and indorsed as an authority on the subject of powers, both in the Federal courts and elsewhere. See *Conklin v. Egerton*; *Davoue v. Fanning*. Followed (Continuance of power of sale contained in mortgage) with *Wilson v. Troup*, 2 *Cov.* 236; s. c., 14 *Am. Dec.* 458; *Slee v. Manhattan Co.*, 1 *Paige*, 178, in *Niles v. Ransford*, 1 *Mich.* 338; s. c., 51 *Am. Dec.* 95, 97, with note. Followed (Effect of execution by executor of power to sell real estate) in *Braman v. Stiles*, 2 *Pick. (Mass.)* 460; s. c., 13 *Am. Dec.* 445.
- **v. Bradley**, 36 *N. Y.* 316. Followed (Appeal to court of appeals, where new trial has been denied below) in *Coleman v. Pleystead*, 40 *N. Y.* 341.
- **v. Carman**, 79 *N. Y.* 146; s. c., as *Bergen v. Snedeker*, 8 *Abb. N. C.* 50; rev'g *Snedeker v. Snedeker*, 18 *Hun.* 355. See *Mutual Life Ins. Co. v. Bowen*; *Snedeker v. Snedeker*. Decision in 79 *N. Y.* distinguish'd (Appealability of General Term order) in *Matter of N. Y., West Shore, &c. R'y Co.*, 94 *N. Y.* 287.
- **v. Gubna**, 10 *Hun.* 11. Cited (Form of town resolution) in *People ex rel. Murphy v. Kelly*, 5 *Abb. N. C.* 383, n.
- **v. Mayor, &c. of N. Y.**, 5 *Hun.* 243. See (Power to appoint attendants for police courts) *Brinck v. Mayor, &c. of N. Y.*, 16 *Hun.* 340.
- **v. Snedeker**. See *Mutual Life Ins. Co. v. Bowen*; *Snedeker v. Snedeker*.
- **v. Wyckoff**, 84 *N. Y.* 659. Reported in full in 1 *Civ. Pro. R. (Browne)* 1.
- **v. Duff**, 4 *Johns. Ch.* 368. Reorganized as authority (Delegation of naked power to sell in *May v. Frazee*, 4 *Litt. (Ky.)* 391; s. c., 14 *Am. Dec.* 159, 167, with note.
- Bergh's Case**. Contempt, *N. Y.* general sessions, 1875. Present't, letter, briefs, in one volume at State Library in Albany. Reported in 16 *Abb. Pr. N. S.* 266. Collated (Constructive contempts) with *Hall v. L'Platinier*, 49 *How. Pr.* 500; *Albany City Bank v. Schermerhorn*, 9 *Paige*, 372; *Bowery Savings Bank v. Richards*, 3 *Hun.* 366; s. c., 6 *Sup'm. Ct. (T. & C.)* 59; *Parker v. Browning*, 8 *Paige*, 388, 390; *Sea Ins. Co. v. Stobbins*, *Id.* 565; *People v. Church*, 2 *Wend.* 262, in note to *State v. Frew & Hart*, 24 *W. Va.* 416; s. c., 19 *Cent. L. J.* 93.
- Berkshire Woolen Co. v. Juillard**, 13 *Hun.* 506. Aff'd in 75 *N. Y.* 535; s. c., 31 *Am. R.* 438. Decision in 75 *N. Y.* cited (Liability of a partnership in case of credit given to individual members thereof) in *Story on Partn. (7 ed.)* § 134, n.
- Berlin v. Hall**, 43 *Barb.* 442. Doubted (Statute of limitations as defense, in proceedings against joint debtor under Code Pro. § 375) in *Gibson v. Van Derzee*, 14 *Abb. Pr. N. S.* 111.
- Berley v. Rampacher**, 5 *Duer*, 183. Col-
- lated with other cases (Effect of married women's acts on liability of husband for wife's debts contracted while sole) in *Cole v. Seeley*, 25 *Vt.* 220; s. c., 60 *Am. Dec.* 258, n.
- Berly v. Taylor**, 5 *Hill*, 581. See *Putnam v. Wise*. Referred to in 17 *Am. Dec.* 244, n., as opposed (Waiver of wrong committed in removal of chattels) to the general current of the adjudications. Examined and approved (Delivery of goods to the use of another) in *Sturtevant v. Orser*, 24 *N. Y.* 538, 542.
- Bernard v. Willcox**, 2 *Johns. Cas.* 374. Disting'd (Proof of death of partner in action by surviving partner to recover a debt due the firm) in *Ledden v. Colby*, 14 *N. H.* 33; s. c., 40 *Am. Dec.* 173, with note.
- Berner v. Mittnacht**, 2 *Sweeny*, 582. Followed (Discrediting witness) in *Burvce v. People*, 1 *Sup'm. Ct. (T. & C.)* 60.
- Bernes v. Weissner**, 2 *Bradf.* 212. Cited (Judgment entered after death of debtor on verdict rendered before, entitled to priority) in *Matter of Dunn*, 5 *Redf.* 27, 31.
- Bernhard v. Rensselaer & Saratoga R. R. Co.**, 18 *How. Pr.* 427. Rev'd in 32 *Barb.* 165; s. c., 19 *How. Pr.* 199; and that aff'd in 23 *Id.* 166; s. c., 1 *Abb. Ct. App. Dec.* 131. Decision in 1 *Abb. Ct. App. Dec.* followed (Negligence in crossing railroad) in *Thurber v. Harlem, &c. R. R. Co.*, 60 *N. Y.* 326, 331. Followed and approved in *Ernst v. Hudson River R. R. Co.*, 35 *N. Y.* 40. Followed (Submission of question of negligence to jury) in *Lamb v. Camden & Amboy R. R., &c. Co.*, 2 *Daly*, 467; *Weber v. N. Y. Central, &c. R. R. Co.*, 58 *N. Y.* 455; *Burke v. Broadway & Seventh Ave. R. R. Co.*, 49 *Barb.* 534. Applied in *Wilde v. Hudson River R. R. Co.*, 23 *How. Pr.* 495.
- Berrien v. Steel**, 1 *Civ. Pro. R.* 279, n.; s. c., 62 *How. Pr.* 335, n. Followed (Husband's liability for torts of wife) in *Fitzsimons v. Harrington*, 1 *Civ. Pro. R.* 360, 362. See *Code Civ. Pro.* 1881, § 450, n.
- **v. McLane**. See *Evans v. Ellis*.
- **v. Westervelt**, 12 *Wend.* 194. To the contrary (Amending affidavit in replevin) *Cutler v. Rathbone*, 1 *Hill*, 204; *Stacy v. Farnham*, 2 *How. Pr.* 26 (which see *below*); *Spalding v. Spalding*, 3 *Id.* 297. Disting'd in *People ex rel. Beller v. Wright*, 5 *Sup'm. Ct. (T. & C.)* 518, 521.
- Berry, Matter of**, 26 *Barb.* 55. Followed (Effect of security on appeal upon levy) in *Rathbone v. Morris*, 9 *Abb. Pr.* 213, 214.
- Berry v. Cross**, 3 *Sandf. Ch.* 1. Consult (Voluntary associations) *Ebbinghausen v. Worth Club*, 4 *Abb. N. C.* 300.
- **v. Kelly**, 4 *Robt.* 106. Applied (Attachment against partnership goods) in *Doane v. Lindsay*, 42 *Super. Ct. (J. & S.)* 399, 408.
- **v. Mutual Ins. Co.**, 2 *Johns. Ch.* 603. See *Brinckerhoff v. Lansing*; *Rockwell v. Hobby*. Relied on, with other cases, in *Probasco v. Johnson*, 2 *Disn. (Ohio)* 98, to show that the weight of authority is against

the rule that an equitable mortgage is created by the deposit of title-deeds.

— **v. People**, 8 *Weekly Dig.* 15. Aff'd in 77 *N. Y.* 588.

— **v. Riley**, 2 *Barb.* 307. Explained (Assignment for benefit of creditors—stipulations in assignor's favor) in *Burrill on Assign.* § 209, 4 ed.

— **v. Robinson**, 9 *Johns.* 121; s. c., 4 *N. Y. Com. L. Law. ed.* 695, with brief note. Cited with *Tobey v. Barber*, 5 *Johns.* 73; s. c., 4 *Am. Dec.* 326 (Necessity for demand and notice in case of note indorsed when overdue) in *Poole v. Tolleson*, 1 *McCord (S. C.)* 199; s. c., 10 *Am. Dec.* 663. Followed in *Eckfert v. Des Coudres*, 1 *Mill. (S. C.)* 69; s. c., 12 *Am. Dec.* 609, with note; *Hill v. Martin*, 12 *Mart. (La.)* 177; s. c., 13 *Am. Dec.* 372; *Colt v. Barnard*, 18 *Pick (Mass.)* 260; s. c., 29 *Am. Dec.* 584. Followed with *Agan v. McManus*, 11 *Johns.* 80; *Leavitt v. Putnam*, 3 *N. Y.* 494, in *Patterson v. Todd*, 18 *Penn. St.* 426; s. c., 57 *Am. Dec.* 622.

— **v. Yates**, 24 *Barb.* 199. Applied (Enforcing contracts *ultra vires*) with *Bissell v. Michigan Southern, &c. R. R. Co.*, 22 *N. Y.* 258, 285, in *Franklin Co. v. Lewiston Institution for Savings*, 68 *Me.* 43; s. c., 28 *Am. R.* 9, 12, 14. Disapproved by *Slosson, J.* (Effect of subscriptions) in *N. Y. Exchange Co. v. De Wolf*, 5 *Bosw.* 593, 609.

**Berthelon v. Betts**, 4 *Hill.* 577. Followed (Priority of creditor procuring assignment) in *Spear v. Wardell*, 1 *N. Y.* 144, 149, 160, which rev'd 2 *Barb. Ch.* 291, which see.

**Bertholf v. O'Reilly**, 8 *Hun.* 16. Aff'd in 74 *N. Y.* 509; s. c., 30 *Am. R.* 323. See *Aldrich v. Sager*. Decision in 8 *Hun.* applied (Violation of Sunday law as a bar to action for injuries) in *Platz v. City of Cohoes*, 24 *Hun.* 101. Decision in 74 *N. Y.* disting'd in *People v. Lyon*, 27 *Hun.* 180, as inapplicable to case of law providing what shall be *prima facie* evidence of illegal sale of liquor. Followed with *Mead v. Stratton*, 87 *N. Y.* 493 (Right of action under Civil Damage Act) in *Neu v. McKechnie*, 95 *N. Y.* 632.

**Bertine v. Varian**, 1 *Edw.* 343. Rule herein said (Time within which to bring action after discovery of fraud), in *Foot v. Harrington*, 41 *N. Y.* 164, to be modified by Code.

**Besel v. N. Y. Central, &c. R. R. Co.**, 9 *Hun.* 457. Rev'd in 70 *N. Y.* 171. Decision in 70 *N. Y.* applied (Injury from negligence of co-employee) in *Murphy v. Boston & Alb. R. R. Co.*, 8 *Abb. N. C.* 41, 48; s. c., 59 *How. Pr.* 197, 203. Disting'd in *McCosker v. Long Island R. R. Co.*, 21 *Hun.* 500, 507.

**Besley v. Lawrence**, 11 *Paige*, 581. Explained (Effect of creditor having security for debt) in *Jervis v. Smith*, 7 *Abb. Pr. N. S.* 217.

— **v. Palmer**, 1 *Hill*, 482. Explained (Extinguishing contract by judgment) in *Suydam v. Barber*, 18 *N. Y.* 468.

**Besson v. Southard**, 10 *N. Y.* 236. Followed (Question of probable cause for malicious prosecution, when for jury) in *Heyne v. Blair*, 62 *N. Y.* 19, 22.

**Best v. Bauder**. See *Swords v. Owen*. Disting'd (Validity of sales, &c. without license required by statute) with *Griffith v. Wells*, 3 *Den.* 226, in *Mandelbaum v. Gregovich*, 17 *Nev.* 87; s. c., 45 *Am. R.* 433.

— **v. Staples**, 61 *N. Y.* 71. Mem. of decision here aff'd in 1 *Alb. L. J.* 102. Compare (Validity of mortgage taken under act of Congress as against State law) *Aldrich v. Aetna Ins. Co.*, 8 *Wall.* 491.

**Bettis v. Goodwill**, 32 *How. Pr.* 137. Disting'd (Offer of judgment in foreclosure as affecting costs) in *Bathgate v. Haskins*, 63 *N. Y.* 261, 267.

**Betts v. Bache**, 23 *How. Pr.* 197; s. c., with affirmance, 14 *Abb. Pr.* 279. Mem. of affirmance in 9 *Bosw.* 614.

— **v. Betts**, 1 *Johns. Ch.* 197. Approved (Confession not admissible without other proof) in *Sawyer v. Sawyer*, *Walk. Ch.* 52.

— **v. —**, 4 *Abb. N. C.* 317. Part of opinion here omitted, in 57 *How. Pr.* 355, *n.* See *Valentine v. Valentine*; *Westerfield v. Westerfield*. Followed (Division of void bequests between residuary legatees or next of kin) in *Greer v. Belknap*, 63 *How. Pr.* 390. See also (*Vesting Meyer's Will*, 6 *Abb. N. C.* 438, 445, *n.* Reaff'd (Bequest to unincorporated society) in *McKeon v. Kearney*, 57 *How. Pr.* 356. Followed in *Leonard v. Davenport*, 58 *How. Pr.* 386. Compare 3 *Am. L. Reg. N. S.* 269, 274. See also (Defective organization of corporation) *Raisbeck v. Oesterricher*, 4 *Abb. N. C.* 444, 445, *n.* See also (Voluntary associations) *Ebbinghausen v. Worth Club*, 4 *Abb. N. C.* 300.

— **v. Birdsall**. See *Bell v. Birdsall*.

— **v. Garr**, 1 *Hill.* 411. Rev'd in 26 *N. Y.* 383. Decision in 26 *N. Y.* followed (Granting leave to issue execution) in *Kincaid v. Richardson*, 9 *Abb. N. C.* 315, 321, as the true rule where facts are undisputed and remedy doubtful.

— **v. Hoyt**, 19 *Barb.* 412. Compare (Lien of successive levies) *Muscott v. Woolworth*, 14 *How. Pr.* 477; *Wheeler v. Smith*, 11 *Barb.* 345.

— **v. Jackson**, 6 *Wend.* 173; s. c., 10 *N. Y. Com. L. Law. ed.* 1058, with brief note on revocation. See *Jackson v. Kniffen*. Cited in *Apperson v. Cottrell*, 3 *Port. (Ala.)* 51; s. c., 29 *Am. Dec.* 239, 242, as showing that the original jurisdiction of probates, belonged to the ecclesiastical courts. See also, *Colton v. Ross*, 2 *Paige*, 396; s. c., 22 *Am. Dec.* 648, with note.

— **v. June**. See *Evans v. Evans*.

— **v. Lee**, 5 *Johns.* 348; s. c., 3 *N. Y. Com. L. Law. ed.* 1041, with brief note; s. c., 4 *Am. Dec.* 368, with note, in which *Curtis v. Groat*, 6 *Johns.* 168; *Sailsbury v. McCoon*, 3 *N. Y.* 379; and other authorities are reviewed. See *Merritt v. Johnson*. Fol-

- lowed (Owner's right to reclaim property in an altered form) in *Curtis v. Groat*, 6 *Johns*. 168; s. c., 5 *Am. Dec.* 204. Compare, also, *Isle Royale Mining Co. v. Hertin*, 37 *Mich.* 332; s. c., 26 *Am. R.* 520. Reviewed with *Curtis v. Groat*, 6 *Johns*. 168; *Chandler v. Edson*, 9 *Id.* 362; *Silsbury v. McCoon*, 3 *N. Y.* 378, 385, in *Wetherbee v. Green*, 22 *Mich.* 311; s. c., 7 *Am. R.* 653, 656. Cited in 2 *Kent Com.* 363, as admitting the Civil and English law on the wrongful acquisition of goods by accession.
- *v. Williamsburgh*, 15 *Barb.* 255. Approved (Injunction not allowed against illegal tax) in *Dodd v. City of Hartford*, 25 *Conn.* 232.
- Bevan v. Cooper**, 7 *Hun.* 117; rev'd in 72 *N. Y.* 317. See *Harris v. Fly*; *Lupton v. Lupton*; *Tucker v. Tucker*. Decision in 72 *N. Y.* reviewed (Jurisdiction of surrogate) in *Matter of York*, 6 *Civ. Pro. R. (Browne)* 245. Disting'd in *Steinle v. Oechsler*, 5 *Redf.* 312. Disting'd and limited in *Leggett v. Leggett*, 24 *Hun.* 336. Questioned in *Meeker v. Meeker*, 4 *Redf.* 29, 34. Limited in *Riggs v. Cragg*, 89 *N. Y.* 479. Explained (Legacy, when a charge on realty) in *Hoyt v. Hoyt*, 85 *N. Y.* 142, 148; *Hall v. Thompson*, 23 *Hun.* 338. Recognized as authority in *Manson v. Manson*, 8 *Abb. N. C.* 123. Explained in *Giles' Estate*, 11 *Abb. N. C.* 57.
- Bevier v. Schoonmaker**, 29 *How. Pr.* 411. Explained and limited (Liability of mortgagee for surplus) in *Russell v. Duffon*, 4 *Lans.* 399, 404.
- Beyer v. People**, 12 *Weekly Dig.* 478; mem. s. c., 24 *Hun.* 655. Aff'd in 86 *N. Y.* 369.
- Bicknell v. Field**, 8 *Puige*, 440. See *Mead v. Merritt*. Followed (Conclusiveness of foreign judgment) in *Kinnier v. Kinnier*, 45 *N. Y.* 535. See to the contrary (Effect of constructive service) *Arndt v. Arndt*, 15 *Ohio*, 33. See also *Abb. Tr. Ev.* 547.
- *v. Lancaster City & County Fire Ins. Co.*, 1 *Sup'm. Ct. (T. & C.)* 215. Aff'd in 58 *N. Y.* 677.
- Bidwell v. Astor Mut. Life Ins. Co.**, 16 *N. Y.* 263. Disting'd (Jurisdiction of transitory action) in *Gemp v. Pratt*, 7 *Daly*, 197, 199; *Landers v. Staten Island R. R. Co.*, 53 *N. Y.* 459. Disting'd (Equitable relief) in *N. Y. Ice Co. v. Northw. Ins. Co.*, 31 *Barb.* 77. Followed in *Lattin v. McCarty*, 41 *N. Y.* 111.
- *v. Greenshield*, 2 *Abb. N. C.* 427. Explained (Trespass—dispossession) in *Moak's Underhill's Torts*, 1 *Am. ed.* 381.
- *v. Lament*, 17 *How. Pr.* 357. Reviewed and disting'd (Dismissal of complaint) in 34 *Super. Ct. (J. & S.)* 145.
- *v. North Western Ins. Co.*, 19 *N. Y.* 179. Subsequent decision in 24 *Id.* 302. Both decisions limited (Effect of warranty in insurance) so as not to oppose *Jennings v. Chenango Mut. Ins. Co.*, 2 *Den.* 75; *Kennedy v. St. Lawrence Mutual Ins. Co.*, 10 *Barb.* 285, in *Ripley v. Aetna Ins. Co.*, 30 *N. Y.* 136, 162. Disting'd (Extrinsic evidence in action on policy) in *Pitney v. Glen's Falls Ins. Co.*, 65 *N. Y.* 14, which aff'd 61 *Barb.* 341, which see. Explained in *Dakin v. Liverpool, London, &c. Ins. Co.*, 77 *N. Y.* 604. Decision in 24 *N. Y.* relied on in *Tallman v. Atlantic Fire, &c. Ins. Co.*, 4 *Abb. Ct. App. Dec.* 345, 349. Followed in *Manhattan Fire Ins. Co. v. Weill*, 28 *Gratt. (Va.)* 389; s. c., 26 *Am. R.* 364. Approved (Waiver by insurer) in *Rowley v. Empire Ins. Co.*, 4 *Abb. Ct. App. Dec.* 135. Applied (Warranty not to be extended to known defects) in *Bennett v. Buchan*, 76 *N. Y.* 391. Decision in 19 *N. Y.* disting'd (Who may recover on policy) in *Pacific Mail S. S. Co. v. Great Western Ins. Co.*, 65 *Barb.* 334, 337.
- Bielschowsky v. People**, 3 *Hun.* 40; s. c., 5 *Sup'm. Ct. (T. & C.)* 277. Aff'd, it seems, in 60 *N. Y.* 616, but no opinion. Decision in 3 *Hun* disting'd (Evidence of one crime to show intent to commit another) in *People ex rel. Willis v. Justices of Special Sessions*, 10 *Hun.* 158.
- Bierbauer v. N. Y. Central, &c. R. R. Co.**, 15 *Hun.* 559. Aff'd without opinion, in 77 *N. Y.* 588.
- Bieseigal v. N. Y. Central R. R. Co.**, 33 *Barb.* 429. Rev'd in 34 *N. Y.* 622. See *Beisiegel v. Same*.
- Bigler v. Hall**, 54 *N. Y.* 167. Followed (Continuance of obligation to deliver personal property) in *Baltimore St. Pkt. Co. v. Garrison*, 6 *Daly*, 246, 254.
- *v. Mayor, &c. of N. Y.*, 6 *Hun.* 239. Further decisions in 9 *Hun.* 253; 5 *Abb. N. C.* 51. Decision in 6 *Hun* disting'd (Contracts of municipal corporation) in *Harrington v. Mayor, &c. of N. Y.*, 10 *Hun.* 248, 253.
- *v. N. Y. Central Ins. Co.*, 20 *Barb.* 635. Aff'd in 22 *N. Y.* 402. See *Hand v. Williamsburgh City Ins. Co.* Decision in 22 *N. Y.* said to maintain doctrine different from that generally prevailing (Validity of policy as affected by subsequent insurance) in 28 *Am. Dec.* 125, *n.* Applied in *Landers v. Watertown F. Ins. Co.*, 19 *Hun.* 174, 177. Disting'd and questioned in *Hubbard v. Hartford Fire Ins. Co.*, 33 *Iowa*, 325; s. c., 11 *Am. R.* 125, 130. Cited in *Lindley v. Union Farmer's Mut. Fire Ins. Co.*, 65 *Me.* 368; s. c., 20 *Am. R.* 701, 704, as showing the *N. Y.* doctrine to be like that of the Federal courts, contrary to that maintained in *Mass.* Disapproved in *Fireman's Ins. Co. of Dayton v. Holt*, 35 *Ohio St.* 189; s. c., 35 *Am. R.* 601, 603. Commented on in *Royal Ins. Co. v. McCrea*, 8 *Lea (Tenn.)* 535. Reviewed with other cases, in 15 *Alb. L. J.* 324.
- Bigelow v. Benedict**, 9 *Hun.* 429. Aff'd in 70 *N. Y.* 202; s. c., 26 *Am. R.* 573. See *Kingsbury v. Kirwan*. Decision in 70 *N. Y.* followed with *Story v. Salomon*, 71 *N. Y.* 420; *Harris v. Tumbidge*, 83 *Id.* 99; s. c., 38 *Am. R.* 398 (Contracts to deliver property, seller having option as to time), in

- Wall v. Schneider, 59 Wis. 552; s. c., 48 Am. R. 520.
- v. Benton, 14 Barb. 123. Disting'd (Construction of guaranty) in Western N. Y. Life Ins. Co. v. Clinton, 66 N. Y. 332.
- v. Hall, 25 Hun, 59. Abridg't in 12 Weekly Dig. 436.
- v. Provost. See Reed v. Pruyn.
- v. Stearns. See Bloom v. Burdick; Yates v. Lansing.
- Biggell v. Forrest. See Cathcart v. Cannon.
- Bigsby v. Warden, 62 N. Y. 27. Disting'd (Notice of appeal from justice's court) in Jones v. Cook, 11 Hun, 230. Followed in Doron v. McLoughlin, 14 Hun, 629. Collated, with other cases, in Throop Justice's Man. 2 ed. 91. See Code Civ. Pro. 1881, § 3070, n. Followed (Costs of appeals from justices' courts) in Chapin v. Skeels, 20 Hun, 448.
- Bihin v. Bihin, 17 Abb. Pr. 19. Cited with other cases (Limitation of time to bring action for divorce) in 8 Abb. N. C. 202, n.
- Bilborough v. Metropolis Ins. Co., 5 Duer, 587. Applied (Promissory warranty in policy) in Schultz v. Mutual Life Ins. Co., 6 Fed. Rep. 675.
- Bildersee v. Aden, 12 Abb. Pr. N. S. 324; s. c., 62 Barb. 175, rev'g 10 Abb. Pr. N. S. 163. See McDowell v. Second Ave. R. R. Co. Compare (Attachment—validity of undertaking) Code Civ. Pro. 1881, §§ 638, 642, n.
- Bill v. Fourth Western Turnpike Co. See Bank of Utica v. Smalley.
- Billings v. Baker, 15 How. Pr. 525. Aff'd in 28 Barb. 343, where also the decision below is fully reported. See Hurd v. Cass. Opinion in 28 Barb. pronounced able and exhaustive, but the conclusion doubted (Tenancy by the curtesy) in Matter of Winne, 2 Lans. 21. Collated, with other cases, in Sharsw. & B. Cases on Real Prop. 289. Criticised and disting'd in Porch v. Fries, 18 N. J. Eq. 204.
- v. Jane, 11 Barb. 620. Followed with Clement v. Adams, 12 How. Pr. 165 (Rights of transferee by delivery of promissory note) in Moore v. Miller, 6 Oreg. 254; s. c., 25 Am. R. 518. For stricter common law rule (Proof of assignment) see Palmer v. Merrill, 6 Cush. 282. See, also, Abb. Tr. Ev. 2.
- v. Vanderbeck, 23 Barb. 546. Subsequent decision in 15 How. Pr. 295. Decision in 15 How. Pr. disting'd (Reference on reversal of judgment) in Devlin v. Mayor, &c. of N. Y., 6 Daly, 386, 389. Decision in 23 Barb. 546, disting'd (Accord unperformed—when binding) in Panzerbeiter v. Waydell, 21 Hun, 161, 162.
- Billington v. Wagoner, 33 N. Y. 81 (said to overrule Vilas v. Jones, 1 N. Y. 274). Followed with La Farge v. Herter, 4 Barb. 346; 9 N. Y. 241 (Defense of usury, when not available) in Lemmon v. Whitman, 75 Ind. 318; s. c., 39 Am. R. 150. Applied in Madison University v. White, 25 Hun, 490, 497.
- Bills v. N. Y. Central R. R. Co., 53 N. Y. 608. Decision on subsequent appeal in 84 N. Y. 5. See Poucher v. N. Y. Central R. R. Co.
- Binck v. Wood, 43 Barb. 315. Said to have been aff'd in Court of App., 1869.
- Bingham v. Disbrow, 37 Barb. 24; s. c., more fully, in 14 Abb. Pr. 251. Rev'd in 5 Trans. App. 198, no principle being, however, settled by the decision, as a majority of the judges did not agree on the ground of the reversal. See (Supplementary proceedings—when maintainable) Code Civ. Pro. 1881, § 2458, n.
- v. Weiderwax, 1 N. Y. 509. See Fellows v. Prentiss; Murray v. Smith; Shephard v. Little. Explained with Murray v. Smith, 1 Duer, 412; Fellows v. Prentiss, 3 Den. 512; McCrea v. Purmort, 16 Wend. 460 (Who may be permitted to inquire into actual consideration of deed) in Halliday v. Hart, 30 N. Y. 474, 493.
- Bininger v. Clark, 60 Barb. 113. See Williams v. Wilson. Cited (Good will of partnership business as part of its property) in Story on Partn. 7 ed. § 99, p. 159, n.; Williams v. Wilson, 4 Sandf. Ch. 379, being cited on a similar point on p. 161. Explained in Morgan v. Schuyler, 79 N. Y. 490; s. c., 35 Am. R. 543, 550, n.
- v. Wattles. See Wolfe v. Goulard.
- Binnard v. Spring, 42 Barb. 470. Reaff'd (Fraudulent sale—proof of scienter) in Clark v. Bamer, 2 Lans. 67.
- Binney v. Le Gal, 19 Barb. 592. Limited (Confession of judgment by one partner) in Lahey v. Kingon, 13 Abb. Pr. 192, 194.
- Binsse v. Wood, 37 N. Y. 526. Disting'd (Discharge of surety) in Grant v. Smith, 46 N. Y. 93, 99. Disting'd (Objection available on appeal from decision refusing non-suit) in Ansonia Brass & Copper Co. v. Pratt, 10 Hun, 445.
- Birch v. Jansen, 9 Weekly Dig. 555. Aff'd, it seems, on this opinion, in 86 N. Y. 630.
- Birehell v. Strauss, 28 Barb. 293. Approved (Constructive fraud not ground of arrest) in People v. Kelly, 35 Barb. 444, 447, 455, 460, 462.
- Birehead v. Brown, 5 Hill, 634. Aff'd in 2 Den. 375. See Union Bank v. Coster. Decision in 2 Den. reviewed and explained with other cases (Guaranty, when general), in Evansville B'k v. Kaufmann, 93 N. Y. 273, 287, which rev'd 24 Hun, 613, which see. Decision in 5 Hill collated with other cases, in 2 Hare & W. Am. Lead. Cas. 5 ed. 352. Collated with Union Bank v. Coster, 3 N. Y. 214; McLaren v. Watson's Executors, 2 Wend. 425, and other cases, in 28 Am. R. 347, n.
- Bird v. Caritat, 2 Johns. 342; s. c., 3 Am. Dec. 433, with note, where it is shown to have been frequently recognized as an authority respecting the right of a foreign assignee to sue, the cases cited in Story Conf. Laws, § 565, being thought by the editor to be on the whole decidedly against the right.

- **v. Hayden**, 2 *Abb. Pr. N. S.* 61; s. c., 1 *Robt.* 383. See *Harger v. McCullough*. See other cases collated (Nature of liability of officer of corporation for its debts) in 6 *Abb. N. C.* 259, n.
- **v. The Josephine**, 50 *Barb.* 501. Rev'd in 39 *N. Y.* 19. Decision in 39 *N. Y.* explained (Jurisdiction of State courts to enforce liens upon vessels) in *Sheppard v. Steele*, 43 *N. Y.* 52; *Brookman v. Hamill*, *Id.* 554. Followed in *Vose v. Cockcroft*, 44 *Id.* 415.
- Birdsall v. Clark**, 7 *Hun*, 351. Rev'd in 73 *N. Y.* 73; s. c., 29 *Am. R.* 105, with note. Decision in 73 *N. Y.* disting'd (Delegation of power by common council) in *Edwards v. City of Watertown*, 24 *Hun*, 426, 428. Disting'd with *Thompson v. Schermerhorn*, 6 *N. Y.* 92 (Validity of proceedings for street improvements) in *Myers v. Martin*, 17 *Weekly Dig.* 110.
- **v. Hewlett**, 1 *Paige*, 32; s. c., 19 *Am. Dec.* 392, with note, wherein it is shown to have been relied on in other States as authority respecting the liability of a devisee, accepting a devise charged with the payment of a legacy, this doctrine being however referred to in *Mesick v. New*, 7 *N. Y.* 167, as *dictum*.
- **v. Patterson**, 51 *N. Y.* 43. Applied (Adoption of verdict on special issues) in *Madison University v. White*, 25 *Hun*, 490, 494. Followed in *Carroll v. Deimell*, 13 *Weekly Dig.* 401. See *Code Civ. Pro.* 1881, § 973, n. Intimation herein followed (Judge's power to direct verdict on trial of special issues) in *Browne v. Murdock*, 12 *Abb. N. C.* 360.
- **v. Phillips**, 17 *Wend.* 464. Overruled in effect (Questions arising on return to certiorari) in *Anderson v. Prindle*, 23 *Wend.* 616; *Morewood v. Hollister*, 6 *N. Y.* 309. See also to the contrary *Benjamin v. Benjamin*, 5 *N. Y.* 383. Approved (Against whom summary proceedings may be maintained) in *People ex rel. Higgins v. McAdam*, 84 *N. Y.* 293.
- **v. Pixly**, 3 *Wend.* 425. Overruled (Remedy by attachment for not producing papers) in subsequent decision in 4 *Wend.* 196, which was followed (Contempt—striking out pleading) in *Walker v. Walker*, 82 *N. Y.* 260, 264.
- **v. Russell**, 1 *Robt.* 538. Rev'd in 29 *N. Y.* 220. See *Loomis v. Jackson*.
- Birdseye v. Ray**, 4 *Hill*, 158. Aff'd in 5 *Den.* 619. Explained as not settling question (Transfer of property to secure antecedent debt as sufficient consideration) in *Williams v. Shelly*, 37 *N. Y.* 375. Followed (Continuation of possession under levy) in *Hodge v. Ade*, 2 *Lans.* 314. Decision in 4 *Hill*, applied in *Matter of Hull*, 14 *Blatchf. C. Ct.* 257, 259.
- Birkbeck v. Ackroyd**, 11 *Hun*, 365. Aff'd in 74 *N. Y.* 356; s. c., 30 *Am. R.* 304. See *Filer v. N. Y. Central R. R. Co.*
- **v. Stafford**, 23 *How. Pr.* 236; s. c., more fully, 14 *Abb. Pr.* 285. See *Power v. Kent*.
- Birmingham v. Empire Fire Ins. Co.**, 42 *Barb.* 457, 459. Relied on (Avoiding fire policy for misrepresentations as to title) in *Wineland v. Security Ins. Co.*, 53 *Md.* 277, 286.
- Bisbey v. Shaw**, 15 *Barb.* 578. Rev'd in 12 *N. Y.* 67. Decision in 12 *N. Y.* examined and limited with *Bush v. Prosser*, 11 *N. Y.* 347 (Justification in actions of defamation) in *Wachter v. Quenzer*, 29 *N. Y.* 547. Followed (Pleading mitigating circumstances) in *Delevin v. Wilder*, 34 *How. Pr.* 488. Relied on in *Van Benschoten v. Yaple*, 13 *How. Pr.* 97, 100.
- Bishop v. Alcott**, 21 *Hun*, 253. Aff'd in 86 *N. Y.* 503.
- **v. Barton**, 2 *Hun*, 436; s. c., 5 *Sup'm. Ct. (T. & C.)* 6. Aff'd, it seems, in 64 *N. Y.* 637, but no opinion.
- **v. Bishop**, 4 *Hill*, 138. Approved (Effect of statute passed after will is made, but before testator's death) in *Wakefield v. Phelps*, 37 *N. H.* 295.
- **v. —**, 11 *N. Y.* 123. See *Goodrich v. Jones*; *Voorhees v. McGinnis*. Disting'd (Fixtures) in *Frank v. Harrington*, 36 *Barb.* 415. Criticised and disting'd in *Noyes v. Terry*, 1 *Lans.* 219. Reviewed, with other cases, in *Arnold v. Crowder*, 81 *Ill.* 56; s. c., 25 *Am. R.* 260.
- **v. Breckles**, *Hoffm.* 534. See *Smith v. Mulock*. Quoted and discussed (Refusal of partner to proceed properly in business, as ground for dissolution) in 1 *Pars. on Contr.* 195, n. 1.
- **v. Edmiston**, 13 *Abb. Pr.* 346. Rev'd in 16 *Abb. Pr.* 466.
- **v. Ely**, 9 *Johns.* 294; s. c., 4 *N. Y. Com. L. Law. ed.* 769, with brief note.
- **v. Empire Transp. Co.**, 33 *Super. Ct. (J. & S.)* 99. Further decisions in 37 *Id.* 12, 17; 48 *How. Pr.* 119.
- **v. Garcia**, 14 *Abb. Pr. N. S.* 69. Explained and disting'd (Effect of judgment on party that has not been notified) in *Dormitzer v. Illinois & St. Louis Bridge Co.*, 6 *Fed. Rep.* 217.
- **v. Halsey**, 3 *Abb. Pr.* 400. Explained (Assignment for benefit of creditors—no disposition of surplus) in *Burrill on Assign.* § 208, n. 2, 4 ed.
- Bissell v. Balcorn**, 40 *Barb.* 98. Rev'd in 39 *N. Y.* 275. Decision in 40 *Barb.* overruled also (Time of making payment required by statute of frauds) in *Webster v. Zielly*, 52 *Barb.* 482. Decision in 39 *N. Y.* disting'd and limited in *Hunter v. Wetsell*, 57 *N. Y.* 375, 379. Quoted and explained in 1 *Benj. on Sales*, § 192, n. 2 (Corbin's 4 *Am. ed.*). Explained in *Browne on Stat. of Frauds*, § 343, n. 3, 4 ed. Discussed (Sale of specific chattels unconditionally) in 1 *Benj. on Sales*, § 320 (Corbin's 4 *Am. ed.*). Dictum followed (Making valid contract after void one) in *Allis v. Read*, 45 *N. Y.* 142.



- **v. Bissell**, 55 *Barb.* 325; s. c., 7 *Abb. Pr. N. S.* 16. See *Ferrie v. Public Adm'r.* Discussed (Formalities of entering into marriage contract) in 2 *Add. on Contr.* 848, n., *Abb. ed.*; 1 *Bish. on Mar. & Div.* § 251, a, 6 ed. Cited with *Willis v. Underhill*, 6 *How. Pr.* 396; *Christy v. Clarke*, 45 *Barb.* 529, and other cases (Husband or wife as competent witness to prove their marriage) in 1 *Whart. Com. on Ev.* § 424.
- **v. Cornell**, 24 *Wend.* 354. Collated (Charge of crime involving moral turpitude) with other cases, in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 99. Cited (Justification of libel as applied or explained by innuendoes), with *Fidler v. Delavan*, 20 *Wend.* 57; *Tillotson v. Cheetham*, 3 *Johns.* 56, in *Atkinson v. Detroit Free Press Co.*, 46 *Mich.* 348.
- **v. Gold**, 1 *Wend.* 210; s. c., 19 *Am. Dec.* 480, with extended note collating authorities upon the subject of arrest.
- **v. Hall**. See *Hubbell v. Cowdrey*.
- **v. Hamblin**, 6 *Duer*, 512. Further decisions in 3 *Bosw.* 383; 13 *Abb. Pr.* 22. Decision in 6 *Duer*, cited (Effect of a public officer's entry as evidence) in 1 *Whart. Com. on Ev.* § 640. Decision in 13 *Abb. Pr.* distinguishing (Reference on reversal of judgment) in *Devlin v. Mayor, &c.* of N. Y., 6 *Daly*, 386, 389.
- **v. Hopkins**, 3 *Cow.* 166; s. c., 15 *Am. Dec.* 259, with note, where it is shown to have been frequently cited and approved in N. Y. (Retention of possession by vendor or mortgagor) its doctrine being thought, however, to have been modified by the Revised Statutes, citing *White v. Cole*, 24 *Wend.* 136. See *Barrow v. Paxton*; *Beals v. Guernsey*. To same effect, see *Lewis v. Stevenson*, 2 *Hall*, 63, 82. Approved in *Hall v. Tuttle*, 8 *Wend.* 375, 391. Followed with *Seward v. Jackson*, 8 *Cow.* 406, in *Briggs v. Parkman*, 2 *Metc. (Mass.)* 258; s. c., 37 *Am. Dec.* 89, with note. Cited in 1 *Benj. on Sales*, § 738, n. 58 (*Corbin's* 4 *Am. ed.*), as a case in which a full discussion by the reporter will be found. Commented upon in 1 *Story on Contr.* 5 ed. § 666, n. 2.
- **v. Kellogg**, 60 *Barb.* 617. Aff'd in 65 *N. Y.* 432. Decision in 60 *Barb.* followed (Who may maintain proceeding to remove cloud on title) in *Phillips v. Mayor, &c.* of N. Y., 2 *Hun.* 212, 215. Followed, but point not indicated, in *Mann v. Bouton*, 21 *Hun.* 410. Disting'd in *Matter of Phillips*, 60 *N. Y.* 21; *Levy v. Merrill*, 52 *How. Pr.* 360, 365. Decision in 65 *N. Y.* commented on (Application of statute against usury [L. 1837, c. 430, § 4] to purchaser) in *Matthews v. Warner*, 6 *Fed. Rep.* 465.
- **v. Kip**, 5 *Johns.* 100. See *McIntire v. Rowan*. Approved (Taking advantage of irregularity in process) in *Phillips v. Coffee*, 17 *Ill.* 156; citing *Jackson v. Walker*, 4 *Wend.* 464; *Jackson v. Pratt*, 10 *Johns.* 381. Disting'd, though approved, in *Den v. Despreaux*, 7 *Halst. (N. J.)* 182; s. c., 22

- Am. Dec.* 485, 488. Disting'd in *Coltraine v. McCaine*, 3 *Dev. (N. C.) Law*, 308; s. c., 24 *Am. Dec.* 256, with note. Followed in *Swiggart v. Harber*, 4 *Scam. (Ill.)* 364; s. c., 39 *Am. Dec.* 418, 425, with note.
- **v. Michigan Southern, &c. R. R. Co.**, 22 *N. Y.* 258. See *Berry v. Yates*; *Stoney v. Am. Life Ins. Co.* Disting'd (*Contracts ultra vires*) with *Whitney Arms Co. v. Barlow*, 63 *Id.* 62; *Woodruff v. Erie R'y Co.*, 93 *Id.* 609, but *Tracy v. Talmage*, 14 *N. Y.* 179, followed in *Nassau B'k v. Jones*, 95 *N. Y.* 115. Disting'd in *Joslyn v. Dow*, 19 *Hun.* 497. Re-aff'd in *Parish v. Wheeler*, 22 *N. Y.* 509. Cited as authority in *President, &c. of Union Bridge Co. v. Troy & Lansingburgh R. R. Co.*, 7 *Lans.* 246. Cited in illustration in *Kent v. Quicksilver Mining Co.*, 78 *N. Y.* 186. Approved with *Farmers' & Mech. B'k v. Empire Stone Dressing Co.*, 5 *Bosw.* 275, in *Monument Nat. B'k v. Globe Works*, 101 *Mass.* 57; s. c., 3 *Am. R.* 322. Cited with *De Groff v. American Linen Thread Co.*, 24 *Barb.* 375, in *City of Memphis v. Adams*, 9 *Heisk. (Tenn.)* 518; s. c., 24 *Am. R.* 331, 339. Decision of *Comstock, J.*, applied in *Culver v. Reno Real Estate Co.*, 91 *Pa. St.* 377. Quoted and commented upon in *Morawetz on Priv. Corp.* § 30, n. 1; *Id.* § 111. *Comstock, J.*'s, definition of *ultra vires* discussed in 1 *Parson on Contr.* 142. Followed (Liability of railroad company for injuries happening outside its line) in *Buffett v. Troy & Boston R. R. Co.*, 40 *N. Y.* 168, 178, which aff'd 36 *Barb.* 420, 425, 428, which see. Also followed in *Maghee v. Camden & Amboy R. R. Co.*, 45 *N. Y.* 518. Included, with notes, in *Field on Ultra Vires*, 116. Quoted and collated, with other cases, in *Id.* 186, 387. Cited in *Hutch. on Carriers*, § 153, n., as discussing the question at great length and with great ability. Doctrine of *SELDEN, J.*, referred to as approved, in *N. Y. & New Haven R. R. Co. v. Schuyler*, 34 *N. Y.* 49, and that of *Comstock, J.*, said to be inferentially abandoned (Liability for employee's acts) in *Lynch v. Metrop. Elev. Ry. Co.*, 24 *Hun.* 506, 508. Disting'd with *Edgerton v. N. Y. &c. R. Co.*, 39 *N. Y.* 227 (Duty of railroad company to one who by fraud obtains permission to ride) in *Way v. Chicago, R. I. & P. R. Co.*, *Sup'm. Ct., Iowa, June* 1884, 19 *N. W. Rep.* 830. Approved (Liability for fraudulent corporate acts) in *Smith v. Rathbun*, 66 *Barb.* 405. Disting'd, as to liability of shareholder in foreign corporation, in *Merrick v. Van Santvoord*, 34 *N. Y.* 211.
- **v. N. Y. Central R. R. Co.**, 26 *Barb.* 630. Rev'd in 23 *N. Y.* 61. See *Herring v. Fisher*; *Holdane v. Trustees of Cold Spring*. Decision in 26 *Barb.* collated with other cases (Highways—acceptance by public) in *Mills' Thomps. on Highw.* 3 ed. 64. Approved and applied in *Kelsey v. Ring*, 33 *How. Pr.* 50. Decision in 23 *N. Y.* followed

- (Right of owner, of fee of land covered by highway to maintain ejectment) with Carpenter v. Oswego & Syracuse R. R. Co., 24 N. Y. 655, in *Terre Haute & Southeastern R. R. Co. v. Rodol*, 87 Ind. 128; s. c., 46 Am. R. 164. Disting'd (Conveyance of land abutting on street) in *Perrin v. N. Y. Central, &c. R. R. Co.*, 40 Barb. 69, which was, however, rev'd in 36 N. Y. 120, which see. Followed in *Lozier v. N. Y. Central R. R. Co.*, 42 Barb. 467; *Miner v. Mayor, &c. of N. Y.*, 37 Super. Ct. (J. & S.) 200. Disting'd in *Lee v. Lee*, 27 Hun, 1. Applied in *Mott v. Mott*, 8 Hun, 478. Collated, with other cases, in *Mills' Thomps. on Highw.* 3 ed. 41.
- v. —, 29 Barb. 602. After three arguments in court of appeals, rev'd in 25 N. Y. 442. See *Cole v. Goodwin*; *Nolton v. Western R. R. Co.*; *Welles v. N. Y. Central R. R. Co.* Decision in 29 Barb. 196 overruled (Limitation of carrier's liability for negligence) in *Perkins v. N. Y. Central R. R. Co.*, 24 N. Y. 196. Decision in 25 N. Y. followed in *Lee v. Marsh*, 43 Barb. 107. Applied in *Belger v. Dinsmore*, 51 Barb. 69, 78. Applied in *Mynard v. Syracuse, &c. R. R. Co.*, 7 Hun, 401, which was, however, rev'd in 71 N. Y. 180, which see. Disting'd in *Kirkland v. Dinsmore*, 2 Hun, 46, 51; *Stinson v. N. Y. Central R. R. Co.*, 32 N. Y. 337; *Blair v. Erie R'y Co.*, 66 N. Y. 317. Disapproved in *Cleveland, Painesville, &c. R. R. Co. v. Curran*, 19 Ohio St. 1, 14; s. c., 2 Am. R. 362. Denied in dissenting opinion of *SANDERSON, J.*, in *Hooper v. Wells*, 27 Cal. 11. See also *Pierce v. Milwaukee, &c. R. R. Co.*, 23 Wis. 387, 391. Criticised in *Lauson's Contr. of Carr.* XLV. § 28, 128, 220. Reviewed, with other N. Y. cases, in *Railroad Co. v. Lockwood*, 17 Wall. 357, 366. Denied in *Ohio & Mississippi R'y Co. v. Selby*, 47 Ind. 485; *Pennsylvania R. R. Co. v. Henderson*, 51 Penn. St. 328. Explained in *Ang. on Carr.* § 528, n. b, 5 ed. Quoted and collated, with other cases, in *Thomps. on Carriers of Pass.* 401, 402. See *Id.* XV. Remarks of *DENIO, J.*, as to comparative value of human and bestial life criticised in *Lehey v. Hudson River R. R. Co.*, 4 Robt. 209.
- v. —, 67 Barb. 385. Said in note thereto to have been aff'd at *Gen. Term.*
- v. *Payne*, 20 Johns. 3. Followed (Right of purchaser at judicial sale to rents accruing before execution of deed) in *Cheney v. Woodruff*, 45 N. Y. 98.
- v. *Pearce*, 21 How. Pr. 130. Subsequent decision in 28 N. Y. 252. See *Scott v. Delahunt*. Decision in 28 N. Y. disting'd (Priority of subsequent special liens over chattel mortgage) in *Scott v. Delahunt*, 65 N. Y. 132, which aff'd 5 Lans. 372, which see. Disting'd, and *Scott v. Delahunt*, 5 Lans. 372, approved, in *Case v. Allen*, 21 Kans. 217; s. c., 30 Am. R. 425, 427. Cited with other cases, in *Storms v. Smith*, 137 Mass. 201. Cited in *Whart. Com. on Ag.* § 817, n., as to lien of farmer pasturing horses.
- v. *Saxton*, 66 N. Y. 55. Further decision in 77 N. Y. 191. Decision in 66 N. Y. disting'd (Liability of sureties on official bond) in *Scofield v. Churchill*, 72 N. Y. 565, 567. Applied (Surety not liable for the past) in *Thomson v. MacGregor*, 81 N. Y. 597.
- v. *Torrey*, 65 Barb. 188. Aff'd in 60 N. Y. 635.
- Bissick v. McKenzie*, 4 Daly, 265. Followed (Former adjudication) in *Bush v. Knox*, 2 Hun, 576, 579; s. c., 5 Sup'm. Ct. (T. & C.) 130.
- Bitter v. Rathman*, 61 N. Y. 512. Collated with other cases (Liability of married woman as partner) in *Story on Partn.* 7 ed. 12, n.
- Bitting v. Vandenburg*. See *Fields v. Moul*; *Morse v. Keyes*.
- Black's Estate*. See *McDowl v. Charles*.
- Black v. O'Brien*, 23 Hun, 82. Applied (Costs in creditors' actions) in *Potter v. Farrington*, 24 Hun, 551.
- v. *White*, 37 Super. Ct. (J. & S.) 320. Further decision in 42 Id. 446. Decision in 37 Super. Ct. (J. & S.) followed (Waiver of trial by jury) in *Keiley v. Dusenbury*, 42 Super. Ct. (J. & S.) 238. See *Code Civ. Pro.* § 1009, subd. 4. Compare *De Bussiere v. Holladay*, 4 Abb. N. C. 112, n. See (Demurrer) *Code Civ. Pro.* 1881, § 488, n.
- Blackley v. Sheldon*, 7 Johns. 32. See *Fox v. Smith*; *People v. McKay*; *Root v. Sherwood*. Disting'd (Mode of rendering verdict) in *State v. John*, 8 Ired. L. (N. C.) 330; s. c., 49 Am. Dec. 396, 401.
- Blackmar v. Van Inwager*, 5 How. Pr. 367. Questioned (Validity of motion decided outside of territorial limits prescribed by law) in *Newcomb v. Reed*, 14 Id. 100. Approved in *Pinckney v. Hagerman*, 4 Lans. 374, 375.
- Black River & M. R. R. Co. Matter of*, 9 Hun, 104. Followed (Measure of damages for land taken for railroad purposes) in *Matter of Boston, Hoosac Tun., &c. R'y Co.*, 22 Hun, 179. Both these cases disting'd, in *Matter of N. Y., Lackawanna, &c. R'y Co.*, 27 Hun, 116.
- Black River and Utica R. R. Co. v. Clarke*, 31 Barb. 258. Aff'd in 25 N. Y. 208. See *Jenkins v. Union Turnpike*. Decision in 25 N. Y. disting'd (Payment on stock) in *Tasker v. Wallace*, 6 Daly, 364, 367. Criticised and questioned (Effect of subscription to take stock as evidence of corporate character of company) in *De Witt v. Hastings*, 40 Super. Ct. (J. & S.) 463, 479. Collated (Calls for subscriptions) with other cases, in 1 *Redf. Am. Railw. Cases*, 197.
- Blacksmith v. Fellows*, 7 N. Y. 401. Aff'd in 19 How. (U. S.) 366.
- Blackstock v. N. Y. & Erie R. R. Co.*, 1 Bosw. 77. Aff'd in 20 N. Y. 48.

**Blackstone v. Allemania Fire Ins. Co.**, 4 *Daly*, 299. Aff'd in 56 *N. Y.* 104.

**Blackwell v. Wiswall**, 14 *How. Pr.* 257; s. c., 24 *Barb.* 355. Said in 24 *Barb.* 362, to have been affirmed at the General Term. Applied (Liability for wrongful acts of another) in *Mecabe v. Jones*, 10 *Daly*, 222. Quoted and collated, with other cases (Liability of railroad company for contractors, &c.) in 1 *Redf. Am. Railw. Cases*, 373.

**Blade v. Noland**, 12 *Wend.* 173; s. c., 27 *Am. Dec.* 126, with note on the subject of actions on lost or destroyed notes. Applied to case of altered instrument, in *Meyer v. Huneke*, 53 *N. Y.* 412, 418. Disting'd in *Steele v. Lord*, 70 *N. Y.* 280, 283.

**Blain v. Taylor**, 19 *Abb. Pr.* 228. See *Adams v. Van Alstyne*. Followed (Covenant to maintain division fence runs with land) in *Hazlett v. Sinclair*, 76 *Ind.* 488; s. c., 40 *Am. R.* 254.

**Blair v. Bartlett**, 75 *N. Y.* 150. See *Gates v. Preston*; *Schwinger v. Raymond*. Disting'd (Former adjudication) in *Schwinger v. Raymond*, 83 *N. Y.* 192, 197. Disapproved (Judgment for surgeon's compensation as bar to action for malpractice) in *Resseque v. Byers*, 52 *Wis.* 651.

— **v. Erie R'y Co.**, 66 *N. Y.* 313. See *Nolton v. Western R. R. Co.* Followed (Injuries to agent) in *Price v. Penn. R. R. Co.*, *Phila. Com. Pl.*, Sept. 1880, 22 *Ab. L. J.* 391.

— **v. Wait**, 6 *Hun.* 477. Aff'd in 69 *N. Y.* 113. See *Continental Nat. Bank v. Nat. Bank of Commonwealth*. Decision in 69 *N. Y.* explained (Estoppel) in *Vietor v. International Nav. Co.*, 45 *Super. Ct. (J. & S.)* 129, 142. Compared with other cases, in 2 *Pomeroy Eq. J.* 266.

**Blaisdell v. Raymond**, 14 *How. Pr.* 265; s. c., more fully 4 *Abb. Pr.* 446.

— **v. Whiteford**, 4 *Hun.* 284. Reported in 6 *Sup'm. Ct. (T. & C.)* 462.

**Blake v. Bernhard**, 3 *Hun.* 397. Reported in 6 *Sup'm. Ct. (T. & C.)* 74.

— **v. City of Brooklyn**, 26 *Barb.* 301. Quoted (Injunction against taxes) in 1 *High. on Inj.* 2 ed. § 544, n. 4.

— **v. Eldred**, 18 *How. Pr.* 240. See *Arthur v. Brooks*. Disapproved (Effect of denial in form, "he says that he denies") in *Chapman v. Chapman*, 34 *Id.* 281. Opposed in *Jones v. Ludlum*, 74 *N. Y.* 61.

— **v. Ferris**, 5 *N. Y.* 48; s. c., 55 *Am. Dec.* 304 with note containing numerous citations. See *City of Buffalo v. Holloway*; *Congreve v. Smith*; *Mayor, &c. of N. Y. v. Bailey*; *Pack v. Mayor, &c. of N. Y.*; *Storrs v. City of Utica*. Collated (Liability for negligence of contractor) with *Pack v. Mayor, &c. of N. Y.*, 8 *N. Y.* 222; *Kelly v. Mayor, &c. of N. Y.*, 11 *Id.* 432; *Stores v. City of Utica*, 17 *Id.* 104; *McCafferty v. Spuyten Duyvil, &c. R. R. Co.*, 61 *N. Y.* 178; s. c., 19 *Am. R.* 267; *Creed v. Hartman*, 29 *N. Y.* 591; *Congreve v. Smith*, 18 *Id.* 79; *Lockwood v. Mayor, &c. of N. Y.*, 2 *Hill.* 66, and other cases, in 27 *Am. R.* 647, n. Collated

with *Stevens v. Armstrong*, 6 *N. Y.* 435; *Congreve v. Smith*, 18 *Id.* 79; *Creed v. Hartman*, 29 *Id.* 591; *McCafferty v. Spuyten Duyvil, &c. R. R. Co.*, 61 *Id.* 178, and other cases, in 27 *Am. R.* 702. Applied in *Gourdier v. Cormack*, 2 *E. D. Smith*, 254. Disting'd in *Creed v. Hartman*, 29 *N. Y.* 591. Explained in dissenting opinion of *Dwight, C.*, in *McCafferty v. Spuyten Duyvil, &c. R. R. Co.*, 61 *N. Y.* 200. Followed in *Town of Pierrepont v. Loveless*, 72 *N. Y.* 214. Applied (Liability for excavation in street in *Bliss v. Schaub*, 48 *Barb.* 343. Reaff'd as to liability of municipal corporations) in *Pack v. Mayor, &c. of N. Y.*, 8 *N. Y.* 227; *Kelly v. Same*, 11 *Id.* 434. Criticised in *Storrs v. City of Utica*, 17 *N. Y.* 106. Disting'd in *Lockwood v. Mayor, &c. of N. Y.*, 2 *Hill.* 67. Disting'd with *Pack v. Mayor, &c. of N. Y.*, 8 *N. Y.* 222; *Kelly v. Mayor, &c. of N. Y.*, 11 *Id.* 432; *Norton v. Wiswall*, 26 *Barb.* 618; *Schular v. Hudson River R. R. Co.*, 38 *Id.* 653; *Sweet v. Village of Gloversville*, 12 *Hun.* 302; in *Dressell v. City of Kingston*, 32 *Hun.* 533. Disting'd with *Pack v. Mayor, &c. of N. Y.*, 8 *N. Y.* 222; *Kelly v. Mayor, &c. of N. Y.*, 11 *Id.* 432, in *Vogel v. Mayor, &c. of N. Y.*, 92 *Id.* 10. Collated, with other cases, in *Mills' Thomps. on Highw.* 3 ed. §1. Followed (Application of rule of *respondeat superior*) with *Pack v. Mayor, &c. of N. Y.*, 8 *N. Y.* 222; *Kelly v. Mayor, &c. of N. Y.*, 11 *Id.* 432, in *Eaton v. European & Northern R. R. Co.*, 59 *Me.* 520; s. c., 8 *Am. R.* 430. Disting'd in *Swords v. Edgar*, 59 *N. Y.* 28, 38; *Cotter v. Bettner*, 1 *Bosw.* 496; *McCleary v. Kent*, 3 *Duer.* 34; *Congreve v. Morgan*, 5 *Id.* 498; *Althof v. Wolf*, 2 *Hill.* 355. Followed in *Gardner v. Bennett*, 38 *Super. Ct. (J. & S.)* 197, 199; *Burmeister v. N. Y. Elevated R. R. Co.*, 47 *Super. Ct. (J. & S.)* 264, 268. Applied in *Sulzbacher v. Dickie*, 6 *Daly*, 469, 471; *Boniface v. Relyea*, 5 *Abb. Pr. N. S.* 265; *Blackwell v. Wiswall*, 24 *Barb.* 359; *Norton v. Same*, 26 *Id.* 621; *Schular v. Hudson River R. R. Co.*, 38 *Id.* 653; *Gilbert v. Beach*, 5 *Bosw.* 448; 4 *Duer.* 427; *Simons v. Monier*, 29 *Barb.* 424. Doctrine discussed and cases cited in 3 *Am. L. Reg. N. S.* 359. Collated with the conflicting cases on the doctrine of *Bush v. Steinman*, in note by *John F. Kelley* to *Railroad Co. v. Gallagher*, *Ohio Supreme Ct. Com.*, 23 *Am. L. Reg. N. S.* 503. Collated with *McCafferty v. Spuyten Duyvil, &c. R. R. Co.*, 61 *N. Y.* 178, and other cases (Liability of employer contracting for results depending on legislative grant for legality) in 18 *Am. L. Rev.* 635, 660. Cited in illustration (Stipulations in building contract, when not for benefit of stranger) in *Cuff v. Newark & N. Y. R. R. Co.*, 35 *N. J.* 17; s. c., 10 *Am. R.* 205, 210. Criticised in 2 *Thomps. on Negl.* 906, as contrary to sound principle, and as questioned in *Storrs v. City of Utica*, 17 *N. Y.* 106.

- **v. Griswold.** See *Blake v. Wheeler*.
- **v. Jerome,** 14 *Johns.* 406. Discussed (Trespass) in 1 *Add. on Torts*, 459, *n.*, Wood's ed. Collated, with other cases, in *Bigel. Cases on Torts*, 380.
- **v. People,** 73 *N. Y.* 586. See *People v. Eastwood*. Explained (Evidence of character of deceased, when admissible on trial for murder) in *Nichols v. People*, 23 *Hun*, 168. Explained (Admissibility of belief of witness) in *Tolman v. King*, 24 *Hun*, 482.
- **v. Sands,** 3 *Redf.* 168. See to the contrary (Power of surrogate to remove testamentary trustee) *Savage v. Gould*, 60 *How. Pr.* 234. Superseded by *Code Civ. Pro.* § 2817.
- **v. Wheeler.** See *Bonnell v. Wheeler*.
- Blakely v. Calder**, 13 *How. Pr.* 476. Aff'd in 15 *N. Y.* 617. See *Fleet v. Dorland*; *Sullivan v. Sullivan*. Decision in 15 *N. Y.* disting'd (Jurisdiction of Supreme Court in partition) in *Muller v. Struppman*, 6 *Abb. N. C.* 343, 348. Approved and followed (Partition) in *Howell v. Mills*, 56 *N. Y.* 226, 229. Disting'd and limited (Partition by remaindermen) in *Sullivan v. Sullivan*, 66 *N. Y.* 40. Followed in *McGlone v. Goodwin*, 6 *Daly*, 185. Disting'd in *Harris v. Larkins*, 22 *Hun*, 488, 490, as inapplicable to case of *cestui que trust*. See *Code Civ. Pro.* 1881, ch. XIV. tit. I. art. 2, *n.*
- Blakiston v. Dudley**, 5 *Duer*, 373. Followed (Effect of parol promise to accept bill) in *Flato v. Mulhall*, 72 *Mo.* 526.
- Blanchard v. Blanchard**, 4 *Hun*, 287; *s. c.*, 6 *Sup'm. Ct. (T. & C.)* 561. Aff'd, it seems, in 70 *N. Y.* 615, but without opinion. Explained (Powers substituted for trusts) in *McGrath v. Van Stavoren*, 8 *Daly*, 454, 460.
- **v. Ely**, 21 *Wend.* 342; *s. c.*, 13 *N. Y. Com. L. Law. ed.* 1113, with brief note. Also reported in 34 *Am. Dec.* 250, with note, containing citations. See *Griffin v. Colver*; *Staats v. Ten Eyck*. Followed (Consequential damages) in *Cassidy v. Le Fevre*, 45 *N. Y.* 562; *Krom v. Levy*, 48 *N. Y.* 679. Explained in *Albert v. Bleecker Street, &c. R. R. Co.*, 2 *Daly*, 389, as not being an absolute authority on the subjects on which it treats, after the comments made on it in *Griffin v. Colver*, 16 *N. Y.* 489. Explained in *Griffin v. Colver*, 16 *N. Y.* 489, which aff'd 22 *Barb.* 587, which see. Applied in *Freeman v. Clute*, 3 *Barb.* 427; *Hargous v. Ablon*, 5 *Hill*, 472; *Academy of Music v. Hackett*, 2 *Hill*, 234. Applied to action of tort—in *Walrath v. Redfield*, 11 *Barb.* 371. Disting'd in *Davis v. Talcott*, 14 *Barb.* 623. Disting'd by *COWEN, J.*, in *Latin v. Davis*, *Hill & D.* 15. Disting'd in *Green v. Mann*, 11 *Ill.* 615. Cited in *The Rhode Island*, 2 *Blatchf. C. Ct.* 113, 114. Included in *Sedv. Cases on Dama.* 240. Relied on (Amount of recovery in case of partial performance of agreement) in *Porter v. Woods*, 3 *Humph. (Tenn.)* 56; *s. c.*, 39 *Am. Dec.* 153, 155, with note.
- **v. Myers**, 9 *Johns.* 66. Overruled (Effect of *certiorari* as superseding to an execution) in *People v. Judges of the C. P. of N. Y.*, 1 *Wend.* 81. Latter case explained as not overruling the former, in *Payfer v. Bissell*, 3 *Hill*, 239. See, also, *Jackson v. Schaubert*, 7 *Con.* 417, 490.
- **v. Nestle**, 3 *Den.* 37. Followed (Undue influence on testator) in *Burk's Will*, 2 *Redf.* 239, 243. Explained in *Willard on Executors*, 91. Explained (Will written by legatee) in *Id.* 115. Commented upon (Lunatic making a will) in *Ewell Lead. Cas. on Inf. &c.* 655, *n.*
- **v. N. J. Steamboat Co.**, 67 *Barb.* 101. Aff'd in 59 *N. Y.* 292.
- **v. Strait**, 8 *How. Pr.* 83. See to the contrary (Remedy for indefinite and uncertain pleading) *Wood v. Anthony*, 9 *How. Pr.* 78.
- **v. Trim**, 38 *N. Y.* 225. Opinion of GROVER, J., in 7 *Transc. App.* 1. See *Keating v. Price*. Criticised (Statute of Frauds—note or memorandum in writing—parol evidence) in 1 *Benj. on Sales*, § 215, *n.* 17 (Corbin's 4 *Am. ed.*).
- **v. Western Union Tel. Co.**, 3 *Sup'm. Ct. (T. & C.)* 775. Rev'd in 60 *N. Y.* 510, the dissenting opinion in 67 *Barb.* 228, being adopted. Decision in 3 *Sup'm. Ct. (T. & C.)* discussed (Nuisance—navigable streams) in *Wood on Nuis.* 2 *ed.* § 483, *n.* 6.
- Blanco v. Foote**, 32 *Barb.* 534. Said to have been aff'd by Court of App. in March, 1866.
- Blank v. Westcott**, 7 *Abb. Pr. N. S.* 225. Disting'd (Costs) in *Whitney v. Daggett*, 6 *Abb. N. C.* 434, 436.
- Blasdale v. Babcock**, 1 *Johns.* 511. Explained (Implied warranty on sale of goods) in 2 *Story on Contr.* 5 *ed.* § 1062, *n.* 3.
- Blasdel v. Hewitt**, 3 *Cal.* 137. Criticised as imperfectly reported (Negating proviso in statute in proceeding for penalty) and *Bennett v. Hurd*, 3 *Johns.* 438, followed, in *Teel v. Fonda*, 4 *Id.* 304.
- Blason v. Bruno**, 21 *How. Pr.* 112; *s. c.*, 33 *Barb.* 520. Approved, explained and disting'd (Arrest for frauds in foreign country) in *Brown v. Ashbough*, 40 *How. Pr.* 226, 240. Disting'd and doubted, *Brown v. Ashbough*, 40 *How. Pr.* 226, being followed, and *Moller v. Azner*, 11 *Abb. Pr. N. S.* 233, being disting'd in *Clafin v. Frenkel*, 29 *Hun*, 288.
- Blatchford v. Ross**, 54 *Barb.* 42; *s. c.*, 5 *Abb. Pr. N. S.* 434; 37 *How. Pr.* 110. Compared (Receiver of corporation) in *Hugh on Receiv.* § 288, *n.* 1.
- Blatchley v. Moser.** See *People v. Stevens*.
- Blattmacher v. Saal**, 29 *Barb.* 22; *s. c.*, 7 *Abb. Pr.* 409. Doctrine discussed (Promise to marry by person already married) in 11 *Am. L. Reg. N. S.* 71.
- Blaut v. Gabler**, 8 *Daly*, 48. Aff'd in 77 *N. Y.* 461.
- Blauvelt v. Woodworth**, 31 *N. Y.* 285. Re-aff'd (Mechanic's lien laws within power

- of legislature) in *Glacius v. Black*, 67 *N. Y.* 563.
- Bleecker v. Ballou**, 3 *Wend.* 263. See Matter of Mayor of N. Y. Followed (Exemption from Assessments) in *Roosevelt Hospital v. Mayor, &c. of N. Y.*, 84 *N. Y.* 108, 112. Followed and approved in *First Presbyterian Church v. City of Fort Wayne*, 36 *Ind.* 338; s. c., 10 *Am. R.* 35.
- **v. Bellinger**, 11 *Wend.* 179. Criticised and explained (Substituting answer for demurrer) in *People v. Whitwell*, 62 *How. Pr.* 383.
- **v. Carroll**, 2 *Abb. Pr.* 82. See to the contrary (Examination before trial) *Leeds v. Brown*, 5 *Abb. Pr.* 418.
- **v. Franklin**, 2 *E. D. Smith*, 93. Cited Right of auctioneer to sue for fees, in his own name) in *Whart. Com. on Ag. § 647, n.*
- **v. Smith**, 13 *Wend.* 530. Explained and applied (Forfeiture, when created by neglect of lessee to comply with covenant in lease) in *Conger v. Duryee*, 24 *Hun.* 617, 619. Followed in *Ireland v. Nichols*, 2 *Sweeny*, 289.
- **v. —**, 37 *How. Pr.* 28. See to the contrary (Contents of motion to change venue) *Cook v. Finch*, 2 *How. Pr.* 89; *Van Auken v. Stewart*, *Id.* 181.
- Bleeker v. Johnson**, 51 *How. Pr.* 380. Rev'd as *Bleeker v. Johnston*, in 69 *N. Y.* 309. Decision in 69 *N. Y.* relied on (No presumption against party created by his omission to produce a certain witness) in *Arnold v. Morris*, 7 *Daly*, 505.
- Blend v. People**, 41 *N. Y.* 604. See *Cancemi v. People*. Disting'd (Court of Sessions) in *People v. Dohring*, 59 *N. Y.* 374.
- Blewett v. Baker**, 37 *Super. Ct. (J. & S.)* 23. Aff'd in 58 *N. Y.* 611.
- Blin v. Campbell**, 14 *Johns.* 432. See *Tenny v. Filer*. Denied (Election of remedies by injured party) in *Gates v. Miles*, 3 *Conn.* 64, as founded on an erroneous proposition of Chitty, which he has since corrected. Approved in *Percival v. Hickey*, 18 *Johns.* 283; *McAllister v. Hammond*, 6 *Cow.* 345.
- Bliss v. Ball**, 9 *Johns.* 132. Disapproved with *Storm v. Woods*, 11 *Id.* 110; *Farrington v. Sinclair*, 15 *Id.* 428; *Kelly v. Griffin*, 17 *Id.* 274 (Senior execution creditor loses lien by inactivity) in *Adair v. McDaniel*, 1 *Bailey L. (S. C.)* 158; s. c., 19 *Am. Dec.* 664, with note.
- **v. Greeley**, 45 *N. Y.* 671. See *Ellis v. Duncan*. Disting'd (Percolation) in *Johnstown Cheese M'fg Co. v. Veghte*, 69 *N. Y.* 16, 23.
- **v. Lawrence**, 48 *How. Pr.* 21. Fully reported in 58 *N. Y.* 442. Decision in 58 *N. Y.* disting'd (Assignment of unearned salary of public officer) in *Thurston v. Fairman*, 9 *Hun.* 584. Cited and followed in *Bangs v. Dunn*, *Sup'm. Ct. Cal., Oct.* 1884, 4 *Pacif. Rep.* 964. Approved in *Beal v. McVicker*, 8 *Mo. App.* 204. Explained in 1 *Pars. on Contr.* 226, n. 1 (Keller's ed.). Decision in 48 *How. Pr.* disting'd in *People ex rel. Grattan v. Dayton*, 50 *How. Pr.* 143.
- **v. Matteson**, 52 *Barb.* 335. Aff'd in 45 *N. Y.* 22. See *Carpenter v. Danforth*.
- **v. Otis**, 1 *Den.* 656. Applied (Liability of attorney for costs) in *Voorhees v. McCartney*, 51 *N. Y.* 389.
- **v. Rice**, 9 *Johns.* 160. Followed (Effect of appearance by infant without guardian) in *McMurray v. McMurray*, 60 *Barb.* 117.
- **v. Schaub**, 48 *Barb.* 339, 342. Followed (Decisions of county court, when only to be reviewed) in *Dahash v. Flanders*, 2 *Sup'm. Ct. (T. & C.)* 445. Rule said, in *Kilmer v. O'Brien*, 13 *Hun.* 224, to be changed by *Code Civ. Pro.* Cited (Personal liability of agent for injury to third person) in *Whart. Com. on Ag. § 537*.
- **v. Sheldon**, 7 *Barb.* 152. Aff'd in 8 *N. Y.* 31.
- **v. Schwartz**, 64 *Barb.* 215; s. c., less fully, as *Bliss v. Swartz*, 7 *Lans.* 186. Rev'd in 65 *N. Y.* 444. Decision in 65 *N. Y.* disting'd (Consideration for release of debt) in *Luddington v. Bell*, 77 *N. Y.* 138, 142. Followed (Explanation of receipt in full) in *Churchill v. Bradley*, 43 *Super. Ct. (J. & S.)* 170.
- Bliven v. Hudson River R. R. Co.**, 35 *Barb.* 188. Aff'd in 36 *N. Y.* 403. Decision in 35 *Barb.* disting'd and questioned (Carrier, when not liable for goods seized on legal process) in *Miersen v. Hope*, 2 *Sweeny*, 561. Decision in 36 *N. Y.* followed with *Van Winkle v. U. S. Mail Steamship Co.*, 37 *Barb.* 122, in *Ohio & Mississippi R'y Co. v. Yohe*, 5 *Ind.* 181; s. c., 19 *Am. R.* 727, 730. Followed and explained (Liability of carrier for delivery) in *Robinson v. Memphis, &c. R. R. Co.*, 16 *Fed. Rep.* 57, 63. As to rule in 36 *N. Y.* as to bailee's estoppel preventing interpleader, — see *Germ. Exch. Bk. v. Comm'rs of Excise*, 6 *Abb. N. C.* 394, 398.
- Block v. Columbian Ins. Co.**, 3 *Robt.* 296. Aff'd in 42 *N. Y.* 393.
- Blodgett v. City of Syracuse**, 36 *Barb.* 526. Applied (Municipal corporation—liability for riot) in *Alleghany Co. v. Gibson*, 90 *Penn. St.* 397; s. c., 35 *Am. R.* 670, 675.
- **v. Conklin**. See *Grazebrook v. McCredie*.
- Blood v. Goodrich**, 9 *Wend.* 68; s. c., 24 *Am. Dec.* 121, with note containing citations. Further decision in 12 *Wend.* 525; s. c., 12 *N. Y. Com. L. Law. ed.* 217, with brief note. See *Brown v. Bowen*; *Connely v. Pierce*; *Hanford v. McNair*; *Ex parte Kerwin*. Decision in 9 *Wend.* applied (Parol ratification of execution of sealed instrument) with *Hanford v. McNair*, 9 *Wend.* 54, in *Despatch Line v. Bellamy M. Co.*, 12 *N. H.* 205; s. c., 37 *Am. Dec.* 203, 213. Followed (Proof of parol agreement to extend time to convey land) in *Ladd v. King*, 1 *R. I.* 224; s. c., 51 *Am. Dec.* 624, 627.
- **v. Humphrey**, 17 *Barb.* 660. Reviewed and relied on (Right of married woman to

- convey estate and acknowledge execution of deed) in *Roberts v. Wilcoxson*, 36 *Ark.* 367.
- Bloodgood v. Bloodgood**, 59 *How. Pr.* 42. See *Allen v. Allen*. See to the same effect (Enforcing stipulation to pay half of referee's fees) *Brick v. Fowler*, 61 *How. Pr.* 153.
- **v. Bruen**, 4 *Sandf.* 427. Rev'd in 8 *N. Y.* 362. See *Soulden v. Van Rensselaer*. Decision in 8 *N. Y.* followed with *Wakeman v. Sherman*, 5 *Id.* 85 (Acknowledgment of debt, that removes bar of statute of limitations, to whom to be made) in *Sibert v. Wilder*, 16 *Kan.* 176; s. c., 22 *Am. R.* 280. See to the contrary (Declarations, &c. of executor, &c.) *Shreve v. Joyce*, 36 *N. J.* (7 *Vroom*) 44; s. c., 13 *Am. R.* 417. See, also, *Abb. Tr. Ev.* 59. Followed (Cause of action against estate of deceased partner) in *Troy Iron & Nail Factory v. Winslow*, 11 *Blatchf. C. Ct.* 513, 519.
- **v. Clark**, 4 *Paige*, 574. See *Osborn v. Heyer*. Reviewed and applied (Appointment of receiver in creditor's suit) in *Shainwald v. Lewis*, 6 *Fed. Rep.* 776. Quoted in *High on Receiv.* § 105, n. 4.
- **v. Mohawk & Hudson R. R. Co.**, 14 *Wend.* 51. Rev'd in 18 *Wend.* 9. See *Beekman v. Saratoga, &c. R. R. Co.*; *Calking v. Baldwin*; *Gardner v. Trustees of Newburgh*. Decision in 18 *Wend.* reported in 31 *Am. Dec.* 313, with note, where it is said to have been cited more frequently than almost any other case, either in *N. Y.* or elsewhere, as to the exercise of eminent domain, authorities being also collated. Explained and followed (Eminent domain—provision for compensation) in *Drake v. Hudson River R. R. Co.*, 7 *Barb.* 552; *Chapman v. Gates*, 54 *N. Y.* 132, 144. Applied in *People v. Mayor, &c. of Brooklyn*, 9 *Barb.* 556; *Wallace v. Karlenowefski*, 19 *Barb.* 121; *Gould v. Glass*, *Id.* 190; *Blodgett v. Utica & Black River R. R. Co.*, 64 *Barb.* 587; *Rexford v. Knight*, 11 *N. Y.* 313; *Dusenbury v. Mutual Telegraph Co.*, 11 *Abb. N. C.* 440. Cited as authority in *Russell v. Mayor, &c. of N. Y.*, 2 *Den.* 472. Relied on with *Smith v. Helmer*, 7 *Barb.* 416; *Gould v. Glass*, 19 *Id.* 190; *Rexford v. Knight*, 11 *N. Y.* 308, in *Cairo & Fulton R. R. Co. v. Turner*, 31 *Ark.* 494; s. c., 25 *Am. R.* 564, 570. Cited as authority in *Beveridge v. West Chicago Park Commrs*, 7 *Bradw. (Ill.)* 467. Cited from, with *People v. Hayden*, 6 *Hill*, 359–361; *Chapman v. Gates*, 54 *N. Y.* 132, in *Connecticut River R. R. Co. v. County Commrs*, 127 *Mass.* 50; s. c., 34 *Am. R.* 388. Collated with other cases, in 1 *Redf. Am. Railw. Cases*, 246. Applied (Character of railroads as public highways) in *People v. N. Y. Central, &c. R. R. Co.*, 28 *Hun.* 543, 548. Applied (What are works or objects of public benefit) in *Clarke v. City of Rochester*, 24 *Barb.* 481; *Bloomfield, &c. Natural Gas Co. v. Richardson*, 63 *Barb.* 447; *Taylor v. Porter*, 4 *Hill*, 147; *Buffalo & N. Y. R. R. Co. v. Brainard*, 9 *N. Y.* 108.
- Disting'd* in *Davis v. Mayor, &c. of N. Y.*, 14 *N. Y.* 521. Reaff'd in *People v. Kerr*, 27 *N. Y.* 191. Reaff'd (Unconstitutionality of law appropriating private property to private use of another) in *Embury v. Conner*, 3 *N. Y.* 517, which rev'd 2 *Sandf.* 106, which see. Reaff'd (Trespass against corporation) in *Mayor, &c. of N. Y. v. Bailey*, 2 *Den.* 440; *Dater v. Troy Turnp. &c. Co.*, 2 *Hill*, 631. Cited in *Whiteman's Ex'x. v. Wilmington & S. R. R. Co.*, 2 *Harr. (Del.)* 514; s. c., 33 *Am. Dec.* 411, 416, with note, as showing that an action of trespass will lie against a corporation. Explained (Limitation on grant to corporation) in *Heath v. Barmore*, 50 *N. Y.* 306. Explained (Evidence of public use) in *Matter of Deansville Cemetery Assoc.*, 66 *N. Y.* 572.
- Bloom v. Burdick**, 1 *Hill*, 130; s. c., 37 *Am. Dec.* 299, with note, containing citations. See *Foot v. Sabin*; *Foot v. Stevens*; *Wheeler v. Raymond*. Approved (Invalidity of proceedings had without jurisdiction of person) in *Sears v. Terry*, 26 *Conn.* 273; *Schneider v. McFarland*, 2 *N. Y.* 459; which aff'd 4 *Barb.* 139, which see. Followed in *Bolton v. Jacks*, 6 *Idolt.* 166; *Corwin v. Merritt*, 3 *Barb.* 345; *Van Slyke v. Shelden*, 9 *Barb.* 285; *Wright v. Douglass*, 10 *Barb.* 110; *Stanton v. Ellis*, 16 *Barb.* 323; *Ackley v. Dygert*, 33 *Barb.* 191; *Schuyler v. Marsh*, 37 *Barb.* 356; *Havens v. Sherman*, 42 *Barb.* 640; *Adams v. Saratoga, &c. R. R. Co.*, 10 *N. Y.* 333; *Ferguson v. Crawford*, 70 *N. Y.* 264. Applied in *Sheldon v. Wright*, 7 *Barb.* 42, which was aff'd in 5 *N. Y.* 497, which see; *Van Rensselaer v. Witbeck*, 7 *Barb.* 141; *Lawrence v. Parsons*, 27 *How. Pr.* 29. Applied in *Lavin v. Emigrant Industrial Sav'gs Bk.*, 18 *Blatchf. C. Ct.* 1, 26. Applied with *Jackson v. Robinson*, 4 *Wend.* 436; *Bigelow v. Stearns*, 19 *Johns.* 42; s. c., 10 *Am. Dec.* 189, with note; *Denning v. Corwin*, 11 *Wend.* 647; *Westcott v. Cady*, 5 *Johns. Ch.* 535; s. c., 9 *Am. Dec.* 306, in *Palmer v. Oakley*, 2 *Doug. (Mich.)* 433; s. c., 47 *Am. Dec.* 41. *Disting'd* in *People ex rel. Jennys v. Brennan*, 3 *Hun.* 673.
- Bloomer v. Bloomer**, 2 *Bradf.* 339. For a similar case (Effect of birth of child in causing revocation of will) see *Hughes v. Hughes*, 37 *Ind.* 183.
- **v. Sherman**, 2 *Edw.* 452. Aff'd in 5 *Paige*, 575. Decision in 5 *Paige* approved (Application of statute respecting arbitration) in *Bulson v. Lohnes*, 29 *N. Y.* 291.
- **v. Sturges**, 58 *N. Y.* 168, 175. See *Hoyt v. Martense*. Statement as to joining assignor of mortgage as party defendant, criticised as dictum,—in *Thomas on Mort.* 251.
- **v. Waldron**, 3 *Hill*, 361. See *Osgood v. Franklin*. See also (*Functus officio*) *Bigler v. Mayor, &c. of N. Y.*, 5 *Abb. N. C.* 51, and *Id.* 52, n. Quoted (Deed creating power as to one parcel of land, and an estate as to another) in 2 *Washb. on Real Prop.* 4 ed. 651.
- Bloomfield, &c. Gas Light Co. v. Calkins**,

- 1 *Sup'm. Ct. (T. & C.)* 549. Aff'd in 62 *N. Y.* 386. See *Story v. N. Y. Elevated R. R. Co.* Decision in 62 *N. Y.* disting'd (Right to lay pipes in streets, &c.) in *Crooke v. Flatbush Water-works Co.*, 27 *Hun.* 72; *Same v. Same*, 29 *Id.* 245. Compare *Bloomfield, &c. Gaslight Co. v. Richardson*, 63 *Barb.* 437.
- & *Roch. Natural Gaslight Co. v. Richardson*, 63 *Barb.* 437. Compare *Same v. Calkins*. Discussed (Eminent domain—public use) in 2 *Add. on Torts*, 247, *n.*, Wood's ed.
- Blossom v. Barrett**, 37 *N. Y.* 434, 436. Disting'd (Joinder of causes of action) in *Morenus v. Crawford*, 15 *Hun.* 45, 47.
- **v. Champion**, 28 *Barb.* 217. Subsequent decision in 37 *Id.* 554.
- **v. Dodd**, 43 *N. Y.* 264. Disting'd (Restriction of liability of carrier by contract) in *Belger v. Dinsmore*, 51 *N. Y.* 166, 171; *Elmore v. Sands*, 54 *N. Y.* 512, 515; *Kirkland v. Dinsmore*, 62 *N. Y.* 171, 179. Followed in *Madan v. Sherard*, 73 *N. Y.* 329, 331. Criticised in *Ayres v. Western R. R. Co.*, 14 *Blatchf. C. Ct.* 9, 14. Included, with notes, in 2 *Redf. Am. Railw. Cases*, 86. Quoted and commented upon in 2 *Story on Contr.* 5 ed. § 952, *n.* 2.
- **v. Estes**, 22 *Hun.* 472; *s. c.*, 59 *How. Pr.* 381. Aff'd in 84 *N. Y.* 614. Decision in 84 *N. Y.* disting'd (Appearance that will uphold attachment) in *Pomeroy v. Moss*, 15 *Weekly Dig.* 25; *Catlin v. Ricketts*, 91 *N. Y.* 668. Decision in 22 *Hun.* approved and applied (What will sustain an order of arrest) in *Southern Inland Nav. & Imp. Co. v. Sherwin*, 1 *Civ. Pro. R.* 44, 46.
- **v. Griffin**, 13 *N. Y.* 569. See *McDonald v. Western R. R. Co.* Followed (Commencement of carriers' responsibility for goods) in *Wade v. Wheeler*, 3 *Lans.* 204; *Rogers v. Wheeler*, 6 *Id.* 429. Cited as authority in *McDonald v. Western R. R. Co.*, 34 *N. Y.* 503. Cited with *Ladue v. Griffith*, 25 *N. Y.* 364, in *Conkey v. Milwaukee & St. Paul R'way Co.*, 31 *Wis.* 619; *s. c.*, 11 *Am. R.* 630. Cited, with other cases, in 12 *Am. L. Reg. N. S.* 378. Quoted and commented upon in 2 *Redf. Am. Railw. Cases*, 147. Applied (Evidence of surrounding circumstances, &c.) in *Coughtry v. Levine*, 4 *Daly*, 336; *Springsteen v. Samson*, 32 *N. Y.* 706; *Matter of N. Y. Central R. R. Co.*, 49 *N. Y.* 419; *Grierson v. Mason*, 60 *N. Y.* 397, which aff'd 3 *Sup'm. Ct. (T. & C.)* 185, which see.
- **v. Lycoming Fire Ins. Co.**, 64 *N. Y.* 162. Disting'd (Waiver of proof of loss) in *Goodwin v. Massachusetts Mut. Life Ins. Co.*, 73 *N. Y.* 480, 492. Followed in *Bell v. Lycoming Fire Ins. Co.*, 19 *Hun.* 238.
- Blot v. Boiceau**, 1 *Sandf.* 111. Rev'd in 3 *N. Y.* 78; *s. c.*, 51 *Am. Dec.* 345, with note. Quoted (Damages in action against agent for disobedience) in 3 *Pars. on Contr.* 190, *n. m.* Included in *Sedgw. Cases on Dam.* 402. Cited with *Suydam v. Allen*, 20 *Wend.* 324, in *Whart. Com. on Ag.* § 252.
- Blowers v. Sturtevant**, 4 *Den.* 46. Applied (Wife, when not justified in refusing to return to her husband) in *People v. Pettit*, 74 *N. Y.* 320, 325. Language of *Bronson, Ch. J.*, relating to case of *Harwood v. Heffer*, 3 *Taunt.* 421, approvingly cited (Liability for goods furnished wife living apart from husband) in 1 *Pars. on Contr.* 153, *n. o.*
- Blunt v. Aiken**, 15 *Wend.* 522. Followed (Liability for nuisance after parting with possession of land) in *Hanse v. Cowing*, 1 *Lans.* 288, as not overruled by *Waggoner v. Jermaine*, 3 *Den.* 312, but, as modified by that case, to be deemed still the law, and virtually aff'd, in *Mayor of Albany v. Cunliff*, 2 *N. Y.* 174. See criticisms in last two cases cited.
- **v. Boyd**, 3 *Barb.* 209, 212. Discussed (Statute of Frauds—guaranties) in *Browne on Stat. of Frauds*, § 167, 4 ed.
- **v. Greenwood**, 1 *Cov.* 15. See to the contrary (Power of court to interfere by mandamus to control practice of other courts) *People ex rel. Griffin v. Common Pleas of Jefferson*, 2 *How. Pr.* 59.
- Byldenburgh v. Bingham**, 38 *N. Y.* 371. Followed (Discharge of surety of judgment debtor) in *Ducker v. Rapp*, 41 *Super. Ct. (J. & S.)* 235, 243. Disting'd (Burden of proof on creditor who releases or delays in enforcing securities) in *Corning v. Pond*, 29 *Hun.* 129.
- **v. Cotheal**, 4 *N. Y.* 418. See *Adams v. Dyer*. Applied (Fractions of a day) in *Jones v. Porter*, 6 *How. Pr.* 286.
- **v. Northrup**, 13 *How. Pr.* 289. Collated (Surplus moneys on foreclosure of mortgage—inchoate dower right) with other cases, in *Colby on Forec.* 54.
- Blyer v. Monholland**. See *Burr v. Beers*; *Lawrence v. Fox*.
- Blythe v. Tompkins**, 2 *Abb. Pr.* 468. See *Lincoln v. Saratoga, &c. R. R. Co.* Approved (Stating facts in affidavit for arrest) in *U. S. v. Tureaud, Cir. Ct. E. D. La., May, 1884*, 20 *Fed. Rep.* 623.
- Board, Ex parte**, 4 *Cow.* 420. Compare (Proof to be furnished on redemption of real property) *Code Civ. Pro.* § 1464.
- Board of Education v. Fonda**, 77 *N. Y.* 350. Followed (Liability of surety on official bond) in *Van Campen v. Ross*, 9 *Abb. N. C.* 385, 389, 390, note. Said to clearly state the rule, and collated with other cases to the same effect, in 29 *Alb. L. J.* 406.
- Board of Education of New Lots v. Hickeox**, 24 *Hun.* 237. Reported as *Same v. Heckox*, 12 *Weekly Dig.* 206.
- Board of Excise v. Sackrider**, 35 *N. Y.* 154. Reviewed and applied (Powers of members of board of excise) in *Metcalf v. Garlinghouse*, 40 *How. Pr.* 50. Followed in *People v. Supervisors of Delaware Co.*, 45 *N. Y.* 196. See (Adjournment by justice to allow time for return of attachment) *Code Civ. Pro.* 1881, § 2967, *n.*

- Board of Excise of Orange v. Dougherty**, 55 *Burb.* 332. Cited as authority (License not assignable) in *State v. Lydick*, 11 *Neb.* 366.
- Board of Excise of Saratoga v. Doherty**, 16 *How. Pr.* 46. See however (Pleading over in justices' courts after demurrer sustained) *Code Civ. Pro.* § 2939, last clause.
- Board of Water Commrs. of Cohoes v. Lansing**, 45 *N. Y.* 19. Followed (Report by less than all of the members of an assessment commission) in *Astor v. Mayor, &c. of N. Y.*, 37 *Super. Ct. (J. & S.)* 539, 573.
- Boardman v. Gaillard**, 1 *Hun.* 217; s. c., 3 *Sup'm. Ct. (T. & C.)* 695. Aff'd in 60 *N. Y.* 614. See *Wood v. Merritt*.
- **v. Halliday**, 10 *Paige*, 223. Explained (Assignment for benefit of creditors—preferences) in *Burrill on Assign.* § 179, 4 ed. Quoted in *Id.* § 166. Quoted and collated with other cases, in *Bishop on Assign.* § 212.
- **v. Lake Shore, &c. R. R. Co.**, 8 *Week. Dig.* 347. Aff'd in 84 *N. Y.* 157. See *Garnsey v. Rogers*. Decision in 84 *N. Y.* followed (Right to dividends on stock) in *Manning v. Quicksilver Mining Co.*, 24 *Hun.* 360, 362. Followed with *Manning v. Quicksilver Mining Co.*, 24 *Hun.* 361, in *Jermain v. Lake Shore & M. S. R'y Co.*, 91 *N. Y.* 483. Reaff'd in *Prouty v. Lake Shore & M. S. R. R. Co.*, 85 *N. Y.* 273, 274.
- **v. Supervisors of Tompkins**, 22 *Hun.* 231. Rev'd in 85 *N. Y.* 359. Decision in 85 *N. Y.* followed (Jurisdiction of county judge to order repayment of tax) in *Matter of Coleman*, 30 *Hun.* 544. Explained in dissenting opinion in *Curtis v. Richland (Mich. 1885)*, 23 *Northw. Rep.* 175, 181.
- Boeckes v. Hathorn**, 17 *Hun.* 87. Further proceedings in 20 *Hun.* 503; 78 *N. Y.* 222; *Id.* 228. See *Kilmer v. Hathorn*. Decision in 17 *Hun.* disting'd (Extra allowance in foreclosure) and *Hunt v. Chapman*, 62 *N. Y.* 333, followed, in *Rosa v. Jenkins*, 31 *Hun.* 384.
- **v. Lansing**, 13 *Hun.* 38. Aff'd in 74 *N. Y.* 437. Decision in 74 *N. Y.* disting'd (Action to remove cloud upon title) in *Mitchell v. Barnes*, 22 *Hun.* 194, 198. Decision in 13 *Hun.* discussed in *Sedgw. & W. on Tr. of Tit. to Land*, § 179. Decision in 74 *N. Y.* disting'd (Impeaching fraudulent conveyance) in *Bergen v. Carman*, 79 *N. Y.* 153. Compare (Recovery of rents and profits by one not in possession) *Code Civ. Pro.* § 1531. Quoted in *Sedgw. & W. on Tr. of Tit. to Land*, § 657.
- Bodine v. Exchange Fire Ins. Co.**, 51 *N. Y.* 117, 123. Followed (Delegation of authority) in *Eclectic Life Ins. Co. v. Fahrenkrug*, 68 *Ill.* 463. Cited in *Whart. Com. on Ag.* § 29. Disting'd (Waiver by special agent) in *Thayer v. Agricultural Ins. Co.*, 5 *Hun.* 566. Applied in *Lasher v. Northw. Nat. Ins. Co.*, 55 *How. Pr.* 328. Followed in *Dean v. Aetna Ins. Co.*, 2 *Hun.* 359; *Chase v. People's Fire Ins. Co.*, 14 *Hun.* 458; *Davis v. Lamar Ins. Co.*, 18 *Hun.* 230; *Van Schoick v. Niagara Fire Ins. Co.*, 68 *N. Y.* 437. Compare *Thompson v. St. Louis, &c. Ins. Co.*, 52 *Mo.* 469.
- **v. Killeen**, 53 *N. Y.* 93. See *Bradstreet v. Clarke*. Cited (Power of married woman to contract) in *Cashman v. Henry*, 75 *N. Y.* 103, 112.
- **v. Moore**, 18 *N. Y.* 347. See also (Redemption) *Livingston v. Arnoux*, 56 *N. Y.* 507, 515.
- Bodley v. Hulse**, 5 *Wend.* 313. Commented on (Executor—refusal to serve) in *Willard on Executors*, 144.
- Boehen v. Williamsburgh Ins. Co.**, 35 *N. Y.* 131. Followed and approved (Waiver of condition as to prepayment of premium) with *Trustees of Baptist Church v. Brooklyn Fire Ins. Co.*, 19 *Id.* 305; *Goit v. National Protection Ins. Co.*, 25 *Barb.* 189, in *Southern Life Ins. Co. v. Booker*, 9 *Heisk. (Tenn.)* 606; s. c., 24 *Am. R.* 344, 346. Relied on with *Wood v. Poughkeepsie Mut. Ins. Co.*, 32 *N. Y.* 619, in *Mason v. Citizens' Fire, Marine & Life Ins. Co.*, 10 *W. Va.* 572; s. c., 27 *Am. R.* 602.
- Boeklen v. Hardenburgh**, 37 *Super. Ct. (J. & S.)* 110. Aff'd in 60 *N. Y.* 8.
- Boerum v. Schenck**, 41 *N. Y.* 182. Quoted (Voidable acts of executors and trustees) in *Wait on Fraud. Conv.* § 471.
- Boese v. King**, 78 *N. Y.* 471; s. c., as *Boese v. Locke*, 1 *Am. Insolv. R.* 326; rev'g 17 *Hun.* 270, which aff'd 53 *How. Pr.* 143. Explained (Assignment for benefit of creditors—bankrupt law) in *Burrill on Assign.* § 47, n. 1, 4 ed.
- **v. Locke**. See *Boese v. King*.
- Bogardus v. Clarke**, 1 *Edw.* 266. Aff'd in 4 *Paige*, 623. See *Clarke v. Fisher*, for a history of the litigation of which this case is a part. Decision in 4 *Paige*, confirmed (Who may appear at probate of will, although not cited) by *Code Civ. Pro.* § 2617.
- **v. Livingston**, 2 *Hill.* 236. Cited (Proof that appearance by attorney is authorized) in *Whart. Com. on Ag.* § 564.
- **v. Parker**, 7 *How. Pr.* 303. Applied (Creditor having lien on entire premises, as party in partition) in *Townshend v. Townshend*, 1 *Abb. N. C.* 81, 85. See *Code Civ. Pro.* § 1548.
- **v. Rosendale Manufacturing Co.**, 4 *Sandf.* 89. Rev'd in 7 *N. Y.* 147. Decision in 7 *N. Y.* disting'd (Parties in action to charge stockholders with debts of corporation) in *Young v. N. Y. & Liverpool Steamship Co.*, 10 *Abb. Pr.* 229, 232.
- **v. Trinity Ch.**, 4 *Paige*, 178. Aff'd in 15 *Wend.* 111. See *Fish v. Miller*. Decision in 4 *Paige* cited, with other authorities, (English statutes part of our common law) in 1 *Kent Com.* 473, n. b. Applied in *Madison Ave. Bapt. Church v. Bapt. Church in Oliver St.*, 46 *N. Y.* 131, 141. Explained (Statute of limitations—adverse possession) in *Ang. on Limita.* §§ 401, 430, 6 ed.
- **v. —**, 4 *Sandf. Ch.* 633, 758. Applied (Who may question right of corporation to



- hold property) in *Jones v. Habersham*, 107 *U. S.* 174, 188.
- Bogart v. Mayor, &c. of N. Y.**, 7 *Cow.* 158. Examined (Proper direction of certiorari) in *Goodrich v. Com. of Lima*, 1 *Mich.* 387.
- *v. O'Regan*, 1 *E. D. Smith*, 590. Applied (Reasonable time for vendor to re-sell) in *O'Brien v. Jones*, 47 *Super. Ct. (J. & S.)* 67, 76.
- *v. Perry*, 1 *Johns. Ch.* 52. Aff'd in 17 *Johns.* 351. See *Foot v. Colvin*. Followed (Interest of *cestui que trust* not to be sold on execution) in *Ontario Bank v. Root*, 3 *Paige*, 478.
- Bogert v. Haight**, 9 *Paige*, 297. Discussed (Assignment for benefit of creditors, in connection with other assignments) in *Burrill on Assign.* § 359, 4 ed.
- *v. Hertell*, 4 *Hill*, 492. See *Dodge v. Pond*. Disting'd (Authority of executor as to mortgage) in *People v. Miner*, 32 *Barb.* 614, which was rev'd in 37 *Barb.* 473, which see. Dicta as to application of proceeds of sale of real estate to payment of debts disapproved in *Matter of Vandervoort*, 1 *Redf.* 273, as contrary to reason and authority. Disting'd (Conversion of real estate into personalty) in *Wilder v. Ranney*, 95 *N. Y.* 7. Applied in *Denham v. Cornell*, 7 *Hun.* 664; *Meakings v. Cromwell*, 5 *N. Y.* 142, which aff'd 2 *Sandf.* 512, which see. Approvingly cited with *Hertell v. Bogert*, 9 *Paige*, 52, in *Beecher v. Buckingham*, 18 *Conn.* 110; s. c., 44 *Am. Dec.* 580, with note; as impliedly admitting the authority of personal representatives to sell and transfer choses in action as well as other personal property. Approved (Distinction between executor and trustee) in *Matter of Anderson*, 5 *Leg. Obs.* 305.
- *v. Hildreth*, 1 *Cui.* 1; s. c., 2 *N. Y. Com. L. Lw.* ed. 35, with brief note citing cases on transitory actions.
- *v. Morse*, 1 *N. Y.* 377. Aff'g *Morse v. Bogert*, 4 *Den.* 108. Decision in 1 *N. Y.* followed (Proof to sustain count for money lent) in *Black v. White*, 42 *Super. Ct. (J. & S.)* 446.
- *v. Vermilya*, 10 *Barb.* 32. Decision on the new trial reported, as it seems, in 1 *Code R. N. S.* 212, which was aff'd in 10 *N. Y.* 447. See (Commencement of action) *Code Civ. Pro.* 1881, § 398, *n.*
- Bogue v. Newcomb**, 1 *Sup'm. Ct. (T. & C.)* 251. Aff'd in 58 *N. Y.* 674, without opinion.
- Bohanan v. Peterson**, 9 *Wend.* 503. Overruled (Liability of attorney to arrest) in *Stage v. Stevens*, 1 *Den.* 267.
- Bohm, Matter of**, 4 *Hun.* 558. Followed (Proceedings necessary before attachment) in *Sutton v. Davis*, 6 *Hun.* 237.
- Bohnet v. Lithauer**, 7 *Hun.* 238. Appeal dismissed in 66 *N. Y.* 645, without opinion.
- Boington v. Lapham**, 14 *How.* *Pr.* 360. Approved (Necessity that complaint conform to summons) in *Shafer v. Humphrey*, 15 *How. Pr.* 565.
- Boisaubin v. Reed**, 2 *Keyes*, 323. Approved (License to enter on land—when terminated) *Kellam v. McKenstry*, 6 *Hun.* 381, 383, in which was aff'd in 69 *N. Y.* 164, which see. Applied in *Alleghany Oil Co. v. Bradford Oil Co.*, 21 *Hun.* 26, 31. Applied (Cessation of right to make severance from the realty) in *Lacustrine, &c. Co. v. Lake Guano, &c. Co.*, 82 *N. Y.* 476, 482.
- Boisgerard v. N. Y. Banking Co.**, 2 *Sandf. Ch.* 23. Aff'd, it seems, but no opinion reported, in 4 *Ch. Sent.* 20. Decision in 2 *Sandf. Ch.* applied (Right to obtain dissolution of corporation) in *Masters v. Eclectic Life Ins. Co.*, 6 *Daly*, 455, 457.
- Bokel v. Bokel**, 3 *Edw.* 376. Disting'd (Pleading in actions for divorce) in *Mitchell v. Mitchell*, 61 *N. Y.* 398, 406.
- Bollen v. Crosby**, 49 *N. Y.* 183. Disting'd (Who may maintain action against trustee of manufacturing corporation for failure to file annual report) in *Bronson v. Dimock*, 4 *Hun.* 614. Followed in *Pier v. George*, 14 *Hun.* 572. Explained (Nature of trustee's liability) in dissenting opinion of *FOLGER, J.*, in *Jones v. Barlow*, 62 *N. Y.* 210. Followed in *Dintruff v. Crittenden*, 1 *Sup'm. Ct. (T. & C.)* 143 (What passes by the transfer of an obligation given for a debt), and as overruling *Battle v. Coit*, 26 *N. Y.* 143. Applied (Release of joint debtor) in *Herries v. Platt*, 21 *Hun.* 132, 135.
- Boller v. Mayor, &c. of N. Y.**, 40 *Super. Ct. (J. & S.)* 523. See *Jarvis v. Driggs*. Compared and applied (Proceedings void for want of jurisdiction) in *Roderigas v. East River Savings Institution*, 43 *Super. Ct. (J. & S.)* 217, 227. Compare *Jarvis v. Driggs*, 69 *N. Y.* 143.
- Bolles v. Duff**, 4 *Abb. Pr. N. S.* 330. Rev'd in 54 *Barb.* 215; s. c., 37 *How. Pr.* 162. As to latter decision, compare other proceedings in 56 *Barb.* 567. Further proceedings in 43 *N. Y.* 469; s. c., more fully, 10 *Abb. Pr. N. S.* 399; s. c., 41 *How. Pr.* 355. Also in 55 *Barb.* 313, 580; s. c., 7 *Abb. Pr. N. S.* 385; 38 *How. Pr.* 492, 505. Decision in 54 *Barb.* disting'd, in *Chamberlain v. Greenleaf*, 4 *Abb. N. C.* 92, 95, as inapplicable to the motion there made for removal of a receiver. Decision in 43 *N. Y.* followed (Strict foreclosures) in *Ross v. Boardman*, 22 *Hun.* 527, 531.
- Bolt v. Rogers**, 3 *Paige*, 156. Followed (Denial of equitable relief to parties standing *in pari delicto*) in *Freeman v. Sedwick*, 6 *Gill (Md.)* 28; s. c., 46 *Am. Dec.* 650, 654, with note.
- Bolton v. Brewster**, 32 *Barb.* 389, 395. Quoted (Interest of mortgagee) in 2 *Washb. on Real. Prop.* 4 ed. 108.
- *v. Jacks*, 6 *Robt.* 166. See *Jackson v. McChesney*; *Roderigas v. East River Savings Inst.* Followed (Effect of proceedings had without jurisdiction) in *Boller v. Mayor, &c. of N. Y.*, 40 *Super. Ct. (J. & S.)* 523. Commented on and approved in *Ferguson v. Crawford*, 70 *N. Y.* 253. Explained in *Donnelly v. Libby*, 1 *Sweeny*, 259, 279.

- Followed (Jurisdiction of surrogates) in *Rowe v. Parsons*, 6 *Hun*, 338, 344. Disapproved in *Roderigas v. East River Sav'gs Inst.*, 63 *N. Y.* 469. Applied in *Roderigas v. East River Savings Institution*, 43 *Super. Ct. (J. & S.)* 217, 227. See *Code Civ. Pro.* 1881, §§ 2473, *n.*, 2476, *n.* Disting'd (Title under will, when held by one as trustee, and not as executor) in *Clapp v. Brown*, 4 *Redf.* 200, 202. Disting'd (Power of executor to act before qualifying) in *Humbert v. Wurster*, 22 *Hun*, 407.
- *v. Lawrence*, 9 *Wend.* 435. See *Jackson v. Anderson*. See also (Sheriff's fees) *Campbell v. Cothran*, 56 *N. Y.* 279, 284.
- *v. Taylor*, 18 *Abb. Pr.* 385. Disapproved (Security for costs) in *Elliott v. Wood*, 5 *Hun*, 594. Followed unwillingly in *Lewis v. Farrell*, 46 *Super. Ct. (J. & S.)* 361. Followed in *Lyman Ventilating, &c. Co. v. Southard*, 1 *Bann. & A. (U. S.) Pat. Cas.* 628.
- Bomanjee Byramjee Colah, Matter of**, 6 *Daly*, 51. Subsequent proceedings 6 *Daly*, 308.
- Bommer v. American Spiral Spring, &c. Mfg Co.**, 44 *Super. Ct. (J. & S.)* 454; Aff'd in 81 *N. Y.* 468.
- Bonafe v. Fowler**, 7 *Paige*, 576. Explained (Power of agent of corporation to bind it) in *Ang. & Am. on Corp.* § 298, 11 ed.
- Bonard's Will**, 16 *Abb. Pr. N. S.* 128. Test'y. Arg'ts, and opinion published in *N. Y.* 1872. Also arg'ts by E. T. GERRY, *N. Y.* 1872. Disting'd (Evidence admissible on probate of will) in *Hagadorn v. Conn. Mut. Life Ins. Co.*, 22 *Hun*, 252. Explained (Constructive conversion) in 2 *Jarman on Wills*, Rand. & T. ed. 214, *n.* 10.
- Bond v. McNiff**, 38 *Super. Ct. (J. & S.)* 83. Aff'd in 41 *Id.* 543, on opinion below. Compare (Consent by widow to receive gross sum in lieu of dower) *Code Civ. Pro.* § 1569.
- *v. Willet*, 1 *Abb. Ct. App. Dec.* 165; *s. c.*, 29 *How. Pr.* 47; 31 *N. Y.* 102. Fully reported, in 1 *Keyes*, 377. Disting'd (Enforcement of execution after return-day without previous levy) in *Hathaway v. Howell*, 54 *N. Y.* 97, 104, 107. Followed (What constitutes valid levy) in *Bardon v. Millins*, 16 *Weekly Dig.* 58.
- Bonesteel v. Flack**, 41 *Barb.* 435. See *Steel-yards v. Singer*. Disting'd (Conclusiveness of memorandum of sale) in *Errico v. Brand*, 9 *Hun*, 655. Collated (Conditional sale, when void as to third persons) with other authorities, in *Lewis v. McCabe*, 21 *Am. L. Reg. N. S.* 217, with extended note.
- *v. Garlinghouse*, 60 *Barb.* 338. Approved (Plaintiff, when bound to allege his official character) in *Albro v. Rood*, 24 *Lun*, 72, 74.
- *v. Lynde*, 8 *How. Pr.* 226. Disting'd (Obtaining inspection of books and papers) in *De Bary v. Stanley*, 5 *Daly*, 413. Relied on in *Commercial B'k of Albany v. Duham*, 13 *How. Pr.* 542, 544. See (Contempt of court) *Code Civ. Pro.* 1881, § 3001, *n.*
- *v. Mayor, &c. of N. Y.*, 6 *Bosw.* 550. Aff'd in 22 *N. Y.* 162; *s. c.*, 20 *How. Pr.* 237. Decision in 22 *N. Y.* disting'd as inapplicable to question involving authority of common council,—in *Jones v. Mayor, &c. of N. Y.*, 7 *Robt.* 209. Disting'd (Liability of city for work done under void contract) in *Moore v. Mayor, &c. of N. Y.*, 73 *N. Y.* 248.
- Bonito v. Mosquera**, 2 *Bosw.* 201. Referred to in *Pegram v. Carson*, 10 *Bosw.* 505, 511, as overruled (Possession by factor that enables him to pass lien to pledgee) in *Cartwright v. Wilmerding*, 24 *N. Y.* 521. Approved in *Howland v. Woodruff*, 60 *N. Y.* 73, 82. Doubted in 58 *Am. Dec.* 164, *n.*
- Bonnafe, Matter of**, 18 *How. Pr.* 15. Aff'd in 33 *Barb.* 469, which was aff'd in 23 *N. Y.* 169.
- Bonnell v. Griswold**, 68 *N. Y.* 294. Further appeal in 80 *N. Y.* 128. Also in 89 *N. Y.* 122. See *Blake v. Wheeler*; *Pier v. Hanmore*. Decision in 80 *N. Y.* applied (What constitutes dissolution of corporation) in *Bruce v. Platt*, 80 *N. Y.* 379, 389. Followed (Liability of trustee for filing untrue annual report of corporation) in *Pier v. Hanmore*, 86 *N. Y.* 95, 100. Disting'd (Conclusiveness of certificate of payment of corporate stock) in *Veeder v. Mudgett*, 95 *N. Y.* 295. Applied (Statute not to be so construed as to create implication of penalty) in *People ex rel. Bush v. Thornton*, 25 *Hun*, 456, 464.
- *v. Wheeler*, 1 *Hun*, 332; *s. c.*, 3 *Sup'm. Ct. (T. & C.)* 557; 16 *Abb. Pr. N. S.* 81. Aff'd in 68 *N. Y.* as *Bonnell v. Griswold*. Further decision in 18 *Hun*, 496, as *Blake v. Wheeler*, rev'd as *Bonnell v. Griswold*, 80 *N. Y.* 128, and *Blake v. Griswold*, *Id.* 631.
- Bonner v. McPhail**, 31 *Barb.* 106. Disting'd (Proof of referee's authority) in *Eighmy v. People*, 79 *N. Y.* 557.
- Bonney v. Seeley**, 2 *Wend.* 481. Followed (Limit of surety's recovery) in *Garnsey v. Allen*, 27 *Me.* 366.
- Bonsteel v. Vanderbilt**, 21 *Barb.* 26; *Briggs v. Vanderbilt*, 19 *Barb.* 222. Overruled, in part (Excuse of non-performance of contract) in *Williams v. Vanderbilt*, 28 *N. Y.* 217.
- Bonynge v. Field**, 44 *Super. Ct. (J. & S.)* 581. Aff'd in 81 *N. Y.* 159.
- *v. Waterbury*, 12 *Hun*, 534. Followed (Liability of attorney for services of stenographer) in *Sheridan v. Genet*, 12 *Hun*, 660; *Bonynge v. Field*, 44 *Super. Ct. (J. & S.)* 581.
- Boody v. Drew**, 46 *How. Pr.* 459. Fully reported in 2 *Sup'm. Ct. (T. & C.)* 69.
- Bookstaver v. Glenny**, 3 *Sup'm. Ct. (T. & C.)* 248. Said in *Chapin v. Dobson*, 78 *N. Y.* 74, 80, to have been aff'd by *Ct. of App.* Said in *Unger v. Jacobs*, 7 *Hun*, 220, 223, to definitely settle the law (Effect of oral counter-agreement).
- *v. Jayne*, 3 *Sup'm. Ct. (T. & C.)* 397. Rev'd in 60 *N. Y.* 146. See *Pechner v.*

- Phoenix Ins. Co.; People v. Bostwick.** Decision in 60 N. Y. disting'd (Parol evidence to vary terms of note) in *Willse v. Whitaker*, 22 *Hun*, 244. Disting'd in *Bull's Head B'k v. Koehler*, 1 *City Ct.* 270. Disting'd (Defense to action on note given in settlement of action) in *Whitlock v. Coulter*, 1 *City Ct.* 428.
- Bool v. Mix**, 17 *Wend.* 119; s. c., 13 *N. Y. Com. L. Law. ed.* 82, with brief note, on conveyances by infants. See *Stafford v. Roof*. Discussed (Infants' contracts) in 2 *Kent Com.* 237, n. b; *Id.* 238, n. d. Explained in 1 *Chitty on Contr.* 194, n. k, 11 *Am. ed.* Explained in *Matthewson v. Johnson*, *Hoffm.* 565. Followed in *Van Nostrand v. Wright*, *Hill & D.* 260. Commented on with *Matthewson v. Johnson*, *Hoffm.* 560, in *Tyler Inf. & Cov.* 2 ed. § 25, as to the rule respecting confirmation of conveyances made by infants. Cited as authority (Conveyance by married woman) in *De Pierres v. Thorn*, 4 *Bosw.* 296. Explained in *Sherman v. Garfield*, 1 *Den.* 329.
- Boomer v. Koon**, 6 *Hun*, 645; s. c., less fully, 6 *Sup'm. Ct. (T. & C.)* 645. Followed (Evidence admissible under general denial) in *Manning v. Winter*, 7 *Hun*, 482, 484; *Schwarz v. Oppold*, 7 *Daly*, 121. Collated with other cases (Pleading alteration in a note) in 17 *Am. R.* 105, n.
- Boone v. Citizen's Sav'g's B'k of N. Y.**, 21 *Hun*, 235. Rev'd in 84 *N. Y.* 83; s. c., 9 *Abb. N. C.* 416; 38 *Am. R.* 498, with note. Decision in 84 *N. Y.* 83, limited (Devolution of trust on administrator) in *Kilburn v. See*, 1 *Dem.* 353. Compare (Trusts of personal property) *Matter of Howell*, 61 *How. Pr.* 179.
- Boorman v. Atlantic & Pac. R. R. Co.**, 17 *Hun*, 555. Aff'd in 78 *N. Y.* 599.
- **v. Jenkins**, 12 *Wend.* 566; s. c., 27 *Am. Dec.* 158, with note, containing citations. Followed (Parol evidence of custom to establish warranty) in *Cassidy v. Begoden*, 38 *Super. Ct. (J. & S.)* 180. Compare (Sale by sample) *Waring v. Mason*, 18 *Johns.* 425.
- Boos v. World Mut. Life Ins. Co.**, 6 *Sup'm. Ct. (T. & C.)* 364; mem. s. c., in 4 *Hun*, 133. Aff'd in 64 *N. Y.* 236.
- Booth v. Ammerman**, 4 *Bradf.* 129. Followed and approved (Effect of bequest of interest payable annually) in *Welsh v. Brown*, 14 *Vroom (N. J.)* 45.
- **v. Bierce**, 40 *Barb.* 114. Rev'd in 38 *N. Y.* 463.
- **v. Boston & Alb. R. R. Co.**, 67 *N. Y.* 593. Further decision in 73 *N. Y.* 38; s. c., 29 *Am. R.* 97, with note. See *Crispin v. Babbutt*; *Laning v. N. Y. Central, &c. R. R. Co.*; *Malone v. Hathaway*. Decision in 73 *N. Y.* explained and followed (Master's liability for injury to servant) in *Fuller v. Jewett*, 80 *N. Y.* 46, 52. Applied in *McCosker v. Long Island R. R. Co.*, 21 *Hun*, 500, 507.
- **v. Bunce**, 35 *Barb.* 496. Rev'd in 24 *N. Y.* 592. Subsequent decisions in 31 *N. Y.* 246; 33 *Id.* 139. Decision in 24 *N. Y.* disting'd (Admissibility of evidence to show fraudulent character of arrangement by which property is held by judgment debtor) in *Smith v. Van Olinda*, 48 *N. Y.* 171.
- **v. Cleveland Rolling Mills Co.**, 11 *Hun*, 278. Aff'd in 74 *N. Y.* 15. Former decision in 6 *Hun*, 591. Decision in 74 *N. Y.* followed (What is implied in contract) in *Jones v. Kent*, 8 *Abb. N. C.* 300, 304.
- **v. Cornell**, 2 *Redf.* 261. Rev'd as *Five Points House of Industry v. Amerman*, in 11 *Hun*, 161.
- **v. Eighmie**, 3 *Sup'm. Ct. (T. & C.)* 378. Aff'd in 60 *N. Y.* 238; s. c., 19 *Am. R.* 171.
- **v. Farmers' & Mech. Nat. Bank**, 4 *Lans.* 301. Rev'd in 50 *N. Y.* 396. Further decisions in 1 *Sup'm. Ct. (T. & C.)* 45; s. c., 65 *Barb.* 457; also in 11 *Hun*, 258, and the latter aff'd in 74 *N. Y.* 228. Decision in 74 *N. Y.* cited (Recovery by partner for sums paid on account of partnership) in *Story on Partn.* 7 ed. § 221, n.
- **v. Kitchen**, 7 *Hun*, 255. Further decisions in *Id.* 260; also in 3 *Redf.* 52.
- **v. Powers**, 56 *N. Y.* 22. Rev'd *Flint v. Craig*, 59 *Barb.* 319. Decision in 56 *N. Y.* criticised as extreme (Effect of alteration of note payable "to order") in 17 *Am. R.* 102, n.
- **v. Smith**, 5 *Wend.* 107. Limited (Effect of decision on demurrer against one who has succeeded on trial of issues of fact) in *Osborne v. Lawrence*, 9 *Wend.* 445.
- **v. Spuyten Duyvil Rolling Mill Co.**, 3 *Sup'm. Ct. (T. & C.)* 368. Aff'd in 60 *N. Y.* 487. Decision in 3 *Sup'm. Ct.* followed (Measure of damages for breach of contract of sale) in *Laird v. Townsend*, 5 *Hun*, 107. Decision in 60 *N. Y.* explained in *Benj. on Sales*, § 882, n. a (Bennett's *Am. ed.*). Explained in 2 *Id.* § 1337 (Corbin's 4 *Am. ed.*); *Id.* n. k. Included (Consequential damages) in *Sedgw. Cases on Dama.* 331. Disting'd in *Allis v. McLean*, 48 *Mich.* 432.
- **v. Swezey**, 8 *N. Y.* 276. See *Paige v. Cagwin*; *Stafford v. Rice*. Limited (Admissibility of admissions of former owner of chattels, &c.) in *Schenck v. Warner*, 37 *Barb.* 263. Applied in *Smith v. Exchange Fire Ins. Co.*, 40 *Super. Ct. (J. & S.)* 500; *Simpson v. McKay*, 3 *Hun*, 322; *Johnson v. Hicks*, 1 *Lans.* 159; *Edington v. Mutual Life Ins. Co.*, 67 *N. Y.* 193. Followed in *Tousley v. Barry*, 16 *N. Y.* 500. Criticised and applied to receipt given by mortgagee, — in *Foster v. Beals*, 21 *N. Y.* 250. Re-aff'd (Onus on one who impeaches transfer) in *Townsend v. Stearns*, 32 *N. Y.* 215; *Thomas v. Murray*, *Id.* 612.
- Bordeaux v. Erie R. Co.**, 8 *Hun*, 579. Criticised as not well considered, and as opposed to reason and authority (Extra fare, in case of ticket-office being closed) in article on "Discriminative Traffic Rates" in 16 *Am. Law Rev.* 818, 827.

**Borden v. Fitch**, 15 *Johns.* 121; s. c., 8 *Am. Dec.* 255. See *Bradshaw v. Heath*; *Hitchcock v. Aiken*; *Hoffman v. Hoffman*; *Huggins v. King*; *Jackson v. Jackson*; *Kinnier v. Kinnier*; *Shumway v. Stillman*; *Starbuck v. Murray*. Collated (Validity of foreign divorce) with other cases, in 7 *Am. Dec.* 206, n., and there approved. Discussed in 3 *Am. L. Reg. N. S.* 212. Explained in 2 *Bishop on Mar. & D.* § 163, a, n. 3, 6 ed. Discussed in 2 *Kent Com.* 109. See *Bradshaw v. Heath*, 13 *Wend.* 407. Approved and followed with *Vischer v. Vischer*, 12 *Barb.* 640, in *McGiffert v. McGiffert*, 31 *Barb.* 69; *Phelps v. Baker*, 60 *Barb.* 107. Followed in *Holmes v. Holmes*, 4 *Lans.* 391; *People v. Baker*, 76 *N. Y.* 82. Disting'd in *Hill v. Hill*, 28 *Barb.* 26; *Hunt v. Hunt*, 9 *Hun.* 624, which was aff'd in 72 *N. Y.* 217, 240, which see. Followed (Necessity of jurisdiction) in *Bigelow v. Stearns*, 19 *Johns.* 40. Explained in *Sheldon v. Wright*, 5 *N. Y.* 516; *Savacool v. Boughton*, 5 *Wend.* 175. Applied in *Denning v. Corwin*, 11 *Wend.* 652; *Spear v. Carter*, 1 *Mich.* 20, which cited *Mills v. Martin*, 19 *Johns.* 33. Followed (Effect of foreign judgment) in *Harrod v. Barretto*, 1 *Hall*, 162. Explained in *Monroe v. Douglas*, 4 *Sandf. Ch.* 180. Approved in *Starbuck v. Murray*, 5 *Wend.* 156. Examined in *Shumway v. Stillman*, 6 *Wend.* 451. Approved in *Dearing v. B'k of Charleston*, 5 *Ga.* 497; s. c., 48 *Am. Dec.* 300, 316. Approved with *Andrews v. Montgomery*, 19 *Johns.* 162; s. c., 10 *Am. Dec.* 213, with note; in *Bimeler v. Dawson*, 4 *Scam. (Ill.)* 536; s. c., 39 *Am. Dec.* 430, 433; *Shumway v. Stillman*, 4 *Cow.* 292; s. c., 15 *Am. Dec.* 374, being followed as to the presumptions respecting the validity of such a judgment. Cited approvingly in 1 *Kent Com.* 261, n. b. Disting'd in *Coleman v. McNulty*, 16 *Mo.* 173; s. c., 57 *Am. Dec.* 229. Examined (Necessity of personal presence in court to sustain jurisdiction) in *People v. Clark*, 1 *Park*, 368.

— **v. South Side R. R. Co. of Long Island**, 5 *Hun.* 184. Aff'd in 67 *N. Y.* 588, without opinion.

**Bordwell v. Collie**, 1 *Lans.* 141. Aff'd in 45 *N. Y.* 494. See *Case v. Hall*. Decision in 45 *N. Y.* applied (Action for breach of warranty, when maintainable) in *Converse v. Miner*, 21 *Hun.* 367, 374. Applied (Effect of implied warranty of title) in *Matheny v. Mason*, 73 *Mo.* 677.

**Boreel v. Mayor, &c. of N. Y.**, 2 *Sandf.* 552. Explained (Right to wharfage) in *Langdon v. Mayor, &c. of N. Y.*, 6 *Abb. N. C.* 314, 326. Limited and questioned (Liability of interest in wharf to taxation) in *Smith v. Mayor, &c. of N. Y.*, 68 *N. Y.* 552. Limited and criticised in *People ex rel. Smith v. Comm'rs of Taxes*, 10 *Hun.* 207, 210.

**Bork v. People**, 16 *Hun.* 476. Writ of error dismissed in 78 *N. Y.* 346. Aff'd in 83 *N. Y.* 609, but without opinion. Further

proceeding in 1 *N. Y. Crim. R.* 368, and that aff'd without noticing point decided here, in 91 *N. Y.* 5.

**Borsdorff v. Lord**, 41 *Barb.* 211; s. c., more fully, as *Matter of Borsdorff*, 17 *Abb. Pr.* 168. Limited (Revivor) in *Beach v. Reynolds*, 53 *N. Y.* 5.

**Borst v. Beecker**, 6 *Johns.* 332. Approved (Alienage as ground for challenge) in *Schumaker v. State*, 5 *Wisc.* 328; but compare *Guykowskie v. People*, 1 *Scam. (Ill.)* 476; *Stowe v. People*, 2 *Id.* 326; *State v. Babcock*, 1 *Conn.* 401; *Rex v. Tremaine*, 5 *B. & C.* 254; *People v. Jewett*, 6 *Wend.* 386. Disting'd (Disqualification of juror as ground for reversal or for setting aside verdict) in *Wassum v. Feeney*, 121 *Mass.* 93; s. c., 23 *Am. R.* 258, 260.

— **v. Corey**, 15 *N. Y.* 505. Affirms a decision of the Supreme Court, which appears not to have been reported; see however, proceedings between the same parties, in 16 *Barb.* 136. See *Pratt v. Huggins*. Approved (Distinction between personal obligation and security furnished by a reserved lien or mortgage) in *Coles v. Withers*, 33 *Gratt. (Va.)* 196. Collated with *Heyer v. Pruyn*, 7 *Pai.* 465; and other cases (Right to enforce lien for debt barred by statute of limitations) in 31 *Am. R.* 41, n. Followed (Definition of counterclaim) in *Mulberger v. Koenig*, 22 *Northw. Rep.* 745, 747.

— **v. Empie**, 5 *N. Y.* 33. Disting'd (Reservations in grants) in *Bridger v. Pierson*, 1 *Lans.* 481.

— **v. Lake Shore and M. S. R. R. Co.**, 4 *Hun.* 346. Aff'd, it seems, in 66 *N. Y.* 639, but without opinion. Decision in 4 *Hun* followed (Negligence of person injured while crossing railroad track, when a question for a jury) in *Leonard v. N. Y. Central, &c. R. R. Co.*, 42 *Super. Ct. (J. & S.)* 225.

— **v. Spelman**, 4 *N. Y.* 284. Disting'd (Gift to wife) in *Brouer v. Vandenberg*, 31 *Barb.* 649. Applied in *Fowler v. Butterly*, 44 *Super. Ct. (J. & S.)* 161. Approved (Reviewing question of fact) in *Morris v. Husson*, 8 *N. Y.* 205. Approved (Right to post-nuptial choses in action) in *Evell Lead. Cases on Inf., &c.* 390. Applied (Effect of appeal from judgment) in *Morgan v. Bruce*, 1 *Code R. N. S.* 367.

**Bort v. Smith**, 5 *Barb.* 283. Approved (Improper evidence not ground for reversal) in *Aldrich v. Maitland*, 4 *Mich.* 212, citing *Spencer v. Saratoga & Washington R. R. Co.*, 12 *Barb.* 382; *Brock v. Waterbury*, 13 *Id.* 116.

**Bossange v. Ross**, 17 *How. Pr.* 566; s. c., more fully in 29 *Barb.* 576. See *Aeby v. Rapelye*.

**Boston & Albany R. R. Co., Matter of**, 53 *N. Y.* 574. See *Milhau v. Sharp*. Explained and applied (Extent of franchise of railroad corporation) in *Prime v. Twenty-third St. R. R. Co.*, 1 *Abb. N. C.* 63, 67. Disting'd in *Stranahan v. Sea View R'y Co.*, 84 *N. Y.* 312.

**Boston & Albany R. R. Co. v. Village of Greenbush**, 5 *Lans.* 461. Aff'd in 52 *N. Y.* 510.

**Boston Carpet Co. v. Journeay**, 1 *Daly*, 190. Aff'd in 36 *N. Y.* 384. See *Leverick v. Meigs*.

**Boston, Hoosac Tunnel, &c. R'y Co., Matter of**, 79 *N. Y.* 64. Other proceedings in *Id.* 69, also in 22 *Hun.* 176; 58 *How. Pr.* 167. See *Matter of Black River, &c. R. R. Co.*

**Boston, Hoosac Tunnel, &c. R. R. Co. v. Troy, &c. R. R. Co.** See *Boston, Hoosac Tunnel, &c. R'y Co., Matter of*.

**Boston Locomotive Works v. Wright**. See *Stannard v. Mattice*.

**Bostwick v. Abbott**, 40 *Barb.* 331; s. c., 16 *Abb. Pr.* 417. Compare (Judgment dismissing complaint) *Code Civ. Pro.* § 1209.

— *v. Atkins*, 3 *N. Y.* 53. See *Jackson v. Carpenter*. Explained (Affirmance of sale of real property by infant) in 3 *Washb. on Real Prop.* 4 ed. 251, with *Chapin v. Shafer*, 49 *N. Y.* 407; *Jones v. Butler*, 30 *Barb.* 641. Contrasted with contrary cases, in *Goodnow v. Empire Lumber Co.*, 31 *Minn.* 468; s. c., 23 *Am. L. Reg. N. S.* 329, where they are disapproved as laying down a rule which should be established by legislature, not by the courts.

— *v. Baltimore & Ohio R. R. Co.*, 55 *Barb.* 137. Rev'd in 45 *N. Y.* 712. Decision in 45 *N. Y.* explained (Effect of bill of lading as evidence of contract) in *Long v. N. Y. Central R. R. Co.*, 50 *N. Y.* 76. See also *Magnin v. Dinsmore*, 56 *N. Y.* 168, 174. Disting'd in *Germania Fire Ins. Co. v. Memphis, &c. R. R. Co.*, 7 *Hun.* 233, which was aff'd in 72 *N. Y.* 90, which see. Disting'd in *Hill v. Syracuse, B. & N. Y. R. R. Co.*, 73 *N. Y.* 351, 353; s. c., 29 *Am. R.* 163, with note. Applied (Oral evidence to vary written instrument) in *Brewer's Fire Ins. Co. v. Burger*, 10 *Hun.* 56, 58. Applied (Limitation of carrier's liability for negligence) in *Magnin v. Dinsmore*, 56 *N. Y.* 168, 174.

— *v. Barlow*, 14 *Hun.* 177, 179. Applied (Liability of highway commissioners) in *Warren v. Clement*, 24 *Hun.* 472.

— *v. Beiser*, 10 *Abb. Pr.* 197. Subsequent decision in 40 *N. Y.* 383. See further decision in *Bostwick v. Menck*, 4 *Daly*, 68, rev'g 8 *Abb. Pr. N. S.* 169. Decision in 4 *Daly* disting'd (Supplemental complaint) in *Cohn v. Husson*, 5 *Civ. Pro. R. (Browne)* 324.

— *v. Brown*, 15 *Hun.* 308. Followed (Costs against executor, &c.) and *Woodruff v. Cook*, 14 *How. Pr.* 481, disapproved in *Bedell v. Barnes*, 29 *Hun.* 589. Compare *Code Civ. Pro.* §§ 1814, 3246.

— *v. Burnett*, 11 *Hun.* 301. Rev'd in 74 *N. Y.* 317. See contrary to 11 *Hun.* (Assignment with preferences—validity of, under bankrupt act) *Dodge v. Sheldon*, 6 *Hill*, 9. Disapproved in *Williams v. Pitts*, 55 *How. Pr.* 331, on authority of *Dodge v. Sheldon*, 6 *Hill*, 9; *Seaman v. Stoughton*, 3 *Barb. Ch.*

344, and other cases. Compare 2 *Perry on Trusts*, 132, § 587; 145, § 597; *Wheelock v. Lee*, 5 *Abb. N. C.* 72. Collated with other cases, in *Bishop on Assign.* § 233.

— *v. Champion*, 11 *Wend.* 571. Aff'd in 18 *Id.* 175. See *Champion v. Bostwick; Van Santvoord v. St. John*. Collated (Liability of connecting carriers) with *Straiton v. N. Y. & N. H. R. R. Co.*, 2 *E. D. Smith*, 184; *Briggs v. Vanderbilt*, 19 *Barb.* 222; *Milnor v. N. Y. & N. H. R. R. Co.*, 53 *N. Y.* 363; *Kessler v. N. Y. Central, &c. R. R. Co.*, 61 *Id.* 538; *Quimby v. Vanderbilt*, 17 *Id.* 306, and other cases, in 35 *Am. R.* 708, n. Applied with *Fairchild v. Slocum*, 19 *Wend.* 329, in *Barter v. Wheeler*, 49 *N. H.* 9; s. c., 6 *Am. R.* 434, 446. Applied with *Fairchild v. Slocum*, 19 *Wend.* 329; *Hart v. Rensselaer & Saratoga R. R. Co.*, 8 *N. Y.* 37; *Smith v. N. Y. Central R. Co.*, 43 *Barb.* 225, and other authorities, in *Wolff v. Central R. R. Co.*, 68 *Ga.* 653; s. c., 45 *Am. R.* 501. Discussed in *Ang. on Carr.* § 582, 5 ed. Collated and discussed (Liability of carrier beyond his line) with *Weed v. Saratoga & Schenectady R. R. Co.*, 19 *Wend.* 534; *St. John v. Van Santvoord*, 25 *Id.* 660; *Wilcox v. Parmelee*, 3 *Sandf.* 610; *Hart v. Rensselaer & Saratoga R. R. Co.*, 8 *N. Y.* 37; *Wibert v. N. Y. & Erie R. R. Co.*, 12 *N. Y.* 245; *Schroeder v. Hudson River R. R. Co.*, 5 *Duer*, 55; *Hunt v. N. Y. & Erie R. R. Co.*, 1 *Hilt.* 228; *Dillon v. N. Y. & Erie R. R. Co.*, *Id.* 231; *Foy v. Troy & Boston R. R. Co.*, 24 *Barb.* 382; *Russell v. Livingston*, 16 *N. Y.* 515; *Quimby v. Vanderbilt*, 17 *N. Y.* 306; *Hempstead v. N. Y. Central R. R. Co.*, 28 *Barb.* 485; *Cary v. Cleveland & Toledo R. R. Co.*, 29 *Barb.* 35, and many other cases, in *Gray v. Jackson*, 51 *N. H.* 9; s. c., 12 *Am. R.* 1, 27, 28, 29, 30.

— *v. Frankfield*, 11 *Hun.* 475. Aff'd in 74 *N. Y.* 207.

— *v. Goetzel*, 57 *N. Y.* 582, 585. Followed (Defendant, when not in custody, so as to be entitled to supersedeas) in *Watt v. Healy*, 22 *Hun.* 492. See *Code Civ. Pro.* 1881, §§ 572, n., 573, n.

— *v. Menck*, 40 *N. Y.* 383. See *Bostwick v. Beiser*. Disting'd (Title of receiver in supplementary proceedings) in *Verplanck v. Van Buren*, 76 *N. Y.* 247, 256. Followed in *Olney v. Tanner (U. S. Cir. Ct. S. D. N. Y., Dec. 1883)*, 17 *Reporter*, 8. Limited (Compelling assignment to receiver) in *Clan Ranald v. Wyckoff*, 41 *Super. Ct. (J. & S.)* 527. Quoted (Who may be complainant in creditors' action) in *Wait on Fraud. Conv.* § 116. Quoted and explained (Receiver bringing judgment creditor's action) in *High on Receiv.* § 455, n. 1.

— *v. Tioga R. R. Co.*, 17 *How. Pr.* 456. Followed (Extra allowance—when only to be given) in *Merchants' Exch. Nat'l Bank v. Commercial Warehouse Co.*, 35 *Super. Ct. (J. & S.)* 214.

— **v. Wildey**, 34 *Super. Ct. (J. & S.)* 23; s. c., with points of counsel, 42 *How. Pr.* 245.

**Botsworth v. Vanderwalker**, 53 *N. Y.* 597. Disting'd (Service on infant) in *Ingersoll v. Mangam*, 84 *N. Y.* 622, 626, which aff'd 24 *Hun.* 203, which see.

**Botsford v. Burr**, 2 *Johns. Ch.* 409. See *Boyd v. McLean*; *Fleming v. Gilbert*; *Steere v. Steere*; *Stevens v. Cooper*. Followed (Proof by parol of resulting trust) with *Steere v. Steere*, 5 *Johns.* 1; s. c., 9 *Am. Dec.* 256, in *Pinnock v. Clough*, 16 *Verm.* 500; s. c., 42 *Am. Dec.* 521, with note. Both these cases followed in *Burden v. Sheridan*, 36 *Iowa*, 125; s. c., 14 *Am. R.* 505, 508. Followed with *Lounsbery v. Purdy*, 16 *Barb.* 376, in *McGovern v. Knox*, 21 *Ohio St.* 547; s. c., 8 *Am. R.* 80. Followed in *Hollida v. Shoop*, 4 *Md.* 465; s. c., 59 *Am. Dec.* 88. Followed (Parol agreements respecting lands) with *Levy v. Brush*, 45 *N. Y.* 589, in *Bauman v. Holzhausen*, 26 *Hun.* 505.

— **v. McLean**, 42 *Barb.* 445. Subsequent proceedings in 45 *Id.* 478. Decision in 42 *Barb.* said in 6 *Abb. L. J.* 196, to have been aff'd by Ct. of App. in May, 1871. See *Welles v. Yates*. Decision in 45 *Barb.* followed (Relief against misdescriptions in written contract) in *Wilson v. Van Pelt*, 2 *Sup'm. Ct. (T. & C.)* 414. Followed in *Albany City Sav'gs Inst.*, 87 *N. Y.* 40, 47.

**Bouchaud v. Dias**, 10 *Paige*, 445. Rev'd in 1 *N. Y.* 201. Decision in 1 *N. Y.* explained (Definition of voluntary assignment) in *Burrill on Assign.* 4 ed. § 3, n. 1. Explained (Distribution of debtor's estate—priority of U. S.) in *Id.* § 440.

— **v. —**, 3 *Den.* 238. Relied on (Conclusiveness of admission of judgment rendered on demurrer) in *Coffin v. Knott*, 2 *G. Greene (Iowa)* 582; s. c., 52 *Am. Dec.* 537, 539, with note. Explained (Former judgment as defense) in 2 *Para. on Contr.* 729, n. o.

**Bouck v. Wilber**. See *Sellick v. Adams*.

**Boughen v. Nolan**. Reported as *Bowghen v. Nolan*, 53 *How. Pr.* 485.

**Boughton v. Bruce**, 20 *Wend.* 234. Disting'd (Demand, as condition precedent to right of action) in *Schroeppel v. Corning*, 5 *Den.* 242.

— **v. Carter**, 18 *Johns.* 405. Disting'd (Negligence in one acting under authority) in *Bellinger v. N. Y. Central R. R. Co.*, 23 *N. Y.* 42, 49.

— **v. Flint**, 13 *Hun.* 206. Rev'd in 74 *N. Y.* 476; s. c., 5 *Abb. N. C.* 215. See *Gardner v. Gardner*; *Payne v. Gardiner*; *Tucker v. Tucker*. With decision in 74 *N. Y.* compare (Effect of vouchers produced on accounting by executor) *Code Civ. Pro.* § 2734. Decision in 74 *N. Y.* disting'd (Jurisdiction of surrogate as to claim of administrator, &c.) in *Richardson v. Root*, 19 *Hun.* 475.

— **v. Mitchell**. See *Simmons v. Sherman*.

— **v. Otis**, 29 *Barb.* 196. Aff'd in 21 *N. Y.*

261. See *Broughton v. Otis*; *Corning v. McCullough*; *Garrison v. Howe*. Decision in 21 *N. Y.* examined and approved (Liability of trustees for debts of corporation) in *McHarg v. Eastman*, 4 *Robt.* 635. Followed in *Nimmons v. Tappan*, 2 *Sweeny*, 652; *Miller v. White*, 57 *Barb.* 511; *Steam Engine Co. v. Hubbard*, 101 *U. S.* 188; *Huguenot Nat. Bk. v. Studwell*, 6 *Daly*, 13, 15; *Shaler & Hall Quarry Co. v. Bliss*, 27 *N. Y.* 297; *Carley v. Hodges*, 19 *Hun.* 187. Applied in *Craw v. Easterly*, 4 *Lans.* 521. Disting'd in *Duckworth v. Roach*, 8 *Daly*, 159, 162; *Loose v. Bullard*, 79 *N. Y.* 406. Relied on in dissenting opinion of *FOLGER, J.*, in *Jones v. Barlow*, 62 *N. Y.* 214. Applied to stockholder's liability,—in *Lowry v. Inman*, 2 *Sweeny*, 148.

**Bours v. Tuckerman**, 7 *Johns.* 538. See *Person v. Grier*. Disapproved (Privilege of witness not absolute) in *Merrill v. George*, 23 *How. Pr.* 331, 333, 335. Compare *Pollard v. Union Pacific R. R. Co.*, 7 *Abb. Pr. N. S.* 70.

**Boutel v. Owens**, 2 *Sandf.* 654. Limited (Effect of adjustment of costs without notice) in *Gilmartin v. Smith*, 4 *Sandf.* 634.

**Bouton v. Bouton**, 40 *How. Pr.* 217. Modified on appeal by imposing payment of costs, in 42 *Id.* 11. See *Mott v. Lansing*.

— **v. City of Brooklyn**, 7 *How. Pr.* 198. Aff'd in 15 *Barb.* 375.

— **v. Neilson**, 3 *Johns.* 474. Relied upon (Validity of summary proceedings for penalties) in *Beach v. Furman*, 9 *Johns.* 229, but distinguished therefrom in 48 *Am. Dec.* 276, n. Followed (Judgment rendered without notice) in *Flint River Steamboat Co. v. Foster*, 5 *Ga.* 194; s. c., 48 *Am. Dec.* 248–254, with lengthy note collating cases.

**Bovee v. King**, 11 *Hun.* 250. Aff'd it seems, in 75 *N. Y.* 609, but without opinion.

**Bowen v. Bell**, 19 *Johns.* 390. Disapproved (Allowing defendant to plead after default in justice's court) with *Lowther v. Crummie*, 8 *Cow.* 87, and *Snell v. Loucks*, 11 *Johns.* 69, approved in *Pickert v. Dexter*, 12 *Wend.* 150.

— **v. —**, 20 *Johns.* 339; s. c., 6 *N. Y. Com. L. Law. ed.* 1035, with brief notes. Also reported in 11 *Am. Dec.* 286, with note, showing it to have been recently followed in *N. Y.* (Parol proof to explain consideration clause in deed). See *Pechner v. Phoenix Ins. Co.*; *Schemerhorn v. Vanderheyden*; *Shephard v. Little*. Followed with *McCrea v. Purmort*, 16 *Wend.* 460, in *Goodspeed v. Fuller*, 46 *Me.* 147. Applied to case of agreement for conveyance, in *Watson v. Blaine*, 12 *Serg. & R. (Pa.)* 131; s. c., 14 *Am. Dec.* 669.

— **v. Bowen**, 2 *Bradf.* 336. See *Williams v. Hutchinson*. Applied (Liability for gratuitous services) in *Hewett v. Bronson*, 5 *Daly*, 1, 7. Disting'd in *Gallaher v. Vought*, 8 *Hun.* 87.

— **v. Bradley**, 1 *Buff. Super. Ct. (Sheldon)*

- 226; s. c., 9 *Abb. Pr. N. S.* 395. Disapproved (Usurious character of contract as determined by law of place) in *Dickinson v. Edwards*, 77 *N. Y.* 573; *Clayes v. Hooker*, 4 *Hun.* 234. Approved in *First Nat'l B'k of N. Y. v. Morris*, 4 *Sup'm. Ct. (T. & C.)* 182, 184, as preferable to *Jewell v. Wright*, 30 *N. Y.* 259. Followed in *Wayne Co. Sav'gs B'k v. Low*, 6 *Abb. N. C.* 76, 88, 91.
- **v. Cooper**, 2 *N. Y. Leg. Obs.* 355. Explained (Privileged communication) in *Moak's Underhill's Torts*, 1 *Am. ed.* 153.
- **v. Cross**, 4 *Johns. Ch.* 375. Relied on (Supplemental answer) in *Stout v. Shew*, 1 *Pinn. (Wisc.)* 438; s. c., 42 *Am. Dec.* 579, 587.
- **v. Fenner**, 40 *Barb.* 383. Explained (Conversion) in *Moak's Underhill's Torts*, 1 *Am. ed.* 582.
- **v. First Nat. Bk. of Medina**, 34 *How. Pr.* 408. Followed (Jurisdiction over national banks) in *Cadle v. Tracy*, 11 *Blatchf. C. Ct.* 101, 108. See to the contrary (National banks as foreign corporations) *Code Civ. Pro.* § 3343, subd. 18. See (Time of motion to vacate attachment) *Code Civ. Pro.* 1881, § 682, n.
- **v. Idley**, 1 *Edw.* 148. Aff'd in 11 *Wend.* 227.
- **v. —**, 6 *Paige*, 46. Examined (Power of amending bill) in *Bank of Mich. v. Niles*, *Walk. Ch.* 401; citing *McElwain v. Willis*, 3 *Paige*, 505. Criticised (Jurisdiction of equity in suit to establish destroyed will) in *Everitt v. Everitt*, 41 *Barb.* 385.
- **v. Lease**, 5 *Hill*, 221. Disting'd (Repeal by implication) in *Excelsior Petroleum Co. v. Embury*, 67 *Barb.* 261, 265; *Pursell v. N. Y. Life Ins. & Trust Co.*, 42 *Super. Ct. (J. & S.)* 396. Applied in *Vallance v. Bausch*, 28 *Barb.* 672; *Spratt v. Huntington*, 2 *Hun.* 344; *Mayor, &c. of N. Y. v. Walker*, 4 *E. D. Smith*, 267; *Boyle's Estate*, *Tuck.* 6. Approved and applied in *Wallace v. Bassett*, 41 *Barb.* 96; *Whipple v. Christian*, 15 *Hun.* 325. Cited in *Peck v. Peck*, 3 *Abb. N. C.* 400, 402. Followed (Application of statute regulating duties of directors) in *Hatch v. Western Union Tel. Co.*, 9 *Abb. N. C.* 430, 433. Disting'd (Transfer by corporation in contemplation of insolvency) in *Gillet v. Moody*, 5 *Barb.* 188. Explained in *Harris v. Thompson*, 15 *Barb.* 65. Applied to effect of failure to elect corporate officers,—in *People ex rel. Miller v. Cummings*, 72 *N. Y.* 437. Explained in *Burrill on Assign.* § 65, 4 ed.
- **v. Newell**, 5 *Sanlf.* 326. Rev'd in 8 *N. Y.* 190. Subsequent decision in 2 *Duer*, 584, which was aff'd in 13 *N. Y.* 290. See *Frith v. Barker*. These decisions cited with other cases (Evidence of usage as to allowance of days of grace) in 12 *Am. L. Reg. N. S.* 9. Decision in 13 *N. Y.* disting'd in *Wayne Co. Sav'gs Bk. v. Low*, 6 *Abb. N. C.* 76, 86. Included (Days of grace—what law to govern) in 2 *Ames Cases on B. & N.* 227, 299.
- **v. N. Y. Central R. R. Co.**, 18 *N. Y.* 408. Approved (Degree of care required from carrier) in *Smith v. N. Y. Central R. R. Co.*, 24 *Id.* 222, 224. Explained in *Ang. on Carr.* § 569, n. a, 5 ed. Cited, with other cases (Ordinary care) in 14 *Am. L. Reg. N. S.* 266.
- **v. Widner**, 25 *Hun.* 61. Briefly reported in 12 *Weekly Dig.* 525.
- Bowerhan's Case.** See *William's Case*.
- Bowers v. Smith**, 10 *Paige*, 201. See *Grant v. Van Schoonhoven*. Followed (Action for construction of will,—who may not maintain) in *Duncan v. Duncan*, 4 *Abb. N. C.* 275, 278. Applied in *Post v. Hover*, 30 *Barb.* 324; *Walrath v. Handy*, 24 *Barb.* 355; *Trow v. Shannon*, 59 *How. Pr.* 217; *Bailey v. Southwick*, 6 *Lans.* 363. Explained in *Chipman v. Montgomery*, 4 *Hun.* 742, which was rev'd in 63 *N. Y.* 231, which see; *Marlett v. Marlett*, 14 *Hun.* 315. Approved and applied in *Monarque v. Monarque*, 19 *Hun.* 332. Followed (Jurisdiction of such action) in *Onderdonk v. Mott*, 34 *Barb.* 113. Discussed (Ejectment, as disting'd from action for construction of will) in *Sedgw. & W. on Tr. of Tit. to Land*, § 163. Disapproved (Devise of real estate in lieu of dower,—whether passing under residuary clause) in *Waring v. Waring*, 17 *Barb.* 560. Cited as authority (What included in residuary clause) in *Youngs v. Youngs*, 45 *N. Y.* 259.
- Bowery Bank v. Duncan**, 12 *Hun.* 408. Collated and compared (Parol evidence to establish trust) in *Randall v. Constans*, 23 *Northw. Rep.* 530, 533.
- Bowery Extension Case**, 2 *Abb. Pr.* 368; s. c., 12 *How. Pr.* 97; *Mayor, &c. of N. Y. v. Erben*, 38 *N. Y.* 311; *Matter of Canal Street*, 12 *N. Y.* 411; *Matter of Sixty-fifth Street*, 23 *How. Pr.* 256; *Matter of Seventy-sixth Street*, 12 *Abb. Pr.* 317. Reviewed and criticised (Appeal from order confirming report of commissioners for taking lands for streets and public places in *N. Y.*) in *Matter of Central Park*, 4 *Lans.* 467; s. c., 61 *Barb.* 40. Contrary to *Bowery Extension case*, see *Matter of Canal and Walker Streets*, 12 *N. Y.* 406. Compare *Pryor's Appeal*, 5 *Abb. Pr.* 272.
- Bowery Nat. Bank v. Duryea**, 54 *How. Pr.* 450. Rev'd in 55 *Id.* 88, which was aff'd in 74 *N. Y.* 491; s. c., 56 *How. Pr.* 42. See also (Necessity of stating cause of arrest in complaint) *Williams v. Norton*, 54 *Id.* 509; *Thompson v. Friedberg*, *Id.* 519; *Mather v. Hannaur*, 55 *Id.* 1. Compare *Code Civ. Pro.* 1881, § 550, n.
- **v. Mayor, &c. of N. Y.** 2 *Sup'm. Ct. (T. & C.)* 523; s. c., with further decision, in 3 *Hun.* 639. Rev'd in 63 *N. Y.* 336. Further decision in 8 *Hun.* 224. See *Phillips v. Gallant*. Decision in 63 *N. Y.* followed (Certificate of officer as prerequisite of payment of claim) in *Bancker v. Mayor, &c.*

- of *N. Y.*, 8 *Hun.* 409. Limited in *Whiteman v. Mayor, &c. of N.Y.*, 21 *Hun.* 117, 121. See to the contrary, *Milner v. Field*, 5 *Exch.* 829. But see *Abb. Tr. Ev.* 372.
- Bowery Savings Bank v. Richards**, 6 *Sup'm. Ct. (T. & C.)* 59; s. c., more fully, 3 *Hun.* 366. Appeal dismissed in 62 *N. Y.* 631. See *Bergh's Case*.
- Bowles v. Van Horn**, 11 *Abb. Pr.* 84. Opposed (Costs on dismissal of complaint) in *Perkins v. Butler*, 42 *How. Pr.* 102. Overruled (Dismissal of complaint for neglect to prosecute) by *Winchell v. Martin*, 14 *Abb. Pr. N. S.* 47.
- Bowling Green Savings Bank v. Todd**, 64 *Barb.* 146. Aff'd in 52 *N. Y.* 489. See *Rooney v. Second Ave. R. R. Co.* Decision in 52 *N. Y.* questioned (Attorney's lien) in *Matter of Knapp*, 8 *Abb. N. C.* 308, 310, which was rev'd on other grounds in 85 *N. Y.* 284, 294, 298, which see. Said in 31 *Am. Dec.* 759, n., collating cases, to have been reiterated in *Hooper v. Welch*, 43 *Vt.* 171. Followed (Compelling payment by attorney to client) *Matter of Fincke*, 6 *Daly*, 111. Explained in *Porter v. Parmly*, 39 (*Super. Ct. (J. & S.)* 219, 239).
- Bowman v. Agricultural Ins. Co.**, 2 *Sup'm. Ct. (T. & C.)* 261. Aff'd in 59 *N. Y.* 521. Disting'd (Waiver by special agent) in *Thayer v. Agricultural Ins. Co.*, 5 *Hun.* 566.
- **v. De Peyster**, 2 *Daly*, 203. Relied on by *MONELL*, Ch. J. (Appeal from order allowing amendment of pleading) in *Schreyer v. Mayor, &c. of N. Y.*, 39 *Super. Ct. (J. & S.)* 277. See to the contrary *Sheldon v. Adams*, 27 *How. Pr.* 179.
- **v. Ely**, 2 *Wend.* 250; *Messenger v. Holmes*, 12 *Id.* 203. Explained (Change of venue) in *People v. Webb*, 1 *Hill*, 179.
- **v. Rainetaux, Hoffm.** Ch. 150. Quoted and collated (Assignment for benefit of creditors—death of assignee) with other cases, in *Bishop on Assign.* § 348.
- **v. Tallman**, 2 *Robt.* 385; s. c., more fully, 27 *How. Pr.* 212. Aff'd in 3 *Abb. Ct. App. Dec.* 182, n.; s. c., 40 *How. Pr.* 1. Further decision in 2 *Robt.* 632, reported more fully in 3 *Id.* 633. See *Marsellis v. Thalhimer*. Decision in 3 *Robt.* applied (Execution issued before affirmance of judgment) in *Rosenfield v. Palmer*, 5 *Daly*, 318.
- **v. Teall**, 23 *Wend.* 306; s. c., 14 *N. Y. Com. L. Law. ed.* 379, with brief note. Explained (Waiver of damages for negligence of carrier) in *McCormick v. Penn. Central R. R. Co.*, 80 *N. Y.* 353, 362. Discussed (Delivery by carrier) in *Ang. on Curr.* § 333, n. 2, 5 ed. Included (Carriers' negligence in transporting goods) in *Sedgw. Cases on Dama.* 101.
- **v. Troy & Boston R. R. Co.**, 37 *Barb.* 516. See *Halloran v. N. Y. & Harlem R. R. Co.* Disting'd (Liability of railroad company for killing animals straying upon track) in *Brady v. Rensselaer & S. R. R. Co.*, 1 *Hun.* 378; s. c., 3 *Sup'm. Ct. (T. & C.)* 538.
- Bowne v. Joy**, 9 *Johns.* 221. See *Embree v. Collins*. Followed (Pendency of foreign suit) in *Walsh v. Durkin*, 12 *Johns.* 101. Approved with *Walsh v. Durkin*, 12 *Johns.* 99, in *White v. Whitman*, 1 *Curt. C. Ct.* 494. Quoted and explained in 2 *Par. on Contr.* 608, n. v. Followed with *Walsh v. Durkin*, 12 *Johns.* 101; *Mitchell v. Bunch*, 2 *Paige*, 620; s. c., 22 *Am. Dec.* 669, in *Hatch v. Spofford*, 22 *Conn.* 485; s. c., 58 *Am. Dec.* 433.
- **v. Mellor**, 6 *Hill*, 496. Followed (Recovery on bond given on issuing of attachment by justice) in *Northrup v. Garrett*, 17 *Hun.* 499.
- **v. O'Brien**, 41 *Super. Ct. (J. & S.)* 539. Another decision in 5 *Daly*, 474.
- **v. Potter**, 17 *Wend.* 164. See *Sherwood v. Vandenburg*. Overruled, it seems, (Estoppel of husband's grantee as against claim of dower) in *Sparrow v. Kingman*, 1 *N. Y.* 242. Denied in *Finn v. Sleight*, 8 *Barb.* 406. Discussed in 1 *Washb. on Real Prop.* 4 ed. 238, 239. Approved (Right of grantee in possession to defend against all but owner) in *May v. Sprecht*, 1 *Mich.* 190. Citing *Bancroft v. White*, 1 *Chi.* 185.
- **v. Underhill**, 4 *Hun.* 130. Fully reported in 6 *Sup'm. Ct. (T. & C.)* 344.
- **v. Witt**, 19 *Wend.* 475. Disting'd ("Head of a family," under exemption laws) in *Bachman v. Crawford*, 3 *Humph. (Tenn.)* 213; s. c., 39 *Am. Dec.* 163, with note. Applied ("Householder") in *Calhoun v. Williams*, 32 *Gratt. (Va.)* 18; s. c., 34 *Am. R.* 759, 762.
- Boyce v. Bates**, 8 *How. Pr.* 495. See to the contrary (Application for leave to issue execution to collect costs) *Lucas v. Johnson*, 6 *Hon. Pr.* 121; *Mitchell v. Westervelt*, *Id.* 265, 311; *Wetzel v. Schultz*, 13 *Id.* 191. Approved and explained (Enforcing attorney's liability for costs) in *Matter of Levy*, 2 *Civ. Pro. R. (Broune)* 108.
- **v. Brown**, 7 *Barb.* 80. Reported below, in *Royce v. Brown*, 3 *How. Pr.* 391. See *Arthur v. Brooks*.
- **v. People**, 55 *N. Y.* 644. Compare (Seduction, when accomplished under promise of marriage. Relying on the promise) *Cook v. People*, 2 *Sup'm. Ct. (T. & C.)* 404.
- **v. Washburn**, 4 *Hun.* 792. Explained (Statute of Frauds—"goods, wares and merchandise") in 1 *Benj. on Sales*, § 117, n. 5. (Corbin's 4 *Am. ed.*).
- **v. Wight**, 2 *Abb. N. C.* 163. See also (Acknowledgment and record of certificate given on making redemption) *Code Civ. Pro.* § 1470.
- Boyd v. Bigelow**, 14 *How. Pr.* 511. Followed (Costs on reference of claim against estate) in *Munson v. Howell*, 20 *How. Pr.* 59. For contrary decisions, see *Van Sickler v. Graham*, 7 *How. Pr.* 203; *Avery v. Smith*, 9 *Id.* 349.
- **v. Brotherson**, 10 *Wend.* 93. See *Mitchell v. Culver*. Approved (Supplying omis-



- sions in promissory note) in *Connor v. Routh*, 7 *How. (Miss.)* 176; s. c., 40 *Am. Dec.* 59.
- *v. Colt*, 20 *How. Pr.* 384. Followed (Nullifying testimony of party) in *Lynch v. Pyne*, 42 *Super. Ct. (J. & S.)* 11. See other cases collected (Weight of testimony of parties) in 1 *Abb.* 363, n.
- *v. Cummings*, 17 *N. Y.* 101. Applied (Holder of note for value) in *Bank of the State of N. Y. v. Vanderhorst*, 32 *N. Y.* 553. Collated (Indorsement of note as consideration for suspending proceedings in collection of debt) with other cases, in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 241.
- *v. De La Montagnie*, 1 *Hun.* 696; s. c., 4 *Sup'm. Ct. (T. & C.)* 148; 47 *How. Pr.* 433. Aff'd in effect on appeal from a second trial in 73 *N. Y.* 498; s. c., 29 *Am. R.* 197. Decision in 73 *N. Y.* approved (Ground for setting aside conveyance) in *Kleeman v. Reltzer*, 22 *Northw. Rep.* 793, 796. See (Transfer of property from wife to husband, when void) *Darlington's Appeal*, 86 *Penn. St.* 512; s. c., 27 *Am. R.* 726. Quoted and discussed (Validity of illegal conveyances as between the parties) in *Wait on Fraud. Conv.* § 400.
- *v. Dowie*, 65 *Barb.* 237. Compare (Necessity of possession, in order to maintain action for partition) *Code Civ. Pro.* § 1532.
- *v. Dunlap*, 1 *Johns. Ch.* 478. Followed and *Van Wyck v. Baker*, 16 *Hun.* 168, disting'd (Allowing fraudulent conveyance to stand as security) in *Davis v. Leopold*, 87 *N. Y.* 620. Reviewed in *Taylor v. Atwood*, 47 *Conn.* 493, 503. Disapproved as contrary to reason and precedent, in *Garland v. Rives*, 4 *Rand. (Va.)* 233; s. c., 15 *Am. Dec.* 756-774. Approved and followed in *McMeekins v. Edmonds*, 1 *Will (S. C.)* 283; s. c., 26 *Am. Dec.* 203. Distinguished in *Moore v. Tarlton*, 3 *Ala.* 444; s. c., 37 *Am. Dec.* 701, with note. Relied on in dissenting opinion, in *Miller v. Tollison*, 1 *Harp. Eq. (S. C.)* 145; s. c., 14 *Am. Dec.* 712. Followed in *U. S. v. Griswold*, 8 *Fed. Rep.* 504. Commented on in *Wait on Fraud. Conv.* § 192.
- *v. Foot*, 5 *Bow.* 110. Cited (Entries made in books of partnership after dissolution) in 2 *Whart. Com. on Ev.* § 1132.
- *v. Gray*, 34 *How. Pr.* 323. Followed (Necessity that affidavit of assessors be annexed to assessment roll) in *Bradley v. Ward*, 58 *N. Y.* 401, 406.
- *v. Hitchcock*, 20 *Johns.* 76; s. c., 6 *N. Y. Com. L. Law. ed.* 939, with brief note. See *Kellogg v. Richards*; *Seymour v. Minturn*; *Witherby v. Mann*. Approved (Effect of additional security for less sum as accord and satisfaction) in *Kellogg v. Richards*, 14 *Wend.* 117; *Booth v. Smith*, 3 *Id.* 66. Approved with *Kellogg v. Richards*, 14 *Wend.* 116, in *Brooks v. White*, 2 *Metc. (Mass.)* 283; s. c., 37 *Am. Dec.* 93, with note.
- *v. Hoyt*, 5 *Puige*, 65. Examined and followed (Parties in creditor's suit) in *Reed v. Stryker*, 12 *Abb. Pr.* 47, 50. See *Morton v. Weil*, 33 *Barb.* 30, 36. Discussed (Multifarious pleadings in creditor's suit) in *Wait on Fraud. Conv.* § 151.
- *v. McLean*, 1 *Johns. Ch.* 382. See *Steere v. Steere*. Reviewed (Parol evidence to establish resulting trust) with *Botsford v. Burr*, 2 *Johns. Ch.* 404; *Foot v. Colvin*, 3 *Johns.* 216; s. c., 3 *Am. Dec.* 478, in *Neill v. Keese*, 5 *Tex.* 23; s. c., 51 *Am. Dec.* 745. Reluctantly followed with *Botsford v. Burr*; *Jackson v. Matsdorf*, 11 *Johns.* 91; s. c., 6 *Am. Dec.* 355, in *Smitheal v. Gray*, 1 *Humph. (Tenn.)* 491; s. c., 34 *Am. Dec.* 664, 666. Cited with approval in *Burleigh v. White*, 64 *Me.* 23. Followed (Trust resulting by presumption of law) in *Baker v. Vining*, 30 *Me.* 121; s. c., 50 *Am. Dec.* 617, with note. Followed (Relief against written instrument on the ground of fraud or mistake) with *Gilispie v. Moon*, 2 *Johns. Ch.* 585; s. c., 7 *Am. Dec.* 559, in *Greer v. Caldwell*, 14 *Ga.* 207; s. c., 53 *Am. Dec.* 553.
- *v. McDonough*, 39 *How. Pr.* 389. Disting'd (Discharge of accommodation indorser as surety) in *Converse v. Cook*, 25 *Hun.* 44, 48.
- *v. Plumb*, 7 *Wend.* 309. Explained (Partnership—firm loans) in 1 *Collyer on Partn.* § 416, n. 1, *Wood's Am. ed.*
- *v. Schlesinger*, 59 *N. Y.* 301. Disting'd (Specific performance) in *Bensel v. Gray*, 80 *N. Y.* 517, 521.
- *v. Weeks*, 5 *Hill*, 393. Aff'd in 2 *Den.* 321; s. c., 43 *Am. Dec.* 749, with note, collecting citations.
- Boyer v. Brown**, 4 *Sup'm. Ct. (T. & C.)* 698; s. c., 1 *Hun.* 615. Disting'd (Payment of costs as condition of granting new trial where verdict is against evidence) in *Bailey v. Park*, 5 *Hun.* 41.
- *v. Schofield*, 1 *Abb. Ct. App. Dec.* 177; s. c., 2 *Keyes*, 628. Followed (Conclusiveness of judgment in justice's court on question relating to title to land) in *Masten v. Olcott*, 60 *How. Pr.* 112, which was rev'd in 24 *Hun.* 587, which see.
- Boyle v. City of Brooklyn**, 8 *Hun.* 32. Rev'd in 71 *N. Y.* 1.
- Boylan v. McAvoy**, 29 *How. Pr.* 278. Applied (Necessity for appointment of guardian *ad litem*) in *Jessurun v. Mackie*, 61 *How. Pr.* 261; s. c., 24 *Hun.* 624. Followed in *McMurray v. McMurray*, 60 *Barb.* 117.
- Boylston v. Wheeler**, 2 *Hun.* 622; s. c., 5 *Sup'm. Ct. (T. & C.)* 179. Compare (Evidence in action to compel determination of claims to real property) 61 *N. Y.* 521.
- Boynton v. Andrews**, 63 *N. Y.* 93. Disting'd (Evasion of stockholder's liability through fraudulent valuation) in *Brown v. Smith*, 13 *Hun.* 408, 412. Applied in *Thurber v. Thompson*, 21 *Hun.* 472, 476. Disting'd in *Van Cott v. Van Brunt*, 82 *N. Y.* 535, 542.
- *v. Boynton*, 16 *Abb. Pr.* 87. Fully reported in 25 *How. Pr.* 490. Said in 41

- N. Y.* 619, to have been aff'd by Ct. of App. in June, 1869.
- **v. Clinton & Essex Ins. Co.**, 16 *Barb.* 254, 258. Applied (Effect of removal of property insured, upon risk) in *Annapolis, &c. R. R. Co. v. President, &c. Baltimore Fire Ins. Co.*, 32 *Md.* 37; s. c., 3 *Am. R.* 112. Disting'd and Townsend *v. Northwestern Ins. Co.*, 18 *N. Y.* 168, relied on in *McClure v. Girard Fire & Marine Ins. Co.*, 43 *Iowa*, 349; s. c., 22 *Am. R.* 249, 250, 253, with note collating *Farmer's Loan & Trust Co. v. Harmony Fire Ins. Co.*, 51 *Barb.* 33; 41 *N. Y.* 619; *Webb v. Nat'l Ins. Co.*, 2 *Sandf.* 497; *Boyce v. Lorillard Fire Ins. Co.*, 55 *N. Y.* 240; s. c., 14 *Am. R.* 249, and other cases.
- **v. Hatch**, 47 *N. Y.* 225. Limited and explained (Stockholder's liability) in *Schenck v. Andrews*, 57 *N. Y.* 133, 137, 144. Opinion by ALLEN, J., followed in *Douglass v. Ireland*, 73 *N. Y.* 100, 102. Disting'd in *Van Cott v. Van Brunt*, 82 *N. Y.* 535, 542.
- **v. Hoyt**, 1 *Den.* 53. See Hone *v. Van Schaick*; *Meserole v. Meserole*. Disting'd (Perpetuities) in *Eells v. Lynch*, 8 *Bosw.* 478. Followed in *Jennings v. Jennings*, 7 *N. Y.* 549, which aff'd 5 *Sandf.* 174, which see. Recognized in *Beekman v. Bonsor*, 23 *N. Y.* 316. Explained in dissenting opinion of EARL, J., in *Heermans v. Robertson*, 64 *N. Y.* 351. Commented on in 1 *Jarm. on Wills*, Rand. & T. ed. 511, n.
- **v. Page**, 13 *Wend.* 425. Applied (Validity of contracts made on Sunday) in *Adams v. Hamell*, 2 *Doug. (Mich.)* 73; s. c., 43 *Am. Dec.* 455, with note. Explained in 2 *Pars. on Contr.* 759, n. g.
- Brabin v. Hyde**, 30 *Barb.* 265. Rev'd in 32 *N. Y.* 519. Decision in 32 *N. Y.* followed (Agreement for payment, not payment within statute of frauds) in *Mattice v. Allen*, 3 *Keyes*, 492. Explained in *Justice v. Lang*, 42 *N. Y.* 493, 514, as not holding that memorandum required by statute need be signed by both parties.
- Brace v. Beatty**, 5 *Abb. Pr.* 221. Rev'd in 7 *Abb. Pr.* 445.
- Bracket v. McNair**, 14 *Johns.* 170; s. c., 7 *Am. Dec.* 447, with note wherein it is shown to have been followed and approved (Measure of damages, in action against carrier). See *Pinney v. Gleason*. Approved in *O'Connor v. Forster*, 10 *Watts (Pa.)* 418. Explained in *Ang. on Curr.* § 484, 5 ed. Included with note in *Sedgw. Cases on Dama*, 99.
- **v. Wilkinson**, 13 *How. Pr.* 102. Overruled (Right of plaintiff to anticipate defense in his complaint) in *Sands v. St. John*, 23 *Id.* 140.
- Brackett v. Barney**, 28 *N. Y.* 333; *Worrall v. Munn*, 5 *Id.* -238; *Jackson v. Catlin*, 2 *Johns.* 259. Cited as authorities (Effect of delivery of deed to grantee) in *Miller v. Fletcher*, 27 *Gratt. (Va.)* 403; s. c., 21 *Am. R.* 356, 362.
- v. Baum**, 50 *N. Y.* 8. Compare (*Barring* wife of mortgagor) *Code Civ. Pro.* §§ 2338-2395.
- Bracy v. Kibbe**, 31 *Barb.* 273. See *People v. Jackson*. Applied (Seclusion—mitigation) in *Wandell v. Edwards*, 25 *Hun.* 498, 501. Cited with other authorities (Ability of step-father standing in loco parentis to maintain action for seduction) in *Kinney v. Langhenour*, 89 *N. C.* 365.
- Bradford v. Fox**, 39 *Barb.* 203; s. c., 16 *Abb. Pr.* 51. Rev'd in 38 *N. Y.* 239. Decision in 38 *N. Y.* applied (Delivery of draft as payment of debt) in *First Nat. Bk. of Meadville v. Fourth Nat. Bk. of N. Y.*, 24 *Hun.* 241, 243.
- **v. Kimberly**, 3 *Johns. Ch.* 431. Relied on (Actions between partners) in dissenting opinion of STERNER, J., in *Causten v. Burke*, 2 *Harr. & G. (Md.)* 295; s. c., 18 *Am. Dec.* 297, with note. Followed (Right of compensation between partners) with *Franklin v. Robinson*, 1 *Johns. Ch.* 165, in *Beatty v. Wray*, 19 *Penn. St.* 516; s. c., 57 *Am. Dec.* 677. Included with notes (Factor's lien) in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 866.
- Bradhurst v. Columbian Ins. Co.**, 9 *Johns.* 9; s. c., 4 *N. Y. Com. L. Law.* ed. 646, with brief note, saying it is of doubtful authority, and to be sustained, if at all, on the precise ground that the intention was not to destroy the ship. Applied (Sacrifice when not voluntarily, so as to entitle to contribution) in *Crockett v. Dodge*, 12 *Me.* 190; s. c., 28 *Am. Dec.* 170, with note. Reviewed (Contribution in case of stranding to save vessel and cargo) with *Heyliger v. N. Y. Firemen's Ins. Co.*, 11 *Johns.* 85, in *Bevan v. Bank of U. S.*, 4 *Whart. (Pa.)* 301; s. c., 33 *Am. Dec.* 64, with note. Opposed in *Columbian Ins. Co. v. Ashby*, 13 *Pet.* 331, and cases cited; *Caze v. Reilly*, 3 *Wash. Circ. Ct. R.* 298; *Gray v. Wain*, 2 *Serg. & R.* 229. Limited in *Scudder v. Bradford*, 14 *Pick.* 13. But see *Slater v. Hayward Rubber Co.*, 26 *Conn.* 129.
- Bradish v. Gibbs**, 3 *Johns. Ch.* 550. Followed (Execution of power by married woman) in *Thompson v. Murray*, 2 *Hill Ch. (S. C.)* 204; s. c. 29 *Am. Dec.* 68, with note. Included in *Ewell Lead. Cas. on Inf.*, &c. 259. Discussed in 2 *Kent Com.* 172, and cited as having been approved by the supreme court of Pennsylvania in *West v. West*, 10 *Serg. & R.* 447.
- **v. Schenck**, 8 *Johns.* 151. See *Putnam v. Wise*. Reviewed and modified (Nature of contract to work farm on shares) in *Taylor v. Bradley*, 39 *N. Y.* 129. See to the contrary (Effect of such contract in creating tenancy in common of the crop) *People v. Smith*, 3 *How. Pr.* 226. Disting'd (Right of action, in case of such contract, for breach of the close) in *Woodruff v. Adams*, 5 *Blackf. (Ind.)* 317; s. c., 35 *Am. Dec.* 122.
- Bradley v. Aldrich**, 40 *N. Y.* 504. Explained (Demand of relief, as characteristic of the action) in *Seeley v. N. Y. Nat. Exch. Bk.*, 8 *Daly*, 400, 405. Approved in *Pomeroy*

- on Rem. § 580. Approved (Necessity for averment of damages in complaint) in *Id.* § 84, n. 3. Disting'd in *Andrew v. N. J. Steamboat Co.*, 11 *Hun.* 494. Explained (Equitable relief) in *Beck v. Allison*, 4 *Duty.* 445. Explained (Waiver of constitutional right) in *Nason v. Luddington*, 55 *How. Pr.* 343.
- *v. Angel*, 3 *N. Y.* 475. See *Keep v. Lord*; *Lindsay v. Jackson*. Approved and followed (Set-off as between solvent and insolvent) in *Keep v. Lord*, 2 *Duer.* 78. Compare *Seymour v. Dunham*, 24 *Hun.* 93. Disting'd in *Dougherty v. Central Nat. Bk.*, 93 *Penn. St.* 227; s. c., 39 *Am. R.* 750. Disting'd with *Martin v. Kunzmuller*, 37 *N. Y.* 396, in *Coates v. Donnell*, 48 *Super. Ct. (J. & S.)* 46.
- *v. Baxter*. See *Thorne v. Cramer*.
- *v. Bosley*, 1 *Barb. Ch.* 125. Applied (Enforcing equitable lien for purchase money) in *Mills v. Bliss*, 55 *N. Y.* 139, 144. Approved (Nature of relief given in equity) in *Whipple v. Farrar*, 3 *Mich.* 446.
- *v. Buffalo, &c. R. R. Co.*, 34 *N. Y.* 432. See *Corwin v. N. Y. & Erie R. R. Co.* Followed (Duty of railroad companies to fence against animals) in *Rhodes v. Utica, Ithaca, &c. R. R. Co.*, 5 *Hun.* 344.
- *v. Burwell*, 3 *Den.* 61. See *Lawrence v. Trustees, &c.* Explained (Contribution against estate of deceased surety) in *Johnston v. Harvey*, 84 *N. Y.* 363, 365.
- *v. Manning*, 12 *Weekly Dig.* 497. From mem. s. c., 24 *Hun.* 603, it appears, that the opinion was delivered by BOARDMAN, J.
- *v. Mutual Benefit Life Ins. Co.*, 3 *Lans.* 341. Rev'd in 45 *N. Y.* 422. Decision in 45 *N. Y.* disting'd (Restriction in policy as to cause of death) in *Shader v. Railway Passenger Assurance Co.*, 66 *N. Y.* 444.
- *v. N. Y. Central R. R. Co.*, 3 *Sup'm. Ct. (T. & C.)* 288. Aff'd in 62 *N. Y.* 99. Decision in 62 *N. Y.* explained (Master's liability for servant's torts) in *Moak's Underhill's Torts*, 1 *Am. ed.* 59.
- *v. Parker*, 2 *Month. L. Bul.* 21. Questioned (Amendment of affidavit, &c. to support order of arrest or attachment) in *Southern Inland Nav. & Imp. Co. v. Sherwin*, 1 *Civ. Pro. R.* 44, 47.
- *v. People*, 56 *Barb.* 72. Included with notes (Collecting gunpowder as nuisance) in *Lawson Lead. Cas. (Crim. L.) Simplified*, 149.
- *v. Root*, 5 *Paige*, 637. Examined (Examination of defendant in chancery as a witness, and its consequences) in *Norris v. Hurd*, *Walk. Ch.* 105. Disting'd (Equitable lien) in *Attorney Genl. v. Continental Life Ins. Co.*, 71 *N. Y.* 325, 329; s. c., 27 *Am. R.* 55. Followed (Title to dividends) in *Herrman v. Maxwell*, 47 *Super. Ct. (J. & S.)* 347, 351.
- *v. Ward*, 1 *Sup'm. Ct. (T. & C.)* 413. Aff'd in 58 *N. Y.* 401. See *Merritt v. Village of Portchester*.
- *v. Wheeler*, 4 *Robt.* 18. Aff'd in 44 *N. Y.* 405. Reviewed (Proof of local custom without proof of knowledge) with other cases, in *Walls v. Bailey*, 49 *N. Y.* 464, 474.
- Bradner v. Faulkner**, 12 *N. Y.* 472. See *Cooke v. Meeker*; *Lawrence v. Embree*. Approved (Interest on legacies) in *Fisk's Estate*, 1 *Tuck.* 122; s. c., 19 *Abb. Pr.* 209, which was, however, rev'd in *Campbell v. Cowdrey*, 31 *How. Pr.* 172; where *Lawrence v. Embree*, 3 *Bradf.* 364, was followed in preference. See *Devlin's Estate*, 1 *Tuck.* 460. Cited as authority in *Lynch v. Mahoney*, 2 *Redf.* 437. Followed in *Wheeler v. Ruthven*, 2 *Redf.* 491, 494.
- *v. —*, 34 *N. Y.* 347. Explained (Sale of growing crops by personal representative) by SUTHERLAND, J., in *Sherman v. Willett*, 42 *N. Y.* 146, 154.
- *v. Howard*, 14 *Hun.* 420. Aff'd in 75 *N. Y.* 417.
- *v. Superintendent of Poor of Orange County*, 9 *Wend.* 433. See (When a common law certiorari may be allowed) *Daget v. Commissioners of Alms House ex rel. Hæffele*, 2 *How. Pr.* 256.
- Bradshaw v. Callaghan**, 5 *Johns.* 80. Rev'd in 8 *Id.* 558.
- *v. Heath*, 13 *Wend.* 407. See *Jackson v. Jackson*. Discussed (Validity of foreign divorce) and cases cited, in 3 *Am. L. Reg. N. S.* 213. Approved with *Vischer v. Vischer*, 12 *Barb.* 640; *McGiffert v. McGiffert*, 31 *Id.* 69; *Borden v. Fitch*, 15 *Johns.* 121, in *Prosser v. Warner*, 47 *Vt.* 667; s. c., 19 *Am. R.* 132, 135. Cited approvingly with many other authorities (Effect of foreign judgment) in 1 *Kent Com.* 261, n. b.
- *v. Rogers*, 20 *Johns.* 103. Rev'd in *Id.* 735.
- Bradstreet v. Clarke**, 12 *Wend.* 602; s. c., 12 *N. Y. Com. L. Law: ed.* 245, with brief note. Approved and followed (Effect of subsequently accruing disabilities on running of statute of limitations) in *McDonald v. Hovey*, 110 *U. S. (Davis)* 619. Collated (Application of doctrine of estoppel to married woman) with *Lindner v. Sable*, 51 *Barb.* 322; *Bodine v. Killeen*, 53 *N. Y.* 93, in 28 *Am. R.* 374, n.
- *v. Ferguson*, 17 *Wend.* 181. Aff'd in 23 *Wend.* 638. Decision in 23 *Wend.* explained as not authority in *People v. Weston*, 4 *Park. Cr.* 226, 229, as to pleading ground for warrant, but only as to evidence of it.
- *v. Supervisors of Oneida*, 13 *Wend.* 546. Quoted and collated (Action by alien in defense of realty) with other cases, in *Sharrow & B. Cases on Real Prop.* 502.
- Bradt v. Benedict**, 17 *N. Y.* 93. See *See v. Bloom*. Disting'd (What constitutes dissolution of corporation) in *Bruce v. Platt*, 80 *N. Y.* 379, 386, 389. Discussed in *Morawetz on Corp.* § 638.
- *v. Brooks*. See *Jackson ex dem. Bradt v. Brooks*.
- *v. Koon*, 4 *Cow.* 416. Better reported, as to the facts, in *People v. N. Y. Com. Pl.*, 13 *Wend.* 653, by Ch. J. SAVAGE.

- **v. Towsley**, 13 *Wend.* 253. Overruled with *Fuller v. Fenner*, 16 *Barb.* 333 (Damages for loss of health and incapacity for business) in *Terwilliger v. Wands*, 17 *N. Y.* 54, 63.
- Bradwell v. Weeks**, 1 *Johns. Ch.* 206. Rev'd (Right of alien enemy to take personal property of alien resident) in 13 *Johns.* 1, by the casting vote of the lieutenant-governor; all the law members of the court being, however, for affirmance. See *Bell v. Chapman*.
- Brady, Matter of**, 8 *Hun.* 437; s. c., 53 *How. Pr.* 128. Aff'd in 69 *N. Y.* 215; s. c., 53 *How. Pr.* 128. Decision in 69 *N. Y.* distinguishing (Appeal in proceedings for discharge of imprisoned debtor) in *Matter of Roberts*, 70 *N. Y.* 5. Applied (Debtor's proceedings—when just or fair) in *Matter of Fowler*, 8 *Daly*, 548, 557. Disting'd (Truth of statements in papers annexed to petition for discharge) in *Schaeffer v. Soule*, 23 *Hun.* 586. Followed (Bond given to procure discharge) in *Russak v. Sabey*, 29 *Hun.* 491. Collated with other cases, in *Bishop on Assign.* § 121. Compare *Code Civ. Pro.* § 2208.
- **Matter of**, 47 *Super. Ct. (J. & S.)* 36. Aff'd in 85 *N. Y.* 268. Decision in 85 *N. Y.* followed (Repayment) in *Matter of Roberts*, 25 *Hun.* 371, 376.
- **v. Bissell**, 1 *Abb. Pr.* 76. Followed and approved (Reference to complaint to supply defects in affidavit for order of arrest) in *Turner v. Thompson*, 2 *Abb. Pr.* 444.
- **v. Brundage**, 2 *Sup'm. Ct. (T. & C.)* 621. Confirmed in 59 *N. Y.* 310. Decision in 59 *N. Y.* followed (Appellability of order for exoneration of bail) in *Douglass v. Haberstro*, 82 *N. Y.* 572, 574. See (Rights, &c. of sheriff, when liable as bail) *Code Civ. Pro.* 1881, § 595, n.
- **v. Durbrow**, 2 *E. D. Smith*, 78. Followed (Right of defendant to extra allowance) in *Comm'rs of Pilots v. Spofford*, 3 *Hun.* 59.
- **v. Kibbe**. See *People v. Abbot*.
- **v. McCosker**, 1 *Barb.* 329. Aff'd in 1 *N. Y.* 214. For points of counsel in Ct. of App. see *How. App. Cas.* 480.
- **v. Mayor, &c. of Brooklyn**, 1 *Barb.* 591. Limited (Effect of resolution of common council, as promise to pay) in *Brady v. Mayor of N. Y.*, 2 *Bosw.* 173, 181. See also (*Functus officio*) *Bigler v. Mayor, &c. of N. Y.*, 5 *Abb. N. C.* 51, 52, n. Compare (Municipal corporation as public agent) *Sage v. City of Brooklyn*, 8 *Abb. N. C.* 279.
- **v. Mayor, &c. of N. Y.**, 2 *Bosw.* 173; s. c., 7 *Abb. Pr.* 234; 16 *How. Pr.* 435. Aff'd in 20 *N. Y.* 312. Decision in 2 *Bosw.* followed (Liability of municipal corporation under void contract) in *McSpedon v. Mayor, &c. of N. Y.*, 20 *How. Pr.* 395; *Farmers' Loan & Trust Co. v. Mayor, &c. of N. Y.*, 4 *Bosw.* 80, 88; *Donovan v. Mayor, &c. of N. Y.*, 33 *N. Y.* 291. Disting'd in *Bonesteel v. Mayor, &c. of N. Y.*, 6 *Id.* 550, 565, which was aff'd in 22 *N. Y.* 162, which see. Commented on and doubted in *Harlem Gas Light Co. v. Mayor, &c. of N. Y.*, 3 *Robt.* 127. Decision in 20 *N. Y.* applied in *McCloskey v. City of Albany*, 7 *Hun.* 473. Collated, with other cases, in 5 *Abb. N. C.* 49, n. Applied in *Smith v. City of Rochester*, 1 *Shield.* 498. Explained in *Hocker v. Mayor, &c. of N. Y.*, 28 *How. Pr.* 214. Recognized in *Parr v. Village of Greenburgh*, 72 *N. Y.* 472. Considered in *Moore v. Mayor, &c. of N. Y.*, 73 *N. Y.* 248; s. c., 29 *Am. R.* 134, which rev'd 4 *Hun.* 548, which see. Decision in 2 *Bosw.* disting'd (Ratifying act of agent of corporation) in *Rider v. Union India Rubber Co.*, 5 *Bosw.* 98. Decision in 20 *N. Y.* followed (Contracts for municipal work) in *Brown v. Mayor, &c. of N. Y.*, 1 *Hun.* 31, which was, however, rev'd in 63 *N. Y.* 239, which see. Disting'd in *Matter of Merriam*, 84 *N. Y.* 596, 604; *People v. Van Nort*, 64 *Barb.* 209. Cited as authority in *Matter of Mahan*, 20 *Hun.* 301. Followed with *McSpedon v. Mayor, &c. of N. Y.*; *Bonesteel v. Same*, (Duty of corporation of N. Y. to lease public property by auction) in *Taylor v. Beebe*, 3 *Robt.* 262. Decision in 2 *Bosw.* disting'd (Liability of municipal corporation on void contract) in *Jones v. Mayor, &c. of New York*, 7 *Robt.* 209.
- **v. Supervisors of N. Y.**, 2 *Sandf.* 460. Aff'd in 10 *N. Y.* 260, but without opinion. Decision in 2 *Sandf.* cited as authority (Power of county officers to incur expenses in legal proceedings), with *People v. Supervisors*, 32 *N. Y.* 473; *Gillespie v. Broas*, 23 *Barb.* 379, in *Thacher v. Comm'rs*, 13 *Kans.* 182. Applied (Effect of allowance by supervisors) in *Brennan v. Mayor, &c. of N. Y.*, 8 *Daly*, 426, 429.
- **v. Weeks**, 3 *Barb.* 157. Followed (Nuisance) in *Heeg v. Licht*, 8 *Abb. N. C.* 355, 360. Reviewed, with other cases, in *Hutchins v. Smith*, 63 *Barb.* 255. Quoted in *Wood on Nuis.* 2 ed. § 2; *Id.* § 76. Quoted and discussed in *Id.* § 573. Included in *Lawson Lead. Cas. in Eq. Simplified*, 159. Applied (Joinder of plaintiffs in action to be relieved from nuisance) in *Foot v. Bronson*, 4 *Lans.* 52.
- Brague v. Lord**, 41 *Super. Ct. (J. & S.)* 193. Rev'd in 67 *N. Y.* 495; s. c., 2 *Abb. N. C.* 1. Decision in 67 *N. Y.* disting'd (Personal communications with deceased) in *Gorham v. Price*, 25 *Hun.* 11, 13. Applied in *Trow v. Shannon*, 8 *Daly*, 239, 242, but objection there cured by putting in evidence examination taken before trial. Applied in *Head v. Teeter*, 10 *Hun.* 550; *Burnett v. Noble*, 5 *Redf.* 69, 77. Reviewed with other cases, in *Kale v. Elliott*, 18 *Hun.* 199. Followed in *Ross v. Harden*, 42 *Super. Ct. (J. & S.)* 427; *Freeman v. Lawrence*, 43 *Id.* 290.
- Brahe v. Pythagoras Assoc.**, 4 *Duer*, 658. See *Kattenstroth v. Astor Bank*. Overruled (Jurisdiction of N. Y. Superior Court in actions for dissolution of corporations) in *Van Pelt v. U. S. Shoe-heel Co.*, 35 *Super. Ct. (J. & S.)* 111; s. c., 13 *Abb. Pr. N. S.* 325, 332.

- Brainard v. Cooper**, 10 *N. Y.* 356. Disting'd (Right to redeem from foreclosure sale) in *Belden v. Slade*, 26 *Hun.* 635. Criticised in dissenting opinion in *Gage v. Brewster*, 21 *N. Y.* 218, as decided by a divided court.
- **v. Jones**, 18 *N. Y.* 35. Prior proceeding in 11 *How. Pr.* 569. See *Crandall v. Bryan*; *Lyon v. Clark*; *Smedes v. Houghtaling*. Disting'd (Limit of liability on a bond) in *Beers v. Shannon*, 73 *N. Y.* 292, 303. Contrasted with the Massachusetts rule, in *Clark v. Wilkinson* (Wisc. Jan. 19, 1884), 18 *Northw. Rep.* 481, 485. Followed (Liability for interest) in *Gutta Percha, &c. M'fg Co. v. Benedict*, 37 *Super. Ct. (J. & S.)* 430. Decision in 11 *How. Pr.* disting'd (Manner of taking objection to complaint for non-joinder of party) in *Eaton v. Balcom*, 33 *Id.* 80. See *Quigley v. Walker*, 2 *Sweeny*, 175.
- **v. Spring**, 42 *Barb.* 470. Reviewed, with other cases (Representations, when fraudulent) in *Brown v. Ashbough*, 40 *How. Pr.* 226, 238.
- Brainerd v. Dunning**, 30 *N. Y.* 211. Disting'd (Presumption as to findings of fact, in aid of judgment) in *Meyer v. Amidon*, 45 *N. Y.* 173.
- **v. Heydrick**. See *Barnard v. Heydrick*.
- **v. N. Y. & Harlem R. R. Co.**, 25 *N. Y.* 496. Followed (Validity of bond issued payable in blank) with *Hubbard v. N. Y. & Harlem R. R. Co.*, 36 *Barb.* 236; *Dutchess County Ins. Co. v. Hachfield*, 4 *Sup. m. Ct. (T. & C.)* 158, in *Boyd v. Kennedy*, 9 *Vroom (N. J.)* 146; s. c. 20 *Am. R.* 376, 379.
- Bramhall v. Ferris**, 14 *N. Y.* 41. Followed (Conditional trusts) in *Roosevelt v. Roosevelt*, 6 *Hun.* 31, 40. Quoted (Spendthrift trusts) in *Wait on Fraud. Conv.* § 366. Cases collected (Valid conditional determination of life estate) in 9 *Am. L. Reg. N. S.* 522.
- Branch v. Harrington**, 49 *How. Pr.* 196. See to the contrary (Right of receiver in supplementary proceedings to employ attorney of judgment creditor) *Baker v. Van Epps*, 60 *Id.* 79.
- **v. Levy**, 44 *Super. Ct. (J. & S.)* 507. Further decision in 46 *Id.* 428.
- **v. Roberts**, 50 *Barb.* 435. Said not to be good law (Who may sue directors for misconduct) in *Thomps. Liab. of Off., &c. of Corp.* 400, but approved as in accord with other cases (Creditors' remedies) in 53 *Am. Dec.* 650, *n.*
- Brand v. Brand**, 49 *Barb.* 346; s. c., 33 *How. Pr.* 167. Rev'd or overruled in 48 *N. Y.* 675; but no opinion.
- **v. Focht**, 3 *Robt.* 426; s. c., 30 *How. Pr.* 313. Aff'd in 3 *Keyes*, 409; s. c., more fully, in 5 *Abb. Pr. N. S.* 225. Decision in 3 *Keyes* followed (Acceptance and delivery) in *Brewster v. Taylor*, 39 *Super. Ct. (J. & S.)* 159, 166.
- **v. Schenectady & Troy R. R. Co.**, 8 *Barb.* 368. Overruled (Liability of passenger carrier) in *Johnson v. Hudson River R. R. Co.*, 6 *Duer*, 633. Followed with *Weed v. Panama R. R. Co.*, 17 *N. Y.* 362, and numerous other cases in *Goddard v. Grand Trunk R'way*, 57 *Me.* 202; s. c., 2 *Am. R.* 39, 42, with note. Applied (Liability to others than passengers) in *New Orleans, Jackson & Great Northern R. R. Co. v. Harrison*, 48 *Miss.* 112; s. c., 12 *Am. R.* 356, 364. Collated and applied with *Nolton v. Western R. R. Co.*, 15 *N. Y.* 444, and other cases, in *Higley v. Gilmer*, 3 *Mont.* 90; s. c., 35 *Am. R.* 450, with note.
- Brander v. Howard**, 14 *Hun.* 420. Aff'd in 75 *N. Y.* 417.
- Brandon v. Avery**, 22 *N. Y.* 469. Commented on, and disting'd (Validity of act creating justices of the peace) in *Waters v. Langdon*, 40 *Barb.* 408; *Dawson v. Horan*, 51 *Id.* 459. Explained in *Geraty v. Reid*, 78 *N. Y.* 64, 66. Followed in *People ex rel. Creegan v. Dutcher*, 2 *Hun.* 156. Cited as authority (Distinction between police justice and justice of the peace) in *People v. Morgan*, 5 *Daly*, 151, 180.
- **v. Brandon**, 4 *Sup'm. Ct. (T. & C.)* 385; s. c., 50 *How. Pr.* 328. Rev'd in effect as *Brandow v. Brandow*, 66 *N. Y.* 401.
- **v. People**, 42 *N. Y.* 265. Followed (Waiver of privilege by accused person testifying in his own behalf) in *Connors v. People*, 50 *N. Y.* 240. Disting'd in *People v. Brown*, 72 *N. Y.* 571, 574, which aff'd 8 *Hun.* 562, 564, which see. Disting'd in *People v. Crapo*, 76 *N. Y.* 291. Followed and approved with *Connors v. People*, 50 *Id.* 240; *Fralich v. People*, 65 *Barb.* 48; *McGarry v. People*, 2 *Lans.* 227, in *State v. Clinton*, 67 *Mo.* 380; s. c., 29 *Am. R.* 506, 508. Followed, and *People v. Crapo*, 76 *N. Y.* 288 disting'd, in *Hanoff v. State*, 37 *Ohio St.* 178; s. c., 41 *Am. R.* 496. Collated with *Connors v. People*, 50 *N. Y.* 204; *People v. Casey*, 72 *Id.* 393; *People v. Brown*, *Id.* 571, and other cases, in 27 *Am. R.* 140, *n.* See 19 *Abb. L. J.* 388, 428, \*
- Brandow v. Brandow**. See *Brandon v. Brandon*.
- Braudreth v. Lance**, 8 *Paige*, 24. Followed (Restraining publication of libel) in *N. Y. Juv. Guard. Soc'y v. Roosevelt*, 7 *Daly*, 188.
- Brandt v. Klein**, 17 *Johns.* 335; s. c., 6 *N. Y. Com. L. Law. ed.* 386, with brief note on attorney's privilege.
- **v. Ogden**, 3 *Cal.* 6. Subsequent decision in 1 *Johns.* 156; s. c., 3 *N. Y. Com. L. Law. ed.* 94, with brief note, of cases on adverse possession. Relied upon (What constitutes adverse possession) in *Gay v. Moffit*, 2 *Bibb (Ky.)* 506; s. c., 5 *Am. Dec.* 633. Followed with *Jackson v. Bard*, 4 *Johns.* 230; *Jackson v. Sharp*, 9 *Johns.* 162; in *French v. Pearce*, 8 *Conn.* 439; s. c., 21 *Am. Dec.* 680. Applied with *Doe v. Butler*, 3 *Wend.* 149, in *Arnold v. Stevens*, 24 *Pick. (Mass.)* 106; s. c., 35 *Am. Dec.* 303, 308. Cited as authority with *Doe v. Campbell*, 10 *Johns.* 475; *Jackson v. Leonard*, 9 *Cow.* 653 (Possession by successive disseizers), in *Melvin v. Proprietors*, 5 *Metc. (Mass.)* 15; s. c., 38 *Am. Dec.* 384. Followed (Effect of describing line in grant as running toward

- one of cardinal points) in *Hagan v. Campbell*, 8 *Port. (Ala.)* 9; s. c., 33 *Am. Dec.* 267, 274.
- Brandtner v. Marshall**, 1 *Cai.* 394. Quoted and explained (Statute of limitations—landlord and tenant) in *Ang. on Limit.* § 442, 6 ed.
- Brant v. Dyckman**, 1 *Johns. Cas.* 275. Applied (Evidence as to defendant in ejectment not being in possession) in *Jackson v. Trusdell*, 12 *Johns.* 247.
- **v. Fowler**, 7 *Cow.* 562. See *People v. Douglass*. Overruled (Setting aside verdict for drinking of intoxicating liquors by jury) in *Wilson v. Abrahams*, 1 *Hill*, 207. Followed with *People v. Douglass*, 4 *Cow.* 26, notwithstanding *Wilson v. Abrahams* (which is said to also overrule *Bullard v. Spore*, 2 *Cow.* 430; *Rose v. Smith*, 4 *Id.* 17), in *Ryan v. Harrow*, 27 *Iowa*, 494; s. c., 1 *Am. R.* 302, 303, 306, with note, wherein *Dennison v. Collins* is said to accord with *Wilson v. Abrahams*. Disapproved in *State v. Bruce*, 48 *Iowa*, 530; s. c., 30 *Am. R.* 406.
- **v. Wilson**, 8 *Cow.* 56. Approved as to construction of codicil in another decision on the same will, in *Wilson v. Wilson*, 32 *Barb.* 328; s. c., 20 *How. Pr.* 41.
- Brasher v. Van Cortlandt**, 2 *Johns. Ch.* 242, 400. Explained (Joinder of lunatic with committee as party) in *Gorham v. Gorham*, 3 *Barb. Ch.* 24, 38. Followed (Compelling compliance by purchaser at judicial sale) in *Warfield v. Dorsey*, 36 *Md.* 299; s. c., 17 *Am. R.* 562, 565; *Simonds v. Catlin*, 2 *Cai.* 61, being disting'd (Application of statute of frauds) as a case of a sheriff's sale.
- Brandlacht, Ex parte**, 2 *Hill*, 367. Quoted and explained (Prohibition, writ of—when to be resorted to) in *High on Extr. Rem.* 2 ed. § 770, n. 1.
- Brauneck v. Knickerbocker Life Ins. Co.**, 1 *Abb. N. C.* 393. Followed with *Landers v. Staten Island R. R. Co.*, 53 *N. Y.* 450, (Jurisdiction of City Court of Brooklyn) in *Davidsburgh v. Knickerbocker Life Ins. Co.*, 90 *N. Y.* 526. Compare *Wheelock v. Lee*, 5 *Abb. N. C.* 72, 74, n.
- Bray v. Farwell**, 3 *Lans.* 495. Compare (Voluntary associations) *Ebbinghausen v. Worth Club*, 4 *Abb. N. C.* 300.
- Braynard v. Hoppock**, 7 *Bosw.* 157. Aff'd in 32 *N. Y.* 571.
- Brazill v. Isham**, 1 *E. D. Smith*, 437. Aff'd in 12 *N. Y.* 9. Decision in 12 *N. Y.* followed (Defense not set up in answer, not available) in *Robbins v. Richardson*, 2 *Bosw.* 256; *Lobdell v. Stowell*, 37 *How. Pr.* 90; *O'Toole v. Garvin*, 1 *Hun.* 95. Applied to plaintiff's pleadings in *Williams v. Birch*, 6 *Bosw.* 307, 678.
- Breasted v. Farmers' Loan & Trust Co.**, 4 *Hill*, 73. Aff'd in 8 *N. Y.* 299; s. c., 59 *Am. Dec.* 482, with extended note respecting the effect of the suicide of an insured person upon his right to recover on the policy, *Van Zandt v. Mutual Benefit Life Ins. Co.*, 55 *N. Y.* 169; *De Gogorza v. Knickerbocker L.*
- Ins. Co.*, 65 *N. Y.* 235, and many other cases being reviewed and criticised in such note, wherein it is stated that the doctrine of *Breasted v. Farmers' Loan & Trust Co.*, though now the prevailing one in this country, seems to be denied or at least modified by later *N. Y.* cases. See *Gates v. Madison County Mut. Ins. Co.*; *Livingston v. Stickles*. Both decisions disting'd in *Fowler v. Mutual Life Ins. Co.*, 4 *Lans.* 202; *Van Zandt v. Mutual Benefit Life Ins. Co.*, 55 *N. Y.* 169, 173. Contrary held in *Dean v. American Mutual Life Ins. Co.*, 4 *Allen, (Mass.)* 106. Decision in 8 *N. Y.* disapproved in *Cooper v. Mass. Ins. Co.*, 102 *Mass.* 229; s. c., 3 *Am. R.* 453. Decision in 4 *Hill*, followed and approved in *Phadenhauer v. Germania Life Ins. Co.*, 7 *Heisk. (Tenn.)* 567; s. c., 19 *Am. R.* 623, 626. Decision in 8 *N. Y.* followed with approval in *Connecticut Mut. Life Ins. Co. v. Groom*, 86 *Penn. St.* 92; s. c., 27 *Am. R.* 689, 692. Though cited in *Life Ins. Co. v. Terry*, 15 *Wall*, 580, as in opposition to the rule laid down in *Borradaile v. Hunter*, 5 *Man. & Gr.* 639, yet said in *Adkins v. Columbia Life Ins. Co.*, 70 *Mo.* 27; s. c., 35 *Am. R.* 410, to have been satisfactorily reconciled in *Van Zandt v. Mut. B. Life Ins. Co.*, 55 *N. Y.* 169, the rule in *De Gogorza v. Knickerbocker Life Ins. Co.*, 56 *N. Y.* 235, being approved and other cases collated. Decision in 4 *Hill*, followed in *Bigelow v. Berkshire Life Ins. Co.*, 93 *U. S.* 284; s. c., 19 *Am. R.* 628, n. Approved, and the doctrine of *Van Zandt v. Mutual Benefit Life Ins. Co.*; *De Gogorza v. Knickerbocker Life Ins. Co.* apparently negatived in *Manhattan Life Ins. Co. v. Broughton*, 109 *U. S.* 121. Collated with other cases, in 3 *Am. R.* 454, n., where it is said to be the first case in the country, where the question arose as to whether such provisions in life policies as that they shall be void, in case the assured shall die by his own hand, include self-destruction under the influence of insanity. Reviewed with other cases, in 4 *Abb. L. J.* 53.
- Breck v. Cole**, 4 *Sandf.* 79, 84. Applied (Compromise agreement, when void) in *Crandall v. Cochran*, 3 *Sup'm. Ct. (T. & C.)* 203, 206. Disting'd with *Lawrence v. Clark*, 36 *N. Y.* 123; *Penniman v. Elliott*, 27 *Barb.* 815, being followed in *Hadley Falls Nat. B'k v. May*, 29 *Hun.* 404. Approved in *Huntington v. Clark*, 39 *Conn.* 556; *Bean v. Amsinck*, 10 *Blatchf. C. Ct.* 361, 370.
- **v. Smith**. See *Forrest v. Forrest*.
- Breed v. Cook**, 15 *Johns.* 241. Explained (Presumption of payment, arising upon sale of goods, by vendor's taking from purchaser note of third person) in *Darnall v. Morehouse*, 36 *How. Pr.* 511.
- Breese v. Bange**, 2 *E. D. Smith*, 474. Disting'd and reviewed (Proof of demand and refusal as sufficient evidence of conversion) in *Ray v. Light*, 34 *Ark.* 430.
- **v. U. S. Telegraph Co.**, 45 *Barb.* 274; s. c., 31 *How. Pr.* 86. Aff'd in 48 *N. Y.*

182. See *Baldwin v. U. S. Tel. Co.*; *De Rutte v. N. Y., Albany, &c. Tel. Co.*; *Young v. Western Union Tel. Co.* Decision in 45 *Barb.* disting'd (Limitation of carrier's liability) in *Sunderland v. Westcott, 2 Sweeney, 260.* Applied in *Falkenau v. Fargo, 35 Super. Ct. (J. & S.) 337.* Disting'd (Liability of telegraph company for error in transmitting message) in *Baldwin v. U. S. Tel. Co., 1 Lans. 136*; *Bartlett v. Western Union Telegraph Co., 62 Mo. 209*; s. c., 16 *Am. R.* 437, 442. Reviewed, with other cases, in *Sweetland v. Ill. & Tenn. Tel. Co., 27 Iowa, 433*; s. c., 1 *Am. R.* 285, 289, 294. Decision in 48 *N. Y.* followed in *Young v. Western Union Tel. Co., 34 Super. Ct. (J. & S.) 395.* Applied in *Redpath v. Western Union Tel. Co., 112 Mass. 71*; s. c., 17 *Am. R.* 69, 71. Followed in *Grinnell v. Western Union Tel. Co., 113 Mass. 299*; s. c., 18 *Am. R.* 485, where *Leonard v. N. Y., Albany, &c. Tel. Co., 41 N. Y. 544*; s. c., 1 *Am. R.* 446, was disting'd. Collated with *Rittenhouse v. Independent Line of Telegraph, 44 N. Y. 263*; s. c., 4 *Am. R.* 673, and other cases, in 24 *Am. R.* 283, n. Followed in *Becker v. Western Union Tel. Co., 11 Neb. 87*; s. c., 38 *Am. R.* 356. Quoted in 2 *Par. on Contr.* 257, i, n. nn; *Id.* 257, j, n. p. Disting'd (Duties of telegraph companies) in *Friedman v. Gold Stock Tel. Co., 32 Hun, 4.* Followed (Limitation of carrier's liability) in *Huntington v. Dinsmore, 6 Sup'm. Ct. (T. & C.) 195.*
- Brehm v. Great Western Ry. Co., 34 Barb. 256.** See *Chapman v. New Haven R. R. Co.* Followed (Proximate and discoverable negligence as a cause) in *Harvey v. N. Y. Central, &c. R. R. Co., 19 Hun, 556, 560.* Followed and approved (Burden of proof resting on railroad company, in case of injuries resulting from defects in its roadway) in *Kansas Pac. Ry. Co. v. Miller, 2 Col. T. 457.*
- Bremer v. Penniman.** See *Brewer v. Brewer.*
- Breunann v. Hafl.** See *Hatch v. Mann.*
- **v. Mayor, &c. of N. Y., 1 Hun, 315**; s. c., more fully, 47 *How. Pr.* 178. Rev'd in 62 *N. Y.* 365. Decision in 62 *N. Y.* explained (Who are "officers" of the court) in *Wines v. Mayor, &c. of N. Y., 9 Hun, 659.* Compared in *Moser v. Mayor, &c. of N. Y., 21 Hun, 163.* Disting'd and limited in *Rowland v. Mayor, &c. of N. Y., 83 N. Y. 372, 377.* Disting'd with *Wines v. Mayor, &c. of N. Y., 9 Hun, 659* (Appointment of court attendant) in *Mason v. Mayor, &c. of N. Y., 28 Hun, 115.* Disting'd (Pay-rolls as evidence, in action against city for salary) in *Fitch v. Mayor, &c. of New York., 88 N. Y. 500*; *Reilly v. Mayor, &c. of N. Y., 43 Super. Ct. (J. & S.) 274.*
- **v. People, 7 Hun, 171.** Collated with other cases (Proof of general immoral character of prosecutrix in rape) in 1 *Barb. on Crim. L.* 3 ed. 74, n.
- **v. Security Life Ins. Co., 4 Daly, 296.** Compare (Effect of statements on application for policy, as warranties) *Fitch v. Am. Popular Life Ins. Co., 59 N. Y. 557.*
- **v. Willson, 7 Daly, 59.** Aff'd in 71 *N. Y.* 502; s. c., 4 *Abb. N. C.* 279. See *Syracuse, Binghampton, &c. R. R. Co. v. Collins.* Decision in 71 *N. Y.* followed unwillingly (Invalidity of conveyance by assignee made before he has filed bond) in *Woodworth v. Seymour, 22 Hun, 247.* Disting'd (Provisions of assignment act, when directory) in *Rennie v. Bean, 24 Hun, 123, 127.*
- Brereton v. Hull, 1 Den. 75.** See *Haxton v. Corse.* Approved (Preferences as ground of impeaching discharge in bankruptcy) in *Caryl v. Russell, 13 N. Y. 194.*
- Brett v. Brown, 13 Abb. Pr. N. S. 295.** Disting'd (Exemption of witness from service of process) in *Frisbie v. Young, 11 Hun, 474.* See to the contrary, *Pollard v. Union Pacific R. R. Co., 7 Abb. Pr. N. S. 70.* Collated with conflicting cases (Defects in process) in *Sweeney v. Schultes, 6 Pac. Rep. 44.* Compare (Special appearance) *Malcolm v. Marshall, 29 Ohio St. 611.*
- **v. Bucknam, 32 Barb. 655.** Commented upon and questioned (Applications to compel production of books and documents on examination of party before trial) in *Hauseman v. Sterling, 61 Barb. 347.*
- **v. First Univ. Soc. of Brooklyn, 5 Hun, 149.** Aff'd, it seems, in 64 *N. Y.* 651, but without opinion. Former decision in 63 *Barb.* 610. Decision in 63 *Barb.* disting'd (Objection by defendant to defect of parties) in *Chapman v. Douglas, 5 Daly, 244, 248*; s. c., 15 *Abb. Pr. N. S.* 421. Pronounced incorrect in *Pomeroy on Rem.* § 676, n. 1.
- Bretz v. Mayor, &c. of N. Y., 3 Abb. Pr. N. S. 478.** Rev'd (Public statutes) in 6 *Robt.* 325; s. c., 4 *Abb. Pr. N. S.* 258; 35 *How. Pr.* 130. Decision in 6 *Robt.* cited in 1 *Whart. Com. on Ev.* § 293. Explained (Judicial notice) in 1 *Best on Ev.* § 33, n. a, Wood's ed.
- Brevoort v. Brevoort, 70 N. Y. 136.** Disting'd (Interest enabling one to maintain action for partition) in *Harris v. Larkins, 22 Hun, 490.* Followed (Rights of persons not in being) in *Monarque v. Monarque, 8 Abb. N. C.* 102, 117. Compare *Code Civ. Pr.* § 1557. See also *Id.* (*Throop's ed.*) ch. XIV. tit. I. art. 2, n.
- **v. Grace, 53 N. Y. 245.** Compare (Sale of contingent interests) *Code Civ. Pro.* § 1557.
- **v. McJimsey, 1 Edw. 551.** See (Effect of foreclosure proceedings on proceedings for sale of decedent's real estate) *Code Civ. Pro.* 1881, § 2797, n.
- **v. Warner, 8 How. Pr. 321.** Approved (Proceedings for discovery of books, &c.) in *Commercial Bank of Albany v. Dunham, 13 How. Pr. 542.*
- Brewer v. Brewer, 11 Hun, 147.** Aff'd, it

- seems, as *Bremer v. Penniman*, 72 *N. Y.* 603, but without opinion. Decision in 11 *Hun*, followed (Validity of trust suspending power of alienation) in *Hobson v. Hale*, 95 *N. Y.* 588.
- *v. Isish*, 12 *How. Pr.* 481. Said in head-note to *Tremain v. Rider*, 13 *How. Pr.* 149, to agree substantially with that case as to the mode of making up case and exceptions upon trial before court or referee, but referred to in *Ferguson v. Hamilton*, 85 *Barb.* 433, as overruled respecting the necessity of a case in order to have reviewed a judgment entered on the report of a referee. See *Code Civ. Pro.* 1881, § 992, *n.*
- *v. Salisbury*, 9 *Barb.* 511. Followed (Passing of title to personal property) in *Hubbard v. O'Brien*, 8 *Hun*, 245. Opposed in *Halterline v. Rice*, 62 *Barb.* 593, 600. Disting'd with *Woodford v. Patterson*, 32 *Id.* 630 (Sufficiency of delivery under contract of sale) in *Hamburger v. Rodman*, 9 *Daly*, 93.
- *v. Temple*, 15 *How. Pr.* 286. Opposed (Joinder of causes of action) in *Anderson v. Hill*, 53 *Barb.* 238. Doctrine re-asserted, in *Sheldon v. Lake*, 9 *Abb. Pr. N. S.* 306. Disapproved in *Perroteau v. Johnson*, 4 *Month. L. Bul.* 25. Referred to in *Pomeroy on Rem.* § 466, *n.* 2, as overruled by *Anderson v. Hill*.
- Brewers', &c. Ins. Co. v. Davenport**, 10 *Hun*, 264. See also (Jurisdiction of State courts in actions by assignees in bankruptcy) *Wheelock v. Lea*, 5 *Abb. N. C.* 72.
- Brewster v. Baker**, 16 *Barb.* 613. Reconsidered and disapproved as to contract in question being a mortgage, in subsequent decision, in 20 *Barb.* 364. Followed (Estoppel created by not objecting to sale) in *Garnar v. Bird*, 57 *Barb.* 277, 289.
- *v. Bostwick*, 6 *Cow.* 34, 37. Relied on (Matter in answer to be stricken out as sham) in *Fellows v. Muller*, 38 *Super. Ct. (J. & S.)* 137.
- *v. City of Syracuse*, 19 *N. Y.* 116. See *People ex rel. Griffing v. Mayor, &c. of Brooklyn*; *Town of Guilford v. Supervisors of Chenango*. Disting'd (Expenses covered by statute authorizing assessment) in *Matter of Metropolitan Gas Co.*, 23 *Hun*, 329. Followed (Expression of subject in title of local bill) in *People ex rel. N. Y. & Harlem R. R. Co. v. Havemeyer*, 4 *Sup'm. Ct. (T. & C.)* 378; *People v. Lawrence*, 36 *Barb.* 186, which was aff'd in 41 *N. Y.* 139, which sec. Applied in *Mann v. City of Utica*, 44 *Hun. Pr.* 340; *People v. Briggs*, 50 *N. Y.* 553; *Freeman v. Panama R. R. Co.*, 7 *Hun*, 124; *Kerrigan v. Force*, 9 *Hun*, 190; *Devlin v. Mayor, &c. of N. Y.*, 63 *N. Y.* 22; *People ex rel. Comm'rs v. Banks*, 67 *N. Y.* 573. Disting'd in *People v. Allen*, 42 *N. Y.* 418. Explained in *People v. Supervisors of Chautauque*, 43 *N. Y.* 19. Followed (Legitimate exercise of taxing power) in *People v. Lawrence*, 36 *Barb.* 194. Disting'd by *Peckham, J.*, in *Baldwin v. Mayor, &c. of N. Y.*, 2 *Keyes*, 399. Approved and applied in *Darlington v. Mayor, &c. of N. Y.*, 31 *N. Y.* 190. Explained (Additional compensation to contractor for municipal work) in *Meech v. City of Buffalo*, 29 *N. Y.* 212. Followed and approved in *Howell v. City of Buffalo*, 37 *N. Y.* 272. Applied in *Davidson v. Mayor, &c. of N. Y.*, 2 *Robt.* 246. Collated with other cases (Taxation in aid of local interests) in 10 *Am. L. Reg. N. S.* 161. Commented on ("Law of the land") in *Cooley on Const. Limits.* 5 ed. 470, *n.*
- *v. Countryman*, 12 *Wend.* 446; *s. c.*, 12 *N. Y. Com. L. Law. ed.* 189, with brief note. See *Doty v. Brown*. Reviewed (Admissibility of copies as secondary evidence) in *Lyon v. Bolling*, 14 *Ala.* 753; *s. c.*, 48 *Am. Dec.* 122, 125, with note.
- *v. Doane*, 2 *Hill*, 537. See *Bank of Monroe v. Culver*; *Merrill v. Ithaca & Owego R. R. Co.* Disting'd (Entries, &c. in evidence) in *Derham v. Lee*, 47 *Super. Ct. (J. & S.)* 174, 183. Rule in different States stated (Effect of absence of witness from State) in 5 *Am. L. Reg. N. S.* 469. Cited in 1 *Whart. Com. on Ev.* § 240, as contrary to rule therein laid down.
- *v. Hall*, 6 *Cow.* 34. Explained (Striking out false defense as sham) in *McCarty v. O'Donnell*, 7 *Robt.* 634.
- *v. Honigsburger*, 2 *Code Rep.* 50. Explained as not authority (Attaching partnership credits and balances), in *Barry v. Fisher*, 8 *Abb. Pr. N. S.* 369, 379; citing *Sears v. Gearn*, 7 *How. Pr.* 303.
- *v. McCardell*, 8 *Wend.* 479. Included (Indorsee of post-dated negotiable paper) in *Redf. & B. Lead. Cns. on B. of Exch.* 225.
- *v. Michigan Central R. R. Co.*, 5 *How. Pr.* 183. See *Hulbert v. Hope Mut. Ins. Co.* Disapproved (Nature of actions against foreign corporations) in *Cumberland Coal & Iron Co. v. Hoffman Steam Coal Co.*, 30 *Barb.* 159, 163.
- *v. Power*, 10 *Paige*, 562. Explained (Enforcing remedy against trust property) in *Ocean National Bank v. Olcott*, 46 *N. Y.* 12, 20. Disapproved in *Wait v. Day*, 4 *Den.* 439, which was, however, overruled, and *Brewster v. Power* approved, in *Garfield v. Hatmaker*, 15 *N. Y.* 475.
- *v. Silence*, 11 *Barb.* 144. Aff'd in 8 *N. Y.* 207. See *Leonard v. Vredenberg*; *Watson v. McLaren*. Decision in 8 *N. Y.* disapproved (Joinder of persons liable on same obligation, in one action) in *Decker v. Gaylord*, 8 *Hun*, 110. Disting'd (Consideration to support guaranty) in *Church v. Brown*, 21 *N. Y.* 321, 336, which rev'd 29 *Barb.* 486, which sec. Explained and approved on a similar point in *Draper v. Snow*, 20 *N. Y.* 337, 342, which aff'd 6 *Duer*, 662, which sec. Examined, with other cases, in *Speyers v. Lambert*, 6 *Abb. Pr. N. S.* 317. Applied by *Clerke, J.*, in *Moore v. Cross*, 23 *Barb.* 545. Explained in *Prime v. Koehler*, 7 *Daly*, 345, 352. Fol-



- lowed in *Wilson v. Roberts*, 5 *Bow.* 100, 107; *Glen Cove Mut. Ins. Co. v. Harrold*, 20 *Barb.* 301; *Wood v. Wheelock*, 25 *Id.* 623; *Gould v. Moring*, 28 *Id.* 446. Disting'd in *Grant v. Hotchkiss*, 26 *Id.* 63; *Dauber v. Blackney*, 38 *Id.* 436. Applied in *Hahn v. Hull*, 4 *E. D. Smith*, 673. Disting'd (Promise, when to pay one's own debt) in *Ellenwood v. Fults*, 63 *Barb.* 334. Followed as settled law, notwithstanding doubts created by later cases,—in *Lossee v. Williams*, 6 *Lans.* 234. Approved in dissenting opinion of BACON, J., in *Mallory v. Gillett*, 21 *N. Y.* 447. Approved (Construction of statute of frauds) in dissenting opinion in *Mead v. Case*, 33 *Barb.* 202, 213.
- *v. Stillman*, 38 *N. Y.* 423. Criticised (Rule of damages in replevin) in *Allen v. Fox*, 57 *N. Y.* 562, 567. See *Code Civ. Pro.* 1881, § 1722, n.
- *v. Striker*, 1 *E. D. Smith*, 321; s. c., 7 *N. Y. Leg. Obs.* 140. Aff'd in 2 *N. Y.* 19. Further decisions on will here involved are in *Striker v. Mott*, 28 *N. Y.* 82; *Smith v. Scholtz*, 63 *N. Y.* 41; *Union Nat. Bk. v. Kuffer*, 2 *Sup'm. Ct. (T. & C.)* 659. Decision in 2 *N. Y.* disting'd (Estate, when vested in executor, &c.) in *Tucker v. Tucker*, 5 *N. Y.* 408. Followed in *Tobias v. Ketchum*, 32 *N. Y.* 331. Disting'd in *Favill v. Roberts*, 50 *N. Y.* 222, which aff'd 3 *Lans.* 24, which see. Applied in *Morse v. Morse*, 85 *N. Y.* 53, 60. Disting'd in *Onondaga Trust, &c. Co. v. Paul*, 87 *N. Y.* 542. Applied in *Mead v. Mitchell*, 5 *Abb. Pr.* 106; *Wagstaff v. Lowerre*, 23 *Barb.* 220; *Dominick v. Michael*, 4 *Sandf.* 403. Applied to personal property in *Bean v. Bowen*, 47 *How. Pr.* 327. Doubted in *Leggett v. Hunter*, 25 *Barb.* 98, which was aff'd in 19 *N. Y.* 454, which see. Disting'd in *Catton v. Taylor*, 42 *Barb.* 581; *Post v. Hover*, 33 *N. Y.* 600; *Robert v. Corning*, 23 *Hun.* 299, 303. Approved (Effect of vesting legal title in executors, &c.) in *Blakely v. Calder*, 15 *N. Y.* 617. Disting'd (Sale of equitable, &c. interests on execution) in *Sheridan v. House*, 4 *Keyes*, 569, 589. Disting'd (Estoppel of one acquiescing in transfer of property) in *Tilton v. Nelson*, 27 *Barb.* 595. Applied (Estoppel) in *Gailor v. Herrick*, 42 *Barb.* 37.
- *v. Taylor*, 39 *Super. Ct. (J. & S.)* 159. Aff'd in 63 *N. Y.* 587. Decision in 63 *N. Y.* disting'd (Acceptance under statute of frauds) in *U. S. Reflector Co. v. Rushton*, 7 *Daly*, 410, 416.
- Brick's Estate, Matter of**, 15 *Abb. Pr.* 12. See *Whitaker*, *Matter of*. Approved (Surrogate's jurisdiction) in *Russell v. Hartt*, 87 *N. Y.* 19, 24; *Wright's Accounting*, 16 *Abb. Pr. N. S.* 446. Followed in *Curran v. Sears*, 2 *Redf.* 526, 529, which was aff'd in 13 *Hun.* 458, 463, which see. Cited, with approval (Ecclesiastical law of England no part of the law of this State) in *Hartnett v. Wandell*, 2 *Hun.* 552. Applied (Power to open decree) in *Bailey v. Stewart*, 2 *Redf.* 226; *Dobke v. McClaran*, 41 *Barb.* 493. Approved in *Dobke v. Munro*, 1 *Redf.* 487; *Strong v. Strong*, 3 *Id.* 484. Compare *Code Civ. Pro.* § 2481, subd. 6. See (Appointment of guardian) *Code Civ. Pro.* § 2821. Opposed (Termination of guardianship by marriage) in *Matter of Herbeck*, 16 *Abb. Pr. N. S.* 216. Cited in 29 *Am. Dec.* 716, n., as supporting the better opinion.
- Brick v. Brick**, 3 *Hun.* 617. Aff'd in 66 *N. Y.* 144. Decision in 66 *N. Y.* disting'd (Proof of undue influence) in *La Bau v. Vanderbilt*, 3 *Redf.* 404. Relied on in *Snyder v. Sherman*, 23 *Hun.* 139.
- Brick Church, Matter of**, 3 *Edw.* 169. Disting'd (Rights of vendee of burial lot) in *People ex rel. Coppers v. Trustees*, 21 *Hun.* 184, 190. Collated with *Richards v. Northwest Protestant Dutch Church*, 32 *Barb.* 42; *Buffalo City Cemetery v. City of Buffalo*, 46 *N. Y.* 503; *Windt v. German Reformed Church*, 4 *Sandf. Ch.* 471, and other cases (Legislative right to authorize removal of dead) in dissenting opinion, in *Craig v. First Pres. Church of Pittsburgh*, 88 *Penn. St.* 42; s. c., 32 *Am. R.* 417, included in the Reporter's note thereto, p. 424.
- Brickner v. N. Y. Central R. Co.**, 2 *Lans.* 506. Aff'd in 49 *N. Y.* 672, but without opinion. See also *Laning v. N. Y. Central R. Co.*, 49 *N. Y.* 521; s. c., 10 *Am. R.* 417, where it is aff'd in effect. See *Flike v. Boston & Albany R. R. Co.* Explained (Liability of railroad company for injury to employee) in *Tinney v. Boston & Albany R. R. Co.*, 62 *Barb.* 218. Followed with approval in *Harper v. Indianapolis, &c. R. R. Co.*, 47 *Mo.* 567; s. c., 4 *Am. R.* 353, 363. Referred to with approval with *Malone v. Hathaway*, 64 *N. Y.* 512 (Liability of corporation for injury to employee) in *Chicago, Milw. & St. P. R'y Co. v. Ross*, 112 *U. S.* 377, 391. Applied in *Smith v. Oxford Iron Co.*, 13 *Vroom (N. J.)* 467; s. c., 36 *Am. R.* 535, 539.
- Bridenbecker v. Lowell**, 32 *Barb.* 9. Disting'd (Application of payments) in *Jones v. Benedict*, 83 *N. Y.* 86. Applied (Corporation, when bound by acts of agent) in *Cheever v. Gilbert Elev. R. Co.*, 43 *Super. Ct. (J. & S.)* 478, 492. Disting'd (Presumption of authority arising from possession of notes) in *Wardrop v. Dunlop*, 1 *Hun.* 325, 329.
- *v. Mason*, 16 *How. Pr.* 203. Followed (Confession of judgment by one partner or joint debtor) in *Lambert v. Converse*, 22 *How. Pr.* 265.
- Bridge v. Mason**, 45 *Barb.* 37. Cited as authority (Evidence of insolvency of maker or indorser of note) in *Clark v. Hampton*, 1 *Hun.* 612; s. c., 4 *Sup'm. Ct. (T. & C.)* 76. Questioned in 2 *Sedg. Meas. of Dama.* 7 ed. 59, n.
- *v. Payson*, 5 *Sandf.* 210. Followed (Pleading matter in abatement) in *Mayhew v. Robinson*, 10 *How. Pr.* 162. See to the contrary *Van Baskirk v. Roberts*, 14 *Id.* 61, 63.

- Bridgford v. Crocker**, 3 *Sup'm. Ct. (T. & C.)* 273. Aff'd in 60 *N. Y.* 627. Decision in 60 *N. Y.* explained (Sale—action against buyer) in 2 *Benj. on Sales*, § 1121, n. 4 (Corbin's 4 *Am. ed.*).
- Bridgeport Ins. Co. v. Wilson**, 7 *Bosw.* 427. Rev'd in 34 *N. Y.* 275. Further decision in 7 *Bosw.* 699; s. c., more fully, 12 *Abb. Pr.* 209. Decision in 34 *N. Y.* 275, followed (Indemnitor, when not bound by judgment against principal) in *People v. White*, 28 *Hun.* 289. Cited as authority in *State v. Thornton*, 8 *Mo. App.* 31.
- Bridger v. Pierson**, 1 *Lans.* 481. Rev'd (Construction of clause in deed reserving right of way) in 45 *N. Y.* 601.
- Bridges v. Hyatt**, 2 *Abb. Pr.* 449. Aff'd in 16 *N. Y.* 546.
- **v. Wyckoff**, 67 *N. Y.* 130. Disting'd (Acceptance of street by public) in *Corwin v. Corwin*, 24 *Hun.* 148.
- Bridgewater Paint Manuf. Co. v. Messmore**, 15 *How. Pr.* 12. Disapproved (Right of defendant to move to vacate order of arrest, after judgment and execution issued against his person) in *Crowell v. Brown*, 17 *How. Pr.* 63.
- Briggs v. Bergen**, 23 *N. Y.* 162. Disting'd (Appeal to Court of Appeals) in *Lahens v. Fielden*, 15 *Abb. Pr.* 180. Followed in *Jones v. Ludlum*, 74 *N. Y.* 61. Applied to case of judgment by default,—in *Maltby v. Greene*, 3 *Abb. Ct. App. Dec.* 146. Followed (Appeal from order striking out answer as sham) in *Potter v. Carreras*, 4 *Robt.* 629.
- **v. Boyd**, 65 *Barb.* 197. Aff'd in 56 *N. Y.* 289. See *Mooney v. Elder*.
- **v. Briggs**, 20 *Barb.* 477. Aff'd in 15 *N. Y.* 471. See *Colgrove v. Tallman*; *Schubert v. Harteau*.
- **v. Davis**, 20 *N. Y.* 15. Modifying *Briggs v. Palmer*, 20 *Barb.* 392. Decision in 20 *N. Y.* partially rev'd on re-argument, in 21 *Id.* 574. Followed (Effect of mortgage executed by one granting estate in trust) in *Marvin v. Smith*, 56 *Barb.* 600. Followed (Rights of purchaser from trustee) in *Griswold v. Perry*, 7 *Lans.* 104. Followed (Invalidity of sale had in contravention of trust) in *Russell v. Russell*, 86 *N. Y.* 585. Commented on (Assignment for benefit of creditors, as distinguished from mortgage) in *Burrill on Assign.* § 6, 4 ed. Quoted in *Id.* n. 4.
- **v. Easterly**, 62 *Barb.* 51. Followed (Action against trustee of manufacturing corporation for failure to file annual report) in *Bronson v. Dimock*, 4 *Hun.* 614.
- **v. Evans**. See *Hewit v. Prime*.
- **v. Mitchell**, 60 *Barb.* 288, 316. Discussed (Fraud by debtor—intent) in *Wait on Fraud. Conv.* § 197.
- **v. N. Y. Central R. R. Co.**, 28 *Barb.* 515. Disting'd (Necessity of notice of intent to search for property not delivered by carrier) in *Farwell v. Davis*, 66 *Barb.* 73, 81.
- **v. N. Y. Central & R. R. Co.**, 1 *Buff. Super. Ct. (Sheldon)* 402. Aff'd in *Id.* 433. Further decision in 72 *N. Y.* 26.
- **v. North American & M. Ins. Co.**, 53 *N. Y.* 446. Approved (Liability for loss by explosion) in *Transatlantic Fire Ins. Co. v. Dorsey*, 56 *Md.* 70; s. c., 40 *Am. R.* 403. Explained in 2 *Paras. on Contr.* 446, n. 3. Keller's ed.
- **v. North British Mercantile Ins. Co.**, 66 *Barb.* 325. Followed (Liability for loss by explosion) in *Briggs v. People's Ins. Co.*, 66 *Barb.* 330.
- **v. Oliver**, 68 *N. Y.* 336. See (Foreclosure of chattel mortgage) *Code Civ. Pro.* 1881, § 1737, n.
- **v. Palmer**, 20 *Barb.* 392. Modified on appeal, as *Briggs v. Davis*, 20 *N. Y.* 15, which see *above*.
- **v. Partridge**, 39 *Super. Ct. (J. & S.)* 339. Aff'd in 64 *N. Y.* 357; s. c., 21 *Am. R.* 617. See *Kiersted v. Orange & Alexandria R. R. Co.*; *Williams v. Gillies*. Decision in 64 *N. Y.* followed (Who may sue or be sued on sealed instrument) in *Nicoll v. Burke*, 78 *N. Y.* 584; *Schafer v. Henkel*, 75 *N. Y.* 381. Explained and applied in *Hensler v. Sefrin*, 19 *Hun.* 568. Disting'd in *Carley v. Potts*, 24 *Hun.* 574. Doctrine discussed in 16 *Alb. L. J.* 98.
- **v. Penniman**, *Hopk.* 300. Aff'd in 8 *Cov.* 387; s. c., 18 *Am. Dec.* 454, with note, collating cases. Decision in 8 *Cov.* followed with *Slee v. Bloom*, 19 *Johns.* 456; s. c., 10 *Am. Dec.* 273, and other cases (Liability of stockholders) in *Hightower v. Thornton*, 8 *Ga.* 486; s. c., 52 *Am. Dec.* 412, 416, with note. Cited in *Ohio Life Ins. & Trust Co. v. Merchants' & C. Co.*, 11 *Humph. (Tenn.)* 1; s. c., 53 *Am. Dec.* 742, 766, with note. Followed (Set-off by stockholder or director) with *Tallmadge v. Fishkill Iron Co.*, 4 *Barb.* 382, in *Remington v. King*, 11 *Abb. Pr.* 278. Applied in *Cheever v. Gilbert Elev. R'y*, 43 *Super. Ct. (J. & S.)* 495. Approved in *Webber v. Leighton*, 8 *Mo. App.* 502. Disting'd (Presumed dissolution of corporation) in *Huguenot Nat. Bk. v. Stidwell*, 6 *Daly*, 13, 17. With *Slee v. Bloom*, 19 *Johns.* 456; said in 18 *Am. Dec.* 461, n., to be frequently cited in *N. Y.* courts. Discussed in 2 *Kent Com.* 312.
- **v. Prosser**, 14 *Wend.* 227. See *La Frombois v. Jackson*. Disting'd (Adverse possession) in *Wiseman v. Lucksinger*, 84 *N. Y.* 31, 46. Discussed (Color of title) in *Sedgw. & W. on Tr. of Tit. to Land*, § 731.
- **v. Rowe**, 1 *Abb. Ct. App. Dec.* 189; s. c., 4 *Keyes*, 424. Disting'd (Brokers' commissions) in *Briggs v. Boyd*, 56 *N. Y.* 289, 294.
- **v. Tillotson**, 8 *Johns.* 304. Discussed (Consideration for contract) in 1 *Chitty on Contr.* 73, *nf.* 1, 11 *Am. ed.*
- **v. Vanderbilt**, 19 *Barb.* 222. See *Bostwick v. Champion*. Approved (Excuse for non-performance of carrier's contract) in

- Bonsteel v. Same**, 21 *Id.* 26. Questioned in *Williams v. Vanderbilt*, 28 *N. Y.* 224, which aff'd 29 *Barb.* 491, 501, which see.
- **v. Waldron**, 9 *Weekly Dig.* 219. Aff'd in 83 *N. Y.* 582.
- Brigham v. Tillinghast**, 15 *Barb.* 618. Rev'd in 13 *N. Y.* 215. See *Nicholson v. Leavitt*. Decision in 13 *N. Y.* disting'd (Validity of provisions in general assignment) in *Jessup v. Hulse*, 29 *Barb.* 539. Confirmed in *Benedict v. Huntington*, 32 *N. Y.* 219. Decision in 15 *Barb.* 618, collated with other cases (Provisions for sale on credit) in *Bishop on Assign.* § 211. Decision in 13 *N. Y.* commented upon in *Wait on Fraud. Conv.* § 332. Collated with *Kellogg v. Slawson*, 11 *N. Y.* 302; *Jessup v. Hulse*, 21 *Id.* 168; *Rapalee v. Stewart*, 27 *Id.* 310; *Benedict v. Huntington*, 32 *Id.* 219; *Woodburn v. Mosher*, 9 *Barb.* 255; *Townsend v. Stearns*, 32 *N. Y.* 209, and other cases, in 31 *Am. R.* 398. Quoted and discussed (Terms of sale) in *Burrill on Assign.* § 224, 4 ed. Decision in 15 *Barb.* explained (Recitals) in *Id.* § 131. Collated with other cases (Compounding debts) in *Bishop on Assign.* § 214.
- Bright v. Currie**, 5 *Sandf.* 433; s. c., 10 *N. Y. Leg. Obs.* 104. Superseded (Actions by executor, &c., in individual capacity) by *Code Civ. Pro.* § 1814.
- **v. Judson**, 47 *Barb.* 29. Followed (Bona fide holder of bill, as against acceptor) in *Philbrick v. Dallett*, 34 *Super. Ct. (J. & S.)* 370.
- **v. Supervisors of Chenango**, 18 *Johns.* 243. Disting'd (Allowance to officer for disbursements) in *Croft v. Brandt*, 5 *Daly*, 124, 126, which was aff'd in 58 *N. Y.* 106, 113, which see.
- Brill v. Flagler**, 23 *Wend.* 354. Overruled (Opinions as to value of dog) in *Dunlap v. Snyder*, 17 *Barb.* 561. Followed with *Clark v. Baird*, 9 *N. Y.* 183, in *Cantling v. Hannibal & St. Joseph R. R. Co.*, 54 *Mo.* 385; s. c., 14 *Am. R.* 476, 481. Applied, as to value of horse, in *Miller v. Smith*, 112 *Mass.* 475. Followed (Opinions of witnesses as to value) in *Vandine v. Burpee*, 13 *Metc. (Mass.)* 288; s. c., 46 *Am. Dec.* 733. Applied (Killing animals trespassing or damage feasant) in *Aldrich v. Wright*, 53 *N. H.* 398; s. c., 16 *Am. R.* 339, 349, 370.
- **v. Tuttle**, 15 *Hun.* 289. Rev'd in 81 *N. Y.* 454; s. c., 37 *Am. R.* 515. See *Winter v. Drury*.
- Brinkerhoff v. Board of Education**, 6 *Abb. Pr. N. S.* 423; s. c., 37 *How. Pr.* 499; 2 *Daly*, 443. Aff'd in *Poillon v. Mayor, &c.* of *N. Y.*, 47 *N. Y.* 666. Decision in 2 *Daly*, followed (Public property not subject to seizure and sale under execution) in *The Fidelity*, 16 *Blatchf. Ct. Ct.* 569, 572.
- **v. Bostwick**, 23 *Hun.* 237. Rev'd in 88 *N. Y.* 52.
- **v. Brown**, 7 *Johns.* 217. See *Slee v. Bloom*. Applied (Dissolution of corporation) in *Bruce v. Platt*, 80 *N. Y.* 379, 389. Examined (Forfeiture of charter by corporation) in *Town v. Bank of River Basin*, 2 *Doug.* 550.
- **v. Lausing**, 4 *Johns. Ch.* 65; s. c., 8 *Am. Dec.* 538. See *James v. Morey*; *Storrs v. Barker*. Followed with *Berry v. Mut. Ins. Co.*, 2 *Id.* 603 (Postponement of prior mortgage) in *Clabaugh v. Byerly*, 7 *Gill (Md.)* 354; s. c., 48 *Am. Dec.* 575, with note.
- **v. Phelps**, 24 *Barb.* 100. Further decision in 43 *Barb.* 469. See *Driggs v. Dwight*; *Peters v. McKeon*; *Trull v. Granger*. Decision in 24 *Barb.* with *Trull v. Granger*, 8 *N. Y.* 115; *Driggs v. Dwight*, 7 *Wend.* 71, said in *Bush v. Cole*, 28 *N. Y.* 261, not to be overruled (Liability of vender who contracts to sell lands to which he has no color of title) in *Conger v. Weaver*, 20 *N. Y.* 140.
- **v. Starkins**, 11 *Barb.* 248. Discussed (Title to wild animals) in 1 *Add. on Torts*, 513, n. 1, *Wood's ed.*
- **v. Wemple**, 1 *Wend.* 470. Recognized as authority (Necessity that trustees unite in transfer of trust property) in *Brennan v. Willson*, 71 *N. Y.* 507. Reviewed, at length with *Baker v. Johnson*, 2 *Hill*, 342; *Turrill v. Norman*, 19 *Barb.* 263; *People v. White*, 11 *Barb.* 26; *Rexford v. Knight*, 15 *Barb.* 267; 11 *N. Y.* 308; *Snyder v. Canal R. R. Co.*, 13 *Weekly Dig.* 329 (Appropriation of land by State for canal purposes) in *Birdsall v. Cary*, 66 *How. Pr.* 358.
- **v. Remsen**, 8 *Paige*, 488. Aff'd in 26 *Wend.* 325. Applied (Due publication of will) in *Bagley v. Blackman*, 2 *Lans.* 41; *Nipper v. Groesbeck*, 22 *Barb.* 670; Trustees of Theol. Sem. of Auburn v. Calhoun, 38 *Id.* 159; *Bagley v. Blackman*, 2 *Lans.* 43; *Gilbert v. Knox*, 52 *N. Y.* 130; *Grant v. Grant*, 1 *Sandf. Ch.* 240; *Neugent v. Neugent*, 2 *Redf.* 369; *Mairs v. Freeman*, 3 *Id.* 193; *Von Hoffman v. Ward*, 4 *Redf.* 260, 262. Cited and applied with *Remsen v. Brinckerhoof*, 26 *Wend.* 325; *Rutherford v. Rutherford*, 1 *Den.* 33; *Brown v. De Selding*, 4 *Sandf.* 20; *Seymour v. Van Wyck*, 6 *N. Y.* 120; *Ex parte Beers*, 2 *Bradf.* 163; *Wilson v. Hettrick*, 2 *Bradf.* 467; *Burritt v. Silliman*, 16 *Barb.* 198; *Lewis v. Lewis*, 11 *N. Y.* 220; *Hunt v. Mootrie*, 3 *Bradf.* 322; *Robinson v. Smith*, 13 *Abb. Pr.* 359; *Abby v. Christie*, 49 *Barb.* 276; *Gilbert v. Knox*, 52 *N. Y.* 125, in *Walsh v. Laffan*, 2 *Dem.* 498. Explained in 4 *Kent Com.* 515, n. b; *Brink v. Gould*, 7 *Lans.* 425; s. c., with points of counsel, in 43 *How. Pr.* 289.
- Brink v. Gould**, 7 *Lans.* 425; s. c., with points of counsel, 43 *How. Pr.* 289.
- **v. Hanover Fire Ins. Co.**, 70 *N. Y.* 593. Explained (Waiver by insurer) on subsequent appeal in 80 *N. Y.* 108, 111. Followed in *Bell v. Lycoming F. Ins. Co.*, 19 *Hun.* 238. Decision in 80 *N. Y.* disting'd and limited in *Devens v. Mechanics' & Tra. Ins. Co.*, 83 *N. Y.* 168, 173. Followed in *Titus v. Glen Falls Ins. Co.*, 81 *N. Y.* 410.

- **v. Niagara Fire Ins. Co.** See *Brink v. Hanover Fire Ins. Co.*
- **v. Republic Fire Ins. Co., 2 Sup'm. Ct. (T. & C.) 550.** Appeal dismissed in 56 *N. Y.* 679. See *Brink v. Hanover Fire Ins. Co.*
- **v. Richtmyer, 14 Johns. 255.** Followed (Trespass for fishing, &c.) in *Whittaker v. Burhans, 62 Barb. 237.* Applied with *Colvin v. Burnet, 2 Hill, 620* (Construction of public grants) in *Langdon v. Mayor, &c. of N. Y., 93 N. Y. 129.*
- Brinkerhoff v. Brown, 4 Johns. Ch. 671.** Another proceeding respecting the same demand in 7 *Johns. Ch. 217.* See *Chautauqua Co. Bk. v. White; Hendricks v. Robinson.* Rule respecting remedy against fraudulent conveyances held inapplicable in cases of mechanics' liens,—in *Gross v. Daly, 5 Daly, 540, 553.* Followed (Remedy against personal assets of debtor) in *Screven v. Bostick, 2 McCords Ch. (S. C.) 410; s. c., 16 Am. Dec. 664.* Explained (Remedy against fraudulent conveyance) as to real estate, in *McCullough v. Colby, 5 Bosw. 494.* Approved in *Shaw v. Dwight, 27 N. Y. 249.* Explained in *North Am. Fire Ins. Co. v. Graham, 5 Sandf. 202.* Explained as inapplicable to proceedings to enforce payment of taxes, in *Durant v. Suprs' of Albany, 26 Wend. 92.* Applied (Necessity for return of execution) to supplementary proceedings, in *Owens v. Dupignac, 9 Abb. Pr. 185.*
- **v. —, 6 Johns. Ch. 139.** See *Fellows v. Fellows; Varick v. Smith.* Applied (Setting aside fraudulent conveyance) in *Fellows v. Fellows, 4 Cov. 682, 701.* Qualified (Necessity of execution) in *McCullough v. Colby, 5 Bosw. 477, 495.* Compare *McCartney v. Bostwick, 31 Barb. 390.* Relied on (Misjoinder) in *Garner v. Harmony Mills, 6 Abb. N. C. 212, 216; Loomis v. Brown, 16 Barb. 331.* Applied in *Lexington & Big Sandy R. R. Co. v. Goodman, 25 Barb. 473; Emery v. Erskine, 63 Barb. 14; Griggs v. Griggs, Id. 299; Murray v. Hay, 1 Barb. Ch. 299; Simar v. Canaday, 53 N. Y. 305.* Relied on (Multifariousness) in *Sheldon v. Keokuk, &c. Packet Co., 8 Fed. Rep. 769.* Applied in *N. Y. & New Haven R. R. Co. v. Schuyler, 17 N. Y. 607,* which rev'd 1 *Abb. Pr. 417, 427,* which see: Board of Supervisors *v. Deyoe, 77 N. Y. 225; Robinson v. Smith, 3 Paige, 231.* Examined (*Demurrer ore tenus*) in *Boyd v. Hoyt, 5 Paige, 71.* Followed (Parties in creditors' action) in *Clarkson v. De Peyster, 3 Paige, 323.* Followed with *Boyd v. Hoyt, 5 Paige, 65; Fellows v. Fellows, 4 Cov. 682,* in *Reed v. Stryker, 4 Abb. Ct. App. Dec. 26, 28, 30,* which rev'd 6 *Abb. Pr. 109,* which see; *Morton v. Weil, 33 Barb. 30, 35.* Followed in *Dugan v. Vattier, 3 Blackf. (Ind.) 245; s. c., 25 Am. Dec. 105, 108,* with note. Explained in *Wait on Fraud. Conv. § 108.*
- **v. Marvin, 5 Johns. Ch. 320, 326.** Qualified (Security for future advances) in *Monnot v. Ibert, 33 Barb. 24, 27; Truscott v. King, 6 Barb. 349,* which was rev'd in 6 *N. Y. 153,* which see. Explained in *Bank of Albion v. Burns, 2 Lans. 57.* Applied in *Hall v. Crouse, 13 Hun, 563; Curtis v. Leavitt, 15 N. Y. 208; Cook v. Whipple, 55 N. Y. 167; Craig v. Tappin, 2 Sandf. Ch. 84; Ackerman v. Hunsicker, 21 Hun, 53,* which was rev'd in 85 *N. Y. 43,* which see. Followed and approved with *Livingston v. McInlay, 16 Johns. 165; Craig v. Tappin, 2 Sandf. Ch. 78; Bank of Utica v. Finch, 3 Barb. Ch. 223; Thomas v. Kelsey, 30 Barb. 268; Robinson v. Williams, 22 N. Y. 380,* in *Summers v. Roos, 42 Miss. 749; s. c., 2 Am. R. 653, 657.* Applied (Rights of partnership creditors) in *Menagh v. Whitwell, 52 N. Y. 146, 173.* Followed in *Doner v. Stauffer, Penn. & W. (Pa.) 198; s. c., 21 Am. Dec. 370, 374.* Said in note thereto, at p. 374, to have been recognized as authority in *King's Appeal, 9 Pa. St. 126; Snodgrass' Appeal, 13 Id. 474; Deal v. Bogne, 20 Id. 234.* Explained (Statement on confession of judgment) in *Whitney v. Kenyon, 7 How. Pr. 460; Schoolcraft v. Thompson, 9 Id. 62.* Applied in *Stebbins v. East. Soc. of M. E. Church, 12 Abb. Pr. 413.*
- **v. Perry, 59 How. Pr. 156, n.** Further decision in 12 *Weekly Dig. 459.*
- Brinkley v. Brinkley, 47 N. Y. 40.** Further decisions in 50 *N. Y. 184; s. c., 10 Am. R. 460,* also in 2 *Sup'm. Ct. (T. & C.) 501,* which was aff'd, in effect, in 56 *N. Y. 192.* Decision in 47 *N. Y.* approved (Rights of party in contempt) in *Matter of Genet, 1 Hun, 296.* Followed in *Marshall v. Marshall, 2 Hun, 238, 248; Matter of Steinert, 24 Hun, 246, 248.* Applied in *Walker v. Walker, 82 N. Y. 260, 264.* Disting'd (Appeal in proceedings to punish for contempt) in *Carrington v. Florida R. R. Co., 52 N. Y. 583, 585.* See *Code Civ. Pro. 1881, § 2273, n.* Decision in 2 *Sup'm. Ct. (T. & C.)* applied (Adoption of special verdict) in *Madison University v. White, 25 Hun, 490, 494.* Applied (Disregarding special verdict) in *Carroll v. Deimel, 13 Weekly Dig. 401.* Decision in 50 *N. Y.* approved but disting'd (Allowance of alimony) in *Collins v. Collins, 71 N. Y. 269, 273,* Applied (Presumption of marriage from cohabitation, etc.) in *Byrnes v. Dibble, 5 Redf. 383, 385.* Commented on (Marriage and divorce—English law, how far applicable) in *Bish. on Mar. & D. § 72, n. 2, 6 ed.*
- Brisbane v. Caines, 10 Johns. 45.** Aff'd in 13 *Johns. 9.*
- **v. Adams, 1 Sandf. 195.** Rev'd in 3 *N. Y. 129.*
- **v. Brisbane, 20 Hun, 48.** Applied (Affidavits on application for examination before trial) in *Tenney v. Mautner, 1 Civ. Pro. R. 64, 71.*
- **v. Macomber, 56 Barb. 375.** Said in 6 *Alb. L. J. 196,* to have been aff'd by Ct. of App. in Jan. 1875.
- **v. Pratt, 4 Den. 63.** Disapproved (Pos-

- session of note as evidence of ownership) in *Seeley v. Engell*, 17 *Barb.* 530; *Smith v. Schanck*, 18 *Barb.* 344; *James v. Chalmers*, 6 *N. Y.* 209, 213, 215. Approved (Admissions of prior owner, admissible against assignee without value) in *Von Sachs v. Kretz*, 72 *N. Y.* 548, 554.
- Briscoe, Matter of**, 51 *How. Pr.* 422. Reasserted (Judicial interference with executive) in *Matter of Nichols*, 6 *Abb. N. C.* 464, 494.
- Bristol, Matter of**, 16 *Abb. Pr.* 184. Further decision, in *Id.* 397.
- **v. Barker**, 14 *Johns.* 205. Trial *at nisi prius*, reported in *Anth. N. P.* 235.
- **v. Bart**, 7 *Johns.* 254; s. c., 5 *Am. Dec.* 264. Followed with *Shotwell v. Few*, 7 *Johns.* 302; *Durell v. Mosher*, 8 *Id.* 445 (Evidence of conversion) in *Reid v. Colcock*, 1 *Nott & McC. (S. C.)* 592; s. c., 9 *Am. Dec.* 729. Followed with *Murray v. Burling*, 10 *Johns.* 172; *Reynolds v. Shuler*, 5 *Cow.* 323, in *Maxwell v. Harrison*, 8 *Ga.* 61; s. c., 52 *Am. Dec.* 385, 388, with note. Included in *Bigel. Cases on Torts*, 389. Disting'd with *Phillips v. Hall*, 8 *Wend.* 610 (Liability of attaching officer for trespass or conversion) in *Rand v. Sargent*, 23 *Me.* 326; s. c., 39 *Am. Dec.* 625, with note.
- **v. Chapman**, 34 *How. Pr.* 140. Disting'd (Removal of causes to U. S. Courts) in *Chamberlain v. Am. Nat. L. & T. Co.*, 11 *Hun.* 368, 373. Relied on in dissenting opinion of *BRADY, J.*, in *Chatham Nat'l Bank v. Merchant's Nat'l Bank of W. Va.*, 4 *Supm. Ct. (T. & C.)* 196, 201.
- **v. Sprague**, 8 *Wend.* 423, 425. Cited and discussed with *Rosa v. Brotherson*, 10 *Id.* 85; *Bank of Salina v. Babcock*, 21 *Id.* 500; *Bank of Sandusky v. Scoville*, 24 *Id.* 115; *Williams v. Smith*, 2 *Hill.* 301, and other cases (Effect of receipt of negotiable paper in payment of precedent debt) in *Bostwick v. Dodge*, 1 *Doug. (Mich.)* 413; s. c., 41 *Am. Dec.* 584, with note.
- British Commercial Life Ins. Co. v. Commissioners of Taxes**, 31 *N. Y.* 32; s. c., more fully, 18 *Abb. Pr.* 118; 28 *How. Pr.* 41; 1 *Keyes*, 303. Applied (Taxation of foreign corporations) in *People ex rel. Bay State Shoe & Leather Co. v. McLean*, 80 *N. Y.* 254, 259.
- Britton v. Peabody**, 4 *Hill.* 61, 66. Modified (Test for change of venue) in *Cook v. Pendergast*, 61 *Cal.* 72.
- **v. Wilder**, 6 *Hill.* 242. See *Holbrook v. Murray*. Collated with *Roraback v. Stebbins*, 33 *How. Pr.* 278; *First Nat'l Bank v. Garlinghouse*, 53 *Burb.* 615; *Moncrief v. Ward*, 16 *Abb. Pr.* 354; s. c., 25 *How. Pr.* 94; *Walker v. Swayzee*, 3 *Abb. Pr.* 136; *Chapman v. Lemon*, 11 *How. Pr.* 235, 238, and other cases (Judgments against married women) in 55 *Am. Dec.* 599, *n.*
- Britton v. Frink**, 3 *How. Pr.* 102. See arguments of counsel in 1 *How. App. Cas.* 4.
- **v. Lorenz**, 3 *Daly*, 23. Aff'd in 45 *N. Y.* 51. Decision in 45 *N. Y.* applied (Necessity of acceptance by assignee in general assignment) in *Rennie v. Bean*, 24 *Hun.* 123. Explained (Express trusts in general assignment) in *Burrill on Assign.* 239, *n.* 2, 4 ed. Reviewed with other cases (Communications from client to attorney) in 36 *Am. R.* 633, *n.* See *Code Civ. Pro.* 1881, § 835, *n.*
- **v. Mayor, &c. of N. Y.**, 21 *How. Pr.* 251; s. c., 12 *Abb. Pr.* 367, *n.* Explained and limited with *Benson v. Mayor, &c. of N. Y.*, 10 *Barb.* 223; *People v. Hawes*, 37 *Id.* 440 (Private rights of municipal corporations) in *Darlington v. Mayor, &c. of N. Y.*, 31 *N. Y.* 164, 201. Explained (Power of municipal corporation to limit its legislative powers by contract) in *Whitney v. Mayor, &c. of N. Y.*, 6 *Abb. N. C.* 329, 342. Applied with *Presbyterian Church v. City of N. Y.*, 5 *Cow.* 538, in *Trenholm v. Charleston*, 3 *S. C.* 347; s. c., 16 *Am. R.* 732, 735.
- **v. Mutual Benefit Life Ins. Co.**, 3 *Supm. Ct. (T. & C.)* 220. Another opinion, in *Id.* 442.
- Brizsee v. Maybee**, 21 *Wend.* 144. See *Suydam v. Jenkins*. Approved as a leading case (Damages in replevin or conversion) in *Twinam v. Swart*, 4 *Lans.* 263, 270. Followed with *Cable v. Dakin*, 20 *Wend.* 172; *Hopkins v. Hopkins*, 10 *Johns.* 378, in *McDonald v. Scaife*, 11 *Pa. St.* 381; s. c., 51 *Am. Dec.* 556, 558. Applied in *Spicer v. Waters*, 65 *Barb.* 227, 235. Discussed in 3 *Pars. on Contr.* 201, *n. q.*
- Broad v. Hoffman**, 6 *Barb.* 177. Followed (Amount of brokerage) in *Cook v. Phillips*, 56 *N. Y.* 310, 314.
- Broadhead v. Lycoming Fire Ins. Co.**, 14 *Hun.* 452. Further decision in 23 *Id.* 397.
- Broadway, Matter of**, 63 *Barb.* 572. Previous proceeding in 42 *How. Pr.* 220; s. c., 61 *Barb.* 483, which was aff'd in 49 *N. Y.* 150.
- Broadwell v. Getman**, 2 *Den.* 87. Followed (Contracts not to be performed within a year) in *Weir v. Hill*, 2 *Lans.* 278. Questioned in *Talmadge v. Rensselaer & Saratoga R. R. Co.*, 13 *Barb.* 493. Doubted in *Waterman on Sp. Perf.* § 290, *n.* Collated, with other cases, in 2 *Whart. Com. on Ev.* § 883. Cited, as supported by the weight of American authority, in 1 *Benj. on Sales*, § 112, *n. 3* (Corbin's 4 *Am. ed.*).
- Brockway v. Allen**, 17 *Wend.* 40; s. c., *Thomps. Liab. of Off. & A.* 32, with notes, p. 77, &c. See *Hills v. Bannister*; *Mott v. Hicks*. Followed (Proof that maker of note signed as agent) in *Clealand v. Walker*, 11 *Ala.* 1058; s. c., 46 *Am. Dec.* 233, 240. Applied in *Metcalf v. Williams*, 104 *U. S.* 93.
- **v. Burnap**, 12 *Barb.* 347; s. c., 8 *How. Pr.* 188. Rev'd in 16 *Barb.* 309. See *Allen v. Crary*. Decision in 12 *Barb.* limited (Action of replevin, when maintainable) in *Knapp v. Smith*, 27 *N. Y.* 277. Decision in 16 *Barb.* approved in *Nichols v. Michael*, 23 *N. Y.* 269. Limited in *Nash v. Fredericks*, 12 *Abb. Pr.* 147. Followed in *Drake v. Wakefield*, 11 *How. Pr.* 106, 108.

- **v. Kinney**, 2 *Johns*. 210. Followed with *Rice v. King*, 7 *Id.* 26; *Platner v. Best*, 11 *Id.* 530 (Judgment as evidence) in *Kilheffer v. Herr*, 17 *Serg. & R. (Pa.)* 319; s. c., 17 *Am. Dec.* 658.
- **v. People**, 2 *Hill*, 558. Overruled (Indictment for keeping bawdy-house) in *People v. Erwin*, 4 *Den.* 129.
- **v. Wells**. See *Slee v. Manhattan Co.* Examined (Distinction between pledge and chattel mortgage) in *Thomas on Mort.* 433.
- Broderick v. Smith**, 15 *How. Pr.* 434; s. c., more fully, 26 *Barb.* 539. Explained (Relief against payment of principal secured by mortgage) in *Ferris v. Ferris*, 28 *Barb.* 29, 32.
- Brodsky v. Ihms**, 25 *How. Pr.* 471; s. c., more fully, 16 *Abb. Pr.* 251.
- Broiestedt v. South Side R. R. Co.**, 55 *N. Y.* 220. Explained (Ejectment—joinder of actions) in *Sedgw. & W. on Tr. of Tit. to Land*, § 639.
- Bromagham v. Clapp**, 5 *Cow.* 295. Rev'd in 9 *Cow.* 530.
- Bromley v. Smith**. See *Legg v. Stillman*.
- Brondage v. Warner**, 2 *Hill*, 145. Compare (Ejectment by plaintiff not entitled to possession) *Rogers v. Sinsheimer*, 50 *N. Y.* 646.
- Bronner v. Fruaenthal**, 9 *Bosw.* 350. Aff'd in 37 *N. Y.* 166. Decision in 37 *N. Y.* relied on (Admissibility of deposition *de bene esse*) in *Gardner v. Bennett*, 38 *Super. Ct. (J. & S.)* 197.
- Bronson's Estate**, 1 *Tuck.* 464, 467. Followed (Necessity that executor be named in the will) in *Hartnett v. Wandell*, 2 *Hun.* 555; s. c., 5 *Sup'm. Ct. (T. & C.)* 101.
- Bronson v. Bronson**, 48 *How. Pr.* 481. Disting'd (Who entitled to accumulated income of trust fund) in *Ellinwood v. Beare*, 59 *Id.* 506.
- **v. Earl**, 17 *Johns.* 63, 65. Applied with *Burdick v. Green*, 18 *Id.* 14 (What constitutes commencement of action) in *Johnson v. Farwell*, 7 *Greenl. (Me.)* 370; s. c., 22 *Am. Dec.* 203. See also, 15 *Am. Dec.* 344, n.; 18 *Id.* 120.
- **v. Fitzhugh**, 1 *Hill*, 185. Disting'd (Effect of release of one of joint wrongdoers) in *Ellis v. Esson*, 50 *Wisc.* 138; s. c., 36 *Am. R.* 830, 833.
- **v. Gleason**, 7 *Barb.* 472. Explained (Delivery of goods sold where to be made) in 2 *Parson Contr.* 650, n. b.
- **v. Mann**, 13 *Johns.* 460. See (Costs in justice's courts) *Code Civ. Pro.* 1881, § 3074, n.
- **v. Noyes**, 7 *Wend.* 188. See *Lovett v. Adams*. Applied (Conditional delivery of bond) in *People v. Bostwick*, 32 *N. Y.* 445.
- **v. Wiman**, 10 *Barb.* 406. Aff'd in 8 *N. Y.* 182. See *Bennett v. Hull*. Followed (Contracts to manufacture as affected by statute of frauds) in *Ferren v. O'Hara*, 62 *Barb.* 517, though there said to conflict with *Downs v. Ross*, 23 *Wend.* 270. Compare *Passaic Manuf. Co. v. Hoffman*, 3 *Daly*, 495. Explained in *Benj. on Sales*, § 109, n. y. (Bennett's 4 *Am. ed.*).
- Brooker v. Coffin**, 5 *Johns.* 188; s. c., 4 *Am. Dec.* 837. See *Gibbs v. Dewey*. Said in 12 *Am. Dec.* 41, n. to have been extensively followed (Slandorous charges of crime) in *N. Y.* and elsewhere. See particularly *Pollard v. Lyon*, 91 *U. S.* 234; *Burton v. Burton*, 3 *Iowa*, 316. *St. Martin v. Desnoyer*, 1 *Minn.* 156, thought by the editor from its citation of *Young v. Miller*, 3 *Hill*, 21, to adopt the doctrine of the *N. Y.* decisions. Approved in *Andres v. Koppenheaver*, § *Serg. & R. (Pa.)* 255; s. c., 8 *Am. Dec.* 647, 650. Included in 1 *Hare & W. Am. Leq. Cas.* 5 ed. 87. Opposed (Charging woman with prostitution) in *Miller v. Parish*, 8 *Pick.* 364; *Woodbury v. Thompson*, 2 *N. Y.* 194; *Friskie v. Fowler*, 2 *Conn.* 707. Included in *Bigel. Cases on Torts*, 77. Followed (Words actionable *per se*) with *Young v. Miller*, 3 *Hill*, 21; *Quinn v. O'Gara*, § *E. D. Smith*, 388; *Van Ness v. Hamilton*, 10 *Johns.* 367, in *Hollingsworth v. Shaw*, 19 *Ohio St.* 430; s. c., 2 *Am. R.* 411.
- Brooklyn Bank v. De Grauw**, 23 *Wend.* 342. Approved and applied (Keeping tender good) in *Dodge v. Fearey*, 19 *Hun.* 277.
- Brooklyn Central R. R. Co. v. Brooklyn City R. R. Co.**, 32 *Barb.* 358. Limited (Extent of street railroad franchise) in *Brooklyn City, &c. R. R. Co. v. Coney Island, &c. R. R. Co.*, 35 *Id.* 364, 371. Compare *Brooklyn Central & Jamaica H. R. Co. v. Brooklyn City R. R. Co.*, 33 *Id.* 420.
- Brooklyn Central & Jamaica R. R. Co. v. Brooklyn City R. R. Co.**, 33 *Barb.* 420. Examined and approved (Extend of street railroad franchise) in *Brooklyn City, &c. R. R. Co. v. Coney Island, &c. R. R. Co.*, 35 *Id.* 364, 368, 371. Followed (Construction of street railroad not imposition of new burden) in *Van Bokelen v. Brooklyn City R. R. Co.*, 5 *Blatchf. C. Ct.* 373.
- Brooklyn Oil Refinery v. Brown**, 38 *How. Pr.* 444. Overruled in effect in further decision in 61 *N. Y.* 643.
- Brooklyn Oil Works v. Brown**, 7 *Abb. Pr. N. S.* 382. See (Adjournment of trial) *Gallaudet v. Steinmetz*, 6 *Abb. N. C.* 224, n.
- Brooklyn Park Commissioners v. Armstrong**, 3 *Lans.* 429. Rev'd in 45 *N. Y.* 234. See *Presbyterian Church v. City of N. Y.* Decision in 45 *N. Y.* applied (Right in lands taken for public use) in *Birdsall v. Cary*, 66 *How. Pr.* 358. Limited (Fee by implication, in property taken for public use) in *Wash. Cemetery v. Prospect Park, &c. R. R. Co.*, 68 *N. Y.* 595. Approved and applied (Compensation for property taken by eminent domain) in *Sixth Ave. R. R. Co. v. Gilbert Elev. Ry. Co.*, 3 *Abb. N. C.* 399. Applied (Purchaser's right to refuse title) in *Wood v. Squires*, 1 *Hun.* 481. Disting'd (Evidence of public use) in *Matter of Deansville Cemetery Assoc.*, 66 *N. Y.* 572. Cited (Contract created by accepting bonds issued under statute) in *Louisiana v. Pillsbury*, 105 *U. S.* 288

- Brooklyn Steam Transit Co. v. City of Brooklyn**, 78 *N. Y.* 524. Confirmed as to loss of power to exercise right of eminent domain in *Matter of Brooklyn, Winfield & Newtown R. R. Co.*, 81 *N. Y.* 71.
- Brooklyn Trust Co. v. Bulmer**, 49 *N. Y.* 84. Followed (Service by publication) in *Pier v. Amory*, 40 *Wisc.* 574. See *Code Civ. Pro.* 1881, § 441, *n.*
- Brooklyn White Lead Co. v. Masury**, 25 *Barb.* 416. Approved (What constitutes trade-mark) in *Wolfe v. Gaulard*, 18 *How. Pr.* 69. Explained in *Newman v. Alvord*, 49 *Barb.* 588; *s. c.*, 35 *How. Pr.* 108, which was aff'd in 51 *N. Y.* 189, where *Brooklyn White Lead Co. v. Masury* was disting'd. Considered in *Congress & Empire Spring Co. v. High Rock Congress Spring Co.*, 57 *Barb.* 526, 535. Explained in 2 *Pars. on Contr.* 257 *bo, n. y.*; *Id.* 257 *by, n. e.* Reviewed (Use of geographical names as trade-marks) in 10 *Alb. L. J.* 209. Collated with other cases (Injunction against violation of trade-mark), in *Thomps. on Prov. Rem.* 259. Quoted and explained in 2 *High on Inj.* 2 ed. § 1067, *n. 5.*
- Brooklyn, Winfield, &c. R. R. Co., Matter of**, 72 *N. Y.* 245; *s. c.*, less fully, 55 *How. Pr.* 14. Further decision in 75 *N. Y.* 335; also in 19 *Hun.* 314, and that aff'd in 81 *N. Y.* 69. Decision in 72 *N. Y.* followed (Loss of corporate existence by failure to comply with charter) in *Brooklyn Steam Transit Co. v. City of Brooklyn*, 78 *N. Y.* 524, 530. Disting'd in *Union Hotel Co. v. Hersee*, 79 *N. Y.* 459. Disting'd with *Brooklyn Steam Transit Co. v. City of Brooklyn*, 78 *N. Y.* 527, in *Hughes v. Northern Pac. R'y Co., U. S. Circ. Ct., D. Oregon, Oct. 1883*, 18 *Fed. Rep.* 117. Quoted and explained in *Morawetz on Corp.* § 147. Decision in 75 *N. Y.* disting'd (What is violation of the statute forbidding passage of private or local bill, granting right to lay down railroad tracks) in *People v. Long Island R. R. Co.*, 9 *Abb. N. C.* 204; *s. c.*, 60 *How. Pr.* 418.
- Brookman v. Hamill**, 54 *Barb.* 209. Aff'd in 43 *N. Y.* 554. See *Moore v. Lunt*. Motion for rehearing upon ground that under decision in *Vose v. Cockroft*, 44 *N. Y.* 415, question as to constitutionality of law was waived,—denied in 46 *N. Y.* 636, with note, correcting syllabus of report in 43 *N. Y.* Re-aff'd (Unconstitutionality of State statutes providing for enforcement of maritime contracts) in *Poole v. Kermit*, 59 *N. Y.* 554, 556, which aff'd 37 *Super. Ct. (J. & S.)* 114, which see. Followed in *Murphy v. Salem*, 1 *Hun.* 141. Re-Surplus and Remnants of the proceeds of the Ship Edith, 11 *Blatchf. C. Ct.* 451, 453, 456; The *Circassian*, *Id.* 472, 479; the *B. F. Woolsey*, 18 *Id.* 344, 348. Cited as authority (Jurisdiction of State courts as to maritime contracts) in *Dougan v. Champlain Transp. Co.*, 6 *Lans.* 434, which was aff'd in 56 *N. Y.* 1, which see. Explained (Contract where maritime) in *Wilson v. Lawrence*, 82 *N. Y.* 409, which aff'd 18 *Hun.* 56, which see. Followed with *The Josephine*, 39 *N. Y.* 19, in *Steamer Petrel v. Dumont*, 28 *Ohio St.* 602; *s. c.*, 22 *Am. R.* 397, 405. Disting'd (Jurisdiction of Court of Appeals) in *Delaney v. Brett*, 51 *N. Y.* 78, 82.
- *v. Metcalf*, 5 *Bosw.* 429. Aff'd in 32 *N. Y.* 591. Subsequent proceedings in 4 *Robt.* 568. Decision in 4 *Robt.* disapproved (Estoppel from pleading statute of limitations) in *Shapley v. Abbott*, 42 *N. Y.* 443, 455.
- Brooks v. Avery**, 4 *N. Y.* 225. Collated with *Post v. Dart*, 8 *Paige*, 639, and other cases (Right of second mortgagee to plead usury) in *Pritchett v. Mitchell*, 17 *Kan.* 355; *s. c.*, 22 *Am. R.* 287, with note, collating cases.
- *v. Ball*, 18 *Johns.* 337. Criticised at length (Oath as consideration) in 14 *Alb. L. J.* 112.
- *v. Bryce*, 21 *Wend.* 14. Rev'd in 26 *Wend.* 367.
- *v. Buffalo & Niagara Falls R. R. Co.*, 25 *Barb.* 600. Aff'd in 1 *Abb. Ct. App. Dec.* 211; *s. c.*, 27 *Barb.* 532, *n.*
- *v. Christopher*, 5 *Duer*, 216. Limited (Conditional admission of evidence) in *Kerslake v. Schoonmaker*, 3 *Sup'm. Ct. (T. & C.)* 524, 527; *s. c.*, 1 *Hun.* 436.
- *v. Curtis*, 4 *Lans.* 283. Aff'd in 50 *N. Y.* 639; *s. c.*, 10 *Am. R.* 535. Decision in 50 *N. Y.* followed (Right to add to party-wall) in *Musgrave v. Sherwood*, 23 *Hun.* 675, *n.*, which was rev'd in *Id.* 669, 685, which see. Disting'd in *Same v. Same*, 53 *How. Pr.* 311. Followed in *Vrooman v. Jackson*, 6 *Hun.* 326, 330. Approved in *Dauenhauer v. Devine*, 51 *Tex.* 480; *s. c.*, 32 *Am. R.* 627. Quoted in *Wood on Nuis.* 2 ed., § 226.
- *v. French*. See *Savacool v. Boughton*.
- *v. Hanford*, 15 *Abb. Pr.* 342. Disapproved (Assignability of demand for damages on account of personal tort) in *Mackey v. Mackey*, 43 *Barb.* 58. Denied in *Zogbaum v. Parker*, 66 *Barb.* 341, as overruled in *Mackey v. Mackey*. Followed (Attorney's lien, as subject to set-off) in *Sanders v. Gillett*, 8 *Daly*, 183.
- *v. Moore*, 67 *Barb.* 393, 395. Disting'd (Effect of part payment by debtor) in *Ludington v. Bell*, 77 *N. Y.* 138, 143.
- *v. Scherwin*, 54 *N. Y.* 343. See *Filer v. N. Y. Central R. R. Co.* Disting'd (Wife's earnings) in *Reynolds v. Robinson*, 64 *N. Y.* 539; *Birkbeck v. Ackroyd*, 11 *Hun.* 365. Criticised in *Beau v. Kiah*, 6 *Sup'm. Ct. (T. & C.)* 454, as overruling *Filer v. N. Y. Central R. R. Co.*, 49 *N. Y.* 47. Applied in *Snow v. Cable*, 19 *Hun.* 230.
- *v. Shultz*. 5 *Robt.* 656. Opinion of *ROBERTSON, Ch. J.*, reported in 3 *Abb. Pr. N. S.* 124.
- Broome v. Taylor**, 13 *Hun.* 341. Rev'd as to defendant *Helen F. Taylor*, and aff'd as to *James T. Taylor* in 76 *N. Y.* 564. Former

- decision in 9 *Hun*, 155. Decision in 76 *N. Y.* disting'd (Married woman's liability) in *Scott v. Otis*, 25 *Hun*, 33, 35.
- Broome County Bank v. Lewis**, 18 *Wend.* 565. Disting'd (Striking out answer as sham) in *McCarty v. O'Donnell*, 7 *Robt.* 434.
- Brotherton v. Consalus**, 26 *How. Pr.* 213. Said in 6 *Alb. L. J.* 196 to have been aff'd by Ct. of App. in Jan. 1871.
- Brotherton v. People**, 14 *Hun*, 486. Aff'd in 75 *N. Y.* 159. Decision in 75 *N. Y.* followed (Burden of proof as to insanity) in *O'Connell v. People*, 87 *N. Y.* 377. Reiterated (Insanity as a defense for crime) in *Walker v. People*, 88 *N. Y.* 81.
- Broughton v. Mitchell**, 29 *How. Pr.* 68; s. c., more fully, 19 *Abb. Pr.* 163. See *Carter v. Werner*.
- **v. Otis**, 29 *Barb.* 196. Aff'd as *Boughton v. Otis*, 21 *N. Y.* 261.
- **v. Whallon**, 8 *Wend.* 474; s. c., 11 *N. Y. Com. L. Law. ed.* 437, with brief note of other cases.
- Brouwer v. Appleby**, 1 *Sandf.* 158. Said in 4 *Sandf. Ch.* 581, *n.* to have been aff'd in Ct. of App. Applied (Proof of liabilities of insurance company, in proceedings on premium note) in *Thomas v. Whallon*, 31 *Barb.* 172, 178. Examined (Nature of notes given on organization of insurance company) in *Howland v. Edmunds*, 33 *Barb.* 439, 454.
- **v. Cotheal**, 10 *Barb.* 216. Aff'd in 5 *N. Y.* 562.
- **v. Harbeck**, 1 *Duer*, 114. Rev'd in 9 *N. Y.* 589. Decision in 9 *N. Y.* followed with *Curtis v. Leavitt*, 15 *N. Y.* 9 (Transfer by insolvent incorporation) in *Hoyt v. Sheldon*, 3 *Bosw.* 267, 305. Cited as authority in *Smith v. Hall*, 5 *Bosw.* 325. Explained (Evidence of insolvency of corporation) in *Ferry v. Bank of Central N. Y.*, 15 *How. Pr.* 451. Applied in *Cheever v. Gilbert Elev. Ry Co.*, 43 *Super. Ct. (J. & S.)* 488. Disting'd in *Dutcher v. Importers' & Trad. Nat. Bank*, 59 *N. Y.* 5, 10; *Marine B'k of N. Y. v. Vail*, 6 *Bosw.* 430.
- **v. Jones**. See *Hills v. Miller*.
- Brower v. Bowers**, 1 *Abb. Ct. App. Dec.* 214. Compare (Circumstantial proof of marriage) *Camden v. Belgrade*, 73 *Me.* 126; s. c., 46 *Am. Dec.* 364.
- **v. Fisher**, 4 *Johns. Ch.* 411. Included with notes (Contracts by deaf and dumb persons) in *Evell Lead. Cas. on Inf. &c.* 721.
- **v. Kingsley**, 1 *Johns. Cas.* 334; s. c., 1 *N. Y. Com. L. Law. ed.* 344, with brief note.
- **v. Mayor, &c. of N. Y.**, 3 *Barb.* 254. See *Adrian v. Mayor, &c. of N. Y.* Disting'd (Right of individual to maintain action to restrain or avoid acts of public authorities) in *Roosevelt v. Draper*, 7 *Abb. Pr.* 126.
- **v. Peabody**, 18 *Barb.* 599; s. c., 10 *How. Pr.* 125. Rev'd in 13 *N. Y.* 121; s. c., with points of counsel, 2 *Abb. Pr.* 211. Decision in 13 *N. Y.* disting'd (Delivery of goods, when absolute) in *Blossom v. Champion*, 28 *Barb.* 222. Approved (Receipt, as subject of larceny) in *People v. Bradley*, 4 *Park.* 247.
- Brown's Accounting**, 16 *Abb. Pr. N. S.* 457. Disting'd (Liability of trustee under will for loss) in *Bates v. Underhill*, 3 *Redf.* 372. See (Allowance to executor, &c. for expenses) *Code Civ. Pro.* 1881, § 2562, *n.*
- Brown v. Babcock**, 3 *How. Pr.* 305. Followed and approved (Power to allow amendments, under Code) in *Prindle v. Aldrich*, 13 *How. Pr.* 466.
- **v. Bement**, 8 *Johns.* 96. See *Peterson v. Clark*. Examined (Discharge of mortgage by implication of law) in *Thurber v. Jewett*, 3 *Mich.* 305; citing *Case v. Boughton*, 11 *Wend.* 109; *Langdon v. Buel*, 9 *Id.* 83; *Smith v. Acker*, 23 *Id.* 667; *Fuller v. Acker*, 1 *Hill*, 475. Approved (Breach of condition in chattel mortgage) in *Tannahill v. Tuttle*, 3 *Mich.* 110; citing *Butler v. Miller*, 1 *Den.* 407, and many other cases.
- **v. Betts**, 13 *Wend.* 29. Disapproved (Questions arising on return to certiorari) in *Birdsall v. Phillips*, 17 *Wend.* 464. See, also, *Morewood v. Hollister*, 6 *N. Y.* 309.
- **v. Blydenburgh**, 7 *N. Y.* 141; s. c., 57 *Am. Dec.* 506, with note. See *Kellogg v. Smith*. Disting'd (Payment of mortgage without production of bond and mortgage) in dissenting opinion in *Foster v. Beals*, 21 *N. Y.* 247; *Purdy v. Huntington*, 46 *Barb.* 389; *Van Keurens v. Corkins*, 66 *N. Y.* 81. Disting'd as inapplicable to case of payment of note, in *Doubleday v. Kress*, 50 *N. Y.* 410.
- **v. Bowen**, 30 *N. Y.* 519, 541. Disting'd (Title by Estoppel) in *Wiseman v. Luck-singer*, 84 *N. Y.* 31, 40. Collated, with many other authorities, in 19 *Cent. L. J.* 87. Reviewed with *Wendell v. Van Rensselaer*, 1 *Johns. Ch.* 344; *Storrs v. Barker*, 6 *Id.* 166; *Tilton v. Nelson*, 27 *Barb.* 595; *Jackson v. Shearman*, 6 *Johns.* 19, 21; *Jackson v. Vosburgh*, 7 *Id.* 186; *Swick v. Sears*, 1 *Hill*, 17, 19; *Blood v. Goodrich*, 9 *Wend.* 68, and other cases, in *Hayes v. Livingston*, 34 *Mich.* 384; s. c., 22 *Am. R.* 533, 537, 538, 540, 543. Quoted and discussed in *Wood on Nuis.* 2 ed. § 359.
- **v. Brown**. Case of this name said in 6 *Alb. L. J.* 167 to have been aff'd by Ct. of App. Jan. 23, 1872.
- **v. —**, 4 *Robt.* 688; s. c., 31 *How. Pr.* 481. See *Shaw v. White*. Approved (Distinction between causes of action as legal or equitable) in *Pomeroy on Rem.* § 70, *n.* 1. See (Admeasurement of dower) *Code Civ. Pro.* 1881, § 1607, *n.*
- **v. —**, 34 *Barb.* 533, 536. Followed (Lobby service contract) in *Russell v. Burton*, 66 *Barb.* 539, 547.
- **v. —**, 6 *How. Pr.* 320; s. c., 6 *N. Y.* 106. Explained with *Pugsley v. Kisselburgh*, 10 *N. Y.* 420; *Wiggins v. Tall-*



- madge, 7 *How. Pr.* 404 (Jurisdiction of Court of Appeals in action commenced in justice's court) in *Flora v. Carbean*, 33 *N. Y.* 111, as decided before Code amendment in 1857.
- *v.* —, 30 *N. Y.* 519. See *Ward v. People*.
- *v.* —, 1 *Hun.* 443; s. c., 3 *Sup'm. Ct. (T. & C.)* 477. Rev'd in 58 *N. Y.* 609, for error as to want of power to open default in divorce case. On further hearing order rev'd upon the merits of application, in 2 *Hun.* 677; s. c., 5 *Sup'm. Ct. (T. & C.)* 691. See (Opening judgment taken by default on constructive service) *Code Civ. Pro.* 1881, § 445, *n.*
- *v. Buffalo & State Line R. R. Co.*, 22 *N. Y.* 191. Questioned and disting'd (Imputing violation of ordinance as negligence) in *Jetter v. N. Y. & Harlem R. R. Co.*, 2 *Keyes*, 154. Overruled in *Beisiegel v. N. Y. Central R. R. Co.*, 14 *Abb. Pr. N. S.* 29. Referred to as overruled in *Massoth v. Delaware & Hudson Canal Co.*, 64 *N. Y.* 524, which aff'd 6 *Hun.* 314, where *Brown v. Buffalo & State Line R. R. Co.* was compared. Said also to be overruled in *Ryan v. Thompson*, 38 *Super. Ct. (J. & S.)* 133, 135. Reviewed, with other cases, in *Knuffle v. Knickerbocker Ice Co.*, 84 *N. Y.* 483, 490. Disapproved with *Fello v. Jones*, 4 *Keyes*, 323, in *Grey v. Mobile Trade Co.*, 55 *Ala.* 387, citing *Jetter v. N. Y. & Harlem R. R. Co.*, 2 *Keyes*, 154. Disapproved in *Correll v. The B. C. R. & M. R. Co.*, 38 *Iowa*, 120; s. c., 18 *Am. R.* 24. Followed (Nature of right to recover damages for injury causing death) in *Roach v. Imperial Mining Co.*, 7 *Fed. Rep.* 698.
- *v. Butcher's & Drover's Bank*, 6 *Hill*, 443; s. c., 41 *Am. Dec.* 755, with note. See *Merritt v. Clason*; *Palmer v. Stephens*. Included (Sufficiency of indorsement) in *Bigel. on B. & N.* 2 ed. 121, with note; also in *Redf. & B. Lead. Cas. on B. of Ech.* 110, with note. Followed and applied in *McIntire v. Preston*, 5 *Gl'm. (Ill.)* 48; s. c., 48 *Am. Dec.* 321, 329, with note. Applied (Sufficiency of signature) in *David v. Wm'burgh City F. Ins. Co.*, 83 *N. Y.* 265, 269; *Zann v. Haller*, 71 *Ind.* 136; s. c., 36 *Am. R.* 193, 195. Explained in 1 *Benj. on Sales*, § 257, *n.* 3 (Corbin's 4 *Am. ed.*)
- *v. Cady*, 19 *Wend.* 477. Approved (Evidence of service of process in justices' courts) in *Reno v. Pinder*, 20 *N. Y.* 298.
- *v. Cattaraugus Mut. Ins. Co.*, 18 *N. Y.* 385. See *Jennings v. Chenango Mut. Ins. Co.* With *Jennings v. Chenango Co. Mut. Ins. Co.*, 2 *Den.* 75; *Vandervoort v. Columbian Ins. Co.*, 2 *Cal.* 153; *Cheriot v. Barker*, 2 *Johns.* 346, overruled (Authority of insurance agent in preparing applications) by *Rowley v. Empire Ins. Co.*, 36 *N. Y.* 550, which relied on *Plumb v. Cattaraugus Co. Mutual Ins. Co.*, 18 *N. Y.* 392. Explained and criticised (Notice of renewal of insurance) in *Healy v. Imperial Fire Ins. Co.*, 5 *Nev.* 276. Cited with other cases (Acts of insurance agents) in 11 *Am. L. Reg. N. S.* 495. Re-aff'd (Renewal not "other" insurance) in *Pitney v. Glens Falls Ins. Co.*, 65 *N. Y.* 6, 26. Disapproved (Nature of warranties in applications for fire insurance) in *North Am. Fire Ins. v. Throop*, 22 *Mich.* 146; s. c., 7 *Am. R.* 644. Collated with *Plumb v. Cattaraugus Co. Mutual Ins. Co.*, 18 *N. Y.* 392; *Rowley v. Empire Ins. Co.*, 36 *Id.* 550; *Van Schoick v. Niagara Fire Ins. Co.*, 68 *Id.* 434; *Rohrback v. Germania Ins. Co.*, 62 *Id.* 47; *Pindar v. Resolute Ins. Co.*, 47 *N. Y.* 114; *Chase v. Hamilton Ins. Co.*, 20 *Id.* 52, and other cases (Insurer how far estopped to set up breach of warranty) in 26 *Am. R.* 370, *n.*
- *v. Cayuga & Susquehanna R. R. Co.*, 12 *N. Y.* 486. See *Fletcher v. Auburn & Syracuse R. R. Co.*; *Gardner v. Trustees of Newburgh*. Explained and disting'd (Liability for nuisance) in *Bellinger v. N. Y. Central R. R. Co.*, 23 *N. Y.* 42, 52. Disting'd with *Wasmer v. D. L. & W. R. R. Co.*, 80 *N. Y.* 212; *Irvine v. Wood*, 51 *Id.* 224; *Clifford v. Dam*, 81 *Id.* 56; *Walsh v. Mead*, 8 *Hun.* 387, in *Wenzlick v. McCotter*, 87 *N. Y.* 122. Reviewed at length and questioned in *Conhocton Stone R. v. Buffalo, N. Y. & Erie R. R. Co.*, 51 *N. Y.* 573, 578. Cited as authority (Distinction between maintaining and continuing nuisance) in *Munson v. People*, 5 *Park.* 23. Applied (Liability of railroad company for acts creating nuisance) in *Lowrey v. Brooklyn City, & C. R. R. Co.*, 4 *Abb. N. C.* 32, 36. Applied in dissenting opinion of *Dwight, C.*, in *McCafferty v. Spuyten Duyvil, & C. R. R. Co.*, 61 *N. Y.* 200. Disting'd in *Corey v. Buffalo, Corning, & C. R. R. Co.*, 23 *Barb.* 490. Approved and followed in *Baltimore & O. R. R. Co. v. Fifth Bapt. Ch.*, 105 *U. S.* 317, 333. Collated with other cases, in *Mill's Thomps. on Highw.* 3 ed. 411. Explained (Extent of authority given by legislature over highways) in *People v. Kerr*, 37 *Barb.* 406. Applied (Necessity that objection be taken on trial) in *Pollen v. Le Roy*, 10 *Dosa.* 56.
- *v. Cherry*, 59 *Barb.* 628. Rev'd in 57 *N. Y.* 645. Previous decision in 56 *Barb.* 635. Decision in 57 *N. Y.* disting'd (Resulting trust) in *Randall v. Constans*, 23 *Northw. Rep.* 530, 534.
- *v. Clark*, 16 *Hun.* 559. Aff'd in 77 *N. Y.* 269; s. c., 1 *Am. Prob. R.* 510, with note. See *Dan v. Brown*. Decision in 77 *N. Y.* applied with *Newton v. Seaman's Friend Soc.*, 130 *Mass.* 91; *Matter of O'Neil*, 91 *N. Y.* 523 (Effect of papers referred to in will) in *Dyer v. Erving*, 2 *Dem.* 160. See (Proof of will) *Code Civ. Pro.* 1881, § 2620, *n.* Approved (Effect of marriage in revoking will of married woman) in *Swan v. Hammond*, 138 *Mass.* 45.
- *v. Clifford*, 7 *Lans.* 46. Aff'd, it seems, in 54 *N. Y.* 636, but without opinion. Decision in 7 *Lans.* followed (Disregarding verdict) in *Carroll v. Deimel*, 13 *Weekly Dig.*

401. Followed (Adoption of special verdict) in *Madison University v. White*, 25 *Hun*, 490, 493.
- *v. Combes*, 36 *Super. Ct. (J. & S.)* 572. Subsequent decision in 63 *N. Y.* 598.
- *v. Cook*, 3 *E. D. Smith*, 123. See *Hull v. Carney*. Questioned and compared (Necessity for demand of payment of chattel mortgage) in *Wisser v. O'Brien*, 35 *Super. Ct. (J. & S.)* 151.
- *v. Cromien*, 50 *How. Pr.* 192. Aff'd in 6 *Hun*, 247. See (Jurisdiction of N. Y. district courts over proceedings for forcible entry and detainer) *Code Civ. Pro.* §§ 2233, 2234.
- *v. Crowl*, 5 *Wend.* 298. Disting'd (Right of action for false imprisonment) in *Van Ingen v. Snyder*, 24 *Hun*, 81.
- *v. Cuming*. See *Gordon v. Bowne*.
- *v. Curran*, 14 *Hun*, 260. Compare to the contrary (Enforcing contract with third person) *Goldenberg v. Hoffman*, 69 *N. Y.* 322, which aff'd 7 *Hun*, 324.
- *v. —*, 53 *How. Pr.* 303. Cited (Damage arising from erection of building) in *Hilliard v. N. Y. & Cleveland Gas Coal Co.*, 13 *Weekly Law Bull.* 379.
- *v. Curtiss*, 2 *N. Y.* 225. See *Allen v. Rightmire*; *Herrick v. Carman*; *Johnson v. Gilbert*. Disting'd (Guaranty when not within statute of frauds) in *Draper v. Snow*, 20 *N. Y.* 338, which aff'd 6 *Duer*, 662, which see. Also disting'd in *Brewster v. Silence*, 8 *N. Y.* 210. Examined at length in *Durham v. Manrow*, 2 *N. Y.* 533. Disting'd and questioned in *Spicer v. Norton*, 13 *Barb.* 546. Examined, with other cases, in *Church v. Brown*, 21 *N. Y.* 315. Followed, with hesitation, in *Milks v. Rich*, 80 *N. Y.* 271. Followed in *Cardell v. McNiel*, 21 *N. Y.* 340; *Lossee v. Williams*, 6 *Lans.* 234; *Ellenwood v. Fufts*, 63 *Barb.* 321; *Fowler v. Clearwater*, 35 *Barb.* 143, 149; *Thomas v. Murray*, 32 *N. Y.* 615. Explained in *Mallory v. Gillett*, 21 *N. Y.* 423. Commented on by *Srroge, J.*, in *Glen Cove Mut. Ins. Co. v. Harrold*, 20 *Barb.* 301. Reconciled with *Brewster v. Silence*, 8 *N. Y.* 207, in *Dauber v. Blackney*, 38 *Barb.* 434, 436. Followed (Liability of guarantor of note) in *Gallagher v. White*, 31 *Barb.* 92, 96; *Clay v. Edgerton*, 19 *Ohio St.* 549; s. c., 2 *Am. R.* 422, 424. Applied in *Deck v. Works*, 18 *Hun*, 266. Disting'd in *Moore v. Cross*, 19 *N. Y.* 230. Followed (Guarantor liable without demand and notice) in *Mallory v. Grant*, 4 *Chand. (Wisc.)* 145. Applied (Incompetency of parol evidence to vary liability of party to note) in *Campbell v. Tate*, 7 *Lans.* 373.
- *v. Dean*, 3 *Wend.* 208. Disting'd (Recording deeds) in *Mut. Life Ins. Co. v. Dake*, 1 *Abb. N. C.* 381, 391.
- *v. Delafield*, 1 *Den.* 445. Overruled (Effect of absence of one joint-debtor in suspending statute of limitations) in *Denny v. Smith*, 18 *N. Y.* 567; *Cutler v. Wright*, 22 *N. Y.* 472, 477. Denied and *Denny v. Smith* followed in *Coswell v. Elgeman*, 31 *Wis.* 93.
- *v. Dewey*, 1 *Sandf. Ch.* 56. Disting'd (Agreement to reconvey) in *Morrison v. Brand*, 5 *Daly*, 40, 42. Cited (Distinction between absolute conveyance, and conveyance as security) as containing extensive review of the cases, in 4 *Kent Com.* 143, n. a.
- *v. Elliott*, 4 *Daly*, 329; s. c., with points of counsel, 45 *How. Pr.* 182.
- *v. Fargo*, 1 *N. Y.* 429; s. c., as *Fargo v. Brown*, 3 *How. Pr.* 294, where the facts are more fully stated.
- *v. Feeter*, 7 *Wend.* 301. See *Witherby v. Mann*. Applied (Liability for attorney's acts) in *Croft v. King*, 8 *Daly*, 265, 269. Disting'd in *Clark v. Woodruff*, 83 *N. Y.* 518, 526.
- *v. Ferguson*, 2 *Denio*, 196. See (Payment of amount of tender into court) *Code Civ. Pro.* 1881, § 732, n.
- *v. Frost*, 1 *Hoffm.* 41. Rev'd in 10 *Paige*, 243.
- *v. Goodwin*, 1 *Abb. N. C.* 452. Aff'd by general term and that aff'd in 75 *N. Y.* 409.
- *v. Hafl*, 5 *Paige*, 235; s. c., 28 *Am. Dec.* 425, with note. Explained (Decreeing specific performance) in *Slauson v. Watkins*, 86 *N. Y.* 597, 602. Cited and approved in *Andrews v. Sullivan*, 2 *Gilm. (Ill.)* 327; s. c., 43 *Am. Dec.* 53. Limited (Right of vendor to make his covenant for title good at any time before decree) in *Alvarez v. Bran-nan*, 7 *Cal.* 509.
- *v. Hermann*, 14 *Abb. Pr.* 394. Referred to as overruled (Liability of married woman on personal obligations) in *Tyler on Inf. & Cov.* 2 ed. § 758; *Thomas on Mort.* 198.
- *v. Hinchman*, 9 *Johns.* 75. Denied (Proof enabling justice to issue warrant) in *Terry v. Fargo*, 10 *Johns.* 114; *Bissell v. Hills*, 3 *Wend.* 390.
- *v. Jenison*, 3 *Sandf.* 732. Limited (Striking out frivolous answer on notice) in *Hull v. Smith*, 1 *Duer*, 649.
- *v. Kimball*, 25 *Wend.* 259. Rev'd *Kimball v. Davis*, 19 *Id.* 437. Decision in 25 *Wend.* limited (Proof of execution of deed) in *Northrop v. Wright*, 7 *Hill*, 476, 493. See *Kimball v. Brown*, *below*.
- *v. Knapp*, 17 *Hun*, 160. Rev'd in 79 *N. Y.* 136. See *Harris v. Flr*.
- *v. Leavitt*, 31 *N. Y.* 113. Applied (*Bona fide* holder of note) in *Day v. Saunders*, 3 *Keyes*, 347. Disting'd in *Huff v. Wagner*, 63 *Barb.* 215, 234; *Phoenix Ins. Co. v. Church*, 81 *N. Y.* 218, 223. Included in 1 *Ames Cases on B. & N.* 668.
- *v. Leigh*, 49 *N. Y.* 78; s. c., 12 *Abb. Pr. N. S.* 193. Further decision in 50 *N. Y.* 427; s. c., 13 *Abb. Pr. N. S.* 305, which was confirmed in part in 52 *N. Y.* 78. Decision in 49 *N. Y.* criticised with *Troy & Boston R. R. Co. v. Tibbitts*, 11 *How. Pr.* 170 (Amendment of pleadings) in *Robertson v. Robertson*, 9 *Daly*, 44. Approved in

- Pomeroy on Rem.* § 566. Explained (Action to determine conflicting claims to land) in *Sedgw. & W. on Tr. of Tit. to Land*, § 181.
- *v. Littlefield*, 7 *Wend.* 454. Aff'd in 11 *Wend.* 467.
- *v. Lyddy*. See *Peters v. Newkirk*.
- *v. Lynch*, 2 *Bradf.* 214. Overruled (Appointment of guardian) in *Code Civ. Pro.* § 2822.
- *v. —*, 1 *Paige*, 147, 158. Followed (Transaction when not usurious) in *Fiedler v. Darrin*, 59 *Barb.* 652. Approved and followed (Equitable relief against statute of frauds) in *Ryan v. Dox*, 34 *N. Y.* 307. Disting'd in *Wheeler v. Reynolds*, 66 *N. Y.* 239. Disting'd with *Ryan v. Dox*, 34 *N. Y.* 307, in *Bauman v. Holzhausen*, 26 *Hun.* 505. Collated and compared with other cases, in *Randall v. Constans*, 23 *Northw. Rep.* 530, 533. Disting'd and limited in *Glass v. Hulbert*, 102 *Mass.* 24; s. c., 3 *Am. R.* 418, 430.
- *v. Lyon*, 6 *N. Y.* 419. Applied (Rule in Shelley's case) in *Bond v. McNiff*, 38 *Super. Ct. (J. & S.)* 83, 88.
- *v. McCune*, 5 *Sandf.* 224. Referred to (Infant's liability for false representations) in *Eckstein v. Frank*, 1 *Daly*, 332, as holding a doctrine previously repudiated in *Wallace v. Morse*, 5 *Hil.* 392, and overruled in this country by an overwhelming weight of authorities. So referred to in *Tyler on Inf. & Cov* 2 ed. § 126. Disapproved in *Schunemann v. Paradise*, 46 *How. Pr.* 426. Compared in *Benj. on Sales*, 27 (Bennett's 4 *Am. ed.*).
- *v. McIntyre*, 43 *Barb.* 344. Explained (Malicious prosecution) in *Moak's Underhill's Torts*, 1 *Am. ed.* 95.
- *v. McKee*, 57 *N. Y.* 684. Collated with other cases (Covenants running with land), in *McAdam on Landl. & T.* 2 ed. § 86. Explained and disting'd (Liability of grantee to contribute towards construction of party-wall) in *Scott v. McMillan*, 76 *N. Y.* 141, 144.
- *v. Marrigold*, 50 *How. Pr.* 248. See *Trolan v. Fagan*. Not followed (Admission of service of summons) in *Peck v. Richardson*, 9 *Hun.* 567.
- *v. Maxwell*, 6 *Hill*, 592; s. c., 41 *Am. Dec.* 771, with note; 16 *N. Y. Com. L. Law. ed.* 469, with brief note, of other cases. See *Brownell v. Flagler*; *Hartfield v. Roper*. Dissented from (Extent of infantile responsibility) in *Rauch v. Lloyd*, 31 *Penn.* 353, 370.
- *v. Mayor, &c. of N. Y.*, 1 *Hun.* 30; s. c., 3 *Sup'm. Ct. (T. & C.)* 155. Rev'd in 63 *N. Y.* 239. Compare, to the contrary, 3 *Hun.* 685; s. c., 6 *Sup'm. Ct. (T. & C.)* 164. Further proceedings in 9 *Hun.* 587; 11 *Id.* 21. Decision in 11 *Hun.* followed (Equitable lien in favor of attorney) in *Williams v. Ingersoll*, 23 *Hun.* 285.
- *v. —*, 55 *How. Pr.* 8. Further decision in *Id.* 11.
- *v. —*, 5 *Daly*, 481. Aff'd in 66 *N. Y.* 385. See *Jarvis v. Driggs*. Decision in 66 *N. Y.* disting'd (Effect of judgment of dis-possession) in *Jarvis v. Driggs*, 69 *N. Y.* 143. Followed (Effect of adjudication on default) in *Blair v. Bartlett*, 75 *N. Y.* 153; s. c., 31 *Am. R.* 455.
- *v. Merser*, 37 *Super. Ct. (J. & S.)* 265. Followed (Trade-mark) in *Electro-Silicon Co. v. Trask*, 59 *How. Pr.* 189, 192.
- *v. Montgomery*, 20 *N. Y.* 287. Applied (Evidence of insolvency of maker of note, &c.) in *Booth v. Powers*, 56 *N. Y.* 22, 32. Limited and disting'd (Duty of vendor of worthless negotiable paper) in *Peoples' B'k of City of N. Y. v. Bogart*, 81 *N. Y.* 101, 109.
- *v. Mott*, 7 *Johns.* 361. See *Murray v. Judah*. Explained (Liability of accommodation indorser) in *Chester v. Dorr*, 41 *N. Y.* 279. Disting'd in *Daniel v. McRae*, 2 *Hawks (N. C.)* 590; s. c., 11 *Am. Dec.* 787, with note. Criticised and explained in *Pitkin v. Flanagan*, 23 *Vt.* 160; s. c., 56 *Am. Dec.* 61.
- *v. N. Y. Central R. R. Co.*, 31 *Barb.* 385. Aff'd in 32 *N. Y.* 597. See *Button v. Hudson River R. R. Co.*; *Matteson v. N. Y. Central R. R. Co.*; *Weed v. Panama R. R. Co.*. Contrary to decision in 31 *Barb.* (Imputing negligence of driver, &c. to passenger) see *Knapp v. Dagg*, 18 *How. Pr.* 165; *Colegrove v. N. Y. & Harlem R. R. Co.*, 6 *Duer*, 382; *Chapman v. New Haven R. R. Co.*, 19 *N. Y.* 341; *Lannen v. Albany Gas Light Co.*, 46 *Barb.* 264. Decision in 32 *N. Y.* thought in *Beck v. East River Ferry Co.*, 6 *Robt.* 82, to greatly shake, if it does not overrule the doctrine apparently laid down, in *Colegrove v. N. Y. & New Haven R. R. Co.*, 20 *N. Y.* 492; *Chapman v. New Haven R. R. Co.*, 19 *N. Y.* 341. To same effect, *Mooney v. Hudson River R. R. Co.*, 5 *Robt.* 548. Limited in *Robinson v. N. Y. Central, &c. R. R. Co.*, 66 *N. Y.* 14, which aff'd 65 *Barb.* 151, which see. Criticised in *Arctic Fire Ins. Co. v. Austin*, 3 *Hun.* 198; *Perry v. Lansing*, 17 *Id.* 37. Cited, with other cases, in 13 *Am. L. Reg. N. S.* 47. Explained in *Webster v. Hudson River R. R. Co.*, 38 *N. Y.* 260, as not deciding question of imputed negligence. Approved (Negligence of railroad company in dividing trains while crossing a highway) in *Butler v. Milwaukee, &c. R. R. Co.*, 28 *Wis.* 487. Followed (Negligence in crossing railroad track) in *Ernst v. Hudson River R. R. Co.*, 35 *N. Y.* 9, 37; *Stillwell v. N. Y. Central R. R. Co.*, 34 *N. Y.* 29. Disting'd in *Wilcox v. Rome, Watertown, &c. R. R. Co.*, 39 *N. Y.* 361. Discussed with *Stillwell v. N. Y. Central R. R. Co.*, 34 *N. Y.* 29; *Ernst v. Hudson River R. R. Co.*, 35 *Id.* 9; 39 *Id.* 61; *Wilcox v. Rome, W., &c. R. R. Co.*, *Id.* 358, and the latter considered as stating the law as finally settled in *N. Y.*,—in *Ormsbee v. Boston & Prov. R. R. Co.*, 14 *R. I.* 102. Reviewed (Actions for joint negligence) in 20 *Abb. L. J.* 184. Decision in 31 *Barb.* discussed and

- compared (Joint negligence) in 4 *Am. L. Reg. N. S.* 25.
- *v. —*, 34 *N. Y.* 404. Collated with other cases (Duty of carrier to adopt improvements contributing to passenger's safety) in 2 *Redf. Am. Railw. Cases*, 487. Held, not applicable to case of injuries to passersby, in *Beisiegel v. N. Y. Central R. R. Co.*, 40 *N. Y.* 9.
- *v. —*, 44 *N. Y.* 79. Quoted (Formation of contract—mutual assent) in 1 *Benj. on Sales*, § 38, n. 2 (Corbin's 4 *Am. ed.*).
- *v. Nichols*, 42 *N. Y.* 26. Explained and limited (Impeaching judgment for want of process) in *Sperry v. Reynolds*, 65 *N. Y.* 186. Applied in *Diossy v. West*, 8 *Daly*, 298. Disting'd in *Ferguson v. Crawford*, 17 *N. Y.* 253, 255, which rev'd 7 *Hun*, 25, which see. Disting'd (Effect of unauthorized appearance) in *Howard v. Smith*, 33 *Super. Ct. (J. & S.)* 124; *Ormsby v. Jaques*, 12 *Hun*, 443. Explained in *Northrup v. Wheeler*, 43 *How. Pr.* 122. Followed in *Powers v. Trenor*, 3 *Hun*, 5. Remarks of GROVER, J., disapproved (Lien on estate of deceased judgment debtor) in *Smith v. Edwards*, 23 *Hun*, 229.
- *v. Orvis*, 6 *How. Pr.* 376. See *Graham v. Stone*. Overruled (Statement of mitigating circumstances in action for libel or slander) in *Bush v. Prosser*, 11 *N. Y.* 347. See to the contrary *Heaton v. Wright*, 10 *How. Pr.* 79. Approved in *Maretzek v. Cauldwell*, 2 *Robt.* 715. See as to pleadings in action for libel, *Buddington v. Davis*, 6 *How. Pr.* 401.
- *v. Penfield*, 24 *How. Pr.* 64. Aff'd in 36 *N. Y.* 473. See *Gage v. Kendall*. Decision in 36 *N. Y.* disting'd (Actions by parties not in interest) in *Eaton v. Alger*, 57 *Barb.* 179. Approved in *Sanford v. Sanford*, 45 *N. Y.* 727. Disting'd in *Hays v. Hathorn*, 74 *N. Y.* 486.
- *v. Pentz*, 1 *Abb. Ct. App. Dec.* 227; s. c., 11 *N. Y. Leg. Obs.* 24. Disting'd (Enforcing agreement to build party-wall against grantee) in *Scott v. McMillan*, 76 *N. Y.* 141, 144. Compare *Cole v. Hughes*, 54 *N. Y.* 444. Quoted in *Wood on Nuis.* 2 ed. § 226.
- *v. People*, 8 *Hun*, 562. Aff'd as *People v. Brown*, in 72 *N. Y.* 571; s. c., 28 *Am. L.* 183. Decision in 75 *N. Y.* followed (Imprisonment in county other than that of conviction) in *People v. Lincoln*, 62 *How. Pr.* 412, 414.
- *v. Post*, 1 *Hun*, 303. Aff'd, it seems, in 62 *N. Y.* 651, but without opinion.
- *v. Richardson*, 1 *Bosw.* 402. Rev'd, on the ground that the witness was improperly excluded; but, it seems, approved as to the other points, in 20 *N. Y.* 472.
- *v. —*, 4 *Robt.* 603. Subsequent decision in 7 *Id.* 57.
- *v. St. Nicholas Ins. Co.*, 34 *Super. Ct. (J. & S.)* 231. Aff'd in 61 *N. Y.* 332.
- *v. Salisbury*, 9 *Barb.* 571. Disapproved (What passes title) in *Halterline v. Rice*, 62 *Barb.* 593, 600.
- *v. Scofield*, 8 *Barb.* 239. Cited with *People v. Canal Appraisers*, 33 *N. Y.* 461 (Judicial notice as to what are navigable streams) in *Shaw v. Oswego Iron Co.*, 10 *Oreg.* 371; s. c., 45 *Am. R.* 146.
- *v. Sax*, 7 *Cow.* 95. See *Baker v. Wheeler*. Criticised with *Baker v. Wheeler*, 8 *Wend.* 505 (Damages in trover) in *Moody v. Whitney*, 38 *Me.* 174; but *Wood v. Morewood*, 3 *Adol. & Ellis, N. S.* 440, is referred to in *Cushing v. Longfellow*, 26 *Me.* 306, as seeming to be in conflict with decisions in *N. Y.* on this subject.
- *v. Sigourney*. See *Pennie v. Continental Life Ins. Co.*
- *v. Smith*, 24 *Barb.* 419. See *Vail v. Owen*. Followed (Office of assessor when judicial) in *Barhyte v. Shepherd*, 35 *N. Y.* 243.
- *v. —*, 13 *Hun*, 408. Aff'd, it seems, in 80 *N. Y.* 650, but without opinion.
- *v. Snell*, 57 *N. Y.* 286. See *Salisbury v. Van Hoesen*. Applied (Action on guardian's bond without accounting) in *Girvin v. Hickman*, 21 *Hun*, 316, 318. Approved in *Behrens v. Rodenburg*, 1 *City Ct.* 96.
- *v. Thurder*, 77 *N. Y.* 613. Opinion reported in 58 *How. Pr.* 95.
- *v. Town of Canton*, 4 *Lans.* 409. Rev'd in 49 *N. Y.* 662, but without opinion. Decision in 49 *N. Y.* disting'd (Right of father to bounties earned by minor son) in *Matter of Wasser*, 18 *Weekly Dig.* 188.
- *v. Treat*, 1 *Hill*, 225. Said in *Bates v. Reynolds*, 7 *Bosw.* 685, 690, to be still an authority (Effect of electing to sue in tort on right to arrest) notwithstanding qualifications expressed in *Suydam v. Smith*, 7 *Hill*, 182; *McDuffie v. Beddoe*, 1d. 578. Compare, however, *Miller v. Scherder*, 2 *N. Y.* 267; *McGovern v. Payn*, 32 *Barb.* 83, 91. Referred to as authority in *Smith v. Knapp*, 30 *N. Y.* 581. Explained in *Hays v. Jones*, 1 *Edm.* 11. Disting'd (Requiring stipulation not to sue) in *Faulkner v. Morey*, 22 *Hun*, 379, 385.
- *v. Volkening*, 64 *N. Y.* 76. Explained (Who bound by judgment of foreclosure) in *Payn v. Grant*, 23 *Hun*, 137. Applied (Possession, when constructive notice) in *Pope v. Allen*, 90 *N. Y.* 298. Disting'd in *Mut. Life Ins. Co. v. Dake*, 1 *Abb. N. C.* 381, 391.
- *v. Webber*, 24 *How. Pr.* 306. Aff'd in 38 *N. Y.* 187. See *Leonard v. Vredenberg*. Decision in 38 *N. Y.* disting'd with *Watt v. Rogers*, 2 *Abb. Pr.* 261; *People ex rel. Taylor v. Breanan*, 39 *Barb.* 522; *Sinclair v. Tallmadge*, 35 *Id.* 602 (Effect of failure to perform executory contract) in *Inness v. Willis*, 48 *Super. Ct. (J. & S.)* 188. Followed (Promise to pay debt of another) in *Rawson v. Springstern*, 2 *Sup'm. Ct. (T. & C.)* 416; *Duffy v. Wunsch*, 42 *N. Y.* 245. Disting'd in *Prime v. Koehler*, 7 *Daly*, 345, 352. Applied in *Kessler v. Sonneborn*, 10 *Daly*, 383; *Weyer v. Beach*, 14 *Hun*, 237.

— **v. Wilde.** See *Fowler v. Hait*.

**Brown's Water Furnace Co. v. French,** 34 *How. Pr.* 94. Said in 6 *Alb. L. J.* 196 to have been aff'd by Ct. of App. in Jan. 1871.

**Brown v. Bradley,** 5 *Abb. Pr.* 141. Disting'd (Annexing debtor's affidavit to petition for his discharge) in *Richmond v. Prait*, 24 *Hun*, 578.

— **v. Scofield,** 8 *Barb.* 289. See *Morgan v. King*. Approved (Common law in this country) in *People v. Canal Appraisers*, 33 *N. Y.* 461.

— **v. Robinson,** 2 *Cal. Cas.* 341; s. c., 2 *N. Y. Com. L. Law. ed.* 842, with brief note.

— **v. Witt,** 19 *Wend.* 475. Approved with *Woodward v. Murray*, 18 *Johns.* 400 (Householder) in *Nelson v. State*, 57 *Miss.* 286; s. c., 34 *Am. R.* 444.

**Brownell v. Akin,** 6 *Hun*, 378. Appeal dismissed, it seems, in 66 *N. Y.* 617, but without opinion. See *Everts v. Everts*. Applied (Executor's liability for his debt to the estate) in *Baucus v. Stover*, 24 *Hun*, 109, 112. See (Ne exeat) *Code Civ. Pro.* 1881, § 548, n.

— **v. Brownell,** 19 *Wend.* 397. Doubted (Maintenance of action for partition by remainder-man not in actual possession) in *Sullivan v. Sullivan*, 6 *Sup'm. Ct. (T. & C.)* 443; s. c., 4 *Hun*, 198.

— **v. Curtis,** 10 *Paige*, 210. See *Bayard v. Hoffman*; *Osborne v. Moss*. Quoted (Creditor's actions—answer) in *Wait on Fraud. Conv.* § 161.

— **v. Flagler,** 5 *Hill*, 282. See *Owen v. Hudson River R. R. Co.* Followed with *Brown v. Maxwell*, 6 *Hill*, 592 (Recovery notwithstanding negligence) in *Trow v. Vt. Cent. R. R. Co.*, 24 *Vt.* 487; s. c., 51 *Am. Dec.* 191, with note. Followed in *Wright v. Brown*, 4 *Ind.* 95; s. c., 58 *Am. Dec.* 622.

— **v. McEwen,** 5 *Den.* 367. See *Foster v. Scofield*; *Gillet v. Mead*. Followed (Inadmissibility of evidence of promise to marry, in action for seduction) in *Whitney v. Elmer*, 60 *Barb.* 250. Relied on (Testimony of jurors as to motives, &c.) in *Woodward v. Leavitt*, 107 *Mass.* 453; s. c., 9 *Am. R.* 49, 60, and thought to limit *Dana v. Tucker*, 4 *Johns.* 487, which is considered hardly reconcilable with later cases in *Massachusetts* and *England*.

— **v. Winnie,** 29 *N. Y.* 400. See *Card v. Miller*; *Chappel v. Spencer*; *Muir v. Demaree*. Followed (Material alteration in note) in *Card v. Miller*, 1 *Hun*, 504, 506.

**Browning v. Abrams.** See *Williams v. Bacon*.

— **v. Bettis,** 8 *Paige*, 568. Examined (Limits of examination on creditor's bill) in *Howard v. Palmer*, *Walk. Ch.* 392. Compare (Reaching moneys earned, but not due, by creditor's bill) note to *Donovan v. Finn*, 14 *Am. Dec.* 531; *Tolles v. Wood*, 16 *Abb. N. C.* 1.

— **v. Hanford,** 5 *Hill*, 588; s. c., 40 *Am. Dec.* 369, with note. Rev'd in 5 *Den.* 586.

Reversal said to settle nothing as to the sheriff's liability in *Moore v. Westervelt*, 21 *N. Y.* 103, 107. Decision in 5 *Hill* approved (Duties and liabilities of sheriff in levying execution) in *Lawson v. State*, 10 *Ark.* 28; s. c., 50 *Am. Dec.* 238, with note. Contrary to 5 *Den.* 586 see (Return, as evidence) *Freeman on Ex.* § 366. But see *Abb. Tr. Ex.* 200.

— **v. Home Ins. Co.,** 6 *Daly*, 522. Aff'd in 71 *N. Y.* 508; s. c., 27 *Am. R.* 86. Decision in 71 *N. Y.* followed ("Dwelling-house" not necessarily "occupied") in *Woodruff v. Imperial F. Ins. Co.*, 83 *N. Y.* 133, 140. Collated, with other cases (Waiver and estoppel as applied to insurance) in 15 *Am. L. Rev.* 769.

— **v. Marvin,** 5 *Abb. N. C.* 285. Another proceeding in 22 *Hun*, 547. Decision in 22 *Hun*, collated, with numerous other cases (Settlement of debts, as affected by partnership relation) in 20 *Am. L. Reg. N. S.* 465, 469.

— **v. Wheeler,** 24 *Wend.* 258. See *Howard v. Sexton*. Approved with *Diedrick v. Richley*, 2 *Hill*, 271 (Effect of statutes providing for arbitration) in *Burnside v. Whitney*, 21 *N. Y.* 148. Approved with *Kelsey v. Darrow*, 22 *Hun*, 125, under a similar statute (Waiver of arbitrator's oath) in *Broadstreet v. Pross*, *Hamilton Co. O. Dist. Ct.*, Feb. 1884, 11 *Weekly L. Bul.* 117, 119.

**Brownson v. Gifford,** 8 *How. Pr.* 389. See *Van Buren v. Cockburn*. Approved (Joinder of husband with wife) in *Ackley v. Tarbox*, 29 *Barb.* 512. Overruled (Demurrer for defect of parties) in *Palmer v. Davis*, 28 *N. Y.* 242.

**Bruce v. Burt,** 5 *Daly*, 510. Aff'd in 67 *N. Y.* 237. See *Cardell v. McNeil*; *Milks v. Rich*. Decision in 67 *N. Y.* disting'd (Parol guaranty by one transferring note) in *Milks v. Rich*, 80 *N. Y.* 271. Explained (Inconsistent pleadings) in *Hooker v. Greene*, 50 *Wis.* 278. Collated, with contrary cases, in *Lake Shore & M. S. R. R. Co. v. Warren*, 6 *Pac. Rep.* 726. Compare *Code Civ. Pro.* § 507.

— **v. Carter,** 7 *Daly*, 37. Aff'd in 72 *N. Y.* 616.

— **v. Davenport,** 36 *Barb.* 349. Rev'd in 3 *Keyes*, 472; s. c., 5 *Abb. Pr. N. S.* 185; 1 *Abb. Ct. App. Dec.* 233.

— **v. Fulton Nat. Bk.,** 16 *Hun*, 615. Aff'd in 79 *N. Y.* 154; s. c., 35 *Am. R.* 505. For "lessee" at end of line ten of syllabus in 79 *N. Y.* 154 read "lessor."

— **v. Griscorn,** 9 *Hun*, 280. Aff'd, it seems, in 70 *N. Y.* 612, but without opinion.

— **v. Kelly,** 39 *Super. Ct. (J. & S.)* 27. Further decisions in 5 *Hun*, 229; 2 *Abb. N. C.* 81.

— **v. Lee.** See *Callagan v. Hallett*.

— **v. Lytle,** 13 *Barb.* 163. Explained (Accommodation indorser—presentment for payment—notice of dishonor—waiver) in 1 *Pars. on Contr.* 271, n. j.

— **v. Pearson.** See *Trevor v. Wood*.

- **v. Tilson**, 25 *N. Y.* 194. See *Wenman v. Mohawk Ins. Co.* Applied (Right to specific performance without previous request or demand) in *Freson v. Bissell*, 63 *N. Y.* 163.
- **v. Westcott**, 3 *Barb.* 374. Approved (Material alteration of note) in *State v. Stratton*, 27 *Iowa*, 420; s. c., 1 *Am. R.* 282; *Holmes v. Trumper*, 22 *Mich.* 427; s. c., 7 *Am. R.* 661, 668. Cited in *Toomer v. Rutland*, 57 *Ala.* 379; s. c., 29 *Am. R.* 722.
- **v. Wright**, 3 *Hun.* 548; s. c., reported fully, 5 *Sup'm. Ct. (T. & C.)* 81. To the contrary see (Indorser and indorsee) 1 *Dan. on Neg. Inst.* 532. But see *Abb. Tr. Ev.* 414.
- Bruen v. Bokee**, 4 *Den.* 57. See (Commencement of action) *Code Civ. Pro.* 1881, § 398, n.
- **v. Marquand**, 17 *Johns.* 58; s. c., 6 *N. Y. Com. L. Law. ed.* 286, with brief note. Approved and followed (Indorser when not released by discharge of maker of note) in *Ludwig v. Iglehart*, 43 *Md.* 39.
- Bruff v. Mali**, 36 *N. Y.* 200. See *N. Y. & New Haven R. R. Co. v. Schuyler*. Applied (Remedy for fraud) in *Eaton, Cole & Burnham Co. v. Avery*, 83 *N. Y.* 34. Explained (Sales—fraud) in 1 *Benj. on Sales*, § 646, n. 12 (Corbin's 4 *Am. Ed.*)
- Brumley v. Fanning**, 1 *Johns. Ch.* 501. Cited as authority (Enjoining waste of mortgaged premises) in *Thomas on Mort.* 53.
- Brunly v. Westchester County Man'f. Society**, 1 *Johns. Ch.* 366. Followed (Compelling corporation to testify) in *Knox v. Protection Ins. Co.*, 9 *Conn.* 430; s. c., 25 *Am. Dec.* 33, with note. Noted (Private corporations, process, pleadings, &c.) in *Ang. & A. on Corp.* § 675, 11 ed.
- Brunner v. Cohen**, 57 *How. Pr.* 386; s. c., 6 *Abb. N. C.* 409. Aff'd in 53 *How. Pr.* 239; s. c., 9 *Daly*, 36, which was aff'd in 86 *N. Y.* 11; s. c., 62 *How. Pr.* 171; 40 *Am. R.* 503. See *Barry v. Equitable Life Ins. Co.* Decision in 58 *How. Pr.* followed (Non-assignability of policy payable to wife) in *De Jonge v. Goldsmith*, 46 *Super. Ct. (J. & S.)* 131. Decision in 86 *N. Y.* disting'd in *Living v. Domett*, 13 *Weekly Dig.* 462.
- Brumskill v. James**, 11 *N. Y.* 294. Disting'd (Judgment against joint debtors) in *Mann v. Marsh*, 35 *Barb.* 68. Followed in *McGuire v. Johnson*, 2 *Lans.* 305. Compare *McKensie v. Farrell*, 4 *Bosw.* 192, 200. Applied in *Stimson v. Van Pelt*, 66 *Barb.* 151, 154, as not limited to case of husband and wife.
- Brundage v. Brundage**, 1 *Sup'm. Ct. (T. & C.)* 82; s. c., 65 *Barb.* 397. Aff'd in 60 *N. Y.* 544. See *Jones v. Terre Haute & Richmond R. R. Co.* Decision in 60 *N. Y.* explained (Private Corporation—transfer of stock) in *Ang. & A. on Corp.* § 557, n. a, 11 ed.
- Brunner v. Meigs**, 6 *Hun.* 203. Aff'd in 64 *N. Y.* 506. Decision in 64 *N. Y.* followed (Descent on death of *cestui que trust*) in *Sage v. Lockman*, 53 *How. Pr.* 276. See *Embury v. Sheldon*, 2 *Abb. N. C.* 404, n.
- Brush v. Holland**, 3 *Bradf.* 240. Disting'd (Admissibility of declarations of legatee to prove undue influence upon testator) in *La Bau v. Vanderbilt*, 3 *Redf.* 405. Disting'd (Executor propounding will, as party to probate proceedings) in *Whelpley v. Loder*, 1 *Dem.* 368.
- **v. Kohn**, 14 *Abb. Pr.* 51. Aff'd in 9 *Bosw.* 589.
- **v. Lee**, 6 *Abb. Pr. N. S.* 50. Other proceeding in 18 *Abb. Pr.* 398, and that rev'd in 36 *N. Y.* 49. Decision in 6 *Abb. Pr. N. S.* re-asserted (Interrogatories upon proceedings to punish for contempt by order to show cause) in *Pitt v. Davison*, 37 *N. Y.* 235. Decision in 18 *Abb. Pr.* criticised (Who may issue execution on district court judgment) in *McDonald v. Flynn*, 2 *Daly*, 42, as decided without reference to *Ginochio v. Figari*, 2 *Abb. Pr.* 185. Decision in 36 *N. Y.* superseded by 2 *L.* 1870, c. 741, § 3, giving the clerk exclusive power. See *Code Civ. Pro.* 1881, § 3017, n.
- **v. Reeves**, 3 *Johns.* 439; s. c., 3 *N. Y. Com. L. Law. ed.* 661, with brief note of supporting cases. Applied with *Dean v. Hall*, 17 *Wend.* 214 (Who may sue on negotiable security) in *Sullivan v. Burnett*, 105 *U. S.* 334, 346.
- **v. Wilkins**, 4 *Johns. Ch.* 506. See *Packard v. Hill*; *Sherry v. Lozier*. Cited (Revocation of will by marriage, &c.) as giving the general rule in *Re Tuller*, 79 *Ill.* 99; s. c., 22 *Am. R.* 164. Commented upon in 1 *Jarm. on Wills*, Rand. and T. ed. 274, n. 5. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 524. Discussed in 4 *Kent Com.* 523.
- Brust v. Barrett**, 16 *Hun.* 409. Aff'd as *Brush v. Barrett*, 82 *N. Y.* 400; s. c., 37 *Am. R.* 569. See (Limitations—demand) *Code Civ. Pro.* 1881, § 410, n.
- Bruyn v. Comstock**, 56 *Barb.* 9. Collated with other cases (Running of statute of limitations against attorney's claim) in 26 *Moak Eng.* 326, n.
- Bryan v. Baldwin**, 7 *Lans.* 174. Aff'd in 52 *N. Y.* 232.
- **v. Brennon**, 7 *How. Pr.* 359. Disapproved (Right to appeal from order of reference) in *Brown v. Harper*, 54 *Iowa*, 546.
- **v. Butts**, 27 *Barb.* 503. Followed (Effect of affidavits of foreclosure sale) in *Mowry v. Sanborn*, 7 *Hun.* 380, 384, which was however rev'd in 68 *N. Y.* 153. See also, to the contrary a further decision in *Mowry v. Sanborn*, 72 *N. Y.* 534. See *Code Civ. Pro.* 1881, § 2400, n. Quoted (Mortgagee's interest until foreclosure) in 2 *Washb. on Real Prop.* 4 ed. 102.
- **v. Knickerbacker**, 1 *Barb. Ch.* 409. Applied (Accumulated income from trust fund) in *Ellingwood v. Beare*, 59 *How. Pr.* 503, 506.

- Bryant v. American Telegraph Co.**, 1 *Daly*, 575. See *De Rutte v. N. Y., Albany, &c. Tel. Co.*; *Leonard v. N. Y., Albany, &c. Tel. Co.* Applied (Carrier's liability for delay) in *Grindle v. Eastern Express Co.*, 67 *Me.* 317; s. c., 24 *Am. R.* 31. Explained (Liability for delay in transmitting message) in 2 *Pars. on Contr.* 257, o, n. v. Collated, with other cases, in 9 *Am. R.* 149, n.
- **v. Bryant**, 4 *Abb. Pr. N. S.* 138. Disting'd (Amendment to perfect appeal) in *Zinsser v. Seiler*, 7 *Daly*, 464.
- **v. Poughkeepsie Mutual Ins. Co.**, 21 *Barb.* 154. Aff'd in 17 *N. Y.* 200. See *Harper v. Albany Mut. Ins. Co.*
- Bryce v. Lorillard Fire Ins. Co.**, 35 *Super. Ct. (J. & S.)* 394. Aff'd in 55 *N. Y.* 240; s. c., 14 *Am. R.* 249. See *Boynton v. Clinton & Essex Mut. Ins. Co.*
- Buchan v. Rintoul**, 10 *Hun.* 183. Aff'd in 70 *N. Y.* 1. Opinion of Surrogate is reported as *Matter of Ritch*, 2 *Redf.* 330.
- **v. Sumner**, 2 *Barb. Ch.* 165; s. c., 47 *Am. Dec.* 305, with note. See *Buckley v. Buckley*. Approved as settled law (Real estate purchased with partnership funds) in *Collumb v. Read*, 24 *N. Y.* 505, 512; *Buckley v. Buckley*, 11 *Barb.* 74. Examined, with other cases, in *Sage v. Sherman*, 2 *N. Y.* 428. Re-aff'd in *Fairchild v. Fairchild*, 64 *N. Y.* 478. Followed, with approval, in *Lang's Heirs v. Waring*, 25 *Ala.* 623; s. c., 60 *Am. Dec.* 533, with note. Cited in *Foster's Appeal*, 74 *Penn. St.* 391; s. c., 15 *Am. R.* 553, as containing a learned and exhaustive opinion. Cited as reviewing several leading cases in 1 *Pars. on Contr.* 150, n. h. Reviewed and explained (Respective rights of partnership and individual creditors) in *Martin v. Wagener*, 1 *Sup'm. Ct. (T. & C.)* 515. Applied (Effect of judgment lien) in *Sieiman v. Austin*, 83 *Barb.* 9. Disting'd and questioned in *King v. Harris*, 34 *N. Y.* 330. Disting'd (Record or registry when substantially defective or irregular) in *Mut. Life Ins. Co. v. Dake*, 1 *Abb. N. C.* 381, 391. Applied and disting'd (Subordination of judgment lien to equitable liens) in *Wilkes v. Harper*, 2 *Barb. Ch.* 354. Applied in *O'Donnell v. Kerr*, 50 *How. Pr.* 334. Followed (Effect of amendment of docket of judgment) in *Sears v. Mack*, 2 *Bradf.* 409. Explained (Equitable relief against mistake) in *Hall v. Fisher*, 9 *Barb.* 23. Applied (Judgment lien when created) in *Blydenburgh v. Northrop*, 13 *How. Pr.* 289.
- Buchanan v. Coustock**, 57 *Barb.* 568. Modification of final judgment by Ct. of App. in June, 1871, was on other questions. Disting'd (Supplemental complaint) in *Prouty v. Lake Shore & M. S. R. R. Co.*, 85 *N. Y.* 272, 275.
- **v. Curry**, 19 *Johns.* 137. See *Clarke v. Morey*. Applied (Contract, when not dissolved by war) in *Kiersted v. Orange & Alexandria R. R. Co.*, 54 *How. Pr.* 45; *O'Reily v. Mutual Life Ins. Co.*, 2 *Abb. Pr. N. S.* 174; *Sands v. N. Y. Life Ins. Co.*, 50 *N. Y.* 626; *Mutual Benefit Life Ins. Co. v. Hillyard*, 8 *Vroom (N. J.)* 444; s. c., 18 *Am. R.* 741, 748. Limited (Submission of partnership controversy by one partner) in *Harrington v. Higham*, 13 *Barb.* 662. Applied in *McBride v. Hagan*, 1 *Wend.* 336.
- **v. Exchange Ins. Co.**, 61 *N. Y.* 26. See *Harper v. Albany Mut. Ins. Co.* Compare (*Petroleum*) *Bennett v. North British, &c. Ins. Co. of London*, 8 *Daly*, 471.
- **v. Morrell**, 13 *How. Pr.* 296. Said in *Coates v. Goddard*, 34 *Super. Ct. (J. & S.)* 126, to have been superseded (Extra allowance) by *Code Pro.* § 309, as amended in 1865.
- **v. Ocean Ins. Co.** See *Juhel v. Church*.
- Buck v. Amidon**, 4 *Daly*, 126; s. c., 41 *How. Pr.* 370. Compare (Who chargeable \* for medical services) *Crane v. Baudoine*, 65 *Barb.* 260. Cited (Agent, when not personally liable) in *Whart. Com. on Ag.* § 503.
- **v. Burk**, 18 *N. Y.* 337. Quoted and discussed (Contract—demand and tender) in 2 *Chitty on Contr.* 1207, n. d, 11 *Am. ed.*
- Buckbee v. Brown**, 21 *Wend.* 110. See *People v. Corp'n. of Albany*. Explained (Statute of Frauds—note or memorandum in writing) in 1 *Benj. on Sales*, § 241, n. 39 (*Corbin's* 4 *Am. ed.*).
- **v. United States Ins. Co.**, 18 *Barb.* 541. See *Viall v. Genesee Mut. Ins. Co.* Cited (Punctuality in payment of premium) in *Mayer v. Mutual Life Ins. Co.*, 38 *Iowa*, 304; s. c., 18 *Am. R.* 34. Followed with *Golt v. Nat. Prot. Ins. Co.*, 25 *Barb.* 189, in *Mutual Life Ins. Co. v. French*, 30 *Ohio St.* 240; s. c., 27 *Am. R.* 443, 448. Disting'd in *Tait v. N. Y. Life Ins. Co.*, 1 *Flipp. (U. S.)* 336. Explained in 2 *Pars. on Contr.* 486, n. o.
- Buckley v. Bentley**, 42 *Barb.* 646. Further decision in 43 *Barb.* 283. Decision in 42 *Barb.* explained (Waiver of demand and notice) and cases collated in *Bigel. on B. & N.* 2 ed. 381. Decision in 48 *Barb.* relied on (Changing effect of written contract by parol evidence) in *Pohalski v. Mutual Life Ins. Co.*, 36 *Super. Ct. (J. & S.)* 234.
- **v. Buckley**, 11 *Barb.* 43. See *Cresson v. Stout*. Collated with *Buchan v. Sumner*, 2 *Barb. Ch.* 165, and other cases (Rights affecting partnership realty) in *Story on Partn.* 7 ed. § 94, n. Cited with *Kendall v. Rider*, 35 *Barb.* 100; *Fairchild v. Fairchild*, 64 *N. Y.* 471; *Chester v. Dickinson*, 54 *Id.* 1; *Van Brunt v. Applegate*, 44 *Id.* 544; *Skinner v. Dayton*, 19 *Johns.* 513; *Clement v. Brush*, 3 *Johns. Cas.* 180; *McBride v. Hagan*, 1 *Wend.* 326; in *Batty v. Adams Co.*, 16 *Neb.* 50.
- **v. Farniss**, 15 *Wend.* 137. Aff'd in 17 *Id.* 504. See *Covell v. Hitchcock*. Followed (Stoppage in transitu) in *Rucker v. Donovan*, 13 *Kan.* 251; s. c., 19 *Am. R.* 84, with note, collating cases. Approved and relied on in *Chandler v. Fulton*, 10 *Tex.* 2; s. c., 60 *Am. Dec.* 188, with note. Explained in 1 *Chitty on Contr.* 606, n. x, 11 *Am. ed.*

- Illustrated, with other cases, in 2 *Redf. Am. Railw. Cas.* 374.
- **v. Leonard**, 4 *Den.* 500. Followed (Evidence of character of dog) in *Mann v. Weiland*, 81½ *Pa. St.* 255; *Goode v. Martin*, 57 *Md.* 606; s. c., 40 *Am. R.* 448.
- **v. Wells**, 33 *N. Y.* 518. *Rev'g* 42 *Barb.* 569. Decision in 33 *N. Y.* followed (Right of wife to profits of business carried on by husband) with *Gage v. Dauchy*, 34 *Id.* 293, in *Merchant v. Bunnell*, 3 *Keyes*, 539; *Kluender v. Lynch*, 4 *Id.* 361.
- Bucklin v. Bucklin**, 1 *Abb. Ct. App. Dec.* 242. Followed with *Emerson v. Bleakly*, 5 *Abb. Pr. N. S.* 350 (Vesting of trusts on death of trustee) in *Matter of Howell*, 61 *How. Pr.* 179. Limited (Evidence to vary consideration) in *Anthony v. Harrison*, 14 *Hun.* 198, 214. Explained (Mortgage between parent and child) in 2 *Washb. on Real Prop.* 4 ed. 49.
- **v. Ford**, 5 *Barb.* 393. Compare (Limitation where action arises between death and granting letters) *Code Civ. Pro.* § 392.
- Buckman v. Brett**, 35 *Barb.* 596; s. c., more fully, 13 *Abb. Pr.* 110; 22 *How. Pr.* 233. Collated with other cases (Joinder of parties plaintiff in actions by part owners of vessel) in *Story on Partn.* (7 ed.) § 454, n.
- **v. Carnley**, 9 *How. Pr.* 180. See (Rights of sheriff, when liable as bail) *Sartos v. Merceques*, *Id.* 188; *Code Civ. Pro.* 1881, § 595, n.
- Buckmaster v. Consumer's Ice Co.**, 5 *Daly*, 313. Explained (Sales void for uncertainty) in 1 *Benj. on Sales*, § 51, n. 17 (Corbin's 4 *Am. ed.*).
- Budd v. Bingham**, 18 *Barb.* 494. Discussed (Ejectment—description of lands) in *Sedgw. & W. on Tr. of Tit. to Land*, § 463.
- **v. Walker**, 9 *Barb.* 493. Explained (Ejectment—mesne profits—statute of limitations) in *Sedgw. & W. on Tr. of Tit. to Land*, § 686.
- Buddenberg v. Benner**, 1 *Hilt.* 84. Applied (Liability of boardinghouse-keeper) in *Smith v. Read*, 6 *Daly*, 33, 37.
- Buel v. Boughton**, 2 *Den.* 91. Cited (Nature of action for money had and received) in *Long v. Bussell*, 45 *Super. Ct. (J. & S.)* 434.
- **v. Dewey**. See *Larkin v. Robbins*.
- **v. Gordon**, 6 *Johns.* 126. Followed with *Mechanics' & F. B'k of Albany v. Capron*, 15 *Id.* 467; *Frost v. Carter*, 1 *Johns. Cas.* 73; 2 *Cal. Cas.* 310; *Ford v. Andrews*, 9 *Wend.* 312; *Andrus v. Waring*, 20 *Johns.* 153; s. c., 41 *Am. Dec.* 693, with note (Effect of discharge in bankruptcy in barring action by surety) in *Pogue v. Joyner*, 6 *Ark.* 241.
- **v. People**, 18 *Hun.* 487. *Aff'd* in 78 *N. Y.* 492; s. c., 34 *Am. R.* 555. See *People v. Butler*. Decision in 18 *Hun.* followed (Committing murder in perpetration of another offense) in *Cox v. People*, 80 *N. Y.* 515. Decision in 78 *N. Y.* relied on in *State v. Wells*, 61 *Iowa*, 629; s. c., 47 *Am. R.* 822.
- Buell v. Trustees of Lockport**, 11 *Barb.* 602. *Aff'd* in 8 *N. Y.* 55. Decision in 8 *N. Y.* followed (Effect of reversal by Court of Appeals) in *Mayor, &c. v. Ryan* 7 *Daly*, 436. *Disting'd* (Impeaching proceedings taken to open street) in *Matter of Buffalo*, 78 *N. Y.* 362, 368.
- Buess v. Koch**, 52 *How. Pr.* 478. *Aff'd* in 53 *How. Pr.* 92; mem. of s. c. in 10 *Hun.* 299.
- Buffalo v. Holloway**. See *City of Buffalo v. Holloway*.
- Buffalo & Alleghany R. R. Co. v. Cary**, 26 *N. Y.* 77. *Disting'd* (Questioning organization of corporation) in *Kaiser v. Lawrence Sav. Bank*, 56 *Iowa*, 104; s. c., 41 *Am. R.* 85. Approved in *Swartwout v. Michigan, &c. R. R. Co.*, 24 *Mich.* 389, 395.
- Buffalo & Hamburg Turnpike Co. v. City of Buffalo**, 1 *Sup'm. Ct. (T. & C.)* 537. *Aff'd* in 58 *N. Y.* 639.
- Buffalo & Jamestown R. R. Co., Matter of**, 5 *Hun.* 485. *Disting'd* (Effect of Art. 8, § 11 of Const. on acts relating to town bonds) in *Horton v. Town of Thompson*, 7 *Hun.* 432.
- Buffalo & Jamestown R. R. Co. v. Judson**, reported as *Falconer v. Buffalo & Jamestown R. R. Co.*
- **v. Weeks**, reported as *Falconer v. Buffalo & Jamestown R. R. Co.*
- Buffalo & N. Y. City R. R. Co. v. Dudley**, 14 *N. Y.* 336. Followed (Liability on stock subscription) in *Whitehall, &c. R. R. Co. v. Myers*, 16 *Abb. Pr. N. S.* 37. Applied in *Buffalo & Jamestown R. R. Co. v. Clark*, 22 *Hun.* 364; *Cayuga Lake R. R. Co. v. Kyle*, 5 *Sup'm. Ct. (T. & C.)* 659. Explained in *Seymour v. Sturgess*, 26 *N. Y.* 145. Applied (Validity of statute affecting corporate franchise) in *Matter of Gilbert Elevated R'y*, 9 *Hun.* 311; *Matter of Oliver Lee & Co's Bank*, 21 *N. Y.* 18; *Albany Northern R. R. Co. v. Brownell*, 24 *N. Y.* 350.
- Buffalo & Niagara Falls R. R. Co. v. City of Buffalo**, 5 *Hill.* 209. See to the contrary (Presumption that municipal ordinance was regularly passed) *Eldred v. Lehay*, 31 *Wis.* 564. Cited in *Abb. Tr. Ev.* 771, n. 4. Commented on (Power of court to inquire whether law passed by constitutional majority) in 1 *Kent Com.* 454, n.
- Buffalo & State Line R. R. Co. v. Reynolds**, 6 *How. Pr.* 96. Followed (Proof required to disprove facts alleged in petition made on application to take real estate under general railroad act) in *Matter of N. Y. Bridge Co.*, 4 *Hun.* 636.
- Buffalo City Bank v. North Western Ins. Co.**, 30 *N. Y.* 251. Followed (Right to abandon freight) in *Hubbell v. Great Western Ins. Co.*, 10 *Hun.* 167, 170.
- Buffalo City Cemetery v. City of Buffalo**, 46 *N. Y.* 503. See *Brick Church*, *Matter of*; *Mayor, &c. of N. Y.*, *Matter of*, 11 *Johns.* 77. Compared with *Roosevelt Hospital v. Mayor, &c. of N. Y.*, 84 *N. Y.* 108; *People v. Davenport*, 91 *Id.* 574 (Construction of statutes exempting from taxation.—Including of



- assessments in exemption) in *Lima v. Cemetery Ass'n*, 42 *Ohio St.* 128. See to the contrary (Taxation of Cemeteries) *Olive Cemetery Co. v. Philadelphia*, 93 *Penn. St.* 429. Explained and disting'd (Exemption from assessment of lands used as cemetery) in *Matter of Eleventh Avenue*, 49 *How. Pr.* 208, 216. Applied (Rights of purchaser of burial lot) in *People ex rel. Coppers v. Trustees*, 21 *Hun*, 184, 191. Collated with *Lantz v. Buckingham*, 11 *Abb. Pr. N. S.* 64; *Windt v. German Reformed Church*, 4 *Sandf. Ch.* 471, and other cases, in 19 *Am. R.* 79, *n.* on various points connected with the law of cemeteries.
- Buffalo Savings Bank v. Newton**, 23 *N. Y.* 160. Explained (Nature of rights affected by orders granting or refusing resales) in *Wolcott v. Schenck*, 23 *How. Pr.* 385.
- Buffalo Steam Engine Works v. Sun Mut. Ins. Co.**, 17 *N. Y.* 401. See *Traders' Ins. Co. v. Robert*. Disapproved (Power of mortgagee to purchase at his own sale) in *Olcott v. Tioga R. R. Co.*, 27 *N. Y.* 546, 566. Also denied in *Hall v. Ditson*, 5 *Abb. N. C.* 198, 211, notwithstanding approval in *Pulver v. Richardson*, 3 *Sup'm. Ct. (T. & C.)* 436. Referred to as overruled in *Thomas on Mort.* 454. Re-aff'd (Validity of transfer of policy between assured) in *Hoffman v. Aetna Ins. Co.*, 32 *N. Y.* 405.
- Buffalo Union Iron Works v. City of Buffalo**, 1 *Buff. Super. Ct. (Sheldon)* 244; *s. c.*, 13 *Abb. Pr. N. S.* 141. Aff'd in 47 *N. Y.* 671 on opinion of VERPLANCK, J.
- Buffit v. Troy & Boston R. R. Co.**, 36 *Barb.* 420. Aff'd in 40 *N. Y.* 168. Decision in 36 *Barb.* explained (Common carrier—liability for passengers whose fare has not been paid) in *Ang. on Curr.* § 521, *n. a.* 5 *cd.*
- Buhler v. Wentworth**, 17 *Barb.* 649; *s. c.*, as *Butler v. Wentworth*, 9 *How. Pr.* 282. Approved in *Wies v. Fanning*, *Id.* 543, as not being authority for conditional pleading.
- Bulger v. Albany Railway**, 42 *N. Y.* 459. Applied (Negligence in Street car driver) in *Lawrence v. Pendleton Street R. R. Co.*, 1 *Cinc. (Ohio)* 180.
- Bulkeley v. Keteltas**, 4 *Sandf.* 450. Rev'd in 6 *N. Y.* 384. Decision in 6 *N. Y.* explained (Probable cause for prosecution) in *Shaul v. Brown*, 28 *Iowa*, 37; *s. c.*, 4 *Am. R.* 151, 157.
- *v. Smith*, 2 *Duer*, 261. Citicised (Probable cause for prosecution) in *Shaul v. Brown*, 28 *Iowa*, 37; *s. c.*, 4 *Am. R.* 157.
- Bulkley v. De Peyster**, 26 *Wend.* See *De Peyster v. Clendinning*.
- Bull, Matter of**, 45 *Barb.* 334; *s. c.*, 31 *How. Pr.* 69. See (Effect of removal of executor or administrator who is testamentary trustee) *Code Civ. Pro.* § 2688.
- Bull v. Church**, 5 *Hill*, 206. Aff'd in 2 *Den.* 430.
- *v. Melliss*. See *Merrill v. Townsend*.
- *v. Willard*, 9 *Barb.* 641. Approved (Merger of covenants in deed) in *Carr v. Roach*, 2 *Duer*, 20.
- Bullard v. Pearsall**, 53 *N. Y.* 230. Explained with *Coulter v. Express Co.*, 56 *Id.* 585; *Pollock v. Pollock*, 71 *Id.* 137, 152 (Right of party to discredit his witness) in *Cox v. Eayres*, 55 *Vi.* 24; *s. c.*, 45 *Am. R.* 583. Cited, at length, in 1 *Whart. Com. on Ev.* § 550.
- *v. —*, 46 *How. Pr.* 383. Said in *Id.* 430 to have been aff'd by Ct. of App. April 7, 1874. Followed (Costs on two appeals to General Term) in *West v. Lynch*, 1 *City Ct.* 174.
- *v. Raynor*. See *Chamberlain v. Dempsey*; *Ohio, &c. R. R. Co. v. Kasson*.
- *v. Saratoga Victory Mfg. Co.*, 13 *Hun*, 43. Aff'd in 77 *N. Y.* 525.
- *v. Sherwood*, 22 *Hun*, 462. Rev'd in 85 *N. Y.* 253.
- *v. Spoor*. See *Brant v. Fowler*; *People v. Douglass*; *Wilson v. Abrahams*.
- Bullis v. Montgomery**, 3 *Lans.* 255. Rev'd in part in 50 *N. Y.* 352. Decision in 50 *N. Y.* disting'd (Officers' protection by process in replevin proceedings) in *Manning v. Keenan*, 9 *Hun*, 686, 689, which was aff'd in 73 *N. Y.* 52, which see. Applied in *Otis v. Williams*, 70 *N. Y.* 210. See *Code Civ. Pro.* 1881, § 1700, *n.* Disting'd (Declarations by former owner) in *Von Sachs v. Kretz*, 72 *N. Y.* 548, 556.
- Bullock v. Babcock**, 3 *Wend.* 391. See *Conklin v. Thompson*. Disting'd (Infant's liability for tort) in *Hewitt v. Warren*, 10 *Hun*, 560, 563. Relied on in *Schlossberg v. Lahr*, 60 *How. Pr.* 450. Followed in *Conway v. Reed*, 66 *Mo.* 346; *s. c.*, 27 *Am. R.* 354. Followed (Act may be trespass though unintentional) in *Welch v. Durand*, 36 *Conn.* 182; *s. c.*, 4 *Am. R.* 55.
- *v. Boyd*, 2 *Edw. Ch.* 293. Disting'd (Admissions of principal against surety) in *Hatch v. Elkins*, 65 *N. Y.* 497.
- *v. Koon*, 9 *Cov.* 30; *s. c.*, 9 *N. Y. Com. L. Law. ed.* 555, with brief note. Cited (Effect of administering oath in cause) in 1 *Whart. Com. on Ev.* § 386.
- Bullymore v. Cooper**, 2 *Lans.* 71. Aff'd in 46 *N. Y.* 236. Decision in 46 *N. Y.* disting'd (Sheriff, when protected in acting under order of discharge) in *Pinckney v. Hegeman*, 53 *N. Y.* 31, 35. Followed in *Develin v. Cooper*, 84 *N. Y.* 417. Followed and also explained in *Richmond v. Prain*, 24 *Hun*, 578, 580. Applied (Interest of bankrupt in assigned property) in *Colie v. Jamison*, 6 *Sup'm. Ct. (T. & C.)* 580.
- Bulson v. Lohues**, 29 *N. Y.* 291. Applied (Proceedings before arbitrators) in *Day v. Hammond*, 57 *N. Y.* 479, 488. See *Code Civ. Pro.* 1881, §§ 2365 *n.*, 2371, *n.* Quoted in 2 *Greenl. on Ev.* 14 *ed.* § 74, *n. c.*
- Bump v. Betts**, 19 *Wend.* 421. Cited as authority (Action for maliciously suing out attachment) in *Spaids v. Barrett*, 57 *Ill.* 289; *s. c.*, 11 *Am. R.* 10, 13. Followed in *Lawrence v. Hagerman*, 56 *Ill.* 68; *s. c.*, 8 *Am. R.* 674, 679.
- *v. —*, 23 *Wend.* 85. See *Lewis v. Chap-*

- man. Cited as authority (Evidence of pecuniary condition) in *Heneky v. Smith*, 10 *Oreg.* 349; s. c., 45 *Am. R.* 143.
- Bumpus v. Platner**, 1 *Johns.* 213. Relied on (Relief against contract for sale of lands) in *Hyslip v. French*, 52 *Wis.* 515, as in harmony with *Parkenson v. Sherman*, 74 *N. Y.* 92. Reconciled with *Abbott v. Allen*, 2 *Johns.* 519, in *Parham v. Randolph*, 4 *How.* (Miss.) 435; s. c., 35 *Am. Dec.* 403, with note. Both these cases cited in *Guice v. Sellers*, 43 *Miss.* 52; s. c., 5 *Am. R.* 476, as to defect of title being no ground for such relief. Quoted and contrary cases cited in 1 *High on Ev.* 2 ed. § 384, n. 2.
- Bumstead v. Hoadley**, *N. Y. Daily Reg. Dec.* 19, 1876. Applied (Cost for drawing interrogations) in *Johnson v. Chappell*, 7 *Daly*, 43.
- **v. Read**, 31 *Barb.* 661. Explained (Disproving jurisdiction) in *Bolton v. Jacks*, 6 *Robt.* 166, 224. See *Code Civ. Pro.* 1881, § 2473, n.
- Bunce v. Reed**, 16 *Barb.* 347. Explained with *Anon.*, 1 *Wend.* 90 (Sufficient publication) in *Howard v. Hatch*, 29 *Barb.* 297. See *Code Civ. Pro.* 1881, § 444, n.
- Bundy v. Bundy**, 47 *Barb.* 135. Reported with decision aff'g it, in 33 *N. Y.* 410. Decision in 38 *N. Y.* explained (Meaning of word "heirs") in *Thurber v. Chambers*, 4 *Hun.* 723. Followed in *Kiah v. Grenier*, 1 *Sup'm. Ct. (T. & C.)* 392. Applied (Validity of trust, where beneficiary is trustee) in *Rogers v. Rogers*, 18 *Hun.* 409. Cited as authority (Construction of words of limitation and of purchase) in *Taggart v. Murray*, 53 *N. Y.* 239. Disting'd with *Holden v. N. Y. & Erie Bank*, 72 *Id.* 286. (Setting apart of property, to produce income) in *Arthur v. Nelson*, 1 *Dem.* 337.
- Bange v. Koop**, 5 *Robt.* 1. Aff'd in 48 *N. Y.* 225. Decision in 5 *Robt.* cited (Effect of notice given by party to contract of sale, as waiver of delivery or tender) in *Patten v. Stitt*, 34 *Super. Ct. (J. & S.)* 344. Decision in 48 *N. Y.* disting'd (Effect of acceptance by creditor of sum less than that due) in *Gray v. Barton*, 55 *N. Y.* 71; *Luddington v. Bell*, 77 *N. Y.* 138. Commented upon and modified in *Grocer's Bank of N. Y. v. Fitch*, 1 *Sup'm. Ct. (T. & C.)* 654.
- Bunker v. Latson**, 1 *E. D. Smith*, 410. See (Justice's court—appeal—new trial) *Code Civ. Pro.* 1881, § 3064, n.
- Bunn v. Hoyt**. See *Duryee v. Dennison*.
- **v. Riker**, 4 *Johns.* 426; s. c., 4 *Am. Dec.* 292, with note; 3 *N. Y. Com. L. Law. ed.* 870, with brief note. See *Juhel v. Church*; *Rust v. Gott*; *Vischer v. Yates*. Followed (Invalidity of election bets) in *Lansing v. Lansing*, 3 *Johns.* 454; *Vischer v. Yates*, 11 *Id.* 28. Approvingly cited with *Rust v. Gott*, 9 *Cow.* 160, in *Russell v. Pyland*, 2 *Humph. (Tenn.)* 131; s. c., 36 *Am. R.* 307, with note. Disting'd in *Lurton v. Gilliam*, 1 *Scam. (Ill.)* 577; s. c., 33 *Am. Dec.* 430. Followed but criticised in *Bettis v. Reynolds*, 12 *Ired. (N. C.) Law.* 297; s. c., 55 *Am. Dec.* 416. Followed (When cognizance will not be taken of fictitious suits) in *Brewington v. Lowe*, 1 *Ind.* 21; s. c., *Smith*, 79; s. c., 48 *Am. Dec.* 349, with note.
- **v. Vaughan**, 3 *Keyes*, 345. Cited as authority (Effect of death of trustee of personal estate) in *Emerson v. Bleakley*, 2 *Abb. Ct. App. Dec.* 28. Dissented from in *Wells v. Wallace*, 2 *Redf.* 58. Explained and disting'd with *Kane v. Gott*, 24 *Wend.* 641; *Savage v. Burnham*, 17 *N. Y.* 561, in *Curtis v. Smith*, 60 *Barb.* 9.
- **v. Winthrop**, 1 *Johns.* 329. See *Dayton v. Tillou*; *Hayes v. Kershaw*; *Souveryby v. Arden*. Followed (Enforcing trust created by voluntary conveyance) in *Dennison v. Goehring*, 7 *Penn. St.* 175; s. c., 47 *Am. Dec.* 505, 508, with note. Quoted and explained (Deed retained in grantor's possession until death) in 3 *Washb. on Real Prop.* 4 ed. 338.
- Bunnell v. Greathhead**, 49 *Barb.* 106. \*See to the contrary (Watching adultery as connivance) *Phillips v. Phillips*, 1 *Robertson (Eng. Ecc.)* 144, 160.
- Bunner v. Storm**, 1 *Sandf. Ch.* 357. Examined (Execution of power) in *Taylor v. Morris*, 1 *N. Y.* 341, 350.
- Bunten v. Orient. Mut. Ins. Co.**, 4 *Bosw.* 254. Further decision, in 8 *Bosw.* 448, aff'd 2 *Keyes*, 667. Decision in 4 *Bosw.* relied on (Jury bound by erroneous instructions) in *Emerson v. County of Santa Clara*, 40 *Cal.* 545; s. c., 20 *Am. Dec.* 136, n.
- Bunting v. Brown**, 13 *Johns.* 425. Rule said to be changed by statute (Arrest without judge's order) in *Bromley v. Town*, 1 *Hill*, 373.
- Burbank v. Fay**, 5 *Lans.* 397. Aff'd in 65 *N. Y.* 57. Decision in 65 *N. Y.* commented upon in 32 *Am. Dec.* 719, n., as adopting the Penn. rule, which is rapidly gaining ground respecting private occupancy as vesting title inconsistent with public use. Applied (Estimation of damages and benefits resulting from construction of canal) in *Whitney v. State of N. Y.*, 96 *N. Y.* 240.
- **v. Reed**, 11 *Weekly Dig.* 576. Opinion in full, in 1 *Civ. Pro. R.* 42, n. Followed (Examination before trial) in *Russ v. Campbell*, 1 *Civ. Pro. R.* 42.
- Burbridge v. Marey**, 54 *How. Pr.* 446. Followed (Effect of N. Y. mechanic's lien act of 1875 in repealing former statutes in *Heckman v. Pinkney*, 6 *Abb. N. C.* 371, 374. Approved and allowed (Interests not affected by mechanic's lien) in *Holley v. Van Dolsen*, 55 *How. Pr.* 323. Applied with *Holley v. Van Dolsen*, 55 *How. Pr.* 333 (Liability under lien law, for improvements instituted by another) and *Otis v. Dodd*, 24 *Hun.* 538; *Burkitt v. Harper*, 79 *N. Y.* 273, disting'd in *Cornell v. Barney*, 26 *Hun.* 134.
- Burch v. Newberry**, 1 *Barb.* 648. Aff'd in 10 *N. Y.* 374. Decision in 10 *N. Y.* cited (Unconstitutionality of legislation impairing

- effect of judgment) in *Lawson v. Jeffries*, 47 *Miss.* 686; s. c., 12 *Am. R.* 342.
- *v. Spencer*, 15 *Hun.* 504. See *Moses v. Mead*; *Van Bracklin v. Fonda*. Commented upon (Implied warranty of provisions for domestic use) in 2 *Benj. on Sales*, § 1012, n. 44 (Corbin's 4 *Am. ed.*). Reviewed and collated with other cases, and disapproved in 22 *Am. L. Reg. N. S.* 233.
- Burekle v. Eckart**, 3 *Den.* 279. Aff'd in 3 *N. Y.* 132. Previous decision in 1 *Den.* 337. Decision in 1 *Den.* disting'd (Participation in profits, as test of partnership relation) in *Mohawk Nat. Bk v. Van Slyck*, 29 *Hun.* 188. Recognized in *Leggett v. Hyde*, 58 *N. Y.* 279. Cited with *Heimstreet v. Howland*, 5 *Den.* 68, 70, and other cases, by Doe, J., in *Eastman v. Clark*, 53 *N. H.* 276; s. c., 16 *Am. R.* 192, 266, as according with an irresistible weight of authority. Quoted and explained in 1 *Collyer on Partn.* § 31, n. 2, Wood's *Am. ed.*; *Id.* § 47, n. 1. Decision in 3 *N. Y.* disting'd with *Landers v. Staten Island R. R. Co.*, 53 *N. Y.* 450 (Waiver of objection to want of jurisdiction) in *Goldman v. Monds*, 1 *City Ct.* 97. Explained in *Mahaney v. Penman*, 1 *Abb. Pr.* 37. Compare *Simmons v. De Barre*, 8 *Id.* 269, 279. Cited as authority in *Brown v. Snell*, 57 *N. Y.* 302. Cited in *Spyer v. Fisher*, 37 *Super. Ct. (J. & S.)* 104, as having probably suggested *Code Pro.* § 139 as amended in 1857.
- Burdell v. Burdell**, 54 *How. Pr.* 91. Disting'd (Appointment of receiver before judgment in ejectment) in *Mitchell v. Barnes*, 22 *Hun.* 198. Compare *Sheridan v. Jackson*, 72 *N. Y.* 170. Explained in *Sedgwick & W. on Tr. of Tit. to Land* § 615.
- Burdett v. Love**, 11 *Weekly Dig.* 323. Reported as *Burdett v. Lowe*, 22 *Hun.* 588.
- *v. Lowe*, 22 *Hun.* 588. Rev'd in 85 *N. Y.* 241. See *Savage v. Allen*.
- Burdick v. Green**, 18 *Johs.* 14. See *Bronson v. Earl*. Explained (Commencement of suit) in *Rose v. Luther*, 4 *Cov.* 161. Commented upon in *Ang. on Limit.* § 312, 6 ed. Applied with *Hughes v. Wheeler*, 8 *Cov.* 77 (Recovery on debt for which note has been given) in *Velledge v. Boston Iron Co.*, 5 *Cush. (Mass.)* 158; s. c., 51 *Am. Dec.* 59, 65. Explained in *Hughes v. Wheeler*, 8 *Cov.* 77, 80. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 294. Followed (What is necessary to create transfer of legal title in note) in *Bennett v. McGaughy*, 3 *How. (Miss.)* 192; s. c., 34 *Am. Dec.* 77.
- *v. McVanner*, 2 *Den.* 170. Relied on (Title of mortgagee of chattels becoming absolute, upon default in payment) in *Wray v. Fedderke*, 43 *Super. Ct. (J. & S.)* 335. Applied (Effect of power of sale contained in mortgage) in *Thurber v. Jewett*, 3 *Mich.* 304.
- *v. Post*, 12 *Barb.* 168. Aff'd in 6 *N. Y.* 522. Decision in 12 *Barb.* quoted (Preferences in assignment for creditors) in *Burrill on Assign.* § 169, 4 ed. Discussed (Terms of sale) in § 221, n. 5. Quoted and collated with other cases (Assigning only part of debtor's property) in *Bishop on Assign.* 164.
- Burger v. Baker**, 4 *Abb. Pr.* 11, 14. Approved as still good law (Decision on trial of question of fact by court) in *Bishop v. Empire Trans. Co.*, 37 *Super. Ct. (J. & S.)* 15.
- Burgess v. Abbott**, 1 *Hill*, 476. Aff'd in 6 *Id.* 125.
- Burgher v. Columbian Ins. Co.**, 17 *Barb.* 274. Misreported. Opinion of EDMONDS, J., given as that of the court, was a dissenting opinion. Opinion of court was delivered by ROOSEVELT, J., and judgment aff'd.
- *v. Hughes*, 5 *Hun.* 180. Aff'd, it seems, in 63 *N. Y.* 629, but without opinion.
- Burhans v. Burhans**, 2 *Barb. Ch.* 398. Disting'd (Determining adverse claims in partition suit) in *Jordan v. Van Epps*, 85 *N. Y.* 427, 434.
- *v. Tibbitts*, 7 *How. Pr.* 21. Subsequent decision in *Id.* 74. Decision on p. 21 relied on (Alteration in verdict when not cause for setting it aside) in *Herzberg v. Murray*, 40 *Super. Ct. (J. & S.)* 271. Decision on p. 74, followed (When title to real property comes in question at trial) in *Seam v. Currier*, 15 *Hun.* 184, 186.
- *v. Van Zandt*, 7 *Barb.* 91. Rev'd in 7 *N. Y.* 523. Decision in 7 *N. Y.* followed (Right of tenant in common, to hold title for his exclusive benefit) in *Weare v. Van Meter*, 42 *Iowa*, 128; s. c., 20 *Am. R.* 616; *Van Horne v. Fonda*, 5 *Johs. Ch.* 388, being also, with other cases, relied on.
- Burk's Will**, 2 *Redf.* 239. Applied (Publication of will) in *Von Hoffman v. Ward*, 4 *Redf.* 244, 260.
- Burke, Matter of**, 4 *Sandf. Ch.* 617. See *Wilkes v. Rogers*. Reviewed (Maintenance and support of infants) in 16 *Am. Dec.* 662, n. and citations collected. Criticised in *McKnight v. Walsh*, 23 *N. J. Eq.* (8 *C. E. G.*) 136-144, as standing by itself in *N. Y.*, and going far beyond any decision, doctrine or dicta in any of the English cases. Reviewed with *Matter of Turner*, 10 *Barb.* 552, 557; *In re Davison*, 6 *Paige*, 136; *In re Ryder*, 11 *Id.* 185, in *Tyler on Inf. & Cov.* 2 ed. § 192, as in accordance with decisions in other States, and in England.
- , 2 *Hun.* 281; mem. in 4 *Sup'm. Ct. (T. & C.)* 657. Modified in 62 *N. Y.* 224. Decision in 62 *N. Y.* applied ("Party aggrieved" by improper assessment) in *Matter of Walter*, 75 *N. Y.* 357. Disting'd (What is repayment) in *Matter of Grube*, 81 *N. Y.* 139, 141. Disting'd (Burden of proof as to injury by assessment) in *Matter of Gantz*, 85 *N. Y.* 536, 539.
- Burke v. Candee**, 63 *Barb.* 552. Followed (Basis for extra allowance) in *Riley v. Hulbert*, 13 *Weekly Dig.* 101. Explained and applied in *Williams v. Western Union Tel. Co.*, 61 *How. Pr.* 305, 307.

- **v. Nichols**, 34 *Barb.* 430; s. c., 21 *How. Pr.* 459. Aff'd in 2 *Keyes*, 670; s. c., 1 *Abb. Ct. App. Dec.* 260. See *Green v. Collins*. Decision in 2 *Keyes*, 670, disting'd (Eviction of grantee) in *Adams v. Conover*, 87 *N. Y.* 428.
- **v. Valentine**, 52 *Barb.* 412; s. c., 5 *Abb. Pr. N. S.* 164. Said in 6 *Abb. L. J.* 167 to have been aff'd by Ct. of App., June 21, 1872. See (Tenancy by curtesy) *Matter of Winne*, 1 *Lans.* 508, 512, which was, however, rev'd in 2 *Lans.* 21. See, also, *Breeding v. Davis*, 77 *Va.* 639; s. c., 46 *Am. R.* 740. Quoted and collated with other cases in *Sharsw. & B. Cas. on Real Prop.* 289. Discussed (Perpetuities) in 1 *Jarm. on Wills* Rand. and T. ed. 512, n.
- **v. Wolfe**, 38 *Super. Ct. (J. & S.)* 263. Disting'd (Admissibility of copies in evidence) in *Derham v. Lee*, 47 *Super. Ct. (J. & S.)* 174, 183.
- Burkett v. Taylor**, 86 *N. Y.* 618. Reported in 13 *Weekly Dig.* 75.
- Burkhalter v. Second Nat. Bank**, 42 *N. Y.* 538. Disting'd (Drawer, when charged) in *First Nat. Bank v. Fourth Nat. Bank*, 77 *N. Y.* 320, 326.
- Burkhardt v. McClellan**, 15 *Abb. Pr.* 243, n. Disting'd (Levy under attachment) in *Rodgers v. Bonner*, 55 *Barb.* 9, 24.
- **v. Sanford**, 7 *How. Pr.* 329. Rev'd in effect (Levy on Real property) in *Burkhardt v. McClellan*, 1 *Abb. Ct. App. Dec.* 263.
- Burkitt v. Harper**, 14 *Hun*, 581. Aff'd in 79 *N. Y.* 273. See *Burbridge v. Marcy*. Decision in 14 *Hun*, followed (Mechanics' lien against owner of leased premises) in *Otis v. Dodd*, 24 *Hun*, 538, 540.
- Burkle v. Luce**, 6 *Hill*, 558. Aff'd in 1 *N. Y.* 163. For additional facts and points of counsel, see *How. App. Cas.* 330. Further decision in 1 *N. Y.* 239. Decision in 1 *N. Y.* 163 disting'd (Abatement of action of replevin) in *Roberts v. Marsen*, 23 *Hun*, 486, 488.
- Burleigh v. Center**, 41 *Super. Ct. (J. & S.)* 441. Appeal dismissed in 74 *N. Y.* 608.
- Burling v. Freeman**, 5 *Sup'm. Ct. (T. & C.)* 695. Reported in 2 *Hun*, 661.
- **v. King**, 66 *Barb.* 633. Further decision in 2 *Sup'm. Ct. (T. & C.)* 545; s. c., less fully, 46 *How. Pr.* 452.
- Burlingame v. Burlingame**, 7 *Cow.* 92. Explained (Remedy on parol contracts for purchase of real estate) in *Jack v. McKee*, 9 *Burr (Penn.)* 235. Differently explained in *Malaun's Administrator v. Ammon*, 1 *Grant's (Penn.) Cases*, 123, 142. Commented on and in part overruled in *King v. Brown*, 2 *Hill*, 485. Collated with *Shute v. Dorr*, 5 *Wend.* 204; *Clark v. Fitch*, 2 *Wend.* 463; *Canover v. Cooper*, 3 *Barb.* 115; *Johnson v. Gibson*, 4 *E. D. Smith*, 121, and other cases (Emancipation of minor child) in 35 *Am. R.* 117, n.
- **v. Parce**, 12 *Hun*, 144. Further proceeding in *Id.* 149. See, to same effect (Jurisdiction of State courts in bankruptcy proceedings) *Wheelock v. Lee*, 5 *Abb. N. C.* 72.
- Burlock v. Peck**, 2 *Duer.* 90. Disapproved (Passing of right to reimbursement for use of party-wall, with grant of premises) in *Cole v. Hughes*, 54 *N. Y.* 444; s. c., 13 *Am. R.* 613. Cases collected and compared in 7 *Am. L. Reg. N. S.* 13.
- Burmeister, Matter of**, 12 *Hun*, 478. Rev'd in 56 *How. Pr.* 416; s. c., less fully, 76 *N. Y.* 174. Former decision in 9 *Hun*, 613. See *Matter of Hyde*. Decision in 76 *N. Y.* disting'd (Repavement) in *Matter of Grube*, 81 *N. Y.* 139, 141. Disting'd (Valid basis for assessment) in *Matter of Kendall*, 85 *N. Y.* 302, 307.
- Burnell v. N. Y. Central R. R. Co.**, 45 *N. Y.* 184. See *Lamb v. Camden & Amboy R. R. Co.* Re-aff'd (Carrier's liability as warehouseman) in *Weed v. Barney*, 45 *N. Y.* 347. Applied in *Fairfax v. N. Y. Central, & C. R. Co.*, 40 *Super. Ct. (J. & S.)* 139, which was, however, rev'd in 67 *N. Y.* 11, which see. Disting'd (Liability of carrier in making delivery) in *Price v. Oswego & Syracuse R. R. Co.*, 50 *N. Y.* 213. Disting'd (Through contract by carrier) in *Milnor v. N. Y. & New Haven R. R. Co.*, 53 *N. Y.* 363, 370. Followed (Burden of proof on carrier failing to deliver) in *Coleman v. Livingston*, 36 *Super. Ct. (J. & S.)* 32, 35; *Claffin v. Meyer*, 43 *Super. Ct. (J. & S.)* 7. Questioned and disting'd in *Magnin v. Dinsmore*, 35 *Super. Ct. (J. & S.)* 182. Followed in *Schwerin v. McKie*, 51 *N. Y.* 186.
- Burnett v. Harris**, 50 *Barb.* 379. See other cases collected (Testimony of parties) in 1 *Abb. N. C.* 363, n.
- **v. Phalon**, 9 *Bosw.* 192. Aff'd in 3 *Keyes*, 594; s. c., 5 *Abb. Pr. N. S.* 212; 1 *Abb. Ct. App. Dec.* 267. Decision on motion for new trial reported in 4 *Bosw.* 622. Decision in 9 *Bosw.* explained (Trade-marks) in 2 *Para. on Contr.* 237 *be*, n. *ee*; *Id.* 237 *bv*, n. *z*. See *Fetridge v. Wells*, 4 *Abb. Pr.* 144. Decision in 3 *Keyes*, reviewed with *Fetridge v. Wells*, 4 *Abb. Pr.* 144; *Fetridge v. Merchant, Id.* 156, in *Selchow v. Baker*, 93 *N. Y.* 59. See in connection with decision in 4 *Bosw.* (Motion for new trial) *Code Civ. Pro.* 1881, § 1002, n.
- **v. Snyder**, 43 *Super. Ct. (J. & S.)* 238. Aff'd in 76 *N. Y.* 344. Another proceeding in 41 *Super. Ct. (J. & S.)* 342. See also, other actions in 45 *Id.* 577, and *Id.* 582, which were rev'd in 81 *N. Y.* 550; s. c., 37 *Am. R.* 527; 81 *N. Y.* 651. Decision in 76 *N. Y.* followed (Partnership resulting from sharing profits) in decision in 81 *N. Y.* Decisions in 76 *N. Y.*; 81 *Id.* 555, explained with *Curry v. Fowler*, 13 *Weekly Dig.* 287; *Richardson v. Hughitt*, 76 *N. Y.* 58; in *Haas v. Roat*, 26 *Hun*, 632. Collated with other cases, in 27 *Moak Eng.* 512, n. Decision in 81 *N. Y.* explained in *Adce v. Cornell*, 25 *Hun*, 78, 81.

- **v. Westfall**, 15 *How. Pr.* 430. See (Defendant's offer to compromise) *Code Civ. Pro.* 1881, § 738, *n.*
- Burnham v. Brennan**, 42 *Super. Ct. (J. & S.)* 49. Rev'd in 74 *N. Y.* 597. Further proceeding in 60 *How. Pr.* 310.
- **v. Harrison**, 3 *Redf.* 345. See (Judgment against executor for decedent's debts) *Code Civ. Pro.* 1881, § 2757, *n.*
- **v. Onderdonk**, 41 *N. Y.* 425. Followed (Action to compel determination of claims to real property) in *Haynes v. Onderdonk*, 2 *Hun.* 619; *Boylston v. Wheeler*, 2 *Hun.* 622.
- Burns v. Dillon**, 25 *Hun.* 119. Reported in 12 *Weekly Dig.* 473.
- **v. Erben**, 26 *How. Pr.* 273. Opinion of *MONELL*, J., given in addition, in 1 *Robt.* 555, which was aff'd in 40 *N. Y.* 463.
- **v. Howard**, 9 *Abb. N. C.* 321. Compare (Appeal vacating judgment) *Britton v. Fox*, 39 *Ind.* 369.
- **v. Kempshall**, 24 *Wend.* 360. Aff'd in 4 *Hill.* 468.
- **v. Mayor, &c. of N. Y.**, 3 *Hun.* 212. Fully reported in 5 *Sup'm. Ct. (T. & C.)* 371.
- **v. People**, 5 *Lans.* 189; *s. c.*, more fully with dissenting opinion, in 59 *Barb.* 531.
- **v. —**, 1 *Park. Cr.* 182. Opposed (Effect of former conviction or acquittal) in 17 *Am. L. Rev.* 748. Collated with other cases in 2 *Bennett & H. Cas. on Crim. L.* 559. Cited with approval in *State v. Littlefield*, 70 *Me.* 452; *s. c.*, 35 *Am. R.* 335, with lengthy note collating cases.
- **v. Provincial Ins. Co.**, 35 *Barb.* 525; *s. c.*, more fully, 13 *Abb. Pr.* 425.
- **v. Rowland**, 40 *Barb.* 368. Disting'd (Consideration for note or draft) in *Fisher v. Sharpe*, 5 *Daly*, 214, 216.
- Burside v. Whitney**, 24 *Barb.* 632. Aff'd in 21 *N. Y.* 148.
- Burr. Matter of**, 2 *Barb. Ch.* 208. Explained with *Matter of Patterson*, 4 *How. Pr.* 34 (Validity of will made by drunkard while subject to commission) in *Lewis v. Jones*, 50 *Barb.* 645.
- Burr v. American Spiral Spring Butt Co.**, 17 *Hun.* 188. Aff'd in 81 *N. Y.* 175; *s. c.*, 8 *Abb. N. C.* 403.
- **v. Beers**, 24 *N. Y.* 178. See *Campbell v. Smith*; *Garnsey v. Rogers*; *Hamill v. Gillespie*; *King v. Whitely*; *Lawrence v. Fox*; *Schemerhorn v. Vanderheyden*. Applied (Liability of purchaser of premises subject to a mortgage) in *Thayer v. Marsh*, 11 *Hun.* 501, 503. Explained in *Garnsey v. Rogers*, 47 *N. Y.* 233; *Real Estate Co. v. Balch*, 45 *Super. Ct. (J. & S.)* 432. Followed in *Thorpe v. Keokuk Coal Co.*, 47 *Barb.* 439, which was aff'd in 48 *N. Y.* 253, which see; *Pardee v. Treat*, 18 *Hun.* 301. Examined and followed in *Douglass v. Wells*, 18 *Hun.* 88. Disting'd in *Vrooman v. Turner*, 69 *N. Y.* 280, 285, which modified 8 *Hun.* 78, which see. Disting'd in *Collins v. Rowe*, 1 *Abb. N. C.* 99. Applied in *Campbell v. Smith*, 71 *N. Y.* 26; *Calvo v. Davies*, 73 *N. Y.* 216. Followed with *Marsh v. Pike*, 10 *Paige*, 595; *Blyer v. Monholland*, 2 *Sanlf. Ch.* 478; *Trotter v. Hughes*, 12 *N. Y.* 74; *Douglass v. Wells*, 18 *Hun.* 88, in *Willard v. Warsham*, 76 *Va.* 392, as announcing what is now the settled doctrine of *N. Y.*, which is also fully established by the current of authority in this country. Disting'd (Grantor's liability to lienor) in *Pardee v. Treat*, 82 *N. Y.* 385, 387. Applied (Promise for benefit of third person) in dissenting opinion of *EARL, J.*, in *Dunning v. Leavitt*, 85 *N. Y.* 30, 39. Applied in *Becker v. Torrance*, 31 *N. Y.* 643; *Coster v. Mayor of Albany*, 43 *Id.* 411; *Claffin v. Ostrom*, 54 *Id.* 584; *Glen v. Hope Mutual Life Ins. Co.*, 56 *Id.* 381. Disting'd in *Simson v. Brown*, 68 *N. Y.* 358. Cited as settled law,—in *Turk v. Ridge*, 41 *N. Y.* 206. Followed (Assumption of obligation on transfer of property) in *Otis v. Seligman*, 67 *How. Pr.* 101.
- **v. Burr**, 10 *Paige*, 20. Aff'd in 7 *Hill.* 207. Decision in 7 *Hill* quoted (Definition of alimony) in 2 *Bishop on Mar. & D.* § 351, *n.* 1, 6 ed. Decision in 10 *Paige*, applied (Allowance of gross sum for alimony) in *Crain v. Cavana*, 62 *Barb.* 109, 120. Criticised (Rights of wife divorced from bed and board) in *Tyler on Inf. & Cov.* 2 ed. § 354, as contrary to other cases cited, holding what is there considered to be a very reasonable doctrine.
- **v. —**, 2 *Edw.* 448. Explained (Bills of particulars in action for divorce for adultery) in 2 *Bish. on Mar. & D.* § 607, 6 ed.
- **v. Mills**, 21 *Wend.* 290. See *Lampman v. Milks*. Disting'd (Implied easements) in *French v. Carhart*, 1 *N. Y.* 96, 112. Approved and *Lampman v. Milks*, 21 *N. Y.* 505 criticised in *Outerbridge v. Phelps*, 13 *Abb. N. C.* 117. Disting'd and criticised in *Seibert v. Levan*, 8 *Penn. St.* 383; *s. c.*, 49 *Am. Dec.* 525, with note.
- **v. Sherwood**, 3 *Bradf.* 85. Explained (Intestacy. Distribution. Foreign domicil) in *Willard on Executors*, 404.
- **v. Stenton**, 52 *Barb.* 377, 389. Not followed (Interest of tenant for years in surplus money arising from sale under foreclosure) in *Clarkson v. Skidmore*, 2 *Lans.* 238.
- **v. Van Buskirk**, 3 *Cov.* 263. See *Christman v. Floyd*. Commented on and explained (Sufficiency of avowry in replevin) in *Webber v. Shearman*, 6 *Hill.* 20. Overruled in *Lion v. Burtis*, 5 *Cov.* 408.
- **v. Wilcox**, 6 *Bosw.* 198. Aff'd in 22 *N. Y.* 551. Decision in 22 *N. Y.* Applied (Nature of corporate stock) in *Williams v. Western Union Tel. Co.*, 9 *Abb. N. C.* 437, 443. Disting'd with *Handy v. Draper*, 89 *N. Y.* 334; *Shellington v. Howland*, 53 *Id.* 372 (Liability of stockholder for interest on debts of the corporation) in *Wheeler v. Millar*, 90 *N. Y.* 353. Collated with other cases in *Munger v. Jacobson*, 99 *Ill.* 349.

**Burrall v. Acker**, 23 *Wend.* 606; s. c., 35 *Am. Dec.* 582, with note. See *Acker v. Burrall*. Cited (Sale of partnership property on execution against one partner) in *Story on Partn.* 7 ed. § 262, n. Explained in 1 *Pars. on Contr.* 209, n. i.

— **v. Bushwick R. R. Co.**, 75 *N. Y.* 211. Applied (Nature of corporate stock) in *Barclay v. Culver*, 30 *Hun.* 1. Criticised in *Williams v. Western Union Tel. Co.*, 9 *Abb. N. C.* 423. Applied with *Barry v. Merchant's Exchange Co.*, 1 *Sandf. Ch.* 286; in *Williams v. Western Union Tel. Co.*, 93 *N. Y.* 162, 188. See also (Pleading plaintiff's title) note to *Richardson v. Snyder*, 20 *Am. L. Reg.* 393, 397.

— **v. Jewett**, 2 *Paige*, 134. See *Cross v. Huntley*. Explained and limited (Jurisdiction of State courts in questions involving patents) in *Hovey v. Rubber Tip Pencil Co.*, 57 *N. Y.* 119, 124. Compare *Gibson v. Woodworth*, 8 *Paige*, 133.

**Burrel v. Associate Church**, 44 *Barb.* 282. See cases collected (Right of seceders) in 12 *Am. L. Reg. N. S.* 362, n.

**Burrell v. Bull**, 2 *Sandf. Ch.* 15. Applied (Duty of one acting for others not to hold interest adverse to them) *Baker v. Humphrey*, 101 *U. S.* 494, 501.

**Burrill v. Boardman**, 43 *N. Y.* 254. See *Hone v. Van Schaick*. Explained (Charitable use) in *Holmes v. Mead*, 52 *N. Y.* 332, 338. Collated with other cases in *Gerard Titles to Real Est.* 2 ed. 304. See papers in Charles O'Connor's *My Own Cases*, No. 79 in Law Institute Library, N. Y. City.

— **v. Chenango County Mut. Ins. Co.**, 1 *Edm.* 233. Disapproved (Effect of misstatement as to realty, upon insurance on personalty) in *Todd v. State Ins. Co.*, 11 *Phil. (Pa.)* 357, as overruled by *Wilson v. Herkimer Co. Mut. Ins. Co.*, 6 *N. Y.* 53.

— **v. Shiel**, 2 *Barb.* 457. Discussed (Pecuniaries) in 1 *Jarm. on Wills*, Rand. and T. ed., 512, n.

— **v. Watertown Bank & Loan Co.**, 51 *Barb.* 108. See *Markle v. Hatfield*. Approved (Objection to return of commission) in *Goodyear v. Vosburgh*, 41 *How. Pr.* 421.

**Burritt v. Saratoga Co. Mut. Fire Ins. Co.**, 4 *Hill*, 188; s. c., 40 *Am. Dec.* 345, with note wherein the case is shown to have been frequently cited. See *Fowler v. Aetna Fire Ins. Co.* Followed (Effect of concealment by insurer in fire policy) in *Kennedy v. St. Lawrence Co. Mut. Ins. Co.*, 10 *Barb.* 288. Disting'd in *Masters v. Madison Co. Mut. Ins. Co.*, 11 *Id.* 633; *Chase v. Hamilton Mut. Ins. Co.*, 22 *Id.* 539. Explained at length and disting'd in *Gates v. Madison Co. Mut. Ins. Co.*, 2 *N. Y.* 48, which rev'd 3 *Barb.* 78, which see. Applied in *Wilson v. Herkimer Co. Mut. Ins. Co.*, 6 *N. Y.* 59; *Chaffee v. Cattaraugus Co. Mut. Ins. Co.*, 18 *Id.* 381; *People v. Liverpool, London, &c. Ins. Co.*, 2 *Sup'm. Ct. (T. & C.)* 271. Followed with *Gates v. Madison, etc. Ins. Co.*, 5 *N. Y.*

469, and other authorities in *Hartford Protection Ins. Co. v. Harmer*; 2 *Ohio St.* 452; s. c., 59 *Am. Dec.* 702. Applied (Application as part of contract of insurance) in *Egan v. Mut. Ins. Co. of Albany*, 5 *Den.* 326. Examined with other cases (What amounts to warranty) in *Wall v. East River Mut. Ins. Co.*, 7 *N. Y.* 374.

— **v. Silliman**, 16 *Barb.* 198. Rev'd (Renunciation by witness to will) in 13 *N. Y.* 93. See *Brinckerhoff v. Remsen*; *McDonough v. Loughlin*. Decision in 13 *N. Y.* commented upon (Executor as subscribing witness) in *Willard on Executors*, 111. Reviewed with *Coffin v. Coffin*, 23 *N. Y.* 9, and other cases (Effect of release by legatee in making him a competent witness) in *Whelpley v. Loder*, 1 *Dem.* 368. Said in *Seguine v. Seguine*, 3 *Abb. Pr. N. S.* 442 to be superseded as to costs by amendment of 1862.

**Burroughs v. Bloomer**, 5 *Den.* 532. Relied on (Absences that prevent running of statute of limitations) in *Cole v. Jessup*, 10 *How. Pr.* 515, 527; *Berrien v. Wright*, 26 *Barb.* 208. Approved in part, but disapproved as to view taken of constructive absence, in *Campbell v. White*, 22 *Mich.* 178, 179. Approved and applied in *Tioga R. R. v. Blossburgh, &c. R. R.*, 20 *Wall.* 137, 150.

— **v. Fosteran**, 2 *Abb. N. C.* 333. Rev'd as *Burroughs v. Tostevan*, 75 *N. Y.* 567.

— **v. Reiger**, 12 *How. Pr.* 171. Explained and limited (Effect of *lis pendens*) in *Tate v. Jordan*, 3 *Abb. Pr.* 392.

**Burrows v. Erie R'y Co.**, 3 *Sup'm. Ct. (T. & C.)* 44. Rev'd in 63 *N. Y.* 556. See *Harty v. Central R. R. Co. of N. J.*

— **v. Miller**, 4 *How. Pr.* 349. Collated with other cases (Attachment—domicile) in *Thomps. on Prov. Rem.* 357.

— **v. Norton**, 2 *Lun.* 550. To similar effect (Indorsement instead of subscription) see *Heilner v. Walsh*, 47 *Super. Ct. (J. & S.)* 269, 271. As to effect of *Code Civ. Pro.* §§ 3046, &c., see *Bishop v. Van Vechten*, 10 *Abb. N. C.* 220, 224.

— **v. Stamm**, 22 *How. Pr.* 169. Opinion substantially the same as that of the same judge in the *Ct. of App.* in *Roome v. Phillips*, 24 *N. Y.* 463, which was perhaps an appeal in the same case.

— **v. Turner**, 24 *Wend.* 276; s. c., 35 *Am. Dec.* 622, with note. Cited (Right of one not named in policy to recover thereon) in *Sleeper v. Union Ins. Co.*, 63 *Me.* 385; s. c., 20 *Am. R.* 706.

— **v. Whitaker**, 8 *Hun.* 260. Aff'd in 71 *N. Y.* 291; s. c., 27 *Am. R.* 42. With decision in 71 *N. Y.* compare (When title to personal property passes) *O'Brien v. Jones*, 47 *Super. Ct. (J. & S.)* 67, 73. Explained in 1 *Benj. on Sales*, § 424 (Corbin's 4 *Am. ed.*).

**Burt v. Brewers' and Malsters' Ins. Co.**, 9 *Hun.* 383. Aff'd in 78 *N. Y.* 400.

— **v. Burt**, 41 *N. Y.* 46. See *Bates v. Underhill*. Disting'd (Jurisdiction in actions

- between executors) in *Price v. Brown*, 10 *Abb. N. C.* 67, 70.
- *v. Dewey*, 31 *Barb.* 540. Rev'd in 40 *N. Y.* 283. See *Case v. Hall*; Sweetman *v. Prince*. Decision in 40 *N. Y.* applied with *McGiffin v. Baird*, 62 *N. Y.* 329 (Warranty of title) in *Inness v. Willis*, 48 *Super. Ct. (J. & S.)* 188. Approved in *Bordwell v. Dewy*, 45 *N. Y.* 494. Explained in 2 *Benj. on Sales*, § 948, n. 18 (Corbin's 4 *Am. ed.*). Cases collected and followed in *Matheny v. Mason*, 73 *Mo.* 682.
- *v. Dutcher*, 34 *N. Y.* 493. Examined and disapproved (Rule of damage in conversion) in *Baker v. Drake*, 53 *N. Y.* 211, 220. Disting'd in *Whelan v. Lynch*, 65 *Barb.* 329. Followed in *Lobdell v. Stowell*, 51 *N. Y.* 70, 76.
- *v. Farrar*, 24 *Barb.* 518. Examined and reviewed (Corporate creation and existence) in 8 *South. L. Rev. N. S.* 530.
- *v. Place*, 4 *Wend.* 591. Explained and followed (Malicious prosecution) in *Palmer v. Avery*, 41 *Barb.* 290.
- *v. Sternburgh*, 4 *Cow.* 559; s. c., 15 *Am. Dec.* 402, with note containing citations. Compared (Evidence of former recovery) in *Wood v. Jackson*, 8 *Wend.* 45. See also *Same v. Same*, 18 *Id.* 107, 123. Explained (Former recovery as evidence, under general issue) in *Coles v. Carter*, 6 *Cow.* 691. Explained by *WALWORTH, Ch.*, in *Miller v. Manice*, 6 *Hill*, 125. Cited as authority in *Derby v. Hartman*, 3 *Daly*, 461. Followed (Effect of former recovery) in *Doty v. Brown*, 4 *N. Y.* 75; *Birckhead v. Brown*, 5 *Sandf.* 143.
- Burtch v. Nickerson**, 17 *Johns.* 217. Included (Charge affecting employment, trade or business) in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 91.
- Burtis v. Buffalo & State Line R. R. Co.**, 42 *N. Y.* 269. See *Van Santvoord v. St. John*; *Wait v. Albany & Susquehanna R. R. Co.*; *Weed v. Saratoga & Schenectady R. R. Co.* Followed (Construction of L. 1847, c. 270,—as to foreign corporations) in *Root v. Great Western Railway Co.*, 45 *N. Y.* 524.
- *v. Burtis*, *Hopk.* 557. Followed (Law of England as to marriage and divorce never a part of the law of this State) in *Campbell v. Crampton*, 18 *Blatchf. C. Ct.* 150, 160. Commented upon and discussed in 1 *Bish. on Mar. & D.* § 72, 6 ed.
- *v. Doughty*, 3 *Bradf.* 287. Disting'd (Lapse of legacy to a person and his heirs) in *Williams v. Seaman*, 3 *Redf.* 148, 150.
- *v. Thompson*, 42 *N. Y.* 246; s. c., 1 *Am. R.* 516. Explained (Effect of anticipatory refusal to perform contract) in *Howard v. Daly*, 61 *N. Y.* 362, 377. Reviewed with *Freer v. Denton*, 61 *N. Y.* 492, and other cases, in *Day v. Conn. Gen. Life Ins. Co.*, 45 *Conn.* 480; s. c., 29 *Am. R.* 693, 699. Collated with other cases, in *Goyert v. Stoner*, (*Super. Ct., Cincin., Ohio*) 11 *Week. L. Bul.* 53. Compared in 3 *Abb. L. J.* 115, 187, 199. Discussed in *Benj. on Sales*, § 569 (Bennett's 4 *Am. ed.*). Explained in 2 *Id.* § 860 (Corbin's 4 *Am. ed.*). Cases collected (Promise to marry—when broken) in 11 *Am. L. Reg. N. S.* 71.
- Burnett, Matter of**, 8 *Daly*, 363. Disting'd (Examination of assignor for creditors) in *Matter of Swezey*, 62 *How. Pr.* 215, 218. Followed in *Matter of Brown*, 10 *Daly*, 115.
- Burton v. Burton**, 26 *How. Pr.* 474. Rev'd in 1 *Keyes*, 359; s. c., 1 *Abb. Ct. App. Dec.* 271. Decision in 1 *Keyes*, cited as authority (Rights of alien widow of naturalized citizen) in *Headman v. Rose*, 63 *Ga.* 465. Doctrine applied in *Renner v. Muller*, 44 *Super. Ct. (J. & S.)* 535, 546. Followed in *Kelly v. Owen*, 7 *Wall.* 499. Thought in *Pequignot v. City of Detroit*, 16 *Fed. Rep.* 215, to have been decided by a divided court.
- *v. Stewart*, 3 *Wend.* 236; s. c., 20 *Am. Dec.* 692, with note wherein it is said to have been frequently cited (Total and partial failure of consideration of note). Cited as authority with *Tallmadge v. Wallis*, 25 *Wend.* 107; *Case v. Hall*, 24 *Id.* 102 (Defense of want of title, in action against purchaser in possession for purchase price) in *Sumner v. Gray*, 4 *Ark.* 467; s. c., 38 *Am. Dec.* 39, 41.
- Burwell v. Jackson**, 9 *N. Y.* 535. See *Gazley v. Price*. Examined and approved, but disting'd (Warranty of title implied in contract for sale of land) in *Leggett v. Mut. Life Ins. Co. of N. Y.*, 53 *N. Y.* 394, 398. Applied in *Story v. Conger*, 36 *N. Y.* 673. Pronounced settled law in *Delavan v. Duncan*, 49 *N. Y.* 485. Followed in *Penfield v. Clark*, 62 *Barb.* 584, 591; *Bensel v. Gray*, 38 *Super. Ct. (J. & S.)* 447; *Collins v. Delashmatt*, 6 *Oreg.* 51. Approved in 11 *Am. Dec.* 36, n. as containing a remarkably clear exposition of the law, limited to cases of title in *Canaday v. Stiger*, 35 *Super. Ct. (J. & S.)* 430.
- *v. Knight*, 51 *Barb.* 267. Collected with other cases (Effect of omission to prove partial payments when sued for debt) in 2 *Whart. Com. on Ev.* § 789, n.
- Bush v. Barnard**, 8 *Johns.* 407. Explained (Statute of Limitations—conditional acknowledgments) in *Ang. on Limit.* § 236, 6 ed.
- *v. Brainard*, 1 *Cow.* 78; s. c., 13 *Am. Dec.* 513. See *Owen v. Hudson River R. R. Co.* Approved with *Holladay v. Marsh*, 3 *Wend.* 147 (Horses and cattle when rightfully on premises) in *Williams v. Michigan Central R. R. Co.*, 2 *Mich.* 259; s. c., 55 *Am. Dec.* 59, where *Griffin v. Martin*, 7 *Barb.* 297, was disapproved as neither sound in law nor just in principle. Disting'd in *Johnson v. Patterson*, 14 *Conn.* 1; s. c., 35 *Am. Dec.* 96, with note.
- *v. Cole*, 28 *N. Y.* 261. See *Brinckerhoof v. Phelps*; *Hicks v. Minturn*; *Mills v. Hunt*. Disting'd (Personal liability of one who enters into a contract in behalf of another)

- in *Bellinger v. Bentley*, 1 *Hun*, 565. Explained with *Mills v. Hunt*, 20 *Wend.* 431; *Simpson v. Gerard*, 2 *Bow.* 607, in *Whart. Com. on Ag.* § 502. Collated with *Pumpelly v. Phelps*, 40 *N. Y.* 59; *Driggs v. Dwight*, 17 *Wend.* 71; *Trull v. Granger*, 8 *N. Y.* 115; *Baldwin v. Munn*, 2 *Wend.* 399; *Peters v. McKeon*, 4 *Den.* 546; *Conger v. Weaver*, 20 *N. Y.* 140, and many other cases (Measure of damages for breach of contract to sell) in *Hammond v. Hannin*, 21 *Mich.* 374; s. c., 4 *Am. R.* 490, 493.
- *v. Dennison*, 14 *How. Pr.* 307. To the contrary (Sufficient appeal from justices' judgment) see *Forman v. Forman*, 17 *Id.* 255. Followed in *Avery v. Woodbeck*, 62 *Barb.* 557, 565.
- *v. Hicks*, 2 *Sup'm. Ct. (T. & C.)* 356. Aff'd in 60 *N. Y.* 298. Compare (Reformation) *Hitchins v. Pettingill*, 58 *N. H.* 3, 386.
- *v. Lathrop*, 22 *N. Y.* 535. See *Kortright v. Buffalo Commercial B'k*; *Murray v. Lylburn*; *Myers v. Davis*; *Poillon v. Martin*; *Stafford v. Van Rensselaer*. Followed (Rights of assignee of non-negotiable chose in action) in *Blydenburgh v. Thayer*, 1 *Abb. Ct. App. Dec.* 160; *Wyman v. Smead*, 31 *How. Pr.* 3, 354. Followed, but criticised in *Reeves v. Kimball*, 63 *Barb.* 129, which was aff'd in 40 *N. Y.* 299, 311, which see. Limited in *Gould v. Marsh*, 1 *Hun*, 566. Explained in *Dillaye v. Com. Bank of Whitehall*, 51 *N. Y.* 353. Cited as authority in *Cutts v. Guild*, 57 *N. Y.* 233. Explained, at length, in dissenting opinion of DANFORTH, J., in *Westbrook v. Gleason*, 79 *N. Y.* 41. Explained in *Trustees of Union College v. Wheeler*, 61 *N. Y.* 88, 105, 113; *Greene v. Warnick*, 64 *N. Y.* 224, as not overruled by *Moore v. Metropolitan Bank* on this point, but only on point of estoppel. Disting'd in *Heermans v. Ellsworth*, 64 *N. Y.* 162. Followed as settled law in *McNeil v. Tenth National Bank of N. Y.*, 55 *Barb.* 59, but disting'd on appeal in that case in 46 *N. Y.* 325, 338. Critically examined, with *Anderson v. Nicholas*, 28 *N. Y.* 600; *Mason v. Lord*, 40 *Id.* 476, 487; *McNeil v. Tenth Nat. Bank*, 46 *Id.* 325; *Moore v. Metropolitan Nat. Bank*, 55 *Id.* 41, and other cases, in *Pomeroy on Rem.* §§ 160, 161. Recognized as authority in *Cowdrey v. Vandenberg*, 101 *U. S.* 572. Referred to in *Thomas on Mort.* 106, as settling point of no distinction between latent and patent equities. Approved as settled law (Assignee how far subject to equities of third persons) in *Shafer v. Reilly*, 50 *N. Y.* 67. Overruled (Effect of doctrine of estoppel) and the adverse decisions of *McNeil v. Tenth Nat. Bank*, 46 *N. Y.* 325; *Commercial Bank of Buffalo v. Kortright*, 22 *Wend.* 348, approved in *Moore v. Metropolitan Nat. Bank*, 55 *N. Y.* 41. So referred to in *First Nat. Bank of Corry v. Stiles*, 22 *Hun*, 345; *Armour v. Mich. Cent. R. R. Co.*, 65 *N. Y.* 124. Referred to as overruled in *International B'k v. German B'k*, 71 *Mo.* 198; *Thomas on Mort.* 111.
- *v. Livingston*, 2 *Cal. Cas.* 66; s. c., 2 *Am. Dec.* 315; 2 *N. Y. Com. L. Law. ed.* 764, with brief note.
- *v. Miller*, 13 *Barb.* 481. See *Platt v. Hibbard*. Collated with other cases (Bailment—onus of proving negligence) in 2 *Story on Contr.* 5 ed. § 903, n. 6. Explained (Loss or injury to thing hired) in 2 *Pars. on Contr.* 125, n. b.
- *v. Pettibone*, 5 *Barb.* 273. Aff'd in 4 *N. Y.* 300.
- *v. Prosser*, 13 *Barb.* 221. Rev'd in 11 *N. Y.* 347. See *Bisbey v. Shaw*. Decision in 11 *N. Y.* followed (Pleading matter in mitigation, in action for libel or slander) in *Howard v. Raymond*, 11 *Abb. Pr.* 155; *Weed v. Bibbins*, 32 *Barb.* 321; *Heaton v. Wright*, 10 *How. Pr.* 81; *Herr v. Bamberg*, *Id.* 131. Disting'd in *Gorton v. Keeler*, 51 *Barb.* 481, which was rev'd in *Spooner v. Keeler*, 51 *N. Y.* 535, which see. Disting'd in *Hager v. Tibbits*, 2 *Abb. Pr. N. S.* 101. Criticised at length, in *Van Benschoten v. Yaple*, 13 *How. Pr.* 99. Applied in *Delevin v. Wilder*, 7 *Robt.* 319; *Hatfield v. Lasher*, 81 *N. Y.* 249, which aff'd 17 *Hun*, 23, which see. Decision in 11 *N. Y.* regarded as authority, notwithstanding criticisms, in *Littlejohn v. Greeley*, 13 *Abb. Pr.* 311, 314. Examined and limited in *Wachter v. Quenzer*, 29 *N. Y.* 547. Doubted in *Maretzeck v. Cauldwell*, 2 *Robt.* 715; s. c., 19 *Abb. Pr.* 35. Cited, though not followed, in *Huson v. Dale*, 19 *Mich.* 17; s. c., 2 *Am. R.* 66, as to the propriety of repudiating the rule, in *Underwood v. Parks*, 2 *Strange*, 1200. Explained as not authority for setting up mitigating circumstances alone,—in *Fink v. Justh*, 14 *Abb. Pr. N. S.* 107. Applied to action for assault and battery,—in *Foland v. Johnson*, 16 *Abb. Pr.* 239; to action for false imprisonment,—in *Beckett v. Lawrence*, 7 *Abb. Pr. N. S.* 406. Explained (Proving mitigating circumstances not pleaded) in *Travis v. Barger*, 24 *Barb.* 623; *Weble v. Haviland*, 42 *How. Pr.* 407. Re-aff'd (Plaintiff's damages not enhanced by defendant's allegations of justification) in *Klinck v. Colby*, 46 *N. Y.* 436. Collated with *Lewis v. Chapman*, 16 *N. Y.* 372, and other cases, in article on malice in actions for slander and libel, in 26 *Atl. L. J.* 247. Quoted (Truth of the charge pleaded) in 2 *Greenl. on Ev.* 14 ed. § 426, n. b.
- *v. Seabury*, 8 *Johns.* 418. Followed with *Village of Buffalo v. Webster*, 10 *Wend.* 100; *Stokes v. Corporation of N. Y.*, 14 *Id.* 87 (Incidental powers given to city by its charter) in *City of Dubuque v. Stout*, 32 *Iowa*, 80; s. c., 7 *Am. R.* 171, 174.
- *v. Treadwell*, 11 *Abb. Pr. N. S.* 27. See (Place of trial) *Code Civ. Pro.* 1881, § 982, n.
- *v. Trustees of Geneva*, 3 *Sup'm. Ct. (T. & C.)* 409. Relied on (Notice to agent of corporation when not notice to corporation) in dissenting opinion of ELLIOTT,



- J.**, in *City of Logansport v. Justice*, 74 *Ind.* 391.
- **v. Westchester Fire Ins. Co.**, 63 *N. Y.* 531. Rev'g 2 *Sup'm. Ct.* (*T. & C.*) 629. Decision in 63 *N. Y.* disting'd (Waiver of proof of loss) in *Goodwin v. Massachusetts Mut. Life Ins. Co.*, 73 *N. Y.* 480, 492.
- Bushnell v. Bushnell**, 7 *How. Pr.* 389. Aff'd in 15 *Barb.* 399. See *Forrest v. Forrest*; *Fuller v. Emeric*. Decision in 15 *Barb.* followed (Ne exeat) in *Beckwith v. Smith*, 4 *Lans.* 184. Reviewed, at length, and disapproved in *Johnston v. Johnston*, 25 *How. Pr.* 182, 187. See *Code Civ. Pro.* 1881, § 548, *n.*
- **v. Chautauqua Nat. Bank**, 10 *Hun.* 378. Modified, and as modified aff'd in 74 *N. Y.* 290.
- Buswell v. Lincks**, 8 *Daly*, 518. See *McElwain v. Willis*. Discussed (Creditors' actions—return of execution) in *Wait on Fraud. Conv.* § 87.
- Butchers' & Drovers' Bank v. Brown**, 1 *N. Y. Leg. Obs.* 149. Aff'd in 6 *Hill*, 443.
- **v. Jacobson**, 24 *How. Pr.* 204; *s. c.*, 9 *Bow.* 595; *s. c.*, more fully, 15 *Abb. Pr.* 218. Said in 33 *How. Pr.* 620 to have been aff'd by *Ct. of App.*, in Sept. 1867. Another decision in 22 *How. Pr.* 470. Decision in 22 *How. Pr.* followed (Costs on motion for judgment on demurrer) in *Whitman v. Nicol*, 16 *Abb. Pr. N. S.* 329; but see to the contrary, *Lawrence v. Davis*, 7 *Id.* 354; *Roberts v. Morrison*, *Id.* 396; *Pratt v. Allen*, 19 *Id.* 450.
- Butler, Matter of**, 38 *N. Y.* 397. Disting'd (Duty of executor to include in inventory assets in another State) in *Sherman v. Page*, 85 *N. Y.* 123, 129, which aff'd 21 *Hun.* 59, which see.
- Butler v. Benson**, 1 *Barb.* 523. Examined and limited (Admissibility of memoranda in evidence) in *Thurman v. Mosher*, 1 *Hun.* 344, 348. Applied (Proof of execution of will) in *Norton v. Norton*, 2 *Reitf.* 6, 17; *Williamson v. Williamson*, 2 *Id.* 449, 452. Commented upon in *Willard on Executors*, 101, 106. Adopted in *Code Civ. Pro.* § 2620. Collated with *Ruddon v. McDonald*, 1 *Bradf.* 352; *Lyon v. Smith*, 11 *Barb.* 124, and other cases, in 28 *Am. R.* 595, *n.*
- **v. Boston & Alb. R. R. Co.**, 10 *Weekly Dig.* 11. Further decision in 24 *Hun.* 99.
- **v. Butler**, *Hoffm.* 344. To the contrary (Perpetuities) *Butler v. Butler*, 3 *Barb. Ch.* 304. Decision in 3 *Barb. Ch.* discussed in 1 *Jarm. on Wills*, *Rand. & T. ed.* 512, *n.*
- **v. —**, 77 *N. Y.* 472; *s. c.*, 33 *Am. R.* 648. Quoted and explained (Prevention of performance of contract—how affecting other party) in 2 *Benj. on Sales*, § 859, *n.* 6 (*Corbin's 4 Am. ed.*).
- **v. City of Rochester**, 4 *Hun.* 321; *s. c.*, 6 *Sup'm. Ct.* (*T. & C.*) 572. Followed (Presentation of claim against municipal corporation) in *Williams v. City of Buffalo*, 25 *Hun.* 301.
- **v. Evening Mail Assoc.**, 34 *Super. Ct. (J. & S.)* 58. Rev'd in 61 *N. Y.* 634.
- **v. Flanders**, 56 *How. Pr.* 312; *s. c.*, 44 *Super. Ct. (J. & S.)* 531. See (Order for separate trial of issues) *Code Civ. Pro.* 1881, § 967, *n.*
- **v. Galletti**, 21 *How. Pr.* 463. Disting'd (Injunction) in *Daly v. Smith*, 38 *Super. Ct. (J. & S.)* 158, 169.
- **v. Kelsey**, 15 *Johns.* 177. Followed, with *Story v. Eliot*, 8 *Cow.* 27; and *Hoghtaling v. Osborn*, 15 *Johns.* 119, denied (Invalidity of judicial acts and receiving of verdicts, on Sunday) in *Davis v. Fish*, 1 *G. Greene (Iowa)* 406; *s. c.*, 48 *Am. Dec.* 387, with note.
- **v. Kent**, 19 *Johns.* 223. Cited with *Bank of Rome v. Mott*, 17 *Wend.* 556 (Proof of special damage to individual in action against public ministerial officer for negligence) in *Whart. Com. on Ag.* § 548.
- **v. Lee**, 3 *Robt.* 644. Aff'd, in effect, in 1 *Abb. Ct. App. Dec.* 279; *s. c.*, more fully, 38 *How. Pr.* 251; 3 *Keyes*, 70. With decision in 3 *Keyes*, compare (What is final judgment) *Weaver v. Barden*, 49 *N. Y.* 286. First paragraph of head-note in decision in 33 *How. Pr.* said in *Pomeroy on Rem.* § 69, *n.* 1, not to be sustained by the decision.
- **v. Lewis Common Pleas**, 10 *Wend.* 541. Aff'd in 15 *Id.* 110.
- **v. Mason**, 16 *How. Pr.* 546. Approved (Rebutting matter improper in complaint) in *Sands v. St. John*, 36 *Barb.* 628, 633; *s. c.*, 23 *How. Pr.* 140.
- **v. Maynard**, 11 *Wend.* 548; *s. c.*, 27 *Am. Dec.* 100, with note, collecting citations respecting levies.
- **v. Mayor, &c. of New York**, 1 *Hill*, 489. Rev'd in *Mayor, &c. of N. Y. v. Butler*, 7 *Id.* 329. But as to some other grounds, confirmed in *Butler v. Mayor, &c. of N. Y.*, 1 *Barb.* 325; and see *Briggs v. Smith*, 20 *Id.* 409. See *Huy v. Brown*. Applied (Evidence to impeach award) in *Borrowe v. Milbank*, 5 *Abb. Pr.* 30.
- **v. Miller**, 1 *Den.* 407. Questioned (Effect of new security on debt secured by mortgage) in later decision in 1 *N. Y.* 496, which aff'd 5 *Den.* 159. See *Brown v. Bement*. Decision in 1 *N. Y.* disting'd (Estoppel) in *Smith v. Ferris*, 1 *Daly*, 21. Followed (Interest of mortgagor of chattels) in *Stewart v. Slater*, 6 *Duer*, 83, 100. Cited as settled law (Interest of mortgagee) in *Curtis v. Leavitt*, 15 *N. Y.* 119. Explained in *Haskins v. Kelly*, 1 *Abb. Pr. N. S.* 63, 75, as inapplicable to case of pledge. Applied (Effect of new security for debt secured by mortgage) in *Hill v. Beebe*, 13 *N. Y.* 563. Applied in *Thurber v. Jewett*, 3 *Mic.* 299.
- **v. N. Y., Lake Erie, &c. R. R. Co.**, *Supreme Ct. MS.* Followed (Time within which stockholder may take stock under plan of reorganization) in *Vatable v. N. Y., Lake Erie, &c. R. R. Co.*, 9 *Abb. N. C.* 273.
- **v. Palmer**, 1 *Hill*, 324. See *Clark v.*

- People. Approved (Law impairing vested right) in *Curtis v. Leavitt*, 17 *Barb.* 358; *Hickox v. Tallman*, 38 *Barb.* 613; *Church v. Rhodes*, 6 *How. Pr.* 284. Examined in 27 *Barb.* 156, *n.* Examined in *Scott v. Smart*, 1 *Mich.* 303; citing *Cochran v. Van Surlay*, 20 *Wend.* 365. Cited disapprovingly, in 1 *Kent Com.* 456, *n. a.* Followed (No vested right in forfeiture) in *Hoppock v. Stone*, 49 *Barb.* 528. Relied on with *Curtis v. Leavitt*, 15 *N. Y.* 1, in *Town of Danville v. Pace*, 25 *Gratt. (Va.)* 1; *s. c.*, 18 *Am. R.* 663, 678. Applied (Validity of law impairing remedy on contract) in *James v. Stull*, 9 *Barb.* 432. Disting'd and questioned (Effect of repeal of a statute) in *People v. Supervisors of Westchester*, 4 *Barb.* 64, 75. Applied in *People v. Townsey*, 5 *Den.* 70; *People v. Van Pelt*, 4 *How. Pr.* 39. Cited as authority in *Curtis v. Leavitt*, 15 *N. Y.* 153; *Hartung v. People*, 22 *Id.* 102. Explained and criticised in *Tinker v. Van Dyke*, 1 *Flipp. (U. S.)* 521, 534. Cited as authority, in *Lamb v. Schottler*, 54 *Cal.* 323, 325. Followed in *Stephenson v. Doe*, 8 *Blackf. (Ind.)* 503; *s. c.*, 46 *Am. Dec.* 489, with note. Approved (Statute becoming part of contract) in *Damman v. Com. of School & Cn. Lands*, 4 *Wisc.* 418. Explained (Contracts as affected by Statelaws) in 3 *Par. on Contr.* 533, *n. k.*
- *v. Patterson.* See *Van Dusen v. Worrell.*
- *v. Potter.* See *Clark v. Holdridge.*
- *v. Rawson*, 1 *Den.* 105. Disting'd (Sufficiency of complaint in action on promissory note) in *Osgood v. Whittelsey*, 10 *Abb. Pr.* 134, 136.
- *v. Sprague*, 66 *N. Y.* 392. See *Chaffee v. Fort.* See also (What may be attached) *Matter of True*, 4 *Abb. N. C.* 90.
- *v. Stoddard*, 7 *Paige*, 163; *s. c.*, 20 *Wend.* 507. Applied (Sales—fraudulent possession) in *Jones v. O'Brien*, 86 *Super. Ct. (J. & S.)* 58, 65. Discussed (Assignment for benefit of creditors—delivery of possession) in *Burrill on Assign.* § 274, 4 ed.
- *v. Tomlinson*, 38 *Barb.* 641; *s. c.*, more fully, 15 *Abb. Pr.* 88.
- *v. Tucker*, 24 *Wend.* 447. Followed (Effect of referring dispute to umpire) in *Whiteman v. Mayor, &c. of N. Y.*, 21 *Hun.* 117, 120. Approved and followed (Contract to satisfaction of defendant) in *Wilson v. Gould*, 21 *Hun.* 446.
- *v. Van Wyck*, 1 *Hill.* 438. Explained (Conveyances to defraud creditors) in *Vance v. Phillips*, 6 *Id.* 433.
- *v. Warren*, 11 *Johns.* 57. Overruled (Interested witness not allowed to prove notice to produce papers) in *Jackson v. Frier*, 16 *Id.* 193.
- *v. Wentworth.* See *Buhler v. Wentworth.*
- *v. Wood*, 10 *How. Pr.* 313. Applied (Construction of statute requiring security for costs) in *Flint v. Van Deusen*, 24 *Hun.* 440, 442.
- *v. Wright*, 20 *Johns.* 367. Further decision between same parties in 2 *Wend.* 369, which was aff'd in 6 *Id.* 284. Decision in 2 *Wend.* applied (Money paid) in *Dougherty v. Vallotton*, 38 *Super. Ct. (J. & S.)* 455, 460. Discussed (Defense—judgment recovered) in 2 *Chitty on Contr.* 1171, *n. a.*, 11 *Am. ed.*; *Id.* 1172, *n. c.* Followed, with *Halliday v. Martinet*, 20 *Johns.* 173; *Nichols v. Goldsmith*, 7 *Wend.* 161 (Evidence of memoranda made by third persons since deceased) in *Lathrop v. Lawson*, 5 *La. Ann.* 238; *s. c.*, 52 *Am. Dec.* 585, 587. Decision in 20 *Johns.* collated with *Curtis v. Brown*, 2 *Barb.* 51, and other cases (Nature of contract of guarantor) in *Beebe v. Dudley*, 26 *N. H.* 249; *s. c.*, 59 *Am. Dec.* 341, with note.
- Butolph v. Blust**, 5 *Lans.* 84; *s. c.*, more fully, 41 *How. Pr.* 481. Disting'd (Police-man's power to arrest without a warrant) in *Hennessy v. Connolly*, 13 *Hun.* 173, 175.
- Butterfield v. Klaber**, 52 *How. Pr.* 255, 262. Considered with *McKeon v. See*, 4 *Robt.* 449, and other cases (Noise as a nuisance) in article by SEYMOUR D. THOMPSON, in 22 *Am. L. Reg. N. S.* 631.
- *v. Radde*, 38 *Super. Ct. (J. & S.)* 1. Motion for leave to go to Ct. of App. denied in *Id.* 44; *s. c.*, 47 *How. Pr.* 535. Notwithstanding an appeal having been taken, was dismissed in 58 *N. Y.* 489, as *Butterfield v. Rudde and Selchow v. Rudde.* Motion for re-argument granted in 40 *Super. Ct. (J. & S.)* 169 as *Butterfield v. Radde and Selchow v. Radde.* Decision on re-argument rev'g decision in 38 *Id.* 1, is in 41 *Id.* 181, with note, giving a history of the case. Decision in 38 *Id.* 44 disting'd (Leave to appeal) in *Alfaro v. Davidson*, 40 *Id.* 289. Decision in 40 *Id.* cited (Re-argument at general term, when allowable) in *Produce Bank v. Morton*, 42 *Id.* 124.
- Butternuts & Oxford Turnpike Co. v. North**, 1 *Hill.* 518. Applied with *Fort Edward & Fort Miller Plank Road Co. v. Payne*, 15 *N. Y.* 583; *Troy & Boston R. R. Co. v. Tibbits*, 18 *Barb.* 298 (Subscriptions to stock in rail-roads, &c.) in *Craig v. Town of Andes*, 93 *N. Y.* 405, 414. Disting'd with *Fort Edward & Fort Miller Plank Road Co. v. Payne*, 15 *N. Y.* 583 (Contracts in aid of rail-roads) in *First Nat. B'k of Cedar Rapids v. Hendrie*, 49 *Iowa*, 402; *s. c.*, 31 *Am. R.* 153.
- Butterworth v. Crawford**, 3 *Daly*, 57. Rev'd in 46 *N. Y.* 349. See *Lampman v. Mills.* Decision in 46 *N. Y.* explained (Torts—easements) and cases cited to the contrary, in *Moak's Underhill's Torts*, 1 *Am. ed.* 429. Cited, with other cases (Presumption of easement from common grant) in 2 *Whart. Com. on Ev.* § 1346, *n.*, as greatly qualifying the doctrine of the text; *Partridge v. Gilbert*, 15 *N. Y.* 601, being also cited in this connection.

- **v. Gould**, 41 *N. Y.* 450. See Patrick *v.* Metcalf. Followed (Recovery by one of two claimants of amount in dispute, when it has been paid to the other) in Osby *v.* Conant, 5 *Lans.* 310; Rowe *v.* Bank of Auburn, 51 *N. Y.* 674; Decker *v.* Saltzman, 59 *N. Y.* 279. Disting'd in Carver *v.* Creque, 48 *N. Y.* 385; Hathaway *v.* Town of Cincinnati, 62 *N. Y.* 434, 447. Followed in Peckham *v.* Van Wagenen, 83 *N. Y.* 40. Disting'd in Long *v.* Russell, 45 *Super. Ct. (J. & S.)* 434. Disting'd (Claim against U. S. government) in Lake *v.* Devoe Manufacturing Co., 7 *Daly*, 161, 163.
- **v. O'Brien**, 28 *Barb.* 187; s. c., 7 *Abb. Pr.* 456; 16 *How. Pr.* 503. Aff'd in 23 *N. Y.* 275. Further decision in 39 *Barb.* 192; s. c., 24 *How. Pr.* 438. Decision in 28 *Barb.* approved (Effect of statute forbidding corporations to interpose defense of usury) in Belmont Branch Bank *v.* Hogs, 7 *Bosw.* 543, 558; and see Hungerford's Bank *v.* Dodge, 30 *Barb.* 625, 629. Decision in 23 *N. Y.* followed in Strong *v.* N. Y. Laundry M'fg Co., 37 *Super. Ct. (J. & S.)* 279, 282. Decision in 39 *Barb.* overruled (Action by creditor or receiver) by Osgood *v.* Laytin, 3 *Abb. Ct. App. Dec.* 418.
- Button v. Hudson River R. R. Co.**, 18 *N. Y.* 248. See Owen *v.* Same. Said in Johnson *v.* Hudson River R. R. Co., 20 *N. Y.* 65, not to be a lucid precedent (Burden of proof as to plaintiff's freedom from negligence). Examined in Welling *v.* Judge, 40 *Barb.* 209. Applied in Robinson *v.* N. Y. Central, &c. R. R. Co., 65 *Barb.* 152. Applied (Contributory negligence) in McGrath *v.* Hudson River R. R. Co., 32 *Barb.* 152; Cox *v.* President, &c. of Westchester County Road, 33 *Barb.* 416. Examined in Bernhardt *v.* Renss. & Saratoga R. R. Co., 19 *How. Pr.* 203. Collated with Johnson *v.* Hudson River R. R. Co., 5 *Duer*, 21; 20 *N. Y.* 65; Reynolds *v.* N. Y. Central, &c. R. R. Co., 53 *Id.* 248; Chapman *v.* New Haven R. R. Co., 19 *Id.* 341; Colegrove *v.* N. Y. & N. H. R. R. Co. & N. Y. & Harlem R. R. Co., 20 *Id.* 492; Brown *v.* N. Y. Central R. R. Co., 32 *Id.* 597; Webster *v.* Hudson River R. R. Co., 38 *Id.* 260; Mooney *v.* Hudson River R. R. Co., 5 *Robt.* 548, and other cases, in 28 *Am. R.* 563, *n.*
- **v. McCauley**, 38 *Barb.* 413. Rev'd (Breach of promise of marriage) in 1 *Abb. Ct. App. Dec.* 282; s. c., 5 *Abb. Pr. N. S.* 29.
- Butts v. Genung**, 5 *Paige*, 254. Applied (Liability of estate of joint debtor) in Stahl *v.* Stahl, 2 *Lans.* 60. Explained and applied (Proof in action by judgment creditor against heirs at law) in Blossom *v.* Hatfield, 24 *Hun.* 275.
- **v. Swartwood**, 2 *Cow.* 432, with note, and supplemental note at p. 572. Decisions in notes denied (Testimony by persons who deny any future punishments) in Atwood *v.* Welton, 7 *Conn.* 75, as opposed to Jackson *v.* Gridley, 18 *Johns.* 98; and see Stanbro *v.* Hopkins, 28 *Barb.* 265.
- **v. Wood**, 38 *Barb.* 181. Aff'd in 37 *N. Y.* 317. See Carpenter *v.* Danforth; Greaves *v.* Gouge; Scott *v.* Depeyster. Decision in 37 *N. Y.* disting'd (Liability of trustee of corporation for fraudulent breach of trust) in Van Dyck *v.* McQuade, 86 *N. Y.* 33, 46. Applied in East *N. Y.*, &c. R. R. Co. *v.* Elmore, 5 *Hun.* 214; Rockford, R. I., &c. R. R. Co. *v.* Boody, 56 *N. Y.* 461. Applied (Inability of director to make contract binding on corporation) in Coleman *v.* Second Ave. R. R. Co., 38 *N. Y.* 203. Applied (Compensation of officers of corporation) in Blatchford *v.* Ross, 54 *Barb.* 48. Followed in Jones *v.* Morrison, 16 *Northw. Rep.* 854, 858. Followed in Cheeney *v.* Lafayette, Bloomington, &c. R. R. Co., 68 *Ill.* 570; s. c., 18 *Am. R.* 584, 586; Holder *v.* Lafayette, Bloomington, &c. R'way Co., 71 *Ill.* 106; s. c., *Am. R.* 89.
- Buys v. Gillespie**, 2 *Johns.* 115; s. c., 3 *Am. Dec.* 404; 3 *N. Y. Com. L. Law. ed.* 321, with brief note, contrary to the case.
- Byass v. Sullivan**, 21 *How. Pr.* 50. Cited (Witness not compelled to produce documents that would inculpate him) in 1 *Whart. Com. on Ev.* § 533.
- Bye, Matter of**, 2 *Daly*, 528. Cited in 58 *Am. Dec.* 113, *n.*, as forcibly recognizing the principle of domicile by birth.
- Byers v. Van Deusen**, 5 *Wend.* 268. Cited (Effect of stipulation to submit to arbitration matters in difference between partners) in *Story on Partn.* 7 ed. § 215, *n.* Cited in *Id.* § 300, as showing when the dissolution of a partnership may be implied from the nature of an award.
- Bylandt v. Comstock**, 25 *How. Pr.* 429; s. c. as Comstock's Case, 16 *Abb. Pr.* 233. Said not to be authority (Being out but within jail liberties, not being in prison) in Develin *v.* Cooper, 84 *N. Y.* 410, 416. See *Code Civ. Pro.* 1881, § 2188, *n.*
- Byrne v. N. Y. Central, &c. R. R. Co.**, 14 *Hun.* 322. Rev'd (Contributory negligence) in 83 *N. Y.* 620.
- **v. Van Hosen**, 5 *Johns.* 66. Examined (Powers and duties of guardian) in Palmer *v.* Oakley, 2 *Doug.* 465. Approvingly cited, with Jackson *v.* Sharp, 9 *Johns.* 167; Jackson *v.* Thomas, 16 *Johns.* 301, and other cases (Presumption that possession of land accompanies title) in Riley *v.* Jameson, 3 *N. H.* 23; s. c., 14 *Am. Dec.* 325.
- **v. Weeks**, 7 *Bosw.* 372. Aff'd in 4 *Abb. Ct. App. Dec.* 657.
- Byrnes v. City of Cohoes**, 5 *Hun.* 602. Aff'd in 67 *N. Y.* 204. Decision in 67 *N. Y.* disting'd (Liability for flow of surface water) in Lynch *v.* Mayor, &c. of N. Y., 76 *N. Y.* 60, 62. Relied on in Beach *v.* City of Elmira, 22 *Hun.* 163. Followed in O'Brien *v.* City of St. Paul, 25 *Minn.* 333; s. c., 33 *Am. R.* 470; considering the principle of Radcliff *v.* Mayor of Brooklyn, 4 *N. Y.* 195, not so sound or just; but the latter, and Goddard *v.* Tuttle, 29 *N. Y.* 459, are cited as to how a man must use his own. Explained

in *Moak's Underhill's Torts*, 1 Am. ed. 468. Approved as founded on the most obvious grounds of justice; and other cases *pro* and *con* collated, in 19 Am. L. Rev. 291, 292.

— *v. National Ins. Co.*, 1 Cov. 265. Followed and approved (Applying rule for deducting one-third new for old, in case of loss under marine policy) in *Eager v. Atlas Ins. Co.*, 14 Pick. (Mass.) 141; s. c., 25 Am. Dec. 363, 368, with note.

**Byxhie v. Wood**, 24 N. Y. 607. Reported below, as *Sheldon v. Wood*, 2 Bosw. 267. Relied on (Fixing action as one in tort by allegations of complaint) in *Sparmann v. Keim*, 9 Abb. N. C. 1, 6; s. c., 83 N. Y. 245. Commented upon in *Pomeroy on Rem.* § 572, n. 2, as inconsistent with *Booth v. Farmers' & Mech. Bank*, 1 Sup'm. Ct. (T. & C.) 45. Applied in *Townsend v. Hendricks*, 39 How. Pr. 477; *Quintard v. Newton*, 5 Robt. 80. Followed (Time for objecting to non-joinder or to improper parties) in *Rhodes v. Dymock*, 33 Super. Ct. (J. & S.) 141. Applied (Assignment of cause of action) in *Bonnell v. Wheeler*, 1 Hun, 332, 339; *Genet v. Howland*, 45 Barb. 567; *Graves v. Spier*, 58 Barb. 385. Followed in *Mason v. Raplee*, 66 Barb. 182. Disting'd as to cause of action against trustee,—in *Bank of California v. Collins*, 5 Hun, 209. Relied on, and *Zabriskie v. Smith*, 13 N. Y. 322 doubted, in *Baker v. Crandal*, 78 Mo. 584; s. c., 47 Am. R. 126. Disting'd (Exceptions) in *Salisbury v. Howe*, 13 Weekly Dig. 448. Criticised but followed (Amendment of complaint) in *Bedford v. Terhune*, 30 N. Y. 461. Followed in *Knapp v. Roche* 37 Super. Ct. (J. & S.) 395, 407.

### C.

**Cable v. Cooper**, 15 Johns. 152. Explained (Effect of discharge on *habeas corpus*) in *Wiles v. Brown*, 3 Barb. 37, as superseded by L. 1818, c. 277. Reviewed with *Bank of the U. S. v. Jenkins*, 16 Johns. 308; *Yates' Case*, 4 Id. 318, and other cases (Limits of power to discharge on *habeas corpus*) in *Commonwealth v. Lecky*, 1 Watts (Pa.) 66; s. c., 26 Am. Dec. 37, with note. Disting'd on the ground that the judgment was re-examinable by writ of error,—in *Ex parte Randolph*, 2 Brock. (Va.) 472 (cited in 4 Gill [Md.] 301; s. c., 45 Am. Dec. 130, with note).

— *v. Dakin*. See *Brizsee v. Maybee*.

**Cadwell v. Colgate**, 7 Barb. 253. Disting'd (Validity of undertaking on attachment) in *Bildersee v. Aden*, 62 Barb. 175, 180. See *Code Civ. Pro.* 1881, § 642, n. Disting'd (Sufficiency of affidavit on information and belief) in *Miller v. Adams*, 52 N. Y. 409, 414.

— *v. Manning*, 15 Abb. Pr. 271; s. c., 24 How. Pr. 88. Approved as correctly stating law (Practice before and since the Code in obtaining security for costs) in *Hinds v. Douglass*, 19 Abb. Pr. 11.

**Cady v. Fairchild**, 18 Johns. 129. Approved (New trial in justice's court) in *Stephens v. Wider*, 32 N. Y. 351; explaining *Herrick v. Stover*, 5 Wend. 580; *Rathbone v. Stanton*, 6 Barb. 141; *Fish v. Skut*, 21 Barb. 333; *Wiley v. Slater*, 22 Barb. 506.

**Cagger v. Lausing**, 57 Barb. 421. Rev'd in 43 N. Y. 550. Decision in 43 N. Y. explained (Effect of payment of purchase money on parol contract for sale of land) in *Morrill v. Cooper*, 65 Barb. 512, 517.

— *v. —*, 4 Hun, 812. Aff'd in 64 N. Y. 417. Decision in 64 N. Y. superseded (Maintaining real action by infant in his own name) by *Code Civ. Pro.* § 1686. Compare *Id.* § 1534, &c.

**Cagwin v. Town of Hancock**, 22 Hun, 201. Rev'd in 84 N. Y. 532. See *Allen v. Brown*; *Town of Springport v. Teutonia Sav'gs B'k.* Decision in 84 N. Y. not followed (Validity of town bonds in hands of *bona fide* holder) in *McCall v. Town of Hancock*, 13 Reporter, 419.

**Cahen v. Continental Life Ins. Co.**, 41 Super. Ct. (J. & S.) 296. Rev'd in 69 N. Y. 300. Decision in 69 N. Y. followed (Witness — privilege) in *Grattan v. Metropolitan Life Ins. Co.*, 80 N. Y. 281, 298.

— *v. Platt*, 40 Super. Ct. (J. & S.) 483. Rev'd in 69 N. Y. 348; s. c., 25 Am. R. 203.

**Cahoon v. Bank of Utica**, 4 How. Pr. 423. Aff'd in 7 How. Pr. 134, which was, however, rev'd in 7 N. Y. 486. See *Alger v. Scoville*.

**Cain v. Ingham**, 7 Cov. 478. See *Higbie v. Leonard*. See (Costs in justice's courts) *Code Civ. Pro.* 1881, § 3075, n.

**Cairnes v. Bleeker**, 12 Johns. 300; s. c., 5 N. Y. Com. L. Law. ed. 399, with brief note. Disting'd with *Hanks v. Drake*, 49 Barb. 202 (Ratification of unauthorized sale by agent) in *Bank of Owensboro v. Western Bank*, 13 Bush (Ky.) 526; s. c., 26 Am. R. 211, 218. Applied in *Meyer v. Morgan*, 51 Miss. 21; s. c., 24 Am. R. 617, 620. Result stated (Agent's liability for conversion) in *Lavery v. Snethers*, 68 N. Y. 522, 527; s. c., 23 Am. R. 184.

**Caines v. Brisbane**. See *Mitchell v. Bristol*.

**Caldwell's Case**. See *Fitzgerald*, Matter of.

**Caldwell v. Cassidy**, 8 Cov. 271. See *Wolcott v. Van Santvoord*. Cited as settled law (Presentment of negotiable instrument for payment) in *Hills v. Place*, 48 N. Y. 520. Compared with other cases in *Salt Springs Nat. B'k v. Burton*, 58 N. Y. 435. Applied to contract to pay for goods,—in *Locklin v. Moore*, 5 Lans. 307, which was aff'd in 57 N. Y. 360, which see. Applied to order on city treasurer,—in *Read v. City of Buffalo*, 67 Barb. 528. Dictum as to necessity of demand, in case of note payable on demand, denied in *Haxtun v. Bishop*, 3 Wend. 14. Explained in 1 *Pars. on Contr.* 273, n. o. Discussed in 3 *Kent Com.* 98. Followed (Effect of tender) in *Kelly v. West*, 56 Super. Ct. (J. & S.) 304.

- **v. Murphy**, 1 *Duer*, 233. Aff'd in 11 *N. Y.* 416. See *Camden R. R. & Transp. Co. v. Burke*; *Matteson v. N. Y. Central R. R. Co.* Decision in 1 *Duer* applied (Compensatory damages for personal injuries) in *Hamilton v. Third Ave. R. R. Co.*, 13 *Abb. Pr. N. S.* 323. Approved and applied in *Ransom v. N. Y. & Erie R. R. Co.*, 15 *N. Y.* 423. Applied (Recovery for consequential damages) in *Platt v. N. Y. Central R. R. Co.*, 37 *N. Y.* 475. Disting'd (Negligence in passenger who rides in unusual position) in *Spooner v. Brooklyn City R. R. Co.*, 31 *Barb.* 420. Followed (Necessity that negligence be contributory) in *Johnson v. Hudson River R. R. Co.*, 6 *Duer*, 646. Decision in 11 *N. Y.* commented on (Admission of plaintiff's testimony *ex necessitate*) in *Garvey v. Camden & Amboy R. R. Co.*, 4 *Abb. Pr.* 173. Applied in *Baker v. Griffin*, 10 *Bosw.* 142; *Cleveland v. N. J. Steamboat Co.*, 5 *Hun.* 529. Disting'd in *Page v. N. Y. Central R. R. Co.*, 6 *Duer*, 532. Followed in *Werely v. Persons*, 28 *N. Y.* 344. Referred to in *Reed v. N. Y. Central R. R. Co.*, 45 *N. Y.* 579, as superseded by statutory provisions. Applied (Exception—when too general) in *Elton v. Markham*, 20 *Barb.* 346; *Dows v. Rush*, 28 *Barb.* 181; *O'Donnell v. N. Y. & Harlem R. R. Co.*, 8 *Daly*, 413.
- **v. N. J. Steamboat Co.**, 56 *Barb.* 425. Aff'd in 47 *N. Y.* 282. Decision in 47 *N. Y.* disting'd (Master's liability to punitive damages for wrongful act of servant) in *Townsend v. N. Y. Central, & C. R. R. Co.*, 56 *N. Y.* 295, 299; *Samuels v. Evening Mail Assoc.*, 9 *Hun.* 291. Followed in *Hamilton v. Third Ave. R. R. Co.*, 13 *Abb. Pr. N. S.* 323. Followed (Construction by appellate court of charge to jury) in *Carnes v. Platt*, 41 *Super. Ct. (J. & S.)* 435, 439; *Loseo v. Buchanan*, 51 *N. Y.* 492. Applied (Presumption of negligence in carrier) in *Marckwald v. Oceanic Steam Nav. Co.*, 11 *Hun.* 467. Disting'd (Misconduct by court to jury—when reviewable on bill of exceptions) in *Huntoon v. Russell*, 50 *How. Pr.* 155.
- Calhoun v. Lee**, 29 *How. Pr.* 1. See to the contrary (Right of a sheriff to fees upon the settlement of proceedings on attachment) *Muller v. Sautler*, 28 *Id.* 87; *Trenor v. Fachin*, 20 *Id.* 405.
- Calking v. Baldwin**, 4 *Wend.* 667; s. c., 21 *Am. Dec.* 168. Approved (Statutory remedy for injuries, when exclusive) in *City of Camden v. Allen*, 2 *Dutcher (N. J.)* 398. Cited as authority in *Troy v. Cheshire R. R. Co.*, 23 *N. H.* 83; s. c., 55 *Am. Dec.* 177, 185. Disting'd (Payment as condition precedent to taking property by eminent domain) and *Bloodgood v. Mohawk & Hudson R. R. Co.*, 18 *Wend.* 1, explained, in *Dusenbury v. Mutual Telegraph Co.*, 11 *Abb. N. C.* 440.
- **v. Barger**, 44 *Barb.* 424. Doubted (Negligence in burning rubbish) in *Hays' Admr v. Miller*, 6 *Hun.* 320, 324.
- **v. Brand**, 5 *How. Pr.* 395. See in accord therewith (Right of public officer to double costs) *Tillou v. Sparks*, 9 *How. Pr.* 465.
- **v. Calkins**, 8 *Barb.* 305. Aff'd, in effect, as *Calkins v. Isbell*, 20 *N. Y.* 147.
- **v. Falk**, 39 *Barb.* 620. Aff'd in 1 *Abb. Ct. App. Dec.* 291.
- **v. Isbell**. See *Calkins v. Calkins*.
- **v. Long**, 22 *Barb.* 97, 99. Cited as authority (Application of statutory provision making seal only presumptive evidence of a consideration) in *Braden v. Ward*, 13 *Vr. (N. J.)* 523. See *Code Civ. Pro.* 1881, § 840, n.
- **v. Packer**, 21 *Barb.* 275. To the contrary see (Imperfect records) *James v. Stookey*, 1 *Wash. C. Ct.* 330. But see *Abb. Tr. Ec.* 538.
- **v. Smith**, 48 *N. Y.* 614; s. c., 8 *Am. R.* 575. Disapproved (Application of a partnership claim to payment of an individual debt) in *Cotzhausen v. Judd*, 43 *Wis.* 219; s. c., 28 *Am. R.* 541. Cited, with *Livingston v. Roosevelt*, 4 *Johns.* 251, 265, and other cases, in *Story on Partn.* 7 ed. § 132, n. Quoted (Suits by partners against each other) in 1 *Collyer on Partn.* § 197, n. 2, Wood's *Am. ed.* Disapproved (Remedy for misjoinder of plaintiffs) in *Pomeroy on Rem.* § 214.
- **v. Williams**, 5 *How. Pr.* 393. See (Increased costs) *Code Civ. Pro.* 1881, § 3258, n.
- Callagan v. Hallet**, 1 *Cal.* 104. Compare (Compensation of pilots) *Schooner Wave v. Hyer*, 2 *Paine*, 150. Cited with *Payne v. Eden*, 3 *Cri.* 213; *Waite v. Harper*, 2 *Johns.* 386; *Bruce v. Lee*, 4 *Id.* 410; *Ycomans v. Chatterton*, 9 *Id.* 295; *Wiggin v. Bush*, 12 *Johns.* 306; *Tuxbury v. Miller*, 19 *Johns.* 311; in *Sharp v. Teese*, 4 *Halst. (N. J.)* 352; s. c., 17 *Am. Dec.* 479, as authority for denying the validity of note given by an insolvent debtor, in consideration that his creditors withdraw opposition to his discharge.
- Callahan v. Mayor, &c. of N. Y.**, 6 *Daly*, 230. Aff'd in 66 *N. Y.* 656, but no opinion. Decision in 66 *N. Y.* relied on (Want of jurisdiction of subject-matter, when not waived) in *Westervelt v. Westervelt*, 46 *Super. Ct. (J. & S.)* 394.
- Callanan v. Van Vleck**, 36 *Barb.* 324. Said in 41 *N. Y.* 619, to have been aff'd by Ct. of App. in June, 1869.
- Calvo v. Davies**, 8 *Hun.* 222. Aff'd in 73 *N. Y.* 211; s. c., 29 *Am. R.* 130. See *Hamill v. Gillespie*. Decision in 73 *N. Y.* followed and approved (Rights arising from assumption of mortgage by purchaser) in *George v. Andrews*, 60 *Md.* 26; s. c., 45 *Am. R.* 706. Disapproved in *Connecticut Mutual Life Ins. Co. v. Mayer*, 8 *Mo. App.* 22. Disting'd (Creation of right of suretyship by arrangement among debtors) in *Palmer v. Purdy*, 83 *N. Y.* 147. Explained (Effect of giving collateral security) in *Fireman's Ins. Co. v. Wilkinson*, 8 *Stew. (N. J.)* 160; s. c., 14 *Reporter*, 245.

- Camblos v. Butterfield**, 15 *Abb. Pr. N. S.* 197. A motion in this case said to have been denied Nov. 30, 1875,—in 12 *Alb. L. J.* 368.
- Camden R. R. & T. Co. v. Belknap**, 21 *Wend.* 354. See *Hollister v. Nowlen*. Discussed (Common carrier—delivery of baggage to, to create liability for loss of) in *Ang. on Carr.* §§ 135, 239, 5 ed.
- **v. Burke**, 13 *Wend.* 611; s. c., 28 *Am. Dec.* 488, with note, containing citations thereof; 12 *N. Y. Com. L. Law. ed.* 493, with brief note. Applied with *Hollister v. Nowlen*, 19 *Wend.* 236 (Liability of carriers of passengers), in *Ingalls v. Bills*, 9 *Metc. (Mass.)* 1; s. c., 43 *Am. Dec.* 346, 353, with lengthy note. Examined and applied, with *Hegeman v. Western R. R. Co.*, 16 *Barb.* 353; 13 *N. Y.* 9; *Caldwell v. Murphy*, 1 *Duer*, 241, in *Taylor v. Grand Trunk R'way*, 48 *N. H.* 304; s. c., 2 *Am. R.* 229, 232. Discussed in *Ang. on Carr.* § 523, 5 ed.
- Cameron v. Chappell**, 24 *Wend.* 94. Included, with note (Accommodation paper—usury) in *Redf. & B. Lead. Cns. on B. of Exch.* 287.
- **v. Dürkheim**, 7 *Alb. L. J.* 298. Rev'd in 55 *N. Y.* 425.
- **v. Freeman**. See *Swift v. Wells*.
- **v. Irwin**, 5 *Hill*, 272. See *Wood v. Colvin*. Cited as authority (Rights acquired under foreclosure of void mortgage) in *Warner v. Blakeman*, 4 *Abb. Ct. App. Dec.* 535, which aff'd 36 *Barb.* 501, 516, which see. Applied in *Mickles v. Dillaye*, 15 *Hun*, 301. Explained (Power of court of law to correct mistake) in *McNulty v. Prentice*, 25 *Barb.* 213. Applied (Mortgagee—when not estopped from denying mortgagor's title) in *National Fire Ins. Co. v. McKay*, 1 *Sheld.* 145. Explained (Mortgage—payment as extinguishing power of sale) in 4 *Kent Com.* 196, n. b. Discussed (Statute of Limitations—adverse possession) in *Ang. on Limit.* § 418, 6 ed.
- **v. Seaman**, 7 *Hun*, 601. Rev'd in 69 *N. Y.* 396; s. c., 25 *Am. R.* 212, with note. Decision in 69 *N. Y.* followed (Trustee's liability for failure to file report) in *Butler v. Smalley*, 49 *Super. Ct. (J. & S.)* 492.
- **v. Young**, 6 *How. Pr.* 372. See (Execution after creditor's death) *Code Civ. Pro.* 1881, § 1376, n.
- Cammann v. Tompkins**, 1 *Code R. N. S.* 12. Aff'd in 12 *Barb.* 265.
- Cammeyer v. United German Lutheran Churches**, 2 *Sandf. Ch.* 186. Cited as authority with *Robertson v. Bullions*, 9 *Barb.* 64, and other cases (Purpose of trust may be changed by consent) in 12 *Am. L. Reg. N. S.* 361, n. Explained (Corporate meetings) in *Ang. & A. on Corp.* § 504, 11 ed.
- Camp v. Barney**, 4 *Hun*, 373; s. c., 6 *Sup'm. Ct. (T. & C.)* 622. Followed (Necessity of leave before suing receiver) in *Barton v. Barbour*, 104 *U. S.* 126. Compare dissent in article by GEORGE W. McCARY in 17 *Am. L. Rev.* 833, 845.
- **v. Bennett**, 16 *Wend.* 48. Followed (Invalidity of appearance of infant defendant without guardian) in *McMurray v. McMurray*, 60 *Barb.* 117.
- **v. Camp**, 2 *Redf.* 141. Rev'd in 18 *Hun*, 217.
- **v. Camp**, 2 *Hill*, 628. Applied (Change of possession on mortgage of chattels) in *Steele v. Benham*, 84 *N. Y.* 634, 639.
- **v. Chamberlain**, 5 *Den.* 198. See *Beckman v. Lansing*. Applied (What constitutes valid levy) in *Bond v. Willet*, 1 *Abb. Ct. App. Dec.* 174. Followed in *Barker v. Binninger*, 14 *N. Y.* 278.
- **v. Garr**. See *Adams v. Hopkins*.
- **v. Ingersoll**, 47 *Super. Ct. (J. & S.)* 534. Rev'd in 86 *N. Y.* 433.
- **v. Norton**, 52 *Barb.* 96. Compare *Dexter v. Norton*, 47 *N. Y.* 62, which aff'd 55 *Barb.* 272.
- **v. Root**, 18 *Johns.* 22. Approved with *Exp. Wright*, 6 *Cov.* 399; *Miller v. Van Anken*, 1 *Wend.* 516; *Wells v. Lain*, 15 *Id.* 99; *West v. Stanley*, 1 *Hill*, 69; *Smith v. Barse*, 2 *Id.* 387 (Submission to arbitrators works discontinuance of suit) in *Dolph v. Clemens*, 4 *Wisc.* 184.
- **v. Wood**, 76 *N. Y.* 92. Disting'd (Liability of owner of dangerous premises) in *Edwards v. N. Y. & Harlem R. R. Co.*, 25 *Hun*, 634, 637; *Converse v. Walker*, 30 *Hun*, 596. Explained in *Moak's Underhill's Torts*, 1 *Am. ed.* 20. Cited in 34 *Am. R.* 230, n., collating cases. See also lengthy note, 26 *Am. R.* 562.
- Campbell v. Adams**, 38 *Barb.* 132. Denied (Former assessment upon premium note as bar to subsequent one) in *Sands v. Sweet*, 44 *Barb.* 108; *Jackson v. Van Slyke*, *Id.* 117, n.
- **v. Arnold**, 1 *Johns.* 511. Followed (Necessity of proof of actual possession, to enable action of trespass to be maintained) in *Wickham v. Freeman*, 12 *Johns.* 184. To the contrary, *Starr v. Jackson*, 11 *Mass.* 524. Applied, with *Tobey v. Webster*, 3 *Johns.* 468; *Van Rensselaer v. Van Rensselaer*, 9 *Id.* 376, in *Gibbons v. Dillingham*, 10 *Ark.* 9; s. c., 50 *Am. Dec.* 233, 236, with note.
- **v. Bruen**, 1 *Bradf.* 224. Disapproved with *Westervelt v. Gregg*, 1 *Barb. Ch.* 469 (Reference in proceedings to compel executor to account) in *Matter of Douglass*, 3 *Redf.* 538. Disting'd in *Buchan v. Rintoul*, 10 *Hun*, 183, 186. Overruled with *Jennings v. Phelps*, 1 *Bradf.* 485; *Babcock v. Lillis*, 4 *Id.* 218 (Surrogate's jurisdiction as to disputed claims) in *Martine's Estate*, 11 *Abb. N. C.* 50.
- **v. Butler**, 14 *Johns.* 349. See *Herrick v. Carman*. Disapproved (Liability of indorser, as guarantor) in *Hall v. Newcombe*, 3 *Hill*, 233. Applied (Evidence to show malice, in action for slander) in *Coleman v. Playsted*, 36 *Barb.* 30. Approved (Subsequent action for words given in evidence to show malice) in *Howard v. Sexton*, 4 *N. Y.* 161.

- **v. Butts**, 3 *N. Y.* 173. Disting'd (Parol evidence of subject litigated on former trial) in *Davis v. Talcott*, 14 *Barb.* 620. Cited as authority in *Smith v. Smith*, 79 *N. Y.* 634.
- **v. Campbell**, 54 *How. Pr.* 115. Aff'd in 12 *Hun.* 636.
- **v. —**, 65 *Barb.* 639. Discussed (Statute of Frauds—verbal contract—suit for partial services performed) in *Browne on Stat. of Frauds*, § 122 a, n. 1, 4 ed.
- **v. Champlain & St. Lawrence R. R. Co.**, 18 *How. Pr.* 412. Aff'd in *Id.* 419, n.
- **v. Conner**, 41 *Super. Ct. (J. & S.)* 459. Aff'd in 70 *N. Y.* 424.
- **v. Consalus**, 25 *N. Y.* 613. Relied on (Former judgment, when not a bar) in *Ferguson v. Mass. Mut. L. Ins. Co.*, 22 *Hun.* 326. Disting'd (Binding effect of report of referee in foreclosure) in *Sutherland v. Ross*, 47 *Barb.* 147.
- **v. Cothran**, 1 *Sup'm. Ct. (T. & C.)* 70; s. c., 65 *Barb.* 534. Aff'd in 56 *N. Y.* 279. See *Adams v. Hopkins*. Decision in 56 *N. Y.* followed (Liability of attorney for sheriff's fees) in *Van Kirk v. Sedgwick*, 23 *Hun.* 39. Limited in *Bowe v. Campbell*, 63 *How. Pr.* 167. Collated with other cases, in *Smith on Sheriffs*, 524. Compare *Code Civ. Pro.* § 3307, subd. 7.
- **v. Cowdrey**, 31 *How. Pr.* 172; rev'g *Fish's estate*, 19 *Abb. Pr.* 209; s. c., 1 *Tuck.* 122.
- **v. Erie Railway Co.**, 46 *Barb.* 540. Approved (Party precluded from raising question in which he has no interest) in *Flint v. Craig*, 59 *Barb.* 319.
- **v. Evans**, 54 *Barb.* 566. Aff'd in 45 *N. Y.* 356. See *Cook v. Gregg*; *Rockwell v. Nearing*. Decision in 54 *Barb.* followed (Constitutionality of L. 1867, c. 814, providing for seizure of trespassing animals) in *Squares v. Campbell*, 41 *How. Pr.* 193, 197. Explained in *McConnell v. Van Aerman*, 56 *Barb.* 534. See also *Leavitt v. Thompson*, *Id.* 542.
- **v. Ewait**, 7 *How. Pr.* 399. See (Justice of the peace—when authorized to issue warrant for arrest) *Wilson v. Robinson*, 6 *How. Pr.* 110.
- **v. Foster**, 16 *How. Pr.* 275. Aff'd, on the merits, but disapproved as to pleading, in 35 *N. Y.* 361. Decision in 35 *N. Y.* followed (Income of trust fund, when not to be reached by creditors) in *Hann v. Van Voorhis*, 5 *Hun.* 427; Same *v. Same*, 15 *Abb. Pr. N. S.* 79; *Parker v. Harrison*, 42 *Super. Ct. (J. & S.)* 150; *McEwen v. Brewster*, 17 *N. Y.* 227. Disting'd in *Williams v. Thorn*, 70 *N. Y.* 270, 274; *Miller v. Miller*, 1 *Abb. N. C.* 30, 37. Commented upon in *Wait on Fraud. Conv.* §§ 45, 360, 365. Applied (Application of statutes of uses and trusts to personal property) in *Wells v. Wallace*, 2 *Redf.* 58, 63. Applied in *Roosevelt v. Roosevelt*, 6 *Hun.* 31, 45.
- **v. Genet**, 2 *Hilt.* 290. Followed (Effect of injunction order in supplementary proceedings upon after-acquired property) in *Atkinson v. Sewine*, 43 *How. Pr.* 84. See *Code Civ. Pro.* 1881, § 2469, n. Approved (Losing benefit of admission of truth of counter-claim) in *Randolph v. Mayor, &c. of N. Y.*, 53 *How. Pr.* 76.
- **v. Hall**, 16 *N. Y.* 575. Subsequent proceeding in *Campbell v. Consalus*, 25 *N. Y.* 613. Disting'd (Who is privy in estate, so as to be bound by judgment) in *Bennett v. Couchman*, 48 *Barb.* 83.
- **v. Hoge**, 4 *Hun.* 672. Followed (When action is on contract and referable) in *Harden v. Corbett*, 6 *Hun.* 523.
- **v. Johnston**, 1 *Sandf. Ch.* 148. Explained (Liability of executors to account for rents and profits) in *Moncrief v. Ross*, 50 *N. Y.* 431.
- **v. Logan**, 2 *Bradf.* 90. Followed (Publication of will) in *Burk's Will*, 2 *Redf.* 239, 242. Disting'd in *Neugent v. Neugent*, *Id.* 369, 372. Quoted in 1 *Jarm. on Wills*. Rand. & T. ed. 214, n. Explained in *Willard on Executors*, 105. Approved (Revoking or altering decrees of Surrogate's Court) in *Bailey v. Stewart*, 2 *Redf.* 212, 223.
- **v. Mesier**, 4 *Johns. Ch.* 334; s. c., 8 *Am. Dec.* 570. See *Eastburn v. Kirk*; *Sherred v. Cisco*. Applied (Rights in party wall) in *Eno v. Del Vecchio*, 4 *Duer*, 60; *Partridge v. Gilbert*, 15 *N. Y.* 607, which aff'd 3 *Duer*, 184, which see. Cited as authority, in *Brooks v. Curtis*, 50 *N. Y.* 643. Commented upon in *Wood on Nuis.* 2 ed. §§ 221, 228. Cases collected and compared in 7 *Am. L. Reg. N. S.* 13. Applied (Equitable contribution between owners of adjoining land) in *Matter of Rensselaer & Saratoga R. R. Co.*, 4 *Paige*, 553. Disting'd (Contribution to expense of party wall) in *Sherred v. Cisco*, 4 *Sandf.* 485. Explained in *Leigh v. Dickeson (Q. B. Div. Dec. 1883)* 50 *Law Times R. N. S.* 124. Cited with approval (Grounds of doctrine of contribution) in *Fletcher v. Grover*, 11 *N. H.* 368; s. c., 35 *Am. Dec.* 497, with note. Quoted in 2 *Chitty on Contr.* 891, n. i, 11 *Am. ed.*
- **v. —**, 6 *Johns. Ch.* 21. Disting'd (Interest on money advanced) in *Renss. Glass Factory v. Read*, 5 *Cow.* 598.
- **v. Page**, 67 *Barb.* 113. Appeal dismissed in 50 *N. Y.* 658.
- **v. Parker**, 9 *Bosw.* 322. Examined, with other cases (Distinction between chattel mortgage and pledge) in *Thomas on Mort.* 432.
- **v. People**, 3 *Wend.* 636. Followed (Sufficiency of indictment for perjury at election) in *Burns v. People*, 59 *Barb.* 531.
- **v. Perkins**. See *Farrell v. Calkins*.
- **v. Rawdon**, 19 *Barb.* 494. Rev'd in 18 *N. Y.* 412. Compared with other cases (Wills—gift to the heir as purchaser) in 2 *Jarm. on Wills*, Rand. & T. ed. 617, n. 17.
- **v. Richardson**. See *Mount v. Waite*.
- **v. Seaman**, 2 *Sup'm. Ct. (T. & C.)* 231. Aff'd in 63 *N. Y.* 563; s. c., 20 *Am. L.* 67.

- Case and briefs in State Library at Albany. Case and points in vol. 353, Ct. of App. Cas. Law Inst. Libr. N. Y. city. Decision in 63 *N. Y.* followed (Injunction against nuisance) in *Beach v. City of Elmira*, 22 *Hun.* 158, 162. Cited as authority in *Bushnell v. Robeson*, 2 *Iowa*, 548. Included, with note, in *Lawson Lead. Cas. in Eq. Simplified*, 140. Discussed in *Wood on Nuis.* 2 ed. §§ 531, 534, 544. Quoted in *Id.* § 711. Decision in 2 *Sup'm. Ct. (T. & C.)* cited in 10 *Am. R.* 674, *n.*, as disapproving *Huckenstine's Appeal*, 7 *Penn. St.* 102.
- *v. Shields*, 11 *Hov. Pr.* 565. Collated with other cases (Lease—eviction) in *McAdam on Landl. & T.* 2 ed. § 212.
- *v. Smith*, 8 *Hun.* 6. Aff'd in 71 *N. Y.* 26; *s. c.*, 27 *Am. R.* 5. See further action, for money paid in consequence of this judgment, reported in *Smith v. Truslow*, 84 *N. Y.* § 60. See *Hamill v. Gillespie*. Decision in 71 *N. Y.* disting'd (Assumption of debt) in *Roe v. Barker*, 82 *N. Y.* 431, 435. Applied in *Hand v. Kennedy*, 83 *Id.* 154. Followed in *Follansbee v. Menage*, 28 *Minn.* 312. With *Burr v. Beers*, 24 *N. Y.* 78; *Garnsey v. Rogers*, 47 *Id.* 233, and other *N. Y.* cases said (Right of mortgagee to enforce mortgage debt against another than the mortgagor) in 9 *Am. Dec.* 155, *n.*, to be in harmony with *Mellen v. Whipple*, 1 *Gray (Mass.)* 317.
- *v. Stakes*, 2 *Wend.* 137; *s. c.*, 10 *N. Y. Com. L. Law. ed.* 78, with brief note; 19 *Am. Dec.* 561. See *Gelston v. Hoyt*. Followed (Infant's liability for tort) in *Moore v. Eastman*, 1 *Hun.* 580; *s. c.*, 4 *Sup'm. Ct. (T. & C.)* 37. Disting'd and in part denied in *Eaton v. Hill*, 50 *N. H.* 235; *s. c.*, 9 *Am. R.* 189, 192. Quoted in *Evell Lead. Cas. on Inf. &c.* 203. Commented upon in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 325. Discussed with other authorities in 2 *Kent Com.* 241, *n. e.* Followed (Liability as for conversion, of one receiving property on void or voidable contract) in *Woodman v. Hubbard*, 25 *N. H.* 67; *s. c.*, 57 *Am. Dec.* 310; *Hall v. Corcoran*, 107 *Mass.* 251; *s. c.*, 9 *Am. R.* 30, 33. Relied on (Differing powers of courts having same apparent jurisdiction) in *Payne v. Pacific Mail Steamship Co.*, 1 *Cal.* 33.
- *v. Tate*, 7 *Lans.* 370. See *Hubbard v. Gurney*. Followed (Evidence that maker of note signed as surety) in *Benjamin v. Arnold*, 2 *Hun.* 447, 449; *s. c.*, 5 *Sup'm. Ct. (T. & C.)* 54, but the latter overruled in *Hubbard v. Gurney*, 64 *N. Y.* 457, 461. Cited as authority with *Benjamin v. Arnold*, 5 *Sup'm. Ct. (T. & C.)* 54; *Hubbard v. Gurney*, 64 *N. Y.* 460 (Right of surety to have his status respected) in *Anthony v. Fritts (Sup'm. Ct. N. J. Feb'y, 1883)* 15 *Reporter*, 726.
- *v. Tousey*, 7 *Cow.* 64. Followed (Liability of foreign executor or administrator) in *McNamara v. Dwyer*, 7 *Paige*, 239; *Brown v. Brown*, 1 *Barb. Ch.* 189; *Gulick v. Gulick*, 33 *Barb.* 92; and see *Rogers v. McLean*, 31 *Id.* 304, 310. Said in *Marcy v. Marcy*, 32 *Conn.* 308, to be irreconcilable with later cases in *N. Y.* and no longer an authority there. Cited in *Williamson v. Branch Bank*, 7 *Ala.* 906; *s. c.*, 42 *Am. Dec.* 617, with note. Approved and applied in *Atchison's Heirs v. Lindsey*, 6 *B. Mon. (Ky.)* 86; *s. c.*, 43 *Am. Dec.* 153, 157, with note. Explained in *Cureton v. Mills*, 13 *S. C.* 409; *s. c.*, 36 *Am. R.* 700, 712. Disapproved in *Hedenberg v. Hedenberg*, 46 *Conn.* 30; *s. c.*, 33 *Am. R.* 12. Disting'd in *Judy v. Kelley*, 11 *Ill.* 211; *s. c.*, 50 *Am. Dec.* 455, with note.
- *v. Vedder*, 3 *Keyes*, 174. Relied on (Necessity for recording assignment of mortgage) in *Bank of Savings in N. Y. v. Frank*, 45 *Super. Ct. (J. & S.)* 404.
- *v. Western*, 3 *Paige*, 124. Decision of Superior Court here referred to is reported as *Lowndes v. Campbell*, in 1 *Hall*, 598. See *Doke v. James*.
- *v. Woodworth*, 26 *Barb.* 648. Rev'd in 20 *N. Y.* 499. Further decision in 33 *Barb.* 425, aff'd in 24 *N. Y.* 304. Decision in 24 *N. Y.* applied (Interpretation of assignment for benefit of creditors) in *Benedict v. Huntington*, 32 *N. Y.* 219, 227. Decision in 20 *N. Y.* disting'd (Evidence of value of converted property) in *Flannagan v. Maddin*, 81 *N. Y.* 623.
- Canaday v. Stiger**, 35 *Super. Ct. (J. & S.)* 423. Aff'd in 55 *N. Y.* 452. Decision in 55 *N. Y.* followed (Correcting judgment on appeal) in *Schreyer v. Mayor, &c. of N. Y.*, 40 *Super. Ct. (J. & S.)* 255. Decision in 35 *Super. Ct. (J. & S.)* examined in 5 *Abb. N. C.* 4 *n.*
- Canal Appraisers v. People**, 17 *Wend.* 571, 587. See *Canal Commissioners v. People*. Discussed (Law governing territories ceded or acquired) in 1 *Kent Com.* 178, *n. a.* Cited (Grants embracing rivers and streams above tide waters) in 3 *Kent Com.* 427, *n. a.*, as stating the true rule of the common law. But see *Id.* 438, *n. e.*
- Canal B'k v. Bank of Albany**, 1 *Hill*, 287. Followed (Recovery of amount of draft from one who has received it without authority) in *Holtsinger v. Nat. Corn Exch. B'k*, 6 *Abb. Pr. N. S.* 299. Followed in *Holt v. Ross*, 59 *Barb.* 554, which was aff'd in 54 *N. Y.* 472, which see; *Bank of Commerce v. Union B'k*, 3 *N. Y.* 237. Explained in dissenting opinion of *Ruggles, J.*, in *Godard v. Merchant's B'k*, 4 *N. Y.* 155, which aff'd 2 *Sand.* 247, 255, which see. Disting'd in *Susquehanna Val. Nat. B'k v. Loomis*, 85 *N. Y.* 207, 212. Applied in *National B'k of North America v. Bangs*, 106 *Mass.* 441; *s. c.*, 8 *Am. R.* 349. Approved and followed in *Schroeder v. Harvey*, 75 *Ill.* 638. Included with notes in 1 *Redf. & B. Lead. Cas. on B. of Exch.* 643. Applied (Recovery of money paid under mistake of fact) in *Gardner v. Mayor, &c. of Troy*, 26 *Barb.* 427; *Talbot v. Bank of Rochester*, 1 *Hill*, 295;



- Kingston Bank v. Eltinge, 40 *N. Y.* 391, 395. Disting'd (Liability for money received) in Bixby v. Drexel, 56 *Hou. Pr.* 482.
- Canal Bank v. Mayor of Albany**, 9 *Wend.* 244. Cited as authority (Impeaching report of commissioners) in Riggs v. Dickinson, 2 *Scam. (Ill.)* 437; s. c., 35 *Am. Dec.* 113.
- Canal Commissioners v. People**, 5 *Wend.* 423. See Bellinger v. N. Y. Central R. R. Co.; People v. Canal Appraisers. Cited with approval with Canal Appraisers v. People, 17 *Wend.* 571, 597 (Extent of riparian ownership) in Delaplane v. Chicago & Northwestern R'y Co., 42 *Wis.* 214; s. c., 24 *Am. R.* 386, 388. Cited as containing established rule in the State,—in 13 *Cent. L. J.* 3. Collated with other cases in *Mills Thomps. on Highw.* 3 ed. 47. Followed and approved with People v. Canal Appraisers, 13 *Wend.* 335; Gardner v. Trustees of Newburgh, 2 *Johns. Ch.* 162, in Weaver v. Miss. & R. R. Boom Co., 28 *Minn.* 540.
- **v. Tibbetts**, 6 *Cow.* 518, 551, n. Rev'd in 5 *Wend.* 423.
- Canal St. Matter of**, 11 *Wend.* 154. See Beekman St. Matter of; Bowery Extension case; Patchin v. Trustees of Brooklyn; Striker v. Kelly. Cited as authority (Limit of assessment for local improvements) in Tide-water Company v. Coster, 18 *N. J. Eq.* 518, 529. Disting'd and limited with Striker v. Kelly, 7 *Hill*, 9, 23; 2 *Den.* 323 (Local assessments—when constitutional) in Hammett v. Philadelphia, 65 *Penn. St.* 146; s. c., 3 *Am. R.* 615, 621; People *ex rel.* Post v. Brooklyn, 6 *Barb.* 209, being cited with approval. See also (Discontinuance) Matter of Washington Park, 56 *N. Y.* 144, 155.
- Canal & Walker Streets, Matter of.** See Bowery Extension case. Followed (Appeal in assessment proceedings) in Matter of Commissioners of Central Park, 61 *Barb.* 45; 4 *Luns.* 467; 50 *N. Y.* 493.
- Canandaigua & Niagara Falls R. R. Co. v. Payne**, 16 *Barb.* 273. See Utica, &c. R. R. Co., Matter of. Followed and approved (Damages in case of land taken by railroad company) in Albany & Susquehanna R. R. Co. v. Dayton, 10 *Abb. Pr. N. S.* 183, 185.
- Cancemi v. People**, 16 *N. Y.* 501. Explained (Juror, when disqualified by opinion) in dissenting opinion of DANIELS, J., in Lindsley v. People, 6 *Park. Cr.* 243. Explained in Greenfield v. People, 6 *Abb. N. C.* 1, 9. Also in dissenting opinion of HENRY, J., in State v. Barton, 71 *Mo.* 300. Explained as modified by L. 1872, c. 475; L. 1873, c. 427,—in Balbo v. People, 80 *N. Y.* 493. Applied (Evidence of character in criminal cases) in Ryan v. People, 19 *Abb. Pr.* 232. Cited (Evidence of character in capital cases) in 52 *Am. Dec.* 738, n., as repudiating the doctrine of Commonwealth v. Webster, 5 *Cush.* 295; and as approved in Harrington v. State, 19 *Ohio St.* 264, 263.
- **v. People**, 18 *N. Y.* 128; s. c., more fully, 7 *Abb. Pr.* 271. See Stephens v. People. Applied (Irregularities that do not bar new trial) in People v. Reagle, 60 *Burb.* 527. Applied (Amending record in writ of error, in criminal cases) in Graham v. People, 63 *Id.* 475. Followed (Questions to be decided on writ of error) in Stephens v. People, 19 *N. Y.* 551. Explained in Willis v. People, 32 *Id.* 720. Disting'd (Waiver of trial by jury) in People *ex rel.* Walker v. Special Sessions, 4 *Hun.* 444. Applied in Grant v. People, 4 *Park. Cr.* 534; People v. Ruloff, 5 *Id.* 81. Applied in dissenting opinion of MULLIN, J., in Knight v. Campbell, 62 *Barb.* 36. Followed in Territory v. Ah Wah, 4 *Mont.* 149; s. c., 47 *Am. R.* 341. See State v. Davis, 66 *Mo.* 684; s. c., 27 *Am. R.* 337. Referred to in State v. Borowsky, 11 *Neo.* 119, 128, as opposed to Commonwealth v. Dailey, 12 *Cush.* 80, though followed and approved in Hill v. People, 16 *Mich.* 354, the cases in N. Y. and Mich. being, however, disting'd as cases of murder. Disting'd on the ground of differences in constitutional provisions,—in Connelly v. State, 60 *Ala.* 89; s. c., 31 *Am. R.* 34, 36, with note. Considered and disting'd from question as to constitutionality of act authorizing election for trial by court, in State v. Worden, 46 *Conn.* 349; s. c., 33 *Am. R.* 27, 32. Disting'd (Waiver in criminal case) in Pierson v. People, 18 *Hun.* 243, which was aff'd in 79 *N. Y.* 429; which see Vose v. Cockcroft, 44 *Id.* 422; Connors v. People, 50 *Id.* 240; People v. Dohring, 59 *Id.* 380. Applied in Maurer v. People, 43 *Id.* 5; People v. Campbell, 4 *Park. Cr.* 388. Relied on in Lemons v. State, 4 *W. Va.* 755; s. c., 6 *Am. R.* 293. Collated with People v. Dohring, 59 *N. Y.* 374; Blend v. People, 41 *Id.* 604, and other cases (Conferring jurisdiction by consent) in 25 *Am. R.* 539, n. See (Waiver of defects in jury, after verdict) State v. Powers, 10 *Oreg.* 145; s. c., 45 *Am. R.* 133. Applied (Effect of irregularities in criminal cases) in Blend v. People, 41 *N. Y.* 604. Explained (New trial in criminal cases) in Shepherd v. People, 25 *Id.* 417.
- Candee v. Burke**, 1 *Hun.* 546; s. c., 4 *Sup'm. Ct. (T. & C.)* 143. Further decision in 10 *Hun.* 350. With decision in 1 *Hun* compare (Naming mortgagee) *Code Civ. Pro.* §§ 2391, 2388, last clause.
- **v. Gundelsheimer**, 8 *Abb. Pr.* 435; s. c., 17 *Hou. Pr.* 434. Overruled (Supplementary proceedings on judgment in justice's court) in Butts v. Dickinson, 12 *Abb. Pr.* 60; Vulte v. Whitehead, 2 *Hilt.* 596.
- **v. Hayward**, 34 *Barb.* 349. Aff'd in 37 *N. Y.* 653.
- **v. Lord**, 2 *N. Y.* 269; s. c., 51 *Am. Dec.* 294, with note, where it is said to have been frequently cited. Compared (Effect of judgment, as against creditors, &c.) in Ludington's Petition, 5 *Abb. N. C.* 323. Applied in McFarland v. Bain, 26 *Hun.* 38; Voorhees v. Seymour, 26 *Barb.* 585; Atkins v. Hosley,

- 3 *Sup'm. Ct. (T. & C.)* 325. Approved in *Hall v. Stryker*, 27 *N. Y.* 596. Applied (Creditors bound by debtor's contracts) in *Miller v. Lewis*, 4 *Id.* 559; *Curtiss v. Leavitt*, 15 *Id.* 51. Followed (Discretionary orders) in *Lansing v. Russell*, 2 *Id.* 563; *Wakeman v. Price*, 3 *Id.* 334; *Howell v. Mills*, 53 *Id.* 330.
- Candler v. Petit**, 1 *Paige*, 427. Aff'd in 3 *Wend.* 618.
- **v. Pettit**, 1 *Paige*, 169; s. c., 19 *Am. Dec.* 399, with note. Approvingly cited with *Eager v. Price*, 2 *Paige*, 333 (Additional relief through supplemental bill) in *Allen v. Taylor*, 2 *Green Ch. (N. J.)* 435; s. c., 29 *Am. Dec.* 721, with note.
- Canfield v. Baltimore & O. R. R. Co.**, 43 *Super. Ct. (J. & S.)* 562. Rev'd in 75 *N. Y.* 144. Decision in 75 *N. Y.* followed (Evidence as to where goods transported by carrier were injured) in *Schastey v. Bache*, 9 *Daly*, 484.
- **v. Ford**, 16 *How. Pr.* 473. Aff'd in 28 *Barb.* 336. See (Partition—parties) *Code Civ. Pro.* 1881, § 1538, n.
- **v. Westcott**, 5 *Cow.* 270. Followed (Waiver of forfeiture for non-payment on a particular day) in *Conkling v. King*, 10 *Barb.* 372, which was aff'd in 10 *N. Y.* 442, which see. Approved in *Stuyvesant v. Mayor, &c. of N. Y.*, 1 *Leg. Obs.* 103. Followed (Avoiding clauses are for obligee's benefit) in *Litchfield v. Irvin*, 51 *N. Y.* 58; *Folts v. Huntley*, 7 *Wend.* 214. Followed and approved with *Church v. Ayres*, 5 *Cow.* 272, in *Mason v. Caldwell*, 5 *Gilm. (Ill.)* 196; s. c., 48 *Am. Dec.* 330, with note; *Wilcoxson v. Stitt*, 65 *Cal.* 598.
- Cantrell v. Conner**, 6 *Daly*, 39. Subsequent proceeding in 6 *Daly*, 224; s. c., 51 *How. Pr.* 45. See *Hoyt v. Van Alstyne*; *Twinan v. Swart*.
- Carleton v. Dubuque, &c. R. R. Co.**, 17 *How. Pr.* 16. Disapproved as contrary to authority (Place where cause of action on negotiable instrument arises) in *Hibernia B'k v. Mechanics*, &c. B'k, 21 *Hun*, 166, 174.
- Canzi v. Conner**, 43 *Super. Ct. (J. & S.)* 569. Fully reported in 4 *Abb. N. C.* 148.
- Capet v. Parker**, 3 *Sandf.* 662. Followed (Enjoining summary proceedings) in *Landon v. Superv's of Schenectady*, 24 *Hun*, 75, 77. To the contrary, *Smith v. Moffat*, 1 *Barb.* 65.
- Card v. Card**, 39 *N. Y.* 317. Relied on (Evidence admissible respecting agreement for purchase of land) in *Dana v. Wright*, 23 *Hun*, 31, 32, 34.
- **v. Miller**, 1 *Hun*, 504. Reviewed with *McCaughy v. Smith*, 27 *N. Y.* 39; *Brownell v. Minnie*, 29 *Id.* 400, and other cases (Material alteration of note) in 23 *Am. L. Reg. N. S.* 198.
- Cardell v. McNeil**, 21 *N. Y.* 336. See *Mallory v. Gillett*; *Milks v. Rich*. Reluctantly followed (Guaranty—when not within statute of frauds) in *Milks v. Rich*, 80 *N. Y.* 269, 271. Followed with *Bruce v. Burr*, 67 *Id.* 237, in *Fitzgerald v. Morrissey*, 14 *Neb.* 198; s. c., 46 *Am. R.* 296, n.; *Wilson v. Hentges*, 29 *Minn.* 105.
- Cardot v. Barney**, 63 *N. Y.* 281; s. c., 20 *Am. R.* 533, with note. Disting'd (Negligence—liability of receiver) in *Kain v. Smith*, 80 *N. Y.* 458, 469, 471.
- Cardwell v. Hicks**, 23 *How. Pr.* 281; s. c., more fully, 37 *Barb.* 458. See *Williams v. Smith*. Said in *Lorimer v. Stevens* (Ct. of App.) 3 *Alb. L. J.* 97, to have been overruled by *Brown v. Leavitt*, 31 *N. Y.* 113; *Pratt v. Coman*, 37 *Id.* 440. Disapproved (Extinguishment of old debt as consideration for new transfer) in *Bank of State of N. Y. v. Vanderhorst*, 1 *Robt.* 211, as contrary to authority. Applied (Limit of recovery by bona fide holder of note) in *Holcomb v. Wyckoff*, 35 *N. J.* 35; s. c., 10 *Am. R.* 219.
- **v. Auburn Gas-Light Co.**, 22 *Barb.* 297. Collated with other cases (Negligence—allowing noxious or dangerous substances to injure neighboring lands) in 1 *Thomps. on Negl.* 107.
- **v. French**, *Hill & D.* 17; s. c., 2 *N. Y. Leg. Obs.* 367. Rev'd in 1 *N. Y.* 96. See *French v. Carhart*.
- Canovar v. Cooper**, 3 *Barb.* 115. See *Burlingame v. Burlingame*; *People v. Mercein*. Examined with other cases (Infancy—emancipation) in 35 *Am. R.* 115, 118, n.
- Carl v. Ayers**, 53 *N. Y.* 14. Applied (Evidence of probable cause) in *Thompson v. Lumley*, 1 *Abb. N. C.* 261; *Heyne v. Blair*, 62 *N. Y.* 22. Applied (Issue in action for malicious prosecution) in *Barber v. Gould*, 20 *Hun*, 446.
- Carle v. Underhill**, 3 *Bradf.* 101, 105. Followed (Publication of will) in *Burk's Will*, 2 *Redf.* 239, 243; *Neugent v. Neugent*, *Id.* 369, 373.
- Carleton v. Carleton**, 23 *Hun*, 251. Rev'd in 85 *N. Y.* 313. Decision in 85 *N. Y.* followed (Affidavit to obtain service by publication) and *Smith v. Mahon*, 2 *Civ. Pro. R. (Browne)* 55, disting'd in *Greenbaum v. Dwyer*, 4 *Id.* 276. Followed in *Kennedy v. N. Y. Life Ins. & Trust Co.*, 32 *Hun*, 35. Disting'd in *Lockwood v. Brantly*, 31 *Id.* 155.
- **v. Darcy**, 43 *Super. Ct. (J. & S.)* 373. Appeal dismissed in 75 *N. Y.* 375. Subsequent decision in 46 *Super. Ct. (J. & S.)* 484, rev'd in 90 *N. Y.* 566. Decision in 75 *N. Y.* discussed (Ejectment—new trial) in *Sedgw. & W. on Tr. of Tit. to Land*, § 583. See *Code Civ. Pro.* 1881, § 1525, n. Decision in 46 *Super. Ct. (J. & S.)*, explained (Comptroller of municipal corporation—signature by) in 1 *Add. on Contr.* 226, n. 1, *Abb. ed.*
- Carlton, Matter of**, 7 *Cow.* 471. Overruled (Validity of enlistment) in *Phelan's Case*, 9 *Abb. Pr.* 236, 288. Disapproved, and held to be overruled (*Haec corpus*) in *Reilly's Case*, 2 *Abb. Pr. N. S.* 334.
- Carlton St., Matter of**, 16 *Hun*, 497. Aff'd

- as Matter of City of Brooklyn, 78 *N. Y.* 362. See Widening Carlton St., Matter of.
- Carman v. McInerow**, 13 *N. Y.* 70. Followed (Mechanic's lien—when not acquired by one doing labor or furnishing materials) in *Lumbard v. Syracuse, B. & N. Y. R. R. Co.*, 55 *N. Y.* 491, 494. Applied in *Crane v. Genin*, 60 *N. Y.* 127, 129.
- **v. Plass**, 23 *N. Y.* 286. Followed (Joinder of surety as co-defendant with principal) in *Decker v. Gaylord*, 8 *Iun.* 110. Disapproved in *Pomeroy on Rem.* § 410.
- **v. Pultz**, 21 *N. Y.* 547. Applied (Presumptions indulged in by Court of Appeals) in *Reese v. Boese*, 94 *N. Y.* 623; Reformed Prot. Dutch Church v. Brown, 4 *Abb. Ct. App. Dec.* 34. Disting'd in *Meyer v. Amidon*, 45 *N. Y.* 169, 172. Re-aff'd (Review of questions of fact) in *Rice v. Isham*, 4 *Abb. Ct. App. Dec.* 41. Applied (Review of referees' decision by appellate court) in *Heroy v. Kerr*, 8 *Boew.* 204; *Hoyt v. Hoyt*, *Id.* 521. Applied (Vendees to be regarded as one party) to mortgagées.—in *People v. Keyser*, 28 *N. Y.* 235. Applied in *Havens v. Patterson*, 43 *Id.* 222. Disting'd (Waiver by purchaser of real estate) in *Morange v. Morris*, 2 *Abb. Ct. App. Dec.* 320. Applied in *Bigler v. Morgan*, 77 *N. Y.* 319. Disting'd (Waiver of objection) in *Rae v. Harteau*, 7 *Daly*, 102. Applied in *Moses v. Bierling*, 31 *N. Y.* 464.
- Carmichael v. Carmichael**, 1 *Abb. Ct. App. Dec.* 309. Explained (Vesting) in *Meyer's Will*, 6 *Abb. N. C.* 438, 444.
- Carnes v. Platt**, 6 *Robt.* 270. On second trial plaintiff had judgment, which was aff'd in 7 *Abb. Pr. N. S.* 42; s. c., 1 *Sweeny*, 140; 38 *How. Pr.* 100. This decision rev'd in 2 *Abb. Ct. App. Dec.* 159, n., on the ground that the question of delivery should have been submitted to the jury. Subsequent decision in 36 *Super. Ct. (J. & S.)* 361; s. c., 15 *Abb. Pr. N. S.* 337; 46 *How. Pr.* 520; aff'd in 59 *N. Y.* 405. Further decision on the merits in 41 *Super. Ct. (J. & S.)* 435; and as to taxation of costs, in 40 *Id.* 205. Decision in 1 *Sweeny* explained and the report corrected in decision in 15 *Abb. Pr. N. S.* Decision in 6 *Robt.* followed (Question when not objectionable, as calling for conclusion of law) in *Rocke v. Meiner*, 34 *Super. Ct. (J. & S.)* 158. Decision in 36 *Super. Ct. (J. & S.)* disting'd (Examination by appellate court of question of weight of evidence) in *Peck v. Cohen*, 40 *Id.* 142, 145. And see to the contrary *Halpin v. Third Ave. R. R. Co.*, *Id.* 175. Cited (Communications by a client to a lawyer) in 1 *Whart. Com. on Ev.* § 583, as holding the true view.
- Carolus v. Mayor, &c. of N. Y.**, 6 *Bosw.* 15. Collated, with other cases (Negligence—municipal corporation—defective highways) in 2 *Thomps. on Negl.* 768.
- Carow v. Mowatt**, 2 *Edw.* 59. Disting'd (Enforcing liability of sureties of executor or administrator) in *Hood v. Hood*, 85 *N. Y.* 561, 573. Applied in *Trust, &c. Co. of Onondaga v. Pratt*, 25 *Iun.* 23, 27; *Williams v. Kiernan*, *Id.* 362; *Haines v. Meyer*, *Id.* 417. Applied to sureties of trustee in *Brooks v. Brooke*, 12 *Gill & J. (Md.)* 303; s. c., 38 *Am. Dec.* 310, 316, with note. Cited (Liability of infant executor or administrator) in *Tyler on Inf. & Cov.* 2 ed. § 180.
- Carpenter v. Atherton**, 28 *How. Pr.* 303. See to the contrary (Right to discharge contract to pay in gold or silver, by payment in U. S. legal tender notes) *Wilson v. Morgan*, 30 *How. Pr.* 386.
- **v. Bailey**. See *Gazly v. Price*.
- **v. Bell**, 19 *Abb. Pr.* 253, 263. Followed (Defendant's right to set up matter arising after suit brought) in *Reimer v. Doerge*, 61 *How. Pr.* 143.
- **v. Blake**, 60 *Barb.* 488. Rev'd in 50 *N. Y.* 696. Further decision in 10 *Iun.* 358. Also former decision on other facts in 2 *Lans.* 206. Decision in 2 *Lans.* disting'd (Opinion by witness as to testimony that he has heard) in *Seymour v. Fellows*, 77 *N. Y.* 178.
- **v. Butterfield**, 8 *Johns. Cas.* 145. Explained (Set-off) in *Taylor v. Mayor, &c. of N. Y.*, 82 *N. Y.* 23.
- **v. City of Cohoes**, 5 *Weekly Dig.* 227. Aff'd in 81 *N. Y.* 21; s. c., 37 *Am. R.* 463. See also (Bridges) *Washer v. Bullitt County*, 110 *U. S.* 558.
- **v. Danforth**, 19 *Abb. Pr.* 225. Further decision in 52 *Barb.* 531. Decision in 19 *Abb. Pr.* explained (Retaining injunction where plaintiff's allegations are denied) in *Secor v. Weed*, 7 *Robt.* 67. Decision in 52 *Barb.* explained (Director of corporation as trustee) in *Mitchell v. Vermont Copper Mining Co.*, 47 *How. Pr.* 222. Followed and approved, and *Robinson v. Smith*, 3 *Paige*, 222; *Verplank v. Mercantile Ins. Co.*, 1 *Edw.* 84; *Scott v. Depeyster*, *Id.* 513, 527; *Cumberland Coal, &c. Co. v. Sherman*, 30 *Barb.* 553; *Butts v. Woods*, 38 *Id.* 181; *Bliss v. Matteson*, 45 *N. Y.* 22, disting'd, in *Board of Commissioners of Tippecanoe County v. Reynolds*, 44 *Ind.* 509; s. c., 15 *Am. R.* 245, 251. Considered questionable in *Story on Eq. Jur.* 11 ed. § 229, b, n. 1. Cited in 12 *Abb. L. J.* 195, as holding what is the true rule, affirmed in numerous cases.
- **v. Eastern Transp. Line**, 67 *Barb.* 570. Aff'd in 71 *N. Y.* 574, as *Carpenter v. Eastern Transp. Co.* Decision in 71 *N. Y.* disting'd (Opinion of witness) in *Brink v. Hanover Fire Ins. Co.*, 80 *N. Y.* 108, 116.
- **v. Goodwin**, 4 *Duly*, 89. See to the contrary (Vacatur of judgment must be specially pleaded) *Kinsey v. Ford*, 38 *Barb.* 195. And see *Abb. Tr. Rev.* 539.
- **v. Green**, 4 *Iun.* 416; s. c., 6 *Sup'm. Ct. (T. & C.)* 550. Compare (Appeal in summary proceedings) *Code Civ. Pro.* §§ 1340, 1357, 2122, subd. 2.
- **v. Griffin**, 9 *Paige*, 310. Followed and

- approved (Distinction between sale and bailment) in *Reed v. Abbey*, 2 *Sup'm. Ct. (T. & C.)* 381.
- *v. Halsey*, 60 *Barb.* 45. Aff'd, it seems, in 57 *N. Y.* 657.
- *v. Herrington*, 25 *Wend.* 370; s. c., 37 *Am. Dec.* 239, with note. Compare (Exemption of growing crops from levy) *King v. Moore*, 10 *Mich.* 538.
- *v. Mutual Safety Ins. Co.*, 4 *Sandf. Ch.* 408. Relied on (Effect of mere contract to insure) in *Cooper v. Pacific Mutual Ins. Co.*, 7 *Nev.* 116; s. c., 8 *Am. R.* 705.
- *v. N. Y. & N. H. R. R. Co.*, 11 *How. Pr.* 481. Explained (Necessity for appearance by defendant) in *Pearl v. Robitschek*, 2 *Daly*, 50.
- *v. Nixon*, 5 *Hill*, 260. Doubted (Conviction of petty larceny as impeaching evidence) in *Sims v. Sims*, 75 *N. Y.* 472. Questioned in *Wilson v. State*, 1 *Smith (Wisc.)* 193. Cited in 1 *Whart. Com. on Ev.* § 397, n., with contrary decisions from other jurisdictions.
- *v. O'Dougherty*, 67 *Barb.* 397; s. c., with affirmance, in 2 *Sup'm. Ct. (T. & C.)* 427. Aff'd in 58 *N. Y.* 681, it seems, but without opinion. Decision in 2 *Sup'm. Ct. (T. & C.)* followed (Estoppel to set up invalidity of mortgage) in *Barnett v. Zacharias*, 24 *Hun*, 304, 306.
- *v. Oswego and Syracuse R. R. Co.*, 24 *N. Y.* 655. See *Bissell v. N. Y. Central R. Co.*; *Jackson v. Hathaway*. Followed (Appropriation of highway for railroad—an additional burden) in *Craig v. Rochester City, &c. R. Co.*, 39 *Barb.* 494, which was aff'd in 39 *N. Y.* 104, which see; *Wager v. Troy Union R. R. Co.*, 25 *N. Y.* 526, 532, 534. Collated, with other cases, in *Cook Highw. L.* 4 ed. 18. Limited in *People v. Kerr*, 27 *N. Y.* 296. Applied (Such appropriation is a *disseizin*) in *Henderson v. N. Y. Central R. R. Co.*, 17 *Hun*, 348. Followed (Ejectment for land under highway) in *Lozier v. N. Y. Central R. R. Co.*, 42 *Barb.* 469. Disting'd (Judgment without qualification for exclusive possession in ejectment) in *White's Bank of Buffalo v. Nichols*, 64 *N. Y.* 75. Disting'd (Equitable relief against trespass) in *Troy & Bost. R. R. Co. v. Boston, Hoosac Tunnel & W. R'y Co.*, 86 *N. Y.* 127.
- *v. Otley*, 2 *Lans.* 451. Approved (Parol evidence respecting interest in land) in *Moyer v. Moyer*, 21 *Hun*, 67, 73.
- *v. Roe*, 10 *N. Y.* 227. Followed (Evidence of fraudulent conveyance) in *Loeschigk v. Addison*, 19 *Abb. Pr.* 187; *Pendleton v. Hughes*, 65 *Barb.* 144; *Savage v. Murphy*, 8 *Bosw.* 98; *Hawley v. Sackett*, 6 *Sup'm. Ct. (T. & C.)* 322. Cited as authority in *Dygart v. Remerschnider*, 32 *N. Y.* 648. Explained in *Tappan v. Butler*, 7 *Bosw.* 490. Disting'd in *Spicer v. Ayers*, 53 *How. Pr.* 405; *Carr v. Breese*, 81 *N. Y.* 590. Disting'd and applied in *Babcock v. Eckler*, 24 *N. Y.* 629. Explained in *Wait on Fraud. Conv.* §§ 95, 102.
- *v. Secor*, 11 *How. Pr.* 403. See, in accord therewith (Limitations upon testimony of adverse party) *Evans v. Burbank*, 12 *Id.* 73; but see adverse thereto *Burgart v. Stork*, 12 *Id.* 559.
- *v. Shimer*, 24 *Hun*, 464. Followed (Statute, when to act prospectively) in *Williams v. City of Oswego*, 25 *Hun*, 36, 38.
- *v. Simmons*. See *Hull v. Carnley*.
- *v. Spooner*, 2 *Sandf.* 717. Followed with *Goupil v. Simonson*, 3 *Abb. Pr.* 474 (Deceit in making service of process) in *Peel v. January*, 35 *Ark.* 331; s. c., 37 *Am. R.* 27.
- *v. Stevens*, 12 *Wend.* 589. Disapproved (Damages in replevin) as wrong in principle, and contradicted by *Rowley v. Gibbs*, 14 *Johns.* 385, and other authorities, in *Suydam v. Jenkins*, 3 *Sandf.* 644. Reviewed with *Suydam v. Jenkins*; *Yates v. Fassett*, 5 *Den.* 21; *Rowley v. Gibbs*, 14 *Johns.* 385 (Effect of death of animal pending replevin) in *De Thomas v. Witherby*, 61 *Cal.* 97, and the later cases, holding death not a defense, approved, — citing *Wells on Replevin*, §§ 600, 601; 2 *Sedgw. on Dama.* 500. See *Code Civ. Pro.* 1881, § 1735, n.
- *v. Stillwell*, 12 *Barb.* 128. Rev'd in 11 *N. Y.* 61. Effect of judgments herein held not binding on defendant in subsequent decision, in *Wilson v. Davol*, 5 *Bosw.* 621. See *Dezell v. Odell*; *Frost v. Yonkers Savings B'k.* Decision in 11 *N. Y.* reaff'd (Practice in taking exceptions) in *Chamberlain v. Pratt*, 33 *N. Y.* 52. Applied (Sheriff cannot execute process for or against himself) to process against his deputy, — in *Holbrook v. Brennan*, 6 *Daly*, 46, 49. Both decisions disting'd and applied in *Albany City Nat. Bk. v. Kearney*, 9 *Hun*, 535.
- *v. Ward*, 30 *N. Y.* 243. Applied (Irrelevant statement of witness not to be contradicted) in *Gandolfo v. Appleton*, 40 *N. Y.* 539; *Stape v. People*, 21 *Hun*, 399.
- *v. West*, 5 *How. Pr.* 53. Approved (Party, when entitled to have matter stricken out of pleading) in *Williams v. Hayes*, 5 *How. Pr.* 470, 475.
- *v. Whitman*, 15 *Johns.* 208. See *People v. Kling*. Collated with other cases (Maintenance of bastard children) in 56 *Am. Dec.* 259, n.
- *v. Willett*. See *Carpentier v. Willett*.
- *v. Wright*, 4 *Bosw.* 655. Disting'd with *Pacific Mail Co. v. Leuling*, 7 *Abb. Pr. N. S.* 37 (Damages sustained by granting of injunction) in *N. Y. West Shore & B. R. R. Co. v. Omerod*, 29 *Hun*, 274. Cited with *Palmer v. Foley*, 2 *Abb. N. C.* 192; *Methodist Churches of N. Y. v. Barker*, 13 *N. Y.* 465; *Wilde v. Joel*, 15 *How. Pr.* 327, in *Hayden v. Keith*, 32 *Minn.* 279. Disting'd (Requisites of determination that plaintiff was not entitled to injunction) in *Neugent v. Swan*, 61 *How. Pr.* 40.

- Carpentier v. Minturn**, 65 *Barb.* 293; Same v. Same, 6 *Lans.* 56. Aff'd in effect in 55 *N. Y.* 676, as *Hall v. Minturn*. Compare (Foreign statute of limitations no bar here) (*Code Civ. Pro.* § 390).
- **v. Willet**, 6 *Bosw.* 25; s. c., 18 *How. Pr.* 400. Aff'd in 1 *Keyes*, 510; s. c., 1 *Abb. Ct. App. Dec.* 312; s. c., as *Carpenter v. Willett*, 81 *N. Y.* 90; 28 *How. Pr.* 225. Subsequent decision as to double costs in 3 *Robt.* 700; s. c., 28 *How. Pr.* 376.
- Carr v. Breese**, 18 *Hun.* 134. Rev'd in 81 *N. Y.* 584. Decision in 81 *N. Y.* quoted and discussed (Debtor's alienations of property—proof necessary to overturn) in *Wait on Fraud. Conv.* § 102.
- **v. Carr**, 4 *Lans.* 314. Aff'd in 52 *N. Y.* 251. Decision in 52 *N. Y.* applied (Effect of conveyance absolute in form, as mortgage) in *Bowery Nat. B'k v. Duncan*, 12 *Hun.* 408; *Umfreville v. Keeler*, 1 *Sup'm. Ct. (T. & C.)* 489; *Pardee v. Treat*, 82 *N. Y.* 385, 392. Disting'd in *Fullerton v. McCurdy*, 55 *N. Y.* 637, 639. Approved in *Starks v. Redfield*, 52 *Wis.* 352. Followed (Once a mortgage, always a mortgage) in *Meighen v. King*, 16 *Northw. Rep.* 702. Disting'd (Verbal agreement respecting real estate) in dissenting opinion of LEARNED, J., in *Bissell v. Harrington*, 18 *Hun.* 87. Cited as authority (Effect of assent to submission of question to jury) in *Zimmerman v. Schoenfeldt*, 3 *Hun.* 695. Compare (Ejectment by mortgagee) (*Code Civ. Pro.* § 1498).
- **v. Ellison**, 20 *Wend.* 178. Applied (Covenant for renewal of lease) in *Banker v. Brakef*, 9 *Abb. N. C.* 411, 414.
- **Great Western Ins. Co.**, 3 *Daly*, 160. Applied (Discovery) in *Schepmoes v. Bousson*, 1 *Abb. N. C.* 481, 485.
- **v. Roach**, 2 *Duer*, 20. Qualified (Merging antecedent stipulations in deed) in *Morris v. Whitcher*, 20 *N. Y.* 41.
- Carrington v. Ward**, 42 *Super. Ct. (J. & S.)* 571. Aff'd in 71 *N. Y.* 360.
- Carris v. Comm'rs of Waterloo**, 2 *Hill*, 443. Explained (Regularity of proceedings for alteration of highway) in *People ex rel. Dorn v. Jones*, 2 *Sup'm. Ct. (T. & C.)* 362.
- Carroll v. Carroll**, 2 *Hun.* 609; s. c., 6 *Sup'm. Ct. (T. & C.)* 294; 16 *Abb. Pr.* 19. S. 239. Rev'd in 60 *N. Y.* 121; s. c., 19 *Am. R.* 144, with note. Decision in 60 *N. Y.* cited (Letters of administration on estate of person when inadmissible to prove his death) in 2 *Whart. Com. on Ev.* § 810. Also cited in § 1278, on a like point.
- **v. Charter Oak Ins. Co.**, 40 *Barb.* 292. Aff'd in 10 *Abb. Pr. N. S.* 166; s. c., 1 *Abb. Ct. App. Dec.* 316. Prior decision in 38 *Barb.* 292. Decision in 10 *Abb. Pr. N. S.* cited as authority (Waiver by insurance agent) in *Pitney v. Glen's Falls Ins. Co.*, 65 *N. Y.* 23; *Goodwin v. Mass. Mut. Life Ins. Co.*, 73 *Id.* 491. Disting'd in *Walsh v. Hartford Fire Ins. Co.*, 73 *N. Y.* 11. Explained in *Mersereau v. Phoenix Mut. Life Ins. Co.*, 66 *N. Y.* 278, 283. See other cases collected (Testimony of parties) in 1 *Abb. N. C.* 356, 365, n. Decision in 38 *Barb.* cited as authority (Effect of renewal of policy to create new contract) in *St. Nicholas Ins. Co. v. Merchant's Ins. Co.*, 11 *Hun.* 112. Followed (Waiver of forfeiture) in *Steen v. Niagara Fire Ins. Co.*, 61 *How. Pr.* 144, 148; *Shearman v. Niagara Fire Ins. Co.*, 46 *N. Y.* 531.
- **v. Cone**, 40 *Barb.* 220. Said in *Baker v. Kenworthy*, 41 *N. Y.* 215, to have been aff'd in Ct. of App., March, 1869.
- **v. Farmers' Loan & Trust Co.**, 5 *Barb.* 613. Opposed (Usury arising from difference of interest) in *Mumford v. American Life Insurance Company*, 4 *N. Y.* 463, 475.
- **v. Finley**, 26 *Barb.* 61. See (Attachment—certificate of interest) (*Code Civ. Pro.* 1881, § 651, n.).
- **v. Newton**, 17 *How. Pr.* 189. Collated with *Fobes v. Shattuck*, 22 *Barb.* 568, and other cases (Manure as part of realty) in 28 *Am. R.* 39, n.
- **v. N. Y. & New Haven R. R. Co.**, 1 *Duer*, 571. See *Edgerton v. N. Y. & Harlem R. R. Co.* Disting'd (Contributory negligence in passenger riding in unusual position) in *Spooner v. Brooklyn City R. R. Co.*, 31 *Barb.* 419, 429. Cited, with approval in *Creed v. Pennsylvania R. R. Co.*, 86 *Pa. St.* 139; s. c., 27 *Am. R.* 693, 697. Disting'd in *Pennsylvania R. R. Co. v. Langdon*, 92 *Pa. St.* 32, citing *Robertson v. Erie R. R. Co.*, 22 *Barb.* 91.
- **v. Staten Island R. R. Co.**, 65 *Barb.* 32. Aff'd, in 58 *N. Y.* 126; s. c., 17 *Am. R.* 221. See *Merritt v. Earle*. Decision in 58 *N. Y.* followed (Violation of Sunday law no bar to action for injuries) in *Platz v. City of Cohoes*, 24 *Hun.* 101. Thought, in 12 *Am. Dec.* 294, n., to furnish the correct rule taken in connection with other decisions there cited. Cited as indicative of the N. Y. rule in *Schmid v. Humphrey*, 48 *Iowa*, 652; s. c., 30 *Am. R.* 414, with note. See, also, 17 *Am. R.* 122, n. Approved and followed in *Opsahl v. Judd*, 30 *Minn.* 129.
- **v. Upton**, 2 *Sandf.* 171. Aff'd in 3 *N. Y.* 272.
- Carshore v. Huyek**, 6 *Barb.* 583. See *Soulden v. Van Rensselaer*. Approved (Distinction between statute which discharges debt and one which acts on remedy) in *Waltermire v. Westover*, 14 *N. Y.* 16. Quoted (Statute of Limitations—part payment) in *Aug. on Limit.* § 247, n. 1, 6 ed.
- Carson v. Murray**, 3 *Paige*, 483. Followed (Wife cannot release her dower to husband) in *Guidet v. Brown*, 54 *How. Pr.* 409.
- Carstens v. Barnstorff**, 11 *Abb. Pr. N. S.* 442. See (Acknowledgment by attorney, of satisfaction of judgment) (*Code Civ. Pro.* 1881, § 1260, n.).
- Carter v. Clark**, 2 *Sweeny*, 189. Compare (Dismissal of complaint for failure to bring cause to trial) *Winchell v. Martin*, 14 *Abb. Pr. N. S.* 47.
- **v. Dolby**, 2 *Hun.* 523. Aff'd, it seems, in 53 *N. Y.* 631, but without opinion.

- **v. Hamilton**, 11 *Barb.* 147. Rev'd in *Seld. Notes*, No. 6, 80.
- **v. Hammett**, 18 *Barb.* 608. Disting'd (Assignment of lease) in *Tate v. McCormick*, 23 *Hun.* 218, 221. Criticised in *Welsh v. Schuyler*, 6 *Daly*, 412, 415.
- **v. Hunt**, 40 *Barb.* 89. See (Action to recover real property—parties defendant) *Code Civ. Pro.* 1881, 1503, *n.*
- **v. Long**, 25 *Hun.* 57, 59. Abridgt. in 12 *Weekly Dig.* 364.
- **v. People**, 2 *Hill*, 317. Overruled (Evidence of good character of witness—when inadmissible) in *People v. Gay*, 7 *N. Y.* 378. See *People v. Hulse*, 3 *Hill*, 309.
- **v. Rockett**, 8 *Paige*, 437. See *Cromwell v. Brooklyn Fire Ins. Co.* Followed (Equitable lien on insurance moneys) in *Cromwell v. Brooklyn Fire Ins. Co.*, 44 *N. Y.* 42, 50. Cited as authority in *Wheeler v. Ins. Co.*, 111 *U. S.* 439, 442.
- **v. Simpson**, 7 *Johns.* 535. Applied (Rights of purchaser at judicial sales) in *Jackson v. Hasbrouck*, 12 *Johns.* 215. Reviewed and relied on, with *Yates v. St. John*, 12 *Wend.* 74; *Earl v. Camp*, 16 *Id.* 566, in *Power v. Kindschi*, 58 *Wis.* 539; *s. c.*, 46 *Am. R.* 652.
- **v. Werner**, 27 *How. Pr.* 385. See *Simmons v. Sherman*. Denied with *Monroe v. Monroe*, 27 *How. Pr.* 208 (Appeal in proceedings commenced in justice's court) in *Broughton v. Mitchell*, 19 *Abb. Pr.* 166; *Broughton v. Mitchell* being reluctantly followed on this point in *Bliss v. Schaub*, 48 *Barb.* 342, where the doctrine of *Carter v. Werner* is preferred.
- **v. Youngs**, 42 *Super. Ct. (J. & S.)* 169. Further proceeding in *Id.* 418.
- Cartwright v. Wilmerding**, 24 *N. Y.* 521. See *Jennings v. Merrill*. Disting'd (Possession that enables factor to pledge) in *Howland v. Woodruff*, 60 *N. Y.* 73, 83. Followed in *Pegram v. Carson*, 10 *Bosw.* 511. Applied in *Bates v. Cunningham*, 12 *Hun.* 29. Applied to pledge by purchaser, —in *Winne v. McDonald*, 39 *N. Y.* 244. Applied (Constructive possession of goods stored in bonded warehouse) in *Schwerin v. McKie*, 5 *Robt.* 418. Quoted (Factor's act) in *Benj. on Sales*, § 19, *n.* 11 (Corbin's 4 *Am. ed.*).
- Carver v. Creque**, 46 *Barb.* 507. Aff'd in 48 *N. Y.* 385. Decision in 48 *N. Y.* disting'd (Validity of contracts relating to bounties) in *Decker v. Saltzman*, 1 *Hun.* 424, which was aff'd in 59 *N. Y.* 275, 279, which see.
- **v. Lane**, 4 *E. D. Smith*, 168, 170. Quoted (Statute of Frauds—goods over fifty dollars—acceptance) in 1 *Benj. on Sales*, § 141, *n.* 3 (Corbin's 4 *Am. ed.*).
- Carvey v. Rider**, 2 *Cov.* 617. See *Lydd v. Kenney*; *Sheridan v. Genet*. Followed ("Costs to abide event") in *Mott v. Consumer's Ice Co.*, 8 *Daly*, 244.
- Carville v. Crane**, 5 *Hill*, 483; *s. c.*, 40 *Am. Dec.* 364, with note, collecting citations thereof. Quoted and collated with other cases (Statute of Frauds—consideration or promise to be in writing) in *Holcombe Lead. Cas. on Com. Law*, 426. Quoted and discussed (Guaranties) in *Browne on Stat. of Frauds*, § 174, 4 *ed.*
- Cary v. Cleveland & Toledo R. R. Co.**, 29 *Barb.* 35. See *Bostwick v. Champion*; *Weed v. Saratoga & Schenectady R. R. Co.* Followed (Carrier's liability as warehouseman) in *Burnell v. N. Y. Central R. R. Co.*, 45 *N. Y.* 184. Commented upon and compared in *Ang. on Carr.* § 114, *n. a*, 5 *ed.* Disting'd (Contract by carrier beyond his line) in *Milnor v. N. Y. & New Haven R. R. Co.*, 53 *N. Y.* 363, 370. Quoted and collated, with other cases, in *Field on Ultra Vires*, 118.
- **v. Gruman**, 4 *Hill*, 625; *s. c.*, 40 *Am. Dec.* 299, with note, wherein it is said to have been extensively cited and approved in *N. Y.*, and to be in accordance with the doctrine maintained in other States. See *Voorhees v. Earle*. Examined (Remedy for breach of warranty without fraud) in *Gatey v. Rountree*, 2 *Chand. (Wisc.)* 43. Rule of damages herein, said in *Passinger v. Thorburn*, 34 *N. Y.* 634, to rest on sound principles and to be settled by this case and *Voorhees v. Earle*, 2 *Hill*, 288. Disting'd in *Flannagan v. Maddin*, 81 *N. Y.* 623. Quoted and explained in 3 *Pars. on Contr.* 211, *n. z*. Explained (Sales—mistake and failure of consideration) in 1 *Benj. on Sales*, § 626 (Corbin's 4 *Am. ed.*).
- **v. Gregory**, 38 *Super. Ct. (J. & S.)* 127. Mem. of further proceeding in *Id.* 566. Cited (Contracts of executors and administrators) in *Ross v. Harden*, 44 *Super. Ct. (J. & S.)* 26.
- **v. Hotailing**, 1 *Hill*, 311; *s. c.*, 37 *Am. Dec.* 323, with note; 15 *N. Y. Com. L. Laps. ed.* 140, with brief note. See *Mowry v. Walsh*. Applied (Evidence of frauds similar to that in issue) in *Van Kleek v. Leroy*, 4 *Abb. Ct. App. Dec.* 481, which aff'd 37 *Barb.* 544, which see. Applied in *French v. White*, 5 *Duer*, 259; *Bruen v. Bruen*, 4 *Edw.* 640. Disting'd in *Murfey v. Brace*, 23 *Barb.* 564; *Strong v. Place*, 4 *Robt.* 393. Examined with other cases in *People v. Shulman*, 80 *N. Y.* 375, *n.* Reaff'd in *Olmsted v. Hotailing*, 1 *Hill*, 317. Cited as an authority in *Whart. Com. on Ev.* § 33, *n.* Limited (Replevin as concurrent remedy with trespass) in *Brockway v. Burnap*, 12 *Barb.* 850. Cited as authority in *Brockway v. Burnap*, 16 *Barb.* 313. Disapproved with *Olmsted v. Hotailing*, 1 *Hill*, 311, 317, in *Roberts v. Randel*, 3 *Sandf.* 707, but followed and explained in *Drake v. Wakefield*, 11 *How. Pr.* 108, notwithstanding *Roberts v. Randel*. Applied (Trove, &c. for goods obtained by fraud) in *Townsend v. Bogart*, 11 *Abb. Pr.* 360; *McKnight v. Morgan*, 2 *Barb.* 173; *Foshay v. Ferguson*, 5 *Hill*, 159. Applied to case of goods received on usurious contract—in *Schroeppel v. Corning*, 5 *Den.* 443. Limited in *Barrett v. Warren*, 3 *Hill*, 448.

- Applied (Right to waive tort and sue in assumption) in *Abbott v. Blossom*, 66 *Barb.* 355. Approved (What is fraud on vendor) in *Van Neste v. Conover*, 20 *Barb.* 548. Limited (Effect of sale procured by fraud, in divesting title or possession) in *Stevens v. Hyde*, 32 *Barb.* 175, 179.
- *v. Schoharie Valley Machine Co.*, 2 *Hun.* 110; s. c., with opinion, 4 *Sup'm. Ct. (T. & C.)* 285.
- *v. White*, 7 *Lans.* 1. Rev'd in 52 *N. Y.* 138. Further decision in 59 *N. Y.* 336. See *Hatch v. Peugnet*. Decision in 52 *N. Y.* distinguishing (Extension of time as valuable consideration) in *Mutual Life Ins. Co. v. Smith*, 23 *Hun.* 540. Followed in *Van Etten v. Troudden*, 67 *Barb.* 345. Applied in *Beard v. Root*, 4 *Hun.* 356; *Sullivan Savgs. Inst. v. Young*, 55 *Iowa*, 134. Explained in *Grocer's B'k v. Penfield*, 7 *Hun.* 282. Disting'd in *Hubbard v. Gurney*, 64 *N. Y.* 457, 468. Reviewed with other cases in *Maier v. Canavan*, 8 *Daly*, 272, 275. Disting'd (Who purchaser in good faith and for value) in *Union Dime Savings Institution v. Duryea*, 67 *N. Y.* 87. Decision in 59 *N. Y.* explained and distinguished (Personal transactions with deceased) in *Ross v. Harden*, 42 *Super. Ct. (J. & S.)* 427. Followed in *Witthaus v. Schack*, 24 *Hun.* 331. Followed (Evidence of communication made by deceased to third party) in *Patterson v. Copeland*, 52 *How. Pr.* 465; *Hildebrandt v. Crawford*, 65 *N. Y.* 111. Applied in *Kale v. Elliott*, 18 *Hun.* 198; *Holcomb v. Holcomb*, 20 *Id.* 159. Disting'd in *Head v. Teeter*, 10 *Id.* 548; *Brague v. Lord*, 41 *Super. Ct. (J. & S.)* 196. To the contrary (Exclusion of assignor as witness) *Lyon v. Snyder*, 61 *Barb.* 172. See also *Abb. Tr. Ev.* 64.
- Caryl v. McElrath**, 3 *Sandf.* 176, 179. Explained (Corporations—agents) in *Ang. & A. on Corp.* § 298, 11 ed.
- *v. Russell*, 18 *Barb.* 429. Rev'd in 13 *N. Y.* 194.
- Case of** —. See the name of the party in its alphabetical place in this table.
- Case v. Abeel**, 1 *Paige*, 393. See *Williams v. Wilson*. Explained (Partnership—surviving partner's rights) in 2 *Collyer on Partn.* § 623, n. 1, *Wood's Am. ed.*
- *v. Boughton*, 11 *Wend.* 106. See *Langdon v. Buel*. Applied (Debt not extinguished by foreclosure) to case of forfeiture of stock, in *Herkimer M. & H. Co. v. Small*, 21 *Wend.* 276. Cited (Effect of recital of object of mortgage) in *Haskins v. Kelly*, 1 *Robt.* 175, as contrary to doctrine there stated. Applied (Inquiring into consideration of sealed instrument) in *Wilson v. Baptist Education Soc. of N. Y.*, 10 *Barb.* 312. Examined in *Mann v. Eckford*, 15 *Wend.* 519. Followed as settled law in *Anthony v. Harrison*, 14 *Hun.* 207. Followed (Effect of possession taken by mortgagee of chattels in satisfying debt) in *Stoddard v. Denison*, 2 *Sweeney*, 62. Shown in 2 *Am. Dec.* 78, n., to be, with *Meyer v. Amidon*, 45 *N. Y.* 169; *Simar v. Canada*, 53 *Id.* 298. limited (Liability for honestly making false statement) by the well settled principle stated in *Bennett v. Judson*, 21 *N. Y.* 138; *Meyer v. Amidon*. Criticised (Plea, when an answer to the whole declaration) in *Sterry v. Schuyler*, 23 *Wend.* 487. Cited as authority in *Sheldon v. Lewis*, 97 *Id.* 644.
- *v. Buckley*, 15 *Wend.* 327. Collated with other cases (Charge of crime involving moral turpitude) in 1 *Hare & W. Am. Lead. Cas.* 99.
- *De Goes*, 3 *Cai.* 261. See *Wickham v. Freeman*. Followed (Limitations upon doctrine of trespass by relation) in *Van Brunt v. Schenck*, 11 *Johns.* 384.
- *v. Haight*. See *Arthur v. Case*.
- *v. Hall*, 24 *Wend.* 102. See *Vibbard v. Johnson*. Followed (Breach of warranty in sale of chattels) in *Gross v. Kierski*, 41 *Cal.* 111, 116. Applied (Recovery for breach of warranty) in *Converse v. Miner*, 21 *Hun.* 367, 374. Approved in *Bordwell v. Collie*, 45 *N. Y.* 496. Followed with *Delaware B'k v. Jarvis*, 20 *Wend.* 226; *Burt v. Dewey*, 40 *Id.* 283; *Bordwell v. Collie*, 45 *N. Y.* 495; *McGiffin v. Baird*, 62 *Id.* 329, in *O'Brien v. Jones*, 91 *N. Y.* 193. Examined and followed (Action for price of chattels, defeated by seller's fraud, without actual ouster) in *Sweetman v. Prince*, 62 *Barb.* 256, which was, however, rev'd in 26 *N. Y.* 224.
- *v. Hotchkiss*, 1 *Abb. Ct. App. Dec.* 324. See *Murray v. Toland*.
- *v. Mechanics' Banking Assoc.*, 4 *N. Y.* 166. Disting'd (Liability of principal on note executed by agent without authority) in *Storrs v. Flint*, 46 *Super. Ct. (J. & S.)* 517.
- *v. People*, 14 *Hun.* 503. Rev'd in 76 *N. Y.* 242; s. c., more fully, 6 *Abb. N. C.* 151. Decision in 76 *N. Y.* approved (Formalities necessary to an oath) in *O'Reilly v. People*, 86 *N. Y.* 154, 160, which rev'd 9 *Abb. N. C.* 83, 88, which see. Considered extreme (Interference with verdict of jury in criminal cases) in *Levy v. People*, 19 *Hun.* 383, 389.
- *v. Phelps*, 39 *N. Y.* 164. Disting'd with *Carpenter v. Roe*, 10 *Id.* 227 (Conveyance of husband's property to wife, when fraudulent) in *Carr v. Breese*, 81 *N. Y.* 589; *Spicer v. Ayers*, 53 *How. Pr.* 405. Quoted in *Wait on Fraud. Conv.* § 100.
- *v. Potter*, 8 *Johns.* 211. Criticised, with *Vosburgh v. Thayer*, 12 *Id.* 465 (Accounts as evidence) in *Conklin v. Stamler*, 2 *Hill.* 422, 425. Disting'd in *Burke v. Wolfe*, 38 *Super. Ct. (J. & S.)* 263, 272.
- *v. Price*, 9 *Abb. Pr.* 111. Approved (Witness-fees a disbursement) in *Dunham v. Sherman*, 11 *Id.* 152, 154. Opposed, in *Bronner v. Frauenthal*, 12 *Id.* 183.
- *v. Reeve*, 14 *Johns.* 79, 81. Approved (Estoppel) in *Prentiss v. Holbrook*, 2 *Mich.* 376. Cited (Result of suit between two persons, when not binding on third) in *St. Johnsbury & Lake Champlain R. R. Co. v. Hunt*, 55 *Vt.* 570; s. c., 45 *Am. R.* 639.

- Cited as authority (Evidence to show who were real parties to suit) in *Belden v. Seymour*, 8 *Conn.* 304; s. c., 21 *Am. Dec.* 660, 663, with note.
- Casey v. Brabason**, 10 *Abb. Pr.* 368. Included (Negotiable paper—parties to, not guarantors within the Statute of Frauds) in 2 *Ames Cas. on B. & N.* 713.
- **v. Brush**, 2 *Cai.* 293. Cited with *Hasted v. Schmelzel*, 17 *Johns.* 80; *Westerlo v. Evertson*, 1 *Wend.* 532, and other cases, as showing that in N. Y., South Carolina, and England, assumpsit will not lie for a final balance of a partnership account,—in *Williams v. Henshaw*, 11 *Pick. (Mass.)* 79; s. c., 22 *Am. Dec.* 366, with note, where a contrary rule was recognized as prevailing in Mass. and Penn.
- **v. Mann**, 5 *Abb. Pr.* 91. Approved with *Doolittle v. Howard*, 3 *Duer.* 464; *Robbins v. Mount*, 33 *How. Pr.* 24; *Kaiser v. Hirsh*, 46 *Id.* 161; *Moore v. Goedel*, 34 *N. Y.* 527 (Liability of landlord for failure to repair) in *Purcell v. English*, 86 *Ind.* 40.
- **v. Mayor, &c. of N. Y.**, 5 *Hun.* 463. Disting'd (Defect in local assessment) in *Matter of Auchmuty*, 11 *Hun.* 79. Compared with *Matter of Auchmuty* in *Matter of N. Y. Prot. Epis. Pub. School*, 75 *N. Y.* 327.
- **v. N. Y. Central, &c. R. R. Co.**, 8 *Daly*, 220, 222; s. c., 6 *Abb. N. C.* 104, with note. Aff'd, on other grounds, in 78 *N. Y.* 515. See *Luby v. Hudson River R. R. Co.*
- Cashman v. Henry**, 44 *Super. Ct. (J. & S.)* 93; s. c., 55 *How. Pr.* 234. Rev'd in 75 *N. Y.* 103; s. c., 5 *Abb. N. C.* 230; 31 *Am. R.* 437, with note; also 44 *Super. Ct. (J. & S.)* 100, n. Decision in 75 *N. Y.* disting'd (Power of married woman to contract) in *Wilson Sewing Mach. Co. v. Fuller*, 60 *How. Pr.* 481. Applied in *Zimmerman v. Erhard*, 8 *Daly*, 311, 313; *Scott v. Otis*, 25 *Hun.* 35. See also *Waterman on Sp. Perf.* § 66, n.
- **v. Johnson**. See *Cushman v. Same*.
- Cashmere v. De Wolf**, 2 *Sandf.* 379. See to the contrary (Jurisdiction of State courts as to questions of salvage) *Frith v. Crowell*, 5 *Barb.* 209.
- Casler v. Shipman**, 35 *N. Y.* 533, 541. Explained (What facts defendant is entitled to have found) in *Quincey v. Young*, 5 *Daly*, 44.
- Casoni v. Jerome**, 58 *N. Y.* 315. Applied (Effect of revocation of letters of administration on jurisdiction of surrogate) in *Gerould v. Wilson*, 81 *N. Y.* 573, 578, 583.
- Casper v. O'Brien**, 36 *Super. Ct. (J. & S.)* 574. Reported in 15 *Abb. Pr. N. S.* 402; s. c., 47 *How. Pr.* 80.
- Cassard v. Hinmann**, 14 *How. Pr.* 84. Aff'd in 1 *Bosw.* 207. Further decision in 6 *Bosw.* 8. See *Harris v. Tumbleidge*. Decision in 1 *Bosw.* relied on (Validity of contracts of sale for delivery of goods on future day) in *Kingsbury v. Kirwin*, 43 *Super. Ct. (J. & S.)* 451.
- Casserly v. Manners**, 4 *How. Pr.* 219. Rev'd in 9 *Hun.* 695. Decision in 9 *Hun.* disting'd (Application of provisions of R. S. relating to moneyed corporations) in *McLean v. Eastman*, 21 *Hun.* 312, 315.
- Cassidy v. City of Brooklyn**, 60 *Barb.* 105; s. c., more fully, 10 *Abb. Pr. N. S.* 97. Aff'd in 47 *N. Y.* 659, but without new opinion. Decision in 10 *Abb. Pr. N. S.* followed (Necessity for concurrence of mayor of Brooklyn in appointment) in *People ex rel. Ennis v. Schroeder*, 12 *Hun.* 415.
- **v. Daly**, 23 *Hun.* 296. Dissenting opinion by GILBERT, J., in 11 *Weekly Dig.* 222.
- **v. La Fevre**, 57 *Barb.* 313. Aff'd in 45 *N. Y.* 562.
- **v. Schedel**, 9 *Hun.* 340. Aff'd, it seems, in 71 *N. Y.* 603, but without opinion.
- Cassin v. Delaney**, 1 *Daly*, 224. Rev'd in 6 *Abb. Pr. N. S.* 1; s. c., 38 *N. Y.* 178. Decision in 38 *N. Y.* explained (Liability of husband for wife's torts committed in his presence) in *Peak v. Lemon*, 1 *Lans.* 295. Considered in 13 *Cent. L. J.* 486. Referred to (Power to order reduction of verdict, as alternative of new trial) in *Peck v. N. Y. Central, &c. R. R. Co.*, 8 *Hun.* 289, as overruled by *Murray v. Hudson River R. R. Co.*, 48 *N. Y.* 655, n.
- Castellanos v. Jones**, 5 *N. Y.* 164. Relied on (Necessity of recital of jurisdictional facts) in *Bullymore v. Cooper*, 2 *Lans.* 71, 80.
- Castle v. Beardsley**, 10 *Hun.* 343. See *Leonard v. Vredenberg*; *Speyers v. Lambert*. Cited (Consideration to appear in note or memorandum of sale) in *Benj. on Sales*, § 232, n. u (Bennett's 4 *Am. ed.*), as sustaining English doctrine.
- **v. Duryea**, 32 *Barb.* 480. Aff'd in 2 *Keyes*, 169; s. c., 1 *Abb. Ct. App. Dec.* 327. Decision in 2 *Keyes*, applied (Liability for unintentional assault) in *Conway v. Reed*, 66 *Mo.* 346; s. c., 27 *Am. R.* 354. Approved in 1 *Thomps. on Negl.* 243.
- **v. Lewis**, 13 *Hun.* 293. Aff'd in 78 *N. Y.* 131. See *Thurber v. Blanck*.
- **v. Noyes**, 14 *N. Y.* 329. See *Doty v. Brown*. Applied (Parties bound by former adjudication) in *Craig v. Ward*, 1 *Abb. Ct. App. Dec.* 458; *Yorks v. Steele*, 50 *Barb.* 406; *Hudson v. Smith*, 39 *Super. Ct. (J. & S.)* 461; *Bush v. Knox*, 2 *Hun.* 576. Explained in dissenting opinion of DANIELS, J., in *Tyng v. Clarke*, 9 *Hun.* 275. Cited as authority in *Miller v. White*, 50 *N. Y.* 144. Applied (Former adjudication) in *Freer v. Stotenbur*, 2 *Abb. Ct. App. Dec.* 189, 196; *Fake v. Smith*, 7 *Abb. Pr. N. S.* 109. Disting'd in *Hendricks v. Decker*, 35 *Barb.* 302.
- Caswell v. Black River Manf. Co.** See *Ellis v. Hoskins*.
- **v. Davis**, 4 *Abb. Pr. N. S.* 6; s. c., 35 *How. Pr.* 76. Overruled (Exclusive use of names, &c.) in 58 *N. Y.* 223; s. c., 17 *Am. R.* 233. See *Messerole v. Tynberg*. Decision



- in 58 *N. Y.* followed (What trade-mark may consist of) in *Taylor v. Gillies*, 59 *N. Y.* 331, 335; *Ayer v. Rushton*, 7 *Daly*, 9, 13. Disting'd in *Morgan's Sons' Co. v. Troxell*, 23 *Hun.* 638. Followed, with *Taylor v. Gillies*, 59 *N. Y.* 331; *Meneely v. Meneely*, 62 *N. Y.* 427; in *Marshall v. Pinkham*, 52 *Wisc.* 572; s. c., 38 *Am. R.* 756. Decision in 4 *Abb. Pr. N. S.* explained in 2 *Pars. on Contr.* 257, n.
- **v. Districh**, 15 *Wend.* 379. See *Putnam v. Wise*; *Stewart v. Doughty*. Reviewed and followed (Nature of contract to work farm on shares) in *Taylor v. Bradley*, 39 *N. Y.* 129.
- Cathcart v. Cannon**, 1 *Johns. Cas.* 28. Collated with *Loflin v. Fowler*, 18 *Johns.* 335; *People v. Bartlett*, 3 *Hill*, 570; *Biggnell v. Forrest*, 2 *Johns.* 482; *People v. Manning*, 8 *Cov.* 297; *Olcott v. Lilly*, 4 *Johns.* 407 (Bail, when excused for non-production of their principal) in *Steelman v. Mattix*, 9 *Vroom (N. J.)* 247; s. c., 20 *Am. R.* 389.
- Catlett v. Pacific Ins. Co.**, 1 *Wend.* 561. Aff'd in 4 *Id.* 75.
- Catlin v. Adirondack Co.**, 19 *Hun.* 389. Confirmed in 81 *N. Y.* 379. Further proceeding in 20 *Hun.* 19, which was rev'd, it seems, in 81 *N. Y.* 639. Also further proceeding in 22 *Hun.* 493. Decision in 81 *N. Y.* 639, commented on (Imprisonment of plaintiff to collect costs) in *Parker v. Spear*, 62 *How. Pr.* 394.
- **v. Catlin**, 1 *Hun.* 322. Mem. of another decision in 2 *Id.* 378; s. c., 4 *Sup'm. Ct. (T. & C.)* 664. Decision in 2 *Hun* followed (Effect of neglect to file exceptions to referee's report in divorce) and *Merrill v. Merrill*, 11 *Abb. Pr. N. S.* 74; *Moore v. Moore*, 14 *Weekly Dig.* 255; *Green v. Green*, *Id.* 159, disregarded, in *Gade v. Gade*, 14 *Abb. N. C.* 510.
- **v. Cole**, 19 *How. Pr.* 82. Explained (Amendment of case) in *O'Gorman v. Kamak*, 5 *Daly*, 517, 519.
- **v. Doughty**, 12 *How. Pr.* 457. See (Discovery in judgment creditor's action) *Code Civ. Pro.* 1881, § 1878, n.
- **v. Gunter**, 1 *Duer*, 253. Rev'd in 11 *N. Y.* 368. See *Aeby v. Rapelye*. Decision in 11 *N. Y.* applied (Disregarding variance) in *McComber v. Granite Ins. Co.*, 15 *N. Y.* 495. Reaff'd and approved in *Place v. Minster*, 65 *N. Y.* 104. Disting'd in *Field v. Syms*, 2 *Robt.* 45. Followed (Application of provisions respecting variance to defense of usury) in *Deuel v. Spence*, 1 *Abb. Ct. App. Dec.* 561; *Clayes v. Hooker*, 4 *Hun.* 235. Limited to course to be pursued at the trial, —in *Gasper v. Adams*, 24 *Barb.* 287. Disting'd as turning entirely on the question of variance, in *Manning v. Tyler*, 21 *N. Y.* 569, which was however disting'd in *Dagal v. Simmons*, 23 *N. Y.* 491, where *Catlin v. Gunter* was reaff'd as settling that same rule applies to defense of usury as to other defenses. Cited as authority (Amending by setting up statutory defense) in *Gilchrist v.*
- Gilchrist*, 44 *How. Pr.* 319. Applied to variance from complaint on note, —in *Trowbridge v. Didier*, 4 *Duer*, 451. Disting'd (Amending pleadings so as to set up defense of usury) in *Morris v. Slatery*, 6 *Abb. Pr.* 76; *Smalley v. Doughty*, 6 *Bow.* 73. Applied in *Brown v. Mitchell*, 2 *Abb. Pr.* 482. Cited as authority in *Union Nat. B'k of Troy v. Bassett*, 3 *Abb. Pr. N. S.* 362; *Bank of Kinderhook v. Gifford*, 40 *Barb.* 659. Applied (Reception of proof that will create a variance) in *Seaman v. Low*, 4 *Bow.* 351. Followed (Disregarding variance from terms of special agreement set up in answer) in *Cobb v. West*, 4 *Duer*, 44.
- **v. Hausen**, 1 *Duer*, 309. See *Bank of Orleans v. Barry*; *Miller v. Ritz*. Limited (Right of amendment) in *Van Ness v. Bush*, 14 *Abb. Pr.* 33, 36. See in accord therewith (Witness, when not to be rejected for interest) *Allen v. Franklin Fire Ins. Co.*, 9 *How. Pr.* 501. Disting'd (Recovery on lost promissory note, &c.) in *Beauford v. Patterson*, 63 *How. Pr.* 81.
- **v. Jackson**, 8 *Johns.* 520. See *Wood v. Colvin*. Approved (Levy on lands unnecessary) in *Bagley v. Ward*, 37 *Cal.* 121. Cited with approval (Property of debtor not divested by mere seizure on execution) in *Churchill v. Warren*, 2 *N. H.* 298; s. c., 9 *Am. Dec.* 73.
- **v. Tobias**, 26 *N. Y.* 217. Disting'd (Effect of vendor's failure in delivering all of goods contracted for) in *Avery v. Willson*, 81 *N. Y.* 345.
- **v. Valentine**, 9 *Paige*, 575. Commented on (Enjoining nuisance) in *Phoenix v. Comm'rs of Emigration*, 1 *Abb. Pr.* 475. Relied on in dissenting opinion of *MILLER, J.*, in *Metropolitan Board of Health v. Heister*, 37 *N. Y.* 683. Reviewed with other cases, in *Hutchins v. Smith*, 63 *Barb.* 255. Examined in *Doellner v. Tynan*, 38 *How. Pr.* 180. Followed in *Peck v. Elder*, 3 *Sandf.* 131. Included with note in *Lawson's Lead. Cas. in Eq. Simplified*, 153. Contrasted with other cases, in 18 *Am. L. Rev.* 599, 608. Compared (What constitutes nuisance) in *Heeg v. Licht*, 80 *N. Y.* 582. Applied in *Brady v. Weeks*, 3 *Barb.* 159. Followed in *Pruner v. Pendleton*, 75 *Va.* 516; s. c., 40 *Am. R.* 738. Quoted and discussed in *Wood on Nuis.* 2 ed. §§ 497, 505. Applied (Joinder of owners of separate premises in action to abate nuisance) in *Gillespie v. Forrest*, 18 *Hun.* 112.
- Caton v. Rumney**, 13 *Wend.* 387. See *Alexander v. Green*. Disting'd (Liability of Towboat as carrier) in *Pa.*, &c. *Nav. Co. v. Dandridge*, 8 *Gill & J. (Md.)* 248; s. c., 29 *Am. Dec.* 543, 555, with note. Followed and approved, with *Alexander v. Greene*, 3 *Hill*, 9; *Wells v. Steam Navigation Co.*, 2 *N. Y.* 207; in *Leonard v. Hendrickson*, 18 *Pa. St.* 40; s. c., 55 *Am. Dec.* 587, it being also thought that the grounds on which *Alexander v. Greene*, was rev'd in 7 *Hill*, 533, cannot be learned from the opinions there

- delivered. These three cases also followed in *Varble v. Bigley*, 14 *Bush* (Ky.) 698; s. c., 29 *Am. R.* 435. Commented upon in 2 *Paris. on Contr.* 170, n. r.
- *v. Southwell*, 13 *Barb.* 325. See (Effect of supplementary proceedings on after-acquired property) *Code Civ. Pro.* 1881, § 2469, n.
- Catskill Bank v. Gray**, 14 *Barb.* 471. See *N. Y. & Sharon Canal Co. v. Fulton Bank*. Disting'd (Partnership created by participation in profits) in *Burnett v. Snyder*, 76 *N. Y.* 344, 351. Cited in *Story on Partn.* 7 ed. § 43, n.
- *v. Messenger*, 9 *Cow.* 27; s. c., 9 *N. Y. Com. L. Law. ed.* 558, with brief note.
- *v. Sanford*, 4 *How. Pr.* 101. See (Time within which to issue execution, in case of judgment obtained before the passage of Code Pro.) *Pierce v. Craine*, 4 *How. Pr.* 257.
- *v. Stall*, 15 *Wend.* 364. Aff'd in 18 *Id.* 466. Decision in 15 *Wend.* examined (Notice of protest when indorser's residence is uncertain) in *Beale v. Parrish*, 20 *N. Y.* 407, 410. Cited with other cases (Violation of partnership articles no defense against *bona fide* holder) in 11 *Am. L. Reg. N. S.* 542.
- Caughy v. Smith**, 50 *Barb.* 351. Intimation in 6 *Alb. L. J.* 168, that this decision was rev'd in Ct. of App., Jan. 16, 1872, is erroneous. See decision in 47 *N. Y.* 244, which was applied (What is decision of General Term) in *Merceron v. Fowler*, 8 *Daly*, 536. Collated with other cases (Right of action for enticing away servant) in 22 *Am. R.* 485, n. Explained (Enticing minor to enlist in the army) in *Mouk's Underhill's Torts*, 1 *Am. ed.* 336, 338.
- Çaujolle v. Ferrie**, 4 *Bradf.* 28. Aff'd in 26 *Barb.* 177, which was aff'd in 23 *N. Y.* 90. See *Ferrie v. Public Adm'r*; *Foster v. Hawley*; *Starr v. Peck*.
- Caulfield v. Sullivan**, 21 *Hun*, 227. Aff'd in 85 *N. Y.* 153.
- Caulkins v. Harris**, 9 *Johns.* 324. Applied with *Tanner v. Livingston*, 12 *Wend.* 83 (Measure of damages for breach of covenant of seizin) in *Spring v. Chase*, 22 *Me.* 505; s. c., 39 *Am. Dec.* 595, with note.
- *v. Hellman*, 47 *N. Y.* 449; s. c., 7 *Am. R.* 461. Disting'd (Acceptance under Statute of Frauds) in *Smith v. Milliken*, 7 *Lans.* 336; *U. S. Reflector Co. v. Rushton*, 7 *Daly*, 410. Applied in *Ham v. Van Orden*, 4 *Hun*, 709. Cited as authority in *Stone v. Browning*, 68 *N. Y.* 601. Followed in *Brewster v. Taylor*, 39 *Super. Ct. (J. & S.)* 159, 166; *Ex parte Parker*, 11 *Neb.* 314. Cited as authority in *Hewes v. Jordan*, 39 *Md.* 472; s. c., 17 *Am. R.* 578. Quoted and explained in 1 *Benj. on Sales*, § 139, n. 1 (Corbin's 4 *Am. ed.*); *Id.* § 160, n. q. Cited in *Benj. on Sales*, §§ 140, 181 (Bennett's 4 *Am. ed.*).
- Caussidiere v. Beers**, 1 *Abb. Ct. App. Dec.* 333; s. c., 2 *Keyes*, 198. Applied (Tracing property or proceeds) in *Dows v. Kidder*, 84 *N. Y.* 121, 132. Disting'd (Money illegally obtained—when recoverable from third person) in *Stephens v. Board of Education of Brooklyn*, 79 *N. Y.* 188. Compare *Same v. Same*, 3 *Hun*, 712.
- Cavalli v. Allen**, 57 *N. Y.* 508. Discussed (Ejectment against vendee) in *Sedgw. & W. on Tr. of Tit. to Land*, § 322.
- Cavanagh, Matter of**, 10 *How. Pr.* 27; s. c., as *People v. Cavanagh*, 1 *Park. Cr.* 588. Rev'd in *People v. Cavanagh*, 2 *Abb. Pr.* 84; s. c., 2 *Park. Cr.* 650, where the certiorari and return are given.
- Cavanagh v. Dinsmore**, 12 *Hun*, 465. See *Sheridan v. Charlick*. Applied (Servant—when not acting in master's business) in *Quinn v. Power*, 17 *Hun*, 102.
- Caw v. Robertson**, 5 *N. Y.* 125. Rev'd 3 *Barb.* 410. Commented upon (Executor as subscribing witness) in *Willard on Executors*, 176.
- Caykendoll, Matter of**, 6 *Cow.* 53. Disting'd (Jurors—when allowed to impeach affidavit) in *Dalrymple v. Williams*, 63 *N. Y.* 361.
- Caylus v. N. Y., Kingston & S. R. Co.**, 49 *How. Pr.* 100. Aff'd in 10 *Hun*, 285, and that aff'd in 76 *N. Y.* 609.
- Cayuga Bank v. Daniels**, 47 *N. Y.* 631. Explained (Sales—reservation of *jus disponendi*) in 1 *Benj. on Sales*, §§ 585, 589 (Corbin's 4 *Am. ed.*).
- *v. Dill*, 5 *Hill*, 403. Disapproved (Conduct of indorser excusing protest and notice) in *Boyd v. Bank of Toledo*, 32 *Ohio St.* 526; s. c., 30 *Am. R.* 628.
- Cayuga Bridge Co. v. Magee**, 2 *Paige*, 116. Aff'd in 6 *Wend.* 85. See *Lawton v. Green*. Decision in 2 *Paige*, 116, cited with other authorities (Practice concerning injunction bonds) in *Russell v. Farley*, 105 *U. S.* 433, 441.
- Cayuga Co. Bank v. Bennett**. See *Johnson v. Beardslee*; *Merchant's Bank v. Birch*.
- *v. Hunt*, 2 *Hill*, 635. Approved (Taking interest in advance not usury) in *Marvine v. Hymers*, 12 *N. Y.* 223.
- *v. Warden*, 6 *N. Y.* 19. See *Dole v. Gold*. Opinion of GRAY, J., in 9 *N. Y. Leg. Obs.* 855. Disting'd (Insufficiency of notice of protest) in *De La Hunt v. Higgins*, 9 *Abb. Pr.* 422.
- Cayuga Lake R. R. Co. v. Kyle**, 5 *Sup'm. Ct.* 659. Aff'd in 64 *N. Y.* 185.
- Cazeaux v. Mali**, 25 *Barb.* 578. Approved, and *Seizer v. Mali*, 32 *Barb.* 76, disting'd (Liability on spurious certificates of stock) in *Bruff v. Mali*, 36 *N. Y.* 200; s. c., 34 *How. Pr.* 338; *Shotwell v. Mali*, 38 *Barb.* 445. Fully confirmed (Sufficient cause of action by stockholders against directors) in *Smith v. Rathbun*, 66 *Barb.* 405. Applied (Liability for representation not made directly to party seeking redress) in *Eaton, Cole & Burnham Co. v. Avery*, 83 *N. Y.* 34.
- Center v. American Ins. Co.**, 7 *Cow.* 564. Aff'd in 4 *Wend.* 45. See *Scott v. Libby*.
- *v. Finney*, 17 *Barb.* 94. Aff'd in *Seld. Notes*, No. 2, 44.

**Central Bank v. Empire Stone Dressing Co.**, 26 *Barb.* 23. Said in 22 *How. Pr.* 571, *n.*, to have been rev'd by Ct. of App. in Dec. 1861. Disting'd (Effect of repeal of statute on prior contracts) in *Washburn v. Franklin*, 11 *Abb. Pr.* 93, which was, however, rev'd in 13 *Id.* 140; *s. c.*, 35 *Barb.* 599; 24 *How. Pr.* 515, which see.

**Central Bank of Brooklyn v. Hammett**, 50 *N. Y.* 158. Mem. of decision below, in 4 *Alb. L. J.* 75. Disapproved (Presumption arising from possession of bill by acceptor before due) in *Witte v. Williams*, 8 *S. C.* 290; *s. c.*, 28 *Am. R.* 299. Compare *Holmes v. Witty*, 2 *Sup'm. Ct. (T. & C.)* 670. Included, with notes (Negotiable paper—*bona fide* holder) in 1 *Ames Cas. on B. & N.* 742.

— **v. Lang**, 1 *Bow.* 202. Followed (Discounted paper) in *Farmers' Bank v. Watson*, 32 *N. Y.* 583.

**Central Bank of Troy v. Heydorn**, 48 *N. Y.* 260. Collated and relied on, with *Lyon v. Adde*, 63 *Barb.* 89; *Lyon v. Odell*, 65 *N. Y.* 28; *Giles v. Baremore*, 5 *Johns. Ch.* 545 (Presumption of payment) in *Stafford Bank v. John D. Lawson*, in 30 *Alb. L. J.* 84.

**Central City Savings Bank v. Walker**, 66 *N. Y.* 424. See *Poillon v. Secor*. Followed (Liability of corporator) in *Stafford Bank v. Palmer*, 47 *Conn.* 449. Cited in *Story on Partn.* 7 ed. 50, *n.* Quoted and explained (Liability of partners for acts of copartners) in 1 *Collyer on Partn.* § 405, *n.* 1, *Wood's Am. ed.*

**Central Cross-town R. R. Co. v. 23d St. R. W. Co.**, 53 *How. Pr.* 45. Further proceeding in 54 *Id.* 168. Decision in 54 *How. Pr.* explained with *Fisher v. N. Y. Central R. R. Co.*, 46 *N. Y.* 644 (Power to lease property of railroad corporation) in *Metropolitan, &c. R'y Co. v. Manhattan R'y Co.*, 14 *Abb. N. C.* 103, 251.

**Central Gold Mining Co. v. Platt**. See *Partridge v. Badger*.

**Central National Bank v. Richland National Bank**, 52 *How. Pr.* 136. Criticised and disting'd (Attachments against national banks) in *Robinson v. Nat. B'k*, 19 *Hun.* 477. Overruled or limited in *People's B'k of N. Y. v. Mechanic's Nat. B'k of Newark*, 62 *How. Pr.* 422; citing *Robinson v. Nat. B'k of Newberne*, 81 *N. Y.* 385.

— **v. White**, 37 *Super. Ct. (J. & S.)* 297. Cited (Corporation cannot be compelled to produce its books and papers by *subpoena duces tecum*) in 4 *Whart. Com. on Ev.* § 377.

**Central Sav'gs Inst. v. Walker**, 5 *Hun.* 35. Aff'd in *Central City Sav'gs B'k v. Walker*, 63 *N. Y.* 424.

**Central Park, Matter of**, 4 *Hun.* 599. Aff'd, it seems, in 62 *N. Y.* 645, on opinion of *DAVIS, P. J.*, below.

**Central Park Extension, Matter of**, 16 *Abb. Pr.* 69. Collated, with other cases (Dower—barred by eminent domain) in *Sharsw. & B. Cas. on Real Prop.* 333.

**Cesar v. Karutz**, 60 *N. Y.* 229. Disting'd

(Liability of landlord for injuries to tenant caused by defect in premises) in *Bowe v. Hunking*, 135 *Mass.* 380; *s. c.*, 46 *Am. R.* 471.

**Chace v. Hinman**, 8 *Wend.* 452; *s. c.*, 24 *Am. Dec.* 39, with note, wherein it is said to have been recognized in *N. Y.* as a leading case. See *Gilbert v. Wiman*; *Rockefeller v. Donnelly*. Declared to be authority as to damages, but disting'd in *Gilbert v. Wiman*, 1 *N. Y.* 550, 555, 561. Cited (When liability of surety becomes fixed) in *Turnure v. Hohenthal*, 36 *Super. Ct. (J. & S.)* 79. Said in *Weller v. Eames*, 15 *Minn.* 461; *s. c.*, 2 *Am. R.* 150, 153, to be based (Damages allowable on agreement to indemnify) on *Rockefeller v. Donnelly*, 8 *Cov.* 639 (which is there said to have been questioned in *Aberdeen v. Blackmer*, 6 *Hill*, 326, and denied in *Sedgw. on Dam.* 309–314). Also disapproved in *Weller v. Eames*; *Churchill v. Hunt*, 3 *Den.* 321, being followed and *Gilbert v. Wiman*, 1 *N. Y.* 550, disting'd.

**Chadwick v. Brother**, 4 *How. Pr.* 283. Dissented from (Right of sheriff to double costs) in *Nestle v. Jones*, 6 *How. Pr.* 172.

— **v. Fonner**, 6 *Hun.* 543. Rev'd in 69 *N. Y.* 404. Decision in 69 *N. Y.* disting'd (Right to possession) in *Fonner v. Johnson*, 78 *N. Y.* 617.

— **v. Lamb**, 29 *Barb.* 518. See *Rich v. Milk*. Overruled (Action by chattel mortgagee for conversion) in *Hathaway v. Brayman*, 42 *N. Y.* 322, 324, as repudiated by *Hall v. Sampson*, 35 *N. Y.* 277.

**Chaffee v. Baptist Missionary Convention**, 10 *Paige*, 85; *s. c.*, 40 *Am. Dec.* 225, with note, collecting citations thereof. See *Baskin v. Baskin*. Followed (Proof of due execution of will) in *Lewis v. Lewis*, 13 *Barb.* 23. Applied in *Lawrence v. Norton*, 45 *Id.* 452. Disting'd in *Torry v. Bowen*, 15 *Id.* 308. Cited as authority in *Tarrant v. Ware*, 25 *N. Y.* 429, *n.*; *Moore v. Griswold*, 1 *Redf.* 390; *Van Pelt v. Van Pelt*, 30 *Barb.* 139; *Mitchell v. Mitchell*, 16 *Hun.* 97; *Matter of Lewis*, 9 *N. Y. Leg. Obs.* 152. Applied to subscription by witness,—in *Morris v. Kniffin*, 37 *Barb.* 340. Explained in *Willis v. Mott*, 36 *N. Y.* 494; *Robinson v. Smith*, 13 *Abb. Pr.* 363. Compared with other cases in *Van Hooser v. Van Hooser*, 1 *Redf.* 370; *Norton v. Norton*, 2 *Id.* 12. Quoted in 1 *Jarm. on Wills*, *Rand. & T. ed.* 219, *n.* Applied (Sufficiency of subscription to legal process) in *Barnard v. Heydrick*, 49 *Barb.* 66.

— **v. Cattaraugus Co. Mut. Ins. Co.**, 18 *N. Y.* 376. Followed (Severability of contract of insurance) in *Merrill v. Agricultural Ins. Co.*, 73 *N. Y.* 452, 462.

— **v. Fort**, 2 *Lans.* 81. Disting'd (Set-off in case of insolvency) in *Terhune v. B'k of Bergen County*, 7 *Stew. (N. J.)* 367, citing *Matter of Franklin B'k*, 1 *Paige*, 249; *Butler v. Spague*, 66 *N. Y.* 392.

**Chaine v. Wilson**, 16 *How. Pr.* 552; *s. c.*, 1 *Bow.* 673; 8 *Abb. Pr.* 78. Collated with

- other cases (Attachment—domicile) in *Thomps. on Prov. Rem.* 359.
- Chalmers v. Wright**, 5 *Robt.* 713. See (Foreclosure by advertisement—deed not necessary) *Code Civ. Pro.* 1881, § 2400, *n.*
- Chamberlain, Matter of**, 28 *How. Pr.* 1. See (Official bond—application for leave to prosecute) *Code Civ. Pro.* 1881, § 1892, *n.*
- Chamberlain v. Beller**, 18 *N. Y.* 115. See *Curtis v. Patterson*. Disting'd (Costs—when covered by indemnity bond) in *Home Ins. Co. v. Watson*, 1 *Hun.* 646; *s. c.*, 4 *Sup'm. Ct. (T. & C.)* 230, which was however rev'd in 59 *N. Y.* 390, which see. Relied on (Indemnity to officer executing process) in *Grace v. Mitchell*, 31 *Wis.* 533; *s. c.*, 11 *Am. R.* 613, 620.
- **v. Chamberlain**, 3 *Lans.* 348. Modified, in 43 *N. Y.* 424. See *Wynkoop v. Halbut*. Decision in 43 *N. Y.* followed (Validity of bequest to corporation as determined by law of its domicile) in *Draper v. President, &c. of Harvard College*, 57 *How. Pr.* 269; *Kennedy v. Town of Palmer*, 1 *Sup'm. Ct. (T. & C.)* 58. Followed\* in *Taylor's Ex'rs v. Bryn Mawr College*, 7 *Stew. (N. J.)* 101. Cited as authority in *Crum v. Bliss*, 47 *Conn.* 599. Applied (Surrogate's jurisdiction as to construction of will) in *Danser v. Jeremiah*, 3 *Redf.* 143. Applied (Bequest to corporation) in *Kerr v. Dougherty*, 59 *How. Pr.* 44, 58, 67, which was modified in 17 *Hun.* 341, which was aff'd in 79 *N. Y.* 327, which see. Applied in *Curran v. Sears*, 2 *Redf.* 526, 539, which was aff'd in 13 *Hun.* 473, which see. Qualified in *Hollis v. Hollis*, 29 *Hun.* 225. Applied (Bequest to trustees of corporations, in legal effect a bequest to the corporations) in *Effray v. Foundling Asylum*, 5 *Redf.* 557, 560. Followed with *Kerr v. Dougherty*, 79 *Id.* 346 (Widow, when restricted to provisions in will for her benefit) in *Bullard v. Benson*, 1 *Dem.* 486. Followed (Equitable conversion by direction to sell) in *Betts v. Betts*, 4 *Abb. N. C.* 386; *Kearney v. Missionary Society of St. Paul*, 10 *Abb. N. C.* 274.
- **v. Dempsey**, 13 *Abb. Pr.* 61. Rev'd in 9 *Bosw.* 212; *s. c.*, 14 *Abb. Pr.* 241, and that overruled in further decision, in 36 *N. Y.* 144. Subsequent decision in 9 *Bosw.* 540; *s. c.*, 15 *Abb. Pr.* 1; rev'd in 36 *N. Y.* 144. Decision in 36 *N. Y.* cited with *Williams v. Tilt*, *Id.* 319, but *Hartley v. Harrison*, 24 *Id.* 176; *Bullard v. Raynor*, 30 *Id.* 197, doubted (Usury as personal defense) in *Ready v. Huebner*, 46 *Wis.* 792; *s. c.*, 32 *Am. R.* 749.
- **v. Gorham**, 20 *Johns.* 144. Rev'd in 20 *Id.* 746. See (Notice with plea) *Fuller v. Rood*, 3 *Hill.* 258.
- **v. Greenleaf**, 4 *Abb. N. C.* 92. Further proceeding in *Id.* 178. Compare (Pledge) *Gould v. Central Trust Co.*, 6 *Abb. N. C.* 381.
- **v. Martin**, 43 *Barb.* 607. Followed (Validity of private sale made under power in mortgage) in *Baliou v. Cunningham*, 60 *Barb.* 425. Compare *Huggans v. Fryer*, 1 *Lans.* 276, and dissenting opinion in 4 *Lans.* 74. Questioned in *Thomas on Mort.* 452. Cited as authority in *Jones on Chat. Mort.* § 791.
- **v. Roch. Seaml. Pap. Ves. Co.**, 7 *Hun.* 557. Compare (Validity of judgment) *Code Civ. Pro.* § 2430.
- **v. Spargur**, 22 *Hun.* 437. Aff'd in 86 *N. Y.* 603.
- **v. Townsend**, 7 *Abb. Pr.* 31; *s. c.*, erroneously reported as a decision at Special Term, in 26 *Barb.* 611. See in accord therewith (Maker of promissory note, when by certificate annexed thereto estopped to set up usury) *Mechanics' Bank of Brooklyn v. Townsend*, 17 *How. Pr.* 569.
- **v. Western Transportation Co.**, 45 *Barb.* 218. Rev'd in 44 *N. Y.* 305. Decision in 44 *N. Y.* applied (Baggage not "merchandise") in *The Marine City, U. S. Dist. Ct. E. D. Mich.*, 6 *Fed. Rep.* 415. Quoted and collated with other cases, in *Thomps. on Carr. of Pass.* 485.
- Chamberlin v. Cuyler**, 9 *Wend.* 125. Followed as decisive (Items of account pleaded as set-off, when not barred) in *Helms v. Otis*, 5 *Lans.* 137.
- Chambers v. Appleton**, 46 *Super. Ct. (J. & S.)* 577. Appeal dismissed in 84 *N. Y.* 649. Another proceeding in 47 *Super. Ct. (J. & S.)* 524, with which compare (Clerk's fees) *Code Civ. Pro.* § 3301, as amended by *L.* 1882, c. 399.
- **v. Clearwater**, 41 *Barb.* 200. Aff'd in 1 *Abb. Ct. App. Dec.* 341. See *Oakley v. Aspinwall*.
- **v. Durand**, 33 *Super. Ct. (J. & S.)* 494. See (Resisting motion to vacate order of arrest) *Code Civ. Pro.* 1881, § 568, *n.*
- **v. Lewis**, 2 *Hill.* 591; *s. c.*, 10 *Abb. Pr.* 206; aff'd in 11 *Abb. Pr.* 210, which was aff'd in 28 *N. Y.* 454; *s. c.*, more fully, 16 *Abb. Pr.* 433. See *Garrison v. Howe*. Decision in 28 *N. Y.* followed (Action against trustee of manufacturing corporation) in *McHarg v. Eastman*, 35 *How. Pr.* 205. Disting'd in *Anderson v. Speers*, 21 *Hun.* 568, 571; *Duckworth v. Roach*, 8 *Daly*, 159, 162. Applied in *Huguenot Nat. Bk. v. Studwell*, 6 *Daly*, 13, 15.
- **v. McCormick**. See *Hicks v. Minturn*.
- Chamboret v. Cagney**, 2 *Sweeney*, 378; *s. c.*, 10 *Abb. Pr. N. S.* 31; 41 *How. Pr.* 125. Followed (Definition of counter-claim) in *Mulberger v. Koenig*, 22 *Northw. Rep.* 745, 747. Followed ("Subject of the action") in *Lehmair v. Griswold*, 40 *Super. Ct. (J. & S.)* 100.
- Chambovet v. Cagney**, 35 *Super. Ct. (J. & S.)* 474. See *Perkins v. Perkins*. Compared with other cases (Opinion of value) in 36 *Am. R.* 437, *n.* Opposed (Partnership between husband and wife) in *Zimmerman v. Erhard*, 8 *Daly*, 311, 314.
- Champenois v. White**. See *Marsh v. Lawrence*.
- Champion v. Bostwick**, 18 *Wend.* 175; *s. c.*,

31 *Am. Dec.* 376, with note, wherein it is said to be a leading case. See *Bostwick v. Champion*; *Weed v. Saratoga & Schenectady R. R. Co.* Applied (Creation of partnership liability by sharing in profits) in *Smith v. Wright*, 1 *Abb. Pr.* 246; *Cottner v. Bettner*, 1 *Bosw.* 493. Re-aff'd in *Leggett v. Hyde*, 58 *N. Y.* 279. Approved in *Pattison v. Blanchard*, 6 *Barb.* 541, which was aff'd in 5 *N. Y.* 190, which see. Examined with other cases, in dissenting opinion of SHANKLAND, J., in *Burckle v. Eckhart*, 8 *N. Y.* 141. Disting'd in *Briggs v. Vanderbilt*, 19 *Barb.* 237; *Mohawk & Hudson River R. R. Co. v. Niles*, 3 *Hill*, 162; *Aetna Ins. Co. v. Wheeler*, 5 *Lans.* 482; *Merrick v. Gordon*, 20 *N. Y.* 93; *Burnett v. Snyder*, 76 *N. Y.* 351; *Straiton v. N. Y. & New Haven R. R. Co.*, 2 *E. D. Smith*, 186. Applied with *Merrick v. Gordon*, 20 *N. Y.* 93; *Smith v. Wright*, 1 *Abb. Pr.* 243, in *Connolly v. Davidson*, 15 *Minn.* 519; s. c., 2 *Am. R.* 154, 160. Explained in *Bentley v. Harris*, 10 *R. I.* 434; s. c., 14 *Am. R.* 695. Disting'd and *Merrick v. Gordon*, 20 *N. Y.* 93, approved in *Irvin v. Nashville*, &c. *R. R. Co.*, 92 *Ill.* 103; s. c., 34 *Am. R.* 116. Criticised in *Beecher v. Bush*, 45 *Mich.* 188; s. c., 40 *Am. R.* 465. Cited at length in *Story on Partn.* 7 ed. § 38, n. Said to be followed in Mass. and elsewhere, but criticised,—in *Id.* § 50. Cited in 1 *Pars. on Contr.* 160, n. m. Commented on in 1 *Collyer on Partn.* § 47, n. 1, Wood's Am. ed. Relied on with *Weed v. Schenectady & Saratoga R. R. Co.*, 19 *Wend.* 534 (Liability of common carriers) in *People v. Rylands*, 20 *Penn. St.* 497; s. c., 59 *Am. Dec.* 746. Compared with other cases (Liability of connecting lines of carriers) in 35 *Am. R.* 710, n.

— **v. Brown**, 6 *Johns. Ch.* 398; s. c., 10 *Am. Dec.* 343. Cited (Equity of purchaser in contract for sale of land) in *Wing v. McDowell*, *Walk. Ch.* 181. Reviewed and approved (Enforcing covenants on principle of bills *quia timet*) in *Funk v. Voneida*, 11 *Serg. & R. (Pa.)* 110; s. c., 14 *Am. Dec.* 617, with note. Disting'd, but cited as the leading case in this country upon the doctrine in *Michigan State Bank v. Hastings*, 1 *Doug. (Mich.)* 225; s. c., 41 *Am. Dec.* 549–570–572, with note. Applied (Purchaser with notice, bound as his vendor) in *Clark v. Flint*, 22 *Pick. (Mass.)* 231; s. c., 33 *Am. Dec.* 733, 738, with note, to case of assignee for benefit of creditors.

— **v. Joslyn**, 44 *N. Y.* 653. Cited (Account rendered, when open to correction) in 2 *Whart. Com. on Ev.* § 1133.

— **v. Webster**, 15 *Abb. Pr.* 4. Overruled (Dismissal of complaint for neglect to prosecute) in *Winchell v. Martin*, 14 *Abb. Pr. N. S.* 47.

— **v. White**, 5 *Cow.* 509. See *Robb v. Montgomery*. Cited as authority with *Danforth v. Suydam*, 4 *N. Y.* 66; *Loonie v. Hogan*, 9 *Id.* 435 (Meaning of "own") in

*Gibson v. Gibson*, 43 *Wis.* 23; s. c., 28 *Am. R.* 527, 533.

**Champlain v. People**, 2 *N. Y.* 82. See *People v. Koeber*. Explained and applied (Power to let to bail) in *People v. Clews*, 77 *N. Y.* 39, 45.

**Champlin v. Champlin**, 1 *Buffalo Super. Ct. (Sheldon)* 355. Aff'd, it seems, in 58 *N. Y.* 620, but without opinion.

— **v. Haight**, 10 *Paige*, 274. Rev'd in 7 *Hill*, 245.

— **v. Laytin**, 1 *Edw.* 467. Aff'd in 6 *Paige*, 189; which was aff'd in 18 *Wend.* 407. See *Holdredge v. Webb*; *Livingston v. Mayor, &c. of N. Y.*; *Lyon v. Richmond*; *Mercer St., Matter of*; *Shotwell v. Murray*. Decision in 18 *Wend.* followed (Relief against mistakes of law) in *Fellows v. Heermans*, 4 *Lans.* 230, 243. Decision in 1 *Edw.* cited with approval in *Griffith v. Townley*, 69 *Mo.* 13; s. c., 33 *Am. R.* 481; *Evants v. Strodes*, 11 *Ohio*, 480; s. c., 38 *Am. Dec.* 744, with note.

— **v. Petrie**, 4 *Wend.* 209. Disting'd (Judgment as for non-suit, in referred cause) in *Sheldon v. Erie Common Pleas*, 12 *Id.* 268.

— **v. Rowley**, 13 *Wend.* 258. Aff'd in 18 *Id.* 187. Both decisions followed (Recovery for part performance) in *Pullman v. Corning*, 14 *Barb.* 179; *Soloman v. Neidig*, 1 *Daly*, 200; *Paige v. Ott*, 5 *Den.* 408; *Moses v. Banker*, 2 *Sweeny*, 271. Re-aff'd in *Smith v. Brady*, 17 *N. Y.* 185. Disting'd in *Tipton v. Feitner*, 20 *N. Y.* 428. Collated with other cases and disting'd in *Avery v. Willson*, 81 *N. Y.* 844. Criticised by DWIGHT, Referee, in *Marie v. Garrison*, as stating an extremely rigid rule, and almost peculiar to New York, not followed in England nor in many American courts. See also *Smith v. Brady*, in this table. Explained in 2 *Benj. on Sales*, § 1032, n. 19 (Corbin's 4 *Am. ed.*). Collated with *Smith v. Brady*, 17 *N. Y.* 173, 187; *Glacius v. Black*, 50 *Id.* 145; *Sinclair v. Talmadge*, 35 *Barb.* 602; *Phillip v. Gallant*, 62 *N. Y.* 264, and other cases, in 19 *Am. Dec.* 272, n., as showing that in N. Y. the rigor of the rule that holds a party to a strict compliance with the terms of his contract, before he can look to the other contracting party for compensation, is gradually relaxing. Decision in 13 *Wend.* disting'd in *Talmage v. White*, 35 *Super. Ct. (J. & S.)* 222. Re aff'd in *Mead v. Degolyer*, 16 *Wend.* 636, 640. Decision in 18 *Wend.* explained in *Matthews v. Hobby*, 48 *Barb.* 172, as not inconsistent with *Russell v. Nicholl*, 3 *Wend.* 112. Explained at length and disting'd in *Morrell v. Irving Fire Ins. Co.*, 33 *N. Y.* 458. Re-aff'd in *Pullman v. Corning*, 9 *Id.* 95. Applied in *Catlin v. Tobias*, 26 *Id.* 222.

**Champney v. Blanchard**, 38 *N. Y.* 53. See opinion of MASON, J., in 6 *Transc. App.* 53, 59. See *Millsbaugh v. Putnam*.

— **v. Coope**, 34 *Barb.* 539. In effect rev'd in 32 *N. Y.* 543

**Chance v. Isaacs**, 5 *Paige*, 592. See *Coster v. Griswold*. Disapproved as contrary to authority (Set-off in case of insolvency) in *Keep v. Lord*, 2 *Duer*, 83.

**Chandler v. Belden**, 18 *Johns.* 157; s. c., 9 *Am. Dec.* 193. Applied (Waiver of lien for freight) in *Raymond v. Tyson*, 17 *How. U. S.* 61. Disting'd in *Clarkson v. Edes*, 4 *Conn.* 470. Reviewed in *Waples on Proc. in Rem.* § 531. Discussed in *Ang. on Carr.* § 387, 5 ed.

— **v. Bunn**, *Hill & D.* 167. Applied (Recital of residence in mortgage) in *Stewart v. Platt*, 101 *U. S.* 731, 737.

— **v. Edson**. See *Betts v. Lee*.

— **v. Herrick**, 19 *Johns.* 129; s. c., 6 *N. Y. Com. L. Law. ed.* 745, with brief note. Examined (Covenant in restraint of right to sue) in *Millett v. Hayford*, 1 *Wisc.* 412. Disapproved in *Morgan v. Butterfield*, 3 *Mieh.* 617; *Robinson v. Godfrey*, 2 *Id.* 408, citing many cases. Followed in *Mendenhall v. Lenwell*, 5 *Blackf. (Ind.)* 125; s. c., 33 *Am. Dec.* 458.

— **v. Hoag**, 2 *Hun.* 613; s. c., 5 *Sup'm. Ct. (T. & C.)* 197. Aff'd on this opinion in 63 *N. Y.* 624.

**Chanoine v. Fowler**, 3 *Wend.* 173. See *Packard v. Hill*. Cited with approval (Who may give notice to indorser) in *Cabot B'k v. Warner*, 10 *Allen*, 525. Included in *Redf. & B. Lead. Cns. on B. of Exch.* 383. Also in *Bigel. on B. & N.* 2 ed. 272, with note. Cited with *Halliday v. McDougall*, 20 *Wend.* 81 (Judicial notice of seals of notaries public) in *Pierce v. Indseth*, 106 *U. S.* 546, 549.

**Chapin v. Dobson**, 78 *N. Y.* 74; s. c., 34 *Am. R.* 512. Followed (Parol evidence of collateral undertaking) in *Lanphire v. Slaughter*, 61 *How. Pr.* 36, 38. Opposed in *Mast v. Pearce*, 58 *Iowa*, 579; s. c., 43 *Am. R.* 125, where the rule of earlier *N. Y.* decisions was preferred. Explained (Statute of Frauds—Memorandum or note in writing) in *Benj. on Sales*, § 203, n. 2 (Corbin's 4 *Am. ed.*); *Id.* § 209, n. 6.

— **v. Merrill**, 4 *Wend.* 657. See *Leonard v. Vredenbergh*. Disapproved (Promise to indemnify a surety as affected by statute of frauds) in *Baker v. Dillman*, 12 *Abb. Pr.* 313, 316. Disapproved in *Kingsley v. Balcome*, 4 *Barb.* 131, as unsupported by authority. Cited from in *Jones v. Shorter*, 1 *Ga.* 294; s. c., 44 *Am. Dec.* 649, 653, with note. Reviewed with other cases and referred to in *Bissig v. Britton*, 59 *Mo.* 204; s. c., 21 *Am. R.* 379, as having been overruled by *Kingsley v. Balcome*, 4 *Barb.* 131, and other later *N. Y.* cases. Criticised in *Macey v. Childress*, 2 *Tenn. Ch.* 438, 448, as contrary to later *N. Y.* decisions. Collated with *Kingsley v. Balcome*, 4 *Barb.* 131; *Barry v. Ransom*, 12 *N. Y.* 462; *Mallory v. Gillett*, 21 *Id.* 412; *Konitzky v. Meyer*, 49 *Id.* 571, and other cases, in *Horn v. Bray*, 61 *Ind.* 555; s. c., 19 *Am. R.* 742. Compared in 4 *Am. L. Reg. N. S.* 242. Collated with

other authorities and applied (Consideration of promise to indemnify) in *Duncan v. Miller*, 64 *Iowa*, 225.

— **v. Seeley**, 13 *How. Pr.* 490. Approved (Practice upon motion to vacate order of arrest) in *Barron v. Sanford*, 14 *How. Pr.* 443.

— **v. Shafer**. See *Bostwick v. Atkins*; *Jackson v. Carpenter*.

— **v. Thompson**, 4 *Hun.* 779. See also (Trustees and statute of limitations) *Congregational Ch. in Union Village*, Matter of, 6 *Abb. N. C.* 398.

— **v. —**, 18 *Hun.* 446. Rev'd in 80 *N. Y.* 275. Other proceedings in 16 *Hun.* 53; 58 *How. Pr.* 46; 23 *Hun.* 12, which latter was modified in 89 *N. Y.* 270. See *Beach v. Mayor, &c. of N. Y.* Decision in 16 *Hun.* followed (Examination before trial) in *Fitzpatrick v. Van Schaick*, 59 *How. Pr.* 472, in dissenting opinion of *DYKMAN, J.*, in *Sweeney v. Sturgis*, 24 *Hun.* 168. Recognized in *Tenney v. Mautner*, 1 *Civ. Pro. R.* 71. Decision in 23 *Hun.* relied on (Practice after trial of specific issues by jury) in *Madison University v. White*, 25 *Hun.* 490. Explained in *Glidden v. Langdon*, 24 *Hun.* 493. Decision in 80 *N. Y.* followed (Exceptions on trial of specific questions of fact, in equity action, when to be presented) in decision in 89 *N. Y.* Decision in 89 *N. Y.* followed (Usurious debt rendered valid by being included in schedules of general assignment) in *Matter of Thompson*, 30 *Hun.* 195.

**Chapman v. Albany & Schenectady R. R. Co.**, 10 *Barb.* 360. Recognized as authority (Recovery by abutting property owner for injury resulting from improvements) in *Elizabeth, Lexington, &c. R. R. Co. v. Combs*, 10 *Bush (Ky.)* 382; s. c., 19 *Am. R.* 67. Collated, with other cases, in *Mills Thomps. on Highw.* 3 ed. 410. Explained in 1 *Am. L. Reg. N. S.* 198. Cited with *Radcliff's Executors v. Mayor, &c. of Brooklyn*, 4 *N. Y.* 195 (both said to overrule *Fletcher v. Auburn & Syracuse R. R. Co.*, 25 *Wend.* 462); *Lausing v. Smith*, 8 *Conn.* 146, and other cases in 7 *Am. R.* 119, n., as denying the right to recover damages arising from an act authorized by statute.

— **v. Chapman**, 34 *How. Pr.* 281. Same rule held (Denial in form "he says that he denies") in *Jones v. Ludlum*, 74 *N. Y.* 61.

— **v. City of Brooklyn**, 40 *N. Y.* 372. Disting'd (Effect of invalidity of assessment proceedings on right to recover back money paid) in *Nash v. Mayor, &c. of N. Y.*, 9 *Hun.* 221; *City of Rochester v. Town of Rush*, 80 *N. Y.* 311. Explained in *Dewey v. Sup'rs of Niagara*, 4 *Sup'm. Ct. (T. & C.)* 611. Disting'd in *Strusburgh v. Mayor, &c. of N. Y.*, 45 *Super. Ct. (J. & S.)* 512. Applied in *Bank of Commonwealth v. Mayor, &c. of N. Y.*, 43 *N. Y.* 191; *Newman v. Sup'rs of Livingston*, 45 *Id.* 685. Followed in *Nat. Bank of Chemung v. City of Elmira*, 53 *N. Y.* 55.

- Applied (Conclusiveness of certificate of assessment proceedings) in *Newell v. Wheeler*, 48 *N. Y.* 490. Disting'd (Liability of municipal corporation to refund money inequitably received) in *De Grauw v. Sup'rs of Queens*, 13 *Hun.* 384.
- *v. Delaware, L. & W. R. R. Co.*, 3 *Lans.* 261. To the contrary (Plaintiff's title) see cases cited in *Abb. Tr. Ev.* 692, n. 2.
- *v. Draper*, 10 *How. Pr.* 367. Aff'd in 17 *N. Y.* 125.
- *v. Dyett*, 11 *Wend.* 31; s. c., 25 *Am. Dec.* 598, with note. Disting'd (Liability for proceedings taken under irregular process) in *Day v. Bach*, 46 *Super. Ct. (J. & S.)* 466; *Landt v. Hiltz*, 19 *Barb.* 290; *Van Ingen v. Snyder*, 24 *Hun.* 81. Criticised but approved in *Dominick v. Eacker*, 3 *Barb.* 19.
- *v. Erie R'y Co.*, 1 *Sup'm. Ct. (T. & C.)* 526. Rev'd in 55 *N. Y.* 579. Decision in 55 *N. Y.* relied on (When erroneous instruction to jury may be obviated) in *People v. Greenfield*, 23 *Hun.* 472. Disting'd (Admissibility of agent's declarations) in *McDermott v. Hannibal, &c. R. R. Co.*, 73 *Mo.* 516; s. c., 39 *Am. R.* 526. See, also, *Adams v. Hannibal & St. Joseph R. R. Co.*, 74 *Mo.* 553; s. c., 41 *Am. R.* 333.
- *v. Fish*, 6 *Hill.* 554; s. c., 16 *N. Y. Com. L. Law. ed.* 456, with brief note.
- *v. Fuller*, 7 *Barb.* 70. Followed (Renewal of execution) in *Hodge v. Adees*, 2 *Lans.* 314.
- *v. Gates*, 46 *Barb.* 313. Aff'd in 54 *N. Y.* 145. See *Bloodgood v. Mohawk & Hudson River R. R. Co.* Decision in 46 *Barb.* disting'd (Effect of failure to produce record of highway) in *Marvin v. Pardee*, 64 *Barb.* 353, 359. Decision in 54 *N. Y.* disting'd with *Sage v. City of Brooklyn*, 89 *N. Y.* 189 (Provision for payment for land taken by eminent domain) in *Matter of Church*, 92 *N. Y.* 1.
- *v. Lathrop*, 6 *Cow.* 110; s. c., 8 *N. Y. Com. L. Law. ed.* 849, with brief note; 16 *Am. Dec.* 433, with note, citing cases, —wherein it is said to have been frequently approved (Effect of delivery of goods without payment to pass the title) in *N. Y.* Followed in *Morgan v. Powers*, 66 *Barb.* 35, 38.
- *v. Lemon*. See *Brittin v. Wilder*.
- *v. Lipscomb*, 1 *Johns.* 294. Approved and applied (Diligence in ascertaining indorser's address) in *Central National Bank v. Adams*, 11 *S. C.* 452; s. c., 32 *Am. R.* 495. Cited with approval in *Nichol v. Bate*, 7 *Yerg. (Tenn.)* 305; s. c., 27 *Am. Dec.* 505. Disting'd in *Foard v. Johnson*, 2 *Ala.* 565; s. c., 36 *Am. Dec.* 421, with note. Reviewed with *Ogden v. Cowley*, 2 *Johns.* 274; *Ireland v. Kip*, 11 *Id.* 232, and other cases (Sufficiency of notice sent to indorser by mail) in *Shed v. Brett*, 1 *Pick. (Mass.)* 401; s. c., 11 *Am. Dec.* 209, 214, with note.
- *v. Murch*, 19 *Johns.* 290; s. c., 10 *Am. Dec.* 227; 6 *N. Y. Com. L. Law. ed.* 805, with brief note. Followed with *Duffee v. Mason*, 8 *Cow.* 25; *Roberts v. Morgan*, 2 *Cow.* 438; *Oneida Manf. Soc. v. Lawrence*, 4 *Cow.* 440, (Warranty on sale of chattels) in *Kinley v. Fitzpatrick*, 4 *How. (Miss.)* 59; s. c., 34 *Am. Dec.* 108, with note. Examined with *Swett v. Colgate*, 20 *Johns.* 196; *Seixas v. Woods*, 2 *Cot.* 48, in *Henshaw v. Robbins*, 9 *Metc. (Mass.)* 83; s. c., 43 *Am. Dec.* 367, 370, with note.
- *v. New Haven R. R. Co.*, 19 *N. Y.* 341. See *Brown v. N. Y. Central R. R. Co.*; *Button v. Hudson River R. R. Co.* Disting'd (Contributory negligence in one having charge of conveyance) in *Bronk v. N. Y. & New Haven R. R. Co.*, 5 *Daly*, 454, 457. Disting'd with *Webster v. Hudson R. R. Co.*, 38 *N. Y.* 262; *Colegrove v. N. Y. & N. H. R. R. Co.*, 20 *Id.* 492, in *Callahan v. Sharp*, 27 *Hun.* 85. Referred to with *Colegrove v. N. Y. & N. H. R. R. Co.*, 20 *N. Y.* 492, in *Mooney v. Hudson River R. R. Co.*, 5 *Robt.* 548, as overruled by *Brown v. N. Y. Central R. R. Co.*, 32 *N. Y.* 597. Cited with approval with *Webster v. Hudson River R. R. Co.*, 19 *N. Y.* 341, in *Bennett v. New Jersey R. R., &c. Co.*, 36 *N. J. (7 Vroom)* 225; s. c., 13 *Am. R.* 435, 438. Collated with *Colegrove v. N. Y. & Harlem R. R. Co.*, 20 *N. Y.* 492, and other cases, in *Prideaux v. City of Mineral Point*, 43 *Wis.* 513; s. c., 28 *Am. R.* 558, where *Knapp v. Dagg*, 18 *How. Pr.* 165; *Metcalf v. Baker*, 11 *Abb. Pr. N. S.* 431; *Beck v. East River Ferry Co.*, 6 *Robt.* 82, also were cited in this connection, the last mentioned case being thought to conflict in principle with *Robinson v. N. Y. Central, &c. R. R. Co.*, 66 *N. Y.* 11. Discussed and cases cited in 4 *Am. L. Reg. N. S.* 25. Disting'd (Effect of contributory negligence of third person, &c.) in *Chipman v. Palmer*, 77 *N. Y.* 51. Applied with *Brehm v. Great Western R'y*, 34 *Barb.* 274; *Mott v. Hudson River R. R. Co.*, 8 *Boss.* 345, in *Ricker v. Freeman*, 50 *N. H.* 420; s. c., 9 *Am. R.* 267, 275.
- *v. N. Y. Central R. R. Co.*, 31 *Barb.* 399. Aff'd in 33 *N. Y.* 369. Decision in 33 *N. Y.* disting'd (Liability of railroad company for negligent acts of employee, done for his own benefit) in *Morier v. St. Paul, Minneapolis, &c. R'y Co.*, 31 *Minn.* 351; s. c., 47 *Am. R.* 793.
- *v. O'Brien*, 34 *Super. Ct. (J. & S.)* 524. Further decision in 39 *Id.* 244.
- *v. Phoenix Nat. Bank of N. Y.*, 5 *Abb. N. C.* 118; s. c., 44 *Super. Ct. (J. & S.)* 340. Rev'd in 85 *N. Y.* 437.
- *v. Robertson*, 6 *Paige*, 627; s. c., 31 *Am. Dec.* 264, with note, collecting citations thereof, and where it is said to be a leading case. Cited as authority (Usurious character of contract as determined by law of place) in *Wayne Co. Sav'gs B'k v. Low*, 6 *Alb. N. C.* 85; *Pomeroy v. Ainsworth*, 22 *Barb.* 128. Followed in *Balme v. Wombough*, 38 *Barb.* 363; *N. Y.*

- Dry Dock Co. v. Am. Life Ins. & Trust Co., 3 *Sandf. Ch.* 267; Bank of State of Ga. v. Lewin, 45 *Barb.* 343. Doubted and disting'd in Cope v. Alden, 53 *Barb.* 353; Curtis v. Leavitt, 15 *N. Y.* 88, 223. Disting'd in Dickinson v. Edwards, 77 *N. Y.* 573, 585. Questioned in *Story's Conf. of L.* § 293, c, and n. Examined in Fisher v. Otis, 3 *Chand. (Wisc.)* 83. Examined at length in dissenting opinion of MULLIN, J., in Smith v. Alvord, 63 *Barb.* 431; in dissenting opinion of DAVIES, J., in Jewell v. Wright, 1 *Sheld.* 232, n. Examined with other cases, in Hildreth v. Shepard, 65 *Barb.* 271. Followed and approved in Kilgore v. Dempsey, 25 *Ohio St.* 413; s. c., 18 *Am. R.* 306, 311. Reviewed with Wayne Co. Sav'gs Bank v. Low, 81 *N. Y.* 569, and other cases, in Scott v. Perlee, 39 *Ohio St.* 63; s. c., 43 *Am. R.* 421. Quoted and explained in 2 *Pars. on Contr.* 584, n. h. Discussed and favorably commented upon in 2 *Kent Com.* 461, n. a. Disting'd (Foreclosure—set-off) in Hudson Fire Ins. Co. v. Winthrop, 2 *Leg. Obs.* 38; Holden v. Gilbert, 7 *Paige*, 211. Examined in Bathgate v. Haskin 59 *N. Y.* 537. Applied in Rawson v. Copeland, 2 *Sandf. Ch.* 251.
- v. **Rose**, 44 *How. Pr.* 364. Rev'd in 56 *N. Y.* 137; s. c., 47 *How. Pr.* 13; 15 *Am. R.* 407. Decision in 56 *N. Y.* disting'd (Liability on paper negligently issued) in Sweet v. Chapman, 7 *Hun*, 576, 579. Applied in Carey v. Miller, 25 *Hun*, 28, 31. Examined with other cases in Millard v. Barton, 13 *R. I.* 606. Followed, and Jackson v. Hayner, 12 *Johns.* 469, disting'd in Montgomery v. Scott, 9 *S. C.* 20; s. c., 30 *Am. R.* 1. Followed and approved in Ort v. Fowler, 31 *Kans.* 478; s. c., 47 *Am. R.* 501. Collated with Whiting v. Snyder, 2 *Lans.* 477, and other cases, in 41 *Am. R.* 607, n.
- v. **Smith**, See Niven v. Munn.
- v. **Swan**, 65 *Barb.* 210. Compare (Laying out highways) *L.* 1873, c. 315, which was, however, repealed by *L.* 1874, c. 616; *L.* 1875, c. 431. Compare (Plea of title in action for obstructing highway) Little v. Deun, 34 *N. Y.* 452.
- v. **White**, 6 *N. Y.* 412; s. c., 57 *Am. Dec.* 464, with note. See Commercial B'k v. Hughes; Hutter v. Ellwanger; Lunt v. Bank of North America. Followed (Check does not operate as assignment of fund) in Butterworth v. Peck, 5 *Bosw.* 341. Applied in Curry v. Powers, 70 *N. Y.* 216; Willetts v. Finlay, 11 *How. Pr.* 474. Applied in dissenting opinion of STRONG, J., in Ketchum v. Bank of Commerce, 19 *N. Y.* 513. Followed (No action on unaccepted draft) in Ketchum v. Stevens, 6 *Duer*, 483; Aetna National Bank v. Fourth National Bank, 46 *N. Y.* 82, 87. Approved in Carr v. National Security Bank, 107 *Mass.* 45; s. c., 9 *Am. R.* 6, 9, as according with the law in England, Penn. and the U. S. Supreme Court. Cited as authority with Pope v. Luff, 7 *Hill*, 577, in Nat'l Bank of Rockville v. Second Nat'l B'k of Lafayette, 69 *Ind.* 479; s. c., 35 *Am. R.* 236, with note collecting cases. Applied (Power of corporation to incur obligations) in Curtis v. Leavitt, 15 *N. Y.* 169.
- Chapman Slate Co. v. Sutcliffe**, 2 *Hun*, 634; s. c., 5 *Sup'm. Ct. (T. & C.)* 686. Aff'd in 63 *N. Y.* 616.
- Chappel v. Brockway**, 21 *Wend.* 157. See Maier v. Homan; Nobles v. Bates. Followed and Hooker v. Vandewater, 4 *Den.* 349; Stanton v. Allen, 5 *Id.* 434, criticised and disapproved (Contracts in restraint of trade) in Kellogg v. Larkin, 3 *Pinn. (Wis.)* 123; 3 *Chand.* 133; s. c., 56 *Am. Dec.* 164, 177. Cited with approval, with Holbrook v. Waters, 9 *How. Pr.* 335, in Smalley v. Greene, 52 *Iowa*, 241; s. c., 35 *Am. R.* 267, with note. Collated with Dunlap v. Gregory, 10 *N. Y.* 241; Lawrence v. Kidder, 10 *Barb.* 641; Holbrook v. Waters, 9 *How. Pr.* 335, and other cases, in 13 *Am. R.* 173, n. Opinion of BRONSON, J., approvingly cited in 2 *Kent Com.* 467, n. e; 2 *Pars. on Contr.* 748, n. z.
- v. **Chappel**, 12 *N. Y.* 215; s. c., 64 *Am. Dec.* 496, 501, with brief note. Limited (Judgment entered on insufficient statement, when fraudulent) in Miller v. Earle, 24 *N. Y.* 110, 112.
- v. **Skinner**, 6 *How. Pr.* 338. Disting'd (Provisional remedies) in Rockford, &c. R. Co. v. Boody, 56 *N. Y.* 456, 459.
- Chappell v. Spencer**, 23 *Barb.* 584. Reasserted (Alteration of note by adding name of person as maker) in Brownell v. Winnie, 29 *N. Y.* 400, notwithstanding contrary decisions in Cobb v. Titus, 10 *N. Y.* 198; Partridge v. Colby, 19 *Barb.* 248. But followed and reconciled with Cobb v. Titus; Partridge v. Colby, in McVean v. Scott, 46 *Barb.* 379. Opposed in Card v. Miller, 1 *Hun*, 504, 506. Disapproved with McVean v. Scott, as standing alone, in Denick v. Hubbard, 27 *Hun*, 347. Both cases referred to in 23 *Am. L. Reg. N. S.* 198, as expressly overruled in Card v. Miller, 1 *Hun*, 504. Followed with McCaughey v. Smith, 27 *N. Y.* 39, in Wallace v. Jewell, 21 *Ohio St.* 163; s. c., 8 *Am. R.* 48, where Brownell v. Winnie, 29 *N. Y.* 408; Cobb v. Titus, 10 *N. Y.* 199, were disting'd. Cited as authority in Coburn v. Webb, 56 *Ind.* 96; s. c., 26 *Am. R.* 15.
- Charles v. Lowenstein**, 26 *How. Pr.* 29. Overruled in effect (Cause of action against separate estate of wife, whether necessarily equitable) in Hauptman v. Catlin, 20 *N. Y.* 247; Corn Exch. Ins. Co. v. Babcock, 42 *N. Y.* 613.
- v. **People**, 1 *N. Y.* 180. See brief opinion of court below in *How. App. Cas.* 362. Decision in 1 *N. Y.* applied (Curing defect in indictment) in Case v. People, 6 *Abb. N. C.* 151, 157. Applied (Legality of foreign contract as affected by our statute) in Ormes v. Dauchy, 82 *N. Y.* 443, 448.
- Charrnaud v. Charrnaud**, 1 *N. Y. Leg. Obs.* 134. Explained (Dower—divorce for adul-



- tery) in 2 *Bish. on Mar. & D.* § 707, n. 1, 6 ed.; *Id.* § 717.
- Charter v. Otis**, 41 *Barb.* 525. Explained (Effect of introductory clause in will on subsequent devise without words of perpetuity) in *Vanderzee v. Vanderzee*, 36 *N. Y.* 231.
- **v. Stevens**, 3 *Den.* 33; s. c., 45 *Am. Dec.* 444, with note, collecting citations thereof. Disting'd (What operates as satisfaction of chattel mortgage) in *Brown v. Rich*, 40 *Barb.* 32. Aff'd (Right of mortgagor of chattels to redeem) in *Hinman v. Judson*, 13 *Barb.* 631; *Stoddard v. Denison*, 2 *Sweeny*, 61.
- Chase v. Barrett**, 4 *Paige*, 148. See *Vanderburgh v. Hull*. Re-aff'd (Participation in profits as constituting a partnership) in *Leggett v. Hyde*, 58 *N. Y.* 279. Disting'd in *Burnett v. Snyder*, 76 *N. Y.* 344, 351. Also explained in *Story on Partn.* 7 ed. § 27, n. But see *Auten v. Ellingwood*, 51 *How. Pr.* 364; Explained in 1 *Collyer on Partn.* § 47, n. 1, Wood's Am. ed.
- **v. Day**, 17 *Johns.* 114. Applied (Obligation to answer for another—when an original contract) in *Post v. Geoghegan*, 5 *Daly*, 216.
- **v. Ewing**, 51 *Barb.* 597. Explained (Mortgage as evidence of indebtedness) in *Coleman v. Van Renssalaer*, 44 *How. Pr.* 372. Disting'd (Advancements) in *Eisner v. Koehler*, 1 *Dem.* 277.
- **v. Hamilton Ins. Co.**, 22 *N. Y.* 527. Rev'd in 20 *N. Y.* 52. See *Brown v. Cattaraugus County Mut. Ins. Co.*; *Rowley v. Empire Ins. Co.* Decision in 20 *N. Y.* disting'd (Insurance company—when bound by knowledge of agent) in *Van Schoick v. Niagara Ins. Co.*, 68 *N. Y.* 441; *Woodruff v. Imperial F. Ins. Co.*, 83 *N. Y.* 133, 140. Decision in 22 *Barb.* followed (Insurable interest of equitable title. Fraud in representations of ownership of land by owner of such title) in *Acer v. Merchants' Ins. Co.*, 57 *Barb.* 63, 82.
- **v. Hogan**, 6 *Bosw.* 431. Reviewed and explained (Specific performance of contract) in further decision, in 3 *Abb. Pr. N. S.* 58.
- **v. James**, 10 *Hun.* 506. Further proceeding in 16 *Id.* 14. Compare (Referee's fees) *Code Civ. Pro.* 1881, § 3296, n.; *Rust v. Hauselt*, 8 *Abb. N. C.* 143, 153. Decision in 16 *Hun.* followed, and *First Nat. Bk. v. Tamajo*, 77 *N. Y.* 478, explained (Attorney's authority as to referee's fees) in *Mark v. City of Buffalo*, 87 *N. Y.* 184.
- **v. Lord**, 16 *Hun.* 369. Rev'd in 77 *N. Y.* 1; s. c., 6 *Abb. N. C.* 258. Decision in 77 *N. Y.* disapproved (Proof that defendant is stockholder) in *Wheeler v. Miller*, 24 *Hun.* 541, 543. Disapproved (Liability of corporator) in *Gulliver v. Roelle*, 100 *Ill.* 155.
- **v. N. Y. Central R. R. Co.**, 24 *Barb.* 273. Approved and followed with *Easterbrook v. Erie R'y Co.*, 51 *Barb.* 94 (Damages for overflow of land damaging ungrown crops) in *Drake v. Chicago, R. I. & P. R. Co.*, 63 *Iowa*, 310.
- **v. —**, 26 *N. Y.* 523. Compared (Exaction of illegal fares) in *Bordeaux v. Erie Railway Co.*, 8 *Hun.* 579, 581.
- **v. Peck**, 21 *N. Y.* 581. See *Phyfe v. Riley*. Applied (Vendee's lien for purchase money paid) in *Clark v. Jacobs*, 56 *How. Pr.* 521.
- **v. Vanderbilt**, 37 *Super. Ct. (J. & S.)* 334. Aff'd in 62 *N. Y.* 307. Decision in 37 *Super. Ct. (J. & S.)* followed in action wherein the substance of the complaint and demurrers were the same,—in *Webb v. Vanderbilt*, 39 *Super. Ct. (J. & S.)* 4, 9. Applied (Jurisdiction in actions affecting foreign corporations) in *Atl. & Pac. Tel. Co. v. Balt. & Ohio R. R. Co.*, 46 *Super. Ct. (J. & S.)* 377, 386.
- Chatham Bank v. Betts**, 23 *How. Pr.* 476. Aff'd in 9 *Bosw.* 552, which was aff'd in 37 *N. Y.* 355.
- Chatterton v. People**, 15 *Abb. Pr.* 147. Applied (Receiving stolen goods) in *Miller v. People*, 25 *Hun.* 473.
- Chauncey v. Laurence**, 15 *Abb. Pr.* 106. Statute here referred to is in substance reenacted by *L.* 1863, c. 392.
- Chautauque Co. Bank v. Risley**, 4 *Den.* 480. Subsequent decision in 19 *N. Y.* 369; subsequent judgment for plaintiff aff'd by Ct. of App. in 1863. Decision in 19 *N. Y.* criticised (Remedy of judgment creditor) in *Erickson v. Quinn*, 15 *Abb. Pr. N. S.* 163. Reaff'd in *Bergen v. Snedeker*, 8 *Abb. N. C.* 57. Applied in *Dawley v. Brown*, 65 *Barb.* 120; *Morss v. Purvis*, 5 *Sup'm. Ct. (T. & C.)* 141, n. Disting'd in *Warden v. Browning*, 12 *Hun.* 409. Cited as authority (Nature of conveyance by debtor to receiver) in *Elsworth v. Muldoon*, 15 *Abb. Pr. N. S.* 444. Applied (Sale of real estate by receiver—when not to be permitted) in *Inglehart's Petition*, 1 *Sheld.* 514. Applied (Title through receiver's deed) in *Walker v. White*, 36 *Barb.* 599. Disting'd (Date of receiver's title as to choses in action) in *Clark v. Brockway*, 1 *Abb. Ct. App. Dec.* 354. Explained (Necessity of conveyance, &c. to vest title in receiver) in *Hayes v. Buckley*, 53 *How. Pr.* 187. Followed in *Scott v. Elmore*, 10 *Hun.* 71; *Union Nat. Bk. v. Warner*, 12 *Id.* 309; *Moak v. Coats*, 33 *Barb.* 501. Disting'd in *Wing v. Disse*, 15 *Hun.* 194. Applied (Right of judgment debtor to redeem) in *Livingston v. Arnoux*, 56 *N. Y.* 515. Criticised in dissenting opinion of SPENCER, J., in *Bowers v. Arnoux*, 33 *Super. Ct. (J. & S.)* 549. Explained (Judgment in action to set aside fraudulent conveyance) in *Orr v. Gilmore*, 7 *Lans.* 346. Followed in *Cole v. Tyler*, 65 *N. Y.* 77. Discussed (Creditor's actions—judgment) in *Wait on Fraud. Conv.* § 170. Cited (Presumption as to corporate acts) in *Home Ins. Co. v. Northwestern Packet Co.*, 32 *Iowa*, 223; s. c., 7 *Am. R.* 183, 192. For

a stricter rule see *People ex rel. Town of Rochester v. Deyoe*, 2 *Sup'm. Ct. (T. & C.)* 142. See also *Abb. Tr. Ev.* 36. Applied (Right of corporation to hold real estate) in *Alward v. Holmes*, 10 *Abb. N. C.* 96, 99.

— *v. White*, 6 *Barb.* 589. Rev'd in 6 *N. Y.* 236; s. c., 57 *Am. Dec.* 442, with note. See *Storrs v. Barker, below*. Decision in 6 *N. Y.* explained in *Chautauque County Bk. v. Risley*, 19 *N. Y.* 383, as not a bar to that action. Followed (Title through receiver's deed) in *Walker v. White*, 36 *Barb.* 598. Disting'd (Estoppel to dispute title to real estate) in *Tilton v. Nelson*, 27 *Barb.* 607. Applied (Remedy of judgment creditor) in *Dawley v. Brown*, 65 *Barb.* 120; *Fassett v. Tallmadge*, 18 *Abb. Pr.* 59; *Chillingworth v. Freeman*, 67 *Barb.* 384. Applied (Receiver's title) in *Porter v. Williams*, 9 *N. Y.* 151. Applied with *Ocean Nat. Bank v. Olcott*, 46 *N. Y.* 12; *Geery v. Geery*, 63 *Id.* 252; *Estes v. Wilcox*, 67 *Id.* 264; *Allyn v. Thurston*, 53 *Id.* 622 (Right of judgment creditor to institute proceedings to set aside fraudulent conveyance) and *Brinkerhoff v. Brown*, 4 *Johns. Ch.* 674; *Shaw v. Dwight*, 27 *N. Y.* 244, disting'd in *Adsit v. Butler*, 87 *Id.* 585. Decision in 6 *Barb.* applied (Jurisdiction to sustain action to remove cloud on title) in *Johnson v. Stevens*, 13 *How. Pr.* 133.

*Cheaney v. Arnold*, 18 *Barb.* 434. Aff'd in 15 *N. Y.* 345. Decision in 18 *Barb.* followed (Execution of will) in *Norton v. Norton*, 2 *Redf.* 6, 18.

*Cheesbrough v. Agate*, 7 *Abb. Pr.* 32; s. c., 26 *Barb.* 603, where the facts are more fully stated; but the opinion is erroneously said in the latter report to have been rendered at Special Term.

*Cheesbrough, Matter of*, 78 *N. Y.* 232. Followed (Land, when not to be appropriated for drains) in *Matter of Church of the Holy Sepulchre*, 61 *How. Pr.* 315, 325. Followed (Vacation of assessment) in *Matter of Kendall*, 83 *N. Y.* 612.

*Cheesbrough v. Millard*, 1 *Johns. Ch.* 409; s. c., 7 *Am. Dec.* 494, with note, wherein it is shown to have been regarded as high authority in *Story on Eq. Jur.* § 469, and elsewhere, on the doctrine of contribution and subrogation. Applied (Constructive notice to mortgagee, of incumbrances or conveyances) in *Stuyvesant v. Hall*, 2 *Barb. Ch.* 157, which aff'd 1 *Sandf. Ch.* 426, which see. Applied to one having contract to purchase,—in *Moyer v. Hinman*, 13 *N. Y.* 184. Approved (Duty of creditor having lien on two funds) in *Ingalls v. Morgan*, 10 *N. Y.* 187; *Guion v. Knapp*, 6 *Paige*, 43. Explained in *Molson's Bk. of Montreal v. Howard*, 40 *Super. Ct. (J. & S.)* 22. Applied (Rights of surety against creditor) in *Pardee v. Van Anken*, 6 *Leg. Obs.* 381. Applied (Jurisdiction of equity to prevent multiplicity of actions) in *Erie R'y Co. v. Ramsey*, 45 *N. Y.* 653. Approved and ap-

plied (Assignment of lien) in *Lagow v. Badollet*, 1 *Blackf. (Ind.)* 416; s. c., 12 *Am. Dec.* 258, with note collecting cases *pro* and *con*. Followed (Rights of junior lien creditors) in *Pennsylvania Bank v. Winger*, 1 *Rawle (Pa.)* 295; s. c., 18 *Am. Dec.* 633, with note.

*Cheeseman v. Sturgis*, 6 *Bosw.* 520. Further decision in 9 *Id.* 246.

— *v. Wiggins*, 1 *Sup'm. Ct. (T. & C.)* 95. Cited (Accounting upon dissolution of partnership by death) in *Story on Partn.* 7 ed. §§ 347, n., 348, n.

*Cheever v. Saratoga Co. Bank*, 47 *How. Pr.* 376. Overruled (Perpetuation of testimony, as matter of right) in *Martin v. Hicks*, 1 *Abb. N. C.* 341.

*Chegaray v. Jenkins*, 3 *Sandf.* 409. Aff'd in 5 *N. Y.* 376. Decision in 3 *Sandf.* followed (Effect upon general words of particular words that precede them) in *Cleaver v. Cleaver*, 39 *Wis.* 96; s. c., 20 *Am. R.* 30, 34. Decision in 5 *N. Y.* applied (Assessors—when acting within jurisdiction) in *Foster v. Van Wyck*, 2 *Abb. Ct. App. Dec.* 172; *Bell v. Pierce*, 51 *N. Y.* 15. Approved in *Barhyte v. Shepherd*, 35 *Id.* 248, 252. Disting'd and applied in *Nat. Bk. of Chemung v. City of Elmira*, 53 *Id.* 54. Followed in *Matter of N. Y. Catholic Protectory*, 77 *Id.* 342. Applied (Warrant for collection of taxes, when a protection) in *Patchin v. Ritter*, 27 *Barb.* 37; *Johnson v. Learn*, 30 *Barb.* 618. Cited as authority in *Wilson v. Mayor, &c. of N. Y.*, 4 *E. D. Smith*, 696. Limited (Impeaching proceedings for want of jurisdiction) in *Roderigas v. East River Sav'gs Inst.* 43 *Super. Ct. (J. & S.)* 231. Reviewed with other cases (Process as protection) in *Bullymore v. Cooper*, 2 *Lans.* 75. Applied (Action of assessors not to be reviewed collaterally) in *Rector, &c. of Trinity Church v. Mayor, &c. of N. Y.*, 10 *How. Pr.* 138. Cited as authority in *Swift v. City of Poughkeepsie*, 37 *N. Y.* 515. Dictum overruled (Exemption of private school property from taxation) in *Chegaray v. Mayor, &c. of N. Y.*, 13 *Id.* 231.

— *v. Mayor, &c. of N. Y.*, 2 *Duer*, 521. Rev'd in 13 *N. Y.* 220. Decision in 13 *N. Y.* disting'd (Recovery of amount of illegal tax) in *Newman v. Supervisors of Livingston*, 45 *N. Y.* 676.

*Chemical Nat. B'k v. Kohner*, 8 *Daly*, 530; s. c., 58 *How. Pr.* 267. Rev'd in 85 *Id.* 189.

*Chemung, &c. Bank v. Bradner*, 44 *N. Y.* 680. Explained (Partnership—liability for acts of copartners) in 1 *Collyer on Partn.* § 412, n. 1, Wood's *Am. ed.*

*Chemung Canal Bank v. Judson*, 8 *N. Y.* 254. Rule as to void judgments qualified in respect to ministerial officers, in *Welles v. Thornton*, 45 *Barb.* 390. Cited as authority (Inquiry into jurisdiction) in *People v. N. Y. & C. R. Co. v. Hutton*, 18 *Hun*, 123; *Ferguson v. Crawford*, 70 *N. Y.* 265. Ap-

- plied in *Bolton v. Jacks*, 6 *Robt.* 199. Applied (Inquiry into jurisdiction of U. S. District Court) in *Ansonia Brass & Copper Co. v. New Lamp Chimney Co.*, 64 *Barb.* 435.
- Chenango Bridge Co. v. Binghamton Bridge Co.**, 27 *N. Y.* 87. Rev'd in 3 *Wall.* 51.
- *v. Lewis*, 63 *Barb.* 111. See *Mayor, &c. of Albany v. Cunliff*. Disting'd (Liability for nuisance to which others have contributed) in *Chipman v. Palmer*, 77 *N. Y.* 51, 56. Followed with *Irvine v. Wood*, 51 *Id.* 224 (Liability of builder and user of unlawful structure) in *Taylor v. Metropolitan El. Ry Co.* 49 *Super. Ct. (J. & S.)* 311, 340.
- *v. Paige*, 8 *Hun.* 292. Rev'd in 83 *N. Y.* 178; s. c., 38 *Am. R.* 407. See *Hooker v. Cummings*. Compare (Riparian rights) *Smith v. City of Rochester*, 92 *N. Y.* 463.
- Cheney v. Arnold**, 15 *N. Y.* 345. See *Fenton v. Reed*. Followed (Presumption as to laws of another State) in *McCulloch v. Norwood*, 26 *Super. Ct. (J. & S.)* 180, 187. Approved (*Marriage per verba de futuro*, followed by carnal intercourse) in *Holmes v. Holmes*, 1 *Abb. U. S.* 539. Cited with *Starr v. Peck*, 1 *Hill*, 270, in *Tyler on Inf. & Cov.* 2 ed. § 616. Discussed in 1 *Bish. on Mar. & D.* § 256, 6 ed. See also *Abb. Tr. Ev.* 80.
- *v. Beals*, 47 *Barb.* 523. Superseded (Right of executor to sue individually) by *Code Civ. Pro.* § 1814.
- *v. Fisk*, 22 *How. Pr.* 236. Explained (Remedy for misjoinder in one count) in *Harris v. Eldridge*, 5 *Abb. N. C.* 278, 281. Disting'd in *Barton v. Speis*, 5 *Hun.* 61. But see *Harris v. Eldridge*, 5 *Abb. N. C.* 278.
- *v. Garbutt*, 5 *How. Pr.* 467. Followed (Relevancy of allegations of fraud in complaint) in *Field v. Morse*, 8 *How. Pr.* 47, as having been approved by the Court of Appeals.
- *v. Troy Hospital Assoc.*, 65 *N. Y.* 282. Followed (Mechanics' lien—payments in advance) in *Post v. Campbell*, 83 *N. Y.* 279, 284.
- *v. Woodruff*, 45 *N. Y.* 98, 100. Applied (Rights of purchaser at foreclosure sale) in *Mut. Life Ins. Co. v. Balch*, 4 *Abb. N. C.* 200, 202.
- Cheriot v. Barker**, 2 *Johns.* 346; s. c., 3 *Am. Dec.* 437. See *Brown v. Cattaraugus County Mutual Ins. Co.*
- Chesebrough, Matter of**, 56 *How. Pr.* 460. Aff'd in 17 *Hun.* 561, and that aff'd in 78 *N. Y.* 232. See *Matter of Chesebrough*.
- Chester v. Bank of Kingston**, 16 *N. Y.* 336. Disting'd (Effect of failure of consideration) in *Weston v. Chamberlain*, 56 *Barb.* 424. Applied (Surety not discharged by contract made with his consent) in *Wright v. Storrs*, 6 *Bosw.* 611. Explained (Parol evidence of understanding existing at time of written contract) in *N. Y. Exchange Co. v. De Wolff*, 5 *Bosw.* 593, 607; *Lewis v. Jones*, 7 *Id.* 366, 370. Disting'd in *Campbell v. Tate*, 7 *Lans.* 370. Applied in *Bainbridge v. Richmond*, 17 *Hun.* 393.
- *v. Comstock*, 6 *Robt.* 1. Aff'd in 40 *N. Y.* 575. See *Marsh v. Falker*. Decision in 40 *N. Y.* followed (*Scienter* necessary to constitute fraud) in *Brown v. Ashbough*, 40 *How. Pr.* 226, 238; *Morehouse v. Yeager*, 41 *Super. Ct. (J. & S.)* 135, 146. Compared and discussed in *Livingston v. Keech*, 34 *Super. Ct. (J. & S.)* 553.
- *v. Dickerson*, 52 *Barb.* 349. Aff'd in 54 *N. Y.* 1; s. c., 13 *Am. R.* 550. See *Buckley v. Buckley*. Decision in 54 *N. Y.* followed (Parol proof of partnership as to real estate) in *Traphagen v. Burt*, 67 *N. Y.* 33; *Williams v. Gillies*, 53 *How. Pr.* 429; *Bissell v. Harrington*, 18 *Hun.* 83. Disting'd in *Fairchild v. Fairchild*, 64 *N. Y.* 479. Followed and approved, in *Holmes v. McCray*, 51 *Ind.* 358; s. c., 19 *Am. R.* 735. Discussed in 2 *Collyer on Partn.* § 700, n. 1, *Wood's Am. ed.* Cited in *Story on Partn.* 7 ed. § 83, n. Followed (Responsibility for fraud of copartner) in *Getty v. Devlin*, 54 *N. Y.* 413. Discussed in 1 *Collyer on Partn.* § 446, *Wood's Am. ed.*
- *v. Dorr*, 41 *N. Y.* 279. To the contrary (Liability of maker of accommodation note taken after maturity) see *First Nat. B'k of Salem v. Grant*, 71 *Me.* 374, with note. Included in 1 *Ames Cases on B. & N.* 793. Disting'd (Rights of *bona fide* holder for value of note) in *Eckhart v. Ellis*, 26 *Hun.* 663.
- Chesterman v. Eyland**, 74 *N. Y.* 452. Further decision in 17 *Hun.* 520, which was aff'd in 81 *N. Y.* 398.
- Chicago & Great Eastern R. Co. v. Dare.** See *Trevor v. Wood*.
- Chichester v. Cande**, 3 *Cow.* 39; s. c., 15 *Am. Dec.* 238, 242, with note, wherein it is said to have been repeatedly recognized as an authority in *N. Y.* See *Bank of Newburgh v. Seymour*; *Mechanic's Bank v. Minthorne*. Disting'd (Amendment of judgment) in *Grant v. Griswold*, 21 *Hun.* 511; *Butler v. Lewis*, 10 *Wend.* 544. Applied in *Hunt v. Grant*, 19 *Wend.* 90; *Geller v. Hoyt*, 7 *How. Pr.* 267. Criticised as extreme (Allowing filing *nunc pro tunc*) in *People v. Superior Court of N. Y.*, 18 *Wend.* 675. Applied (Filing record *nunc pro tunc* to sustain execution) in *Bradford v. Read*, 2 *Sandf. (H.)* 163; *Jones v. Porter*, 6 *How. Pr.* 289. Followed with *Seaman v. Drake*, 1 *Cai.* 9, and other cases (Amendment of record) in *King v. State Bank*, 9 *Ark.* 185; s. c., 47 *Am. Dec.* 739, with note.
- *v. Livingston*, 2 *Sandf.* 718. Followed (Examination of party before trial) in *Watson v. Gage*, 12 *Abb. Pr.* 215. Reviewed with other cases, in *Phoenix v. Dupuy*, 7 *Duly*, 238, 242.
- Child v. Brace**, 4 *Paige*, 309. Followed (Creditor's action—when maintainable against several) in *Field v. Chapman*, 13 *Abb. Pr.* 320, 326. Followed (Jurisdiction of equity) in *Cunlevy v. Tallmadge*, 32 *N. Y.*

457. Quoted (Creditor's lien before filing bill for discovery of property) in *Wait on Fraud. Conv.* § 75.
- *v. Chappell*. See *Cowenhoven v. City of Brooklyn*.
- *v. Starr*, 4 *Hill*, 369. Rev'g *Starr v. Child*, 20 *Wend.* 149. Subsequent decision in 5 *Den.* 599. See *Ex parte Jennings*. Decision in 4 *Hill*, followed (Evidence of intent to extend grant to thread of stream) in *Orendorff v. Steele*, 2 *Barb.* 129. Cited as authority in *Harris v. Thompson*, 9 *Barb.* 360. Followed in *Halsey v. McCormick*, 13 *N. Y.* 298. Explained in *Walton v. Tift*, 14 *Barb.* 220. Disting'd in *Seneca Nation v. Knight*, 23 *N. Y.* 499. Collated with other cases, in *Mills Thoms. on Highw.* 3 ed. 50. Doctrine of *Bockee*, Senator, adopted (Distinction between city and country lands) in *Hammond v. McLachlan*, 1 *Sandf.* 342. Criticised (Right of riparian proprietors) in *People v. Canal Appraisers*, 33 *N. Y.* 484, as to the doubts raised by *People v. Tibbetts*, 17 *Wend.* 571, having been removed by *Commissioners of Canal Fund v. Canal Appraisers*, 33 *N. Y.* 461, 484. Applied to highway in *Sizer v. Devereux*, 16 *Barb.* 163; *Van Amringe v. Barnett*, 8 *Bosw.* 368; *Anderson v. James*, 4 *Robt.* 35.
- Children's Aid Society v. Loveridge**, 70 *N. Y.* 387. See *Pruyn v. Brinkerhoff*. Applied (Undue influence on testator) in *Tucker v. Field*, 5 *Redf.* 139, 180; *Bristed v. Weeks*, *Id.* 529, 532. Followed and applied with *Horn v. Pullman*, 72 *N. Y.* 269; *Coit v. Patchin*, 77 *Id.* 533; *Marx v. McGlynn*, 88 *Id.* 357; in *Hagan v. Hagan*, 1 *Dem.* 584. Referred to in 16 *Am. Dec.* 260, *n.*, as well stating the settled doctrine. Quoted in 1 *Jarm. on Wills*, *Rand. & T.* ed. 141. Explained (Executor disqualified from testifying) in *Matter of Burke*, 5 *Redf.* 369.
- Childs v. Clarke**, 3 *Barb. Ch.* 52; *s. c.*, 49 *Am. Dec.* 164, with note, collecting citations thereof.
- *v. Smith*, 55 *Barb.* 45; *s. c.*, 38 *How. Pr.* 328. Rev'd in 46 *N. Y.* 34. These decisions examined and reviewed (Corporate creation and existence) in 8 *South. L. Rev. N. S.* 531.
- Chillingworth v. Freeman**, 67 *Barb.* 379. Disting'd (Status to impeach fraudulent conveyance) in *Barton v. Hosner*, 24 *Hun.* 467, 471.
- Chipman, Matter of**, 14 *Johns.* 217. With this case and *Matter of Smith*, 16 *Id.* 102, compare (Attachment against partner) *Robbins v. Cooper*, 6 *Johns. Ch.* 186.
- Chipman v. Montgomery**, 4 *Hun.* 739. Aff'd in 63 *N. Y.* 221. Followed (Right to maintain action for construction of will) in *Duncan v. Duncan*, 4 *Abb. N. C.* 279; *Trcv v. Shannon*, 59 *How. Pr.* 214. Disting'd in *Keteltas v. Keteltas*, 53 *How. Pr.* 65. Disting'd (Jurisdiction of action to construe will) in *Monarque v. Monarque*, 19 *Hun.* 352, which was, however, rev'd in 80 *N. Y.* 320, 326, which see. Applied in *Wager v. Wager*, 21 *Hun.* 93, which was, however, rev'd in 89 *N. Y.* 161, which see. Disting'd in *Danser v. Jeremiah*, 3 *Redf.* 130, 136. Disting'd (Action by one claiming in hostility to will) in *Wager v. Wager*, 23 *Hun.* 439, 442. Disting'd (Jurisdiction of Supreme Court in action for accounting) in *Harth v. Bower*, 30 *Hun.* 151. Approved (Jurisdiction over administrators) in 1 *Pomeroy on Eq. Jur.* § 349, *n.* 1. See (Costs on appeal from final judgment) *Code Civ. Pro.* 1881, § 3238, *n.*
- *v. Palmer*, 9 *Hun.* 517. Aff'd in 77 *N. Y.* 51; *s. c.*, 33 *Am. R.* 566. Decision in 77 *N. Y.* explained (Private nuisance—joint acts) in *Wood on Nuis.* 2 ed. § 168, *n.* 2. Cited in *Woodruff v. North Bloomfield Gravel Mining Co.*, 11 *Pac. C. L. J.* 181; *s. c.*, 16 *Fed. Rep.* 25; 17 *West. Jur.* 220, as expressly recognizing rule as to equitable action against parties severally contributing to a nuisance, other cases being collated.
- Chism v. Keith**, 1 *Hun.* 589. Compare (Barring future contingent interests by judgment in partition) *Code Civ. Pro.* § 1557.
- Chouteau v. Suydam**, 21 *N. Y.* 179. See *Peck v. Mallams*. Applied (Affirming judgment, with reduction of its amount) in *Sears v. Conover*, 4 *Abb. Ct. App. Dec.* 182; *Weed v. Lee*, 50 *Barb.* 354. Disting'd in *Whitehead v. Keendy*, 69 *N. Y.* 468. Applied (Extrinsic proof to show that contract was individual act of person executing it) in *Lee v. Meth. Epis. Church of Fort Edward*, 52 *Barb.* 120. Followed (Right of executor or administrator to bind estate) in *Ferrin v. Myrick*, 53 *Barb.* 95, which was rev'd in 41 *N. Y.* 322, which see. Applied in *Tradesmen's Nat. Bk. v. McFeely*, 61 *How. Pr.* 525. Disting'd but approved in *Austin v. Munro*, 47 *N. Y.* 365. Disting'd in *Hall v. Richardson*, 22 *Hun.* 449. Followed (Common law right of executors to compromise) in *Wood v. Tunnicliff*, 74 *N. Y.* 45. Reviewed, with other cases (Authority to allow such compromise) in *Shepard v. Saltus*, 4 *Redf.* 232. Disting'd (Delivery of written instrument) in *Russell v. Freer*, 56 *N. Y.* 71. To the contrary (Qualified delivery) see *Pope v. Latham*, 1 *Pike (Ark.)* 66. But see *Abb. Tr. Ev.* 507.
- Chretien v. Doney**, 1 *N. Y.* 419. Disting'd (Effect of election by lessee to extend period of lease) in *Western Trans. Co. of Buffalo v. Lansing*, 49 *N. Y.* 499.
- Christian v. Gouge**, 10 *Abb. N. C.* 82. Followed (Suit by non-resident in *forma pauperis*) in *Anonymous*, *Id.* 80, 81.
- Christern, Matter of**, 43 *Super. Ct. (J. & S.)* 523. See also (Amending record of naturalization) *Matter of Desty*, 8 *Abb. N. C.* 250. Approved and followed in *Re Coleman*, 15 *Blatchf. C. Ct.* 406, 427.
- Christie v. Bloomingdale**, 18 *How. Pr.* 12. Disting'd and disapproved (New trial in ejectment) in *Reed v. Loucks*, 61 *How. Pr.* 434, 436. See *Code Civ. Pro.* 1881, §§ 1526, *n.*, 1528, *n.*. Commented upon in

- Sedgw. & W. on Tr. of Tit. to Land*, § 593.
- **v. Gage**, 5 *Lans.* 139. Further decisions in 2 *Sup'm. Ct. (T. & C.)* 344; 71 *N. Y.* 189. See *Williams v. Williams*.
- Christman v. Floyd**, 9 *Wend.* 340. Explained with *Burr v. Van Buskirk*, 3 *Cow.* 263 (Sufficiency of avowry in replevin) in *Webber v. Shearman*, 6 *Hill*, 20, 30.
- Christopher v. Austin**, 11 *N. Y.* 216. Aff'g *Vermilya v. Austin*, 2 *E. D. Smith*, 203. See *Dyett v. Pendleton*. See (Effect of eviction of tenant in suspending rent) *Lounsbery v. Snyder*, 31 *N. Y.* 514. See also *Abb. Tr. Ev.* 355. Disting'd in *McKinney v. Holt*, 8 *Hun.* 336. Cited in *Colburn v. Morrill*, 117 *Mass.* 262; s. c., 19 *Am. R.* 415.
- **v. Garr**, 6 *N. Y.* 61. See (Statute of limitations where one dies abroad) *Code Civ. Pro.* 1881, § 391, n. Commented upon in *Throop's Justice's Man.* 2 ed. 180.
- **v. Mayor, &c. of N. Y.**, 13 *Barb.* 567. See *Adriance v. Mayor, &c. of N. Y.* Cited with approval, with *Milhau v. Sharp*, 15 *Barb.* 195; *Stuyvesant v. Pearsall*, *Id.* 244; *De Baun v. Mayor, &c. of N. Y.*, 16 *Id.* 392; *Wood v. Draper*, 24 *Id.* 187 (Right of tax-payer to maintain proceeding to restrain authorities) in *Newmeyer v. Missouri* & *Mississippi R. R. Co.*, 52 *Mo.* 81; s. c., 14 *Am. R.* 394, though said to be questioned by later *N. Y.* decisions, as *Roosevelt v. Draper*, 23 *N. Y.* 318; *Doolittle v. Supervisors, &c.*, 18 *Id.* 155.
- Christy v. Clarke**. See *Bissell v. Bissell*.
- **v. Libby**, 35 *How. Pr.* 119. Aff'd in 5 *Abb. Pr. N. S.* 192. Decision in 5 *Abb. Pr. N. S.* applied (Joinder of causes of action against defendant individually and otherwise) in *Day v. Stone*, 5 *Daly*, 353.
- **v. Murphy**, 12 *How. Pr.* 77. Collated with other cases (Injunction—violation of trade-mark) in *Thomps. on Prov. Rem.* 264.
- Chrysler v. Canaday**, 12 *Weekly Dig.* 214. It appears by mem. s. c., 24 *Hun.* 137, that *LEARNED, P. J.*, dissented.
- **v. Renois**, 43 *N. Y.* 209. Included (Note—how payable, to be negotiable) in 1 *Ames Cas. on B. & N.* 53.
- Christie v. Phyfe**, 19 *N. Y.* 344. Disting'd (Fee given by will, when defeasible) in *Gibson v. Walker*, 20 *Id.* 476, 485. Relied on (Rule of construction in interpretation of wills) in *Farish v. Cook*, 78 *Mo.* 212; s. c., 47 *Am. R.* 107. Quoted (Rule in *Shelly's case*) in 3 *Jarm. on Wills*, *Rand. & T. ed.* 175, n.
- Chubbuck v. Vernam**, 42 *N. Y.* 432. Explained at length (Effect of exceptions to legal conclusions in case that contains none of the evidence—in action tried by referee) in *Stoddard v. Whiting*, 46 *N. Y.* 627, 630. Followed and reconciled with *Stoddard v. Whiting* (Right to look beyond findings of fact) in *Porter v. McGrath*, 41 *Super. Ct. (J. & S.)* 98.
- Church v. Ayres**. See *Canfield v. Westcott*.
- **v. Bedient**, 1 *Cai. Cas.* 21. Collated with other cases (Abandonment (marine)—dependent on actual state of affairs), in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 678.
- **v. Brown**, 29 *Barb.* 436. Rev'd in 21 *N. Y.* 315. See *Leonard v. Vredenberg*. Decision in 29 *Barb.* disting'd (What is promise to pay debt of another) in *Ellenwood v. Fuhs*, 63 *Barb.* 334. Decision in 21 *N. Y.* compared with other cases (Expressing consideration in guaranty) in *Dauber v. Blackney*, 33 *Barb.* 438. Examined with other cases and approved, in *Dunning v. Roberts*, 35 *Barb.* 463, 469.
- **v. —**, 29 *Barb.* 335. See other cases collected (Limit of cost of public works) in 5 *Abb. N. C.* 468, n.
- **v. Ball**, 2 *Den.* 430; s. c., 43 *Am. Dec.* 754, with note, wherein it is said, with citations, to be a recognized authority. Aff'g 5 *Hill*, 206. Quoted (Election in case of dower) in 2 *Jarm. on Wills*, *Rand. & T. ed.* 24, n.
- **v. Church**, 3 *Sandf. Ch.* 434. Discussed (Dower in equitable estates) in 1 *Washb. on Real Prop.* 4 ed. 206. Explained (Dower in proceeds of sales directed by order of court) in *Id.* 295.
- **v. Howard**, 17 *Hun.* 5. Rev'd in 79 *N. Y.* 515. Decision in 79 *N. Y.* explained and followed (Incompetency of defendant who makes no defense, to testify for co-defendant as to transactions with deceased) in *Hill v. Hotchkiss*, 23 *Hun.* 414, 416. Compare *Wilkins v. Baker*, 24 *Id.* 32, 36.
- **v. Kidd**, 3 *Hun.* 254; s. c., less fully, 5 *Sup'm. Ct. (T. & C.)* 454. Further decision in 6 *Hun.* 475. Compare (Application of rules respecting new trials to trials of specific issues) *Code Civ. Pro.* § 1003. Collated and compared with other cases (Parol evidence to establish trust) in *Randall v. Constans*, 23 *Northw. Rep.* 530, 533.
- **v. Landers**, 10 *Wend.* 79. Disting'd (Husband, when agent for his wife, and *vice versa*) by *VAN HOESEN, J.*, in *Mead v. Jack*, 16 *Weekly Dig.* 403; s. c., *N. Y. Daily Reg.*, Mar. 24, 1883. Applied in *Casteel v. Casteel*, 8 *Blackf. (Ind.)* 240; s. c., 44 *Am. Dec.* 763, 765, with note. Disting'd in *Benjamin v. Benjamin*, 15 *Conn.* 347; s. c., 39 *Am. Dec.* 384, 390.
- **v. Maloy**, 9 *Hun.* 148. Aff'd in 70 *N. Y.* 63. Decision in 70 *N. Y.* disting'd (Usurious agreement as defense) in *Nat. B'k of Gloversville v. Place*, 15 *Hun.* 564, 567.
- **v. Simmons**, 19 *Hun.* 220. Rev'd in 83 *N. Y.* 261.
- Church of Redeemer v. Crawford**, 14 *Abb. Pr. N. S.* 200. Rev'd in 36 *Super. Ct. (J. & S.)* 307.
- Church of Redemption v. Grace Church**, 6 *Hun.* 166. Rev'd as to personality, and otherwise aff'd, in 68 *N. Y.* 570.
- Churchill v. Hunt**, 3 *Den.* 321. See *Chace v. Hinman*; *Gilbert v. Wiman*; *Matter of Negus*. Applied (Right of action on con-

- tract of indemnity) in *McGee v. Roen*, 4 *Abb. Pr.* 10; *Drake v. Porter*, 13 *Hun.* 662. Followed in *Kohler v. Matlage*, 72 *N. Y.* 266. Examined with *Wright v. Whiting*, 40 *Barb.* 235, in 1 *Am. Dec.* 47, n. Disting'd in *McGay v. Keilback*, 14 *Abb. Pr.* 144. Explained in *Crippen v. Thompson*, 6 *Barb.* 534; *Bancroft v. Winspear*, 44 *Id.* 214. Approved and disting'd in *Gilbert v. Wiman*, 1 *N. Y.* 563. Approved in *Rector, &c. of Trinity Church v. Higgins*, 48 *Id.* 536, which overruled 4 *Robt.* 372, which see.
- *v. Marsh*, 4 *E. D. Smith*, 369; s. c., more fully, 2 *Abb. Pr.* 219. Questioned but followed (Necessity of seal on process of *N. Y. Marine Court*) in *Talcott v. Rosenberg*, 8 *Abb. Pr. N. S.* 287.
- *v. Onderdonk*, 59 *N. Y.* 134. Followed (Possession enabling one to maintain proceeding to compel determination of claim to vacant lots) in *Cleveland v. Crawford*, 7 *Hun.* 619.
- *v. Prescott*, 3 *Bradf.* 233. Explained (Intestacy—distribution—foreign domicile) in *Willard on Executors*, 404.
- *v. Stone*, 58 *Barb.* 233. Applied (Recovery of money paid for membership in association) in *Weller v. Tuthill*, 4 *Hun.* 811.
- Cipperly v. Cipperly**, 40 *How. Pr.* 269. Applied (Effect of word "heirs" in giving absolute estate) in *Williams v. Seaman*, 3 *Redf.* 150.
- Cisco v. Roberts**, 6 *Bosw.* 494. Rev'd in 36 *N. Y.* 292. Decision in 36 *N. Y.* disting'd (Pilots) in *Gillespie v. Zittlosen*, 60 *N. Y.* 449, 452.
- City Bank v. Dearborn**, 20 *N. Y.* 244. Cited (Effect of record put in evidence as involving an admission) in 2 *Whart. Com. on Ev.* § 836.
- *v. Lumley*, 28 *How. Pr.* 397. Approved, and head-note criticised (Arrest for frauds in foreign country) in *Brown v. Ashbough*, 40 *How. Pr.* 226, 240.
- *v. Rome, Watertown, &c. R. R. Co.*, 44 *N. Y.* 136. Applied (Effect of delivery of bill of lading to pass title) in *First Nat. B'k of Toledo v. Shaw*, 61 *N. Y.* 295. Explained in *Man'frs, &c. B'k of Buffalo v. Farmers', &c. B'k of Buffalo*, 2 *Sup'm. Ct. (T. & C.)* 401.
- City Bank of Brooklyn v. McChesney**. See *Vernon v. Manhattan Co.*
- City Bank of New Haven v. Perkins**, 4 *Bosw.* 420. Aff'd in 29 *N. Y.* 554. See *Gage v. Kendall*; *Sanford v. Sanford*. Decision in 29 *N. Y.* disting'd (Who can deny plaintiff's title to negotiable paper) in *Eaton v. Alger*, 57 *Barb.* 179. Approved in *Flint v. Craig*, 59 *Id.* 319. Cited as authority in *Sheridan v. Mayor, &c. of N. Y.*, 68 *N. Y.* 32. Followed in *Brown v. Penfield*, 36 *N. Y.* 475; *Hays v. Southgate*, 10 *Hun.* 511, 513, which was rev'd in 74 *N. Y.* 486, which see. Approved but disting'd in *Sanford v. Sanford*, 45 *N. Y.* 727. Decision in 4 *Bosw.*, cited (Extent and continuance of power of bank cashier) in *Whart. Com. on Ag.* § 685.
- City Bank of Rochester v. Westbury**, 16 *Hun.* 458. Applied (Validity of provision in chattel mortgage enabling mortgagor to sell) in *Brackett v. Harvey*, 25 *Hun.* 502, 506. Disting'd in *Caring v. Richmond*, 22 *Id.* 371.
- City Fire Ins. Co. v. Corlies**, 21 *Wend.* 367. See *Babcock v. Montgomery Co. Mut. Ins. Co.*; *Grim v. Phoenix Ins. Co.* Followed (Loss covered by fire policy) in *Scripture v. Lowell Mut. Fire Ins. Co.*, 10 *Cush.* 356. Applied in *N. Y. & Boston Despatch Express Co. v. Traders', &c. Ins. Co.*, 132 *Mass.* 381; s. c., 42 *Am. R.* 440; *Boon v. Aetna Ins. Co.*, 12 *Blatchf. Ct.* 24, 33.
- City Savings Bank v. Bidwell**, 29 *Barb.* 325. Followed (Law of place) in *Jewell v. Wright*, 12 *Abb. Pr.* 55, 57, which was however rev'd in 18 *Abb. Pr.* 80; s. c., 27 *How. Pr.* 481.
- City of Brooklyn, Matter of**, 73 *N. Y.* 179. Approved (Implied covenant in grant of land bounding on highway) in *Matter of Opening 67th St.*, 60 *How. Pr.* 264.
- City of Brooklyn v. Brooklyn City R. R. Co.**, 57 *Barb.* 497; s. c., more fully, 8 *Abb. Pr. N. S.* 369. Aff'd in 47 *N. Y.* 475. See *Dorwin v. Potter*; *Losee v. Clute*; *Tallman v. Syracuse, &c. R. R. Co.* Decision in 47 *N. Y.* followed (Liability of contractor with city to third parties) in *McMahon v. Second Ave. R. R. Co.*, 11 *Hun.* 343, 350; which was aff'd in 75 *N. Y.* 235, which see. Applied (Recovery over by corporation for negligence causing injury in street) in *Town of Seneca Falls v. Zalinski*, 8 *Hun.* 576. Disting'd (Liability of corporation for defect in highway) in *City of Hartford v. Talcott*, 48 *Conn.* 525; s. c., 40 *Am. R.* 189.
- *v. Fulton Municipal Gas Co.*, 7 *Abb. N. C.* 19. Disting'd (Transfer of franchise of gas company) in *City of Brooklyn v. Jourdan*, 7 *Abb. N. C.* 23.
- *v. Lott*, 2 *Hun.* 628. Aff'd in 60 *N. Y.* 398, as *Matter of Lands in the Town of Flatbush*.
- City of Buffalo, Matter of**, 1 *Buff. Super. Ct. (Sheldon)* 408. Further decision in *Id.* 423.
- , —, 64 *N. Y.* 547. Further decision in 68 *N. Y.* 167. See *Milhau v. Sharp*. Decision in 63 *N. Y.* disting'd (Taking land already acquired for one public use, for another) in *Stranahan v. Sea View R'y Co.*, 84 *N. Y.* 312.
- , —, 78 *N. Y.* 362. Aff'g *Matter of Carlton St.*, 16 *Hun.* 497. Decision in 78 *N. Y.* cited as authority (Setting aside on motion, unauthorized proceeding to take land) in *Matter of Department of Public Parks*, 85 *N. Y.* 459, 464; s. c., as *Matter of One Hundred and Thirty-Eighth St.*, 61 *How. Pr.* 284, 286.
- City of Buffalo v. Holloway**, 14 *Barb.* 101. Aff'd in 7 *N. Y.* 493; s. c., 57 *Am. Dec.* 550, with note. See *Blake v. Ferris*; *Congreve v. Smith*; *Pack v. Mayor, &c. of N. Y.*; *Storrs v. City of Utica*. Decision in 7 *N. Y.* applied (Necessity of pleading facts to show duty) in *Ramsay v. Erie R'y Co.*, 7 *Abb. Pr.*

- N. S.* 180. Criticised (*Respondent superior*) in *Sulzbacker v. Dickie*, 6 *Daly*, 469, 478, 477; *Gardner v. Bennett*, 33 *Super. Ct. (J. & S.)* 200. With *Blake v. Ferris*, 5 *N. Y.* 48; *Pack v. Mayor, &c.* of *N. Y.*, 8 *Id.* 222; *Storrs v. City of Utica*, 17 *Id.* 104; *Congreve v. Smith*, 18 *Id.* 79; *Kelly v. Mayor, &c.* of *N. Y.*, 11 *Id.* 432, examined and compared (Doctrine of negligence, and liability of employers, contractors, &c.) in *Creed v. Hartmann*, 29 *Id.* 591. Disting'd (Liability for negligence of contractor) in *City of Rochester v. Montgomery*, 72 *Id.* 65, 69. Applied in *Storrs v. City of Utica*, 17 *Id.* 109. Applied (Liability for injury resulting from defect in street) in *Bliss v. Schaub*, 48 *Barb.* 343. Collated with *Storrs v. City of Utica*, 17 *N. Y.* 104; *Slater v. Meisereau*, 64 *Id.* 138, and other cases, in 18 *Am. L. Rev.* 635, 663, where cities in *N. Y.*, *Maryland*, *Minnesota* and *Ohio* are said to be held liable notwithstanding the contract, where streets are made dangerous, while the contrary is the case in *California*, *Missouri* and *Pennsylvania*. Doctrine discussed and cases cited in 3 *Am. L. Reg. N. S.* 360.
- City of N. Y. v. Mapes**, 6 *Johns. Ch.* 46. Cited (When equity will interfere with a proposed work by injunction) in *Troy & Boston R. R. Co. v. Boston, Hoosac T. &c. R'y Co.*, 86 *N. Y.* 107, 126.
- City of Ogdensburgh v. Lovejoy**, 2 *Sup'm. Ct. (T. & C.)* 83. Aff'd, it seems, in 58 *N. Y.* 602, but without opinion.
- City of Oswego v. Oswego Canal Co.** See *Underwood v. Stuyvesant*.
- City of Rochester v. Montgomery**, 9 *Hun*, 394. Aff'd in 72 *N. Y.* 65. See *Montgomery v. City of Rochester*.
- **v. Town of Rush**, 15 *Hun*, 239. Rev'd in 80 *N. Y.* 302. Decision in 80 *N. Y.* with *Leonard v. Reynolds*, 7 *Hun*, 73, disting'd (Exemption from taxation of property held for government purposes) in *People ex rel. Mills Water Works Co. v. Forrest*, 29 *Id.* 548. Disting'd (Action against town for money had and received) in *Horn v. Town of New Lots*, 83 *N. Y.* 100, 106.
- City of Troy v. Winters**, 4 *Sup'm. Ct. (T. & C.)* 256. Collated with *Mayor of Hudson v. Thorne*, 7 *Paige*, 261, and other cases (Right of municipal corporation to establish fire limits) in 29 *Am. R.* 347, *n.*
- City of Utica v. Churchill**, 33 *N. Y.* 161. Rev'd in *Van Allen v. Assessors*, 3 *Wall.* 573. See, however, 2 *L.* 1866, *c.* 761. Examined (Taxation of stockholders in National banks) in *People v. Comm'rs of Taxes*, 35 *N. Y.* 423. Cited as authority in *People v. Dolan*, 36 *Id.* 68. Overruled in *First Nat. Bank of Sandy Hill v. Fancher*, 48 *Id.* 524. Disting'd in *Clapp v. City of Burlington*, 42 *Vt.* 579; *s. c.*, 1 *Am. R.* 355, 359. Examined with *Wilde v. Jenkins*, 4 *Paige*, 481; *Mickles v. Rochester City Bank*, 11 *Id.* 118; *Bennett v. Am. Art Union*, 5 *Sandf.* 614, (Title to corporate property) in *Button v. Hoffman*, 61 *Wisc.* 23.
- Claffin v. Baere**, 57 *How. Pr.* 78. Aff'd by the General Term, and appeal therefrom dismissed, in 80 *N. Y.* 642.
- **v. Farmers' & Citizens' Bank**, 36 *Barb.* 540. Rev'd in 25 *N. Y.* 293; *s. c.*, 2 *Am. L. Reg. N. S.* 92, with note. See partial report of reversal in 24 *How. Pr.* 1; where, however, the opinion of referee is given. Decision in 25 *N. Y.* followed (Notice of want of authority in corporate officer to negotiate paper) in *Dabney v. Stevens*, 10 *Abb. Pr. N. S.* 47. Disting'd (Power of officer to certify in his own favor) in *N. Y. & N. H. R. R. Co. v. Schuyler*, 34 *N. Y.* 64; *Titus v. President, &c. Great Western Turnpike Road*, 61 *Id.* 237, 243, which aff'd 5 *Lans.* 250, which see. Cited with *Titus v. President, &c. Great Western Turnpike Road*, 5 *Lans.* 250; *Comstock v. Comstock*, 57 *Barb.* 453; *Reimers v. Ridner*, 2 *Kobt.* 7 (Agent cannot use his trust for his own benefit) in *Whart. Com. on Ag.* §§ 231, 232. Decision in 36 *Barb.* applied (Estoppel of bank to deny authority of its officer) in *Cochecho Nat'l Bank v. Haskell*, 51 *N. H.* 116; *s. c.*, 12 *Am. R.* 67, 74, with note.
- **v. Lenheim**, 5 *Hun*, 209. Rev'd in 66 *N. Y.* 301.
- **v. Meyer**, 43 *Super. Ct. (J. & S.)* 1. Rev'd in 75 *N. Y.* 260; *s. c.*, 31 *Am. R.* 467. Decision in 75 *N. Y.* disting'd (Proof of bailee's negligence) in *Levy v. Appleby*, 1 *City Ct.* 252. Followed in *Madan v. Covert*, 45 *Super. Ct. (J. & S.)* 245.
- **v. Ostrom**, 45 *N. Y.* 581. Applied (Effect of assignment) in *Budd v. Thurber*, 61 *How. Pr.* 206, 215. Upheld in *George v. Tate*, 102 *U. S.* 571. Discussed in *Real Estate Trust Co. v. Balch*, 45 *Super. Ct. (J. S.)* 534. See (Promise by one to another for benefit of third) 11 *Alb. L. J.* 121; 13 *Id.* 362. Compare *Merrill v. Green*, 55 *N. Y.* 270.
- **v. Sanger**, 31 *Barb.* 36. Aff'd in 11 *Abb. Pr.* 338. See *Freligh v. Brink*; *Lanning v. Carpenter*.
- **v. Tishler**, 66 *Barb.* 649. Aff'd it is said, in 55 *N. Y.* 657, but without opinion.
- Clancy v. Byrne**, 58 *Barb.* 449. Further decision in 65 *Barb.* 344, which was rev'd in 56 *N. Y.* 129; *s. c.*, 15 *Am. R.* 391, with note, on the ground that the lessor was not liable, not being in possession, &c. Decision in 56 *N. Y.* followed (Liability of owner, &c.) in *Homer v. Everett*, 47 *Super. Ct. (J. & S.)* 298, 300. Disting'd in *Walsh v. Mead*, 8 *Hun*, 391. Applied in *Swords v. Edgar*, 59 *N. Y.* 31. Followed (Privity necessary to maintain action on covenant or contract) in *Wilmington, &c. R. R. Co. v. Greenville, &c. R. R. Co.*, 9 *S. C.* 325; *s. c.*, 30 *Am. R.* 23. Said in 50 *Am. Dec.* 780, *n.*, to enunciate the same doctrine as is laid down in *Nelson v. Liverpool, &c. Co., L. R. 2 C. P. Div.* 311, as to a lessor's liability for injuries to third persons.

**Clan Ranald v. Wyckoff.** See Ten Broeck v. Sloo.

**Clapp v. Astor, 2 Edw. 384.** Same principle (Interest of life tenant in dividends) in case of extra dividends—in Woodruff's estate, 1 Tuck. 58.

— **v. Bromagham, 5 Cow. 295.** Rev'd in 9 *Id.* 530. See Jackson v. Ellis. Decision in 9 *Cow.* applied (What constitutes ouster of co-tenant) in Trustees of Church, &c. of North Greig v. Johnson, 66 *Barb.* 123. Disting'd in Culver v. Rhodes, 87 *N. Y.* 348. Approved and followed in Parker v. Proprietors of Locks, &c., 3 *Metc. (Mass.)* 91; s. c., 37 *Am. Dec.* 121, 124, with note. Followed (Adverse possession as bar to action for partition) in Burhans v. Burhans, 2 *Barb. Ch.* 405; Therasson v. White, 52 *How. Pr.* 65. Explained and applied in Florence v. Hopkins, 46 *N. Y.* 185. Applied (Who may maintain action for partition) in Brownell v. Brownell, 19 *Wend.* 370; Beach v. Mayor, &c. of N. Y., 45 *How. Pr.* 370. Approved, but referred to as modified by later decisions, as to necessity for present actual possession,—in Stewart v. Munroe, 56 *How. Pr.* 195. Disting'd in Blakely v. Calder, 15 *N. Y.* 622, 627, which aff'd 13 *How. Pr.* 476, which see. Followed (Adverse possession by one entering under executory contract) in Whitney v. Wright, 15 *Wend.* 181. Followed (Adverse possession by grantee of tenant in common) in Bogardus v. Trinity Church, 4 *Paige*, 200. Commented upon in *Ang. on Limit.* § 429, 6 ed. Applied (Deed given without right, as basis of adverse possession) in Sands v. Hughes, 53 *N. Y.* 297; Bogardus v. Trinity Church, 4 *Sandf. Ch.* 633, 739. Examined with other cases, in Chalmers v. Wright, 5 *Robt.* 717. Quoted and commented upon in *Sedgw. & W. on Tr. of Tit. to Land*, § 776.

— **v. Fullerton, 34 N. Y. 190.** See Schenck v. Dart; Stewart v. Lisenard. Explained (Jurisdiction of Supreme Court on appeals from surrogates) in Marvin v. Marvin, 3 *Abb. Ct. App. Dec.* 202; Johnson v. Hicks, 1 *Lans.* 157. Applied in Horn v. Pullman, 10 *Hun.* 473. Disting'd (Opinion of witness as to mental capacity) in Real v. People, 55 *Barb.* 576. Followed in Van Zandt v. Mut. Benefit Life Ins. Co. (Ct. of App. 1872) which was cited in Higbee v. Guardian Mut. Life Ins. Co., 66 *Barb.* 466. Approved and applied in O'Brien v. People, 36 *N. Y.* 282. Applied in Holcomb v. Holcomb, 95 *Id.* 316. Approvingly cited in 11 *Am. Dec.* 656, *n.*, as maintaining a doctrine that is gaining ground. Included in *Redf. Lead. Cas. on Wills*, 105. Examined with other cases (Evidence of admissions of legatee as to testator's capacity) in La Bau v. Vanderbilt, 3 *Redf.* 403. Applied (Right of testator to dispose of estate) in Seguire v. Seguire, 4 *Abb. Ct. App. Dec.* 194; in dissenting opinion of PECKHAM, J., in Tyler v. Gardiner, 35 *N. Y.* 613; in Jackson v. Jackson, 39 *Id.* 157; McLaughlin's

Will, 2 *Redf.* 514; Deas v. Wandell, 3 *Sup'm. Ct. (T. & C.)* 128. Examined with other cases (Insane delusions of testators) in Merrill v. Rolston, 5 *Redf.* 220, 252. Applied (Disregarding admission of improper evidence in equity action) in Patterson v. Copeland, 52 *How. Pr.* 466; Foote v. Beecher, 12 *Hun.* 374, which was rev'd in 78 *N. Y.* 155, which see. Compare Holcomb v. Holcomb, 20 *Hun.* 158; Schoonmaker v. Wolford, *Id.* 168.

— **v. Graves, 26 N. Y. 418.** Applied (Distinction between irregularity and nullity) in McMurray v. McMurray, 60 *Barb.* 117.

— **v. Hudson River R. R. Co.** See Hege-man v. Western R. R. Co.

— **v. Meserole, 38 Barb. 661.** Aff'd in 1 *Keyes*, 281; s. c., 1 *Abb. Ct. App. Dec.* 362. See Walton v. Walton.

— **v. Rogers, 1 E. D. Smith, 549.** Aff'd in 12 *N. Y.* 283. See Vernon v. Manhattan Co.

— **v. Shutt, 19 Abb. Pr. 121; s. c., 44 Barb. 9; 29 How. Pr. 255.** Aff'd in 44 *N. Y.* 104.

— **v. Wilson, 5 Den. 285.** Disapproved (Impeaching witness by inconsistent written statements) in Romertz v. East River National Bank, 2 *Sweeny*, 82, which was, however, rev'd in 49 *N. Y.* 577, which see.

**Clapper, Ex parte, 3 Hill, 458.** Cited (Conclusiveness of record of magistrate) in 2 *Whart. Com. on Ev.* § 813.

**Clare v. National City Bank, 14 Abb. Pr. N. S. 326; s. c., 35 Super. Ct. (J. & S.) 261.** Further decision in 40 *Id.* 114. Previous decision in 1 *Sweeny*, 539. Decision in 1 *Sweeny*, compared with contrary cases (Negligence—articles falling from buildings) in *Bigel. Cas. on Torts*, 600. Decision in 40 *Super. Ct. (J. & S.)* applied (Liability for negligence of servant of contractor) in Burmeister v. N. Y. Elevated R. R. Co., 47 *Id.* 264, 268.

**Clarissey v. Metropolitan Fire Dept., 1 Sweeny, 224.** Followed (Liability of Board) in Donovan v. Board of Education of N. Y., 44 *Super. Ct. (J. & S.)* 64.

**Clark, Matter of, 9 Wend. 212.** Disting'd (Extradition) in Leary's Case, 6 *Abb. N. C.* 43, 65. Followed in Brown's Case, 112 *Mass.* 409; s. c., 17 *Am. R.* 114, 116.

—, —, 20 *Hun.* 551. Appeal dismissed, it seems, in 81 *N. Y.* 638, but without opinion.

—, —, 3 *Den.* 167. Cited with apparent disapproval (Necessity of notice, in order to give jurisdiction in attachment proceedings) in *Waples on Proc. in Rem.* § 596.

**Clark v. Baird, 7 Barb. 64.** Aff'd in 9 *N. Y.* 183. See Brill v. Flagner; Pechner v. Phoenix Ins. Co. Decision in 9 *N. Y.* applied (Inadmissibility of parol evidence of acquiescence to vary description in deed) in Emerick v. Kohler, 29 *Barb.* 169; Hubbell v. McCulloch, 47 *Id.* 302; Terry v. Chandler, 16 *N. Y.* 358; Drew v. Swift, 46 *Id.* 209. Applied (Opinions as evidence) in Harris v. Panama R. R. Co., 3 *Bosw.* 7.



- Approved in *De Witt v. Barly*, 17 *N. Y.* 342. Applied (Opinion of witness as to value) in *Bush v. Westchester Fire Ins. Co.*, 2 *Sup'm. Ct. (T. & C.)* 629, 634; *Teerpening v. Corn Exchange Ins. Co.*, 43 *N. Y.* 283; *Van Deusen v. Young*, 29 *Id.* 37.
- *v. Barlow*, 4 *Johns.* 183. Followed (When rent carries interest) in *Obermeyer v. Nichols*, 6 *Binn. (Pa.)* 159; *s. c.*, 6 *Am. Dec.* 439.
- *v. Bininger*, 43 *Super. Ct. (J. & S.)* 126, and *Id.* 344. The former aff'd and the latter modified and aff'd in 75 *N. Y.* 344. Former proceeding in 1 *Abb. N. C.* 421.
- *v. Binninger*, 38 *How. Pr.* 341; *s. c.*, 8 *Am. L. Reg. N. S.* 304, with note giving history of connected litigation.
- *v. Bogardus*, 2 *Edw.* 387. Explained (Evidence of intention of testator as to enforcing claim) in *Stevens v. Stevens*, 2 *Redf.* 265, 286.
- *v. Brockway*, 3 *Keyes*, 13. Quoted and explained (Receiver—judgment creditor's action) in *High on Receivers*, § 464, n. 4.
- *v. Brooks*, 2 *Abb. Pr. N. S.* 385. Applied (Adoption of special verdict) in *Madison University v. White*, 25 *Hun.* 490, 494.
- *v. Bruce*, 12 *Hun.* 271. See also *Same v. Same*, *Id.* 274.
- *v. Burdett*, 2 *Hall*, 197. Examined (Continuing guaranty) in *Farmers' & Mechanics' Bank v. Kercheval*, 2 *Mich.* 510.
- *v. Bush*, 3 *Cow.* 151. See *Smedes v. Houghtaling*. Limited (Interest beyond penalty) in the cases cited under *Smedes v. Houghtaling*, *below*; but approved, in *Tarewell v. Saunders*, 13 *Gratt. (Va.)* 354, 366. See, also, *Mower v. Kip*, 6 *Paige*, 88.
- *v. City of Rochester*, 13 *How. Pr.* 204. Rev'd in 24 *Barb.* 446; *s. c.*, 5 *Abb. Pr.* 107; 14 *How. Pr.* 193. Latter decision in effect aff'd in 28 *N. Y.* 605. See *Bank of Rome v. Village of Rome*; *Beals v. Benjamin*; *Griswold v. Atlantic Dock Co.*; *People v. Mitchell*. Decision in 13 *How. Pr.* disapproved (Constitutionality of statute authorizing town bonding for railroads) in *Benson v. Mayor, &c. of Albany*, 24 *Barb.* 251. Re-examined in *Williams v. Town of Duaneburgh*, 66 *N. Y.* 138, by ALLEN, J., who had given the opinion in 13 *How. Pr.* Cited and compared in *Thompson v. Perrine*, 103 *U. S.* 806, 816. Decision in 24 *Barb.* followed in *Gould v. Town of Venice*, 29 *Id.* 450. Explained as affected by *N. Y. Const. art. 8, § 11*,—in *Matter of Buffalo & Jamestown R. R. Co.*, 5 *Hun.* 485. Approved in *Bank of Rome v. Village of Rome*, 18 *N. Y.* 44. The decisions in *Clark v. City of Rochester*, examined at length in *Town of Duaneburgh v. Jenkins*, 57 *Id.* 186. Decision in 24 *Barb.* applied (Statute when not unconstitutional as delegation of legislative power) in *Bank of Chenango v. Brown*, 26 *N. Y.* 471. Decision in 28 *N. Y.* applied in *Gilbert Elevated R. Co. v. Anderson*, 3 *Abb. N. C.* 447; *People v. Acton*, 48 *Barb.* 528; *Village of Gloversville v. Howell*, 7 *Hun.* 348, which was aff'd in 70 *N. Y.* 291, which see. Examined in *Metropolitan Board of Health v. Heister*, 37 *Id.* 676.
- *v. Clark*, 8 *Paige*, 152; *s. c.*, 35 *Am. Dec.* 676, with note, collecting citations thereof. See *Bates v. Underhill*. Disting'd (Bequest of residue for life, with remainder over) in *Hill v. Hill*, 2 *Lans.* 43. Followed (Duty of guardian as to requiring infant to maintain himself) in *Kelahr v. McCahill*, 26 *Hun.* 148. Disting'd (Accounting by executors for proceeds of real estate that they are empowered to sell) in *Janssen v. Wemple*, 3 *Redf.* 233. Cited as authority (Right of executors to retain control of proceeds of estate) in *Bundy v. Bundy*, 47 *Barb.* 141. Followed in *Edsall v. Waterbury*, 2 *Redf.* 50. Followed (Proof of claim made against estate by executor, &c.) in *Wood v. Rusco*, 4 *Id.* 386. Applied with *Adair v. Brimmer*, 74 *N. Y.* 566; *Croft v. Williams*, 23 *Hun.* 102 (Liability of trustee for acts or omissions of co-trustee) in *Earle v. Earle*, 48 *Super. Ct. (J. & S.)* 18. Applied in *Whitney v. Phoenix*, 4 *Redf.* 198.
- *v.*, 24 *Barb.* 581. Disapproved (Curtesy, how affected by statute) in *Matter of Winne*, 1 *Lans.* 508, 520, which was, however, rev'd in 2 *Id.* 21, which see. See, also, *Hurd v. Cass*, 9 *Barb.* 366. Collated, with other cases, in *Sharsw. & B. Cas. on Real Prop.* 289.
- *v.*, 25 *Barb.* 76. See *Fetridge v. Wells*. Approved (Trademark—use of same word to designate same manufacture as another) in *Wolfe v. Goulard*, 18 *How. Pr.* 68. Collated with *Faber v. Faber*, 49 *Barb.* 357; *Wolfe v. Burke*, 7 *Lans.* 151; *Mencely v. Mencely*, 3 *Sup'm. Ct. (T. & C.)* 540, and other cases (Restraining one from the use of his own name) in 12 *Am. R.* 410, n.
- *v. Cleveland*, 6 *Hill*, 344. Disapproved (Second arrest) in *Doyle v. Russell*, 30 *Barb.* 300, 303. Cited as authority in *Riley v. Whittiker*, 49 *N. H.* 145; *s. c.*, 6 *Am. R.* 474. Disting'd (Letting prisoner to bail in county where arrested) in *People v. Clews*, 77 *N. Y.* 39, 44. Collated, with other cases, (Arrest without warrant) in *Bigel. Cas. on Torts*, 276.
- *v. Coles*, 48 *How. Pr.* 266. Further proceeding in 50 *Id.* 178.
- *v. Cottrell*, 63 *Barb.* 335. Rev'd in 42 *N. Y.* 527.
- *v. Crego*, 47 *Barb.* 599. Aff'd in 51 *N. Y.* 646. Decision in 47 *Barb.* disting'd (Charge on land creating trust) in *Dill v. Wisner*, 23 *Hun.* 123, 127. Cited (What constitutes ouster, as fact for a jury), in *Hightstone v. Burdette*, *Sup'm. Ct. Mich. June*, 1884, 20 *Northw. Rep.* 65.
- *v. Cummings*, 5 *Barb.* 339, 353. Collated with *King v. Paddock*, 18 *Johns.* 141; *Eagle's Case*, 3 *Abb. Pr.* 218, and many other cases (Presumption of death from absence) in 29 *Abb. L. J.* 426.

- **v. Dales**, 20 *Barb.* 42. See Keating *v.* Price, 20 *Barb.* 42, 64. Followed (Waiver of proof of loss) in Goodwin *v.* Massachusetts Mut. Life Ins. Co., 73 *N. Y.* 480, 495. Followed (Extension of time, by parol) in Burt *v.* Saxton, 4 *Sup'm. Ct. (T. & C.)* 109, 111.
- **v. Denure**, 3 *Den.* 319. See (Justice's court—remitting part of verdict) *Code Civ. Pro.* 1881, § 3016, *n.*
- **v. Dibble**, 16 *Wend.* 601. See Woodbeck *v.* Keller. Disting'd (Evidence—quantum of, in civil cases) in Johnson *v.* Agricultural Ins. Co., 25 *Hun.* 251, 253.
- **v. Donaldson**, 49 *How. Pr.* 63; *mem. s. c.*, 3 *Hun.* 224; 5 *Sup'm. Ct. (T. & C.)* 683. Aff'd, it seems, in 64 *N. Y.* 631, but without opinion.
- **v. Eighth Ave. R. R. Co.**, 32 *Barb.* 657. Aff'd in 36 *N. Y.* 135; *s. c.*, 34 *How. Pr.* 315. See Phillips *v.* Rens. & S. R. R. Co. Decision in 36 *N. Y.* followed (Negligence in street car) in Lax *v.* Forty-second, &c. R. R. Co., 46 *Super. Ct. (J. & S.)* 448, 452.
- **v. Ely**, 2 *Sandf. Ch.* 166. See Ten Eyck *v.* Holmes. See (*Bona fide* holder) 2 *Alb. L. J.* 327, *n.*
- **v. Fairchild**, 22 *Wend.* 576. Disapproved (Declaration need not be special) in King *v.* Kerr, 4 *Chand. (Wisc.)* 160.
- **v. Farmer's Woolen Manuf. Co. of Benton**, 15 *Wend.* 256. Included with notes (Negotiable paper—effect of a seal) in 2 *Ames Cas. on B. & N.* 770.
- **v. Fisher**, 1 *Paige*, 171; *s. c.*, 19 *Am. Dec.* 402, with note. In Bogardus *v.* Clark, 1 *Edw.* 266 (aff'd in 4 *Paige*, 623) a subsequent action concerning realty devised by same will, decision in 1 *Paige*, on validity of will as to personalty held not to be conclusive. Will sustained in Clark *v.* Sawyer, 3 *Sandf. Ch.* 351, which was rev'd in 2 *Barb. Ch.* 411, and that aff'd in 2 *N. Y.* 498. See Culver *v.* Haslam. Cited as authority (Evidence as to paternity of children for whom provision is made in will) in Davis *v.* Calvert, 5 *Gill & J. (Md.)* 269; *s. c.*, 5 *Am. Dec.* 282, 298, with note. Included with note (Will—capacity necessary) in *Redf. Lead. Cas. on Wills*, 287.
- **Fitch**, 2 *Wend.* 459; *s. c.*, 20 *Am. Dec.* 639. See Bartley *v.* Richtmyer; Burlingame *v.* Burlingame; Foster *v.* Scofield; Martin *v.* Payne. Approved (Infant's right to collect his wages) in Swartz *v.* Hazlett 8 *Cal.* 118, 124. Applied (Who may maintain action for seduction) in Certwell *v.* Hoyt, 6 *Hun.* 575; Lavery *v.* Crooke, 52 *Wisc.* 618. Followed (Exclusion of evidence of promise of marriage, in action for seduction) in Whitney *v.* Elmer, 60 *Barb.* 250. Not followed in White *v.* Campbell, 13 *Gratt. (Va.)* 573.
- **v. Foot**, 8 *Johns.* 421. See Hay *v.* Cohoes Co. Approved (Liability for spread of fire) in De France *v.* Spencer, 2 *G. Greene (Iowa)* 462; *s. c.*, 52 *Am. Dec.* 533, with note. Discussed in *Bigel. Cas. on Torts*, 502. Applied with Panton *v.* Holland, 17 *Johns.* 92 (One doing lawful act, when not chargeable with consequences) in Burroughs *v.* Housatonic R. R. Co., 15 *Conn.* 124; *s. c.*, 38 *Am. Dec.* 64, 68, with note.
- **v. Ford**, 1 *Abb. Ct. App. Dec.* 359; *s. c.*, 3 *Keyes*, 370. See McCartee *v.* Camel. See (Action by legatee against executor) *Code Civ. Pro.* 1881, § 1819, *n.*
- **v. Fuller**, 21 *Barb.* 128. Explained (Assignment for benefit of creditors—authority to assignee) in Burrill *on Assign.* § 315, 4 ed. Discussed (Terms of sale) in *Id.* § 224.
- **v. Gilbert**, 32 *Barb.* 576. On second trial plaintiff excepted to rule of damages, and on appeal judgment was rev'd in 26 *N. Y.* 279.
- **v. Goodridge**, 41 *N. Y.* 210. See second report purporting to supply deficiencies, in 44 *How. Pr.* 226, which was corrected (Notice of attachment of funds) in O'Brien *v.* Mech. & Trad. Ins. Co., 56 *N. Y.* 52, which rev'd 36 *Super. Ct. (J. & S.)* 124, which see. Decision in 41 *N. Y.* disting'd in Wehle *v.* Connor, 69 *N. Y.* 546, 552, as involving a question as to priority of creditors.
- **v. Griffith**, 2 *Dows.* 558. Rev'd in 24 *N. Y.* 595. Dictum in 24 *N. Y.* approved (Right of severance between tenants in common of personalty) in Channon *v.* Lusk, 2 *Lans.* 211.
- **v. Hall**, 7 *Paige*, 382. Further decision, as Clark *v.* Hale, *Clarke*, 349. See Moore *v.* Burrows.
- **v. Harwood**, 8 *How. Pr.* 470. Approved (Nothing but cause of action to be stated in complaint) in Sands *v.* St. John, 36 *Barb.* 628, 640.
- **v. Henry**, 2 *Cow.* 324; *s. c.*, 7 *N. Y. Com. L. Laro. ed.* 800, with brief note, on proving deed a mortgage. See Dey *v.* Dunham.
- **v. Holdridge**, 58 *Barb.* 60. Collated with Yates *v.* Lansing, 5 *Johns.* 282; Butler *v.* Potter, 17 *Id.* 145; Willis *v.* Havemeyer, 5 *Duer*, 447 (Judge not liable in civil action for judicial acts) in 25 *Am. R.* 694, *n.*
- **v. Jones**, 1 *Den.* 516; *s. c.*, 43 *Am. Dec.* 706, with note, collecting citations. See Van Rensselaer *v.* Jewett.
- **v. Loomis**, 5 *Duer*, 468. Aff'd, as Clark *v.* Sisson, in 22 *N. Y.* 312.
- **v. Luce**, 15 *Wend.* 479. Overruled (Practice on attachment against non-resident) in Bennett *v.* Brown, 4 *N. Y.* 234; and see Taylor *v.* Heath, 4 *Den.* 592. Collated, with other cases, in *Throop's Justice's Man.* 2 ed. 25.
- **v. McCann**, 19 *Hun.* 13. Rev'd in Clarke *v.* Gibbons, 83 *N. Y.* 107.
- **v. Marsiglia**, 1 *Den.* 317; *s. c.*, 43 *Am. Dec.* 670, with notes, wherein it is said to have been frequently referred to with approval in *N. Y.* and elsewhere. Applied with Hecksher *v.* McCrea, 24 *Wend.* 314; Master-ton *v.* Mayor of Brooklyn, 2 *Hill*, 75 (Dam-

- ages for breach of contract) in *Friedlander v. Pugh*, 43 *Miss.* 111; s. c., 5 *Am. R.* 478. Applied with *Wilson v. Martin*, 1 *Den.* 602; *Spencer v. Halstead*, *Id.* 606, in *Polsley v. Anderson*, 7 *W. Va.* 202; s. c., 23 *Am. R.* 613, 617. Approved in *Hosmer v. Wilson*, 7 *Mich.* 294.
- **v. Masters**, 1 *Bosw.* 177, 185. Followed (Freight not recoverable until goods tendered) in 1265 *Vitrified Pipes*, 14 *Blatchf. C. Ct.* 274.
- **v. Mayor, &c. of Syracuse**, 13 *Barb.* 32. Collated with *Underwood v. Green*, 42 *N. Y.* 140, and other authorities (Liability of municipality for abatement of a supposed nuisance which is not one in fact) in *Cole v. Kegler*, 64 *Iowa*, 62.
- **v. Mayor of N. Y.**, 3 *Barb.* 288. Rev'd in 4 *N. Y.* 338; s. c., 53 *Am. Dec.* 379, with note. Another decision arising under same contract, in 1 *Keyes*, 9. Decision in 4 *N. Y.* criticised at length (Measure of damages in case of contract terminated by one party against the consent of the other) in *Doolittle v. McCullough*, 12 *Ohio St.* 369-372. Included in *Sedgw. Cas. on Dama.* 371.
- **v. Meigs**, 12 *Abb. Pr.* 267; s. c., 21 *Hov. Pr.* 187. Rev'd in 13 *Abb. Pr.* 467; s. c., 22 *Hov. Pr.* 340. Further decision in 10 *Bosw.* 337.
- **v. Merchants' Bank**, 1 *Sandf.* 498. Rev'd in 2 *N. Y.* 380. Decision in 2 *N. Y.* explained and disting'd (Title to negotiable paper received for collection) in *Commercial Bank of Clyde v. Marine Bank*, 6 *Abb. Pr. N. S.* 33; s. c., 3 *Keyes*, 337. Confirmed and applied (*Bona fide* holder of negotiable paper) in *Wyman v. Colorado Nat'l Bank*, 5 *Col.* 30; s. c., 40 *Am. R.* 133. Applied (Title to money or bills deposited in bank) in *Metropolitan Nat. B'k v. Loyd*, 25 *Hun.* 101, 105.
- **v. Miller**, 4 *Wend.* 628. Applied (Liability of one preventing owner of property from showing its quality and value) in *Bailey v. Shaw*, 24 *N. H.* 297; s. c., 55 *Am. Dec.* 241.
- **v. —**, 42 *Barb.* 255. On further decision plaintiff had judgment in 47 *Barb.* 38, which was aff'd in 54 *N. Y.* 528. See *Adsit v. Brady*. Decision in 54 *N. Y.* cited as authority (Damaged party not to increase amount of damage) in *Beers v. Board of Health*, 35 *La. Ann.* 1132; s. c., 48 *Am. R.* 256.
- **v. Montgomery**, 23 *Barb.* 464, 472. Commented on (Guardian appointed by surrogate) in *Willard on Executors*, 447, n.
- **v. Niblo**. See *Jackson v. Plumb*.
- **v. N. Y. Life Ins. & Trust Co.**, 7 *Lans.* 322. Rev'd in 64 *N. Y.* 33.
- **v. Norton**, 3 *Lans.* 484; s. c., 58 *Barb.* 434. Aff'd in 49 *N. Y.* 243. See *People v. Supervisors of Chenango*. Decision in 49 *N. Y.* disting'd (Liability of assessors) in *Stewart v. Fonda*, 19 *Hun.* 191. Doctrine explained (Completing assessment roll) in *Overing v. Foote*, 65 *N. Y.* 271. Followed (Substantial compliance with statutes regulating assessment and taxation sufficient) in *Albany City Bank v. Maher*, 6 *Fed. Rep.* 423.
- **v. Ostrander**, 1 *Cow.* 437; s. c., 13 *Am. Dec.* 546, with extended note on the subject of waiver of appeal or right of review.
- **v. Owens**, 18 *N. Y.* 434. See *Jackson v. Blanshan*. Approved (Admissibility of deed accompanied with possession for thirty years) in 3 *Am. Dec.* 490, n. Cited (Evidence of death of *cestui que vie*) in 1 *Washb. on Real Prop.* 4 ed. 115, n. 3.
- **v. People**, 26 *Wend.* 599. Followed with *People v. Draper*, 15 *N. Y.* 543; *Butler v. Palmer*, 1 *Hill*, 324 (Courts, when not authorized to annul act of legislature) in *Stewart v. Supervisors of Polk Co.*, 30 *Iowa*, 9; s. c., 1 *Am. R.* 238, 243. Disting'd (Justice of the peace) in *Wenzler v. People*, 58 *N. Y.* 516, 524. Explained in *People v. Morgan*, 5 *Daly*, 161, 180.
- **v. —**, 1 *Park. Cr.* 347. Rev'd, on the ground that an intent to kill, though formed on the instant, may be a "premeditated design," in *People v. Clark*, 7 *N. Y.* 885.
- **v. Pinney**, 6 *Cow.* 297. Applied (Effect of reversal of judgment on property rights) in *Duncan v. Ware's Executors*, 5 *Stew. & P. (Ala.)* 119; s. c., 24 *Am. Dec.* 772. Followed in *McJilton v. Love*, 13 *Ill.* 486; s. c., 54 *Am. Dec.* 449, 454, with note. See, also, *Ponder v. Moseley*, 2 *Fla.* 207; s. c., 48 *Am. Dec.* 194. Approved (Trespass not maintainable for amount of a judgment which was merely erroneous) in *Field v. Anderson*, 103 *Ill.* 407.
- **v. —**, 7 *Cow.* 681; s. c., 9 *N. Y. Com. L. Law.* ed. 263, with brief note, citing conflicting authorities. See *Gleason v. Same*; *Suydam v. Jenkins*. Denied (Damages for breach of contract for sale of chattels) in *Kennedy v. Whitwell*, 4 *Pick. (Mass.)* 466; *Parks v. Boston*, 15 *Id.* 206. Preferred in *Thomas v. Murray*, 32 *N. Y.* 605, to *Pinney v. Gleason*, 5 *Wend.* 393, which is reconciled with *Clarke v. Pinney*. Discussed and qualified in *Suydam v. Jenkins*, 3 *Sandf.* 614. Explained with *Sturgis v. Allis*, 10 *Wend.* 355, in *Lott v. Swezey*, 29 *Barb.* 87. Explained in 3 *Pars. on Contr.* 197, n. j.; *Id.* 205, n. i. Explained (Contracts—construction and interpretation of) in 2 *Pars. on Contr.* 500, n. s.
- **v. Rankin**, 46 *Barb.* 570; s. c., with opinion of DANIELS, J., in 6 *Am. L. Reg. N. S.* 368.
- **v. Richards**. See *Beardsly v. Root*.
- **v. Rowling**, 3 *N. Y.* 216; s. c., 53 *Am. Dec.* 290, with note, wherein it is said to be denied (Effect of adjudication in bankruptcy on judgment) in *McCarthy v. Goodwin*, 8 *Mo. App.* 380; but thought by the editor to be sustained by the great preponderance of authority, citing cases. See *Dresser v. Brooks*; *Monroe v. Upton*. Followed in *Monroe v. Upton*, 50 *N. Y.* 593. Disap-

- proved with *Dresser v. Brooks*, 3 *Barb.* 429, in *Boynnton v. Ball*, 105 *Ill.* 627; s. c., 46 *Am. R.* 577. Dissenting opinion of Bronson, Ch. J., cited as authority (Power to vacate judgment after expiration of term where it was rendered) in *Heckling v. Allen*, U. S. Cir. Ct. D. Col. 15 *Reporter*, 387. Followed (Looking behind judgment to debt in insolvency proceedings) in *Conway v. Seamons*, 55 *Vt.* 8; s. c., 45 *Am. R.* 579.
- **v. Sawyer.** See *Clark v. Fisher*; *Stewart v. Lispensard*.
- **v. Sickler**, 64 *N. Y.* 231; s. c., 21 *Am. R.* 606. Applied (Discharge of surety) in *Marsh v. Duncel*, 25 *Hun.* 167, 169. Disting'd and *Sailly v. Elmore*, 2 *Paige*, 497, cited in *White's Adm. v. Life Ass'n of America*, 63 *Ala.* 419; s. c., 35 *Am. R.* 45. Disting'd (Accommodation maker) in *Converse v. Cook*, 25 *Hun.* 44, 48.
- **v. Sisson**, 22 *N. Y.* 312. Aff'g *Clark v. Loomis*, 5 *Duer*, 468. See *Achy v. Rapelye*. Followed (Oral evidence to vary writing) in *Fellows v. Wallace*, 8 *Abb. N. C.* 351, 353. Applied (Estoppel of parties to instrument by representations outside its face) in *Weyh v. Boylan*, 85 *N. Y.* 394. Collated, with other cases (Consideration—purchase of accommodation note or bill) in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 243.
- **v. Skinner.** See *Pangburn v. Patridge*.
- **v. Smith**, 14 *Johns.* 326. Followed with *Wood v. Edwards*, 19 *Id.* 212 (Recovery on general count, when precluded, after failure in proof of special contract) in *Fowler v. Austin*, 1 *How. (Miss.)* 156; s. c., 26 *Am. Dec.* 701.
- **v. —**, 34 *Barb.* 140. See *Quinn v. Quinn*. Limited (Revocation of will) in *Lovell v. Quitman*, 25 *Hun.* 537.
- **v. Syracuse, &c. R. R. Co.**, 11 *Barb.* 112. Criticised (Liability of railroad company for injury to cattle trespassing on its track) in 49 *Am. Dec.* 262, n., as going beyond the rule of the authorities holding to the common-law doctrine laid down in *Tonawanda R. R. Co. v. Munger*, 5 *Den.* 255; s. c., 49 *Am. Dec.* 239, with valuable note, collating many authorities. Disapproved in *Jackson v. Burlington & Rutland R. R. Co.*, 25 *Vt.* 162; and compare *Corwin v. N. Y. & Erie R. R. Co.*, 3 *N. Y.* 42.
- **v. Titcomb.** See *Partridge v. Badger*.
- **v. Tucker**, 2 *Sandf.* 157, 164. Quoted (Part payment required by statute of frauds) in *Benj. on Sales*, § 193, n. m. (Bennett's 4 *Am. ed.*).
- **v. Union Ferry Co.**, 35 *N. Y.* 485. Followed (Proximate cause of damage) in *Kennedy v. Mayor, &c. of N. Y.*, 73 *N. Y.* 365, 368. Quoted and explained (Nuisance—care of animals) in *Wood on Nuis.* 2 ed. § 748, n. 1.
- **v. Village of Dunkirk**, 12 *Hun.* 181. Aff'd, it seems, in 75 *N. Y.* 612, but without opinion. Decision in 12 *Hun.* disting'd (Suit to vacate assessment) in *Kennedy v. City of Troy*, 77 *N. Y.* 493, which rev'd 14 *Hun.* 308, which see.
- **v. Vorce**, 15 *Wend.* 193. Subsequent decision in 19 *Wend.* 232. Decision in 15 *Wend.* approved (Proving testimony of deceased witness on a former trial) in *Crawford v. Loper*, 25 *Barb.* 449. Decision in 19 *Wend.* referred to as modified by late decisions (Improper evidence always cause for new trial) in *People v. Gonzalez*, 35 *N. Y.* 49.
- **v. Wethey**, 19 *Wend.* 320. Approved (Controlling effect of description) in *Clark v. Baird*, 9 *N. Y.* 183, 204.
- **v. Wise**, 57 *Barb.* 416; s. c., 39 *How. Pr.* 97. Rev'd (Question of fact, in case submitted without action) in *Clark v. Wise*, 46 *N. Y.* 612.
- **v. Woodruff**, 18 *Hun.* 419. Aff'd in 83 *N. Y.* 518.
- Clarke, Matter of**, 1 *Tuck.* 119. Explained (Authority of assistant of surrogate in N. Y.) in *Roderigas v. East River Savings Institution*, 43 *Super. Ct. (J. & S.)* 217, 232.
- Clarke v. Baird**, 7 *Barb.* 64. Appeal from decision on subsequent trial in 9 *N. Y.* 183.
- Clarke v. Bogardus.** See *Rickets v. Livingston*.
- **v. Boreel**, 21 *Hun.* 594. Followed (Service of summons) in *Wood v. St. Louis Bolt & I. Co.*, 1 *Civ. Pro. R.* 220, in preference to *Pennoyer v. Neff*, 95 *U. S.* 714.
- **v. Brooklyn Bank.** See *Walker v. Devereaux*.
- **v. City of Rochester.** See *Clark v. Same*.
- **v. Davenport**, 1 *Bosw.* 95. Said in *Towle v. Remsen*, 70 *N. Y.* 303, 307, to have been aff'd by Ct. of App. See *Towle v. Forney*.
- **v. Dutcher**, 9 *Cow.* 674. See *Mut. Life Ins. Co. v. Wager*; *Shotwell v. Murray*. Applied (Effect of mistake of law) in *Holdredge v. Webb*, 64 *Barb.* 22; by *Coxen, J.*, in *Root v. Stuyvesant*, 18 *Wend.* 299. Applied in *Champlin v. Laytin*, *Id.* 417; *Morton v. Ludlow*, 1 *Edw.* 643. Disapproved in *Northrup v. Graves*, 19 *Conn.* 548; s. c., 50 *Am. Dec.* 264, 270, with note. Cited as authority with *Mowatt v. Wright*, 1 *Wend.* 355, in *Mayor of Baltimore v. Lefferman*, 4 *Gill (Md.)* 425; s. c., 45 *Am. Dec.* 145. Cited as authority with *Mowatt v. Wright*, 1 *Wend.* 355; *Lyon v. Richmond*, 2 *Johns. Ch.* 51, in *Union Ins. Co. v. City of Allegheny*, 101 *Pa. St.* 255. Opposed in *City of Louisville v. Anderson*, 20 *Am. L. Reg. N. S.* 687, with note. *Dicta* herein criticised in 2 *Pomeroy on Eq. Jur.* 322, as inconsistent with decisions, and as having been expressly overruled, though said to to have been followed by some of the text-writers. Discussed in 2 *Alb. L. J.* 450. Cited as authority (Admission that avoids statute of limitations) in *Deyo v. Jones*, 19 *Wend.* 491; *Hancock v. Bliss*, 7 *Id.* 267.
- **v. Gibbons.** See *Clark v. McCann*.

- **v. Goodridge**, 41 *N. Y.* 210. Rev'd Drake *v. Goodridge*, 54 *Barb.* 78. Decision in 41 *N. Y.* explained (Sufficiency of notice of attachment) and report corrected in *O'Brien v. Merchants' and Traders' Fire Ins. Co.*, 56 *N. Y.* 52, 55, which rev'd 36 *Super. Ct. (J. & S.)* 110, which see. See *Code Civ. Pro.* 1881, § 649, *n.* Applied (Effect of service of attachment on bank, in *Bills v. National Park Bk. of N. Y.*, 47 *Super. Ct. (J. & S.)* 302, 309.
- **v. Faxton**, 21 *Wend.* 153. Questioned with *Hollister v. Nowlen*, 19 *Id.* 234; *Cole v. Goodwin*, 19 *Id.* 251 (Limiting carrier's liability) in *Farmers' & Merchants' Bank v. Champlain Transportation Co.*, 23 *Vt.* 186; *s. c.*, 56 *Am. Dec.* 68, 75. Commented upon in 2 *Redf. Am. Railw. Cas.* 54.
- **v. Lowrie**, 21 *Hun.* 618. Appeal dismissed in 82 *N. Y.* 580.
- **v. Morey**, 16 *Johns.* 69. Cited as authority (Effect of war on contracts) in *Kershaw v. Kelsey*, 100 *Mass.* 561; *s. c.*, 1 *Am. R.* 142, 150. Reviewed with *Buchanan v. Curry*, 19 *Johns.* 140; *Griswold v. Wadlington*, 16 *Id.* 438, and other cases, in *Statham v. N. Y. Life Ins. Co.*, 45 *Miss.* 581; *s. c.*, 7 *Am. R.* 737, 741. See (Limitations—aliens) *Code Civ. Pro.* 1881, § 404, *n.*
- **v. Rochester, L. & N. F. R. R. Co.**, 18 *Barb.* 350. Applied (When equity will refuse to enforce performance of duty respecting real property) in *Trustees of Columbia Coll. v. Thacher*, 10 *Abb. N. C.* 235, 240.
- **v. Rochester & Syracuse R. R. Co.**, 14 *N. Y.* 570. See *Poucher v. N. Y. Central R. R. Co.* Relied on (Liability of carrier of animals) in *Rixford v. Smith*, 52 *N. H.* 355; *s. c.*, 13 *Am. R.* 42, 50, with note, collating cases. Cited as authority in *Louisville, Cincinnati, &c. R. R. Co. v. Hedger*, 9 *Bush (Ky.)* 645; *s. c.*, 15 *Am. R.* 740. Followed with *Conger v. Hudson River R. R. Co.*, 6 *Duer*, 375, in *Evans v. Fitchburg R. R. Co.*, 111 *Mass.* 142; *s. c.*, 15 *Am. R.* 19, 22. Explained in *Ang. on Carr.* § 214, *n. a*, 5 ed. Included, with note, in 2 *Redf. Am. Railw. Cas.* 360.
- **v. Roberts**, 12 *Weekly Dig.* 475. Reported in 25 *Hun.* 86.
- **v. Sawyer**, 2 *N. Y.* 498. Followed (Jurisdiction by equity, in absence of objection) in *Monarque v. Monarque*, 19 *Hun.* 332. Explained, and cases cited to the contrary (Will—relief in equity to set aside for fraud) in *Willard on Executors*, 91.
- **v. Sheehan**, 47 *N. Y.* 188. Followed (Consideration must proceed from borrower to establish usury) in *Madison University v. White*, 25 *Hun.* 490, 497.
- **v. Smith**, 46 *Barb.* 30. Disapproved (Physician's books of account as evidence) in *Knight v. Cunningham*, 6 *Hun.* 106, 103.
- **v. Tunnieliff**, 38 *N. Y.* 58; *s. c.*, more fully, 4 *Abb. Pr. N. S.* 451.
- **v. Van Surlay**, 15 *Wend.* 436. Aff'd in *Cochran v. Van Surlay*, 20 *Id.* 365, which see *below*. Followed with *Cochran v. Van Surlay* (Constitutionality of statutes authorizing sale of lands of wards, &c.) in *Davison v. Johnnot*, 7 *Metc. (Mass.)* 388; *s. c.*, 41 *Am. Dec.* 448, with note.
- **v. Wright**, 19 *Wend.* 584. Explained and cited as authority (Denial of application of insolvent for assignment and discharge) in *Matter of Andriot*, 2 *Daly*, 28.
- Clarke National Bank v. Bank of Albion**, 52 *Barb.* 592. \*Disting'd (Effect of certification of check by cashier) in *Pope v. Bank of Albion*, 59 *Barb.* 226. Disting'd (Validity of post-dated check) in *Frazier v. Trow's Printing, &c. Co.*, 24 *Hun.* 281, 283.
- Clarkson v. Clarkson**, 18 *Barb.* 646. Approved (Interest of life tenants in dividends) in *Woodruff's Estate*, 1 *Tuck.* 58. Followed with *Matter of Woodruff's Estate*, in *Cragg v. Riggs*, 5 *Redf.* 82, 88. Disting'd in *Scovel v. Roosevelt*, *Id.* 121, 126. Discussed in 2 *Perry on Trusts*, 3 ed. § 546, *n.* Disting'd (Dividends, &c., whether principal or income) in *Matter of Pollock*, 3 *Redf.* 109. Collated with *Simpson v. Moore*, 30 *Barb.* 637, and other cases, in 24 *Am. R.* 169, *n.*
- **v. De Peyster**, *Hopk.* 424, 505. Aff'd in 2 *Wend.* 77. See (Payment into court) *Code Civ. Pro.* 1881, § 743, *n.*
- **v. —**, 3 *Paige*, 320. Dictum disapproved (Necessity of issuing execution, for the purpose of removing obstructions) in *North American Ins. Co. v. Graham*, 5 *Sandf.* 197. Disapproved with *Mohawk Bank v. Atwater*, 2 *Paige*, 54; *Storm v. Waddell*, 2 *Sandf. Ch.* 510 (Necessity of execution for maintaining action to set aside conveyance), in *McCullough v. Colby*, 5 *Bosw.* 477, 495. Compare *Williams v. Hubbard*, *Walk. Ch.* 29. Quoted in *Wait on Fraud. Conv.* § 76.
- **v. Gifford**, 1 *Cal.* 5; *s. c.*, 2 *N. Y. Com. L. Law. ed.* 37, with brief note on changing venue.
- **v. Hudson River R. R. Co.**, 12 *N. Y.* 304. Cited as authority (Nature of powers and privileges conferred on railroad corporations by act of 1850) in *Johnson v. Hudson River R. R. Co.*, 49 *N. Y.* 455.
- **v. Skidmore**, 2 *Lans.* 238. Modified on appeal, in 46 *N. Y.* 297.
- Clason v. Bailey**, 14 *Johns.* 487. See *Merritt v. Clason*. Followed (Subscription to memorandum required by statute of frauds) in *Justice v. Lang*, 42 *N. Y.* 493, and explained in connection with *Bailey v. Ogden*, 3 *Johns.* 399; *Parkhurst v. Van Cortlandt*, 1 *Johns.* Ch. 282; *Benedict v. Lynch*, *Id.* 370. Collated with *Justice v. Lang*, 42 *N. Y.* 493; 52 *Id.* 323; 63 *Id.* 633, and other cases, in 25 *Am. R.* 543, *n.* Approved in *Crutchfield v. Donathon*, 49 *Tex.* 691; *s. c.*, 30 *Am. R.* 112. Approved as an authority (Enforcing agreement signed by one party only) in *Old Colony R. R. v. Evans*, 6 *Gray*, 25. Explained in *Rogers v. Saunders*, 16 *Me.* 92; *s. c.*, 33 *Am. Dec.* 635, 639, with note.

- **v. Clason**, 6 *Paige*, 541. Aff'd in 18 *Wend.* 369.
- **v. Corley**, 5 *Sandf.* 454. Aff'd as *Clasen v. Cooley*, in 8 *N. Y.* 426.
- **v. Morris**, 10 *Johns.* 524. See *Woodcock v. Bennet*; *Woodworth v. Bank of America*. Applied (Subrogation of surety to position of principal creditor) in *Townsend v. Whitney*, 75 *N. Y.* 432. Followed in *Lyon v. Bolling*, 9 *Ala.* 463; s. c., 44 *Am. Dec.* 444, 446, with note. Followed and approved (Dismissing, as to one defendant, bill taken *pro confesso* as to him) in *Petty v. Hannum*, 2 *Humph. (Tenn.)* 102; s. c., 36 *Am. Dec.* 303, with note.
- **v. Rankin**, 1 *Duer*, 337. Quoted (Ejectment—co-tenants—ouster) in *Sedgw. & W. on Tr. of Tit. to Land*, § 290.
- **v. Shotwell**, 10 *Johns.* 304. Rev'd in 12 *Id.* 31.
- Clayton v. Per Dun**, 13 *Johns.* 218. See *Tenny v. Filer*. See (Justices' courts—costs) *Code Civ. Pro.* 1881, § 3075, n.
- **v. Wardell**, 5 *Barb.* 214. Aff'd in 4 *N. Y.* 230. See *Fenton v. Reed*; *Starr v. Peck*; *People v. Humphrey*. Doctrine in second paragraph in report in 5 *Barb.* 214 criticised as not law,—in *O'Gara v. Eisenlohe*, 38 *Barb.* 300. Decision in 4 *N. Y.* approved (Presumption of legitimacy) in *Caujolle v. Ferrie*, 23 *N. Y.* 90, 95. Cited as authority (Evidence of marriage) in *Rockwell v. Tunnickliff*, 62 *Barb.* 416; *Cheney v. Arnold*, 15 *N. Y.* 351. Explained in *Wright v. Wright*, 48 *Barb.* 4. Disting'd as inapplicable to action for divorce,—in *Collins v. Collins*, 80 *N. Y.* 9. Applied in *Davis v. Brown*, 1 *Redf.* 262; *Minor v. Jones*, 2 *Id.* 293; *People v. Gabagan*, 1 *Park. Cr.* 385. Disting'd in *Badger v. Badger*, 88 *N. Y.* 546. Discussed in 2 *Pars. on Contr.* 79. Cited (Evidence necessary to overcome presumption of marriage) in *Jones v. Jones*, 48 *Id.* 391; s. c., 30 *Am. R.* 466, 469.
- **v. Yarrington**, 16 *Abb. Pr.* 273. Approved (Examination of witnesses under a commission) in *Anderson v. West*, 9 *Abb. Pr. N. S.* 209.
- Clearwater v. Brill**, 4 *Hun.* 728. Rev'd in 63 *N. Y.* 627; which followed a previous decision in 61 *Id.* 625. See *Parker v. Walrod*. Decision in 61 *N. Y.* explained (False imprisonment—defective affidavits) in *Moak's Underhill's Torts*, 1 *Am. ed.* 194. Compare *Code Civ. Pro.* § 2906.
- Cleaveland v. Hunter**, 1 *Wend.* 104. Examined (Power of referee) in *Ayrault v. Sackett*, 9 *Abb. Pr.* 154, n.
- Clegg v. American Newspaper Union**, 7 *Abb. N. C.* 59. Further proceedings in 59 *Hov. Pr.* 122, and 60 *Id.* 498.
- Clemence v. City of Auburn**, 4 *Hun.* 386; s. c., 6 *Sup'm. Ct. (T. & C.)* 633. Aff'd in 66 *N. Y.* 334. See *Mills v. City of Brooklyn*. Decision in 66 *N. Y.* disting'd (Liability of municipal corporation for injury arising from defect inside walk) in *Urquhart v. City of Ogdensburg*, 91 *N. Y.* 67.
- Clemens v. Clemens**, 37 *N. Y.* 59. Disting'd (Right to maintain action for partition) in *Harris v. Larkins*, 22 *Hun.* 488, 490. Approved (Judgment as estoppel) in *Bloomer v. Sturges*, 58 *N. Y.* 176. Applied (Effect of judgment in partition to bar contingent interests) in *Brevoort v. Brevoort*, 70 *Id.* 140.
- Clement v. Adams**. See *Billings v. Jane*.
- **v. Brush**, 3 *Johns. Cas.* 180; s. c., 1 *N. Y. Com. L. Law. ed.* 661, with brief note. See *Buckley v. Buckley*. Followed (Sealed instrument made by partner, when binding upon copartners) in *Price v. Alexander*, 2 *G. Greene (Iowa)* 427; s. c., 52 *Am. Dec.* 526, 530.
- Clements v. Benjamin**, 12 *Johns.* 299. Cited with *Pratt v. Huil*, 13 *Id.* 334; *Stuart v. Simpson*, 1 *Wend.* 376; *Betts v. Jackson*, 6 *Id.* 173, and *Loomer v. Meeker*, 25 *N. Y.* 361, in 24 *Am. Dec.* 620, n., as showing that in *N. Y.* the practice of compulsory non-suit is perfectly well settled,—the same rule being adopted in most of the States of the Union.
- **v. Gerow**, 30 *Barb.* 325. Rev'd in 1 *Abb. Ct. App. Dec.* 370; s. c., 1 *Keyes*, 297. See *Dunham v. Waterman*. Followed (Statement on confession of judgment) in *Brown v. Marrigold*, 50 *How. Pr.* 248.
- **v. Village of West Troy**, 16 *Barb.* 251. See *Underwood v. Stuyvesant*. Quoted and collated, with other cases (Highways—acceptance by public) in *Mills Thomps. on Highw.* 3 ed. 63.
- **v. Ytturia**, 14 *Hun.* 151. Aff'd in 81 *N. Y.* 285.
- Clemons v. Davis**, 4 *Hun.* 260. Reported in 6 *Sup'm. Ct. (T. & C.)* 523.
- Clendinning v. Church**, 3 *Cai.* 141. Questioned with *Buchanan v. Ocean Ins. Co.*, 6 *Cow.* 318; *Juhel v. Church*, 2 *Johns. Cas.* 333, (Wager policy valid) in *Ruse v. Mut. Benefit Life Ins. Co.*, 23 *N. Y.* 516, 523.
- Cleu v. McPherson**. See *Dike v. Reitlinger*.
- Cleveland v. Boerum**, 23 *Barb.* 201; s. c., 3 *Abb. Pr.* 294. Aff'd in 27 *Barb.* 252, which was aff'd in 24 *N. Y.* 613. Decision in 24 *N. Y.* explained (Limitation of action by assignee in bankruptcy) in *Stevens v. Hauser*, 39 *N. Y.* 302, which rev'd 1 *Robt.* 50, which see. Decision in 27 *Barb.* applied (Assignee in bankruptcy necessary party to foreclosure) under the Act of 1867, in *Daly v. Burchell*, 13 *Abb. Pr. N. S.* 264.
- **v. Cleveland**, 12 *Wend.* 172. Disting'd (Trespass on land adjoining highway) in *Beck v. Carter*, 6 *Hun.* 604, 608.
- **v. Farley**, 4 *Cow.* 432. Disting'd with *Elwood v. Monk*, 5 *Wend.* 235 (Guaranty, when not within statute of frauds) in *Durham v. Arledge*, 1 *Strob. (S. C.)* 5; s. c., 47 *Am. Dec.* 544, 546, with note; and said to be in conflict with *Simpson v. Patten*, 4 *Johns.* 422; *Jackson v. Rayner*, 12 *Id.* 291.
- **v. N. J. Steamboat Co.**, 5 *Hun.* 523. Rev'd in 68 *N. Y.* 306. See *Ward v. Atlantic, &c. Telegraph Co.* Decision in 68

- N. Y.* applied (Negligence in passenger carrier) in *Carpenter v. Boston & Alb. R. R. Co.*, 24 *Hun.* 104, 108; *Loftus v. Union Ferry Co. of Brooklyn*, 84 *N. Y.* 455, 460.
- *v. Whiton*, 31 *Barb.* 544. Followed (Jurisdiction of surrogate) in *Savage v. Olmstead*, 2 *Redf.* 478, 482. See (Judgment against executor for decedent's debt) *Code Civ. Pro.* 1881, § 2757, *n.*
- Cleves v. Willoughby**, 7 *Hill.* 83. See *Dyett v. Pendleton*. Followed (Application of maxim of *caveat emptor* to hiring of real property) in *McGlasham v. Tallmadge*, 37 *Barb.* 315; *O'Brien v. Capwell*, 59 *Id.* 504. Commented on (Recovery for use and occupation) in *Hall v. Western Transp. Co.*, 34 *N. Y.* 289. Reaff'd (Lessor's liability as to condition of premises) in *Jaffe v. Harteau*, 56 *Id.* 401. Applied in *Post v. Yetter*, 2 *E. D. Smith*, 249. Included in *Lawson's Lead. Com. L. Cas. Simplified*, 166. Followed in *Foster v. Peyser*, 9 *Cush. (Mass.)* 242; *s. c.*, 57 *Am. Dec.* 43, with note. Applied (Lease when not to be controlled by oral agreement) in *Wilson v. Dean*, 74 *N. Y.* 534.
- Clews v. Rockford, R. I. & St. L. R. R. Co.**, 2 *Hun.* 379; *s. c.*, 4 *Sup'm. Ct. (T. & C.)* 669. Another proceeding in 49 *How. Pr.* 117.
- Clickman v. Clickman**, 1 *N. Y.* 611. Explained and disapproved (Error in name of court in title of affidavit) in *Bowman v. Sheldon*, 5 *Sandf.* 657.
- Clifford v. Dam**, 44 *Super. Ct. (J. & S.)* 391. Aff'd in 81 *N. Y.* 52. Statement in latter that the appeal is from the Supreme Court is incorrect. See *Brown v. Cayuga & Sus. R. R. Co.* Decision in 81 *N. Y.* disting'd (Liability for injury resulting from obstruction, &c. in sidewalk) in *Wenzlick v. McCotter*, 87 *Id.* 128. Applied in *Dickinson v. Mayor, &c. of N. Y.*, 62 *How. Pr.* 257.
- Cliff v. White**, 15 *Barb.* 70. Rev'd in 12 *N. Y.* 519. Decision in 15 *Barb.* relied on (Merger of mortgage) in *Welsh v. Phillips*, 54 *Ala.* 809; *s. c.*, 25 *Am. R.* 679.
- Clinch v. South Side R. R. Co.**, 2 *Hun.* 154; *s. c.*, 4 *Sup'm. Ct. (T. & C.)* 683. Another decision in *Id.* 224. With latter decision compare (Receiver of corporation—how appointed) *Code Civ. Pro.* § 1810.
- Clinton v. Hope Ins. Co.**, 51 *Barb.* 647. Aff'd in 45 *N. Y.* 454. Decision in 45 *N. Y.* disting'd (Effect of reference to survey, &c. in policy) in *Steward v. Phoenix Fire Ins. Co.*, 5 *Hun.* 264. Applied in *Vilas v. N. Y. Central Ins. Co.*, 72 *N. Y.* 592. Explained (Right of insurer to subrogation to rights of mortgagee) in *Foster v. Van Reed*, 70 *Id.* 26. Examined with other cases (Insurable interest of creditor of estate of deceased) in *Rohrbach v. Germania Fire Ins. Co.*, 62 *Id.* 60. Explained (Effect of words "estate of" in designating parties having rights or liabilities on written instrument) in *Merchant's Bank v. Hayes*, 7 *Hun.* 535. Cited as authority (Effect of insurance procured by mortgagee at instance of mortgagor) in *Waring v. Loder*, 53 *N. Y.* 585. Applied with *Hoffman v. Aetna Ins. Co.*, 32 *Id.* 405 (Construction of policy) in *Morse v. Buffalo Fire & Marine Ins. Co.*, 30 *Wis.* 534; *s. c.*, 11 *Am. R.* 587, 591.
- *v. Myers*, 46 *N. Y.* 511. Disting'd (Right to discharge surface water) in *Waffle v. N. Y. Central R. R. Co.*, 53 *N. Y.* 11, 13.
- *v. Strong*, 9 *Johns.* 370. See *Hall v. Schultz*; *Ripley v. Gelston*. Examined with other cases (Payment to emancipate person and property, when not compulsory) in *Mayor of Baltimore v. Lefferman*, 4 *Gill (Md.)* 425; *s. c.*, 45 *Am. Dec.* 145–151, with elaborate note collating cases. Explained (Money had and received) in 2 *Chitty on Contr.* 943, *n.* 23, 11 *Am. ed.*
- Close v. Stuart**, 4 *Wend.* 95. Applied (Recovery back of money paid) to case of assessment in *Mayor, &c. of Jersey City ads. Riker*, 9 *Vroom (N. J.)* 225; *s. c.*, 20 *Am. R.* 386.
- Clothier v. Adriance**, 51 *N. Y.* 322. See *Moore v. Cross*. Disting'd (Surrender of notes as constituting holder for value) in *Phoenix Ins. Co. v. Church*, 81 *N. Y.* 218, 224.
- Clough v. Murray**, 3 *Robt.* 7, 16. Disting'd (Accord and satisfaction as bar) in *Lawrence v. Barker*, 9 *Daly*, 140. Disting'd (Discharge of sealed agreement) in *Anthony v. Harrison*, 14 *Hun.* 198, 210. Approved and followed in *Kuhn v. Stevens*, 36 *How. Pr.* 275.
- *v. Borst*, 6 *Johns.* 37. Compare (Payment by a stranger) *Wellington v. Kelly*, 84 *N. Y.* 543, 547.
- Clow v. Van Loan**, 4 *Hun.* 184; *s. c.*, more fully, 6 *Sup'm. Ct. (T. & C.)* 458.
- Clowes v. Dickenson**, 5 *Johns. Ch.* 235. Rev'd in 9 *Cow.* 403. Followed with *Gill v. Lyon*, 1 *Johns. Ch.* 440 (Applying parcels of incumbered land in inverse order of their transfer) in *Nailer v. Stanley*, 10 *Serg. & R. (Penn.)* 450; *s. c.*, 13 *Am. Dec.* 691, with note. Compare (Execution—contribution between owners) *Code Civ. Pro.* §§ 1481, 1483, *nn.*
- *v. —*, 8 *Cow.* 328. Explained and disting'd (Seeking payment of judgment, when waiver of right to appeal) in *Knapp v. Brown*, 45 *N. Y.* 207.
- Cloyes v. Thayer**, 3 *Hill.* 564. Approved with *Vroom v. Ditmas*, 4 *Paige*, 526 (Variance) in *Richards v. Worthly*, 5 *Wisc.* 76; and see *Griggs v. Howe*, 31 *Barb.* 100, 102, and *Catlin v. Gunter*, *above*. Followed with *Ward v. People*, 6 *Hill.* 144; *Brandon v. People*, 42 *N. Y.* 265; *Connors v. People*, 50 *Id.* 240 (Privilege of witness to refuse to make criminating answer, purely personal) in *State v. Wentworth*, 65 *Me.* 234; *s. c.*, 20 *Am. R.* 688, 690.
- Clum v. Smith**, 5 *Hill.* 566. See *Dana v.*

- Tucker. Disting'd (Correcting verdict on juror's affidavits) in *Dalrymple v. Williams*, 63 *N. Y.* 361.
- Clumpha v. Whiting**, 10 *Abb. Pr.* 448. Explained (Waiver of irregularity in judgment, by appeal) in *People v. Albany & Susquehanna R. R. Co.*, 8 *Abb. Pr. N. S.* 122.
- Clussman v. Long Island R. R. Co.**, 9 *Hun.* 618. Aff'd, it seems, in 73 *N. Y.* 606, but without opinion.
- **v. Merkel**, 3 *Bow.* 402. See *Gaillard v. Smart*. Limited (Conditional admission of evidence) in *Kerslake v. Schoonmaker*, 3 *Sup'm. Ct. (T. & C.)* 524, 527.
- Clute v. Bool**, 8 *Paige*, 83. See *Hone v. Van Schaick*. Limited and disting'd (Right of creditors to reach income of trust fund) in *Williams v. Thorn*, 70 *N. Y.* 270, 279.
- **v. Clute**, 3 *Den.* 263. See *Adams v. Dyer*. Considered (Fractional parts of a day, when to be regarded) in *Knowlton v. Culver*, 2 *Pinn. (Wis.)* 243; 1 *Chand.* 214; s. c., 52 *Am. Dec.* 156, with note.
- **v. Emmerick**, 12 *Hun.* 504. Further decision in 21 *Id.* 122. Contrary to decision in 12 *Id.* see (Ejectment) *Tyler on Ejectment*, 529. See, also, *Abb. Tr. Ev.* 703.
- **v. Fitch**, 24 *Barb.* 428. Criticised and explained (Justifying attachment by proof that prior sale by defendant was fraudulent) in *Hall v. Stryker*, 27 *N. Y.* 596. Explained in *Wait on Fraud. Conv.* § 263.
- **v. Robison**, 2 *Johns.* 595. See *Gazley v. Price*. Examined, with other cases (Rights of assignee of chose in action) in *Bush v. Lathrop*, 22 *N. Y.* 544. Approved (Contract to give good deed relates to title) as stating rule correct in equity though otherwise at law,—in *Parker v. Parmelee*, 20 *Johns.* 130, 132. Followed with *Judson v. Wass*, 11 *Id.* 525; *Gazley v. Price*, 16 *Id.* 267, in *Stow v. Stevens*, 7 *Vt.* 27; s. c., 29 *Am. Dec.* 139, 142. Though said to be impugned if not overruled by later cases (citing *Van Eps v. Schenectady*, 12 *Johns.* 436; *Gazley v. Price*, 16 *Id.* 269; *Parker v. Parmelee*, 20 *Id.* 130), yet cited as authority with *Jackson v. Ayres*, 14 *Id.* 224, in *Tindall v. Conover*, 1 *Spencer (N. J.)* 214; s. c., 40 *Am. Dec.* 220, with note.
- **v. Wiggins**, 14 *Johns.* 175; s. c., 7 *Am. Dec.* 448, with extended note, wherein it is referred to as a leading and early case and one very frequently followed as to liability of innkeepers. See *Cromwell v. Stephens*. Disting'd (Possession that creates innkeeper's liability) in *Albin v. Presley*, 8 *N. H.* 408; s. c., 29 *Am. Dec.* 679, 681, with note. Explained in 2 *Para. on Contr.* 154, n. p.
- Clyde & Rose Plank-road Co. v. Baker**, 12 *How. Pr.* 371. Aff'd in 22 *Barb.* 323.
- Coakley v. Chamberlain**. See *Kolls v. De Leyer*.
- Coates, Matter of**, 13 *Barb.* 452. Rev'd in 3 *Abb. Ct. App. Dec.* 231. See *Donnelly v. Corbett*. Decision in 3 *Abb. Ct. App. Dec.* approved (Effect of foreign discharge in bankruptcy) in *Matter of Bonaffe*, 23 *N. Y.* 169. Explained and limited in *Munroe v. Guilleaume*, 3 *Keyes*, 30.
- Coates v. Cheever**, 1 *Cow.* 460, 475. See *Collins v. Torrey*. Explained (Dower in mortgaged premises) in *Russell v. Austin*, 1 *Paige*, 192. Collated, with other cases, in *Sharswo. & B. Cas. on Real Prop.* 342. Followed (Dower in mines) in *Billings v. Taylor*, 10 *Pick. (Mass.)* 460; s. c., 20 *Am. Dec.* 533; *Hendrix v. McBeth*, 61 *Ind.* 473; s. c., 28 *Am. R.* 680. Cited as authority in *Lenfers v. Henke*, 73 *Ill.* 405; s. c., 24 *Am. R.* 263. Discussed in 1 *Washb. on Real Prop.* 4 ed. 208.
- **v. Coates**, 1 *Duer*, 664. Disting'd (What is final decision that plaintiff was not entitled to injunction) in *Neugent v. Swan*, 61 *How. Pr.* 40.
- **v. Goddard**, 34 *Super. Ct. (J. & S.)* 118. Compare (Allowance in addition to costs) *Code Civ. Pro.* § 3252.
- **v. Mayor, &c. of N. Y.**, 7 *Cow.* 585. Approved (Constitutionality of burial laws) in *West Sav. Fund v. City of Philadelphia*, 31 *Penn.* 175. Applied (Power of municipal corporations to annul their grants) in *Mayor, &c. of New York v. Second Avenue R. R. Co.*, 32 *N. Y.* 261.
- Coats v. Holbrook**, 2 *Sandf. Ch.* 586. Approved (Trade-marks) in *Amoskeag Manuf. Co. v. Spear*, 2 *Sandf.* 613. Followed with *Bell v. Locke*, 8 *Paige*, 75; *Stone v. Carlan*, 2 *Sandf.* 738, as leading cases, in *Marsh v. Billings*, 7 *Cush. (Mass.)* 322; s. c., 54 *Am. Dec.* 723, with note. Quoted and collated with other cases, in *Bigel. Cas. on Torts*, 70, 71. See 3 *Alb. L. J.* 143. Cited as authority with *Spottswood v. Clark*, 2 *Sandf. Ch.* 629 (Damages for violation of trade-mark) in *Graham v. Plate*, 40 *Cal.* 593; s. c., 6 *Am. R.* 639, 641.
- **v. People**, 4 *Park. Cr.* 662. Rev'd on the point that defendant was not within the statute, in 22 *N. Y.* 245.
- **v. Shepard**, 3 *N. Y. Leg. Obs.* 404; s. c., more fully, as *Coats v. Holbrook*, in 2 *Sandf. Ch.* 586.
- Cobb v. Cornish**, 16 *N. Y.* 602. Disting'd (Power to suspend entry of judgment) in *Alfaro v. Davidson*, 39 *Super. Ct. (J. & S.)* 408.
- **v. Dows**, 9 *Barb.* 230. Rev'd in 10 *N. Y.* 335. Decision in 10 *N. Y.* applied (Right of principal to trace proceeds of property) in *Dows v. Kidder*, 84 *Id.* 121, 137.
- **v. Dunkin**, 17 *How. Pr.* 97. Rev'd in 19 *Id.* 164.
- **v. Harmon**, 29 *Barb.* 472. Aff'd in 23 *N. Y.* 148.
- **v. Hatfield**, 46 *N. Y.* 533. Disting'd (Contracts—rescission for fraud) in *Krumm v. Beach*, 25 *Hun.* 293, 295. Applied in *Anthony v. Day*, 52 *How. Pr.* 38; *Sinclair v. Neill*, 1 *Hun.* 82; *Ross v. Titterton*, 6 *Id.* 284; *Dows v. Griswold*, 4 *Id.* 556; *Gray v. Green*, 12 *Id.* 602; *Guckenheimer v.*



- Angevine, 81 *N. Y.* 394, 396. Followed in *Grannis v. Hooker*, 81 *Wis.* 474.
- **v. Knapp**, 42 *Super. Ct. (J. & S.)* 91. Aff'd in 71 *N. Y.* 348; s. c., 27 *Am. R.* 51. Decision in 71 *N. Y.* followed (Execution of instrument by agent) in *Adamson v. Elwell*, 49 *Super. Ct. (J. & S.)* 494.
- **v. Titus**, 13 *Barb.* 45. Aff'd in 10 *N. Y.* 198. See *Chappell v. Spencer*. Followed (Altering note, by adding name of maker) in *Brownell v. Winnie*, 29 *N. Y.* 400, where it is explained as understood in *Burton v. Baker*, 31 *Barb.* 261.
- Cobine v. St. John**, 12 *How. Pr.* 333. Opposed (Limit of jurisdiction of Supreme Court in equitable actions) in *Marsh v. Benson*, 11 *Abb. Pr.* 241, 250; but see *Sarsfield v. Van Vaughner*, 15 *Id.* 65.
- Coburn v. Wheelock**, 42 *Barb.* 267. Aff'd in 34 *N. Y.* 440.
- Cochran v. Dinsmore**. See *Lamb v. Camden & Amboy R. R., &c. Co.*
- **v. Gottwald**, 40 *Super. Ct. (J. & S.)* 442. Other decisions in 41 *Id.* 317, and 42 *Id.* 614. Decision in 42 *Super. Ct.* overruled in effect (Costs to abide event) in *Howell v. Van Siclen*, 4 *Abb. N. C.* 1.
- **v. Ingersoll**, 13 *Hun.* 368. Appeal dismissed in 73 *N. Y.* 613. Other proceedings in 66 *N. Y.* 652, and 11 *Hun.* 342.
- **v. Van Surloy**, 20 *Wend.* 365; s. c., 32 *Am. Dec.* 570–588, with note, wherein it is considered as by no means settling the titles in dispute, though recognized as authority by all the decisions, except *Williamson v. Berry*, 8 *How. (U. S.)* 465; but the position there taken, is said to have been receded from in *Suydam v. Williamson*, 24 *Id.* 427, by reason of the decision in *Towle v. Forney*, 14 *N. Y.* 426, which aff'd 4 *Duer*, 164, 174, which see. See other citations in note. Also reported in 13 *N. Y. Com. L. Law.* ed. 884, with brief note. Compare *Towle v. Palmer*, 1 *Robt.* 437; *Clarke v. Davenport*, 1 *Bosw.* 95, 105; *Towle v. Remsen*, 70 *N. Y.* 305; *Williamson v. Field*, 2 *Sandf. Ch.* 533, 549. See *Clarke v. Van Surloy*. Cited as authority (Sale of contingent interests or estates of infants) in *Bowman v. Tallman*, 27 *How. Pr.* 225, 278; *Matter of Trustees of P. E. Pub. School*, 31 *N. Y.* 591. Cited as necessarily disposing of the question, — in *Leggett v. Hunter*, 19 *Id.* 461. Disting'd as to adults, in *Brevoort v. Grace*, 53 *Id.* 251. Relied on in *Todd v. Flournoy's Heirs*, 56 *Ala.* 99; s. c., 28 *Am. R.* 758, 763. See to the contrary *Burke v. Mechanics' Savings Bk.*, 12 *R. I.* 513. Cited as authority (Care of equitable estates of infants, inherent in Court of Chancery) in *Anderson v. Mather*, 44 *N. Y.* 260. Applied (Extent of legislative power) in *People v. Clute*, 63 *Barb.* 386; *People v. Quant*, 12 *How. Pr.* 86; *People v. Toynbee*, 2 *Park. Cr.* 534. Approved in *Wynchamers v. People*, 13 *N. Y.* 412. Approved in *Bradford v. Shine's Administrator*, 13 *Fla.* 393; s. c., 7 *Am. R.* 239, 245. Examined in *People v. Gallagher*, 4 *Mich.* 249. Quoted and commented upon in *Cooley on Const. Lim.* 5 ed. 121. Applied (Duty of courts to declare laws unconstitutional) in *Darby v. Wright*, 3 *Blatchf. C. Ct.* 170, 174. Quoted in *Cooley on Const. Lim.* 5 ed. 205.
- Cockcroft v. Clafin**, 64 *Barb.* 464. See (Undertaking on application by one of two or more defendants for vacation of attachment) *Code Civ. Pro.* 1831, § 689, n.
- Cockey v. Hurd**, 12 *Abb. Pr.* N. S. 307; s. c., 43 *How. Pr.* 140. Aff'd on account of defects in motion papers; but disapproved on the question of power, in 14 *Abb. Pr.* N. S. 183; s. c., 36 *Super. Ct. (J. & S.)* 42, and 45 *How. Pr.* 70. But see to the contrary (Power to appoint referee to take affidavit of party) *Knoeppel v. Kings County Fire Ins. Co.*, 47 *How. Pr.* 412; *Spratt v. Huntington*, 2 *Hun.* 341.
- Cockle v. Underwood**, 1 *Abb. Pr.* 1; s. c., more fully and aff'd in 3 *Duer*, 676. Decision in 3 *Duer* approved but disting'd (Right to discontinue after counter-claim set up) in *Seaboard & Roanoke R. R. Co. v. Ward*, 1 *Abb. Pr.* 46. Approved and followed (Power to deny discontinuance) in *Young v. Bush*, 36 *How. Pr.* 240.
- Cocks v. Barker**, 44 *N. Y.* 107. See *Worrall v. Munn*. Disting'd and limited (Parol evidence to vary consideration) in *Anthony v. Harrison*, 14 *Hun.* 189, 213. Cited (Contradicting acknowledgment of delivery of deed) in *Whart. Com. on Ev.* § 930.
- Codd v. Codd**, 2 *Johns. Ch.* 141. Reviewed (Origin and character of the writ of supplicavit) in *Adams v. Adams*, 100 *Mass.* 365; s. c., 1 *Am. R.* 111, 113.
- **v. —**, 2 *Johns. Ch.* 224. Disting'd (Pleading in actions for divorce) in *Mitchell v. Mitchell*, 61 *N. Y.* 398, 403. Quoted and explained in 2 *Bish. on Mar. & D.* § 606, 6 ed. Discussed and approved with *Germond v. Germond*, 6 *Johns. Ch.* 347, in *Christianberry v. Christianberry*, 3 *Blatchf. (Ind.)* 202; s. c., 25 *Am. Dec.* 96, 98, with note.
- **v. Ratlbone**, 19 *N. Y.* 37. Followed (Banker not a corporation) in *Hallet v. Harrower*, 33 *Barb.* 537, 542. Followed (Waiver, when not created by failure to object to admission of evidence) in *Williams v. Mechanics' & Traders' Fire Ins. Co.*, 54 *N. Y.* 577, 589.
- Coddington v. Newman**, 3 *Sup'm. Ct. (T. & C.)* 364. Aff'd, it seems, in 63 *N. Y.* 639, but without opinion. Confirmed (Retraction of renunciation) in *Code Civ. Pro.* § 2639.
- **v. Wamsley**, 1 *Hun.* 586; s. c., 4 *Sup'm. Ct. (T. & C.)* 49. Aff'd in 60 *N. Y.* 644, but without opinion. Decision in 1 *Hun* disting'd (Covenant in lease, when not forfeited by failure to perform condition within time prescribed) in *N. Y. Life Ins. Co. v. Rector, &c. of St. George's Church*, 12 *Abb. N. C.* 50.
- Coddington v. Bay**, 20 *Johns.* 637; s. c.,

11 *Am. Dec.* 342, with note; 6 *N. Y. Com. L. Law. ed.* 1143, with brief note. See *Bay v. Coddington*; *Padgett v. Lawrence*; *Root v. French*; *Rosa v. Brotherson*; *Spear v. Myers*; *Stalker v. McDonald*. Followed (Precedent debt as consideration for transfer of negotiable paper) in *Spear v. Myers*, 6 *Barb.* 447; *Wright v. Delafield*, 23 *Id.* 520; *Bright v. Judson*, 47 *Id.* 37; *Francia v. Joseph*, 3 *Edw.* 182; *Turner v. Treadway*, 56 *How. Pr.* 28; *Lawrence v. Clark*, 36 *N. Y.* 128; *Clark v. Ely*, 2 *Sandf. Ch.* 171; *McQuade v. Irwin*, 39 *Super. Ct. (J. & S.)* 398; *Prentiss v. Graves*, 33 *Barb.* 624; *Rosa v. Brotherson*, 10 *Wend.* 86. Applied in *Trader's Bk. v. Bradner*, 43 *Barb.* 392; *Moore v. Ryder*, 65 *N. Y.* 441; *Ontario Bk. v. Worthington*, 12 *Wend.* 600. Commented on in *White v. Springfield Bank*, 3 *Sandf.* 226. Reaff'd in *Stalker v. McDonald*, 6 *Hill*, 93; *McBride v. Farmers' Bk.*, 26 *N. Y.* 454. Disting'd in *De Zeng v. Fyfe*, 1 *Bosw.* 335. Declared settled law, and never to have been departed from by our courts, in *Crandall v. Vickery*, 45 *Barb.* 156. Examined in *McCuskey v. Sherman*, 24 *Conn.* 611; citing, *Bank of Salina v. Babcock*, 21 *Wend.* 499; *Bank of Sandusky v. Scoville*, 24 *Id.* 115. Critically considered in *Russell v. Haddock*, 3 *Gilm. (Ill.)* 233; s. c., 44 *Am. Dec.* 693, with note, and in effect said to be superseded by *Bank of Salina v. Babcock*, 21 *Wend.* 499; *Bank of Sandusky v. Scoville*, 24 *Id.* 115; and to be denied by Justice STORR, after reviewing all the cases, in *Swift v. Tyson*, 16 *Pet.* 1; though again reviewed and approved by Chancellor WARWORTH, in *Stalker v. McDonald*, 6 *Hill*, 39; where he endeavored to prove that Justice STORR entirely misunderstood all the English cases, as well as those in 21 and 24 *Wend. supra*; the decision in 3 *Gilm. supra*; also approving the last-named cases in support of what is said to be the most sensible and reasonable rule. Criticised and disting'd with *Rosa v. Brotherson*, 10 *Wend.* 85, in *Homes v. Smyth*, 16 *Me.* 177; s. c., 33 *Am. Dec.* 650, with note, as inapplicable to the law of Maine, and upon their principles and authorities, the N. Y. doctrine as thus laid down, in *Tobey v. Barber*, 5 *Johns.* 68; *Johnson v. Weed*, 9 *Id.* 309; *N. Y. State Bank v. Fletcher*, 5 *Wend.* 85, is denied. Explained in *Railroad Co. v. Nat. Bk.*, 102 *U. S.* 25, as not according with views afterwards expressed in 3 *Kent Com.* 81, n. b. Dissented from in *Fellows v. Harris*, 12 *Smedes & M. (Miss.)* 466. Disting'd as to transferee of bonds,—in *Curtis v. Leavitt*, 15 *N. Y.* 196; as to mortgagee, in *Birdseye v. Ray*, 4 *Hill*, 163. Applied to assignee of mortgage,—in *Hoyt v. Hoyt*, 8 *Bosw.* 527; *Hertell v. Bogert*, 9 *Paige*, 59. Applied to transferee of stock,—in *Weaver v. Barden*, 49 *N. Y.* 294. Applied to purchaser of mortgaged premises,—in *Dickerson v. Tillinghast*, 4 *Paige*, 222. Applied to trans-

feree of goods, in *Root v. French*, 13 *Wend.* 573. Followed (Necessity that negotiable paper be taken in usual course of trade) in *Payne v. Cutler*, 13 *Wend.* 605; *Hall v. Wilson*, 16 *Barb.* 533; *Wardell v. Howell*, 9 *Wend.* 173. Applied in *Holbrook v. Mix*, 1 *E. D. Smith*, 153. Applied to consignment of goods in *Williams v. Tilt*, 36 *N. Y.* 325. Applied (Compelling accounting for proceeds of negotiable paper) in *Comstock v. Hier*, 73 *N. Y.* 275; *Covell v. Tradesman's Bank*, 1 *Paige*, 134.

— *v. Davis*, 3 *Den.* 16. Aff'd in 1 *N. Y.* 196. See points of counsel in *How. App. Cas.* 387. Decision in 1 *N. Y.* applied (Waiver of demand, by indorser) in *Russell v. Cronkhite*, 32 *Barb.* 282; *Porter v. Kemball*, 53 *Id.* 470. Disting'd (Demand included in protest, by implication) in *Brennan v. Lowry*, 4 *Daly*, 255. Applied in *Youngs v. Lee*, 12 *N. Y.* 554; *Cook v. Litchfield*, 5 *Sandf.* 341; *Woodbury v. Sackrider*, 2 *Abb. Pr.* 404. Disting'd with *Youngs v. Lee* in *Cook v. Warren*, 88 *N. Y.* 37. Disting'd, and *Backus v. Shipherd*, 11 *Wend.* 269, cited, in *Sprague v. Fletcher*, 8 *Oreg.* 367; s. c., 34 *Am. R.* 587.

Codwise *v. Field*, 9 *Johns.* 263. Followed with *Bank of Orange v. Wakeman*, 1 *Cor.* 46 (Officer not to apply execution to his own debt) in *Miles v. Richwine*, 2 *Rauhe (Pa.)* 199; s. c., 19 *Am. Dec.* 638, with note.

— *v. Gelston*, 10 *Johns.* 521. Compared with other cases (Application by trustee to court for advice, whether by petition or bill) in 5 *Abb. N. C.* 352, n. Quoted in *Burrill on Assign.* § 427, n. 1, 4 ed.

Coe *v. Beckwith*, 31 *Barb.* 339; s. c., more fully, in 10 *Abb. Pr.* 296; 19 *How. Pr.* 398. Denied as a rule of pleading in *Graham v. Machado*, 6 *Duer*, 519; *Price v. McClave*, *Id.* 548. Discussed (Assignment for benefit of creditors—release, subsequent to) in *Burrill on Assign.* § 317, 4 ed.

— *v. Beckwith*, 10 *Abb. Pr.* 296; s. c., 31 *Barb.* 339. Collated with other cases (Trustees' compromises) in 5 *Abb. N. C.* 351, n.

— *v. Dunham*, 45 *How. Pr.* 40; s. c., more fully, 35 *N. Y. Super. Ct. (J. & S.)* 412.

— *v. Gilbert*, 5 *Duer*, 72; s. c., 2 *Abb. Pr.* 242. Aff'd in 17 *N. Y.* 489. Decision in 17 *N. Y.* followed (Bonds not leviable until delivered) in *Sickles v. Richardson*, 23 *Hun*, 559, 564. Compare *Code Civ. Pro.* § 648. Explained (Private corporation—suit against) in *Ang. & A. on Corp.* 401, 11 ed.

— *v. Hunt*, 6 *Hill*, 595. Followed (Newly discovered evidence) in *May v. Strauss*, 8 *Abb. N. C.* 274, 279.

— *v. Webb*, 4 *Sandf.* 639. Questioned (Service of injunction order as prerequisite to bringing party into contempt) in *People v. Compton*, 1 *Duer*, 512, 553.

— *v. Cassidy*, 6 *Daly*, 242. Aff'd in 72 *N. Y.* 133.

- **v. Coe**, 37 *Barb.* 232; s. c., more fully, 14 *Abb. Pr.* 86.
- **v. Hobby**, 7 *Hun.* 157. Aff'd in 72 *N. Y.* 141; s. c., 28 *Am. R.* 120. See *National Bank of Fort Edward v. Washington Co. Nat. Bank*. Decision in 72 *N. Y.* followed, but point not stated, in *Nat. B'k of Fort Edward v. Washington Co. Nat. B'k*, 72 *N. Y.* 606.
- **v. Smith**, 24 *Wend.* 341. Approved and followed (Construction of Poor law) in *Foster v. Cronkhite*, 35 *N. Y.* 139.
- Coffey v. Home Life Ins. Co.**, 44 *How. Pr.* 381; s. c., more fully, 35 *Super. Ct. (J. & S.)* 814. Decision in 35 *Super. Ct.* followed (Suicide as showing insanity) in *Weed v. Mutual Benef. L. Ins. Co.*, *Id.* 386.
- Coffin v. Coffin**, 23 *N. Y.* 9. Followed (Execution of will) in *Nexsen v. Nexsen*, 2 *Keyes*, 229. Applied in *Bagley v. Blackman*, 2 *Lans.* 41; *Von Hoffman v. Ward*, 4 *Redf.* 244, 260. Followed in *Darling v. Arthur*, 22 *Hun.* 84. Compared in *Brady v. McCrosnan*, 5 *Redf.* 431. Quoted in 1 *Jarm. on Wills*, Rand. & T. ed. 208, n.
- **v. Coke**, 3 *Hun.* 396; s. c., 6 *Sup'm. Ct. (T. & C.)* 71. Further proceedings in 4 *Hun.* 616. Decision in 4 *Hun.* followed (Extra allowance on discontinuance) in *Dambmann v. Schulting*, 6 *Hun.* 29.
- **v. N. Y. Central R. R. Co.**, 64 *Barb.* 379. Aff'd, it seems, in 56 *N. Y.* 632, but without opinion.
- **v. Reynolds**, 37 *N. Y.* 640. See *Aikin v. Wasson*; *Hovey v. Ten Broeck*. Disting'd (Meaning of terms "laborers, employes," &c.) in *Gurney v. Atlantic & G. W. R'y Co.*, 58 *N. Y.* 358, 367; *Stryker v. Cassidy*, 76 *N. Y.* 50, 53. Applied (Power of referee) in *Schuyler v. Smith*, 51 *N. Y.* 309, 317. Collated, with other cases, in *Hoffm. on Referees*, 4.
- **v. Folger**. See *Fenton v. Folger*.
- Coggeshall v. Pelton**, 7 *Johns. Ch.* 292; s. c., 11 *Am. Dec.* 471, with note. Commented on (Jurisdiction of chancery over charitable bequests) in *King v. Woodhull*, 3 *Edw.* 79. Relied on in *Williams v. Williams*, 8 *N. Y.* 525, 550. Approved with *McCartee v. Orphan Asylum*, 9 *Cow.* 440, in *Burr v. Smith*, 7 *Verm.* 241; s. c., 28 *Am. Dec.* 154, 185, with note. Compared (Bequest to unincorporated society) in 4 *Am. L. Reg. N. S.* 274.
- Coggill v. American Exchange Bk.**, 1 *N. Y.* 113; s. c., 49 *Am. Dec.* 310, with note, collecting citations thereof. Cited as authority (Recovery on bill, &c., made payable to fictitious person) in *Merchants' L. & T. Co. v. Bk. of Metropolis*, 7 *Daly*, 137, 140. Discussed (Note—*bona fide* holder) in *Bijsel. on B. & N.* 2 ed. 567.
- Coggins v. Bulwinkle**, 1 *E. D. Smith*, 434. See *Guernsey v. Carver*.
- Cogswell v. Cogswell**, 2 *Edw.* 240. Applied (Interest of tenants in dividends, &c.) in case of extra dividends, in *Woodruff's estate*, 1 *Tuck.* 58. Disting'd in *Matter of Pollock*, 3 *Redf.* 109. Cited as authority in *Richardson v. Richardson*, 75 *Me.* 570; s. c., 46 *Am. R.* 428.
- Coghlan v. Dinsmore**, 9 *Bosw.* 453. Aff'd in 35 *How. Pr.* 416.
- Cohen. Matter of**, 1 *Tuck.* 286. Followed (Signature at end of attestation clause of will) in *Williamson v. Williamson*, 2 *Redf.* 449, 451.
- Cohen v. Dry Dock. &c. R. R. Co.**, 40 *Super. Ct. (J. & S.)* 368. Aff'd in 69 *N. Y.* 170. See *Rounds v. Delaware, Lack. & W. R. R. Co.* Decision in 44 *Super. Ct. (J. & S.)* explained (Liability for acts of servant) in *Hoffman v. N. Y. Central, &c. R. R. Co.*, *Id.* 1, 7. Decision in 69 *N. Y.* quoted in *Moak's Underhill's Torts*, 1 *Am. ed.* 32. Approved as a well considered case, in 1 *Thomps. on Negl.* 200.
- **v. Dupont**, 1 *Sandf.* 260. See *Dyett v. Pendleton*. Applied (Constructive eviction) in *West Side Sav'gs Bk. v. Newton*, 8 *Daly*, 332, 335. Quoted in 2 *Story on Contr.* 5 ed. § 1221, n. 4. Collated with other cases in *McAdam on Landl. & T.* 2 ed. § 212.
- **v. Frost**, 2 *Duer*, 335. Disapproved (Liability of carrier for loss of baggage) in *Mudgett v. Bay State Steamboat Co.*, 1 *Daly*, 151. Questioned in dissenting opinion of CHRISTIANCY, J., in *McKee v. Owen*, 15 *Mich.* 133 (the court being equally divided). See *Thomps Carr. of Pass.* XXII.
- **v. N. Y. Mut. Life Ins. Co.**, 50 *N. Y.* 610; s. c., 10 *Am. R.* 522. See *Hayner v. Am. Popular Life Ins. Co.* Disting'd (Non-performance of express condition in contract of insurance) in *Wheeler v. Conn. Mut. Life Ins. Co.*, 82 *N. Y.* 543, 551. Followed (Equitable relief to one whose rights under insurance contract are denied) in *Mausbach v. Metrop. Life Ins. Co.*, 53 *How. Pr.* 496. Approved with *Hayner v. Am. Popular L. Ins. Co.*, 69 *N. Y.* 435, in *Union Central Life Ins. Co. v. Pottker*, 33 *Ohio St.* 459; s. c., 31 *Am. R.* 555, 558. Disapproved (Effect of non-performance of condition in policy caused by war) in *Tait v. N. Y. Mutual Life Ins. Co.*, 1 *Flipp. (U. S.)* 292, 318. To the contrary, *N. Y. Life Ins. Co. v. Statham*, 93 *U. S.* 24. Followed and approved with *Sands v. N. Y. Life Ins. Co.*, 50 *N. Y.* 626, 631, 632, in *Mutual Benefit Life Ins. Co. v. Atwood's Administratrix*, 24 *Gratt. (Va.)* 497; s. c., 18 *Am. R.* 652, 658. Followed in *Mutual Benefit Life Ins. Co. v. Hillyard*, 8 *Vroom (N. J.)* 444; s. c., 18 *Am. R.* 741, 753.
- **v. O'Connor**, 5 *Daly*, 28. Aff'd in 56 *N. Y.* 613, but without opinion.
- Cohn v. Burtneil**, 25 *Hun.* 118. Reported in 1 *Civ. Pro. R.* 211.
- **v. Goldman**, 43 *Super. Ct. (J. & S.)* 436. Rev'd in 76 *N. Y.* 284. Decision in 43 *Super. Ct. (J. & S.)* applied (Judgment on contract of sale, as conclusive against vendor) in *Sacia v. Decker*, 1 *Civ. Pro. R.* 47, 51.

- *v. Lippmann*, 2 *Month. L. Bul.* 45. Superseded (Sale of infant's real estate) as to infant over 14 joining),—by *Code Civ. Pro.* § 2349.
- Cohoes Co. v. Goss**, 13 *Barb.* 137. Dictum disapproved (Foreclosure by advertisement—passing of title without recording of affidavits) in *Howard v. Hatch*, 29 *Id.* 297, 303. See *Code Civ. Pro.* 1881, § 2400, *n.*
- Coit v. Beard**, 33 *Barb.* 357; *s. c.*, as *Coit v. Bland*, 12 *Abb. Pr.* 462; 22 *How. Pr.* 2. Followed (Judgment dismissing complaint) in *Dexter v. Clark*, 35 *Barb.* 271. Disapproved in *People v. Smith*, 51 *Id.* 360. Compare *Code Civ. Pro.* § 1209.
- *v. Campbell*, 20 *Hun.* 50. Aff'd in 82 *N. Y.* 509. Decision in 82 *N. Y.* followed (Continuance of action on death of party) in *McLachlin v. Brett*, 27 *Hun.* 18. Followed, but point not indicated, in *Greene v. Martine*, 84 *N. Y.* 648.
- *v. Commercial Ins. Co.*, 7 *Johns.* 385; *s. c.*, 5 *Am. Dec.* 282. Followed (Parol evidence of signification of term) in *Sampsen v. Gazzam*, 6 *Port. (Ala.)* 123; *s. c.*, 30 *Am. Dec.* 578, 582, with note. Collated with *Astor v. Union Ins. Co.*, 7 *Cow.* 202; *Hinton v. Locke*, 5 *Hill*, 437; *Stroud v. Frith*, 11 *Barb.* 300; *Fitch v. Carpenter*, 42 *Id.* 40, and other cases, in 6 *Am. R.* 673, *n.* Explained in 2 *Par. on Contr.* 535, *n. e.*
- *v. Horn*, 1 *Sandf. Ch.* 1; *s. c.*, fully reported in 2 *N. Y. Leg. Obs.* 102.
- *v. Houston*, 3 *Johns. Cas.* 243. See *Hawley v. Foote*; *Slingerland v. Morse*. Cited with *Slingerland v. Morse*, 8 *Johns.* 474; *Lamb v. Lathrop*, 13 *Wend.* 95; *Bement v. Smith*, 15 *Id.* 493, and *Des Arts v. Leggett*, 16 *N. Y.* 582, in 12 *Am. Dec.* 700, *n.*, as showing it to be the established rule in *N. Y.* that a complete and valid tender discharges the debt and passes the title in the property to the creditor even though he is absent. Overruled (Mutual promises, when good as accord and satisfaction) in *Tilton v. Alcott*, 16 *Barb.* 598, and cases there cited. See *Russell v. Lyttle*, 6 *Wend.* 390; *Hawley v. Foote*, 19 *Id.* 516; *Brooklyn Bank v. De Grauw*, 23 *Id.* 342.
- *v. Millikin*, 1 *Den.* 376. Applied (Sufficiency of seal) in *Gillespie v. Brooks*, 2 *Redf.* 349, 366.
- *v. Planer*, 7 *Robt.* 413; *s. c.*, 4 *Abb. Pr.* *N. S.* 140. Aff'd in 51 *N. Y.* 647.
- *v. Stewart*, 12 *Abb. Pr. N. S.* 216. Approved, but appeal dismissed, in 50 *N. Y.* 17. Decision in 12 *Abb. Pr. N. S.* distinguishing (Counter-claim founded on tort) in *Bell v. Lesbini*, 4 *Civ. Pro. R. (Broune)* 367.
- Colah, Matter of**, 3 *Daly*, 529. Applied (Who to be appointed committee of lunatic) in *Matter of Owens*, 5 *Daly*, 288, 293. Compare (Compensation of such committee) *Code Civ. Pro.* § 2338.
- Colburn v. Woodworth**, 31 *Barb.* 381. Followed (Effect of former recovery for installment due under contract) in *Brodar v. Lord*, 46 *Super. Ct. (J. & S.)* 205, 207.
- Colden v. Brownell**, 1 *Johns.* 267. Reviewed (with other cases (Lease and letting on shares) in *Taylor v. Bradley*, 4 *Abb. Ct. App. Dec.* 363, 370.
- *v. Knickerbacker*. See *Gelston v. Hoyt*.
- *v. Thurber*, 2 *Johns.* 424. Collated with other cases (Highways—dedication) in *Mills Thomps. on Highw.* 3 ed. 59.
- Cole v. Bell**, 48 *Barb.* 194. Disting'd (Notice of appeal) in *Avery v. Woodbeck*, 62 *Barb.* 557, 564.
- *v. Cole*, 50 *How. Pr.* 59. Aff'd in 12 *Hun.* 373. Decision in 50 *How. Pr.* applied (Witness convicted in another State not disqualified) in *U. S. v. Barnabo*, 14 *Blatchf. C. Ct.* 74, 78.
- *v. Goodwin*, 19 *Wend.* 251; *s. c.*, 32 *Am. Dec.* 470. See *Clark v. Faxton*; *Gibson v. Culver*; *Hollister v. Nowlen*; *Orange County Bank v. Brown*; *Welles v. N. Y. Central R. R. Co.* Explained with *Hollister v. Nowlen*, 19 *Wend.* 247; *Gould v. Hill*, 2 *Hill*, 623, (Limitation of carrier's liability) in *Mercantile Mut. Ins. Co. v. Chase*, 1 *E. D. Smith*, 115. Relied on in *Camden & Amboy R. R. Co. v. Baldauf*, 16 *Pa. St.* 67; *s. c.*, 55 *Am. Dec.* 481. Referred to as contrary to the current of authority,—in *Swindler v. Hilliard*, 2 *Rich. (S. C.) L.* 303. Referred to as overruled,—in *Welsh v. Pittsburgh, &c. R. R. Co.*, 10 *Ohio St.* 70. Reviewed with *Gould v. Hill*, 2 *Hill*, 623; *Dorr v. N. J. Steam Navigation Co.*, 4 *Sandf.* 186; *Parsons v. Monteath*, 13 *Barb.* 353; *Moore v. Evans*, 14 *Id.* 524; *Wells v. N. Y. Central R. R. Co.*, 26 *Id.* 641; *Perkins v. N. Y. Central R. R. Co.*, 24 *N. Y.* 196; *Bissell v. N. Y. Central R. R. Co.*, 25 *Id.* 442; *Smith v. N. Y. Central R. R. Co.*, 29 *Barb.* 132; 24 *N. Y.* 222; *Poucher v. N. Y. Central R. R. Co.*, 49 *Id.* 263; *Cragin v. N. Y. Central R. R. Co.*, 51 *Id.* 61; *Magnin v. Dinsmore*, 56 *Id.* 168; *Steers v. Liverpool, N. Y. & Phila. S. S. Co.*, 57 *Id.* 1, in *Maslin v. Balt. & Ohio R. R. Co.*, 14 *W. Va.* 180; *s. c.*, 35 *Am. R.* 748, as illustrating the development of the *N. Y.* doctrine—which, together with the English, is deprecated—English, *U. S.* and State authorities being collated. Quoted in 1 *Add. on Contr.* 544; 1 *Add. on Torts*, § 656. Cited approvingly with other authorities, in 2 *Kent Com.* 608, *n. b.* Quoted and explained in 2 *Par. on Contr.* 234, *n. j.*; 238, *n.* Collated, with other cases, in 2 *Redf. Am. Railw. Cas.* 86. Included, with note, in *Id.* 110. Commented upon in *Id.* 54. Commented upon in *Ang. on Carr.* §§ 234, 235, 318, 319, 321, 5 ed. Approved (Duty of carrier as to delivery of baggage) in *Logan v. Pontchartrain R. R. Co.*, 11 *Rob. (La.)* 24; *s. c.*, 43 *Am. Dec.* 199, 201, with note. Quoted (Carrier's duty to receive goods) in *Ang. on Carr.* § 125, *n. 4*, 5 ed.
- *v. Gourlay*, 9 *Hun.* 493. Aff'd in 79 *N. Y.* 527.
- *v. Hawes*, 2 *Johns. Cas.* 203; *s. c.*, 1

- N. Y. Com. L. Law. ed.* 488, with brief note on construing covenants together.
- *v. Hughes*, 54 *N. Y.* 444; s. c., 13 *Am. R.* 611. Disting'd (Effect of party-wall agreement) in *Brown v. McKee*, 57 *N. Y.* 684. Applied in *Scott v. McMillan*, 8 *Daly*, 320, 327. Followed with *Scott v. McMillan*, 76 *N. Y.* 141, in *Hart v. Lyon*, 90 *Id.* 663. Compared in *Stewart v. Aldrich*, 8 *Hun*, 241. Cited, with other cases, in *Richardson v. Tobey*, 121 *Mass.* 457; s. c., 23 *Am. R.* 283. Collated with *Coffin v. Tallman*, 8 *N. Y.* 465, and other cases, in 18 *Cent. L. J.* 125. Collated, with other cases, in *McAdam on Landl. & T.*, 2 ed. § 86. Explained in *Wood on Nuis.* 2 ed. § 223. Quoted (Covenants—transfer of burden or benefits—distinction between) in 2 *Washb. on Real Prop.* 4 ed. 255.
- *v. Irvine*, 6 *Hill*, 634. See *Harrison v. Stevens*; *Ryers v. Wheeler*. See (Separate action by joint tenants, &c. to recover real property) *Code Civ. Pro.* 1881, § 1500, *n.*
- *v. Jessup*, 9 *Barb.* 395. Aff'd in 10 *N. Y.* 96. Former decision in 2 *Barb.* 309. Decision in 10 *N. Y.* followed (Effect of successive absences under statute of limitations) in *Cutler v. Wright*, 22 *N. Y.* 472, 477. Followed with *Bennett v. Cook*, 43 *N. Y.* 537, under a similar statute, in *Whitcomb v. Keator*, 59 *Wisc.* 614. Followed in *Milton v. Babson*, 88 *Mass.* 326. Decision in 2 *Barb.* disapproved (Pleading—return that will bar statute of limitations) in *Ford v. Babcock*, 2 *Sandf.* 518.
- *v. Malcolm*, 7 *Hun*, 31. Rev'd in 66 *N. Y.* 363. Decision in 66 *N. Y.* explained and applied (Subrogation) in *Twombly v. Cassidy*, 82 *N. Y.* 155, 158. Discussed in *Wait on Fraud. Conv.* § 195.
- *v. Mann*, 3 *Sup'm. Ct. (T. & C.)* 380. Aff'd in 62 *N. Y.* 1. See *Herring v. Hopcock*. Decision in 62 *N. Y.* followed (Effect of sale of goods, title not to pass till they are paid for) in *Fitzgerald v. Fuller*, 19 *Hun*, 180. Explained in *Thomas on Mort.* 488.
- *v. Niles*, 3 *Hun*, 326; s. c., 5 *Sup'm. Ct. (T. & C.)* 451. Aff'd, it seems, in 62 *N. Y.* 636, but without opinion.
- *v. Patterson*, 25 *Wend.* 456. See *Jackson v. Topping*. Approved (Separate actions by heirs for rent) in *Jones v. Felch*, 3 *Bosw.* 63.
- *v. Perry*, 8 *Cov.* 214; s. c., 9 *N. Y. Com. L. Law. ed.* 364, with brief note, on granting of new trial for excessive damages. See *Matson v. Buck*.
- *v. Reynolds*, 18 *N. Y.* 74. Followed (Suits between firms where a person is member of both) in *Kingsland v. Braisted*, 2 *Lans.* 17.
- *v. Sackett*, 1 *Hill*, 516. Approved (Effect of note to satisfy debt) in *Elwood v. Deifendorf*, 5 *Barb.* 398, 408. Disting'd in *Neff v. Clute*, 12 *Id.* 471. Applied in *Farrington v. Frankfort Bank*, 24 *Id.* 562;
- Parrott v. Colby*, 6 *Hun*, 58. Followed in *Bates v. Rosekraus*, 23 *Hov. Pr.* 93, 107, which was aff'd in 37 *N. Y.* 409, which see; *Hill v. Beebe*, 13 *Id.* 562. Disting'd (Satisfaction of obligation due from joint obligors) in *La Farge v. Herter*, 4 *Barb.* 352. Disapproved in *Waydell v. Luer*, 3 *Den.* 415, which rev'd 5 *Hill*, 448, which see. Criticised in *Livingston v. Radcliff*, 6 *Barb.* 207. Applied in *Vernam v. Crocker*, 1 *Hun*, 451, 454.
- *v. Saulpau*, 48 *Barb.* 105. See *De Zeng v. Fyfe*. Questioned (Pledgee of accommodation paper as security for pre-existing debt, as a *bona fide* holder) in *Bowman v. Van Kuren*, 29 *Wis.* 209; s. c., 9 *Am. R.* 557.
- *v. Savage*, 10 *Paige*, 583. Not followed (Right of grantee of mortgaged premises to set up usury) in *Mechanic's Bank v. Edwards*, 1 *Barb.* 278, which was however denied and *Cole v. Savage* followed in *Morris v. Floyd*, 5 *Id.* 135. Disting'd in *Berdan v. Sedgwick*, 40 *Id.* 362. Disapproved in *Post v. Bank of Utica*, 7 *Hill*, 397, which was reaff'd in *Chamberlain v. Dempsey*, 36 *N. Y.* 149, and *Cole v. Savage* disapproved. Examined ("Borrower" within meaning of usury act) and disapproved as contrary to *Rexford v. Widger*, 2 *N. Y.* 131; *Schermerhorn v. Talman*, 14 *Id.* 93,—in *Allerton v. Belden*, 49 *Id.* 377. Compare *Leavitt v. De Launay*, 4 *Sandf. Ch.* 229. Limited, and *Allerton v. Belden*, 49 *N. Y.* 375; *Post v. Bank of Utica*, 7 *Hill*, 391; *Rexford v. Widger*, 2 *N. Y.* 131; *Vilas v. Jones*, 1 *Id.* 274; *Schermerhorn v. Talman*, 14 *Id.* 93; *Wheelock v. Lee*, 64 *Id.* 243, reviewed in *Buckingham v. Corning*, 91 *Id.* 525. Cited as authority (Bill to remove usurious security) in *Williams v. Fitzhugh*, 37 *Id.* 448. Applied (Waiver of defense of illegality of contract) in *Merritt v. Millard*, 4 *Keyes*, 214.
- *v. Smith*, 4 *Johns.* 193. Disting'd (Proof of right of action, in action on statute) in *Thorpe v. Rankin*, 4 *Harr. (N. J.)* 36; s. c., 38 *Am. Dec.* 531, with note.
- *v. Tyler*, 65 *N. Y.* 73, 77. Explained (Creditor's actions—judgment) in *Wait on Fraud. Conv.* § 170. Quoted and explained (Debtor's alienations of property—existing creditors—fraud) in *Id.* § 95. Quoted (Fraudulent intent—how judged) in *Id.* § 8.
- *v. Van Keuren*, 6 *Sup'm. Ct. (T. & C.)* 480; mem. of s. c., 4 *Hun*, 262. Aff'd, it seems, in 64 *N. Y.* 646, but without opinion. Further decision in 51 *Hov. Pr.* 451.
- *v. Village of Medina*, 27 *Barb.* 218. Reviewed and reaff'd (Liability of municipal corporation, in respect to sidewalks) in *Peck v. Village of Batavia*, 32 *Id.* 634, 646.
- *v. Wendel*, 8 *Johns.* 116. Cited (Parol evidence to explain ambiguous expressions) in 2 *Whart. Com. on Ev.* § 947.
- *v. White*, 26 *Wend.* 511. See *Collins v.*

- Brush; *Smith v. Acker*. Explained (Effect of sale, &c. without immediate delivery of possession) in *Hanford v. Archer*, 4 *Hill*, 271. Quoted in *Wait on Fraud. Conv.* § 252, n. 4.
- Colegrove v. N. Y. & Harlem R. R. Co.**, 6 *Duer*, 382. Aff'd in 20 *N. Y.* 492. See *Brown v. N. Y. Central R. R. Co.*; *Button v. Hudson River R. R. Co.*; *Chapman v. New Haven R. R. Co.* Decision in 20 *N. Y.* criticised (Contributory negligence that excuses carrier) as not removing the difficulty that may be presented by such cases,—in *Willis v. Long Island R. R. Co.*, 32 *Barb.* 402, which was aff'd in 34 *N. Y.* 677, which see. Cited with other cases (Effect of contributory negligence of one in charge of conveyance) as conclusively settling the law in *N. Y.*,—in *Robinson v. N. Y. Central, &c. R. R. Co.*, 65 *Barb.* 154. Applied in *Arctic Fire Ins. Co. v. Austin*, 3 *Hun*, 198, which was rev'd in 69 *N. Y.* 483, which see; *Brown v. N. Y. Central R. R. Co.*, 32 *Id.* 601. Thought in *Mooney v. Hudson River R. R. Co.*, 5 *Robt.* 548; *Beck v. East River Ferry Co.*, 6 *Id.* 87, to be in great measure overruled by *Brown v. N. Y. Central R. R. Co.*, 5 *Id.* 549. Applied (Effect of contributory negligence of third person) in *Mott v. Hudson River R. R. Co.*, 8 *Bosw.* 354; *Slater v. Mersereau*, 64 *N. Y.* 147. Cited as authority in *Perry v. Lansing*, 17 *Hun*, 37. Disting'd in *Bronk v. N. Y. & New Haven R. R. Co.*, 5 *Daly*, 457. Disting'd (Joint action against wrong-doers) in *Jackson v. Brookins*, 5 *Id.* 535. Applied in *Van Wagenen v. Kemp*, 7 *Id.* 328. Disting'd in *Chipman v. Palmer*, 9 *Id.* 519, which was aff'd in 77 *N. Y.* 51, which see. Relied on with *Cooper v. Eastern T. Co.*, 75 *Id.* 116, in *Cuddy v. Horn*, 46 *Mich.* 604. Questioned and compared in 4 *Am. L. Reg. N. S.* 25.
- Coleman v. Bean**, 14 *Abb. Pr.* 38. Aff'd in 3 *Keyes*, 94; s. c., more fully, 32 *How. Pr.* 370; 1 *Abb. Ct. App. Dec.* 394. Decision in 32 *How. Pr.* applied (Consideration to support undertaking given on discharge of attachment) in *Bildersee v. Aden*, 12 *Abb. Pr. N. S.* 327. Applied (Presumption as to validity of such undertaking) in *Onderdonk v. Voorhis*, 36 *N. Y.* 361. Applied (Sureties estopped by recitals in undertaking) to undertaking in replevin, in *Harrison v. Wilkin*, 69 *Id.* 418.
- **v. Crump**, 40 *Super. Ct. (J. & S.)* 548. Aff'd as *Colman v. Same.* in 70 *N. Y.* 573. Decision in 70 *N. Y.* followed (Use of trademark to be restrained, notwithstanding absence of proof of guilty intent) in *American Grocer v. Grocer Pub. Co.*, 25 *Hun*, 398, 402.
- **v. Eyre**, 1 *Sweeny*, 476. Rev'd (Validity of parol agreement to share profits and losses of adventure) in 45 *N. Y.* 38.
- **v. First Nat. Bk. of Elmira**, 53 *N. Y.* 390. Approved (Right to rescind contract for deposit in bank,—for fraud on part of bank) in *Rich v. Niagara Sav'gs Bk.*, 3 *Hun*, 484. Followed (Parol evidence that loan was made to bank and not to its officer) in *Pierson v. Atlantic Nat. Bk.*, 77 *N. Y.* 310. Applied (Estoppel of bank to deny its liability on certificate of deposit) in *West v. First Nat. Bk.*, 20 *Hun*, 411. Explained at length (Liability of principal not named in written contract) in *Merchant's Bank v. Hayes*, 7 *Id.* 533. Cited as authority in *Briggs v. Partridge*, 64 *N. Y.* 362. Cited with *Barry v. Ransom*, 12 *Id.* 464, in 2 *Whart. Com. on Ev.* § 950, n. Cited (Parol evidence to explain contract with agent) in *Id.* § 225, n. Cited (Election to proceed against agent, instead of principal) in *Id.* § 472.
- **v. Garrigues**, 18 *Barb.* 60. Examined and explained (Agency for the sale of land) in *Pringle v. Spaulding*, 53 *Id.* 17. Quoted and explained in 3 *Paris. on Contr.* 11, n. g.
- **v. Lausing**, 1 *Sup'm. Ct. (T. & C.)* 8; s. c., more fully, 65 *Barb.* 54.
- **v. Livingston**, 36 *Super. Ct. (J. & S.)* 32. Aff'd, it seems, in 56 *N. Y.* 638, but without opinion. Another decision denying reargument, in 36 *Super. Ct. (J. & S.)* 231; s. c., 45 *How. Pr.* 483. Decision in 36 *Super. Ct. (J. & S.)* disting'd (Negligence of warehouseman as question for a jury) in *Madan v. Covert*, 42 *Id.* 135, 139.
- **v. People**, 1 *Sup'm. Ct. (T. & C.)* add. 3. Rev'd in 55 *N. Y.* 81. Further decisions in 1 *Hun*, 596; s. c., 4 *Sup'm. Ct. (T. & C.)* 61, which were aff'd in 58 *N. Y.* 555. See *People v. Corbin*. Decision in 55 *N. Y.* applied (Evidence of other offenses than that charged) in *People v. Corbin*, 56 *Id.* 365. Disting'd in *Copperman v. People*, 56 *Id.* 594; *Levy v. People*, 80 *Id.* 327, 331; *People n. Gibbs*, 93 *Id.* 470. Decisions in 55 *Id.* and 58 *Id.* with *Copperman v. People* examined and reconciled (Proof of scienter on part of one receiving stolen goods) in *State v. Ward*, 49 *Conn.* 429; s. c., 15 *Reporter*, 748. Explained (Evidence establishing scienter) in 2 *Add. on Torts*, 630, n., *Wood's ed.* Explained (Derivative evidence) in 2 *Best on Ev.* § 495, n. a, *Wood's ed.*
- **v. Second Ave. R. R. Co.**, 48 *Barb.* 371. Aff'd in 38 *N. Y.* 201.
- **v. Wise**, 2 *Johns.* 165. See to the contrary (Competency of person whose name appears on negotiable paper, as witness to impeach its validity) in *Stafford v. Rice*, 5 *Cow.* 23.
- Coles v. Bowne**, 10 *Paige*, 534. See *Trevor v. Wood*; *Wiswall v. Hall*. Explained (Reformation of contract for mistake) in *Bryce v. Lorillard Fire Ins. Co.*, 55 *N. Y.* 240, 245.
- **v. Coles**, 15 *Johns.* 159; s. c., 8 *Am. Dec.* 231, with note. Opposed (Rules applicable to partnership real estate) in *Edgar v. Donally*, 2 *Munf.* 387. Denied in *Sigourney v. Munn*, 7 *Conn.* 18. Approved in *Thayer v. Lane*, *Walk. Ch. (Mich.)* 203. Criticised and qualified in *Divine v. Mitchum*, 4 *B. Monr. (Ky.)* 488; s. c., 41 *Am. Dec.* 241, with note,

as at variance with other decisions. Reviewed, with other cases, in *McDermott v. Lawrence*, 7 *Serg. & R. (Pa.)* 488; s. c., 10 *Am. Dec.* 468. Cited in *Story on Partn.* 7 ed., § 94, n., as not supporting the rule laid down in the text. Included in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 592.

— *v. Marquand*. See *Martin v. Black*.

**Colgrove v. Tallman**, 5 *Hun*, 103. Aff'd in 67 *N. Y.* 95; s. c., 23 *Am. R.* 90. Previous decision in 2 *Lans.* 97. See *Pain v. Packard*, Decision in 67 *N. Y.* explained (Complaint in action against surety) in *Luce v. Alexander*, 49 *Super. Ct. (J. & S.)* 202. Disting'd (Change of relation of debtor to creditors from legal to equitable) in *Munger v. Albany City Nat. B'k*, 85 *N. Y.* 580, 591. Followed (Duty of creditor to proceed against principal debtor at request of surety) in *Russell v. Weinberg*, 4 *Abb. N. C.* 139, 148. Explained in *Marsh v. Dunckel*, 25 *Hun*, 167, 169. Cited (Discharge of retiring partner's liability for debts of firm) in *Story on Partn.* 7 ed. § 158, n.; *Briggs v. Briggs*, 15 *N. Y.* 471, being cited in § 159, n., on a like point. Quoted and discussed in 2 *Collyer in Partn.* § 553, n. 2, Wood's Am. ed. Decision in 2 *Lans.* disting'd (Discharge of withdrawing partner by dealings with continuing partner) in *Vernam v. Harris*, 1 *Hun*, 451, 453.

**Collender v. Dinsmore**, 55 *N. Y.* 200; s. c., 14 *Am. R.* 224; rev'g 64 *Barb.* 457. See *Reynolds v. Commerce Fire Ins. Co.* Compare decision in 55 *N. Y.* (Meaning of "C. O. D.") with *American Express Co. v. Schier*, 55 *Ill.* 140. Criticised (Parol evidence to explain written contract for carriage of goods) in *Lawson's Contr. of Carr.* § 113.

**Collie v. Jamison**, 13 *Nat. Bankr. Reg.* 4, n. Aff'd in 4 *Hun*, 284; s. c., 6 *Sup'm. Ct. (T. & C.)* 576; 13 *Nat. Bankr. Reg.* 1.

— *v. O'Keel*, 3 *Abb. L. J.* 13. Followed (Expiration of lien) in *Dart v. Fitch*, 23 *Hun*, 361, 366.

**Collier v. Coates**, 17 *Barb.* 471. See *Lockwood v. Barnes*. Followed (Recovery of money paid under contract void by statute of frauds) in *Galvin v. Prentice*, 45 *N. Y.* 162; *Galway v. Shields*, 66 *Mo.* 313; s. c., 27 *Am. R.* 351, 353.

— *v. Idley*, 1 *Bradf.* 94. Disting'd (Depositions taken on probate of will, how affected by subsequent filing of objections) in *Downey v. Downey*, 16 *Hun*, 481.

— *v. Munn*, 41 *N. Y.* 143. Aff'g 1 *Tuck.* 136. Decision in 41 *N. Y.* approved (Compensation of executor) and applied to guardian, in *Morgan v. Hannas*, 13 *Abb. Pr. N. S.* 361, 368.

— *v. Whipple*, 13 *Wend.* 225. Relied on (Setting aside judicial sale) in *Kellogg v. Howell*, 62 *Barb.* 280. Approved in *King v. Platt*, 37 *N. Y.* 160.

**Colligan v. Scott**, 36 *Super. Ct. (J. & S.)* 574. Aff'd, it seems, in 58 *N. Y.* 670.

**Collin v. Collin**, 1 *Barb. Ch.* 630; s. c., 45 *Am. Dec.* 420, with note, collecting cita-

tions thereof on the points decided respecting construction of wills and legacies.

**Collins v. Albany & Schenectady R. R. Co.**, 11 *Barb.* 492. See *Hegeman v. Western R. R. Co.* Disting'd (Contributory negligence in railroad passenger) in *Southwestern R. R. Co. v. Paulk*, 24 *Ga.* 365. Criticised as inconclusive (Allowing damages for accident larger than allowed for death) in 2 *Sedgw. on Dama.* 7 ed. 659, n.

— *v. Allen*, 12 *Wend.* 356; s. c., 27 *Am. Dec.* 130, with note, containing citations respecting set-off.

— *v. Brush*, 9 *Wend.* 198. Followed with *Doane v. Eddy*, 16 *Id.* 523; *Randall v. Cook*, 17 *Id.* 56 (Retention of possession by vendor as evidence of intent to defraud) in *Randall v. Parker*, 3 *Sandf.* 332, as not overruled by *Smith v. Acker*, 23 *Wend.* 653; *Cole v. White*, 26 *Id.* 511; *Hanford v. Archer*, 4 *Hill*, 271.

— *v. Burns*, 36 *Super. Ct. (J. & S.)* 518. Aff'd in 63 *N. Y.* 1.

— *v. Butts*, 10 *Wend.* 399. Aff'd in 13 *Id.* 189.

— *v. Campfield*, 9 *How. Pr.* 519. Approved (Sufficiency of substituted service) in *Jones v. Derby*, 1 *Abb. Pr.* 458. Disting'd (Affidavit to obtain substituted service) in *Simpson v. Burch*, 4 *Hun*, 315, 317.

— *v. Collins*, 10 *Hun*, 272. Rev'd in 71 *N. Y.* 269. Further decision in 80 *Id.* 1. Another proceeding in 17 *Hun*, 598, aff'd in 80 *N. Y.* 24. Decision in 71 *Id.* disting'd (Right to alimony) in *Kennedy v. Kennedy*, 73 *Id.* 369, 372. Decision in 80 *Id.* followed in *Maxwell v. Maxwell*, 28 *Hun*, 566.

— *v. Drew*, 6 *Daly*, 234; s. c., 50 *How. Pr.* 477. Aff'd in 67 *N. Y.* 149.

— *v. Hasbrouck*, 1 *Sup'm. Ct. (T. & C.)* 36. Rev'd in 56 *N. Y.* 157; s. c., 15 *Am. R.* 407. See *Woodhull v. Rosenthal*. Decision in 56 *N. Y.* examined and approved (Sublease and assignment) in *Ganson v. Tift*, 71 *Id.* 48, 54. Authorities reviewed in 16 *Am. L. Rev.* 31.

— *v. Mayor, &c. of N. Y.*, 3 *Hun*, 680. Followed (Recovery for services as clerk of board of aldermen) in *Oakly v. Mayor, &c. of N. Y.*, 4 *Hun*, 72. Disting'd as inapplicable to messenger, in *Smith v. Mayor, &c. of N. Y.*, 4 *Id.* 644.

— *v. N. Y. Central, &c. R. R. Co.*, 5 *Hun*, 499, 503. Aff'd, it seems, in 71 *N. Y.* 609, but without opinion.

— *v. Ralli*, 20 *Hun*, 246. Aff'd on opinion below, in 85 *N. Y.* 637. Decision in 20 *Hun* followed and *Zink v. People*, 77 *N. Y.* 114 disting'd (Rights of one claiming under one who has acquired possession by larceny) in *Hentz v. Miller*, 94 *Id.* 64.

— *v. Torrey*, 7 *Johns.* 278. See *Hitchcock v. Harrington*; *Jackson v. Dewitt*; *Jackson v. Willard*; *Jackson v. Wood*; *Raynor v. Wilson*. Disapproved with *Coates v. Cheever*, 1 *Cow.* 460, 475 (Dower in mort-

- gaged premises) in *Van Dyne v. Thayre*, 19 *Wend.* 172. Collated with other cases, in *Sharsw. & B. Cas. on Real Prop.* 342.
- Collman v. Collins.** See *Van Buskirk v. Purinton*.
- Collomb v. Caldwell**, 16 *N. Y.* 484. Further decision, as *Collomb v. Read*, 24 *N. Y.* 505. Decision in 16 *N. Y.* quoted (Assignment for benefit of creditors—trusts in assignor's favor) in *Burrill on Assign.* § 200, n. 5, 4 ed. Explained in *Id.* § 207, n. 4. Discussed in *Id.* § 211.
- **v. Read.** See *Collomb v. Caldwell*.
- Colman v. Shattuck**, 2 *Hun.* 497; s. c., 5 *Sup'm. Ct. (T. & C.)* 34. Aff'd in 62 *N. Y.* 348. Decision in 62 *N. Y.* disting'd (Excess of or reduction from assessment, when to be disregarded on appeal) in *Matter of Deering*, 93 *Id.* 361.
- Colson v. Arnot**, 57 *N. Y.* 253. Disting'd (Negotiable instrument as subject of sale) in *Sweet v. Chapman*, 7 *Hun.* 576, 579.
- Colt v. Heard**, 10 *Hun.* 189. Compared with other cases (Life donee's absolute power of disposition) in *Flanagan v. Flanagan*, 8 *Abb. N. C.* 413, 418.
- **v. Lasuler**, 9 *Cow.* 320. Followed and approved (Liability of one receiving assets from executor) in *Prosser v. Leatherman*, 4 *How. (Miss.)* 237; s. c., 34 *Am. Dec.* 121.
- **v. McMechen**, 6 *Johns.* 160; s. c., 5 *Am. Dec.* 200; s. c., 4 *N. Y. Com. L. Law. ed.* 85, with brief note, treating it as of doubtful authority. Approved (Extent of common carrier's liability) in *Fitch v. Newberry*, 1 *Doug. (Mich.)* 7. Cited as authority with *Kemp v. Coughtry*, 11 *Johns.* 107; *Elliot v. Rossell*, 10 *Id.* 1, in *Malpica v. McKown*, 1 *La.* 248; s. c., 20 *Am. Dec.* 279, 283. Criticised (Act of God) in *Lawson's Contr. of Carr.* § 5. Discussed in *Ang. on Carr.* § 155, 5 ed. Quoted and explained in 2 *Pars. on Contr.* 160, n. l. Condemned in 1 *Smith Lead. Cas.* pt. 1, 417.
- **v. People**, 1 *Park. Cr.* 611. Previous proceedings in *People v. Colt*, 3 *Hill.* 432.
- **v. Sixth Ave. R. R. Co.**, 33 *Super. Ct. (J. & S.)* 189. Aff'd in 49 *N. Y.* 671, but without opinion. Decision in 33 *Super. Ct. (J. & S.)* collated with other cases (Contributory negligence of disabled, &c. person) in 6 *Abb. N. C.* 116, n.
- Colton v. Beardsley**, 38 *N. Y.* 29. Reviewed at length and disting'd (*Estoppel* to assert title to office) in *Turnipseed v. Hudson*, 50 *Miss.* 429; s. c., 19 *Am. R.* 15, 20; *Bigel. on Estoppel*, 522, being thought to convey an erroneous impression of the case.
- **v. Fox**, 6 *Hun.* 49. Aff'd in 67 *N. Y.* 348. See *Manice v. Manice*. Decision in 67 *N. Y.* and *Magill v. McMillan*, 23 *Hun.* 193, disting'd (Provision by will, when vesting at testator's death) in *Stuart v. Spalding*, 30 *Id.* 21.
- **v. Ross**, 2 *Paige*, 396. See *Betts v. Jackson*; *Lloyd v. Brewster*. Commented upon (Wills—probate conclusive as to personality) in *Willard on Executors*, 60.
- Columbia Ins. Co. v. Force**, 8 *How. Pr.* 353. Followed (Waiver of objection to legality of arrest) in preference to *Stewart v. Howard*, 15 *Barb.* 26, in *Farmer v. Robbins*, 47 *How. Pr.* 415.
- **v. Stevens**, 37 *N. Y.* 536. Disting'd (Costs against receiver of insurance company) in *Matter of Booth*, 11 *Abb. N. C.* 145. Quoted in *High on Receiv.* § 339, n. 3; *Id.* § 810, n. 1.
- Columbia Turnpike v. Haywood**, 10 *Wend.* 425. See *Fairbanks v. Wood*; *Noyes v. Hewitt*.
- Colvin v. Colvin**, 2 *Paige*, 385. Limited (Remarriage of divorced parties) in *Moore v. Hegeman*, 92 *N. Y.* 521, 528. Followed in *Moore v. Moore*, 8 *Abb. N. C.* 171, 173. Explained and limited in *Rush v. Rush*, 46 *Iowa*, 648; s. c., 26 *Am. R.* 179. Explained (Reversal of decree of divorce on mutual request) in 2 *Bish. on Mar. & D.* § 752, 6 ed.
- **v. Corwin**, 15 *Wend.* 557. See *Guernsey v. Carver*. Disapproved (Cause of action, when entire) in *Secor v. Sturgis*, 16 *N. Y.* 548. Questioned in *Perry v. Dickerson*, 85 *Id.* 345, 348.
- **v. Carrier**, 22 *Barb.* 371. Disapproved (Lien for work done on separate estate of married woman) in *Ainsley v. Mead*, 3 *Lana.* 116. See (Curtesy as affected by statute) *Matter of Winne*, 1 *Id.* 508, 521. Collated with other cases in *Sharsw. & B. Cas. on Real Prop.* 289.
- **v. Holbrook**, 3 *Barb.* 475. Aff'd in 2 *N. Y.* 126.
- **v. Lawrence**, 24 *How. Pr.* 324; s. c., more fully, 38 *Barb.* 643. Aff'd in 38 *N. Y.* 71; s. c., 36 *How. Pr.* 306. See *Bagley v. Peddie*.
- Coman v. Lakey**, 80 *N. Y.* 345. Disting'd (Lien of vendor of personal property as against bona fide purchaser) in *Walker v. Mitchell*, 25 *Hun.* 527.
- **v. Storm**, 26 *How. Pr.* 84. Followed (Imprisonment for debt—on the limits) in *Matter of Moore*, 1 *Am. Insolv. R.* 95. Confirmed in *Code Civ. Pro.* § 2200.
- Comer v. Cunningham**, 77 *N. Y.* 391. Followed (Conditional sales of personal property) in *Hintermister v. Lane*, 27 *Hun.* 497. Explained in *Walker v. Mitchell*, 25 *Id.* 527. Quoted and explained in 1 *Benj. on Sales*, § 358, et seq. (Corbin's 4 *Am. ed.*). Criticised as against the weight of authority, in 15 *Am. L. Rev.* 381.
- Comfort v. Fulton**, 39 *Barb.* 56; s. c., more fully, 13 *Abb. Pr.* 276. Questioned and explained (Liability for false imprisonment) in *Von Latham v. Rowan*, 17 *Abb. Pr.* 237.
- **v. Kiersted**, 26 *Barb.* 472. Approved (Passing of title to articles to be manufactured) in *Hyde v. Lathrop*, 3 *Keyes*, 597.
- Comins v. Hetfield**, 12 *Hun.* 375. Aff'd in 80 *N. Y.* 261.
- **v. Supervisors of Jefferson**, 3 *Sup'm. Ct. (T. & C.)* 296. Aff'd in 64 *N. Y.* 626, mem. of opinion. See *Cumines v. Same*.



Decision in 3 *Sup'm. Ct. (T. & C.)* followed (Basis of extra allowance) in *Riley v. Hulbert*, 13 *Weekly Dig.* 101. Decision in 64 *N. Y.* applied in *Williams v. Western Union Tel. Co.*, 61 *How. Pr.* 305, 307.

**Commercial Bank v. City of Rochester**, 41 *Barb.* 341. Said in 41 *N. Y.* 619 to have been aff'd in *Ct. of App.*, Sept. 1869.

— *v. White*, 1 *Code R.* 67; s. c., 3 *How. Pr.* 292. To the contrary (Alternative judgment in action to recover personal property) see *Seaman v. Luce*, 23 *Barb.* 240.

**Commercial Bank of Albany v Canal Commissioners**, 10 *Wend.* 25. Followed (Taking advantage of defect in substance, after return to alternative mandamus) in *People v. Supervisors of Fulton*, 14 *Barb.* 54; *People v. Ransom*, 2 *N. Y.* 492; *People v. Supervisors of Westchester*, 15 *Barb.* 613. Followed and approved in *People ex rel. Dunkirk, &c. R. R. Co. v. Batchellor*, 53 *N. Y.* 138. Approved (Nature of proceedings on alternative mandamus), as sustained by all the authorities,—in *People v. Ovenshire*, 41 *How. Pr.* 166. Followed (Facts to be set forth therein) in *People v. Mayor of N. Y.*, 7 *Id.* 81. Explained (Writ of mandamus as showing *prima facie* title to relief) in *People v. Judges of Oneida C. P.*, 21 *Wend.* 22. Cited with *People v. Ransom*, 2 *N. Y.* 490 (Alternative mandamus—when fatally defective) in *Trustees v. People*, 12 *Ill.* 248; s. c., 52 *Am. Dec.* 489.

— *v. Hughes*, 17 *Wend.* 94. Disting'd (Presumption of damage from failure to present bill for payment) in *Syracuse, Binghamton, &c. R. R. Co. v. Collins*, 3 *Lans.* 82. Examined with other cases (Necessity of presentment) in *Harker v. Anderson*, 21 *Wend.* 375. Disting'd (Effect of delivery of money to work change of ownership) in *Graves v. Dudley*, 20 *N. Y.* 80. Cited with *Chapman v. White*, 6 *Id.* 412; *Ætna Nat. Bank v. Fourth Nat. Bank*, 46 *Id.* 82, in *Davis v. Smith*, 29 *Minn.* 202. Cited as authority (Assumpsit for neglect of corporate duty) in *People v. Mayor, &c. of N. Y.*, 25 *Wend.* 685. Disting'd (Effect of transfer delivered in blank) in *Chauncey v. Arnold*, 24 *N. Y.* 334.

— *v. Ten Eyck*, 50 *Barb.* 9. Aff'd in 48 *N. Y.* 305.

**Commercial Bank of Buffalo v. Kortright**, 22 *Wend.* 348; s. c., 14 *N. Y. Com. L. Law. ed.* 159, with brief note, and (at p. 167) analytic list of cases citing this case; s. c., 34 *Am. Dec.* 317, with note, wherein it is said to have been frequently cited as authority. Aff'g 20 *Wend.* 91. See *Bush v. Lathrop*. Decision in 22 *Wend.* disting'd (Possession of certificates of stock as evidence of title) in *Dunn v. Commercial Bk of Buffalo*, 11 *Barb.* 585; *Driscoll v. West, Bradley & C. M. Co.*, 59 *N. Y.* 108. Followed in *Leavitt v. Fisher*, 4 *Duer*, 20. Explained and applied in *Mechanics' Bk v. N. Y. & New Haven R. R. Co.*, 13 *N. Y.* 624;

*N. Y. & New Haven R. R. Co. v. Schuyler*, 34 *Id.* 83. Re-aff'd in *McNeil v. Tenth Nat. Bk.*, 46 *Id.* 331; *Holbrook v. N. J. Zinc Co.*, 57 *Id.* 623. Approved and applied in *Comeau v. Guild Farm Oil Co.*, 3 *Daly*, 220., Relied on in dissenting opinion of ALLEN, J., in *Leggett v. Bk of Sing Sing*, 24 *N. Y.* 298. Conflicting cases in various States cited in 10 *Am. L. Rec.* 276. Cited (Damages for refusal to permit transfer of stock) as having been much questioned,—in *Van Allen v. Illinois Central R. R. Co.*, 7 *Bosw.* 538. Explained (Demand for leave to transfer stock) in *Purchase v. N. Y. Exchange Bk.*, 3 *Robt.* 171. Relied on in dissenting opinion of MONELL, J., in *Mechanics' Bk'g Assoc. v. Mariposa Co.*, *Id.* 404. Applied (Right of transferee of non-negotiable chose in action) in *Moore v. Metropolitan Nat. Bk.*, 55 *N. Y.* 46. Cited as authority (Right of transferee of stock certificate) in *Delafield v. State of Illinois*, 26 *Wend.* 219. Applied (Measure of damages) to case of conversion, in *Wilson v. Matthews*, 24 *Barb.* 296. Applied (Damages for conversion of stock) in *Romaine v. Van Allen*, 26 *N. Y.* 212. Disting'd in *Baker v. Drake*, 53 *Id.* 222. Applied (Measure of damages for value of stock) in *Wilson v. Little*, 1 *Sandf.* 360. Applied (Limit of damages) in *Clark v. Miller*, 54 *N. Y.* 535. Applied (Action to compel transfer of stock) in *Cushman v. Thayer Man'fg Jewelry Co.*, 7 *Daly*, 332, which aff'd 53 *How. Pr.* 61, which see, and which was aff'd in 76 *N. Y.* 368, which see; *People ex rel. Jenkins v. Parker Vein Coal Co.*, 1 *Abb. Pr.* 129. Cited as settled law, in dissenting opinion of ALLEN, J., in *Bank of Attica v. Man'frs & Traders' Bk.*, 20 *N. Y.* 507. Discussed in *Moranetz on Corp.* § 338.

— *v. Sparrow*. See *Thomas v. Dakin*.

— *v. Warren*, 15 *N. Y.* 577. Disting'd (Ratification of void act of agent) as inapplicable to case of forgery, in *Workman v. Wright*, 33 *Ohio St.* 405; s. c., 31 *Am. R.* 546, with note, collating cases. Cited as authority in *Hefner v. Vandolah*, 62 *Ill.* 483; s. c., 14 *Am. R.* 106, 108, with note, collating cases. See *Kingsley v. Vernon*, 4 *Sandf.* 361, cited on a similar point in *Hefner v. Dawson*, 63 *Ill.* 403; s. c., 14 *Am. R.* 123. Cited (Effect of promise of partner to pay obligation created by another partner for his private benefit) in *Story on Partn.* 7 ed. § 133, n.

**Commercial Bank of Clyde v. Marine Bank.** See *McBride v. Farmers' Bk of Salem*.

**Commercial Bank of Ky. v. Varnum**, 3 *Lans.* 86. Rev'd in 49 *N. Y.* 269; s. c., 11 *Am. L. Reg. N. S.* 407, with note. Further decision in 7 *Hun*, 236. See *Gawtry v. Doan*; *Walls v. Bailey*.

**Commercial Bank of Lake Erie v. Norton**, 1 *Hill*, 501. Disting'd and criticised (Proof of want of consideration for acceptance of bill) in *Anthony v. Harrison*, 14 *Hun*, 198,

211. Applied (Delegation of power by agent) in *Edwards v. City of Watertown*, 24 *Id.* 426, 428.
- Commercial Bank of Oswego v. Ives.** See *Cornell v. Moulton*.
- Commercial Bank of Pennsylvania v. Union Bank of N. Y.**, 19 *Barb.* 391. Aff'd in 11 *N. Y.* 203. See *Allen v. Merchants' Bank*. Decision in 11 *N. Y.* cited as authority (Setting aside deposition) in *Butler v. Flanders*, 44 *Super. Ct. (J. & S.)* 531, 533. Disting'd (Liability of collecting agent of bank) in *Van Dyck v. McQuade*, 86 *N. Y.* 38, 46. Cited with other cases and not followed in *Guelick v. Nat. State Bank of Burlington*, 56 *Iowa*, 436. Cited as establishing the doctrine, in *Exchange Nat. Bk. v. Third Nat. Bk.*, 112 *U. S.* 276, 282.
- Commercial Warehouse Co. v. Graber**, 2 *Sweeny*, 638. Aff'd in 45 *N. Y.* 393.
- Commissioners of Almshouse of Kingston v. Osterhoudt**, 23 *Hun.* 66. Motion to go to Ct. of App. denied in 24 *Id.* 140.
- Commissioners of Bushwick v. Meserole**, 10 *Wend.* 122. Criticised and disting'd with Commissioners of Carmel v. Judges of Putnam, 7 *Id.* 264 (Statement of ground of appeal in highway cases) in *Rector v. Clark*, 12 *Hun.* 189, which was rev'd in 78 *N. Y.* which see.
- Commissioners of Canal Fund v. Kempshall**, 26 *Wend.* 404. See *Child v. Starr*; *Hooker v. Cummings*. Explained (Rights in land bounded on navigable stream) in *People v. Canal Appraisers*, 33 *N. Y.* 461, 500 as not infringing upon the doctrine of *People v. Tibbetts*, 19 *Id.* 523. Collated with other cases, in *Mills Thomps. on Highw.* 3 ed. 49.
- Commissioners of Carmel v. Judges of Putnam**, 7 *Wend.* 264. See *Commissioners of Bushwick v. Meserole*.
- Commissioners of Central Park, Matter of**, 63 *Barb.* 282. Appeal dismissed in 50 *N. Y.* 493. Statement in latter that the case below is reported in 41 *How. Pr.* 12 and 4 *Lans.* 469, is incorrect, for the former is a different case, and the latter set aside a report of commissioners and appointed new ones, whose report was confirmed on appeal in 63 *Barb.* 262, from which the appeal in 50 *N. Y.* 493 was taken. Decision in 41 *How. Pr.* also reported as *Morningside Park Case*, 10 *Abb. Pr. N. S.* 338. Decision in 50 *N. Y.* followed (Implied repeal of local statutes) in *Bartels v. Cunningham*, 8 *Abb. N. C.* 226. Disting'd (Appeal from order confirming report of commissioners in highway proceedings) in *Matter of Kingsbridge Road*, 4 *Hun.* 599, 605.
- *v. —*, 35 *How. Pr.* 255; s. c., 51 *Barb.* 277. Limited (Authority of Central Park commissioners) in *Astor v. Mayor, &c. of N. Y.*, 62 *N. Y.* 574.
- Commissioners of Excise v. Purdy**, 22 *How. Pr.* 312. Rev'd in 13 *Abb. Pr.* 434; s. c., less fully, 22 *How. Pr.* 506; 36 *Barb.* 266. Cited as authority (Action in name of public commissioners, when not maintainable) in *Hess v. Appell*, 62 *How. Pr.* 314.
- Commissioners of Excise of Tompkins v. Taylor.** See *Nevin v. Ladue*.
- Commissioners of Excise of Wayne v. Keller**, 20 *How. Pr.* 280. See *Hasbrouck v. Weaver*. Approved (Liability of husband for wife's act) in *Commissioners of Excise of Orange v. Dougherty*, 55 *Barb.* 332.
- Commissioners of Excise of Yonkers v. Glennon**, 21 *Hun.* 245., Followed (Who has right of action for violation of excise law) in *Comm'rs of Kingston v. Osterhoudt*, 23 *Hun.* 66, 68.
- Commissioners of Kinderhook v. Claw**, 15 *Johns.* 537. Followed (Invalidity of judgment without notice) in *Flint River Steamboat Co. v. Roberts*, 2 *Fla.* 102; s. c., 48 *Am. Dec.* 178, 181, with note.
- Commissioners of Pilots v. Erie R. R. Co.**, 5 *Robt.* 366. Said in 41 *N. Y.* 619 to have been aff'd in Ct. of App., March, 1869.
- *v. Spofford*, 3 *Hun.* 57; s. c., 5 *Sup'm. Ct. (T. & C.)* 353; Rev'd 47 *How. Pr.* 479. Reargument denied in 4 *Hun.* 74. Former proceedings in 3 *Id.* 52; s. c., 5 *Sup'm. Ct. (T. & C.)* 357. Former decision as *Sturgis v. Spofford*, 53 *N. Y.* 103. Decision in 3 *Hun.* 52, explained (Silence as to costs) in *Lotti v. Krakauer*, 1 *Civ. Pro. R.* 312, 315, n.
- *v. Vanderbilt*, 2 *Robt.* 367. Aff'd in 31 *N. Y.* 265.
- Commissioners of Warwick v. Judges of Orange**, 13 *Wend.* 433. Approved (Disregarding irregularities in highway proceedings) in dissenting opinion in *People ex rel. Odle v. Kniskern*, 54 *N. Y.* 52, 61. Followed with *People v. Van Alstyne*, 3 *Keyes*, 37, in *People ex rel. Lasher v. McNeil*, 2 *Sup'm. Ct. (T. & C.)* 140. Quoted and collated with other cases, in *Mills Thomps. on Highw.* 3 ed. 297.
- Commonwealth of Kentucky v. Bassford**, 6 *Hill.* 526. Disting'd (Contract as governed by law of place of performance) in *Dickinson v. Edwards*, 77 *N. Y.* 573, 583. Disapproved with *Thatcher v. Morris*, 11 *Id.* 437 (Comity as requiring enforcement of foreign contracts) in *Flagg v. Baldwin*, 38 *N. J. Eq.* (11 *Stew.*) 219; s. c., 48 *Am. R.* 308.
- Compton v. Jones**, 4 *Cow.* 13. Commented upon (Contracts—change of parties by novation) in 1 *Story on Contr.* 5 ed. § 483, n. 1. Included in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 145.
- Comstock's Case**, 16 *Abb. Pr.* 233; s. c., as *Bylandt v. Comstock*, 25 *How. Pr.* 423. Overruled in effect (Discharge of imprisoned debtor) by *Coman v. Storm*, 26 *Id.* 84. See *Code Civ. Pro.* 1881, § 2200, n.
- Comstock v. Ames**, 3 *Keyes*, 357. Followed (Finding by referee, when not to be presumed) in *Meyer v. Amidon*, 45 *N. Y.* 169.
- *v. Carr*, 6 *Wend.* 526. Followed (Invalidity of appearance by infant defendant

- without guardian) in *McMurray v. McMurray*, 60 *Barb.* 117.
- **v. Comstock.** See *Claffin v. Farmers' & Citizens' Bank*.
- **v. Dodge.** See *People ex rel. Hubbard v. Annis*.
- **v. Drohan**, 8 *Hun.* 373. Aff'd in 71 *N. Y. 9*. See *Hamill v. Gillespie*; *Pattison v. Powers*. Decision in 8 *Hun* applied (Effect of 2 R. S. 191, § 153, on liability of one that is surety for payment of mortgage debt) in *Weed v. Calkins*, 24 *Id.* 582, 586.
- **v. Hier**, 73 *N. Y.* 269. Disting'd (Assignees of negotiable paper, within meaning of Code Pro. § 399 [Code Civ. Pro. § 829]) in *Raubitschek v. Blank*, 80 *Id.* 478, 483. Disting'd (Right of action on note, as affected by proof of illegal transaction) in *Solinger v. Earle*, 45 *Super. Ct. (J. & S.)* 604. Disting'd (Action for conversion of negotiable paper) in *Southwick v. First Nat. Bk. of Memphis*, 84 *Id.* 420, 433. Explained in *Moak's Underhill's Torts*, 1 Am. ed. 573.
- **v. Johnson**, 46 *N. Y.* 615. See *Garwood v. N. Y. Central, & C. R. R. Co.*; *Parsons v. Johnson*. Disting'd (What passes as incident to grant) in *Parsons v. Johnson*, 68 *N. Y.* 69; *Wallace v. Fee*, 50 *Id.* 694.
- **v. Moore**, 18 *How. Pr.* 421. Further decision as *Comstock v. White*, 31 *Barb.* 301. Decision in 18 *How. Pr.* explained (Trade-mark—fraud in the use of) in 2 *Pars. on Contr.* 257 *bn.*, n. o.
- **v. Smith**, 7 *Johns.* 87; s. c., 4 *N. Y. Com. L. Law. ed.* 258, with brief note.
- **v. Warner**, 2 *Sup'm. Ct. (T. & C.)* 663. Aff'd, it seems, in 60 *N. Y.* 647, but without opinion.
- Conant v. Van Schaick**, 24 *Barb.* 87. Approved (Theory of personal liability of stockholders) in *Hawthorn v. Calef*, 2 *Wall.* 10.
- Conaughty v. Nichols**, 42 *N. Y.* 83. Followed (Recovery on cause of action different from that alleged) in *Lyon v. Isett*, 11 *Abb. Pr. N. S.* 355; *Ladd v. Arkell*, 37 *Super. Ct. (J. & S.)* 40. Disting'd in *Beard v. Yates*, 2 *Hun.* 466; *Ross v. Mather*, 51 *N. Y.* 112; *Matthews v. Cady*, 61 *Id.* 651; *Smith v. Frost*, 70 *Id.* 71. Explained and approved in *Greentree v. Rosenstock*, 61 *Id.* 583, 589. Applied (Effect of allegation of conversion) in *Church of the Redeemer v. Crawford*, 36 *Super. Ct. (J. & S.)* 319. Quoted as containing an elaborate opinion, in *Pomeroy on Rem.* § 559, n. 4.
- Concklin v. Havens.** See *Putnam v. Wiley*.
- **v. Taylor**, 68 *N. Y.* 221. See (Costs of motion) *Code Civ. Pro.* 1881, § 3236, n.
- Corderman v. Smith**, 41 *Barb.* 404. See *Van Hoozer v. Corey*. Disting'd (Completion of contract of sale of personal property) in *Stephens v. Santee*, 49 *N. Y.* 35, 40.
- Condit v. Baldwin**, 21 *Barb.* 181. Aff'd in 21 *N. Y.* 219. See *Algur v. Gardiner*; *Lee v. Chadsey*. Decision in 21 *N. Y.* followed (Effect of usurious bonus exacted by agent) in *Lee v. Chadsey*, 3 *Abb. Ct. App. Dec.* 49; *Fellows v. Commrs of Oneida*, 36 *Barb.* 658; *Esterly v. Purdy*, 50 *How. Pr.* 350, which was aff'd in 66 *N. Y.* 446, which rev'd 6 *Hun.* 46, which see; *Stout v. Rider*, 12 *Id.* 576; *Moore v. Bogart*, 19 *Id.* 228; *Elmer v. Oakley*, 3 *Lans.* 37; *Bell v. Day*, 32 *N. Y.* 165; *Van Buren v. Stokes*, 3 *Sup'm. Ct. (T. & C.)* 511; *North v. Sergeant*, 33 *Barb.* 352. Disting'd in *Bank of Salina v. Alvord*, 31 *N. Y.* 475; *Algur v. Gardiner*, 54 *Id.* 365; *Wyeth v. Braniff*, 84 *Id.* 627, 632. Cited in *Wheaton v. Van Voorhis*, 53 *How. Pr.* 324, as unshaken by *Algur v. Gardner*. Criticised and disting'd in *Porter v. Mount*, 45 *Barb.* 430. Approved with *Smith v. Marvin*, 27 *N. Y.* 137; *Bell v. Day*, 32 *Id.* 165; *Barretto v. Snowden*, 5 *Wend.* 181, in *Palmer v. Call*, *U. S. Cir. Ct. D. Iowa*, 12 *Reporter*, 194; s. c., 7 *Fed. Rep.* 137. See also *Acheson v. Chase*, 28 *Mich.* 214. Followed with *Bell v. Day*, 32 *N. Y.* 165, in *Ballinger v. Bourland*, 87 *Ill.* 513; s. c., 29 *Am. R.* 69, with note, collating other cases. Examined with *Algur v. Gardner*, 54 *N. Y.* 360, in *New England Mortgage Security Co. v. Hendrickson*, 13 *Neb.* 160. Applied (Ratification of unauthorized act of agent) in *Smith v. Tracy*, 36 *N. Y.* 84; *Thompson v. Craig*, 16 *Abb. Pr. N. S.* 33. Applied (Repelling defense of usury by proof of absence of corrupt agreement) in *Shoop v. Clark*, 4 *Abb. Ct. App. Dec.* 238.
- Condon v. Callahan**, 9 *Abb. N. C.* 407. Compare (Employment by husband) *Potter v. Virgil*, 67 *Barb.* 578.
- Cone v. Delaware, L. & W. R. R. Co.**, 15 *Hun.* 172. Aff'd in 81 *N. Y.* 206. See *Laning v. N. Y. Central, & C. R. R. Co.* Decision in 81 *N. Y.* applied (Duty of master to furnish safe machinery) in *Kain v. Smith*, 25 *Hun.* 146, 148. Disting'd (Contributory negligence in servant) in *White v. Sharp*, 27 *Hun.* 94.
- **v. Niagara Fire Ins. Co.**, 3 *Sup'm. Ct. (T. & C.)* 33. Aff'd in 60 *N. Y.* 619. Decision in 3 *Sup'm. Ct. (T. & C.)* disting'd (Waiver by agent of condition in policy) in *Thayer v. Agricultural Ins. Co.*, 5 *Hun.* 567. Cited as authority in dissenting opinion of *MILLER, J.*, in *Mersereau v. Phoenix Mut. Ins. Co.*, 66 *N. Y.* 285. Disting'd (Right of action on fire policy) in *Hastings v. Westchester Fire Ins. Co.*, 73 *Id.* 150. Decision in 60 *Id.* followed (Insurable interest of one having right to purchase or redeem) in *Creighton v. Homestead Fire Ins. Co.*, 17 *Hun.* 80. Applied (Right of appointed payee to sue on policy) in *Lasher v. Northwestern Nat. Ins. Co.*, 18 *Id.* 102. Applied (Waiver by agent of condition in policy) in *Woodruff v. Imperial F. Ins. Co.*, 83 *N. Y.* 133, 140. See also (Right of subrogation) *Dick v. Franklin Fire Ins. Co.*, 10 *Mo. App.* 356. Cited as authority (Parol waiver of contract) in *Waterman on Sp. Perf.* § 356, n.

- *v. Purcell*, 56 *N. Y.* 649. See opinion in 11 *Nat. Bankr. Reg.* 490.
- *v. Whitaker*, 2 *Johns. Cas.* 280. Overruled (Costs of non-suit, as affected by discharge under insolvent act) in *Warne v. Constant*, 5 *Johns.* 135.
- Congden v. Lee**, 3 *Edw.* 304. Quoted (Receiver—judgment creditor's bill—discovery) in *High on Receiv.* § 403, n. 1.
- Conger v. Conger**, *Sup'm. Ct. Sp. T.* Followed (Judgment in divorce case after trial before referee) in *Schroeter v. Schroeter*, 23 *Hun.* 230.
- *v. Hudson River R. R. Co.*, 6 *Duer*, 375. Approved and followed with *Wibert v. N. Y. & Erie R. R. Co.*, 19 *Barb.* 36 (Measure of damages against carrier for delay in transportation) in *Kirkland v. Leary*, 2 *Sweeny*, 677, the *Wibert* case being thought to have been, though overruled in *Kent v. Hudson River R. R. Co.*, 22 *Barb.* 278, yet sustained in *Jones v. N. Y. & Erie R. R. Co.*, 29 *Id.* 633.
- *v. Ring*, 11 *Barb.* 364. Followed (Purchase of trust property by trustee) in *Terwilliger v. Brown*, 59 *Barb.* 9, which was aff'd in 44 *N. Y.* 237, which see; *Fulton v. Whitney*, 5 *Hun.* 20.
- *v. Van Aernum*, 43 *Barb.* 602. Rev'd by Comm. of App., in Jan., 1871.
- *v. Vandewater*, 1 *Abb. Pr. N. S.* 126. Commented upon (Judgment—when presumed to be paid) in *Throop Justice's Man.* 2 ed. 174. Compare *Code Civ. Pro.* §§ 376, 382, subd. 7, § 414.
- *v. Weaver*, 20 *N. Y.* 140. See *Brinckerhoof v. Phelps*; *Bush v. Cole*; *Driggs v. Dwight*. Explained and reconciled (Damages for breach of contract to convey land) with *Brinckerhoof v. Phelps*, 24 *Barb.* 100,—in *Brinckerhoof v. Phelps*, 43 *Id.* 469; also in *Bush v. Cole*, 28 *N. Y.* 270. Re-aff'd in *Cockcroft v. N. Y. & Harlem R. R. Co.*, 69 *Id.* 204.
- Congregation Shaaer Hashmoin v. Halliday**, 3 *Robt.* 386. Rev'd in 50 *N. Y.* 604.
- Congregational Church in Union Village, Matter of**, 6 *Abb. N. C.* 398. See also (Division of church property) *First Ref'd. Presb. Ch. v. Bowden*, 10 *Abb. N. C.* 1.
- Congress & Empire Spring Co. v. High Rock Congress Spring Co.**, 57 *Barb.* 526. Rev'd in 10 *Abb. Pr. N. S.* 348; s. c., 45 *N. Y.* 291; 6 *Am. R.* 82. Decision in 45 *N. Y.* followed (Use, as trademark, of name indicating origin or ownership) in *Dunbar v. Glenn*, 42 *Wis.* 118; s. c., 24 *Am. R.* 395. Applied in *Newman v. Alvord*, 51 *N. Y.* 139, 194. Explained in 2 *Pars. on Contr.* 257, *ba.* n. 1 *Keller's ed. Id.* 257, *bj.* n. 1. Applied (Use of word as trademark) in *Hier v. Abrahams*, 82 *N. Y.* 519, 524. Disting'd in *Huwer v. Dannenhoffer*, *Id.* 499, 503. Followed with *Glen & Hall Manfg Co. v. Hall*, 61 *Id.* 229; *Booth v. Jarrett*, 52 *How. Pr.* 169 (Assignment of property, as carrying right to use name) in *Pepper v. Labrot*, *U. S. Cir. Ct. D. Ky.*, 12 *Reporter*, 321; s. c., 8 *Fed. Rep.* 29.
- *v. Knowlton*, 23 *Abb. L. J.* 290. Disting'd (Money recoverable back) in *Birkett v. Chatterton*, 12 *Rep.* 441.
- Congreve v. Morgan**, 5 *Duer*, 495. Aff'd as *Congreve v. Smith*, 18 *N. Y.* 79. See *Creed v. Hartman*; *Irvin v. Wood*. Decision in 5 *Duer* disting'd (Liability for negligence of contractor, &c.) in *Potter v. Seymour*, 4 *Bosw.* 140, 147. Disting'd (Liability for unauthorized excavation of highway) in *Wendell v. Mayor, &c. of Troy*, 4 *Abb. Ct. App. Dec.* 570. Disting'd (Proof of accident as evidence of negligence) in *Garrison v. Mayor, &c. of N. Y.*, 5 *Bosw.* 503. Criticised and explained (Owner of scuttle in a sidewalk as absolute insurer) in *Fisher v. Thirkell*, 21 *Mich.* 1; s. c., 4 *Am. R.* 422, 427.
- *v. —*, 18 *N. Y.* 84. Disting'd (Liability for injury caused by excavation of highway) in *Wendell v. Mayor, &c. of Troy*, 4 *Abb. Ct. App. Dec.* 571. Followed in *Anderson v. Dickie*, 26 *How. Pr.* 117. Re-aff'd in *Sexton v. Zett*, 44 *N. Y.* 432. Followed in *Irvin v. Wood*, 4 *Robt.* 146, which was aff'd in 51 *N. Y.* 224, which see. Applied in *Davenport v. Ruckman*, 16 *Abb. Pr.* 352. Quoted in *Wood on Nuis.* 2 ed. § 274, n. 2. Disting'd (Liability of owners of premises as insurers) in *Robbins v. Mount*, 33 *How. Pr.* 35. Quoted and discussed in 1 *Add. on Torts*, 245, n. 2, *Wood's ed.*
- *v. Smith*, 18 *N. Y.* 79. Aff'g *Congreve v. Morgan*, 5 *Duer*, 495. See *Blake v. Ferris*; *City of Buffalo v. Holloway*; *Creed v. Hartman*; *Dygert v. Schenck*; *Kelly v. Mayor, &c. of N. Y.*; *Pack v. Mayor, &c. of N. Y.*; *Storrs v. City of Utica*. Disting'd (Liability for injury caused by excavation of highway) in *Wendell v. Mayor, &c. of N. Y.*, 4 *Abb. Ct. App. Dec.* 570; *Eccles v. Darragh*, 46 *Super. Ct. (J. & S.)* 186. Followed in *Anderson v. Dickie*, 26 *How. Pr.* 117; *Irvin v. Wood*, 4 *Robt.* 146, which was aff'd in 51 *N. Y.* 224, which see; *Davenport v. Ruckman*, 10 *Bosw.* 37, which was aff'd in 37 *N. Y.* 572, which see. Re-aff'd in *Sexton v. Zett*, 44 *Id.* 432. Quoted and discussed in *Wood on Nuis.* 2 ed. § 280. Disting'd (Liability of owners of premises as insurers) in *Robbins v. Mount*, 33 *How. Pr.* 35. Examined and compared with *Blake v. Ferris*, 5 *N. Y.* 43; *Pack v. Mayor, &c. of N. Y.*, 8 *Id.* 222; *Storrs v. City of Utica*, 17 *Id.* 104; *City of Buffalo v. Holloway*, 7 *Id.* 493; *Kelly v. Mayor, &c. of N. Y.*, 11 *Id.* 432. (Liability of employers, contractors, &c.) in *Creed v. Hartman*, 29 *Id.* 591, which aff'd 8 *Bosw.* 128, which see. Disting'd (Imputing negligence to one that changes condition of street) in *Lowrey v. Brooklyn City, &c. R. R. Co.*, 4 *Abb. N. C.* 36. Disting'd in *Hume v. Mayor, &c. of N. Y.*, 8 *Hun.* 676.
- Conhocton Stone Road v. Buffalo, &c. R. R. Co.**, 52 *Barb.* 390. Rev'd in 51 *N. Y.* 573;

- s. c., 10 *Am. R.* 646. Further decision in 3 *Hun*, 523; s. c., 5 *Sup'm. Ct. (T. & C.)* 651. See *Goodale v. Tuttle*. Decision in 51 *N. Y.* cited, with other cases (Liability of grantee of land for continuing nuisance placed by previous owner) in 14 *Am. Dec.* 338, n., as according with an overwhelming weight of authority. Considered with *Miller v. Church*, 2 *Sup'm. Ct. (T. & C.)* 259 (Necessity of request to remove nuisance) and 2 *Chitty on Pl.* cited to the contrary,—in *Morse v. Borough of Fairhaven*, 47 *Conn.* 220, where, however, these cases are followed (Necessity of knowledge of existence of nuisance).
- Conkey v. Bond**, 34 *Barb.* 276. Aff'd in 36 *N. Y.* 427; s. c., 3 *Abb. Pr. N. S.* 415. Decision in 36 *N. Y.* cited (Duty of agent under general power to buy) in *Whart. Com. on Ag.* § 240, n.
- **v. Hart**. See *Shuart v. Taylor*.
- Conklin v. Barton**. See *Poillon v. Secor*.
- **v. Bauer**, 62 *N. Y.* 620. Disting'd (Permission to build under mechanic's lien law) in *Burkitt v. Harper*, 79 *Id.* 276.
- **v. Egerton**, 21 *Wend.* 430. Aff'd in 25 *Id.* 224. Decision in 21 *Wend.* referred to in *Matter of Anderson*, 5 *N. Y. Leg. Obs.* 302, as overruled (Executors—powers in trust) in *Bogert v. Hertell*, 4 *Hill*, 492. Examined in *Battelle v. Parks*, 2 *Mich.* 532; citing *Roseboom v. Mosher*, 2 *Den.* 61; *Bergen v. Bennet*, 1 *Cal. Cas.* 16. Cited as learnedly and ably investigating the subject (Powers that survive to administrator *de bonis non*) in *Evans v. Chew*, 71 *Pa. St.* 47, 49, which was cited in 24 *Am. Dec.* 389, n. Cited as authority in *Warfield v. Brand*, 13 *Bush (Ky.)* 77, 100. Quoted and discussed in 2 *Perry on Trusts*, 3 ed. § 500, n. 3. Decision in 25 *Wend.* discussed in same place. Decision in 21 *Wend.* reviewed with *Roome v. Phillips*, 27 *N. Y.* 357, 363; *Dunning v. Ocean Nat'l B'k*, 61 *Id.* 497, in 12 *Am. Dec.* 102, n., as showing the position of the *N. Y.* courts. Disting'd (Survival of power to sell real estate) in *Clapp v. Brown*, 4 *Redf.* 200.
- **v. Farman**, 57 *Barb.* 484; s. c., 8 *Abb. Pr. N. S.* 161. Decision in 57 *Barb.* overruled (Judgment as evidence against stockholder) in *Miller v. White*, 50 *N. Y.* 137.
- **v. Moore**, 2 *Bradf.* 179. Followed (Vesting of interest that is subject to life estate) in *Talmadge v. Williamson*, 2 *Redf.* 455.
- **v. Second National Bank of Oswego**, 53 *Barb.* 512, n. Aff'd in 45 *N. Y.* 655.
- **v. Stampler**, 2 *Hill.* 423. Explained (Books of account as evidence) in *Burke v. Wolfe*, 38 *Super. Ct. (J. & S.)* 263, 269.
- **v. Thompson**, 29 *Barb.* 218. Followed (Nuisance) in *Conklin v. Phoenix Mills of Seneca Falls*, 62 *Id.* 299, 309. Disting'd (Infant's liability for tort) in *Hewitt v. Warren*, 10 *Id.* 560, 563. Cited as authority with *Harvey v. Dunlap*, *Hill & D.* 193; *Bullock v. Babcock*, 3 *Wend.* 391; *Corning v. Corning*, 6 *N. Y.* 97, in *Peterson v. Haffner*, 59 *Ind.* 130; s. c., 26 *Am. R.* 81, with note.
- **v. Wood**. See *Beals v. Congregation B'nai Jeshurun*.
- Conkling v. Gandall**, 1 *Keyes*, 228; s. c., 1 *Abb. Ct. App. Dec.* 423. Disting'd (Sufficiency of complaint in action on note, &c.) in *Richter v. Kramer*, 1 *City Ct.* 348. Followed in *Judd v. Smith*, 3 *Hun*, 191; *Tooker v. Arnoux*, 76 *N. Y.* 401. See *Code Civ. Pro.* 1881, § 534, n.
- **v. King**, 10 *Barb.* 372. Aff'd in 10 *N. Y.* 440.
- **v. Shelley**, 28 *N. Y.* 360. Limited (Effect of provision in chattel mortgage allowing mortgagor to sell) in *Brckett v. Harvey*, 91 *Id.* 214, which rev'd 25 *Hun*, 502, 507, which see. Followed in *Ellsworth v. Phelps*, 30 *Id.* 646. Disting'd in *City Bank v. Westbury*, 16 *Id.* 458. Approved in *Southard v. Benner*, 7 *Daly*, 41, 43.
- Conley v. Meeker**, 9 *Weekly Dig.* 288. Aff'd in 85 *N. Y.* 618.
- Conlin v. Cantrell**, 51 *How. Pr.* 312. Aff'd in 64 *N. Y.* 217. See *Yale v. Dederer*. Decision in 64 *N. Y.* followed (Liability of married woman for services, &c.) in *Muller v. Platt*, 31 *Hun*, 121. Collated with *Williamson v. Dodge*, 5 *Id.* 497, and other cases, in 31 *Am. R.* 697, n. Cited in *Tyler on Inf. & Cov.* 2 ed. § 476. Explained and disting'd (Intent to charge inferred from circumstances) in *Salmon v. McEnany*, 23 *Hun*, 87, 89.
- Connah v. Hale**, 23 *Wend.* 462. Followed (Goods delivered to tradesmen, exempt from distress for rent) in *McCreery v. Claflin*, 37 *Id.* 435; s. c., 11 *Am. R.* 542.
- **v. Sedgwick**, 1 *Barb.* 210. Discussed (Assignment for benefit of creditors—delivery of possession) in *Burrill on Assign.* § 274, 4 ed.
- Connecticut v. Jackson**, 1 *Johns. Ch.* 13; s. c., 7 *Am. Dec.* 471. Applied (Computing interest in case of partial payments) in *French v. Kennedy*, 7 *Barb.* 455; *Bennett v. Cook*, 2 *Hun*, 529. Recognized as authority in *Young v. Hill*, 67 *N. Y.* 167, which rev'd 6 *Hun*, 619, which see. Followed in *Hart v. Dorman*, 2 *Fla.* 445; s. c., 50 *Am. Dec.* 285. Explained (Interest on interest) in *Conn. Mut. Life Ins. Co. v. Cleveland, &c. R. R. Co.*, 41 *Barb.* 23. Disting'd in *Gibbs v. Chisolm*, 2 *Nott & McC.* (S. C.) 38; s. c., 10 *Am. Dec.* 560. See lengthy note to 6 *Am. Dec.* 188, collating cases. Disting'd in *Hovey v. Edmison*, 22 *Northw. Rep.* 594, 601. Disting'd (Recovery of compound interest) in *Schieffelin v. Stewart*, 1 *Johns. Ch.* 628; *Towhensend v. Corning*, 3 *N. Y. Leg. Obs.* 97. Explained in *Kellogg v. Hickok*, 1 *Wend.* 521. Followed in *Van Benschooten v. Lawson*, 6 *Johns. Ch.* 314.
- Connecticut Fire Ins. Co. v. Erie Ry. Co.**, 10 *Hun*, 59. Rev'd in 73 *N. Y.* 399; s. c., 29 *Am. R.* 171. Decision in 73 *N. Y.* explained (Action by insurance company to

- recover amount of loss paid, from party whose negligence caused it) in *First Presb. Soc. v. Goodrich Transp. Co.*, 12 *Rep.* 105; s. c., 7 *Fed. Rep.* 257. Applied in *Swartout v. C. & N. W. R. Co.*, 49 *Wisc.* 628.
- Connecticut Mutual Life Ins. Co. v. Cleveland, &c. R. R. Co.**, 23 *How. Pr.* 180. Plaintiffs recovered judgment which was aff'd in 41 *Barb.* 9; s. c., 26 *How. Pr.* 225. Decision in 41 *Barb.* criticised (Interest "when allowable on coupons for interest) in *Wheaton v. Pike*, 9 *E. I.* 132; s. c., 11 *Am. R.* 227.
- Connelly v. Pierce**, 7 *Wend.* 129. Cited as authority with *Blood v. Goodrich*, 9 *Id.* 68; *Fuller v. Hubbard*, 6 *Cov.* 13; *Fuller v. Williams*, 7 *Id.* 53 (Duty of vendor to prepare deed) in *Smith v. Henry*, 2 *Eng. (Ark.)* 207; s. c., 44 *Am. Dec.* 540, 542, with note.
- Conner v. Mayor, &c. of N. Y.**, 2 *Sandf.* 355. Aff'd in 5 *N. Y.* 285. See *Smith v. Mayor, &c. of N. Y.* Decision in 5 *N. Y.* applied (Public and private statutes) in *Bretz v. Mayor, &c. of N. Y.*, 4 *Abb. Pr. N. S.* 261; *Phillips v. Mayor, &c. of N. Y.*, 1 *Hilt.* 489. Applied in dissenting opinion of WELLES, J., in *Baldwin v. Mayor, &c. of N. Y.*, 45 *Barb.* 367. Considered and explained with *Williams v. People*, 24 *N. Y.* 405; *People v. Hills*, 35 *Id.* 449; *People v. O'Brien*, 38 *Id.* 193, in *Healy v. Dudley*, 5 *Lans.* 115. Applied (Expression of title of local act) in *Freeman v. Panama R. R. Co.*, 7 *Hun.* 124; *Devlin v. Mayor, &c. of N. Y.*, 63 *N. Y.* 21; *People ex rel. Comm'rs v. Banks*, 67 *Id.* 573; *Central Crosstown R. R. Co. v. Twenty-Third St. R. R. Co.*, 54 *How. Pr.* 179. Examined in dissenting opinion of HUNT, J., in *Baldwin v. Mayor, &c. of N. Y.*, 2 *Keyes*, 409. Explained in *People v. Allen*, 42 *N. Y.* 417. Followed in *Tift v. City of Buffalo*, 82 *Id.* 204, 211. Applied (Nature of right to public office and its emoluments) in *McVeany v. Mayor, &c. of N. Y.*, 80 *N. Y.* 190, 194. Disting'd with *Smith v. Mayor, &c. of N. Y.*, 37 *Id.* 518; *Dolan v. Same*, 68 *Id.* 274; *McVeany v. Same*, 80 *Id.* 185; *Terhune v. Same*, 88 *Id.* 247, in *People ex rel. Ryan v. French*, 91 *Id.* 265. Approvingly cited in *State v. Douglass*, 26 *Wis.* 428; s. c., 7 *Am. Dec.* 87; the case of *People v. Morrell*, 21 *Wend.* 563, 576, being also cited. Cited as authority in *Perkins v. Corbin*, 45 *Ala.* 103; s. c., 6 *Am. R.* 698. Decision in 2 *Sandf.* collated with other cases, in 25 *Am. Dec.* 701, n.
- Connitt v. Reformed P. D. Church**, 4 *Lans.* 339. Aff'd in 54 *N. Y.* 551.
- Connolly v. Pardon**, 1 *Paige*, 291; s. c., 19 *Am. Dec.* 433. See *Roman Catholic Orphan Asylum v. Emmons*.
- **v. Poillon**, 41 *Barb.* 366. Said in 41 *N. Y.* 619, to have been aff'd in Ct. of App. June, 1869.
- Connor v. Williams**, 2 *Robt.* 46. Commented upon (Statute of frauds—guaranties) in *Browne on Stat. of Frauds*, § 166, b, 4 ed.
- Connors v. People**, 50 *N. Y.* 240. See *Brandon v. People*. Disting'd (Liability of accused testifying in his own behalf) in *People v. Brown*, 72 *N. Y.* 571, 574; *People v. Crapo*, 76 *Id.* 288, 291. Followed in *State v. Ober*, 52 *N. H.* 459; s. c., 13 *Am. R.* 88. Cited as authority in *State v. Wentworth*, 65 *Me.* 234; s. c., 20 *Am. R.* 688. Commented upon (Waiver of constitutional privileges) in *Cooley on Const. Limit.* 5 ed. 387.
- Conor v. Dempsey**, 49 *N. Y.* 665. For the rule in case of executory contract see cases cited (Acceptance of goods after opportunity to examine) in *Abb. Tr. Ev.* 348, n. 5.
- Conover, Matter of**, 3 *Abb. Pr.* 74. Disapproved (Proceedings to obtain official books and papers) in *People v. Allen*, 42 *Barb.* 203.
- Conover v. Devlin**, 15 *How. Pr.* 470; s. c., more fully, 6 *Abb. Pr.* 228.
- **v. —**, 24 *Barb.* 587. Approved (Application to compel delivery of books, &c. pertaining to public office) in *Matter of Davis*, 19 *How. Pr.* 327.
- **v. Hoffman**, 1 *Bosw.* 214. Aff'd in 15 *Abb. Pr.* 100; s. c., 1 *Abb. Ct. App. Dec.* 429.
- **v. Mutual Ins. Co.**, 5 *Den.* 254. Aff'd in 1 *N. Y.* 290. See points of counsel in *How. App. Cas.* 604. See *Van Deusen v. Charter Oak Fire & Marine Ins. Co.* Decision in 3 *Den.* disting'd with *Masters v. Madison County Mut. Ins. Co.*, 11 *Barb.* 624 (Powers of officers and agents of insurance companies) in *Gibbs v. Richmond County Mut. Ins. Co.*, 9 *Daly*, 203. Explained in 2 *Greenl. on Ev.* 14 ed. § 405, n. 1. Decision in 1 *N. Y.* followed with *Salomes v. Rutgers Fire Ins. Co.*, 3 *Keyes*, 416, in *Northrup v. Mississippi Valley Ins. Co.*, 47 *Mo.* 435; s. c., 4 *Am. R.* 337, 341. See to the contrary 1 *Redf. on Railw.* 590. See also *Abb. Tr. Ev.* 42. Decision in 3 *Den.* relied on (Mortgage not to be regarded as an alienation) in *Hurral v. Levery*, 50 *Conn.* 46; s. c., 47 *Am. R.* 608, 617; *Hubbard v. Hartford Fire Ins. Co.*, 33 *Iowa*, 325; s. c., 11 *Am. R.* 125, 132.
- Conrad v. Trustees of Ithaca**, 16 *N. Y.* 158. See *Hickok v. Trustees of Plattsburg*; *Hutson v. Mayor, &c. of N. Y.*; *Mayor, &c. of N. Y. v. Furze*; *Rochester White Lead Co. v. City of Rochester*; *Smith v. City of Rochester*; *Wilson v. Mayor, &c. of N. Y.* Applied (Liability of municipal corporation for negligence of agents) in *Baldwin v. City of Oswego*, 1 *Abb. Ct. App. Dec.* 74; *Deyoe v. Village of Saratoga Springs*, 1 *Hun.* 343; Limited in *Onderdonk v. City of Brooklyn*, 31 *Barb.* 506. Explained in *Saw-mill Co. v. City of Brooklyn*, 8 *Hun.* 39. Cited in *Inman v. Tripp*, 11 *R. I.* 520; s. c., 23 *Am. R.* 520, 525. Explained with *Hickok v. Trustees of Plattsburg*, 16 *N. Y.* 161 (Liability of municipal corporation for injury resulting from defect in public work) in *Peck v. Village of Batavia*, 32 *Barb.* 637. Disting'd as to sidewalks,—in *Hart v. City*

- of Brooklyn, 36 *Id.* 227, but followed as to sidewalks in N. Y. city, in *Davenport v. Ruckman*, 10 *Bosw.* 29, which was aff'd in 37 *N. Y.* 568, which see. Followed as to sidewalks generally, in *Wilson v. City of Watertown*, 3 *Hun.* 512. Disting'd as inapplicable to counties, in *Ensign v. Supervisors of Livingston*, 25 *Id.* 22; *Herrington v. Village of Corning*, 51 *Barb.* 411. Disting'd with *Hickok v. Trustees of Plattsburg*, 16 *N. Y.* 161, in *Mills v. City of Brooklyn*, 32 *Id.* 500. Applied in *Hines v. City of Lockport*, 60 *Barb.* 385; *Clemence v. City of Auburn*, 66 *N. Y.* 341; *Buffalo, &c. Turnpike Co. v. City of Buffalo*, 1 *Sup'm. Ct. (T. & C.)* 540; *Nims v. Mayor, &c. of Troy*, 3 *Id.* 7.
- *v. Williams*, 6 *Hill*, 444. Applied (Effect of testimony of uncontradicted witness) in *Stafford v. Leamy*, 43 *How. Pr.* 49. Disting'd in *Kavanagh v. Wilson*, 70 *N. Y.* 179. Doubted (Forbidding jury to give credit to evidence) in *Roth v. Wells*, 29 *Id.* 492.
- Conran v. Lakey**, 7 *Weekly Dig.* 161. Rev'd as *Coman v. Lakey*, in 80 *N. Y.* 345.
- Conro v. Gray**. See *Conro v. Port Henry Iron Co.*
- *v. Port Henry Iron Co.*, 12 *Barb.* 27. Previous decision as *Conro v. Gray*, 4 *How. Pr.* 166. Decision in 4 *How. Pr.* quoted and explained (Private corporations—creditor's rights) in *Morawetz on Corp.* § 572. Decision in 12 *Barb.* approved (Directors of a corporation cannot destroy it) in *Abbott v. Am. Hard Rubber Co.*, 33 *Barb.* 578, 584, 592. Quoted and explained in *Morawetz on Corp.* § 241. Referred to as containing a full discussion (Creditor's suits) in *Pomeroy on Rem.* § 267, n. 1. Quoted in *Wait on Fraud. Conv.* § 68, n. 1.
- Conroe v. Birdsall**, 1 *Johns. Cas.* 127; s. c., 1 *Am. Dec.* 105, with note; 1 *N. Y. Com. L. Law. ed.* 268, with brief note. Criticised (Infants' contracts—distinction between void and voidable) in 1 *Pars. on Contr.* 329, n. b; *Tyler on Inf. & Conv.* 2 ed. 12. Shown in 1 *Am. Dec.* 107, n., to have been approved in N. Y. and elsewhere, though doubted (Validity of deeds of an infant) in *Story on Sales*, § 28. Criticised and reconciled with other cases (Doctrine of estoppel in pais as applicable to infants) in 44 *Am. Dec.* 286, n.
- *v. National Protection Ins. Co.*, 10 *How. Pr.* 403. See (Change of venue) *Code Civ. Pro.* 1881, § 986, n.
- Conroy v. Gale**, 5 *Lans.* 344. Said in *Stack v. Bangs*, 6 *Lans.* 262, to have been aff'd in Ct. of App.
- *v. Mayor, &c. of N. Y.*, 6 *Daly*, 490. Aff'd, it seems, in 67 *N. Y.* 610, but without opinion.
- *v. Warren*, 3 *Johns. Cas.* 259; s. c., 2 *Am. Dec.* 156. Approved (Liability in case of non-presentment) in *Matter of Brown*, 2 *Story C. Ct.* 502. Applied (Right to sue on note indorsed in blank) in *Barlow v. Myers*, 24 *Hun.* 286, 289.
- Consequa v. Fanning**, 3 *Johns. Ch.* 587. Rev'd in 17 *Johns.* 511.
- Considerant v. Brisbane**, 14 *How. Pr.* 487. Subsequent decision on demurrer to amended complaint, in 2 *Bosw.* 471, which was rev'd in 22 *N. Y.* 389. Decision in 22 *N. Y.* explained (Action by trustee of express trust) in *Grinnell v. Buchanan*, 1 *Daly*, 538. Followed in *Brown v. Cherry*, 66 *Barb.* 635. Disting'd with *Devol v. Barnes*, 7 *Hun.* 342 (Actions by agent) in *Iselin v. Rowlands*, 30 *Id.* 488. Cited as containing an exhaustive discussion, in *Pomeroy on Rem.* § 175, n. 1. Cited as a fully considered case (Nature of express trusts) in *Id.* § 174. Decision in 14 *How. Pr.* disting'd with *Grant v. Johnson*, 5 *N. Y.* 247 (Promise to pay, when conditional) in *Chase v. Behrman*, 10 *Daly*, 344.
- Constantine v. Van Winkle**, 2 *Hill*, 240. Rev'd in 6 *Hill*, 177. See (Married woman's deed) *Van Winkle v. Constantine*, 10 *N. Y.* 422.
- *v. Wake*, 1 *Sweeny*, 239. See authority reviewed (Sub-lease and assignment) in 16 *Am. L. Rev.* 31.
- Continental Nat. B'k v. Nat. B'k of Commonwealth**, 50 *N. Y.* 575. Followed (Requisites of equitable estoppel) in *Voorhees v. Olmstead*, 3 *Hun.* 754, which was aff'd in 66 *N. Y.* 113, which see. Compared with other cases in *Vietor v. International Navigation Co.*, 45 *Super. Ct. (J. & S.)* 129, 142. Relied on, *Blair v. Wait*, 69 *N. Y.* 113, in *Anderson v. Hubble*, 93 *Ind.* 570; s. c., 47 *Am. R.* 394. See cases collected in 2 *Pomeroy on Eq. Jur.* 265, n. Disting'd (Estoppel to recover money paid on forged paper) in *White v. Continental Nat. B'k*, 64 *N. Y.* 321. Applied in *Marine Nat. B'k v. Nat. City B'k*, 36 *Super. Ct. (J. & S.)* 479. Extended and applied in *U. S. v. Nat. Park B'k*, 6 *Fed. Rep.* 854.
- Converse v. Kellogg**, 7 *Barb.* 590. See *Hone v. Van Schaick*. Disting'd (Suspension of division of estate) in *Doubleday v. Newton*, 27 *Barb.* 441. Cited as authority (Death referred to in will—when death happening in lifetime of testator) in *Kelly v. Kelly*, 61 *N. Y.* 50. Disting'd (Consideration for agreement) in *White v. Baxter*, 41 *Super. Ct. (J. & S.)* 367. Disapproved (Effect of deferring payment of legacy) in *Bliven v. Seymour*, 84 *N. Y.* 469.
- Conway v. Bush**, 4 *Barb.* 564. Disting'd (When title passes to vendee) in *Morey v. Medbury*, 10 *Hun.* 540, 543.
- *v. Mayor, &c. of N. Y.*, 6 *Daly*, 515. Further decision in 8 *Id.* 306.
- *v. —*, 4 *Hun.* 43. Modified and aff'd in 63 *N. Y.* 504.
- *v. Starkweather*, 1 *Den.* 113. Explained and followed (Holding over by tenant) in *Schuyler v. Smith*, 51 *N. Y.* 309, 315. Approved in *Witt v. Mayor, &c. of New York*, 6 *Robt.* 441, 451. See to the contrary (Tenant's estoppel) *Welland Canal Co. v.*

- Hathaway, 8 *Wend.* 480. But see *Abb. Tr. Ev.* 528, 529.
- *v. Williams*, 5 *Sup'm. Ct. (T. & C.)* 689. Reported in 2 *Hun.* 642.
- Cook v. Allen**, 5 *Hun.* 561. Aff'd in 67 *N. Y.* 578.
- *v. Barnes*, 36 *N. Y.* 520. Cited as settled law (Effect of taking usurious security for valid debt) in *Gerwig v. Sitterly*, 56 *N. Y.* 217, which partially rev'd 64 *Barb.* 626, which see. Applied in *Patterson v. Birdsall*, 64 *N. Y.* 298.
- *v. Barr*, 44 *N. Y.* 158. Cited (Answer under oath, when admissible against the party making it) in 2 *Whart. Com. on Ev.* § 1116. See to the contrary, cases cited (Proof of express trust) in *Abb. Tr. Ev.* 233, n. 3. Explained with *Peabody v. Speyers*, 56 *N. Y.* 230 (Memorandum required by statute of frauds) in *Warfield v. Wisconsin Cranberry Co.*, 63 *Iowa*, 314.
- *v. Beal*, 1 *Bosw.* 497. Aff'd in *Ct. of App.*, Dec. 1862.
- *v. Brockway*, 21 *Barb.* 331. Explained and limited (Opinion as to quantity of lost or destroyed property) in *Harpending v. Shoemaker*, 37 *Barb.* 370, 290. Disting'd in *Argotsinger v. Vines*, 82 *N. Y.* 308.
- *v. Champlain Transportation Co.* Approved (Rights of one who when lawfully using property exposes it to accidental injury) in *Fero v. Buffalo & State Line R. R. Co.*, 22 *N. Y.* 209, 215. Approved with *Fero v. Buffalo & State Line R. R. Co.*, in *Murphy v. Chicago, &c. R'y Co.*, 45 *Wis.* 222; s. c., 30 *Am. R.* 721. Approved and cited with *Fero v. Buffalo & State Line R. R. Co.*, 22 *N. Y.* 209; *Corwin v. N. Y. & Erie R. Co.*, 13 *Id.* 42; *Shepard v. N. Y. & Erie R. Co.*, 35 *Id.* 641, in *Cressey v. Northern R. R. Co.*, 59 *N. H.* 564; s. c., 47 *Am. R.* 227. Limited in *Kesee v. Chicago & N. W. R. R. Co.*, 30 *Iowa*, 76; s. c., 6 *Am. R.* 642, 647. Explained (Damages for injury to building) in *Agate v. Lowenbein*, 6 *Daly*, 291, 294. Cited, with other cases, as opposed to the doctrine held in *Chicago & Northwestern R. R. Co.*, 54 *Ill.* 504; s. c., 5 *Am. R.* 155 (Contributory negligence in a landowner adjoining a railroad) in 5 *Am. R.* 157, n. Relied on with *Field v. N. Y. Central R. R. Co.*, 32 *N. Y.* 339; *Fero v. Buffalo & State Line R. R. Co.*, 22 *Id.* 209; in *Kellogg v. Chicago & N. W. R. R. Co.*, 26 *Wis.* 223; s. c., 7 *Am. R.* 69, 72, 76. Followed with *Fero v. Buffalo & State Line R. R. Co.*, 22 *N. Y.* 215, in *Rowell v. Railroad*, 57 *N. H.* 132; s. c., 24 *Am. R.* 59, 62. Cited in *Delaware, Lackawanna, &c. R. R. Co. v. Salmon*, 10 *Vroom (N. J.)* 299; s. c., 23 *Am. R.* 214, 224. Cited with approval (Judgment against non-resident—when good by reason of waiver) in *Dearing v. B'k of Charleston*, 5 *Ga.* 497; s. c., 43 *Am. Dec.* 300, 317, with note.
- *v. Clark*, 3 *Hun.* 247; s. c., as *Cook v. Rogers*, 5 *Sup'm. Ct. (T. & C.)* 493. Aff'd in 68 *N. Y.* 178.
- *v. Commercial Ins. Co.*, 11 *Johns.* 40; s. c., 6 *Am. Dec.* 353; 5 *N. Y. Com. L. Law. ed.* 53, with brief note. Decision in 11 *Johns.* criticised (*Barratry* in respect to cargo, as well as to vessel) in *Natchez Ins. Co. v. Stantoni*, 2 *Smedes & M. (Miss.)* 340; s. c., 41 *Am. Dec.* 592, 600, with note.
- *v. Cook*, 1 *Barb. Ch.* 639, 644. Applied (Proceedings collateral to action for divorce) in *Kamp v. Kamp*, 37 *Super. Ct. (J. & S.)* 241, 245.
- *v. Ellis*, 6 *Hill*, 466. See *Tillotson v. Cheetham*. Followed (Defendant's liability in civil action not barred by criminal proceedings against him) in *Hoadley v. Watson*, 45 *Vt.* 289; s. c., 12 *Am. R.* 197. Disapproved (Exemplary damages in case of offense punishable by criminal law) in *Fay v. Parker*, 53 *N. H.* 342; s. c., 16 *Am. R.* 270, 315. Cited with *Fry v. Bennett*, 4 *Duer*, 247, in *Taylor v. Grand Trunk R'y Co.*, 48 *N. H.* 304; s. c., 2 *Am. R.* 229, 240. Approved in *Klopfer v. Bromme*, 26 *Wis.* 372. Included in *Sedgw. Cas. on Duma.* 741. Discussed in 2 *Greenl. on Ev.* 14 ed. § 253, n. 2.
- *v. Esleeck*, 8 *Abb. Pr.* 170. Aff'd as *Cook v. Kelsey*, in 19 *N. Y.* 412.
- *v. Farmer*, 11 *Abb. Pr.* 40. Aff'd in 12 *Id.* 359; s. c., 34 *Barb.* 95; 21 *How. Pr.* 286.
- *v. Ferral*, 13 *Wend.* 285. Approved with *Dox v. Dey*, 3 *Id.* 356; *Porter v. Rose*, 12 *Johns.* 209 (Plaintiff's duty to show performance or readiness) in *Hough v. Rawson*, 17 *Ill.* 591.
- *v. Finch*. See *Bleecker v. Smith*.
- *v. Freudenthal*, 80 *N. Y.* 202. Aff'g *Cook v. Horwitz*, 14 *Hun.* 542. Decision in 80 *N. Y.* confirmed (Invalidity of undertaking) in *Toles v. Adee*, 84 *N. Y.* 222.
- *v. Gregg*, 46 *N. Y.* 439. See *Rockwell v. Nearing*. Decision in *Sup'm Ct.* here aff'd, but not reported, followed (Constitutionality of statute authorizing seizure of trespassing animals) in *Squares v. Campbell*, 41 *How. Pr.* 193, where *Fox v. Dunkel*, 38 *Id.* 136; *Campbell v. Evans*, 54 *Barb.* 566; *McConnell v. Van Aerman*, 56 *Id.* 534; *Leavitt v. Thompson*, *Id.* 542, were also compared.
- *v. Harris*, 61 *N. Y.* 448. Cited with *Gibney v. Marchay*, 34 *Id.* 303 (Admissions made by owner of estate in respect to such estate) in 2 *Whart. Com. on Ev.* § 1157.
- *v. Hill*, 3 *Sandf.* 349. Applied (Doctrine of absolutely privileged communications not to be extended) in *Maurice v. Warden*, 54 *Md.* 233; s. c., 39 *Am. R.* 384.
- *v. Horwitz*, 10 *Hun.* 586. Further proceeding in 14 *Id.* 542, which was aff'd as *Cook v. Freudenthal*, 80 *N. Y.* 202.
- *v. Kelley*, 12 *Abb. Pr.* 35. Aff'd in 14 *Id.* 466.
- *v. Kelsey*, 19 *N. Y.* 412. Aff'g *Cook v. Esleeck*, 8 *Abb. Pr.* 170.
- *v. Kroemeke*, 4 *Daly*, 268. Opposed with *Hart v. Hoffman*, 44 *How. Pr.* 168



- (Burden of proof on broker who claims commissions) in *Iselin v. Griffith*, 62 *Iowa*, 668.
- **v. Litchfield**, 5 *Sandf.* 330. Rev'd in 9 *N. Y.* 279. Subsequent decision in 2 *Bosw.* 137. Decision in 9 *N. Y.* disting'd (Protest as including demand by implication) in *Brennan v. Lowry*, 4 *Daly*, 254. Disting'd (Sufficiency of notice to indorser) in *Artisan's Bk. v. Backus*, 31 *Id.* 100, which aff'd 31 *How. Pr.* 242, which see. Disting'd and limited in *Bank of Coopers-town v. Woods*, 28 *N. Y.* 553, 565. Applied in *Arnold v. Kinloch*, 50 *Barb.* 48; *Youngs v. Lee*, 12 *N. Y.* 554. Collated with *Artisans' Bank v. Backus*, 36 *Id.* 100; *Pahquoque Bank v. Martin*, 11 *Abb. Pr.* 291; *Dole v. Gold*, 5 *Barb.* 490, in 26 *Am. R.* 505, *n.* Explained and applied (Contract of indorsement, as governed by law of place) in *Weil v. Lange*, 6 *Daly*, 550. Explained (Law of place of note) in *Dickinson v. Edwards*, 77 *N. Y.* 586, as not inconsistent with *Jewell v. Wright*, 30 *Id.* 259. Approved (Commencement of indorser's liability) and applied to acceptor, in *Tilden v. Blair*, 21 *Wall.* 247. Decision in 5 *Sandf.* applied (Law of place of note) in *Overton v. Bolton*, 9 *Heisk. (Tenn.)* 762; *s. c.*, 24 *Am. R.* 367, 374.
- **v. McClure**, 2 *Sup'm. Ct. (T. & C.)* 434. Rev'd in 58 *N. Y.* 437.
- **v. McDoel**, 3 *Den.* 317. Aff'd in 2 *N. Y.* 110.
- **v. Moseley**, 13 *Wend.* 277; *s. c.*, 12 *N. Y. Com. L. Law. ed.* 373, with brief note on requisites of warranty. Explained in 1 *Pars. on Contr.* 580, *n. n.*
- **v. Newman**, 8 *How. Pr.* 523. Quoted (Assignment—personal torts as distinguished from rights adhering to property) in 1 *Pars. on Contr.* 226, *n. k.*
- **v. Passage**, 4 *How. Pr.* 360. Followed (New trial in ejectment under the Code) in *Post v. Moran*, 61 *Id.* 122.
- **v. President of N. Y. Floating Dry Dock Co.**, 1 *Hilt.* 436. Followed (Liability of dock company for injury from defective construction) in *Mulcahy v. N. Y. Floating Dry Dock Co.*, 8 *Daly*, 93.
- **v. Rogers**, 5 *Sup'm. Ct. (T. & C.)* 493; *s. c.*, as *Cook v. Clark*, 3 *Hun.* 247. Aff'd in 68 *N. Y.* 173.
- **v. Satterlee**, 6 *Cow.* 108; *s. c.*, 16 *Am. Dec.* 432. Approved (Instrument, when bill of exchange) in *Munger v. Shannon*, 61 *N. Y.* 251, 257. Disting'd with *Atkinson v. Manks*, 1 *Cow.* 691; *Munger v. Shannon*, 61 *N. Y.* 251, in *Corbitt v. Clark*, 45 *Wis.* 403; *s. c.*, 30 *Am. R.* 763. Included with notes, in *Kedf. & B. Lead. Cas. on B. of Exch.* 8. Also included in *Bigel. on B. & N.* 2 ed. 9. Discussed in *Id.* 15.
- **v. Soule**, 45 *How. Pr.* 340; *s. c.*, less fully, 1 *Sup'm. Ct. (T. & C.)* 116. Aff'd in 56 *N. Y.* 420. See with decision in 56 *N. Y.* (Damages for lessor's right to repair) *Arnold v. Clark*, 45 *Super. Ct. (J. & S.)* 252, 256.
- **v. Starkweather**, 13 *Abb. Pr. N. S.* 392, 400. Followed (Relief against imitation of trade-mark) in *Brown v. Mercer*, 37 *Super. Ct. (J. & S.)* 265, 268. Followed (Packages, &c. as trade-marks) in *Godillot v. Hazard*, 44 *Id.* 427, 433.
- **v. Travis**, 22 *Barb.* 333. Aff'd in 20 *N. Y.* 400. See *Thomas v. Crofut*. Decision in 20 *N. Y.* followed (Effect of conveyance by sheriff as against purchasers without notice) in *Reynolds v. Darling*, 42 *Barb.* 418. Followed (Possession as notice) in *Staples v. Fenton*, 5 *Hun.* 172. Disting'd (Duty of purchaser to search for incumbrances as against title not appearing by records) in *Crane v. Turner*, 7 *Id.* 359. Cited with other cases as holding a uniform doctrine (Conveyance entitled to be recorded, as constructive notice to subsequent purchasers) in *Edwards v. McKenna*, 22 *Northw. Rep.* 20, 23.
- **v. Wardens, &c. of St. Paul's Church**, 5 *Hun.* 293. Aff'd in 67 *N. Y.* 594. Decision in 5 *Hun.* quoted (Ejectment—reversioners) in *Sedgw. & W. on Tr. of Tit. to Land*, § 212.
- **v. Whipple**, 55 *N. Y.* 150; *s. c.*, 14 *Am. R.* 202. Applied (Jurisdiction of State court in bankruptcy matters) in *Brewers' & M. Ins. Co. v. Davenport*, 10 *Hun.* 264, 269; *Olcott v. McLean*, 50 *How. Pr.* 455. Followed in *Rutherford v. Hewey*, 59 *Id.* 235; *Tyler v. McCollum*, 19 *Hun.* 623. Referred to as superseded by amendment of June 22, 1874, in *Olcott v. McLean*, 10 *Hun.* 280, but see to the contrary *Wente v. Young*, 12 *Id.* 221; *Kidder v. Horrobin*, 72 *N. Y.* 165. Approved in *Sherwood v. Burns*, 58 *Ind.* 502, 507; *Isett v. Stuart*, 30 *Ill.* 402; *s. c.*, 22 *Am. R.* 194.
- Cook v. Meeker**, 36 *N. Y.* 15. Followed (Interest on legacy) in *Matter of Lynch*, 52 *How. Pr.* 367; *Pierce v. Chamberlin*, 41 *Id.* 501. Explained in *Devlin's Estate*, 1 *Tuck.* 460, as, though thought to have overruled *Bradner v. Faulkner*, 12 *N. Y.* 472, yet not to, have dealt with a legacy of a sum of money. Explained and disting'd in *Nahmens v. Copely*, 2 *Dem.* 253.
- **v. Millard**, 5 *Lans.* 243. Aff'd in 65 *N. Y.* 332; *s. c.*, 22 *Am. R.* 619. Decision in 65 *N. Y.* quoted and explained (Statute of frauds—goods over fifty dollars—sale distinguished from contract for work and labor) in 1 *Benj. on Sales*, § 109, *n.* 8 (Corbin's 4 *Am. ed.*). Explained in *Id.* § 109, *n. y.* (Bennett's 4 *Am. ed.*). Quoted (Acceptance preceding receipt) in 1 *Id.* § 157, *n.* 9 (Corbin's 4 *Am. ed.*).
- **v. Smith**, 3 *Sandf. Ch.* 333. Discussed (Assignment for benefit of creditors—other transfers in connection therewith) in *Burrill on Assign.* § 357, 4 ed.
- **v. State Nat. Bank of Boston**, 3 *Abb. Pr. N. S.* 339; *s. c.*, 50 *Barb.* 339. Further decision in 1 *Lans.* 494, qualified on appeal in 52 *N. Y.* 96; *s. c.*, 11 *Am. R.* 667. See *First Nat. B'k of Whitehall v. Lamb*;

- Marine Nat. Bank v. Nat. City B'k*; *Teall v. Felton*. Decision in 52 *N. Y.* explained (Jurisdiction of State courts in actions against national banks) in *Central Nat. Bk. v. Richland Nat. B'k of Mansfield*, 52 *How. Pr.* 137. Reaff'd and applied in *Robinson v. Nat. Bk. of Newberne*, 81 *N. Y.* 390. Applied in *Southwick v. First Nat. Bk. of Memphis*, 7 *Hun*, 97; 20 *Id.* 349, 355. Followed in *Cadle v. Tracy*, 11 *Blatchf. Ct.* 101, 108. Reluctantly followed (Application by corporation for removal of cause) in *Mix v. Audes Ins. Co.*, 9 *Hun*, 399, which was rev'd in 74 *N. Y.* 53, 56, which see. Criticised and questioned in *Quigley v. Central Pacific R. R. Co.*, 11 *Nev.* 350; s. c., 21 *Am. R.* 757. Explained (Liability of bank certifying check) in *Marine Nat. Bk. v. Nat. City Bk.*, 59 *N. Y.* 72. Followed with *First Nat. B'k of Jersey City v. Leach*, 52 *Id.* 350, in *French v. Irwin*, 4 *Bast. (Tenn.)* 401; s. c., 27 *Am. R.* 769. See criticism of syllabus (Submitting particular facts to jury) in 9 *Alb. L. J.* 255. Decisions in 1 *Lans.* and 50 *N. Y.* explained (Review of order of removal to U. S. court) in *Chamberlain v. Amer. Nat. Life, & Co.*, 11 *Hun*, 373. Compare (National bank a foreign corporation) *Code Civ. Pro.* § 3343, subd. 18.
- Cookingham v. Lasher**, 38 *Barb.* 656. Aff'd in 2 *Keyes*, 454; s. c., 1 *Abb. Ct. App. Dec.* 436.
- Cooley v. Betts**, 24 *Wend.* 203. Referred to in *Whart. Com. on Ag.* § 787, n., as controverting with much justice (Demand in case of suits against foreign factors) *Clark v. Moody*, 17 *Mass.* 145; *Dodge v. Perkins*, 9 *Pick.* 368, the case of *Terwilliger v. Beals*, 6 *Lans.* 403, being also cited (Duty of selling factor to make statement of dealings).
- **v. Howe Machine Co.**, 53 *N. Y.* 620. Disting'd (Assumption of debt) in *Roe v. Barker*, 82 *Id.* 431, 435.
- **v. Lawrence**, 5 *Duer*, 605. Followed (Submission of defendant to jurisdiction of court) in *Krause v. Averill*, 4 *Civ. Pro. R. (Broune)* 410. Considered in dissenting opinion of **BRADY, J.** in *Chatham Nat. Bank v. Merchants' Nat. Bank of West Virginia*, 4 *Sup'm. Ct. (T. & C.)* 202.
- Coon v. Knap**, 8 *N. Y.* 402. Another decision, as it seems, in 13 *How. Pr.* 175. Decision in 8 *N. Y.* commented on and disting'd (Effect of payment by debtor of sum less than indebtedness. Parol evidence to explain receipt) in *Hammond v. Christie*, 5 *Robt.* 160. Examined with other cases (Parol evidence to explain receipt) in *Howard v. Norton*, 65 *Barb.* 161, 167. With decision in 13 *How. Pr.* see (Extension of time) *Code Civ. Pro.* 1881, § 784, n.
- **v. Syracuse & Utica R. R. Co.**, 6 *Barb.* 231. Aff'd in 5 *N. Y.* 492. Decision in 5 *N. Y.* disting'd (Liability of employer for injury caused by negligence of co-servant) in *Russell v. Hudson River R. R. Co.*, 5 *Duer*, 41, which was rev'd in 17 *N. Y.* 134, which see. Cited as authority (Discharge of principal from liability for negligence of servants) in dissenting opinion of **ALLEN, J.** in *Smith v. N. Y. Central R. R. Co.*, 24 *N. Y.* 240. Followed in *Ross v. N. Y. Central, & R. R. Co.*, 5 *Hun*, 499; *Sherman v. Rochester & Syracuse R. R. Co.*, 17 *N. Y.* 155; *Warner v. Erie R'y Co.*, 39 *Id.* 471. Approved in *Whaalan v. Mad River R. R.*, 8 *Ohio (N. S.)* 249. Commented upon in *Ang. on Carr.* § 578, 5 ed.
- Coope v. Bowles**, 42 *Barb.* 87; s. c., 18 *Abb. Pr.* 442; 28 *How. Pr.* 10. See *Deming v. Colt*. Compare (Necessity of alleging judgment) *Southard v. Pinckney*, 5 *Abb. N. C.* 184. Commented upon (Power of partners to make assignment for benefit of creditors) in *Burrill on Assign.* § 85, 4 ed.
- Cooper. Matter of**, 22 *N. Y.* 67; s. c., 11 *Abb. Pr.* 301; 20 *How. Pr.* 1. Rev'g 10 *Abb. Pr.* 348; 19 *How. Pr.* 97, 136; 31 *Barb.* 353. See case and points, in *Ct. of App. Cas.*, June, 1860, Law Inst. Libr., N. Y. city.
- Cooper v. Barber**, 24 *Wend.* 105. See *Introduction to Wendell's Starkie on Slander and Libel*. Cited in 2 *Kent Com.* 26, n. a, as incorrectly decided (Evidence in mitigation of damages in action for libel).
- **v. Burr**, 45 *Barb.* 9. See *Millsbaugh v. Putnam*. Applied (Evidence to sustain gift *inter vivos*) in *Trow v. Shannon*, 8 *Daly*, 239, 242.
- **v. Dedrick**. See *Jackson v. Potter*; *McLaren v. Watson*; *Smith v. N. Y. Central R. R. Co.*; *Watson v. McLaren*.
- **v. Eastern Transportation Co.**, 75 *N. Y.* 116. See *Colgrove v. N. Y. Central, & R. R. Co.*
- **v. Felter**, 6 *Lans.* 485. Questioned (Disputed claims against estates) in *Underhill v. Newburger*, 4 *Redf.* 499, 503.
- **v. Greeley**, 1 *Den.* 347. Collated with other cases (Slander and libel—distinction between) in *Bigel. Cas. on Torts*, 108; 1 *Hare & W. Am. Lead. Cas.* 5 ed. 127.
- **v. Kane**, 19 *Wend.* 386; s. c., *Lawson's Usages & Customs*, 339. See *Place v. Union Express Co.* Compare (Ownership of materials) *Morgan v. Stevens*, 6 *Abb. N. C.* 356, n. Included (Contracts—evidence of usage to explain) in *Lawson's Lead. Com. Law Cas. Simplified*, 80.
- **v. Newland**, 17 *Abb. Pr.* 342. Followed (Effect of assignment of mortgage without bond) in *Merritt v. Bartholick*, 47 *Barb.* 253.
- **v. Shaver**, 41 *Barb.* 151. Questioned (Notice of assessment upon premium notes) in *Sands v. Graves*, 58 *N. Y.* 94, 99. Overruled in effect in *Sands v. Sanders*, 26 *Id.* 239.
- **v. Smith**. See *Hudson v. Smith*.
- **v. Stone**, 24 *Wend.* 434. Quoted and collated with other cases (Libel—requisites of) in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 127.
- **v. Whitney**, 3 *Hill*, 95. Explained and limited (Merger) in *De Lisle v. Herbs*, 25

- Hun*, 485, 488. Referred to with *Lawrence v. Farmers' Loan & Trust Co.*, 13 *N. Y.* 200; *Terrett v. Crombie*, 6 *Lans.* 82 (Dower as affected by equitable mortgage) in *Tyler on Inf. & Con.* 2 ed. § 395.
- Cope v. Alden**, 53 *Barb.* 350; s. c., 37 *How.* Pr. 181. Aff'd as *Cope v. Wheeler*, 41 *N. Y.* 303. Earlier decision as *McCraney v. Alden*, in 46 *Barb.* 272.
- **v. Wheeler**, 41 *N. Y.* 303. Previous decision as *McCraney v. Alden*, in 46 *Barb.* 272. See *Cope v. Alden*. Decision in 41 *N. Y.* disting'd (Usurious mortgage as valid lien) in *Knickerbocker Life Ins. Co. v. Nelson*, 78 *N. Y.* 137, 153, which aff'd 13 *Hun*, 324, which see.
- Copperman v. People**, 1 *Hun*, 15; s. c., 3 *Sup'm. Ct. (T. & C.)* 199. Aff'd in 56 *N. Y.* 591. See *Coleman v. People*. Decision in 56 *N. Y.* applied (Evidence of similar transactions to show guilty intent) in *Weyman v. People*, 4 *Hun*, 519. Followed in *People ex rel. Willis v. Justices of Special Sessions*, 10 *Id.* 158. Approved in *Coleman v. People*, 58 *N. Y.* 559.
- Coppers' Case**, 7 *Abb. N. C.* 121; s. c., as *People ex rel. Coppers v. Trustees of St. Patrick's Cathedral*, and also as *Coppers v. Trustees of St. Patrick's Cathedral*, 58 *How. Pr.* 55. The first of these two proceedings rev'd in 21 *Hun*, 184; and the latter rev'd in *Id.* 233, but without opinion. See also (*Cemetery lots*) *Thompson v. Hickey*, 8 *Abb. N. C.* 159. Compare *Partridge v. First Church*, 39 *Md.* 631.
- Corbett v. De Comeau**, 4 *Abb. N. C.* 252; s. c., 54 *How. Pr.* 506. Rev'd in 5 *Abb. N. C.* 169; s. c., 44 *Super. Ct. (J. & S.)* 306. Further proceedings in 45 *Super. Ct. (J. & S.)* 587; *Id.* 588; *Id.* 637. See *Phoenix v. Dupuy*. Decision in 54 *How. Pr.* criticised (Order for examination of party before trial in action for libel) in *Kinney v. Roberts*, 26 *Hun*, 166.
- **v. Eno**, 13 *Abb. Pr.* 65. Examined with other cases (Denial of motion to strike out answer as sham) in *McCarty v. O'Donnell*, 7 *Robt.* 634.
- **v. Gibson**, 16 *Hun*, 241. Further proceeding in 18 *Id.* 49.
- **v. Ward**, 3 *Bosw.* 632. Overruled (Costs to one or more successful defendants) in *Allis v. Wheeler*, 56 *N. Y.* 50.
- Corbin, Corporation of, v. Gordon**, 25 *Hun*, 59. Abridgt. s. c., 12 *Weekly Dig.* 570.
- **v. Jackson**, 14 *Wend.* 619; s. c., 28 *Am. Dec.* 550. See *Jackson v. Harder*.
- Corcoran v. Holbrook**, 59 *N. Y.* 517. See *Crispin v. Babbitt*; *Laning v. N. Y. Central R. R. Co.*; *Malone v. Hathaway*. Applied (Liability for negligence of superior servant) in *Fort v. Whipple*, 11 *Hun*, 592. Followed in *Ryan v. Bagaley*, 50 *Mich.* 179; s. c., 45 *Am. R.* 35. Cited with *Laning v. N. Y. Central R. R. Co.*, 49 *N. Y.* 521, in *Willis v. Oregon R'y & Nav. Co.*, 11 *Oreg.* 263.
- **v. Judson**, 24 *N. Y.* 106. See *Andrews v. Glenville Woolen Co.* Commented on (Reference -- assessing damages -- counsel fees) in *Hoffm. on Referees*, 135.
- Cordell v. N. Y. Central, & C. R. R. Co.**, 6 *Hun*, 461. Rev'd in 64 *N. Y.* 535. Subsequent decisions in 70 *Id.* 119; s. c., 26 *Am. R.* 550; also in 75 *N. Y.* 330; and in 77 *Id.* 636, latter being without opinion. See *Johnson v. Hudson River R. R. Co.*; *Reynolds v. N. Y. Central, & C. R. R. Co.* Decision in 64 *N. Y.* followed (Duty of railroad company to give signals at crossing) in *Byrne v. N. Y. Central, & C. R. R. Co.*, 94 *Id.* 12. Decision in 70 *N. Y.* cited in *Thomas v. Delaware, & C. R. R. Co.*, *U. S. Cir. Ct., N. D. N. Y.*, 12 *Reporter*, 739; s. c., 8 *Fed. Rep.* 729. Decision in 75 *N. Y.* explained and followed (Contributory negligence) in *Glendening v. Sharp*, 22 *Hun*, 78. Followed in *Kenney v. N. Y. & Manhattan Beach R. R. Co.*, 13 *Weekly Dig.* 61. Explained in *Urguhart v. City of Ogdensburg*, 23 *Hun*, 75. Decision in 70 *N. Y.* quoted (Nuisance—injuries caused by) in *Moak's Underhill's Torts*, 1 *Am. ed.* 263.
- Corey v. Buffalo, & C. R. R. Co.**, 23 *Barb.* 482. See *Radcliff v. Mayor, & C. of Brooklyn*. Overruled (Effect of dedication) in *Williams v. N. Y. Central R. R. Co.*, 16 *N. Y.* 97.
- **v. Long**, 35 *Super. Ct. (J. & S.)* 569. Aff'd in 53 *N. Y.* 641.
- Corlies v. Cumming**, 6 *Cow.* 181. Disting'd (Sale by factor for another than his principal) in *Roosevelt v. Doherty*, 129 *Mass.* 301; s. c., 37 *Am. R.* 356. Cited in *Whart. Com. on Ag.* § 764.
- **v. Gardner**, 2 *Hall*, 345. See *Wilson v. Force*. Disting'd and critically considered (Effect of refusal of purchaser to give security agreed upon) in *Bradford v. Marbury*, 12 *Ala.* 520; s. c., 46 *Am. Dec.* 264, 266, with note.
- Cormier v. Batty**, 41 *Super. Ct. (J. & S.)* 70. Further decision in 42 *Id.* 423.
- Corn Exchange Ins. Co. v. Babcock**, 8 *Abb. Pr. N. S.* 246. Rev'd in 9 *Id.* 156; s. c., less fully, 42 *N. Y.* 613; 1 *Am. R.* 601. See *Barnett v. Lichtenstein*; *Frecking v. Rolland*; *Jaques v. Methodist Episc. Church*; *Perkins v. Perkins*; *Yale v. Dederer*. Decision in 42 *N. Y.* followed (Charge on separate estate of married woman) in *Merchants' Bk. v. Scott*, 59 *Barb.* 643; *Todd v. Ames*, 60 *Id.* 462; *Kidd v. Conway*, 65 *Id.* 160; *Conlin v. Cantrell*, 51 *How. Pr.* 313; *Hier v. Staples*, 51 *N. Y.* 139. Followed as established law, in *Maxon v. Scott*, 55 *Id.* 251; *Woolsey v. Brown*, 74 *Id.* 84, which aff'd 11 *Hun*, 53, which see. Disting'd in *Bogert v. Gulick*, 45 *How. Pr.* 300. Applied in *Williamson v. Dodge*, 5 *Hun*, 497; *Eustaphie v. Ketchum*, 6 *Id.* 623. Disapproved in *Deering v. Boyle*, 8 *Kan.* 525; s. c., 12 *Am. R.* 482. Explained in *Schouler on Dom. Rel.* 3 ed. § 145, n. 1. Disting'd (Necessity of averment of existence of separate estate) in *Schlesinger v. Hexter*, 34 *Super. Ct. (J. & S.)* 504.

- Cornelius v. Van Slyck**, 21 *Wend.* 70. Cited as authority (Words "you will steal," whether actionable) in *Townsend on Slander and Libel*, 2 ed. 192. Disting'd in *Bays v. Hunt*, 60 *Iowa*, 254.
- Cornell v. Barnes**. See *Earl v. Camp*; *Warner v. Shed*.
- **v. Cook**, 7 *Cow.* 310. Opposed (Officer's return on execution as presumptive evidence in his favor) in *Merrill v. Sawyer*, 8 *Pick. (Mass.)* 397.
- **v. Dakin**, 38 *N. Y.* 253. See *People ex rel. Knapp v. Reeder*. Disting'd (Receiver of property from sheriff, when estopped) in *Clark v. Weaver*, 17 *Hun.* 481, 486.
- **v. Masten**, 35 *Barb.* 137. See (Composition—joint debtors) *Code Civ. Pro.* 1881, § 1942, *n.*
- **v. Moulton**, 3 *Den.* 12. Cited with *Commercial Bank v. Ives*, 2 *Hill.* 355; *Judd v. Fulton*, 10 *Barb.* 118, as according with the weight of authority (Computation of time from act done) in *Warren v. Slade*, 23 *Mich.* 1; *s. c.*, 9 *Am. R.* 70, 74. Followed and cited with *Osborn v. Moncure*, 3 *Wend.* 170; *Salt Springs Nat. B'k v. Burton*, 58 *N. Y.* 480; in *Blackman v. Nutting*, 43 *Conn.* 56; *s. c.*, 21 *Am. R.* 634.
- **v. Potter**, 15 *How. Pr.* 278. Opposed (Party not entitled to witness fees) in *Bronner v. Frauenthal*, 12 *Abb. Pr.* 183. Compare *Dunham v. Sherman*, 11 *Id.* 152; and see *Steere v. Miller*, 30 *How. Pr.* 7.
- **v. Prescott**, 2 *Barb.* 16. Explained (Assumption of mortgage) in *Stebbins v. Hall*, 29 *Id.* 530; *Garnsey v. Rogers*, 47 *N. Y.* 236.
- Cornes v. Wilkin**, 14 *Hun.* 428. Aff'd in 79 *N. Y.* 129. Decision in 14 *Hun.* followed (Contribution against estate of deceased surety) in *Johnston v. Harvey*, 22 *Id.* 460.
- Corning v. Corning**, 6 *N. Y.* 97. Aff'g 1 *Code R. N. S.* 351. See *Conklin v. Thompson*. Decision in 6 *N. Y.* relied on (Evidence of dissolute conduct to mitigate damages) in dissenting opinion of *Jonsson, J.*, in *Crossman v. Bradley*, 53 *Barb.* 137. Applied (Amendment of complaint after verdict by increasing damages) to amendment after confirmation of referee's report,—in *Bowman v. Earle*, 3 *Duer.* 695. Applied to action tried before judge, in *Decker v. Parsons*, 11 *Hun.* 295. Disting'd in *Barth v. Walther*, 4 *Duer.* 228; *Poillon v. Volkenning*, 11 *Hun.* 388. Cited as authority in *Coulter v. Am. Merchants' & Co. Express Co.*, 5 *Lans.* 67. Disting'd as not applicable to amendments before verdict,—in *Knapp v. Roche*, 37 *Super. Ct. (J. & S.)* 406. Followed in *Elting v. Campbell*, 5 *Blatchf. C. Ct.* 183. Disting'd (Rejecting evidence offered on immaterial issue) in *White v. Spencer*, 14 *N. Y.* 251.
- **v. Gould**, 16 *Wend.* 531. Applied (Evidence of intent to abandon easement) in *Crain v. Fox*, 16 *Barb.* 187. Disting'd in *Pope v. O'Hara*, 48 *N. Y.* 455; *White's Bk. of Buffalo v. Nichols*, 64 *Id.* 74. Cited in 3 *Kent Com.* 448, *n. o.*, as containing a full and learned view of the law. Commented upon in 3 *Washb. on Real Prop.* 4 ed. 61.
- **v. Greene**, 23 *Barb.* 33. Said in 26 *N. Y.* 472, *n.*, to have been aff'd in *Ct. of App.* Decision in 23 *Barb.* followed (Statute to be void unless corporation consent, not a delegation of legislative power) in *Currier v. West Side Elev. Pat. R'y. Co. of N. Y.*, 6 *Blatchf. C. Ct.* 487, 494. See (Actions by or against associations) *Code Civ. Pro.* 1881, § 1919, *n.*
- **v. Lewis**, 54 *Barb.* 51; *s. c.*, with referee's opinion, 36 *How. Pr.* 425.
- **v. Lowerre**, 6 *Johns. Ch.* 439. Approved with *Hills v. Miller*, 3 *Paige*, 254; *Trustees of Watertown v. Cowen*, 4 *Id.* 510 (Injunction) in *Green v. Oakes*, 17 *Ill.* 251. Relied on (Injunction of nuisance) in *Hamilton v. Whitridge*, 11 *Md.* 128; *s. c.*, 48 *Am. R.* 274, *n.* Approved and applied in *City of Georgetown v. Alexandria Canal Co.*, 12 *Pet.* 99.
- **v. McCullough**, 1 *N. Y.* 47; *s. c.*, 49 *Am. Dec.* 287, with note. Subsequent decision in 4 *How. Pr.* 183. See *Harger v. McCullough*. Decision in 1 *N. Y.* explained (Nature of stockholder's liability) in *Walker v. Crain*, 17 *Barb.* 129; *Abbott v. Aspinwall*, 26 *Id.* 207. Approved and followed in *Conant v. Van Schaick*, 24 *Id.* 96; *Bird v. Hayden*, 1 *Robt.* 388. Re-aff'd in *Moss v. Averell*, 10 *N. Y.* 459; *Story v. Furman*, 25 *Id.* 222. Applied in *Strong v. Wheaton*, 38 *Barb.* 625; *Pfohl v. Simpson*, 50 *How. Pr.* 343; *Clark v. Myers*, 11 *Hun.* 609. Approved in *Hawthorne v. Calef*, 2 *Wall.* 10. Disting'd in *Merchants' B'k v. Bliss*, 35 *N. Y.* 414, which aff'd 1 *Robt.* 401, where *Corning v. McCullough* is said to have overruled *Freeland v. McCullough*, 1 *Den.* 414; *Van Hook v. Whitlock*, 3 *Paige*, 409. Disting'd in *Jessup v. Carnegie*, 80 *N. Y.* 457; *Halsey v. McLean*, 12 *Allen (Mass.)* 441. Disting'd with *Allen v. Sewall*, 2 *Wend.* 338; *Moss v. Oakley*, 2 *Hill.* 265; *Bailey v. Bancker*, 3 *Id.* 188; *Harger v. McCullough*, 2 *Den.* 119; *Ex parte Van Riper*, 20 *Wend.* 614, and cited with *Garrison v. Howe*, 17 *N. Y.* 458; *Andrews v. Murray*, 33 *Barb.* 354; *Shaler & Hall Quarry Co. v. Bliss*, 34 *Id.* 309; *Boughton v. Otis*, 21 *N. Y.* 261; *Squire v. Brown*, 22 *How. Pr.* 45, in *First Nat. B'k of Plymouth v. Price*, 33 *Md.* 487; *s. c.*, 3 *Am. R.* 204. Compared with other cases, in *Conklin v. Furman*, 57 *Barb.* 487; *Belmont v. Coleman*, 1 *Boss.* 200. Compare *Chase v. Lord*, 6 *Abb. N. C.* 258, and note. Cited as authority in *Cuykendall v. Miles*, *U. S. Cir. Ct. D. Mass.* 10 *Fed. Rep.* 342; *s. c.*, 14 *Reporter*, 69. Disapproved in *Lowry v. Inman*, 2 *Sweeney*, 117, 148. Explained in *Morawetz on Corp.* § 609. Explained and approved in *Wile on Retroactive Laws*, § 142. Explained (Statute of limitations—what actions may be barred) in *Ang. on Limit.* § 70, *n.* 1, 6 ed. Discussed (Specialties) in *Id.* § 80, *n.* 1. Applied (Application of

- maxim "*noscitur a sociis*") in McGaffin v. City of Cohoes, 74 *N. Y.* 389.
- *v. Murray*, 3 *Barb.* 652. Criticised (Assignment of chose in action—subject to what equities) in Greene v. Warwick, 64 *N. Y.* 220, 224.
- *v. Slosson*, 16 *N. Y.* 294. Approved (Consultation necessary to decision by court) in Parrott v. Knickerbocker Ice Co., 8 *Abb. Pr. N. S.* 234, 244. Explained in Shaw v. People, 5 *Sup'm. Ct. (T. & C.)* 439, 448.
- *v. Smith*, 6 *N. Y.* 82. Explained (Prior mortgagee as party to foreclosure suit) in Walsh v. Rutgers Fire Ins. Co., 13 *Abb. Pr.* 33, 39. Applied in Banning v. Bradford, 21 *Minn.* 308; s. c., 18 *Am. R.* 398, to case of one holding adversely to mortgagor.
- *v. Southland*, 3 *Hill*, 552. Explained and disting'd (Discharge of sheriff's liability for failure to return execution) in McKinley v. Tucker, 59 *Barb.* 98, which was overruled in 6 *Lans.* 216, which see. Applied (Sheriff's liability for acts of deputy) in Sheldon v. Payne, 7 *N. Y.* 458; 10 *Id.* 401.
- *v. Stebbins*, 1 *Barb. Ch.* 589. Cited as authority (Time within which to fill creditor's bill) in Walker v. Donovan, 6 *Daly*, 552.
- *v. Troy Iron & Nail Factory*, 6 *How. Pr.* 89; s. c., 10 *N. Y. Leg. Obs.* 7. Injunction suit reported in 34 *Barb.* 485; s. c., 22 *How. Pr.* 217. Case under same name in 34 *Barb.* 529; s. c., 22 *How. Pr.* 212; is ejectment suit between same parties. Subsequent decision in injunction suit,—in 39 *Barb.* 311, which was aff'd in 40 *N. Y.* 191. See Garwood v. N. Y. Central, &c. R. R. Co. Decision in 40 *N. Y.* applied (Injunction to restore rights in running water) in Pollitt v. Long, 58 *Barb.* 34; Foot v. Bronson, 4 *Lans.* 52. Explained in Clinton v. Myers, 46 *N. Y.* 511, 521. Quoted and explained in 1 *High on Inj.* 2 ed. § 804, n. 1. Cited as authority (Grant of real estate, title to which is in dispute) in Allen v. Welch, 18 *Hun*, 227. Applied (Use of word "reservation" in deed) in Saunders v. Hanes, 44 *N. Y.* 361. Applied (Right to relief as affected by form of action) in Wright v. Wright, 54 *Id.* 443; Broiestedt v. South Side R. R. Co., 55 *Id.* 220; Henderson v. N. Y. Central R. R. Co., 78 *Id.* 433. Compare (Judgment requiring defendant to remove nuisance) De Laney v. Blizzard, 7 *Hun*, 68. Explained and limited (Mandatory injunction) in Slocum v. Chicago, &c. R. R. Co., 11 *Northw. Rep.* 641.
- Cornish v. Farm Buildings Fire Ins. Co.**, 10 *Hun*, 466. Aff'd in 74 *N. Y.* 295.
- Cornwell v. Deek**, 2 *Redf.* 87. Aff'd in part, in 8 *Hun*, 122.
- *v. Lovett*, 1 *Hall*, 56. Aff'd in 6 *Wend.* 369.
- *v. Woolley*, 47 *Barb.* 327. Aff'd in 2 *Transc. App.* 380; s. c., 1 *Abb. Ct. App. Dec.* 441; 43 *How. Pr.* 475. Decision in 43 *How. Pr.* followed (Proof of execution of will) in Williamson v. Williamson, 2 *Redf.* 449, 452.
- Corp v. Brown**, 2 *Sandf.* 293. Followed (Brokerage) in Cook v. Phillips, 56 *N. Y.* 310, 314.
- *v. McComb*. See Osborn v. Moncure.
- Corporation of N. Y. v. Dover Street**, 18 *Johns.* 506. Applied (Discontinuance of proceedings to acquire title to land) in Matter of Washington Park, 56 *N. Y.* 144, 154.
- *v. Mapes*, 6 *Johns. Ch.* 46. Applied (Discontinuance of proceedings to acquire title to land) in Matter of Washington Park, 56 *N. Y.* 144, 155.
- Corporation of P. & F. Corbin v. Gordon**. See Corbin, Corporation of, v. Gordon.
- Corse v. Leggett**, 25 *Barb.* 389. Quoted (Trust—how far writing necessary to create under statute of frauds) in 1 *Perry on Trusts*, 3 ed. § 81.
- Corson v. Ball**, 47 *Barb.* 452. Explained (Attachment in action for recovery of money) in *Code Civ. Pro.* 1881, ch. VII. tit. III. art. 1, n.
- Cortelyou v. Lansing**, 2 *Cal. Cas.* 200; s. c., 2 *N. Y. Com. L. Law. ed.* 802, with brief note; 7 *Am. Dec.* 296, n. Said by Kent, J., in Barrow v. Paxton, 5 *Johns.* 260, never to have been actually rendered, but is subsequently cited by him in the Commentaries without any such reservation. Approvingly cited in *Pars. on Contr.* 594, n. a. Applied (Tender by pledgor excused by sale by pledgee) in Lewis v. Graham, 4 *Abb. Pr.* 114. Compare Wilson v. Little, 1 *Sandf.* 358. Explained (Damages in conversion, &c.) in Wilson v. Mathews, 24 *Barb.* 297. Re-aff'd and applied in Romaine v. Van Allen, 26 *N. Y.* 311. Applied in Booth v. Powers, 56 *Id.* 27; Clark v. Pinney, 7 *Cow.* 694. Followed in West v. Wentworth, 3 *Cow.* 83. Explained at length in Baker v. Drake, 53 *N. Y.* 220, Disting'd in Page v. Fowler, 39 *Cal.* 412; s. c., 2 *Am. R.* 462, 467. Disapproved in Sturgis v. Keith, 57 *Ill.* 451; s. c., 11 *Am. R.* 33. Followed, and Markham v. Jaudon, 41 *N. Y.* 235; Baker v. Drake, 53 *Id.* 211; Gruman v. Smith, 81 *Id.* 25, disting'd (Measure of damages on unauthorized sale by pledgee) in Hopper v. Smith, 63 *How. Pr.* 34. Applied (Title of mortgage of chattels (in Stoddard v. Denison, 7 *Abb. Pr. N. S.* 314. Disting'd in Brown v. Bement, 8 *Johns.* 97. Cited as authority (Limitation on authority of pledgee to sell) in Wheeler v. Newbould, 5 *Duer*, 36; Stearns v. Marsh, 4 *Den.* 230. Followed in Garlick v. James, 12 *Johns.* 149. Applied (Distinction between pledge and mortgage) in McLean v. Walker, 10 *Id.* 474; McFarland v. Wheeler, 26 *Wend.* 475. Relied on in Lucketts v. Townsend, 3 *Tex.* 119; s. c., 49 *Am. Dec.* 723, with note. Discussed and cited in 2 *Pars. on Contr.* 112, n. a.
- *v. Van Brundt*, 2 *Johns.* 356; s. c., 30 *Am. Dec.* 439. Applied (Prescription as

- foundation of right) in *Pearsall v. Post*, 20 *Wend.* 128, which was aff'd in 22 *Id.* 425, which see; *Ferris v. Brown*, 3 *Barb.* 109. Applied in *Littlefield v. Maxwell*, 31 *Me.* 134; s. c., 50 *Am. Dec.* 653, 656. Followed (Extent of grant of lands bounded on tide-water) in *Hagan v. Campbell*, 8 *Port. (Ala.)* 9; s. c., 33 *Am. Dec.* 267, 270, with note. Applied (Ownership of fee of highway) in *Gidney v. Earl*, 12 *Wend.* 99.
- Corwin, Matter of**, 14 *Hun.* 34. Another proceeding in 6 *Abb. N. C.* 437.
- **v. Corwin**, 9 *Barb.* 219. Rev'd in 6 *N. Y.* 342.
- **v. Daly**, 7 *Bow.* 222. See *Wolfe v. Goulard*. Disting'd (Assignment of trademark) in *Hegeman v. Hegeman*, 8 *Daly*, 1, 8.
- **v. Freeland**, 6 *Hov. Pr.* 241. Rev'd in 6 *N. Y.* 560. See *Elwood v. Gardner*. Decision in 6 *N. Y.* explained and limited (Arrest on ca. sa. issued after judgment) in *Smith v. Knapp*, 30 *Id.* 581. Explained in *Molenaar v. Koerner*, 13 *Abb. Pr.* 242, n. Explained (Partial trial of cause, on motion to vacate order of arrest) in *Frost v. McCarger*, 14 *Hov. Pr.* 131, disapproving *Hernandez v. Carnobeli*, 10 *Id.* 433, and *Republic of Mexico v. Arrangois*, *Id.* 1. Explained in *Barret v. Gracie*, 34 *Barb.* 20, 25.
- **v. Merritt**, 3 *Barb.* 341. Followed (Jurisdiction of surrogate's courts) in *Savage v. Olmstead*, 2 *Redf.* 475, 481; *People ex rel. Meyer v. Hartman*, 2 *Sweeny*, 576. Criticised in *Waples on Proc. in Rem* § 577.
- **v. N. Y. & Erie R. R. Co.**, 13 *N. Y.* 42. See *Cook v. Champlain Transp. Co.* Applied (Application of law requiring railroad companies to construct fences) in *Staats v. Hudson River R. R. Co.*, 4 *Abb. Ct. App. Dec.* 292; *Tallman v. Syracuse, &c. R. R. Co.*, *Id.* 352; *McDowell v. N. Y. Central R. Co.*, 37 *Barb.* 198; *Duffy v. N. Y. & Harlem R. R. Co.*, 2 *Hilt.* 498; *Brady v. Renss. & Saratoga R. R. Co.*, 1 *Hun.* 380; *Crawford v. N. Y. Central, &c. R. R. Co.*, 18 *Hun.* 109. Applied to case of village streets, in *Brace v. N. Y. Central R. R. Co.*, 27 *N. Y.* 275. Applied to foreign corporation, in *Purdy v. N. Y. & New Haven R. R. Co.*, 61 *Id.* 355. Explained as resting on special provision of N. Y. statute, in *Pittsburgh, Fort Wayne, &c. R. R. Co. v. Methven*, 21 *Ohio St.* 586. Collated with other cases, in 1 *Thomps. on Negl.* 530. Collated with *Munch v. N. Y. Central R. R. Co.*, 29 *Barb.* 647, and other cases, in 7 *Am. R.* 47. Compared with *Shepard v. Buffalo, N. Y. & Erie R. R. Co.*, 35 *N. Y.* 641; *Bradley v. Same*, 34 *Id.* 427, and N. Y. statutes (Liability of railroad corporations for injury to live stock) in *Burlington & M. R. R. Co. v. Brinkman*, 15 *Northw. Rep.* 201. Disting'd (Contributory negligence as defense to action against railroad company) in *Dascomb v. Buffalo & State Line R. R. Co.*, 27 *Barb.* 228; *Bowman v. Troy & Boston R. R. Co.*, 37 *Id.* 518; *Sheaf v. Utica, &c. R. R. Co.*, 2 *Sup'm. Ct. (T. & C.)* 388. Applied in *Munch v. N. Y. Central R. R. Co.*, 29 *Barb.* 649. Followed in *Rhodes v. Utica, &c. R. R. Co.*, 5 *Hun.* 344; *Shepard v. Buffalo, N. Y., &c. R. R. Co.*, 35 *N. Y.* 645.
- Cory v. Leonard**, 1 *Sup'm. Ct. (T. & C.)* 183. Aff'd in 56 *N. Y.* 494.
- Cosgrove v. N. Y. Central, &c. R. R. Co.**, 13 *Hun.* 329. Subsequent decision in 87 *N. Y.* 88. Decision in 13 *Hun.* explained as put on the ground that defendant's negligence did not contribute (Contributory negligence) in *Masterson v. N. Y. Central, &c. R. R. Co.*, 84 *N. Y.* 247, 254.
- **v. Ogden**, 49 *N. Y.* 255. See *Higgins v. Watervliet Turnpike Co.* Applied (Question of negligence of parent of injured child—when for jury) in *Mullaney v. Spence*, 15 *Abb. Pr. N. S.* 329. Collated with other cases, in 6 *Abb. N. C.* 104, 114, n.; 2 *Thomps. on Negl.* 1188. Applied (Test of master's responsibility for wrongful act of servant) in *Peck v. N. Y. Central, &c. R. R. Co.*, 8 *Hun.* 287; *Hughes v. N. Y. & New Haven R. R. Co.*, 36 *Super. Ct. (J. & S.)* 225; *Maximilian v. Mayor, &c. of N. Y.*, 2 *Hun.* 263, 268.
- Costello v. Dale**, 1 *Hun.* 489. Fully reported in 3 *Sup'm. Ct. (T. & C.)* 493. Appeal said in 3 *Hun.* and 5 *Sup'm. Ct. (T. & C.)* 3, to have been dismissed.
- **v. Syracuse, B. & N. Y. R. R. Co.**, 65 *Barb.* 92. Appeal dismissed, it seems, in 55 *N. Y.* 641, but without opinion. See other cases collected (Contributory negligence of child) in 6 *Abb. N. C.* 104, 109, n.
- Coster, Ex parte**, 2 *Johns. Ch.* 503. Cited and disting'd (Substitution of one taking up bond and mortgage, in the place of mortgagee) in *Garwood v. Eldridge*, 1 *Green Ch. (N. J.)* 145; s. c., 34 *Am. Dec.* 195, 198, with note.
- Coster v. Clarke**, 3 *Edw.* 405. Aff'd in 2 *Ch. Sent.* 38.
- **v. Griswold**, 4 *Edw.* 364. Discussed with *Chance v. Isaacs*, 5 *Paige*, 592; *Beckwith v. Union Bank*, 9 *N. Y.* 211; *Gay v. Gay*, 10 *Paige*, 369; *Hackett v. Connett*, 2 *Edw.* 73; *Roberts v. Carter*, 38 *N. Y.* 107; *Spencer v. Barber*, 5 *Hill*, 568; *Chamberlin v. Day*, 3 *Cov.* 353; *Graves v. Woodbury*, 4 *Hill*, 559 (Right of judgment debtor to have judgment set off) in *Terney v. Wilson*, 16 *Vroom* (45 *N. J. L.*) 282, 287. Cited (As between State and U. S. courts, neither can enjoin process of the other) in *Chapin v. James*, 11 *R. I.* 86; s. c., 23 *Am. R.* 412.
- **v. Lorillard**, 14 *Wend.* 265. Rev'd *Lorillard v. Coster*, 5 *Paige*, 172. See *Hone v. Van Schaick*. Decision in 14 *Wend.* followed with *Hawley v. James*, 16 *Id.* 61 (Suspension of power of alienation—application of 1 *R. S.* 723, § 14) in *Amory v. Lord*, 9 *N. Y.* 403. Discussed in 4 *Kent Com.* 272, n. c. Explained and disting'd (Validity of trust where beneficiary has control of income) in *Wetmore v. Truslow*, 51

- N. Y.* 338, 343. Commented on (Trusts to receive rents and profits and pay over) in 4 *Kent Com.* 310, *n. c.*; *Id.* 503.
- *v. Mayor, &c. of Albany*, 52 *Barb.* 276. Rev'd in 43 *N. Y.* 399. See *Bellinger v. N. Y. Central R. R. Co.*; *Milbau v. Sharp*; *People v. Mayor, &c. of Albany*. Decision in 43 *N. Y.* applied (Rights of abutting owners) in *Sixth Ave. R. R. Co. v. Gilbert Elevated R. Co.*, 3 *Abb. N. C.* 399; *Story v. N. Y. Elevated R. R. Co.*, *Id.* 507; *Fearing v. Irwin*, 55 *N. Y.* 490. See also (Jurisdiction against State) *People v. Denison*, 8 *Abb. N. C.* 128. Examined, with other cases (Promise to pay demand of third person) in dissenting opinion of *EARL, J.*, in *Dunning v. Leavitt*, 85 *N. Y.* 30, 39. Followed in *People v. Mayor, &c. of Albany*, 53 *Id.* 629, which aff'd 5 *Lans.* 524, 531, which see.
- *v. Murray*, 7 *Johns. Ch.* 167. Aff'd in 4 *Cow.* 617. Another decision in 5 *Johns. Ch.* 522; aff'd in 20 *Johns.* 576. See *Decouche v. Savetier*; *Kane v. Bloodgood*. Decision in 5 *Johns. Ch.* denied (Application of statute of limitations to mutual accounts) in *McClelland v. Crofton*, 6 *Greenl. (Mc.)* 343. Decision in 20 *Johns.* explained by *SPENCER*, Senator, in *Renss. Glass Factory v. Reed*, 5 *Cow.* 610. Discussed in *Ang. on Limit.* §§ 149, 156, 167, 6 ed.
- *v. N. Y. & Erie R. R. Co.*, 6 *Duer*, 43; *s. c.*, more fully, 3 *Abb. Pr.* 332.
- *v. Peters*, 5 *Robt.* 192-202. Discussed (Ejectment—when it lies—interest in vaults) in *Sedgwick & W. on Tr. of Tit. to Land*, § 107.
- *v. Watson*, 15 *Johns.* 535. Approved (Attorney as bail) in *Miles v. Clarke*, 4 *Bosw.* 632, 634.
- Costigan v. Gould**, 5 *Den.* 290. Cited among cases from other jurisdictions (Presumption as to correctness of dates found in written instruments) in 29 *Alb. L. J.* 227.
- Costigan v. Mohawk & Hudson R. R. Co.**, 2 *Den.* 609; *s. c.*, 43 *Am. Dec.* 758, with note. Disting'd (Damages recoverable by discharged employee) in *Durkee v. Mott*, 8 *Barb.* 425. Disting'd in *Holmes v. Davis*, 19 *N. Y.* 404, a case of an ousted tenant. Applied in *Gillis v. Space*, 63 *Barb.* 182; *Thompson v. Wood*, 1 *Hilt.* 97. Cited as authority in *Howard v. Daly*, 61 *N. Y.* 371. Approved in *Oldham v. Kerchner*, 79 *N. C.* 106; *s. c.*, 28 *Am. R.* 308, with note collating cases. Explained in 2 *Chitty on Contr.* 840, *n. h.*, 11 *Am. ed.* Quoted in 2 *Greenl. on Ev.* 14 ed. § 261, *a. n.* 2. Applied with *Hamilton v. McPherson*, 23 *N. Y.* 72 (Burden of proof as to damages, on party guilty of breach of contract) in *Dunn v. Johnson*, 33 *Ind.* 54; *s. c.*, 5 *Am. R.* 177, 183. Quoted (Penalties and liquidated damages) in 2 *Story on Contr.* 5 ed. § 1478, *n. 3*. Applied (Novelty of defense as argument against it) in *Ryan v. N. Y. Central R. R. Co.*, 85 *N. Y.* 216.
- Cotes v. Carroll**, 23 *How. Pr.* 443. Disting'd (Procedure on appeal from judgment determining rights of defendants as between themselves) in *Morrison v. Morrison*, 10 *Hun.* 507.
- Cothcal v. Brouwer**, 5 *N. Y.* 562. Aff'd *Brouwer v. Cothcal*, 10 *Barb.* 216, and that aff'd *Cothcal v. Brouwer*, 5 *N. Y. Leg. Obs.* 175.
- *v. Talmadge*, 1 *E. D. Smith*, 573. Aff'd in 9 *N. Y.* 551. See *Bagley v. Peddie*. Decision in 9 *N. Y.* approved (Liquidated damages and penalty) in *Clement v. Cash*, 21 *Id.* 253, 256, 259. Followed in *Staples v. Parker*, 41 *Barb.* 648; *Kemp v. Knickerbocker Ice Co.*, 51 *How. Pr.* 31, which was rev'd in 69 *N. Y.* 45, 59, which see. Disting'd in *Salters v. Ralph*, 15 *Abb. Pr.* 275; *Colwell v. Lawrence*, 33 *Barb.* 647, which was aff'd in 38 *N. Y.* 74, which see.
- *v. Mechanics' Bank*. See *Mechanics' Bank v. Edwards*.
- Cott v. Lewiston R. R. Co.**, 36 *N. Y.* 214. Quoted and discussed (Nuisance—changing bed of natural stream) in *Wood on Nuis.* 2 ed. § 400.
- Cottle v. Vanderheyden**, 56 *Barb.* 622; *s. c.*, 39 *How. Pr.* 289. Aff'd in 11 *Abb. Pr. N.* 8, 17.
- Cotton v. Maurer**, 1 *Sup'm. Ct. (T. & C.)* 481. Further decision in 5 *Id.* 575; *mem. s. c.*, 3 *Hun.* 552.
- Couch v. Ash**, 5 *Cow.* 265. See *Scouton v. Eislord*. Compare with this and *Hubert v. Williams*, 5 *Cow.* 537 (Debt due by insolvent as sufficient consideration for new promise) *Earnest v. Parke*, 4 *Lawle.* 452; *Scouton v. Eislord*, 7 *Johns.* 36; *Shippey v. Henderson*, 14 *Id.* 178.
- *v. Delaplaine*, 2 *N. Y.* 397. See (Sale of real property—restitution for assets subsequently discovered) *Code Civ. Pro.* 1881, § 2801, *n.* Explained (Assignment for benefit of creditors—what property passes under) in *Burrill on Assign.* § 312, 4 ed.
- *v. Mills*, 21 *Wend.* 424. See (Composition by joint debtors) *Code Civ. Pro.* 1881, § 1942, *n.*
- Coughlin v. N. Y. Central, &c. R. R. Co.**, 8 *Hun.* 136. Rev'd in 71 *N. Y.* 443; *s. c.*, 27 *Am. R.* 75. See *Pulver v. Harris*. Decision in 71 *N. Y.* approved (Attorney's lien and client's power to settle action for unliquidated damages) in *Swanston v. Morning Star Mining Co.*, *U. S. Cir. Ct., D. Col.*, 14 *Reporter*, 321; *s. c.*, 13 *Fed. Rep.* 215; *Hooper v. Welch*, 43 *Vt.* 169. Followed (Attorney's lien in case of non-assignable action) and *Shank v. Shoemaker*, 18 *N. Y.* 489; *Pulver v. Harris*, 62 *Barb.* 500, approved, in *Kusterer v. City of Beaver Dam*, 56 *Wis.* 471; *s. c.*, 43 *Am. Dec.* 725. Decision in 8 *Hun* disting'd in *Walsh v. Flatbush, N. Shore, &c. R. R. Co.*, 11 *Id.* 190. Decision in 71 *N. Y.* cited as authority (Basis of attorney's lien) in *Matter of Knapp*, 83 *N. Y.* 284, 294. See *Code Civ. Pro.* § 66, as am'd in 1879. Cited, with other cases (Contingent fees) in 24 *Alb.*

- L. J.* 19. Compared with other cases (ChamPERTY) in 19 *Alb. L. J.* 468. See (Judgment, when assignable) *Code Civ. Pro.* 1881, § 1912, *n.*
- Coughtry v. Globe Woolen Co.**, 1 *Sup'm. Ct. (T. & C.)* 452. Rev'd in 56 *N. Y.* 124; *s. c.*, 15 *Am. L.* 387.. See *King v. N. Y. Central, &c. R. R. Co.*; *Thomas v. Wunchester*. Decision in 56 *N. Y.* applied (Liability of owner of premises for negligence of contractor, causing injury to workman) in *Ominger v. N. Y. Central, &c. R. R. Co.*, 4 *Hun*, 163. Followed (Duty of owner, &c. of real property) in *Homer v. Everett*, 47 *Super. Ct. (J. & S.)* 298, 300. Applied (Duty of master to servant as to condition of machinery, &c.) in *King v. N. Y. Central, &c. R. R. Co.*, 4 *Hun*, 771, which was rev'd in 66 *N. Y.* 181, 187, which see; *Schappert v. Ringler*, 45 *Super. Ct. (J. & S.)* 348. Disting'd in *Marvin v. Muller*, 25 *Hun*, 163, 166. Followed (Privy in negligence) in *Coughlin v. Steamship Rheola, U. S. Cir. Ct., S. D. N. Y.*, 17 *Reporter*, 644. Explained in *Moak's Underhill's Torts*, 1 *Am. ed.* 25. Collated with other cases (Negligence—who can bring action for) in *Bigel. Cas. on Torts*, 618.
- Coulter v. American Merch. Union Express Co.**, 5 *Lans.* 67. Rev'd in 56 *N. Y.* 585. See *Bullard v. Pearsall*. Decision in 56 *N. Y.* approved and applied (Negligence in effort to escape danger) in *Cuyler v. Decker*, 20 *Hun*, 175. Followed in *Dyer v. Erie R'y Co.*, 71 *N. Y.* 236. Collated with other cases, in *Bigel. Cas. on Torts*, 609. Followed (Impeaching one's own witness) in *Nichols v. White*, 85 *N. Y.* 531, 536.
- **v. Board of Education**, 4 *Hun*, 569. Aff'd in 63 *N. Y.* 365.
- Countriman v. Lighthill**, 24 *Hun*, 405. Explained (Private nuisance—overhanging branches) in *Wood on Nuis.* 2 *ed.* § 108, *n.* 1.
- Courtney v. Baker**, 37 *Super. Ct. (J. & S.)* 249. Appeal dismissed in 60 *N. Y.* 1. Decision on appeal from former trial, in 34 *Super. Ct. (J. & S.)* 529. Statement in 62 *N. Y.* 1, that the case there reported is incorrect below in “2 *J. & S.* 529” is incorrect. See vol. 307 of Cases on Appeal, in *Law Inst. Libr. N. Y. City*. Decision in 37 *Super. Ct. (J. & S.)* approved (Master's liability for acts of servant not within the scope of his employment) in 35 *Am. Dec.* 197, *n.*
- **v. N. Y. City Ins. Co.**, 28 *Barb.* 116. Quoted and explained (Marine insurance—assignment of policy) in 2 *Pars. on Contr.* 356, *n.*
- Courtwright v. Stewart**, 19 *Barb.* 455. Approved with *Stephens v. Santee*, 51 *Id.* 545; *Webster v. Zeilly*, 52 *Id.* 482 (Statute of frauds—work and labor disting'd from sale of goods) in *Cooke v. Millard*, 5 *Lans.* 243. Explained in *Benj. on Sales*, § 109, *n. y.*, *Bennett's* 4 *Am. ed.* Explained in 3 *Pars. on Contr.* 55, *n. v.*
- Cousland v. Davis**. See *Bedell v. Sturta*.
- Coutant v. People**, 11 *Wend.* 511. Approved (Construing statute) in *Clark v. Mowyer*, 5 *Mich.* 468.
- **v. Schuyler**, 1 *Paige*, 316. Followed with *Wright v. Wright*, 1 *Cow.* 598 (Promissory note as proper subject of *donatio causa mortis*) in *Brown v. Brown*, 18 *Conn.* 410; *s. c.*, 46 *Am. Dec.* 328, with note, as according with the current of decisions in this country. Disting'd and *Wright v. Wright*, 1 *Cow.* 598, denied as disapproved in *Raymond v. Sellick*, 10 *Conn.* 480; and opposed to *Parish v. Stone*, 14 *Pick. (Mass.)* 198; *s. c.*, 25 *Am. Dec.* 378, with note, and to the whole current of English authorities,—in *Holley v. Adams*, 16 *Vt.* 206; *s. c.*, 42 *Am. Dec.* 508, 510, with note. Collated with *Westerlo v. De Witt*, 36 *N. Y.* 340; *Grymes v. Ilone*, 49 *Id.* 17; *House v. Grant*, 4 *Lans.* 296; *Stevens v. Stevens*, 2 *Hun*, 470, and numerous other cases, in 23 *Am. Dec.* 601, *n.*, as showing an unbroken current of authority in this country.
- **v. Servoss**. See *Albany Fire Ins. Co. v. Bay*.
- Covall v. Hill**. See *Covill v. Hill*; *Laverty v. Snethen*.
- **v. Hitchcock**, 23 *Wend.* 611; *s. c.*, 14 *N. Y. Com. L. Law. ed.* 486, with brief note. Aff'g *Hitchcock v. Covell*, 20 *Wend.* 167. Decision in 23 *Wend.* disting'd and questioned with *Buckley v. Furniss*, 15 *Wend.* 137 (Stoppage in transitu) in *Sawyer v. Joslin*, 20 *Vt.* 172; *s. c.*, 49 *Am. Dec.* 768, 772, with note. Illustrated with other cases, in 2 *Redf. Am. Railw. Cas.* 380.
- **v. Tradesman's B'k**, 1 *Paige*, 131. Disting'd (Rights of assignee of non-negotiable chose in action) in *Moore v. Metropolitan Nat. B'k*, 55 *N. Y.* 41, 48. Examined in *Bush v. Lathrop*, 22 *Id.* 535, 545. Disting'd and approved in *McNeil v. Tenth National Bank*, 46 *Id.* 325, 337.
- Coveney v. Tannahill**, 1 *Hill*, 33; *s. c.*, 37 *Am. Dec.* 287, with note, containing citations. See *Jackson v. French*. Disting'd (Communication by attorney to two or more jointly—when privileged) in *Whiting v. Barney*, 38 *Barb.* 399, which was rev'd in 30 *N. Y.* 330, 342, which see. Approved (Extent of privilege of communications between attorney and client) in *Bank of Utica v. Mersereau*, 3 *Barb. Ch.* 595, 600; *Crosby v. Berger*, 11 *Paige*, 379. Examined, with other cases, in *March v. Ludlum, & Sandf. Ch.* 46.
- Covenhoven v. Shuler**, 2 *Paige*, 122; *s. c.*, 21 *Am. Dec.* 73, with note, containing citations. Applied (Life interest in chattels with remainder over) in *Rapalye v. Rapalye*, 27 *Barb.* 615; *Smith v. Van Nostrand*, 3 *Hun*, 452; *Williamson v. Williamson*, 6 *Paige*, 306; *Cairns v. Chaubert*, 9 *Id.* 163; *Calkins v. Calkins*, 1 *Redf.* 338.



- Disting'd in *Hill v. Hill*, 2 *Lans.* 48. Compare *Livingston v. Murray*, 68 *N. Y.* 493. See to the contrary *Westcott v. Cady*, 5 *Johns. Ch.* 334. Doubted in *Evans v. Iglehart*, 6 *Gill & J. (Md.)* 171, 193. Cited as authority (Right of executors to control proceeds of estate) in *Bundy v. Bundy*, 47 *Barb.* 141, which was aff'd in 38 *N. Y.* 418, which see. Followed in *Clark v. Clark*, 8 *Paige*, 160; *Edsall v. Waterbury*, 2 *Redf.* 50. Applied (Construction of words of will) in *Conover v. Hoffman*, 1 *Bosw.* 221; *Ex parte Hornby*, 2 *Bradf.* 422. Applied (Absolute estate, when given by will to widow) in *Roseboom v. Roseboom*, 15 *Hun*, 315.
- Coventry v. Barton**, 17 *Johns.* 142; s. c., 8 *Am. Dec.* 376. See *Allaire v. Ouland*. Disting'd (Town's liability to indemnify against suit) in *People ex rel. Van Keuren v. Auditors of Esopus*, 10 *Hun*, 551, 553. Approved with *Averill v. Williams*, 1 *Den.* 502 (Agency of officer) in *Nelson v. Cook*, 17 *Ill.* 449. Cited as authority (Implied promise of indemnity) in *Turner v. Jones*, 1 *Lans.* 147. Disting'd (Validity of contract to indemnify for unlawful act) in *Cumpston v. Lambert*, 18 *Ohio*, 81; s. c., 51 *Am. Dec.* 442, with note.
- Covert v. Gray**, 34 *How. Pr.* 450. Cited (Presumption of continuance of an existing condition) in 2 *Whart Com. on Ev.* § 1284.
- **v. Hughes**, 8 *Hun*, 305. Disting'd (Wife as agent of husband) in *Salmon v. McEnany*, 23 *Id.* 87, 89.
- Covill v. Hill**, 4 *Den.* 323. Rev'd as *Hill v. Covell*, 1 *N. Y.* 522. Further decision as *Covell v. Hill*, 6 *N. Y.* 374. Decision in 4 *Den.* disting'd (Factor's act) in *Bates v. Cunningham*, 12 *Hun*, 26. Quoted (Sale of specific chattels conditionally) in *Benj. on Sales*, § 450 (Corbin's 4 *Am. ed.*).
- Cowan v. Village of West Troy**, 43 *Barb.* 48. Cited as authority (Invalidity of executed contract that is against public policy) in *Dickinson v. City of Poughkeepsie*, 75 *N. Y.* 74.
- Cowden v. Pease**, 10 *Wend.* 333. Followed with *Cowdin v. Stanton*, 12 *Id.* 120; *Shaw v. Tobias*, 3 *N. Y.* 188 (Pleading in action on replevin bond) in *Jennison v. Haire*, 29 *Mich.* 207.
- **v. Teale**, 6 *Hun*, 532. Appeal dismissed in 67 *N. Y.* 581, as *Cowdin v. Teal*. Decision in 6 *Hun* collated, with other cases (What cases are referable) in 1 *Abb. N. C.* 109, n.
- Cowdin v. Stanton**. See *Cowden v. Pease*.
- Cowdrey v. Carpenter**, 1 *Robt* 429; s. c., 19 *Abb. Pr.* 373. Rev'd in 1 *Abb. Ct. App. Dec.* 445. Subsequent decision, as it seems, in 2 *Robt.* 601; s. c., 17 *Abb. Pr.* 107. Decision in 2 *Robt.* examined (Supplementary proceedings as affected by stay of proceedings) in *Woolf v. Jacobs*, 36 *Super. Ct. (J. & S.)* 408, 412. See *Code Civ. Pro.* 1881, § 2454, n.
- **v. Coit**, 3 *Robt.* 210. Rev'd in 44 *N. Y.* 382.
- Cowee v. Cornell**, 75 *N. Y.* 91. Collated with *Bank of America v. Woodworth*, 18 *Johns.* 315; 19 *Id.* 391; *Benedict v. Cowden*, 49 *N. Y.* 396 (What is material alteration of promissory note) in 25 *Am. R.* 481, n.; *Benedict v. Cowden*, being thought to overrule *Sanders v. Bacon*, 8 *Johns.* 485; *Tappan v. Ely*, 15 *Wend.* 362, and to cast some doubt on *Bank of America v. Woodworth*. Followed (Constructive fraud) in *Carpenter v. Soule*, 13 *Weekly Dig.* 55. Collated with other cases, in 25 *Am. R.* 728, n. Denied (Scope of constructive fraud) in 2 *Pomeroy on Eq. Jur.* 463, n.
- Cowen v. Banks**, 24 *How. Pr.* 72. Criticised and explained (Effect of assignment of copyright to pass renewal) in *Paige v. Banks*, 13 *Wall.* 615.
- Cowenhoven v. City of Brooklyn**, 38 *Barb.* 9. Disapproved, and *Child v. Chappell*, 9 *N. Y.* 248 disting'd (Ejectment — for what maintainable) in *Armstrong v. City of St. Louis*, 69 *Mo.* 309; s. c., 33 *Am. R.* 499.
- Cowing v. Altman**, 5 *Hun*, 556. Rev'd in 71 *N. Y.* 435; s. c., 27 *Am. R.* 70. Previous decision in 1 *Sup'm. Ct. (T. & C.)* 494. Further decision in 79 *N. Y.* 167.
- Cowles v. Watson**, 14 *Hun*, 41. Approved (Effect of misrepresentation as to value of property) in 2 *Pomeroy on Eq. Jur.* § 879, n., where, however, contrary cases are cited.
- Cowley v. People**, 21 *Hun*, 415; s. c., more fully, 8 *Abb. N. C.* 1. Aff'd in 83 *N. Y.* 464; s. c., 38 *Am. R.* 464, with note. See error book and briefs at State Library in Albany. Also error book, &c. in vol. 548 of *Cases on Appeal in Law Inst. Libr.*, N. Y. City. Decision in 83 *N. Y.* followed with *Gaiterman v. Liverpool*, N. Y., &c. S. S. Co., *Id.* 358 (Hypothetical questions) in *Burt v. Jewett*, *N. Y. Daily Reg.*, May 6, 1884.
- Cowperthwaite v. Sheffield**, 1 *Sandf.* 416. Aff'd in 3 *N. Y.* 243. See *Harris v. Clark*; *Hutter v. Ellwanger*; *Winter v. Drury*. Decision in 3 *N. Y.* followed (Draft, when not operating as assignment) in *Winter v. Drury*, 5 *N. Y.* 530; *Chapman v. White*, 6 *Id.* 416; *Willetts v. Finlay*, 11 *How. Pr.* 475. Applied in *Ætna Nat. Bk. v. Fourth Nat. Bk.*, 46 *N. Y.* 87; *Lunt v. Bk. of North America*, 49 *Barb.* 280. Disting'd in *Munger v. Shannon*, 61 *N. Y.* 258. Examined with other cases, in *Shuttleworth v. Bruce*, 7 *Robt.* 162. Applied with *Winter v. Drury*, 5 *N. Y.* 525, in *Exchange B'k of St. Louis v. Rice*, 107 *Mass.* 37; s. c., 9 *Am. R.* 1. Applied with *McMenomy v. Ferrers*, 3 *Johns.* 72; *Peyton v. Hallett*, 1 *Cal.* 363; *Luff v. Pope*, 5 *Hill*, 413; *Harrison v. Williamson*, 2 *Edw.* 430, in *First Nat. B'k of Canton v. Dubuque Southwestern R'y Co.*, 52 *Iowa.* 378; s. c., 35 *Am. R.* 280, 283. Applied (Effect of failure to raise objection on trial) in *Morris v. Hysson*, 8 *N. Y.* 206; *Murphy v. People*, 63 *Id.* 595.
- Cox v. Broderick**, 4 *E. D. Smith*, 72. Ex-

- plained (Mechanic's lien—how defeated) in *Smith v. Merriam*, 67 *Barb.* 405.
- *v. Clift*, 3 *Barb.* 481. Aff'd in 2 *N. Y.* 118. Decision in 2 *N. Y.* cited as authority (Setting aside deed, &c. as cloud on title) in *Chautauque Co. Bk. v. White*, 6 *Id.* 256. Applied in *Scott v. Onderdonk*, 14 *Id.* 14; *Ward v. Dewey*, 16 *Id.* 524. Disting'd in *Williams v. Fitzhugh*, 37 *Id.* 448. Examined and applied in *Fonda v. Sage*, 48 *Id.* 179.
- *v. Jagger*, 2 *Cow.* 638; s. c., 14 *Am. Dec.* 522. Applied (Effect of award relating to title to land) in *Robertson v. McNiel*, 12 *Wend.* 583. Questioned (Power to award costs of arbitration) in *People v. Newell*, 13 *Barb.* 91. Applied (Effect of arbitrators exceeding their powers) in *Harrington v. Higham*, 15 *Id.* 528. Questioned and disting'd in *Matter of Vanderveer*, 4 *Den.* 251.
- *v. James*, 59 *Barb.* 144. Aff'd in 45 *N. Y.* 557. Decision in 45 *N. Y.* examined with other cases (Time to object that plaintiff has adequate legal remedy) in *De Bussierre v. Holladay*, 4 *Abb. N. C.* 117.
- *v. McBurney*, 2 *Sandf.* 561. Disapproved (Ownership of real estate purchased with partnership funds) in *Fairchild v. Fairchild*, 5 *Hun.* 413. Cited (Effect of statutory abolition of implied trusts in *N. Y.* on presumption as to such ownership) in *Story on Partn.* 7 ed. § 94, n. p. 140.
- *v. N. Y. Central, &c. R. R. Co.*, 4 *Hun.* 176; s. c., 6 *Sup'm. Ct. (T. & C.)* 405. Rev'd in 63 *N. Y.* 414. Further decision in 11 *Hun.* 621. Decision in 63 *N. Y.* disting'd with *Roberts v. Marsen*, 23 *Hun.* 486; *McGuire v. N. Y. Central R. R. Co.*, 6 *Daly.* 70 (Continuance of action) in *Matter of Norwood*, 32 *Hun.* 196. Explained (Jurisdiction of person conferred by stipulation) in *Roberts v. Marsen*, 23 *Id.* 486, 489. With decision in 6 *Sup'm. Ct. (T. & C.)* see (Rights of passengers in drawing-room car of railway company) 11 *Alb. L. J.* 393.
- *v. —*, 61 *Barb.* 615. Disapproved but followed (Reference to statute in action for penalty) in *Schoonmaker v. Brooks*, 24 *Hun.* 553.
- *v. People*, 19 *Hun.* 430. Aff'd in 80 *N. Y.* 500. See *Balbo v. People*; *People v. Wentz*. Decision in 80 *N. Y.* applied (Juror not disqualified by opinion) in *Abbott v. People*, 86 *Id.* 460, 469. Cited, and with others approved, as sustained by weight of authority, in *State v. Walton*, 74 *Mo.* 279. Collated with *Balbo v. People*, 80 *N. Y.* 484, and other cases (Admissibility of confessions in evidence) in 46 *Am. R.* 253, n. Decision in 19 *Hun.* examined with other cases, in 20 *Am. L. Reg. N. S.* 123, n. Compare Points of law in *Guiteau's Case*, 83 (Boston: Little, Brown & Co., 1881).
- *v. Schermerhorn*, 12 *Hun.* 411. Further decision in 18 *Id.* 16. See *Ex parte Dean*. Decision in 18 *Hun.* questioned (Executors' commissions on sale of real estate subject to mortgage) in *Baucus v. Stover*, 24 *Id.* 109, 115. Followed (Trustees' commissions to be computed on entire fund) in *Matter of Moffat*, 24 *Id.* 325, 327. Disting'd (Two or more executors, when entitled to but one commission) in *Matter of St. John*, *N. Y. Daily Reg.* June 10, 1884.
- *v. Weller*, 3 *Hun.* 612. Reported fully in 6 *Sup'm. Ct. (T. & C.)* 309.
- *v. Wightman*, 4 *Hun.* 799. Aff'd, it seems, in 66 *N. Y.* 612, but without opinion. Decision in 4 *Hun.* disting'd with *Dewitt v. Brisbane*, 16 *N. Y.* 508 (Mortgage when void as against public policy) in *Nichols v. Weed Sewing Machine Co.*, 27 *Hun.* 200.
- Coy v. Utica, &c. R. R. Co.*, 23 *Barb.* 643. See *Moshier v. Same*. Disting'd (Liability for encroachment on public highway) in *Conklin v. Phoenix Mills*, 62 *Barb.* 299.
- Coykendall v. Eaton*, 55 *Barb.* 188. Points of counsel in 37 *How. Pr.* 438. Further decisions in 40 *Id.* 266; 42 *Id.* 376. Decision in 37 *Id.* quoted and commented on (Innkeeper—what constitutes one a guest) in 1 *Add. on Torts*, 753, n. Woods' ed.
- Coyle v. City of Brooklyn*, 53 *Barb.* 511. Said in 41 *N. Y.* 619 to have been aff'd by Ct. of App. in June, 1869.
- *v. Western R. R. Co.*, 47 *Barb.* 152. Applied (Delivery into possession of carrier) in *Ætina Ins. Co. v. Wheeler*, 49 *N. Y.* 622.
- Coyne v. Weaver*, 84 *N. Y.* 386. Applied (Assignment for benefit of creditors providing for compromises) in *McConnell v. Sherwood*, 84 *N. Y.* 522, 527, which aff'd 61 *How. Pr.* 67, 69, which see.
- Cozine v. Graham*, 2 *Paige*, 177. Quoted (Bill for specific performance) in 2 *Chitty on Contr.* 1447, n. p, 11 *Am. ed.* Commented upon (Statute of frauds—pleadings) in *Browne on Stat. of Frauds*, § 534, 4 ed.
- *v. Walter*, 55 *N. Y.* 304. Cited (Sheriff's legal duty to bail) in *Koch v. Coots*, 43 *Mich.* 33. Compare (Surrender of defendant by bail) *Code Civ. Pro.* § 591.
- Cozzens v. Higgins*, 1 *Abb. Ct. App. Dec.* 451; s. c., 3 *Keyes*, 206. See *Rulloff v. People*. Applied (Photographs as evidence) in *Cowley v. People*, 83 *N. Y.* 464, 479, which aff'd 8 *Abb. N. C.* 1, 30, which see.
- Craft v. Merrill*. See *Frost v. Youkers Savings B'k.*
- Crafts v. Mott*, 5 *Barb.* 305. Aff'd in 4 *N. Y.* 604. Decision in 5 *Barb.* followed (Recovery by surety against principal who has been discharged in bankruptcy) in *Lipscomb v. Grace*, 26 *Ark.* 231; s. c., 7 *Am. R.* 607. Cited as a case of great instruction in 3 *Pars. on Contr.* 506, n. k. Decision in 4 *N. Y.* disting'd (Discharge of one of two joint obligors) in *Mullendore v. Wertz*, 75 *Ind.* 431; s. c., 39 *Am. R.* 155.
- Cragin v. N. Y. Central R. R. Co.*, 51 *N. Y.* 61; s. c., 10 *Am. R.* 559. See *Cole v. Goodwin*; *Poucher v. N. Y. Central R. R. Co.* Decision in 51 *N. Y.* disting'd (Liability of carrier of animals) in *Holsapple v. Rome, W. & O. R. R. Co.*, 86 *N. Y.* 275, 279; *Mynard v. Syracuse, &c. R. R. Co.*, 71

- Id.* 180, 188; *Potter v. Sharp*, 24 *Hun.* 179. Criticised in *Lawson's Contr. of Carr.* § 136.
- Craig v. Craig**, 3 *Barb. Ch.* 76. See *Haxtun v. Corse*. Explained and questioned (What is included in residuary clause of will) in *Waring v. Waring*, 17 *Barb.* 560. Explained (Legacy when an annuity) in *Booth v. Ammerman*, 4 *Bradf.* 133, with which it is compared in *Wells v. Knight*, 5 *Hun.* 52. Questioned (Application of income of personal property, absolute ownership of which is suspended) in *Phelps v. Pond*, 23 *N. Y.* 83. Reviewed, with other cases, in *Grant v. Grant*, 3 *Redf.* 291. Applied (Accumulated income, when to go to those entitled to capital) in *Ellingwood v. Beare*, 59 *How. Pr.* 505. Followed (Commencement of payment of annuity, &c. from testator's death) in *Cooke v. Meeker*, 42 *Barb.* 540, which was aff'd in 36 *N. Y.* 15, 19, which see. Examined, with other cases, in *Matter of Lynch*, 52 *How. Pr.* 371. Explained in *Matter of Williams*, 1 *Redf.* 216. Followed (Promissory note of donor not subject of gift *causa mortis*) in *Harris v. Clark*, 3 *N. Y.* 114. Cited as settled law in *Whitaker v. Whitaker*, 52 *Id.* 378. Disting'd with *Wood v. Brown*, 34 *Id.* 337 (Trustee when allowed to disclaim trust) in *Earle v. Earle*, 48 *Super. Ct. (J. & S.)* 18.
- **v. Hone**, 2 *Edw.* 554. Explained and disting'd (Invalid trust) in *Wetmore v. Truslow*, 51 *N. Y.* 338, 344. Disapproved in *Matter of Moke*, 2 *Redf.* 429, 432.
- **v. Marsh**, 2 *Daly*, 61. Denied (Title derived from one obtaining by fraud) in *Collins v. Ralli*, 20 *Hun.* 246.
- **v. Parkis**, 40 *N. Y.* 181. See *Moakeley v. Riggs*. Applied (Discharge of surety by delay) in *Northern Ins. Co. v. Wright*, 13 *Hun.* 168; *McMurray v. Noyes*, 72 *N. Y.* 526. Disting'd in *Field v. Cutler*, 4 *Lans.* 195. Explained (Exhausting remedy at law, prior to resort to guarantor) in *Riper v. Poppenhausen*, 43 *N. Y.* 74.
- **v. Rochester City & Brighton R. R. Co.**, 39 *Barb.* 494. Aff'd in 39 *N. Y.* 404. See *Milbau v. Sharp*; *Story v. N. Y. Elevated R. R. Co.*; *People v. Kerr*. Decision in 39 *N. Y.* disting'd (Right of owner adjoining street railway to injunction) in *Patten v. N. Y. Elevated R. R. Co.*, 3 *Abb. N. C.* 345; *Kellinger v. Forty-second Street, &c. R. R. Co.*, 50 *N. Y.* 210. Applied (What is imposition of additional burden on street) to laying gas pipes, --in *Bloomfield, &c. Gas-Light Co. v. Calkins*, 62 *Id.* 389. Its doctrine, in effect, limited in *Story v. N. Y. Elev. Ry. Co.*, 11 *Abb. N. C.* 236. Criticised and disting'd in *Eichels v. Evansville Street Ry. Co.*, 78 *Ind.* 261; s. c., 41 *Am. R.* 561. Examined with *People v. Kerr*, 27 *N. Y.* 204 in *Hobart v. Milwaukee City R. R. Co.*, 27 *Wis.* 194; s. c., 9 *Am. R.* 461, with note collating cases. Quoted and collated with other cases, in *Mills Thomps. on Highw.* 3 ed. 401.
- **v. Swinerton**, 8 *Hun.* 144. Aff'd, it seems, in 76 *N. Y.* 608, on opinion below.
- **v. Tappen**, 2 *Sandf. Ch.* 78. See *Brinkerhoff v. Marvin*; *Townsend v. Empire Stone Dressing Co.* Explained (Security for future advances) in *Ackerman v. Hunsicker*, 85 *N. Y.* 43, 52, which rev'd 21 *Hun.* 53, which see. Explained in 2 *Washb. on Real Prop.* 4 ed. 156.
- **v. United Ins. Co.**, 6 *Johns.* 226; s. c., 5 *Am. Dec.* 222; 4 *N. Y. Com. L. Law. ed.* 107, with brief note on conflict of authority as to fear of capture justifying abandonment.
- **v. Ward**, 36 *Barb.* 377. Aff'd in 3 *Keyes*, 387; s. c., 3 *Abb. Pr. N. S.* 235; 1 *Abb. Ct. App. Dec.* 454. See *Bennett v. Judson*; *Mead v. Bunn*. Decision in 36 *Barb.* explained (Liability for false representations) in *Wakeman v. Dalley*, 44 *Id.* 502; *Chester v. Comstock*, 6 *Robt.* 22. Disting'd in *Barrett v. Western*, 66 *Barb.* 206; *Marshall v. Gray*, 89 *How. Pr.* 174. Decision in 3 *Keyes*, examined with other cases, in *Wakeman v. Dalley*, 51 *N. Y.* 34. Criticised but followed, in *Morehouse v. Yeager*, 41 *Super. Ct. (J. & S.)* 147. Applied (Meaning of "good and valid" as applied to security) in *Du Flon v. Powers*, 14 *Abb. Pr. N. S.* 395.
- **v. Wells**, 11 *N. Y.* 315. Followed (Effect of exception in deed) in *Hill v. Priestly*, 52 *Id.* 635. Disting'd in *Rexford v. Marquis*, 7 *Lans.* 260. Explained by *DENIO*, Ch. J., in *Hathaway v. Payne*, 34 *N. Y.* 116. Disting'd (Conditions in grant—when not favored) in *Kellam v. McKinstrey*, 69 *Id.* 269.
- Craighead v. Peterson**, 10 *Hun.* 596. Aff'd in 72 *N. Y.* 279; s. c., 28 *Am. R.* 150.
- Crain v. Beach**, 2 *Barb.* 120. Aff'd in 2 *N. Y.* 86. Decision in 2 *Barb.* quoted and explained (Measure of damages—separable breaches) in 3 *Para. on Contr.* 188, n. h.
- **v. Cavana**, 36 *Barb.* 410. Another opinion by *MULLIN*, J., in 62 *Id.* 109.
- **v. Fox**, 16 *Barb.* 184. Doctrine discussed (Abandonment of easement) in 2 *Am. L. Reg. N. S.* 515.
- **v. Petrie**, 6 *Hill*, 522. Relied on (Recovery for injuries resulting from wrongful act of third person) in *Cuff v. Newark & N. Y. R. R. Co.*, 35 *N. J.* 17; s. c., 10 *Am. R.* 205, 215, 217.
- Cram v. Dresser**, 2 *Sandf.* 120. Disting'd (Counter-claim in action for rent) in *Walker v. Shoemaker*, 4 *Hun.* 579. Approved and followed in *Mayor, &c. of N. Y. v. Mabie*, 2 *Duer*, 401.
- **v. Hendricks**, 7 *Wend.* 569. See *Aeby v. Rapelye*; *Powell v. Waters*. Followed (Sale, &c. of note when not usurious) in *Ellwell v. Chamberlain*, 4 *Bosw.* 327. Disapproved but followed in *Burton v. Baker*, 31 *Barb.* 255. Approved in *Cowles v. McVickar*, 3 *Wis.* 733. Explained and followed in *Armstrong v. Gibson*, 31 *Wis.* 61; s. c., 11 *Am. R.* 594. Reviewed and disting'd with

- Nash v. White's Bank of Buffalo, 68 *N. Y.* 396; Atlantic State Bank v. Savery, 82 *Id.* 291; Talmage v. Pell, 7 *Id.* 328, with regard to usurious discount by national bank, in National Bank of Gloversville v. Johnson, 104 *U. S.* 271, which aff'd Johnson v. National Bank of Gloversville, 74 *N. Y.* 329. Included, with notes, in 2 *Ames Cas. on B. & N.* 202. Collated with other cases, in *Holcombe, Lead. Cas. on Com. Law*, 160.
- **v. Mitchell**, 1 *Sandf. Ch.* 251. Explained (Assignment for benefit of creditors—qualifications of assignee) in *Burrill on Assign.* § 92, 4 ed.
- **v. Union Bank of Rochester**, 42 *Barb.* 426. Aff'd in 4 *Keyes*, 558; s. c., 1 *Abb. Ct. App. Dec.* 461. With decision in 1 *Abb. Ct. App. Dec.* see to the contrary (Variance between assignment and schedule) *Platt v. Thorn*, 8 *Bosw.* 574. See also *Abb. Tr. Ev.* 6.
- Cramer v. Benton**, 60 *Barb.* 216; s. c., 4 *Lans.* 291. Further decision in 64 *Barb.* 522, which was aff'd in 56 *N. Y.* 638, but without opinion. Decision in 64 *Barb.* followed, without specifying points, in *Howland v. Newark Cemetery Assoc.*, 66 *Id.* 366. Decision in 60 *Id.* explained (Ejectment—answer in) in *Sedgw. & W. on Tr. of Tit. to Land*, § 488. Criticised (Equitable defenses) in *Pomeroy on Rem.* § 91, n. 1.
- **v. Blood**, 57 *Barb.* 155, 671. Aff'd in 48 *N. Y.* 684, but without opinion. Decision in 57 *Barb.* followed (Equitable lien of creditors against fraudulent vendee of debtor, how discharged) in *Youmans v. Boomhower*, 3 *Sup'm. Ct. (T. & C.)* 21, 25.
- **v. Bradshaw**, 10 *Johns.* 484. Applied (Requisites of warranty by vendor) in *Kinley v. Fitzpatrick*, 4 *How. (Miss.)* 59; s. c., 34 *Am. Dec.* 108, with note.
- **v. Van Alstyne**, 9 *Johns.* 386. See *McIntire v. Rowan*. Followed and approved with *Scott v. Shaw*, 13 *Johns.* 378 (Irregular process not void) in *Commonwealth v. O'Cull*, 7 *J. J. Marsh. (Ky.)* 149; s. c., 23 *Am. Dec.* 393, with note. Followed in *Byers v. Fowler*, 12 *Ark.* 218; s. c., 54 *Am. Dec.* 271, 275, with note.
- Cranch v. McLachlin**, 4 *Johns.* 34. Disting'd (Divesting of property by proceedings in a foreign jurisdiction) in *Edgerly v. Bush*, 81 *N. Y.* 190, 205.
- **v. Parker**, 1 *Sup'm. Ct. (T. & C.)* Adl. 1. Aff'd in *Crouch v. Parker*, 56 *N. Y.* 597, which also aff'd in effect 40 *Barb.* 94.
- Crandall v. Bradley**, 7 *Wend.* 311. Followed with *Smith v. Smith*, 2 *Johns.* 235; *Pierce v. Crafts*, 12 *Id.* 90 (Note payable in specific articles,—admissibility thereof in evidence) in *Payne v. Couch*, 1 *G. Greene (Iowa)* 64; s. c., 46 *Am. Dec.* 497.
- **v. Brown**, 18 *Hun.* 461. Followed (Change of possession) in *Steele v. Benham*, 84 *N. Y.* 634, 638.
- **v. Bryan**, 15 *How. Pr.* 48. Examined and doubted (Ground of arrest) in *McGovern v. Payn*, 32 *Barb.* 83, 89. Cited and approved (Meaning of word "obligation") in *Exchange Bank v. Ford*, 7 *Col.* 317, while *Brainard v. Jones*, 11 *How. Pr.* 569 is not regarded as authoritative.
- **v. Clark**, 7 *Barb.* 169. Followed (Averment of performance not sustained by evidence of excuse for non-performance) in *Clift v. Rodger*, 25 *Hun.* 39, 43.
- **v. People**. See *McGarry v. Same*; **Crane v. Baudouine**, 65 *Barb.* 260. Rev'd as *Crane v. Baudouine*, in 55 *N. Y.* 256. With decision in 65 *Barb.* compare (Implied employment of physician) *Buck v. Amidon*, 4 *Daly*, 126.
- **v. Decker**, 22 *Hun.* 452. See also mere mem. decision in 23 *Id.* 534.
- **v. Ford**, *Hopk.* 114. Discussed (Partnership—appointment of receiver) in 1 *Collyer on Partn.* § 375, Wood's *Am. ed.*
- **v. French**, 1 *Wend.* 311. See *Grazebrook v. McCreddie*; *Green v. Beals*; *Holbrook v. Murray*; *Smith's Case*. Difficulties herein and in *Grazebrook v. McCreddie*, 9 *Wend.* 437, explained (Entering judgment) in *Pardee v. Haynes*, 10 *Wend.* 680, as obviated by *L. 1833, c. 271*, § 3. See cases collected (Unauthorized submission by one partner not binding) in 9 *Am. L. Reg. N. S.* 270. Language of *SAVAGE, Ch. J.*, quoted (Separate creditor levying on partnership property) in 1 *Pars. on Contr.* 209, n. i.
- **v. Holcomb**, 2 *Hill.* 269. Examined (Costs as affected by questions of jurisdiction of justices' courts) and held not to be in conflict with *Kalt v. Lignot*, 3 *Abb. Pr.* 190, in *Boston Mills v. Eull*, 6 *Abb. Pr. N. S.* 319. Disting'd in *Griffin v. Brown*, 53 *Barb.* 428. Also explained in *Boston Mills v. Eull* as not authority as to whether district courts are justices' courts.
- **v. Hubbel**, 7 *Paige*, 413. Followed (Loan when not made usurious by fact of agent taking premium) in *Hetfield v. Newton*, 3 *Sandf. Ch.* 370. Explained in *Condit v. Baldwin*, 21 *Barb.* 189.
- **v. Knubel**, 34 *Super. Ct. (J. & S.)* 443; s. c., less fully, 43 *How. Pr.* 389. Aff'd in 61 *N. Y.* 645.
- **v. Sawyer**, 5 *How. Pr.* 372. Disapproved (Proceedings under *Code Pro.* § 449 to determine claims to real property) in *Hammond v. Tillotson*, 18 *Barb.* 332, but the latter overruled in part, in *Burnham v. Onderdonk*, 41 *N. Y.* 425.
- **v. Stiger**, 2 *Sup'm. Ct. (T. & C.)* 577. Appeal dismissed in 58 *N. Y.* 625.
- **v. Turner**, 7 *Hun.* 357. Aff'd in 67 *N. Y.* 437. Decision in 67 *N. Y.* reviewed with other cases (Conflicting equities arising after inception of mortgage) in *Bank for Savings v. Frank*, 45 *Super. Ct. (J. & S.)* 409. Also in dissenting opinion of *DANFORTH, J.*, in *Westbrook v. Gleason*, 79 *N. Y.* 40. Limited in *Decker v. Boice*, 83 *Id.* 215, 222.
- Crans v. Hunter**, 28 *N. Y.* 389. See *Ben-*

- nett v. Judson. Followed (Compromise of a doubtful claim as consideration) in Pitkin v. Noyes, 48 *N. H.* 294; s. c., 2 *Am. R.* 218, 228. Cited with other cases, in Griswold v. Wright, 61 *Wisc.* 197.
- Crapo v. King**, 45 *N. Y.* 86. Rev'd as Crapo v. Kelly, in 16 *Wall.* 610.
- v. **People**, 15 *Hun.* 269. Aff'd in 76 *N. Y.* 288; s. c., 32 *Am. R.* 302. Decision in 15 *Hun.* disting'd (Question admissible to impeach witness) in Stape v. People, 21 *Id.* 899.
- Crary v. Goodman**, 9 *Barb.* 657. Rev'd in 12 *N. Y.* 266; s. c., 64 *Am. Dec.* 506, with brief note on equitable defenses in legal actions. See *Livingston v. Peru Iron Co.*; *Reubens v. Joel*. Decision in 12 *N. Y.* limited (Distinction between law and equity) in *Marsh v. Benson*, 11 *Abb. Pr.* 241. Applied in *Stevens v. Mayor, &c.*, of N. Y., 84 *N. Y.* 305. Disting'd and limited in *Cramer v. Benton*, 4 *Lans.* 295.
- v. —, 22 *N. Y.* 170. Applied (Requisites of adverse possession under statute against champerty) in *Fish v. Fish*, 39 *Barb.* 515; *Nash v. Kemp*, 12 *Hun.* 595; *Christie Gage*, 71 *N. Y.* 192. Followed in *Hallas v. Bell*, 53 *Barb.* 248; *Chalmers v. Wright*, 5 *Robt.* 716. Applied (Constructive adverse possession,—when insufficient) in *Pope v. Hammer*, 74 *N. Y.* 245. Explained (Necessity of claim or color of title) in *Sands v. Hughes*, 53 *Id.* 296. Quoted and explained in *Sedgw. & W. on Tr. of Tit. to Land*, § 760.
- v. **Smith**, 2 *N. Y.* 60. Explained (Specific performance when decreed though there is remedy at law) in *Slauson v. Watkins*, 86 *Id.* 597, 602.
- v. **Sprague**, 12 *Wend.* 41; s. c., 27 *Am. Dec.* 110, with note, containing citations thereof. See *Wilbur v. Selden*. Disting'd (Judicial sale when to be deemed fraudulent) in *Speer v. Skinner*, 35 *Ill.* 282, 298. Disting'd (*Res gestæ*) in *Bullis v. Montgomery*, 50 *N. Y.* 352.
- v. **Turner**, 6 *Johns.* 51; s. c., 4 *N. Y. Com. L. Law. ed.* 49. Disting'd with *Jackson v. Bartlett*, 8 *Johns.* 361; *Kellogg v. Gilbert*, 10 *Id.* 220, and *Doty v. Turner*, 8 *Id.* 20; *Mott v. Kipp*, 10 *Id.* 478; *Kellogg v. Griffen*, 17 *Id.* 274, followed (Continuance of powers of attorney) in *Brackett v. Norton*, 4 *Conn.* 517; s. c., 10 *Am. Dec.* 179.
- Crater v. Bininger**, 54 *Barb.* 155. Aff'd in 45 *N. Y.* 545. Decision in 45 *N. Y.* applied (Partner's action against copartner) in *Halliday v. Carman*, 6 *Daly*, 422.
- Craver v. Wilson**, 47 *N. Y.* 673. Fully reported in 14 *Abb. Pr. N. S.* 374. Applied (Enforcing mortgage against married woman) in *Smith v. Fellows*, 41 *Saper. Ct. (J. & S.)* 36, 49.
- Craw v. Easterly**, 4 *Lans.* 513. Aff'd in 54 *N. Y.* 679. Decision in 54 *N. Y.* disting'd (Liability of trustee of manufacturing corporation) in *Easterly v. Barber*, 65 *Id.* 256. Decision in 4 *Lans.* collated with other cases, in 6 *Abb. N. C.* 259, n. Denied as absurd in *Thomps. on Liab. of Off. & A.* 444, n. 5.
- Crawford, Matter of**, 3 *N. Y. Leg. Obs.* 76. Collated, with other cases (Attachment—domicil) in *Thomps. on Prov. Rem.* 360.
- Crawford v. Collins**, 45 *Barb.* 269. See *Fralick v. Betts*. Followed (Canal boats are vessels) in *Emmons v. Wheeler*, 5 *Sup'm. Ct. (T. & C.)* 617; *King v. Greenway*, 71 *N. Y.* 413, 717.
- v. **Lockwood**, 9 *How. Pr.* 547; s. c., 12 *N. Y. Leg. Obs.* 105. See *Harper v. Leal*. Approved (Effect of waiver of right of exemption) in *Kneettle v. Newcomb*, 31 *Barb.* 169.
- v. **Loper**, 25 *Barb.* 449. Applied (Manner of returning commission to take testimony) in *Goodyear v. Vosburgh*, 41 *How. Pr.* 421.
- v. **Morrell**, 8 *Johns.* 253. See *Van Dyck v. Van Beuren*. Explained (Application of statute of frauds) in *Dow v. Way*, 64 *Barb.* 255, 260. Followed (Effect of illegality of part of consideration) in *Widoe v. Webb*, 20 *Ohio*, 431; s. c., 5 *Am. R.* 664.
- v. **Russell**, 62 *Barb.* 92. Collated with other cases (Marriage brokerage contracts) in 22 *Am. L. Reg.* 781, n. Included in *Lawson's Lead. Com. L. Gas. Simplified*, 103.
- v. **Waters**, 46 *How. Pr.* 210. Compared with subsequent decision in *Waters v. Crawford*, 2 *Sup'm. Ct. (T. & C.)* 602, and explained (Redemption of possession that has been forfeited by lessee) in *Pursell v. N. Y. Life Ins. &c. Co.*, 42 *Super. Ct. (J. & S.)* 383, 389, 391, 398.
- v. **Wilson**, 4 *Barb.* 504. See *Matter of Wrigley*. Cited as authority (Power to direct verdict) in *People v. Cook*, 8 *N. Y.* 76. Disting'd (Entry of judgment *nunc pro tunc*) in *Tuomy v. Dunn*, 77 *Id.* 515. Approved (Inhabitaney and domicil mean the same thing) in *Lee v. Stanley*, 9 *How. Pr.* 272. Applied in *Houghton v. Ault*, 16 *Id.* 86. Doctrine discussed and cases cited in 3 *Am. L. Reg. N. S.* 258. Quoted in 2 *Pars. on Contr.* 580, n. y.
- Creed v. Hartman**, 8 *Bosw.* 123. Aff'd in 29 *N. Y.* 591. See *Blake v. Ferris*; *Dygert v. Schenck*. Decision in 29 *N. Y.* disting'd (Liability of one that changes condition of street) in *Lowrey v. Brooklyn City, &c. R. Co.*, 4 *Abb. N. C.* 36. Commented on in *Gardner v. Bennett*, 38 *Super. Ct. (J. & S.)* 200. Disting'd (Joint and several liability) in *Chipman v. Palmer*, 9 *Hun.* 519, which was rev'd in 77 *N. Y.* 51, 54, which see. Followed in *Wood v. Luscomb*, 23 *Wisc.* 287. Decision in 8 *Bosw.* 123 explained and disting'd (Liability for contractor's negligence) in *Eccles v. Darragh*, 46 *Super. Ct. (J. & S.)* 186. Decision in 29 *N. Y.* collated with *Congreve v. Smith*, 18 *Id.* 79; *Congreve v. Morgan*, *Id.* 81; *Irvine v. Wood*, 51 *Id.* 224, in 18 *Am. L. Rev.* 635, 638. Decision in 8 *Bosw.* approved and

- followed (Testimony of person not an expert as to result of injury) in *Wright v. City of Port Howard*, 60 *Wis.* 122.
- Creely v. Ostrander**, 3 *Bradf.* 107. Explained (Will—old age of testator) in *Willard on Executors*, 86.
- Creery v. Holly**, 14 *Wend.* 26. See *Van Ostrand v. Reed*. Cited as authority (Effect of clean bill of lading, precludes parol evidence to show agreement to stow goods on deck) in 2 *Whart. Com. on Ev.* § 1070.
- Cregier, Matter of**, 1 *Barb. Ch.* 598. See *Bear v. Snyder*; *Dunham v. Osborn*. Disting'd and explained with *Dunham v. Osborn*, 1 *Paige*, 634 (Nature of estate that gives right of dower) in *Brooks v. Everett*, 13 *Allen (Mass.)* 457. See to the contrary *Bear v. Snyder*, 11 *Wend.* 592. Quoted and collated with other cases (Dower upon dower) in *Sharsv. & B. Cas. on Real Prop.* 318. Explained in 1 *Washb. on Real Prop.* 4 ed. 259, 260.
- Cregin v. Brooklyn Cross Town R. R. Co.**, 56 *How. Pr.* 32. Aff'd in 75 *N. Y.* 192; s. c., 56 *How. Pr.* 192; 31 *Am. R.* 459. Further proceedings in 18 *Hun*, 368; 19 *Id.* 341; *Id.* 349. Decision in 19 *Hun*, 341 rev'd in 83 *N. Y.* 595; s. c., 38 *Am. R.* 474. With decision in 75 *N. Y.* compare (Survival of cause of action) *Holliday v. Parker*, 23 *Hun*, 71, 73. Applied in *Scott v. Brown*, 24 *Hun*, 620, 622.
- Cresson v. Stout**, 17 *Johns.* 116; s. c., 8 *Am. Dec.* 373, n.; 6 *N. Y. Com. L. Law. ed.* 306, with brief note. See *Haggerty v. Wilber*; *Heermance v. Vernoy*; *Thompson v. Button*; *Wehle v. Conner*. Applied (Machinery as personal property) in *Taffe v. Warnick*, 3 *Blackf. (Ind.)* 111; s. c., 23 *Am. Dec.* 383. Followed in *Swift v. Thompson*, 9 *Conn.* 63; s. c., 21 *Am. Dec.* 718, with note. Reviewed with *Walker v. Sherman*, 20 *Wend.* 636; *Vanderpoel v. Van Allen*, 10 *Barb.* 157; *Buckley v. Buckley*, 11 *Id.* 43, in *Teaff v. Hewitt*, 1 *Ohio St.* 511; s. c., 59 *Am. Dec.* 654. Approved in *Thomas on Mort.* 48.
- Crespey v. Sabre**, 17 *Hun*, 120. Criticised (Mortgage of unplanted crop) as not in accord with *McCaffrey v. Wooden*, 65 *N. Y.* 459,—in *Jones on Chat. M.* § 147.
- Creuse v. Defiganier**, 10 *Boso.* 122. Applied (Authority to do act that will prevent running of statute of limitations) in *Smith v. Ryan*, 39 *Super. Ct. (J. & S.)* 489, 497.
- Crippen v. Baumes**, 15 *Hun*, 136. Disting'd (Equitable jurisdiction of action to reform and foreclose mortgage) in *Avery v. Willis*, 24 *Id.* 548, 550.
- *v. Heermance, Clarke*, 133. Rev'd in 9 *Paige*, 211. Decision in 9 *Paige* cited as authority (Costs where two causes of action are litigated) in *Adams v. Howard*, *U. S. Cir. Ct. S. D. N. Y.*, 19 *Fed. Rep.* 319.
- *v. Hudson*, 13 *N. Y.* 161. Quoted (Foundation for creditors' actions) in *Wait on Fraud. Conv.* § 80.
- *v. Ingersoll*, 10 *Wend.* 603. Followed, and regarded as decisive (Costs of motion not to be given under general clause in notice) in *Northrup v. Van Dusen*, 3 *Code R.* 140.
- *v. Morss*, 49 *N. Y.* 63. Cited (Admissibility of acts and declarations of tenants in common in each other's presence) in 2 *Whart. Com. on Ev.* § 1193.
- Crisfield v. Perine**, 15 *Hun*, 200. Aff'd, it seems, in 81 *N. Y.* 622, on opinion below, without further opinion.
- Crispell v. Dubois**, 4 *Barb.* 393. Collated with other cases (*Onus* of proof respecting undue influence in confidential relations) in 33 *Am. R.* 736, n. Explained in *Kinne v. Johnson*, 60 *Barb.* 69; *Willard on Executors*, 114. Quoted (Wills—personal disabilities of testators) in 1 *Jarm. on Wills* Rand. & T. ed. 69, n. 10.
- Crispin v. Babbitt**, 81 *N. Y.* 516; s. c., 37 *Am. R.* 521. See *Slater v. Jewett*. Followed (Liability to employee for negligence of co-employee) in *McCosker v. Long Island R. R. Co.*, 84 *N. Y.* 77, 81. Disting'd in *Slater v. Jewett*, 85 *Id.* 61, 71. Followed and *Corcoran v. Holbrook*, 59 *Id.* 517; *Flike v. Boston & Albany R. R. Co.*, 53 *Id.* 549, disting'd in *Beifus v. N. Y., Lake Erie, & C. R. Co.*, 29 *Hun*, 556. Applied with *McCosker v. Long Island R. R. Co.*, 84 *N. Y.* 77, and *Flike v. Boston & A. R. R. Co.*, 53 *Id.* 549; *Booth v. Same*, 73 *Id.* 38; *Fuller v. Jewett*, 80 *Id.* 46, disting'd in *Hart v. N. Y. Floating Dry Dock Co.*, 48 *Super. Ct. (J. & S.)* 460. Applied with *McCosker v. Long Island R. R. Co.*, 84 *N. Y.* 77, in *Houser v. Chicago, Rock Island & P. R. R. Co.*, 60 *Iowa*, 230; s. c., 46 *Am. R.* 65. Followed and *Sheehan v. N. Y. Central, & C. R. Co.*, 91 *N. Y.* 332; *Dana v. Same*, 92 *Id.* 639, disting'd in *Newbauer v. N. Y., Lake Erie, & C. R. R. Co.*, 18 *Weekly Dig.* 402.
- Crist v. Armour**, 34 *Barb.* 378. Examined (Anticipatory refusal to perform contract) in *Howard v. Daly*, 61 *N. Y.* 362, 376.
- *v. Erie R'y Co.*, 1 *Sup'm. Ct. (T. & C.)* 435. Aff'd in 58 *N. Y.* 638.
- Crittenden v. Fairchild**, 41 *N. Y.* 289. See *Lang v. Ropke*. Disting'd (Effect of power of sale given to executors) in *Prentice v. Janssen*, 79 *Id.* 486. Applied in *Matter of Boyd*, 4 *Redf.* 156; *Hetzell v. Barber*, 6 *Hun*, 534, 540.
- *v. Wilson*, 5 *Cow.* 165; s. c., 15 *Am. Dec.* 462; 8 *N. Y. Com. L. Law. ed.* 612, with notes on cumulative remedies. Decision in 5 *Cow.* followed (Liability of person acting under legislative authority, which results in damage to private property) in *Lec v. Pembroke Iron Co.*, 57 *Me.* 481; s. c., 2 *Am. R.* 59, 62. Quoted in 2 *Add. on Torts*, 261, n., Wood's ed.
- Crocheron v. North Shore S. I. Ferry Co.**, 56 *N. Y.* 656. Disting'd (Negligence of carrier by boat, in failing to provide proper appliances for safety of passengers) in *Cleveland v. N. J. Steamboat Co.*, 5 *Hun*, 527,

- which was rev'd in 68 *N. Y.* 306, which see. Followed in *Loftus v. Union Ferry Co.* of Brooklyn, 84 *N. Y.* 455, 460.
- Crocker v. Claughly**, 2 *Duer*, 684. Examined and disting'd (Setting off costs against judgment) in *Purchase v. Bellows*, 16 *Abb. Pr.* 105.
- **v. Colwell**, 46 *N. Y.* 212. Cited (Partnership liability on negotiable paper to which one of the partners has become a party in his individual name) in *Story on Partn.* 7 ed. § 742, n.; *Bank of Rochester v. Monteath*, 1 *Den.* 402, being cited on a similar point.
- **v. Crane**, 21 *Wend.* 211; s. c., 34 *Am. Dec.* 228, with note. See *Jenkins v. Union Turnpike Co.* Examined with *Ex parte Rogers*, 7 *Cow.* 526 (Execution of authority delegated to several) in *First Nat. B'k of North Bennington v. Town of North Tabor*, 52 *Vt.* 87; s. c., 36 *Am. R.* 734, 740. Explained (Payment by check) in *Beach v. Smith*, 28 *Barb.* 254, 261.
- **v. Crocker**, 17 *How. Pr.* 504. Rev'd in part in 31 *N. Y.* 507. Decision in 31 *N. Y.* relied on (When purchaser from one having apparent right of property will be protected against secret trust) in *Rawls v. Deshler*, 4 *Abb. Ct. App. Dec.* 12, 20. Said in *McNeil v. Tenth Nat. Bk.*, 55 *Barb.* 66, to be unskillfully reported, and the point stated. Applied by *GROVER, J.*, in *Weaver v. Barden*, 49 *N. Y.* 286.
- **v. Whitney**, 71 *N. Y.* 161. Rev'd in *National Bank v. Whitney*, 103 *U. S.* 99, on the ground that only the U. S. could object to the validity of the mortgage.
- Croemer v. Bradshaw**, 10 *Johns.* 484. Applied (Statements as to quality, made upon sale of chattel—effect of as warranty) in *Osgood v. Lewis*, 2 *Harr. & G. (Md.)* 495; s. c., 18 *Am. Dec.* 317, 321, with note.
- Crofoot v. Allen**, 2 *Wend.* 494; s. c., 10 *N. Y. Com. L. Law. ed.* 207, with brief note.
- **v. Bennett**, 2 *N. Y.* 258. Applied (Delivery of goods sold) in *Brewer v. Salisbury*, 9 *Barb.* 514; *Dexter v. Bevins*, 42 *Id.* 577; *Heroy v. Kerr*, 8 *Bow.* 206; *Bradley v. Wheeler*, 4 *Robt.* 27; *Tyler v. Strang*, 21 *Barb.* 206; *Graff v. Fitch*, 58 *Ill.* 373; s. c., 11 *Am. R.* 85, 89, with note, collating cases. Approved and applied in *Burrows v. Whitaker*, 8 *Hun.* 264, which was aff'd in 71 *N. Y.* 291, which see; *Hyde v. Lathrop*, 3 *Keyes*, 600. Explained and applied in *Kimberly v. Patchin*, 19 *N. Y.* 336. Disting'd in *Cooke v. Millard*, 65 *Id.* 365. Doubted in *Chapin v. Potter*, 1 *Hilt.* 372. Disapproved in *Kein v. Tupper*, 33 *Super. Ct. (J. & S.)* 476. Quoted in *Benj. on Sales*, § 319, n. c (Bennett's 4 *Am. ed.*). Discussed in *Id.* § 346. Quoted and explained in 1 *Id.* § 394 (Corbin's 4 *Am. ed.*).
- Croft v. King**, 8 *Daly*, 265. Compare (Direction of warrant) *Code Civ. Pro.* § 2238.
- Croft v. Brandt**, 58 *N. Y.* 106. Aff'g 13 *Abb. Pr. N. S.* 128; s. c., 46 *How. Pr.* 481. Decision in 58 *N. Y.* followed (Sheriff's fees) in *O'Connor v. O'Connor*, 47 *Super. Ct. (J. & S.)* 498, 505; *McKeon v. Horsfall*, 13 *Weekly Dig.* 252. Decision in 13 *Abb. Pr. N. S.* applied to sale by U. S. Marshal, in *The John E. Mulford, U. S. Distr. Ct. S. D. N. Y.*, 18 *Fed. Rep.* 456. Compare *Code Civ.* § 3307, subd. 7.
- **v. Brooklyn Ferry Co.**, 36 *Barb.* 201. Explained (Private corporation—constitution of powers, &c.) in *Ang. & A. on Corp.* § 107, n. a, 11 ed.
- Croghan v. Livingston**, 25 *Barb.* 336. Aff'd in 17 *N. Y.* 218; s. c., 6 *Abb. Pr.* 352. Decision in 17 *N. Y.* explained and approved (Partition by petition) in *Matter of Cavanagh*, 14 *Abb. Pr.* 261. Limited (Effect of appearance by infant without guardian *ad litem*) in *McMurray v. McMurray*, 60 *Barb.* 124. See (Partition by infant) *Code Civ. Pro.* 1881, § 1534, n.
- Cromelines v. Beldens**, 1 *Wend.* 107. Explained (Amount of justification by bail) in *Louis v. Mitchell*, 2 *Hill.* 379.
- Cromer v. Pinckney**, 3 *Barb. Ch.* 466. Applied (Necessary parties to action by one of several residuary legatees) in *Leavy v. Leavy*, 22 *Hun.* 499, 501. Followed with *Gardner v. Heyer*, 2 *Paige*, 11; *Mowatt v. Carow*, 7 *Id.* 328 (Legal import of term "children") in *Cummings v. Plummer*, 94 *Ind.* 403; s. c., 48 *Am. R.* 167.
- Crommelin v. N. Y. & Harlem R. R. Co.**, 10 *Bow.* 77. Aff'd in 4 *Keyes*, 90; s. c., 1 *Abb. Ct. App. Dec.* 472. Decision in 4 *Keyes* explained (Sale—remedies against the goods—lien) in 2 *Benj. on Sales*, § 1181 (Corbin's 4 *Am. ed.*); *Id.* § 796 (Bennett's 4 *Am. ed.*).
- Cromwell v. Benjamin**, 41 *Barb.* 558. See *Raymond v. Loyl*. Referred to (Liability of husband for necessities furnished to wife) in 10 *Am. Dec.* 465, n., as well expressing the spirit of the American courts.
- **v. Brooklyn Fire Ins. Co.**, 44 *N. Y.* 42; s. c., 4 *Am. R.* 641. See *Kitts v. Massasoit Ins. Co.* Disting'd (Effect of agreement to keep insured for benefit of mortgagee) in *Woodward v. Republic Fire Ins. Co.*, 32 *Hun.* 365; *Stearns v. Quincy Mut. Life Ins. Co.*, 124 *Mass.* 61; s. c., 26 *Am. R.* 647, 649. Disting'd with *Carter v. Rockett*, 8 *Paige*, 437, in *Dunlop v. Avery*, 89 *N. Y.* 592. Applied in *Ames v. Richardson*, 29 *Minn.* 333.
- **v. Cromwell**, 2 *Edw.* 495. Aff'd, it seems, in 3 *Ch. Sent.* 7, but without opinion.
- **v. Hewitt**, 40 *N. Y.* 491. See *Dean v. Hall*; *Hall v. Newcomb*; *Moore v. Cross*; *Richards v. Warring*. Disapproved (Irregular indorser's liability) in *Burton v. Hansford*, 10 *W. Va.* 470; s. c., 27 *Am. R.* 576. Applied (Liability as maker of non-negotiable note) in *Little v. Rawson*, 8 *Abb. N. C.* 253, 258.
- **v. Lovett**, 1 *Hall*, 56. Aff'd in 6 *Wend.* 369.
- **v. Stephens**, 2 *Daly*, 15. Collated with other cases (Who are inn-keepers) in 7

- Am. Dec.* 450, *n.* Referred to in 35 *Am. Dec.* 137, *n.*, as containing a learned and interesting dissertation. Collated with Grinnell v. Cook, 3 *Hill*, 485; Clute v. Wiggins, 14 *Johns.* 175; Ingallsbee v. Wood, 33 *N. Y.* 577; Wilkins v. Earle, 44 *Id.* 172 (Liability of inn-keepers) in 18 *Am. R.* 130, *n.*
- Cronin v. People**, 20 *Hun.* 137. *Aff'd* in 82 *N. Y.* 318; *s. c.*, 87 *Am. R.* 564.
- Croninger v. Crocker**, 62 *N. Y.* 151. Quoted and explained (Sale—delivery) in 2 *Benj. on Sales*, § 1026, *n.* 16 (Corbin's 4 *Am. ed.*); *Id.* § 1030, *n.* 17.
- Cronk v. Canfield**, 31 *Barb.* 171. See (Motion for new trial) *Code Civ. Pro.* 1881, § 1002, *n.*
- Cronkite v. Wells**, 32 *N. Y.* 247. Cited with *Goddard v. Mallory*, 52 *Barb.* 87; *Standard Oil Co. v. Triumph Ins. Co.*, 6 *Sup'm. Ct. (T. & C.)* 300 (What acts of agent are in scope of his authority) in *Whart. Com. on Ag.* § 129, and note.
- Cronse v. Fitch**, 14 *Abb. Pr.* 345; *s. c.*, as *Crouse v. Fitch*, 23 *How. Pr.* 350. *Rev'd* in 1 *Abb. Ct. App. Dec.* 475; *s. c.*, 6 *Abb. Pr. N. S.* 185. Decision in 1 *Abb. Ct. App. Dec.* disting'd (Evidence of subsequent disposition of property to show its value) in *Flannagan v. Maddin*, 81 *N. Y.* 623.
- Crooke v. Andrews**, 40 *N. Y.* 547. Applied (Equitable relief against illegal assessment) in *Hanlon v. Supervisors of Westchester*, 8 *Abb. Pr. N. S.* 270; *Masterson v. Hoyt*, 55 *Barb.* 528. Examined with other cases (Action to remove cloud on title,—when maintainable) in *Fonda v. Sage*, 48 *N. Y.* 186. Applied in *Washburn v. Burnham*, 63 *Id.* 134.
- **v. Slack**, 20 *Wend.* 177. Followed (Word "stores" embraces fuel) in *The Alida*, *Abb. Adm.* 173.
- Crooker v. Bragg**, 10 *Wend.* 260; *s. c.*, 25 *Am. Dec.* 555, with note. Followed and approved with *Allaire v. Whitney*, 1 *Hill*, 487 (Riparian owner's right to natural flow of stream) in *Parker v. Griswold*, 17 *Conn.* 288; *s. c.*, 42 *Am. Dec.* 739, 749, with note. Followed in *Davis v. Fuller*, 12 *Vern.* 178; *s. c.*, 36 *Am. Dec.* 334, 337, with note.
- Crookshank v. Burrell**, 18 *Johns.* 58; *s. c.*, 9 *Am. Dec.* 187, with note; 6 *N. Y. Com. L. Law. ed.* 506, with brief note on conflicting authorities. See *Bennett v. Hall*; *Moore v. Fox*. Applied (Statute of frauds inapplicable to contracts for work and labor) in *Mead v. Case*, 33 *Barb.* 204; *Parker v. Schenck*, 28 *Id.* 40; *Higgins v. Murray*, 4 *Hun.* 567, which was *aff'd* in 73 *N. Y.* 252, which see. Reviewed with other cases and followed in *Ferren v. O'Hara*, 62 *Barb.* 529. Reviewed with other cases in *Passaic Man'g Co. v. Hoffman*, 3 *Daly*, 507; *Court-right v. Stewart*, 19 *Barb.* 457. Cited as settled law, in *Parsons v. Loucks*, 48 *N. Y.* 19, which *aff'd* 4 *Robt.* 218, which see. Disting'd in *Cooke v. Millard*, 65 *N. Y.* 360; *Downs v. Ross*, 23 *Wend.* 273. Followed in *Sewall v. Fitch*, 8 *Cow.* 219. Shown in 9
- Am. Dec.* 188, *n.*, to hold a view different from that held in *Mass.*, *N. H.* and elsewhere; see *Goddard v. Binney*, 115 *Mass.* 450; *s. c.*, 15 *Am. R.* 112; *Pitkin v. Noyes*, 48 *N. H.* 294; *s. c.*, 2 *Am. R.* 218. Applied with *Sewall v. Fitch*, 8 *Cow.* 215, in *Bird v. Muhlbrink* 1 *Rich. (S. C.)* 199; *s. c.*, 44 *Am. Dec.* 247, with note. Explained in *Benj. on Sales*, § 109, *n. y* (Bennett's 4 *Am. ed.*). Commented on, in 2 *Story on Contr.* 5 ed. § 1005, *n.* 2. Applied (Recovery for value of article contracted to be made) in *Muckey v. Howenstine*, 3 *Sup'm. Ct. (T. & C.)* 29; *Bement v. Smith*, 15 *Wend.* 495.
- **v. Gray**. See *Niven v. Munn*.
- Cropsey v. McKinnney**, 30 *Barb.* 47. Cited with other cases (Validity of bigamous marriage, when not to be questioned collaterally) in 10 *Am. L. Reg. N. S.* 610.
- **v. Ogden**, 11 *N. Y.* 228. Examined (Reason of prohibition of re-marriage) in *Moore v. Moore*, 8 *Abb. N. C.* 171. Approved, but disting'd, in *Van Voorhis v. Brintnall*, 86 *N. Y.* 18, 25, 27. Applied in *Marshall v. Marshall*, 2 *Hun.* 238, 240, 242, 250.
- Crosby v. Berger**, 3 *Edw.* 538. *Rev'd* in 4 *Ch. Sent.* 63, but without opinion. Further decision, as it seems, in 4 *Edw.* 254, which was *aff'd* in 11 *Paige*, 377.
- **v. Crafts**, 5 *Hun.* 327. *Aff'd*, it seems, in 69 *N. Y.* 607, without further opinion.
- **v. Hillyer**, 24 *Wend.* 280. Approved (Necessity of acceptance of trust) in *Pierson v. Manning*, 2 *Mich.* 462. Applied in *Reunie v. Bean*, 24 *Hun.* 123.
- Crosier v. Acer**. See *Little v. Harvey*; *Shotwell v. Murray*.
- Cross v. Beard**, 26 *N. Y.* 85. Disting'd (Demurrage) in *Schull v. Albany, &c. Iron Co.*, *N. Y. Daily Reg.*, *Apr.* 11, 1883. Cited as authority, in *Wiles v. N. Y. Central, &c. R. Co.*, 4 *Sup'm. Ct. (T. & C.)* 264, 266.
- **v. Huntley**, 13 *Wend.* 385. Approved (Invalidity of patent as defense to action on note) in *McDougall v. Fogg*, 2 *Bow.* 391. Followed (Jurisdiction of State court to inquire collaterally into validity of patent) in *Merserole v. Union Paper Collar Co.*, 6 *Blatchf. C. Ct.* 356, 360. Followed with *Head v. Stevens*, 19 *Wend.* 411; *Burrall v. Jewett*, 2 *Paige*, 134; *Saxton v. Dodge*, 57 *Barb.* 84, 115; *Middlebrook v. Broadbent*, 47 *N. Y.* 443, in *Kice v. Garnhart*, 34 *Wis.* 453; *s. c.*, 17 *Am. R.* 448, 451.
- **v. Jackson**, 5 *Hill*, 478. Collated with other cases (Voluntary associations) in 4 *Abb. N. C.* 306, *n.* Collated with other cases (Consideration for subscription to public and charitable enterprises) in 2 *Ware & W. Am. Lead. Cas.* 5 ed. 184.
- **v. O'Donnell**, 44 *N. Y.* 661. Applied (Acceptance required by statute of frauds) in *U. S. Reflector Co. v. Rushton*, 7 *Daly*, 410, 412. Explained and disting'd in *Caulkins v. Hellman*, 47 *N. Y.* 454; *Brewster v. Taylor*, 39 *Super. Ct. (J. & S.)* 159, 165. Explained (Effect of delivery to carrier, to



- take case out of statute of frauds) in *Allard v. Greasert*, 61 *N. Y.* 5. Cited in *Benj. on Sales*, § 181. (Bennett's 4 *Am. ed.*). Cited as authority (Acceptance that vests title) in *Hubbard v. O'Brien*, 8 *Hun.* 246.
- *v. Williams*, 25 *Hun.* 62. Abridgt. s. c., 12 *Weekly Dig.* 426.
- Crossman, Matter of**, 20 *How. Pr.* 350. See (Revocation of letters—testamentary trusts) *Code Civ. Pro.* 1881, § 2638, n.
- Crossman v. Bradley**. See *People v. Jackson*.
- *v. Lindsley*, 42 *How. Pr.* 107. See (Attachment of property) *Code Civ. Pro.* 1881, ch. VII., tit. III. art. 1, n.
- Croswell v. Crane**, 7 *Barb.* 191. See *Young v. Dake*. Overruled (Effect of parol lease to commence in future) in *Young v. Dake*, 5 *N. Y.* 463. Discussed in *Browne on Stat. of Frauds*, § 34, 4 ed.
- Croton Turnpike Co. v. Ryder**, 1 *Johns. Ch.* 611. Overruled with *Newburgh Turnpike Co. v. Miller*, 5 *Id.* 101 (Extension of franchise by implication) in *Auburn and Cato Plankroad Co. v. Douglass*, 9 *N. Y.* 444. Followed (Injunction to secure enjoyment of privilege conferred by statute) in *Gates v. McDaniel*, 2 *Stew. (Ala.)* 211; s. c., 19 *Am. Dec.* 49.
- Crouch v. Parker**, 40 *Barb.* 94. Said in 6 *Alb. L. J.* 197, to have been rev'd by Comm. of App. in May, 1871.
- Cronnse v. Fitch**. See *Cronnse v. Fitch*.
- *v. Walrath*. See *Baxter v. Putney*.
- Crowley v. Panama R. R. Co.** See *Vandeventer v. N. Y. & N. H. R. R. Co.*
- Crozier v. Bartlett**, 15 *Johns.* 250. Rev'd as *Bartlett v. Crozier* in 17 *Id.* 439, deciding that a civil action will not lie in such case.
- *v. People*, 1 *Parb.* 453. Disapproved (Proof of reputation of chastity) in *Zabriske v. State*, 14 *Vroom (N. J.)* 640; s. c., 30 *Am. R.* 610, 614.
- Cruger v. Armstrong**, 3 *Johns. Cas.* 9; s. c., 2 *Am. Dec.* 126. Cited with other cases (Distinction between bills and checks) in 12 *Am. L. Reg. N. S.* 10.
- *v. Dougherty*, 1 *Lans.* 464. Aff'd in 43 *N. Y.* 107. Decision in 43 *N. Y.* applied (Heirs, when not bound) in *Merchants' B'k v. Hayes*, 7 *Hun.* 536. Cited (What can be proved by record cannot ordinarily be proved by parol) in 1 *Whart. Com. on Ev.* § 63.
- *v. Douglas*, 4 *Edw.* 433; s. c., less fully, 4 *N. Y. Leg. Obs.* 55. Modified and aff'd in 5 *Barb.* 225, where the opinion of the V. C. is also reported. See also decisions in 2 *N. Y.* 571; 8 *Barb.* 81. Pleadings, proofs, and decrees published at *N. Y.* 1850, also, *N. Y.* 1840-47 (bound with other cases).
- *v. Halliday*, 3 *Edw.* 565. Rev'd in 11 *Paige*, 314.
- *v. Hudson River R. R. Co.*, 12 *N. Y.* 190. Followed (Construction of word "jury" in respect to assessments) in *Astor v. Mayor, &c. of N. Y.*, 37 *Super. Ct. (J. & S.)* 539, 568. Disting'd and explained in *Menges v. City of Albany*, 56 *N. Y.* 374, 378. Ap-
- proved (Invalidity of proceedings to open road without notice to owner of land) in *Silva v. Garcia*, 65 *Cal.* 591.
- *v. Jones*, 18 *Barb.* 467. Applied (Disability of Supreme Court to authorize alienation of trust estate) in *Douglas v. Cruger*, 80 *N. Y.* 15, 19.
- *v. McClaughry*, 51 *Barb.* 642. Aff'd in 41 *N. Y.* 219.
- Crumb, Ex parte**, 2 *Johns. Ch.* 439. Commented on (Guardian—chancery removing) in *Schouler on Dom. Rel.* 3 ed. § 315.
- Crygier v. Long**, 1 *Johns. Cas.* 393. Overruled with *Lawrence v. Bowne*, 2 *Id.* 225 (Time for objection that suit on note was not commenced in time) in *Osborne v. Moncure*, 3 *Wend.* 170.
- Cuddeback v. Kent**, 5 *Paige*, 92. Disting'd and questioned (Remedy on guardian's bond) in *Hood v. Hood*, 85 *N. Y.* 561, 574, a case of an executor's bond. Applied in *Girvin v. Hickman*, 21 *Hun.* 316.
- Cudney v. Cudney**, 68 *N. Y.* 148. See *Jackson v. Kniffen*. Disting'd (Proof of undue influence on testator) in *Van Kleeck v. Phipps*, 4 *Redf.* 99, 131. Followed in *Tucker v. Field*, 5 *Id.* 139, 178. Applied in *Bristed v. Weeks*, *Id.* 529, 533.
- Cuff v. Dorland**, 50 *Barb.* 438. Approved, as to the specific performance; but rev'd on the ground that damages should have been awarded, in 55 *Id.* 481. Decision, in 55 *Barb.* rev'd in 57 *N. Y.* 560, on the ground that the General Term could not give a judgment for specific relief on the appeal, the correctness of the decision in 50 *Barb.* not being passed on.
- Culhane v. N. Y. Central, &c. R. R. Co.**, 67 *Barb.* 562. Former decision in 60 *N. Y.* 137. See *Johnson v. Hudson River R. R. Co.*
- Culver v. Avery**, 7 *Wend.* 380. See *Monell v. Colden*. Approved with *Welsh v. Carter*, 1 *Id.* 189 (Representations pending contract, merged in warranty) in *Horner v. Fellows*, 1 *Doug. (Mich.)* 54. Approved (No distinction as to representation as to title and and as to matters collateral) in *Whitney v. Allaire*, 1 *N. Y.* 305, 308. Disting'd (Duty of one rescinding for fraud) as inapplicable to one bringing action for deceit, in *Krumm v. Beach*, 25 *Hun.* 293, 295.
- *v. Barney*, 14 *Wend.* 161. Approved (*Puis darrein continuance* waives former pleas) in *Adler v. Wise*, 4 *Wisc.* 162.
- *v. Felt*, 4 *Robt.* 681. Reported in 30 *How. Pr.* 442.
- *v. Haslam*, 7 *Barb.* 314. See *Stewart v. Lisperand*. Overruled (Admissibility of opinions of witnesses) in *Dewitt v. Barley*, 9 *N. Y.* 371. Collated with *Clark v. Fisher*, 1 *Paige*, 171; *Jackson v. Kings*, 4 *Cow.* 207; *DeLafield v. Parish*, 25 *N. Y.* 38, and other cases, in 27 *Alb. L. J.* 126. See also, *Id.* 146. Explained in *Willard on Executors*, 130.
- *v. Sisson*, 3 *N. Y.* 264. Disting'd (Covenant to pay implied from acknowledg-

- ment of debt) in *Thayer v. Marsh*, 11 *Hun*, 501, 503. Applied in *Mack v. Austin*, 29 *Id.* 534; *Booth v. Cleveland Mill Co.*, 74 *N. Y.* 15, 22.
- Cumberland v. Codrington**, 3 *Johns. Ch.* 229. Applied (Promise for benefit of third person) in *Barker v. Bucklin*, 2 *Den.* 55; *Berly v. Taylor*, 5 *Hill*, 586. Applied (Liability of grantee of mortgaged premises) in *King v. Whitley*, *Hoffm.* 477; *Burr v. Beers*, 24 *N. Y.* 180. Examined with other cases, in *Garnsey v. Rogers*, 47 *Id.* 238.
- Cumberland Coal & Iron Co. v. Hoffman Steam Coal Co.**, 30 *Barb.* 159; s. c., 20 *How. Pr.* 62. Other decisions in 8 *Abb. Pr.* 243; 30 *Barb.* 553; 39 *Id.* 16; s. c., 15 *Abb. Pr.* 78. See *Humiston v. Ballard*.
- Cumberland Coal Co. v. Sherman**, 8 *Abb. Pr.* 243. Aff'd, as *Cumberland Coal & Iron Co. v. Sherman*, 30 *Barb.* 159; s. c., 20 *How. Pr.* 62. See *Carpenter v. Danforth*; *Hoyle v. Plattsburgh & Montreal R. R. Co.* Decision in 8 *Abb. Pr.* disting'd (Objection as to want of jurisdiction over foreign corporation) in *McCormick v. Penn. Cent. R. R. Co.*, 49 *N. Y.* 303. Decision in 30 *Barb.* disting'd (Duty of director of corporation as trustee) in *Murray v. Vanderbilt*, 39 *Id.* 157; *Gardiner v. Pollard*, 10 *Bosw.* 692. Applied in *East N. Y. & Jamaica R. R. Co. v. Elmore*, 5 *Hun*, 217; *Butts v. Wood*, 37 *N. Y.* 319, which aff'd 38 *Barb.* 189, which see. Approved in *Paine v. Irwin*, 16 *Hun*, 391. Followed in *Metropolitan, &c. R'y Co. v. Manhattan R'y Co.*, 14 *Abb. N. C.* 103, 209. Followed and approved in *Port v. Russell*, 36 *Ind.* 60; s. c., 10 *Am. R.* 5, 9, with note, collating cases. Approved in *Pickett v. School Dist. No. 1, Town of Wiota*, 25 *Wis.* 551; s. c., 3 *Am. R.* 105, 107, as applicable to member of school board. Quoted in *Morawetz on Corp.* § 243, n. 2. Applied (Trustees, &c. when incapacitated to purchase) in *Case v. Carroll*, 35 *N. Y.* 388. Applied to lease from father to son,—in dissenting opinion of *DWIGHT, C.*, in *Lingke v. Wilkinson*, 57 *Id.* 453. Applied with *Adair v. Brimmer*, 74 *Id.* 539 (Ratification by *cestui que trust*) in *Luers v. Branjes*, 5 *Redf.* 32.
- Cumberland, Duke of v. Graves**, 9 *Barb.* 595. Aff'd in 7 *N. Y.* 305.
- Cumines v. Supervisors of Jefferson**, 63 *Barb.* 287. Aff'd as *Comins v. Supervisors of Jefferson*, in 3 *Sup'm. Ct. (T. & C.)* 296, and that aff'd in 64 *N. Y.* 626.
- Cumming's Case**, 3 *Park.* 343. Examined and approved with *Francis v. McCann*, *Id.* 298 (Impaneling a jury) in *People v. Ferris*, 1 *Abb. Pr. N. S.* 193, notwithstanding reversal of *Francis v. McCann* in 16 *N. Y.* 58.
- Cumming v. Hackley**, 8 *Johns.* 202. See *Witherby v. Mann*. Examined, and *Roosevelt v. Mark*, 6 *Johns. Ch.* 281, followed (Right of action by one who has paid debt of another) in *Miller v. Howry*, 3 *Penr. & W. (Pa.)* 374; s. c., 24 *Am. Dec.* 320, with note. Followed in *Boulware v. Robinson*, 8 *Tex.* 327; s. c., 58 *Am. Dec.* 117.
- **v. Williamson**. See *Williams v. Woodard*.
- Cummings v. Banks**, 2 *Barb.* 601. See *Monroe v. Douglass*. Approved with *Monroe v. Douglass*, 4 *Sandf. Ch.* 126 (Conclusiveness of foreign judgment) in *Lazier v. Westcott*, 26 *N. Y.* 146.
- **v. Mayor, &c. of Brooklyn**, 11 *Paige*, 596. Approved (Recovery by contractor with city, when municipal officers neglect to make proper assessment) in *Baldwin v. City of Oswego*, 1 *Abb. Ct. App. Dec.* 62.
- **v. Morris**, 3 *Bosw.* 560. Aff'd in 25 *N. Y.* 625. See *Myers v. Davis*. Decision in 25 *N. Y.* disting'd (Right of action on note) in *Hays v. Hathorn*, 74 *Id.* 488, which rev'd 10 *Hun*, 513, which see. Applied to case of assignment of claim,—in *Henderson v. Fullerton*, 54 *How. Pr.* 427.
- Cummins v. Agricultural Ins. Co.**, 5 *Hun*, 554. Rev'd in 6 *N. Y.* 260; s. c., 23 *Am. R.* 111, with note. Decision in 67 *N. Y.* *Y.* reviewed with other cases (Insured building when vacant or unoccupied) in *Herrman v. Adriatic Fire Ins. Co.*, 45 *Super. Ct. (J. & S.)* 397. Applied in *Stupetski v. Transatlantic Fire Ins. Co.*, 43 *Mich.* 371. Collated with other cases in 35 *Am. R.* 443, n.
- **v. Barkalow**, 4 *Keyes*, 514; s. c., 1 *Abb. Ct. App. Dec.* 479. Compare (Agreement for compensation for procuring government contract) *Providence Tool Co. v. Norris*, 2 *Wall.* 45.
- **v. Bennett**, 8 *Paige*, 81. Disting'd (Discontinuance) in *Clearwater v. Decker*, 13 *Hun*, 63. Followed in *Bishop v. Bishop*, 7 *Robt.* 194. Cited in *Jerome v. Seymour*, *Walk. Ch. (Mich.)* 360.
- Cumpston v. McNair**, 1 *Wend.* 457. See *Bank of N. Y. v. Livingston*; *Moakley v. Riggs*.
- Cunliff v. Mayor of Albany**, 2 *Barb.* 190. Rev'd in 2 *N. Y.* 165.
- Cunningham v. Bucklin**, 8 *Cow.* 178; s. c., 18 *Am. Dec.* 432, with note. See *Lansing v. Yates*; *Yates v. Lansing*. Followed with *Vanderheyden v. Young*, 11 *Johns.* 159 (Judicial responsibility) in *Gordon v. Farrar*, 2 *Doug. (Mich.)* 416. Disting'd (Jurisdiction to grant discharge to insolvent) in *Stanton v. Ellis*, 12 *N. Y.* 575.
- **v. Burdell**, 4 *Bradf.* 343. Quoted and commented on (Evidence of marriage) in 1 *Bishop on Mar. & D.* § 589, 6 ed. Discussed (Administration—widow preferred) in *Willard on Executors*, 192.
- **v. Cassidy**, 17 *N. Y.* 276; s. c., more fully, 7 *Abb. Pr.* 183. Applied (Validity of sale in mass) in *Bennett v. Bagley*, 22 *Hun*, 493, 411. Followed in *McIntyre v. Sanford*, 9 *Daly*, 21.
- **v. Freeborn**, 1 *Edw.* 256. Aff'd in 3 *Paige*, 557; and that aff'd in 11 *Wend.*

240. Decision in 11 *Wend.* overruled (Power of debtor or assignee to delay payment) in *Dunham v. Waterman*, 17 *N. Y.* 9, 17. Followed, notwithstanding *Dunham v. Waterman* (Provision for carrying on or finishing business) in *Perry Ins. & Trust Co. v. Foster*, 58 *Ala.* 502; s. c., 29 *Am. R.* 779, 784, with note collating cases. Compared with other cases in 21 *Alb. L. J.* 24. Approved (Proportional right of creditors to insolvent's property) in *Brooke v. Scoggins*, *U. S. Cir. Ct. D. Oreg.* 11 *Bankr. Reg.* 258, 268. Followed in *Dord v. Bonnafée*, 6 *La. Ann.* 563; s. c., 54 *Am. Dec.* 573, with note, as to the validity of an assignment under the laws of N. Y. Quoted (Assignment directly to auditors) in *Burrill on Assign.* § 3, n. 4, 4 ed. Commented on in *Id.* § 121, n. 1, §§ 212, 216. Quoted (Fraudulent intent) in §§ 338, 339. Quoted (Preferences) in *Id.* § 163, n. 1. Cited as condemning the common law doctrine on this point,—in 3 *Pars. on Contr.* 427, n. f.
- *v. Goele*, 4 *Den.* 71. Followed (Summary proceedings—affidavit of agent—appearance for purpose of objecting to jurisdiction) in *People v. Johnson*, 1 *Sup'm. Ct. (T. & C.)* 578.
- *v. Hudson River B'k*, 21 *Wend.* 557. Explained (Proof of handwriting) in 1 *Best on Ev.* § 234, n. a, Wood's ed.
- *v. Jones*, 3 *E. D. Smith*, 650; s. c., 4 *Abb. Pr.* 433. Aff'd in 20 *N. Y.* 486.
- *v. Knight*, 1 *Barb.* 399. See *Jackson v. De Witt*; *Stow v. Tift*. Disapproved (Dower in mortgaged premises) in *Mills v. Van Voorhis*, 23 *Barb.* 125.
- *v. Morrell*, 10 *Johns.* 203; s. c., 6 *Am. Dec.* 332. See *McMillan v. Vanderlip*; *Seers v. Fowler*. Reported in 2 *Langdell's Cas. on Contr.* 2 ed. 600. Approved (Mutual and independent covenants) in *Bean v. Atwater*, 4 *Conn.* 3; s. c., 10 *Am. Dec.* 91, as having overruled *Seers v. Fowler*, 2 *Johns.* 272; *Havens v. Bush*, *Id.* 387, which recognized *Terry v. Duntze*, 2 *H. Bl.* 389, as authority. Cited in *Leopold v. Salkey*, 89 *Ill.* 412; s. c., 31 *Am. R.* 92, with note, collating cases,—as approved in *Tompkins v. Elliott*, 5 *Wend.* 496, the case of *Wolfe v. Howes*, 20 *N. Y.* 197, being disting'd in *Leopold v. Salkey*. Applied in *Sayre v. Craig*, 4 *Ark.* 10; s. c., 37 *Am. Dec.* 757, 760, with note.
- *v. Peil*, 5 *Paige*, 607. Disting'd (Directors of corporation liable for fraudulent breach of trust) in *Van Dyck v. McQuade*, 86 *N. Y.* 46. Followed in *Heath v. Erie R'y Co.*, 8 *Blatchf. C. Ct.* 347, 395; *Smith v. Rathbun*, 66 *Barb.* 402. See other cases collected (Application to intervene) in 6 *Abb. N. C.* 306, n. Followed with *Peck v. Ellis*, 2 *Johns. Ch.* 231; *Miller v. Fenton*, 11 *Paige*, 18 (Co-trustee not necessary party to suit for fraudulent breach of duty) in *Boyd v. Gill*, *U. S. Cir. Ct. S. D. N. Y.*, 17 *Reporter*, 132.
- *v. People*, 4 *Hun.* 455. Disting'd (Forgery of instrument invalid on its face) in *Phelps v. People*, 6 *Id.* 428, 445.
- Cure v. Crawford*, 5 *How. Pr.* 293. Disapproved (Restraining proceedings of inferior tribunal) in *Wordsworth v. Lyon*, *Id.* 463.
- Curnen v. Mayor. &c. of N. Y.*, 7 *Daly*, 544. Rev'd in 79 *N. Y.* 511. Statement in latter that it is an appeal from *Sup'm. Ct.* is error.
- Currie v. Cowles*, 6 *Bosw.* 452. Cited (Effect of attorney's negligence, &c. in one matter, in depriving him of compensation in another) in *Whart. Com. on Ag.* § 615, n. with a query as to a case where the client pleads damage as set-off.
- *v. Hart*, 2 *Sandf. Ch.* 353. Explained (Assignment for benefit of creditors—qualifications of assignee) in *Burrill on Assign.* § 92, 4 ed. Explained (For whose benefit) in *Id.* § 114. Explained (Trusts in assignor's favor) in *Id.* § 199.
- *v. Henry*, 2 *Johns.* 433. See *Gillet v. Fairchild*. Disting'd (Using language employed in one plea to support or disprove another) in *Alderman v. French*, 1 *Pick. (Mass.)* 1; s. c., 11 *Am. Dec.* 114, 121, with note, collating cases.
- *v. White*, 1 *Sweeny*, 166; s. c., 6 *Abb. Pr. N. S.* 352; 37 *How. Pr.* 330. Rev'd in 45 *N. Y.* 822.
- Curran v. Finn*, 3 *Den.* 229. See *Mick v. Mick*. Collated with other cases (Aliens—effect of statute on rights of) in *Sharnau & B. Cas. on Real Prop.* 519.
- Curtis v. Brooks*, 37 *Barb.* 476. Doubted (Effect of intermarriage of maker and payee of note) in *Wright v. Wright*, 59 *Id.* 505. Criticised as inconsistent with later decisions in *Tyler on Inf. & Cov.* 2 ed. § 463, citing *Wright v. Wright*, 54 *N. Y.* 437.
- *v. Brown*, 2 *Barb.* 51. Aff'd in 2 *N. Y.* 225. See *Butler v. Wright*. Decision in 2 *Barb.* cited as authority (What is contract of guaranty) in *National Loan & Building Society v. Lichtenwalner*, 100 *Penn. St.* 100; s. c., 45 *Am. R.* 359.
- *v. Bryan*, 36 *How. Pr.* 33. Quoted (Trade-mark—fraud in the use of) in 2 *Pars. on Contr.* 257 *bn*, n. v.
- *v. Delaware. L. & W. R. R. Co.*, 74 *N. Y.* 116. Disting'd (*Lex loci contractus* as to liability of carriers) in *Faulkner v. Hart*, 82 *Id.* 413, 420. Disting'd (Title to paraphernalia of wife) in *Whiton v. Snyder*, 83 *Id.* 292.
- *v. Engel*, 2 *Sandf. Ch.* 287. See *Jaques v. M. E. Church*. Disting'd (Husband's liability for wife's debts) in *Tuttle v. Hoag*, 46 *Mo.* 38; s. c., 2 *Am. R.* 490.
- *v. Fox*, 47 *N. Y.* 299. Explained (Creditor's actions—judgment) in *Wait on Fraud. Conv.* § 181.
- *v. Gokey*, 5 *Hun.* 555. Rev'd in 68 *N. Y.* 300. See *Maier v. Hoffman*; *Nobles v. Bates*. Decision in 68 *N. Y.* cited with *Saratoga Co. B'k v. King*, 44 *Id.* 87; *Maier v. Hoffman*, 4 *Daly*, 168; *Lawrence*

- v. Kidder*, 10 *Barb.* 641; *Murray v. Vanderbilt*, 39 *Id.* 140, and many other cases (Application of doctrine of public policy to restraint of trade) in note to *Metzger v. Cleveland*, *Super. Ct.*, *Marion Co. Ind.*, 18 *Ins. L. J.* 861.
- *v. Groat*, 6 *Johns.* 168; s. c., 5 *Am. Dec.* 204. See *Betts v. Lee*; *Merritt v. Johnson*; *Osterhout v. Roberts*. Re-aff'd (Right of owner to reclaim property in altered form) in *Silsbury v. McCoon*, 3 *N. Y.* 392, which rev'd 4 *Den.* 334, which see. See, in connection therewith, *Isle Royale Mining Co. v. Hertin*, 37 *Mich.* 332; s. c., 26 *Am. R.* 520. Applied (Effect of judgment and execution to change property in chattel) in *Osterhout v. Roberts*, 8 *Cow.* 44. Reviewed with *Osterhout v. Roberts*, 8 *Cow.* 43, and other cases, in *Marsh v. Pier*, 4 *Rawle (Pa.)* 273; s. c., 26 *Am. Dec.* 131, 139, with note. Reviewed with other cases (Effect of passing on demand presented as set-off) in *Hatch v. Benton*, 6 *Barb.* 33. Explained in *Skelding v. Whitney*, 3 *Wend.* 157; *Burwell v. Knight*, 51 *Barb.* 269. Cited as authority in *Wilder v. Case*, 16 *Wend.* 585. Applied in *McGuinty v. Herick*, 5 *Id.* 244. Applied (Recovery of enhanced value of property as damages) in *Walther v. Wetmore*, 1 *E. D. Smith*, 28; *Baker v. Wheeler*, 8 *Wend.* 505. Explained and disting'd in *Weymouth v. Chicago & N. W. R'y Co.*, 17 *Wis.* 550. Reviewed with *Silsbury v. McCoon*, 3 *N. Y.* 379, and other cases, in *Skinner v. Pinney*, 19 *Fla.* 42; s. c., 45 *Am. R.* 1.
- *v. Hubbard*, 1 *Hill*, 336. Aff'd in 4 *Id.* 427. Decision in 1 *Hill* quoted (Wrongful execution of civil process by sheriff) in 2 *Add. on Torts* 124, n., Wood's ed.
- *v. Jones*, 3 *Den.* 590. Modified on appeal in *How. App. Cas.* 137.
- *v. Knox*, 2 *Den.* 341. See *People v. Mather*. Commented on (Witness—questions tending to disgrace) in 1 *Best on Ev.* § 130, n. a, Wood's ed.
- *v. Leavitt*, 4 *Edw.* 246. Aff'd in 11 *Paige*, 386.
- *v. —*, 17 *Barb.* 309. Modified on appeal in 15 *N. Y.* 9. See *Brouwer v. Harbeck*; *Butler v. Palmer*; *Ketchum v. City of Buffalo*; *Tracy v. Talmage*. Another decision arising out of the transactions here involved is reported in *Leavitt v. Blatchford*, 17 *N. Y.* 521. Decision in 17 *Barb.* followed (Sufficiency of seal) in *Gillespie v. Brooks*, 2 *Redf.* 349, 366. Decision in 15 *N. Y.* followed (Question of usury as determined by law of place) in *Hull v. Wheeler*, 7 *Abb. Pr.* 414; *Jewell v. Wright*, 30 *N. Y.* 264. Disting'd in *Wayne Co. Savg's Bk. v. Low*, 6 *Abb. N. C.* 87. Applied in *Berrien v. Wright*, 26 *Barb.* 213. Cited as authority with *Chapman v. Robertson*, 6 *Paige*, 634, in *Miller v. Tiffany*, 1 *Wall.* 310. Cited as authority (Defense of usury as to corporations) in *Butterworth v. O'Brien*, 7 *Abb. Pr.* 461, which was aff'd in 23 *N. Y.* 275, which see.
- Disting'd in *Hungerford's Bk. v. Potsdam, &c. R. R. Co.*, 10 *Abb. Pr.* 27, which is thought in *Smith v. Alvord*, 63 *Barb.* 424, to conflict with the other two cases. Approved in *Belmont Branch Bk. v. Hoge*, 7 *Bosw.* 557. Re-aff'd in *Southern Life Ins. Co. v. Packer*, 17 *N. Y.* 52. Explained and applied in *Rosa v. Butterfield*, 33 *Id.* 665. Examined with other cases, in *Strong v. N. Y. Laundry M'fg Co.*, 37 *Super. Ct. (J. & S.)* 279, 282. Explained (Repeal of usury laws as to corporations) in *Merchants' Exch. Nat. Bk. v. Com. Warehouse Co.*, 49 *N. Y.* 641. Applied (Effect of repeal or alteration of law giving cause of action or defense founded on public policy) in *Washburn v. Franklin*, 13 *Abb. Pr.* 140; *Central Bk. v. Empire Stone Dressing Co.*, 26 *Barb.* 37; *Hoppock v. Stone*, 49 *Id.* 528. Said in 10 *Am. Dec.* 135, n., to maintain the doctrine, which has been followed in *Va.*, *Ill.*, *Ind.*, and elsewhere,—citing cases. Applied in *Gregory v. German Bank of Denver*, 3 *Colo.* 332; s. c., 25 *Am. R.* 760. Followed and approved in *Ewell v. Daggs*, 108 *U. S.* 150; *Town of Danville v. Pace*, 25 *Gratt. (Va.)* 1; s. c., 18 *Am. R.* 663, 665, 671. Applied (Validity of provisions contained in instrument also containing invalid provisions) in *Scott v. Guthrie*, 10 *Bosw.* 420; *Powers v. Graydon*, *Id.* 646; *Towle v. Smith*, 2 *Robt.* 495. Explained and applied in *O'Neil v. Salmon*, 25 *How. Pr.* 255. Applied (Effect of contract illegal in part) in *Pollak v. Gregory*, 9 *Bosw.* 128; *Sacketts Harbor Bk. v. Codd*, 18 *N. Y.* 244. Disting'd in *Saratoga County Bk. v. King*, 44 *Id.* 91. Applied (Incidental power of corporation to transfer assets as security) in *Nelson v. Eaton*, 26 *N. Y.* 414. Followed in *Smith v. Law*, 21 *Id.* 299. Applied (Implied power in corporation) in *East N. Y. & Jamaica R. R. Co. v. Lighthall*, 5 *Abb. Pr. N. S.* 462. Disting'd in *Kent v. Quicksilver Mining Co.*, 78 *N. Y.* 180. Followed (Power of corporation to borrow) in *Barnes v. Ontario Bk.*, 19 *Id.* 156. Followed (Banking association not within provisions of L. 1820, c. 94) in *International Bk. v. Bradley*, *Id.* 255. Followed with *Leavitt v. Blatchford*, 17 *Id.* 521; *International Bk. v. Bradley*, in *Robinson v. Bk. of Attica*, 21 *Id.* 409. Discussed in *Burrill on Assign.* § 66, 4 ed. Applied (Individual bankers) in *People v. Doty*, 80 *N. Y.* 234. Examined with other cases (Obligation of bank to charge indorsers) in *State Bk. of Troy v. Bk. of the Capitol*, 17 *Abb. Pr.* 370. Explained (Recovery of money paid) in *Knowlton v. Congress & Empire Spring Co.*, 57 *N. Y.* 532. Followed in *Oneida Bk. v. Ontario Bk.*, 21 *Id.* 496. Explained and disting'd in *Matter of Jaycox*, 13 *Blatchf. Ct. Ct.* 70, 79. Applied with *Schermerhorn v. Talmán*, 14 *N. Y.* 93; *Tracy v. Talmage*, *Id.* 162, in *Smart v. White*, 73 *Me.* 332; s. c., 40 *Am. R.* 356. Explained (Illegal contracts) in 2 *Chitty on Contr.* 976 n. p, 11 *Am. ed.* Ex-

- plained in *Benj. on Sales*, § 504, n. c (Bennett's 4 Am. ed.). Approved as an able discussion (Parties when not in *pari delicto*) in *Pomeroy on Eq. Jur.* § 403, n. 2. Quoted ("Void," and "voidable" acts disting'd) in *Wait on Fraud. Conv.* § 434, n. 2. Applied (Application of statute forbidding fraudulent alienations of property) in *Rome Exchange Bk. v. Eames*, 4 *Abb. Ct. App. Dec.* 95. Applied with *Dunham v. Whitehead*, 21 *N. Y.* 131; *Leavitt v. Blatchford*, 17 *Id.* 521, in *Van Buskirk v. Warren*, *Id.* 459; *Shoemaker v. Hastings*, 61 *How. Pr.* 96. Commented on in *Burrill on Assign.* §§ 349, 350. Followed (Rights of *bona fide* transferee of property unlawfully transferred by corporation) in *Warner v. Chappell* 32 *Barb.* 314; *Marine Bk. v. Clements*, 31 *N. Y.* 45. Cited as authority in *Ogden v. Andre*, 4 *Bosw.* 601. Explained (Invalidity of assignment for creditors containing reservation in favor of assignor) in *Collomb v. Caldwell*, 16 *N. Y.* 485. Collated with other cases, in *Bishop on Assign.* § 201. Discussed in *Burrill on Assign.* §§ 200, 243, 4 ed. Applied (Invalidity of revocable assignment for creditors) in *Yates v. Lyon*, 61 *Barb.* 209. Explained in *Burrill on Assign.* § 6, 4 ed. Quoted and commented on in *Id.* § 173, 4 ed. Quoted (Receiver of corporation) in *High on Receiv.* § 315, n. 2. Explained (Fraudulent conveyance of personal estate) in *Shoemaker v. Hastings*, 61 *How. Pr.* 79, 96.
- *v. Masten*. See *Vroom v. Ditmas*.
- *v. Patterson*, 8 *Cow.* 65. Referred to as overruled (Liability of sheriff for refusal to levy when indemnified) in *Dolson v. Saxton*, 11 *Hun.* 565. Collated with *Chamberlain v. Beller*, 18 *N. Y.* 115, and other cases, in 16 *Am. Dec.* 551, n.
- *v. Rochester & Syracuse R. R. Co.*, 18 *N. Y.* 534. Aff'd 20 *Barb.* 282. See *Ransom v. N. Y. & Erie R. R. Co.* Decision in 18 *N. Y.* applied (Presumption that injury resulted from negligence of railroad company) in *Brehm v. Great Western R'y Co.*, 34 *Barb.* 269; *Edgerton v. N. Y. & Harlem R. R. Co.*, 35 *Id.* 389, 395; 39 *N. Y.* 229. Applied to owner of building, in *Mullen v. St. John*, 57 *N. Y.* 572. Included with notes, in *Thomps. on Carr. of Pass.* 188. Commented upon in *Id.* 214. Followed (Damages for bodily suffering) in *Swarthout v. N. J. Steamboat Co.*, 46 *Barb.* 226, which was aff'd in 48 *N. Y.* 211, which see. Applied with *Ransom v. N. Y. & Erie R. R. Co.*, 15 *Id.* 415, in *Smith v. Bagwell*, 19 *Fla.* 117; s. c., 45 *Am. R.* 12. Applied to damages for loss of health, &c., in *Williams v. Vanderbilt*, 28 *N. Y.* 225; *Sheehan v. Edgar*, 58 *Id.* 631. Applied (Damages for future suffering) in *Hamilton v. Third Ave. R. R. Co.*, 35 *Super. Ct. (J. & S.)* 130. Disting'd in *Macer v. Third Ave. R. R. Co.*, 47 *Id.* 461, 467. Followed (Damages for mental suffering) in *Matteson v. N. Y. Central R. R. Co.*, 62 *Barb.* 379. Cited with other cases (Damages for negligence) in 14 *Am. L. Reg. N. S.* 279.
- *v. Smallman*. See *Moakeley v. Riggs*.
- *v. Smith*, 30 *Barb.* 9. Denied (Vesting of trusts on death of trustee of personal estate) in *Matter of Howell*, 61 *How. Pr.* 180. Collated with other cases (Assignment for benefit of creditors—parties in suits by assignee) in *Bishop on Assign.* § 315, n.
- *v. Tyler*, 9 *Paige*, 432. Applied (Right of creditor to benefit of security taken by surety) in *Van Schaick v. Third Ave. R. R. Co.*, 8 *Abb. Pr. N. S.* 383; *Marine & Fire Ins. B'k of Ga. v. Jauncey*, 1 *Barb.* 488; *Crossby v. Crafts*, 5 *Hun.* 329; *Vail v. Foster*, 4 *N. Y.* 314; *Clark v. Ely*, 2 *Sandf. Ch.* 168; *Ten Eyck v. Holmes*, 3 *Id.* 429. Cited as authority in *First Nat. B'k of Corry v. Stiles*, 22 *Hun.* 345. Explained in *Marine & Fire Ins. B'k v. Jauncey*, 3 *Sandf.* 261. Disting'd in *Hampton v. Phipps*, 108 *N. S.* 265. Disting'd (Liability for deficiency in foreclosure) in *Burr v. Beers*, 24 *N. Y.* 179. Explained in *King v. Whitely*, 10 *Paige*, 468. Applied in *Marsh v. Pike*, 1 *Sandf. Ch.* 213; *Blyer v. Monbolland*, 2 *Id.* 480. Applied (Effect of assignment of debt to carry collaterals) in *Dorsheimer v. Nichols*, 1 *Abb. Ct. App. Dec.* 521; *Bowdoin v. Coleman*, 6 *Duer*, 186.
- Curtiss v. Ayrault*, 47 *N. Y.* 73. Subsequent decision in 3 *Hun.* 487; s. c., 5 *Sup'm. Ct. (T. & C.)* 611. Decision in 47 *N. Y.* quoted and discussed (Nuisance—artificial water courses) in *Wood on Nuis.* 2 ed. § 409.
- *v. Howell*, 39 *N. Y.* 211. Disting'd (Duty of vendor rescinding for fraud, to restore what he has received) in *Guckenheimer v. Angevine*, 81 *Id.* 394.
- *v. McNair*, 6 *Hun.* 550. Aff'd in 68 *N. Y.* 198.
- Cushman v. Bailey*, 1 *Hill*, 526. Disting'd (Participation in profits, as constituting partnership) in *Burnett v. Snyder*, 76 *N. Y.* 344, 351.
- *v. Hatfield*, 52 *N. Y.* 653; s. c., more fully, as *Cushman v. Hatfield*, 15 *Abb. Pr. N. S.* 109. Compare (Jurisdiction when lost by Court of Appeals) *People ex rel. Smith v. Village of Nelliston*, 79 *N. Y.* 638.
- *v. Horton*, 1 *Hun.* 601; s. c., 4 *Sup'm. Ct. (T. & C.)* 103. Rev'd in 59 *N. Y.* 149.
- *v. Johnson*, 13 *How. Pr.* 495; s. c., more fully, as *Cashman v. Johnson*, in 4 *Abb. Pr.* 256. Followed with *Miller v. Rosseman*, 15 *How. Pr.* 10 (Supplementary proceedings must be conducted by a judge) in *Amlingmeier v. Amlingmeier*, 9 *Cin. L. Bull.* 241.
- *v. Thayer Mfg Jewelry Co.*, 53 *How. Pr.* 60. Aff'd in 7 *Daly*, 330; which was aff'd in 76 *N. Y.* 365; s. c., 32 *Am. R.* 315. Decision in 76 *N. Y.* confirmed (Refusal of remedy by mandamus) in *Clarke v. Bentel*, *Dist. Ct. Hamilton Co. Ohio*, 11 *Weekly L. Bul.* 105.
- *v. U. S. Life Ins. Co.*, 4 *Hun.* 783.

Rev'd in 63 *N. Y.* 404. Further decision in 70 *N. Y.* 72. Decision in 70 *N. Y.* explained (Life insurance—statements in policy—warranty) in 2 *Pars. on Contr.* 466, n. 1, Keller's ed.

**Cutler v. Biggs**, 2 *Hill*, 409. Disting'd (Use of old affidavit) in *Mojarrieta v. Saenz*, 80 *N. Y.* 547, 551.

— **v. Rathbone**, 1 *Hill*, 204. See *Berrien v. Westervelt*. With this decision and *Stacy v. Farnham*, 2 *How. Pr.* 26, compare (Affidavit, &c. in replevin) *Milliken v. Selye*, 6 *Hill*, 623; 3 *Den.* 54.

— **v. Wright**, 22 *N. Y.* 472. Explained (Foreign statutes as evidence) in *Munroe v. Guillaume*, 3 *Keyes*, 30. Disapproved in *Prouty v. Michigan S. & N. Indiana R. R. Co.*, 1 *Hun*, 655, 669. Examined with other cases (Usury as determined by law of place) in *Wayne Co. Savgs' Bk. v. Low*, 6 *Abb. N. C.* 76, 86. Followed in *Sheldon v. Haxton*, 24 *Hun*, 196.

**Cutter v. Doughty**, 23 *Wend.* 513. Rev'd in 7 *Hill*, 305.

**Cutting v. Cutting**, 20 *Hun*, 360. Aff'd in part and rev'd in part in 86 *N. Y.* 522. Decision in 20 *Hun* discussed (Creditors reaching powers) in *Wait on Fraud. Conv.* § 40.

— **v. Marlon**. See *Cutting v. Marlon*.

— **v. Marlor**, 6 *Abb. N. C.* 388; s. c., 57 *How. Pr.* 56. Aff'd in 17 *Hun*, 573, and that aff'd in 78 *N. Y.* 454.

**Cutts v. Guild**, 57 *N. Y.* 229. Subsequent appeal in 4 *Weekly Dig.* 582; mem. s. c., in 70 *N. Y.* 608, but no opinion. Decision in 57 *Id.* recognized as authority (Rights of an assignee) in *Cowdrey v. Vandenberg*, 101 *U. S.* 572. Followed in *Scamoni v. Ruck*, 53 *How. Pr.* 317. See (Judgment, when assignable) *Code Civ. Pro.* 1881, § 1912, n.

**Cuyler v. Ensworth**, 6 *Paige*, 32. Applied (Subrogation of surety to position of judgment creditor) in *Townsend v. Whitney*, 75 *N. Y.* 430.

— **v. Nellis**, 4 *Wend.* 398. Overruled (Sufficiency of notice of protest) in *Downer v. Remer*, 21 *Wend.* 10.

— **v. Sandford**, 13 *Barb.* 339. Relied on (Usury as determined by rate of exchange) in dissenting opinion of *Johnson, J.*, in *Price v. Lyons Bank*, 80 *Id.* 85, 97.

**Cythe v. La Fountain**, 51 *Barb.* 186. Explained (Ejectment against vendee—waiver of forfeiture) in *Sedgw. & W. on Tr. of Tit. to Land*, § 326.

## D.

**Dabney v. Stevens**, 2 *Sweeny*, 415; s. c., 10 *Abb. Pr. N. S.* 39; 40 *How. Pr.* 341. Aff'd in part in 46 *N. Y.* 681, but without opinion.

**Daby v. Ericsson**, 45 *N. Y.* 786. Collated with *Clark v. Hopkins*, 7 *Johns.* 556; *Miller v. Smith*, 16 *Wend.* 425, and other cases (Presumption of payment of judgment after

twenty years) in 30 *Alb. L. J.* 86. Cited in 2 *Whart. Com. on Ev.* § 1360.

**Dacey v. Agricultural Ins. Co.**, 21 *Hun*, 83. Compare (Separate valuation of each article insured) *Newlin v. North Amer. Ins. Co.*, 5 *Penn. L. J. Rep.* 116.

**Dack v. Dack**, 19 *Hun*, 630. Modified in 84 *N. Y.* 663.

**Da Costa, Matter of**. See *Yates' Case*.

**Daguerre v. Orser**, 3 *Abb. Pr.* 86. Subsequent decision, as it seems, in 10 *Id.* 12, n., which was aff'd in 15 *Id.* 113. Decision in 3 *Abb. Pr.* doubted (Allowance of amendments of pleadings) in *Stevens v. Brooks*, 23 *Wis.* 196.

**Dalash v. Flanders**, 2 *Sup'm. Ct. (T. & C.)* 445. See *Bliss v. Schaub*. Rule said to be changed by *Code Civ. Pro.* (Appeal in action commenced in County Court) in *Kilmer v. O'Brien*, 13 *Hun*, 224.

**Dain v. Wycoff**, 7 *N. Y.* 191. See *Lewis v. Chapman*. Disapproved, and the contrary held (Exemplary damages) in *Fry v. Bennett*, 1 *Abb. Pr.* 289. Followed (Inadmissibility of evidence of defendant's wealth in action for seduction) in *Watson v. Watson*, 53 *Mich.* 175.

**Dalus v. Prosser**, 32 *Barb.* 290. See *Morse v. Keyes*. Approved (Leviable property in *Twinam v. Swart*, 4 *Lans.* 263, 265.

**Dake v. Miller**, 15 *Hun*, 556. Followed (Objection to jurisdiction of County Court) in *Coe v. Raymond*, 22 *Hun*, 461.

**Dakin, Matter of**, 4 *Hill*, 42; s. c., 15 *N. Y. Com. L. Law. ed.* 737, with brief note. Relied on with *Matter of Husson*, 26 *Hun*, 130; *Matter of Haskin*, 18 *Id.* 42 (Attorney not to be summarily disbarred for misconduct as individual) in *People ex rel. Hewes v. Appleton*, 105 *Ill.* 474, 481.

**Dakin v. Demming**, 6 *Paige*, 95. Applied (Trustees, when entitled under statute to compensation for services rendered before its passage) in *Savage v. Sherman*, 24 *Hun*, 307, 311. Disting'd (Executor's right to compensation) in *Secor v. Sentis*, 5 *Redf.* 570, 572.

— **v. Hudson**, 6 *Cow.* 221. Followed (Proof of surrogate's jurisdiction) in *People ex rel. Meyer v. Hartman*, 2 *Sweeny*, 576.

— **v. Liverpool, L. & G. Ins. Co.**, 13 *Hun*, 122. Aff'd in 77 *N. Y.* 600.

— **v. Williams**, 17 *Wend.* 447. Aff'd as *Williams v. Dakin*, 22 *Wend.* 201. See *Bagley v. Peddie*; *Nobles v. Bates*. Decision in 17 *Wend.* followed with *Mott v. Mott*, 11 *Barb.* 127 (Penalty or liquidated damages) in *Holbrook v. Tobey*, 66 *Me.* 410; s. c., 22 *Am. R.* 581, 584. Discussed in 2 *Chitty on Contr.* 1317, n. é, 11 *Am. ed.* Considered at length in 2 *Sedgw. on Meas. of Dama.* 7 ed. 237. Included in *Sedgw. Cas. on Dama.* 435.

**Dale v. Brooklyn City, &c. R. R. Co.**, 1 *Hun*, 146; s. c., 3 *Sup'm. Ct. (T. & C.)* 686. Aff'd, it seems, in 60 *N. Y.* 638, but without opinion.

— **v. Cooke**, 4 *Johns. Ch.* 11. Followed (Set-off of debts accruing in different rights)

- in *Robbins v. McKnight*, 1 *Halst. Ch. (N. J.)* 642; s. c., 45 *Am. Dec.* 406, with note; *Simson v. Hart*, 14 *Johns.* 63, and *Pond v. Smith*, 4 *Conn.* 297,—holding insolvency to be ground for such relief,—being disapproved by *Sroky, J.*; in *Greene v. Darling*, 5 *Mason*, 201; *Howe v. Sheppard*, 2 *Sumn.* 416 (both cited in 45 *Am. Dec.* 411), and said not to be supported by any English decisions.
- *v. McEvers*, 2 *Cow.* 118. See *Robinson v. Ryan*. Disting'd (Right of mortgagee to acquire adverse claim to or lien upon mortgaged premises) in *Cornell v. Woodruff*, 77 *N. Y.* 203.
- *v. Radcliffe*, 25 *Barb.* 333; s. c., 15 *How. Pr.* 71. Explained as no longer authority (Effect of giving bail in precluding motion to vacate arrest) in *Knickerbocker Life Ins. Co. v. Ecclesine*, 6 *Abb. Pr. N. S.* 9.
- *v. Roosevelt*, 5 *Johns. Ch.* 174. Confirmed on rehearing in 6 *Id.* 255, and aff'd in 2 *Cow.* 129. Subsequent decision, as it seems, in 9 *Id.* 807. See *Sherwood v. Johnson*; *Upton v. Vail*. Decision in 9 *Cow.* followed (Parol evidence to show illegality of consideration of written contract) in *Donley v. Tindall*, 32 *Tex.* 43; s. c., 5 *Am. R.* 234, with note, collating cases.
- *v. Smithson*, 12 *Abb. Pr.* 237. Explained (Trade-mark—fraud in the use of) in 2 *Pars. on Contr.* 237 *bn, n. o.*
- Dalrymple v. Arnold**, 21 *Hun.* 110. Cited as authority (Funeral expenses, &c. as a charge on the estate) in *Laird v. Arnold*, 25 *Id.* 5.
- *v. Hillenbrand*, 2 *Hun.* 488; s. c., 5 *Sup'm. Ct. (T. & C.)* 57. Aff'd in 62 *N. Y.* 5; s. c., 20 *Am. R.* 438. See *Erwin v. Downs*. Decision in 62 *N. Y.* examined with others (Composition agreements) in 14 *Alb. L. J.* 436.
- *v. Williams*, 63 *N. Y.* 363; s. c., 20 *Am. R.* 544. Collated with other cases (Admissibility of affidavits of jurors to impeach verdict) in 24 *Am. Dec.* 475, *n.*
- Daly's Adm'r v. Wright**, 5 *Weekly Dig.* 229. Fully reported as *Meeker v. Wright*, in 7 *Abb. N. C.* 299; s. c., 76 *N. Y.* 262.
- Daly v. Byrne**, 43 *Super. Ct. (J. & S.)* 261. Aff'd in 77 *N. Y.* 182. Former proceeding in 1 *Abb. N. C.* 150.
- *v. Daly*, 38 *Super. Ct. (J. & S.)* 158; s. c., 49 *How. Pr.* 150. Disting'd (Injunction to restrain actor, &c. from performing for another) in *Mapleson v. Del Puente*, 13 *Abb. N. C.* 144. Compared with other cases in 20 *Am. L. Reg.* 589, *n.*
- Damainville v. Mann**, 32 *N. Y.* 197. Disapproved as unsupported by authority (Entry necessary to charge assignee of lease, with rent) in *Babcock v. Scovill*, 56 *Ill.* 461.
- Dambman v. Butterfield**, 2 *Hun.* 284; s. c., 4 *Sup'm. Ct. (T. & C.)* 542. Further proceeding in 15 *Hun.* 495.
- *v. Schulting*, 51 *How. Pr.* 337. Aff'd in 4 *Hun.* 50; s. c., 6 *Sup'm. Ct. (T. & C.)* 251. Further decision in 6 *Hun.* 29; mem. s. c., 51 *How. Pr.* 357. Also in 54 *Id.* 289, which was aff'd in 12 *Hun.* 1, and that rev'd in 75 *N. Y.* 55. See *Glackin v. Zeller*. Decision in 75 *N. Y.* disting'd (Relief against mistake as to extrinsic fact) in *Knapp v. Fowler*, 30 *Hun.* 512. Approved and relied on with *People's Bk. v. Bogart*, 81 *N. Y.* 107 (Fraudulent concealment) in *Milliken v. Chapman*, 75 *Me.* 306; s. c., 46 *Am. R.* 389, 396. Approved as stating general rule and exceptions, very clearly (What amounts to fraud) in 2 *Pomeroy on Eq. Jur.* 390, *n.*
- Damon v. Moore**. See *Ingersoll v. Jones*.
- Dan v. Brown**, 4 *Cow.* 483; s. c., 15 *Am. Dec.* 395, with note, wherein it is shown to have been frequently cited and approved in *N. Y.* and elsewhere. See *Jackson v. Kniffen*. Reviewed with *Fetherly v. Waggoner*, 11 *Wend.* 599; *Brown v. Clark*, 77 *N. Y.* 367; *Matter of Kellum*, 52 *Id.* 517; *Everitt v. Everitt*, 41 *Barb.* 385; *Sheridan v. Houghton*, 6 *Abb. N. C.* 234; *Knapp v. Knapp*, 10 *N. Y.* 276 (Proof of execution of lost will) in *Hatch v. Sigman*, 1 *Dem.* 519. Applied in *Apperson v. Cottrell*, 3 *Port. (Ala.)* 51; s. c., 29 *Am. Dec.* 239. Cited with *Osgood v. Manhattan Co.*, 3 *Cow.* 611 (Effect of admissions of one of several having community of interest) in 1 *Taylor on Ev.* 660. See to the contrary cases cited (Testator's declarations) in *Abb. Tr. Ev.* 124, *n. 9.*
- Dana v. Fiedler**, 1 *E. D. Smith*, 463. Aff'd in 12 *N. Y.* 40. See *Van Rensselaer v. Jewett*. Decision in 12 *N. Y.* applied (Interest as damages) in *Fishell v. Winans*, 38 *Barb.* 230; *Van Allen v. Illinois Central R. R. Co.*, 7 *Bosw.* 538; *Greer v. Mayor, &c. of N. Y.*, 3 *Robt.* 410. Applied to action for conversion in *Andrews v. Durant*, 18 *N. Y.* 496, 502. Collated with other cases, in *White v. Miller*, 78 *Id.* 396. Approved, but not followed, in *Lakeman v. Grinnell*, 5 *Bosw.* 638. Disting'd in *Gallup v. Perue*, 10 *Hun.* 527; *Black v. Camden & Amboy R. R., &c. Co.*, 45 *Barb.* 43. Applied (Evidence of meaning of terms used in business) in *Pollen v. Leroy*, 10 *Bosw.* 55. Compared in 4 *Am. L. Reg. N. S.* 350. Applied (Damages for non-delivery) to case of conversion,—in *Nauman v. Caldwell*, 2 *Sweeny*, 217. Included in *Sedgw. Cas. on Dana*, 220. Collated with other cases (Tender—waiver) in *McAdam on Landl. & T.* 2 ed. § 154.
- *v. Munson*, 23 *N. Y.* 564. Aff'g *Dana v. Munro*, 38 *Barb.* 528. Decision in 23 *N. Y.* limited (Liability on note given to insurance company before organization) in *Jackson v. Van Slyke*, 52 *N. Y.* 645.
- *v. Tucker*, 4 *Johns.* 487. See *Brownell v. McEwen*; *Smith v. Cheetham*. Followed with *Smith v. Cheetham*, 3 *Cal.* 57; *Jackson v. Dickenson*, 15 *Johns.* 309 (Admissibility of testimony of jurors to impeach

- their verdict) in *Tyler v. Stevens*, 4 *N. H.* 116; s. c., 17 *Am. Dec.* 404. Cited with approval in *Smith v. Eames*, 3 *Scam. (Ill.)* 76; s. c., 36 *Am. Dec.* 515, 520, with note. Doubted in *Woodward v. Leavitt*, 107 *Mass.* 470; s. c., 9 *Am. R.* 60. Collated with *Clum v. Smith*, 5 *Hill*, 560; *Gale v. N. Y. Central, &c. R. R. Co.*, 53 *How. Pr.* 885, and other cases, in 12 *Am. Dec.* 142, n. Thought with *People v. Barber*, 3 *Wheel. Cr.* 19; *Green v. Bliss*, 12 *How. Pr.* 428, in 1 *Am. Dec.* 39, n., to express what is now the position of the N. Y. courts, notwithstanding decision in *Smith v. Cheetham*, 3 *Cal.* 58. Followed with *Roberts v. Failis*, 1 *Cow.* 238 (Invalidity of "chance" verdict) in *Goodman v. Cody*, 1 *Wash. T.* 329; s. c., 34 *Am. R.* 808; with note collating *Harvey v. Rickett*, 15 *Johns.* 88, and other cases.
- Dane v. Liverpool & London Ins. Co.**, 21 *Hun.* 259. Disting'd (Compulsory reference) in *Dustin v. Wallace*, 13 *Weekly Dig.* 518.
- **v. Mallory**, 16 *Barb.* 53. Qualified with *Talman v. Smith*, 39 *Id.* 390 (Power of mortgagee of chattels over mortgaged property) in *Stoddard v. Denison*, 38 *How. Pr.* 296.
- Danforth v. Culver**, 11 *Johns.* 146; s. c., 6 *Am. Dec.* 361; 5 *N. Y. Com. L. Law. ed.* 95, with brief note. See *Dean v. Pitts*; *Frear v. Hardenbergh*. Cited as authority with *Dean v. Pitts*, 10 *Johns.* 35 (Acknowledgment of debt as affecting statute of limitations) in *Glenn v. McCullough*, *Harper (S. C.)* 484; s. c., 18 *Am. Dec.* 661. Explained in 3 *Pars. on Contr.* 70, n. v. Discussed in *Ang. on Limit.* §§ 214, 215, 6 ed.
- **v. Dent**. See *Kentgen v. Parks*.
- **v. Schoharie Turnpike Co.**, 12 *Johns.* 227. Disting'd with *Dunn v. Rector, &c. of St. Andrew's Church*, 14 *Johns.* 118, as cases of assumpsit, — (Liability of corporation to actions of trespass) in *Orr v. Bank of U. S.*, 1 *Ohio*, 36; s. c., 13 *Am. Dec.* 588, with note, however, wherein the Ohio case is regarded as unsound and obsolete. Explained in *Ang. & A. on Corp.* § 379, 11 ed.
- **v. Suydam**, 4 *N. Y.* 66. See *Champion v. White*. Explained and disting'd with *Munsell v. Lewis*, 2 *Den.* 226 (Lien on or title to fund) in *Bank of Auburn v. Roberts*, 45 *Barb.* 407.
- Daniels v. Atlantic Mut. Ins. Co.**, 8 *Bosw.* 266. Aff'd in 24 *N. Y.* 447.
- **v. Ball**. See *Duncan v. Spear*.
- **v. Cushman**. See *People ex rel. Daniels v. Cushman*.
- **v. Lyon**, 9 *N. Y.* 549. Referred to as overruled by *Allis v. Wheeler*, 56 *Id.* 50 (Right of several defendants to costs) in *Williams v. Cassady*, 22 *Hun.* 180.
- Danks v. Quackenbush**, 3 *Den.* 594; s. c., with points of counsel and opinion, 1 *N. Y.* 129. Aff'g 1 *Den.* 128. Decision in 1 *Den.* criticised, and that in 3 *Id.* explained as adding little to weight of authority (Retrospective effect of exemption law [L. 1842, c. 157]) in *Vedder v. Alkenbrach*, 3 *Barb.* 329. Overruled in *Morse v. Gould*, 11 *N. Y.* 285. Both decisions disting'd (Law impairing obligation of contract) in *Guild v. Rogers*, 8 *Barb.* 504. Examined with other cases (Exemption of team from execution) in *Van Buren v. Loper*, 29 *Id.* 386. Applied (Law not to be construed as retrospective) in *Wood v. Mayor, &c. of N. Y.*, 6 *Robt.* 469.
- Dannat v. Mayor, &c. of N. Y.**, 6 *Hun.* 88. Aff'd in 66 *N. Y.* 535. Decision in 66 *N. Y.* followed (Liability of city for claims for services rendered distinct department) in *Waterman v. Mayor, &c. of N. Y.*, 7 *Daly*, 489. Applied in *People ex rel. Burnet v. Jackson*, 60 *How. Pr.* 332.
- Darbee v. Elwood**, 2 *Hun.* 599. Reported in 5 *Sup'm. Ct. (T. & C.)* 148.
- Darby v. Callaghan**, 16 *N. Y.* 71. Applied (Acts for protection of married women to be construed liberally) in *Bixings v. Baker*, 28 *Barb.* 356. Applied (Right of married women to hold property before acts of 1848-9) in *Vandevoort v. Gould*, 36 *N. Y.* 641.
- Darling v. Brewster**, 3 *Hun.* 219; s. c., 5 *Sup'm. Ct. (T. & C.)* 670. Aff'd, it seems, in 62 *N. Y.* 630, but without opinion. Mem. of previous decision in 55 *Id.* 667.
- **v. Halsey**, 2 *Abb. N. C.* 105. Subsequent decision, as it seems, in 12 *Hun.* 90.
- **v. Pierce**, 15 *Hun.* 542. Compare (Disqualification of surrogate) *Wigand v. Dejonge*, 8 *Abb. N. C.* 260.
- **v. Rogers**, 22 *Wend.* 483. Discussed (Assignment of realty for benefit of creditors, to sell or mortgage) in 4 *Kent Com.* 310, n. b. Quoted and discussed with *Rogers v. De Forest*, 7 *Puige*, 272 (Terms of sale) in *Burrill on Assign.* § 221, n. 5, 4 ed.; *Id.* § 352.
- Darlington v. Mayor, &c. of N. Y.**, 2 *Robt.* 274. Aff'd in 31 *N. Y.* 164. See *Newberry v. Mayor, &c. of N. Y.* Decision in 31 *N. Y.* applied (Liability of municipal corporation on claim which no means are provided to meet) in *Hecker v. Mayor, &c. of N. Y.*, 18 *Abb. Pr.* 374. Approved and applied (Exemption of municipal property from execution, &c.) in *Brinckerhoff v. Board of Education*, 6 *Abb. Pr. N. S.* 433; *Leonard v. Reynolds*, 7 *Hun.* 74, which was aff'd in 71 *N. Y.* 498, which see. Applied to exemption from taxation, — in *City of Rochester v. Town of Rush*, 80 *Id.* 307. Followed in *The Fidelity*, 16 *Blatchf. C. Ct.* 569, 571. Questioned (Constitutionality of legislation respecting use of property of municipal corporation) in *Baldwin v. Mayor, &c. of N. Y.*, 1 *Abb. Ct. App. Dec.* 77, which aff'd 30 *How. Pr.* 291, which see. Explained in *Webb v. Mayor, &c. of N. Y.*, 64 *Id.* 10. Applied (Plenary power of legislature in respect to subjects of civil government) in *People v. Pinckney*, 32 *N. Y.* 395. Cited as authority in *People v. Ingersoll*, 58 *Id.* 21. Disting'd and ex-



- plained in *Spaulding v. Andover*, 54 *N. H.* 38, 55. Explained in 38 *Am. Dec.* 676, *n.*, as inconsistent with *People v. Batchellor*, 53 *N. Y.* 141, which relied upon *Atkins v. Randolph*, 31 *Vt.* 226, a case declared in *Darlington v. Mayor* not to be law. Followed (Constitutionality of act respecting liability of city, &c. for injury done by mob) in *Moody v. Supervisors of Niagara*, 46 *Barb.* 662; *Salles v. Mayor, &c. of N. Y.*, 47 *Id.* 451; *Orr v. City of Brooklyn*, 36 *N. Y.* 667. Explained in *Eastman v. Mayor, &c. of N. Y.*, 5 *Robt.* 389, as not shaken by *Baldwin v. Mayor, &c. of N. Y.* Applied (Liability of municipal corporation for injury done by riot) in *Allegheeny Co. v. Gibson*, 9 *Penn. St.* 397; *s. c.*, 35 *Am. R.* 670, 677. Applied (Power of legislature to delegate power to local organizations) in *Metropolitan B'd of Health v. Heister*, 37 *N. Y.* 672. Applied ("Tax" within meaning of *N. Y. Const. art. 7*) in *Matter of Ford*, 6 *Lans.* 97; *People, ex rel. N. Y. & Harlem R. R. Co. v. Havemeyer*, 4 *Sup'm. Ct. (T. & C.)* 380.
- Darnall v. Morehouse**, 36 *How. Pr.* 511. Rev'd in 45 *N. Y.* 64. Decision in 36 *How. Pr.* collated with other cases (Debt—bill or note taken for) in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 306.
- Darrow v. Lee**, 16 *Abb. Pr.* 215. See (Supplementary proceedings—receiver) *Code Civ. Pro.* 1881, ch. XVII., tit. XII., art. 2, *n.* Commented on in *Thomps. on Prov. Rem.* 518.
- Darry v. People**, 10 *N. Y.* 120. Opinion of PARKER, J., approved (Murder by one committing another offense) in *Buel v. People*, 18 *Hun.* 490, which was aff'd in 78 *N. Y.* 500, which see. Not followed (Statutory definition of murder) as excluding cases of particular malice, in *Hogan v. State*, 36 *Wis.* 226, 241, 243, 250.
- Dart v. Eusign**, 2 *Lans.* 383. Rev'd in 47 *N. Y.* 619.
- *v. Fitch*, 77 *N. Y.* 625. Affirmance of order explained in subsequent decision, in 23 *Hun.* 361.
- Darvin v. Hatfield**, 4 *Sandf.* 468. Rev'd in *Seld. notes*, No. 1, 36.
- Dascomb v. Buffalo & State Line R. R. Co.**, 27 *Barb.* 221. Approved (Contributory negligence as defense) in *Thrings v. Central Park R. R. Co.*, 7 *Robt.* 616. Followed with *Ernst v. Hudson River R. R. Co.*, 39 *N. Y.* 61; *Wilcox v. Rome, Watertown, &c. R. R. Co.*, *Id.* 358; *Beiseigel v. N. Y. Central R. R. Co.*, 40 *Id.* 9; *Havens v. Erie R. R. Co.*, 41 *Id.* 296; *Baxter v. Troy & Boston R. R. Co.*, *Id.* 502 (Duty of one crossing railroad track to use his senses of sight and hearing) in *Bellefontaine R'y Co. v. Hunter*, 33 *Ind.* 335; *s. c.*, 5 *Am. R.* 201, 209.
- Dash v. Van Kleeck**, 7 *Johns.* 477; *s. c.*, 5 *Am. Dec.* 291, with note collating cases and where it is shown to have been extensively cited and followed as an authority, both in the Federal and other courts. See *People ex rel. Pells v. Supervisors of Ulster*. Applied (Retrospective construction of statutes) in *Trist v. Cabenas*, 18 *Abb. Pr.* 146; *Brower v. Bowers*, 1 *Abb. Ct. App. Dec.* 223; *People v. Marshall*, 7 *Abb. N. C.* 382; *Smith v. Colvin*, 17 *Barb.* 161; *People v. Supervisors of Ulster*, 63 *Id.* 85, which was rev'd in 65 *N. Y.* 300, 307, which see; *Berley v. Rampacher*, 10 *Bosw.* 188; *Jarvis v. Jarvis*, 3 *Edw.* 465; *Mills v. Hildreth*, 5 *Hun.* 368; *Sanford v. Bennett*, 24 *N. Y.* 23; *People v. Supervisors of Columbia*, 43 *Id.* 135; *N. Y. & Oswego M. R. R. Co. v. Van Horn*, 57 *Id.* 477; *Williamson v. Field*, 2 *Sandf.* 570; *Sayre v. Wisner*, 8 *Wend.* 664; *Baker v. Bartlett*, 9 *Id.* 496; *McPherson v. Cheadell*, 24 *Id.* 28; *Snyder v. Snyder*, 3 *Barb.* 623; *Weed v. Oakley*, 11 *Puige*, 403. Followed in *Bedford v. Shilling*, 4 *Serg. & R. (Pa.)* 401; *s. c.*, 8 *Am. Dec.* 718; *Perkins v. Perkins*, 7 *Conn.* 556; *s. c.*, 18 *Am. Dec.* 120, 126, with note. Compare 9 *Bac. Abr.* (1846 ed.) 220. Followed and approved in *Society v. Wheeler*, 2 *Gall.* 104, 139, 144; *Lewis v. Brackenridge*, 1 *Blackf. (Ind.)* 220; *s. c.*, 12 *Am. Dec.* 228. Reviewed with *Tillman v. Lansing*, 4 *Johns.* 45, and other cases, in *Wort v. Winnick*, 3 *N. H.* 473; *s. c.*, 14 *Am. Dec.* 384, with note. Disting'd in *Wadsworth v. Thomas*, 7 *Barb.* 450; *Bullock v. Boyd*, *Hoffm.* 303; *Shepard v. People*, 23 *How. Pr.* 339, which was rev'd in 25 *N. Y.* 410, which see; *Guillotel v. Mayor, &c. of N. Y.*, 55 *How. Pr.* 115; *Morse v. Goold*, 11 *N. Y.* 285; *Weservelt v. Gregg*, 12 *Id.* 210. Disting'd as inapplicable to construction of a constitution, in *Matter of Oliver Lee & Co's Bk.*, 21 *Id.* 12. Cited in *Cooley on Const. Limit.* 62. Cited approvingly in 1 *Kent Com.* 455. Referred to as qualified in *Kent Com.* (Vested rights not to be subverted by legislative authority) in *Syracuse City Bk. v. Davis*, 16 *Barb.* 190. Applied in *McDonnell v. Mayor, &c. of N. Y.*, 4 *Hun.* 475; *Burch v. Newbury*, 10 *N. Y.* 393; *Ely v. Holton*, 15 *Id.* 600; *Moore v. State*, 43 *N. J. L. (Vroom)* 207. Disting'd in *Butler v. Palmer*, 1 *Hill*, 333. Followed by *Bronson, J.*, in *Sackett v. Andross*, 5 *Id.* 336. Disting'd in *Coles v. County of Madison*, *Breeze (Ill.)* 154; *s. c.*, 12 *Am. Dec.* 161. Reviewed and explained in *Pryor v. Downey*, 50 *Cal.* 388; *s. c.*, 19 *Am. R.* 656. Approved in *Kennebec Purchase v. Laboree*, 2 *Greenl. (Me.)* 275; *s. c.*, 11 *Am. Dec.* 79, 90, with note. See also *Merrill v. Sherburne*, 1 *N. H.* 199; *s. c.*, 8 *Am. Dec.* 52, with note; *King v. Dedham Bank*, 15 *Mass.* 447; *s. c.*, 8 *Am. Dec.* 112; *Foster v. Essex Bank*, 16 *Mass.* 245; *s. c.*, 8 *Am. Dec.* 135, with note; *Bedford v. Shilling*, 4 *Serg. & R. (Pa.)* 401; *s. c.*, 8 *Am. Dec.* 718; *Dickinson v. Dickinson*, 3 *Murph. (N. C.)* 327; *s. c.*, 9 *Am. Dec.* 308. Criticised as inconclusive in *Goshen v. Stonington*, 4 *Conn.* 209; *s. c.*, 10 *Am. Dec.* 121, 129, with note collating

- cases. Applied and approved in *Davis v. Minor*, 1 *How. (Miss.)* 183; s. c., 28 *Am. Dec.* 325, 330, with note. Disting'd with *People ex rel. Ryan v. Green*, 58 *N. Y.* 295, in *People ex rel. Gere v. Whitlock*, 92 *Id.* 191. Relied on in *Aldridge v. Tuscomb*, &c. R. R. Co., 2 *Stew. & P. (Ala.)* 199; s. c., 23 *Am. Dec.* 307, 311, with note. Disting'd (Effect of election to affirm debtor in custody, as waiver) in *McElroy v. Mancius*, 13 *Johns.* 122. Applied (Return of prisoner, as defense in action for escape) in *Mandell v. Barry*, 9 *Id.* 237, which was rev'd in 10 *Id.* 576, which see. Applied (Statute when a repeal) in *U. S. v. Bennett*, 12 *Blatchf. Ct.* 345, 349. Explained in *People ex rel. Brown v. Van Hoesen*, 62 *How. Pr.* 76, 81.
- Dater v. Troy Turnpike**, 2 *Hill*, 629. Followed (Right of owner of land to full compensation before appropriation by railroad company) in *St. Joseph & Denver City R. R. Co. v. Callender*, 13 *Kans.* 496, 502.
- *v. Wellington*, 1 *Hill*, 319; s. c., 15 *N. Y. Com. L. Law. ed.* 143, with brief note.
- Dauber v. Blackney**, 38 *Barb.* 432. Doubted but followed (Guaranty by transferrer of note—when not within statute of frauds) in *Milks v. Rich*, 80 *N. Y.* 269, 271.
- Daubney v. Hughes**, 3 *Sup'm. Ct. (T. & C.)* 350. Aff'd in 60 *N. Y.* 187.
- Dauchy v. Tyler**, 15 *How. Pr.* 399. Approved as authority (Permitting amendments) in *Baker v. Seely*, 17 *Id.* 297.
- Davenport v. City Bank of Buffalo**. See *Bank Comm'r's v. Bank of Buffalo*.
- *v. Ferris*, 6 *Johns.* 131. Applied (Setting aside default) in *Security Bank v. Bank of Commonwealth*, 2 *Hun*, 287, 292.
- *v. Gilbert*, 4 *Bosw.* 532. Further decision in 6 *Id.* 179.
- *v. Ludlow*. See *Ward v. Wordsworth*.
- *v. Mayor, &c. of N. Y.*, 2 *Sup'm. Ct. (T. & C.)* 536. Aff'd in 67 *N. Y.* 456.
- *v. Ruckman*, 10 *Bosw.* 20; s. c., 16 *Abb. Pr.* 341. Aff'd in 37 *N. Y.* 568. See *McGinity v. Mayor, &c. of N. Y.*; *Mayor, &c. of N. Y. v. Furze*; *Rochester White Lead Co. v. City of Rochester*. Decision in 37 *N. Y.* applied (Liability of municipal corporation for injury caused by excavation in highway) in *Wendell v. Mayor, &c. of Troy*, 4 *Abb. Ct. App. Dec.* 568; *Wilson v. City of Watertown*, 3 *Hun*, 512; *Hume v. Mayor, &c. of N. Y.*, 74 *N. Y.* 270. Disting'd in *Hartford & N. Y. Steamboat Co. v. Mayor, &c. of N. Y.*, 12 *Hun*, 554. Disapproved in *Detroit v. Blakeby*, 21 *Mich.* 84; s. c., 4 *Am. R.* 455. Applied (Contributory negligence in one injured in street) in *Healy v. Mayor, &c. of N. Y.*, 3 *Hun*, 711; *Peach v. City of Utica*, 10 *Id.* 480; *Requa v. City of Rochester*, 45 *N. Y.* 131; *Rector v. Pierce*, 3 *Sup'm. Ct. (T. & C.)* 420. Collated with other cases, in 6 *Abb. N. C.* 116, n. Disting'd (Responsibility of owner of premises as insurer) as inapplicable to questions between landlord and tenant,—in *Robbins v. Mount*, 33 *How. Pr.* 35. Applied (Joint liability for negligence) in *Van Wagenen v. Kemp*, 7 *Hun*, 329.
- David v. Williamsburgh City Fire Ins. Co.**, 7 *Abb. N. C.* 47. Rev'd in 83 *N. Y.* 265; s. c., 38 *Am. R.* 418.
- Davidson v. Alfaro**, 54 *How. Pr.* 481. Aff'd in 16 *Hun*, 353, and that aff'd as to defendants and dismissed as to plaintiffs, in 80 *N. Y.* 660. With decision in 16 *Hun* see (Attorney's lien) *Code Civ. Pro.* § 66 as am'd in 1879.
- *v. Mayor, &c. of N. Y.*, 2 *Robt.* 230. See *Newberry v. Mayor, &c. of N. Y.* Followed (Compensation for property destroyed by mob) in *Darlington v. Mayor, &c. of N. Y.*, 2 *Robt.* 274. Applied in *Allegheny Co. v. Gibson*, 90 *Penn. St.* 397; s. c., 35 *Am. R.* 670, 677.
- Davies v. Mayor, &c. of N. Y.**, 45 *Super. Ct. (J. & S.)* 373. Rev'd in 83 *N. Y.* 207. Decision in 83 *N. Y.* followed (Liability of city of N. Y. for rent) in subsequent decision, in 93 *Id.* 250; rev'g 48 *Super. Ct. (J. & S.)* 194.
- Davis, Ex parte**, 5 *Cow.* 33. Examined with *Benson, Ex parte*, 6 *Id.* 592; *Mallard, Ex parte*, *Id.* 593 (Jurisdiction) in *Sheriff v. Brownell*, 4 *Wisc.* 286.
- Davis v. Allen**. See *Ketcham v. Clark*.
- *v. American Life Ins. & Trust Co.*, 4 *Edw.* 308. Order aff'd, but without prejudice to complainant's right to renew application for injunction as to sterling note, on amended or new bill, in 3 *Ch. Sent.* 99.
- *v. Bechstein*, 69 *N. Y.* 440; s. c., 25 *Am. R.* 218, with note as to lack of consideration. Explained and other cases collected (Rights of assignee of non-negotiable thing in action) in 2 *Pomeroy on Eq. Jur.* 160, n.
- *v. Bemis*, 40 *N. Y.* 453, n. Approved (Liability for fraud of agent) in *Verona Central Cheese Co. v. Murtaugh*, 50 *N. Y.* 314, 317.
- *v. Briggs*, 3 *How. Pr.* 65. Doubted (Restraining foreclosure proceedings) in *Bedell v. McClellan*, 11 *Id.* 172.
- *v. Copeland*, 6 *Daly*, 221. Aff'd in 67 *N. Y.* 127.
- *v. Darrow*. See *Anthoine v. Coit*; *Sherwood v. Vandenburgh*.
- *v. Davis*, 1 *Abb. N. C.* 140. Aff'd in 7 *Daly*, 308, where it is stated in note on p. 321, that an appeal was taken to Ct. of App., but subsequently abandoned, the U. S. Sup'm. Ct. having made a similar decision in the case of *Meister v. Moore*, 96 *U. S.* 76.
- *v.*, 75 *N. Y.* 221. Disting'd with *Turrel v. Turrel*, 2 *Johns. Ch.* 391 (Action by wife for maintenance, without separation) in *Ramsden v. Ramsden*, 91 *N. Y.* 281. Compare (Direction by court as to custody of children) *People ex rel. Ward v. Ward*, 59 *How. Pr.* 174; *Code Civ. Pro.* § 1771.
- *v. Duffle*, 18 *Abb. Pr.* 360. Rev'd in 8 *Bosw.* 617, and the latter aff'd in 4 *Abb. Pr.*

- N. S.* 478; s. c., 3 *Keyes*, 606; 1 *Abb. Ct. App. Dec.* 486. See *O'Brien v. Hagan*.
- *v. Dunham*, 13 *How. Pr.* 425. Collated with other cases (Discovery of books, papers, &c.) in 1 *Civ. Pro. R.* 182, n.
- *v. Fargo*. See *Stone v. Seymour*.
- *v. Garr*, 6 *N. Y.* 124; s. c., 55 *Am. Dec.* 387, with extended note. Examined, with other cases (Usury as determined by law of place) in *Wayne Co. Sav'gs B'k v. Low*, 6 *Abb. N. C.* 86. Applied in dissenting opinion of *MULLIN, J.*, in *Smith v. Alvord*, 63 *Barb.* 431. Applied in *Hildreth v. Shepard*, 65 *Id.* 270. Applied (Suit by trustee in his own name) in *Butterfield v. Macomber*, 22 *How. Pr.* 154. Examined and followed (Effect of statute of limitations on causes arising outside the State) in *Olcott v. Tioga R. R. Co.*, 20 *N. Y.* 210, 225.
- *v. Grove*, 27 *How. Pr.* 70; s. c., more fully, 2 *Robt.* 134, 635.
- *v. Gwyne*, 4 *Daly*, 218. *Aff'd* in 57 *N. Y.* 676.
- *v. Hudson*, 5 *Abb. Pr.* 61. Disapproved (Appeal from judgment of N.Y. City District Court in summary proceedings) in *Romaine v. Kinshimer*, 2 *Hill.* 519. See *McIntyre v. Hernandez*, 7 *Abb. Pr. N. S.* 214.
- *v. Keyes*, 38 *N. Y.* 94. Another decision between same parties in 5 *Transc. App.* 352.
- *v. Kimball*. See *Kimball v. Davis*.
- *v. Leopold*, 10 *Weekly Dig.* 266; mem. s. c., 21 *Hun.* 277. *Rev'd* in 13 *Weekly Dig.* 337. See *Union Nat. B'k of Albany v. Warner*.
- *v. McCready*, 4 *E. D. Smith*, 565. *Aff'd* in 17 *N. Y.* 230. Decision in 17 *N. Y.* included, with notes (Negotiable paper—breach of collateral agreement) in *Redf. & B. Lead. Cas. on B. of Exch.* 222. Included in *Bigel. on B. & N.* 2 ed. 406.
- *v. Mayor, &c. of N. Y.*, 14 *N. Y.* 506. Former decision as Attorney General *v. Mayor, &c. of N. Y.*, 3 *Duer*, 119; s. c., 12 *N. Y. Leg. Obs.* 17. Decision as to amendment in 2 *Duer*, 663. See *Adrian v. Mayor, &c. of N. Y.*; *Doolittle v. Supervisors of Broome*; *People v. Sturtevant*; *Story v. N. Y. Elevated R. R. Co.* Decision in 14 *N. Y.* applied (Nuisance not to be predicated of lawful exercise of authority) in *Masterson v. Short*, 3 *Abb. Pr. N. S.* 155. Followed (Enjoining construction of street railway) in *Milbau v. Sharp*, 28 *Barb.* 229. Applied (Railway, whether part of street) in *Brooklyn Central R. R. Co. v. Brooklyn City R. R. Co.*, 32 *Id.* 371. Cited as authority (Power of legislature over public highways) in *People v. Kerr*, 37 *Id.* 393, 417, which was *aff'd* in 27 *N. Y.* 192, which see. Disting'd (Illegal encroachment) as to obstruction to navigation,—in *Delaware & Hudson Canal Co. v. Lawrence*, 2 *Hun.* 181. Applied to incumbrances on piers,—in *Com'm's of Pilots v. Clark*, 33 *N. Y.* 265. Applied (Power of corporation of N. Y. as to streets) in *Trenor v. Jackson*, 15 *Abb. Pr. N. S.* 124. Approved

(Corporation of N. Y. not authorized to grant right to construct street railway) in *Milbau v. Sharp*, 27 *N. Y.* 618. Approved (Limitations on power of amendment) in *Woodruff v. Dickie*, 31 *How. Pr.* 168; *Newman v. Marvin*, 12 *Hun.* 238; *Van Syckels v. Perry*, 3 *Robt.* 621; *Smith v. Rathbun*, 22 *Hun.* 156. Approved in *Shaw v. Cock*, 12 *Id.* 176; *People v. Ingersoll*, 67 *Barb.* 484. Disting'd in *Bank of Havana v. Magee*, 20 *N. Y.* 361; *Van Duzer v. Howe*, 21 *Id.* 531, 539. Applied (Obstruction in highway, as indictable nuisance) in *Harrower v. Ritson*, 37 *Barb.* 303. Applied to incumbrances on piers and bulkheads in *Board of Com'rs of Pilots v. Erie R'y Co.*, 5 *Robt.* 382. Applied (Individual citizen not entitled to restrain public nuisance) in *Manhattan Gaslight Co. v. Barker*, 36 *How. Pr.* 235. Approved in *Doolittle v. Supervisors of Broome*, 18 *N. Y.* 163. Disting'd and applied (Who entitled to take proceedings to prevent construction of railway) in case of public highway,—in *People v. Cortelyou*, 36 *Barb.* 167. Applied (Enjoining threatened obstruction) in *People v. Vanderbilt*, 38 *Id.* 287, which was *aff'd* in 26 *N. Y.* 297, which see. Applied (Time to raise objection of plaintiff's want of interest) in *Moselman v. Caen*, 1 *Hun.* 648. See other cases collected (Application to intervene) in 6 *Abb. N. C.* 306, n. Disting'd (Restraining the passage of city ordinance) in *Des Moines Gas Co. v. City of Des Moines*, 44 *Iowa*, 505; s. c., 24 *Am. R.* 760. Applied (Street railway as additional burden) in *Craig v. Rochester City & Brighton R. R. Co.*, 39 *Barb.* 501, which was *aff'd* in 39 *N. Y.* 408, which see. Explained as not determined on this ground, in *Brooklyn Central, &c. R. R. Co. v. Brooklyn City R. R. Co.*, 33 *Barb.* 420. Cited with others as settling the law in *Bloomfield, &c. Gaslight Co. v. Calkins*, 62 *N. Y.* 389. Disting'd in *Van Bokelen v. Brooklyn City R. R. Co.*, 5 *Blatchf. C. Ct.* 379. Decisions in 2 *Duer*; 14 *N. Y.* applied (Action by attorney-general for public wrong) in *People v. Tweed*, 13 *Abb. Pr. N. S.* 53. Decision in 2 *Duer*, explained and disapproved, as to *dicta*, in *People v. Miner*, 2 *Lans.* 396. Approved with *People v. Miner*, in *State v. McLaughlin*, 15 *Kan.* 228; s. c., 22 *Am. R.* 264, 267. Commented on and case cited to the contrary, in 2 *High on Inj.* 2 ed. § 1304, n. 3. Referred to as having been frequently approved in N. Y. and elsewhere,—and followed and approved in *State v. County Court of Saline Co.*, 51 *Mo.* 350; s. c., 11 *Am. R.* 454, where *People v. Miner*, 2 *Lans.* 396, was criticised at length and disapproved in so far as it holds a contrary view. In this case (*State v. County Court*) Attorney-General *v. Utica Ins. Co.*, 2 *Johns. Ch.* 371, was also recognized as authority (*Quo warranto* a sufficient remedy for a violation of charter).

— *v. —*, 1 *Duer*, 484. *Aff'd* as *People v. Sturtevant*, 9 *N. Y.* 263. Decision in 1

- Duer*, approved (Inefficiency of injunction upon corporation) in *People v. Albany & Vermont R. R. Co.*, 12 *Abb. Pr.* 171, 174. Compare *People v. Mayor, &c. of N. Y.*, 32 *Barb.* 102, 104.
- *v. Meeker*. See *Dorlan v. Sammis*.
- *v. Morris*, 35 *Barb.* 227. Aff'd in 36 *N. Y.* 569. Decision in 36 *N. Y.* cited as authority (Damages in equitable action) in *Matthews v. Del. & Hud. Canal Co.*, 20 *Hun*, 437. Applied (Right to trial by jury, in action entitling one to both legal and equitable relief) in *Hudson v. Caryl*, 44 *N. Y.* 555. Cited as authority in *Porter v. Parmly*, 39 *Super. Ct. (J. & S.)* 235. Explained (Liability as assignee for rent) in *Constantine v. Wake*, 1 *Sweeney*, 250.
- *v. —*, 21 *Barb.* 152. See *Freligh v. Brink*; *Lanning v. Carpenter*; *Moody v. Townsend*. Opposed (Sufficiency of confession) in *Lyon v. Sherman*, 14 *Abb. Pr.* 393, but see *Freligh v. Brink*, 22 *N. Y.* 418. Approved in *Claffin v. Sanger*, 31 *Barb.* 36.
- *v. Newkirk*, 5 *Den.* 92. Disting'd (Liability of sheriff's indemnitors) in *Chapman v. Douglas*, 15 *Abb. Pr. N. S.* 421, 426.
- *v. N. Y. Central, &c. R. R. Co.*, 47 *N. Y.* 400. See *Kellogg v. N. Y. Central, &c. R. R. Co.* Applied (Contributory negligence in crossing railroad track) in *Stackus v. N. Y. Central, &c. R. R. Co.*, 7 *Hun*, 561, but see *Same v. Same*, 79 *N. Y.* 469. Applied also in *Reynolds v. N. Y. Central, &c. R. R. Co.*, 58 *N. Y.* 251; *Ingersoll v. N. Y. Central, &c. R. R. Co.*, 6 *Sup'm. Ct. (T. & C.)* 417. Disting'd in *Gillespie v. City of Newburgh*, 54 *N. Y.* 471.
- *v. Packard*, 6 *Wend.* 327. Rev'd in 7 *Pet.* 276. Prior decision on motion to dismiss writ of error, in 6 *Pet.* 41. Subsequent decision in 10 *Wend.* 51; which was aff'd in 8 *Pet.* 312. Decision in 6 *Wend.* applied (Waiver of privilege of exemption as consul) in *Flynn v. Stoughton*, 5 *Barb.* 115; *Bolton v. Jacks*, 6 *Robt.* 198. Applied (Estoppel to show want of jurisdiction) in *Brown v. Snell*, 57 *N. Y.* 303; *Shumway v. Stillman*, 6 *Wend.* 452; *Cleaveland v. Hatch*, 25 *Hun*, 308. Examined with other cases (Inquiry into jurisdiction) in *Ferguson v. Crawford*, 70 *N. Y.* 264.
- *v. Pattison*, 24 *N. Y.* 317. Applied (Liability of original shipper for freight) in *Gilson v. Madden*, 1 *Lans.* 175; *Elwell v. Skiddy*, 77 *N. Y.* 290.
- *v. Peabody*, 10 *Barb.* 91. Erroneously reported. The word "not" should be omitted from the head note, as it is in some copies; and "new trial granted," at the end, should be "judgment affirmed." Approved (Surety in note for purchase of property not purchaser within meaning of execution act of 1842) in *Smith v. Slade*, 57 *Barb.* 637.
- *v. Peek*, 54 *Barb.* 425. See *Walsh v. Kelly*. Disting'd (Opinion of witness as evidence) in *Nicolay v. Unger*, 80 *N. Y.* 54, 57.
- *v. People*, 2 *Sup'm. Ct. (T. & C.)* 212. Overruled (Dying declarations in case of homicide) but order aff'd in *People v. Davis*, 56 *N. Y.* 95, which was however superseded by *L.* 1875, c. 352.
- *v. —*, 1 *Park.* 447. Disting'd (Possession of stolen goods as *prima facie* evidence) in *Knickerbocker v. People*, 57 *Barb.* 365. Explained in 1 *Best on Ev.* § 214, *n. a.*, Wood's ed.
- *v. Reynolds*, 48 *How. Pr.* 210. Aff'd in 5 *Hun*, 651.
- *v. Scott*, 15 *Abb. Pr.* 127. Explained (Withholding order of arrest) in *Britton v. Richards*, 13 *Abb. Pr. N. S.* 258, 262. Applied in *Knickerbocker Life Ins. Co. v. Ecclesine*, 6 *Abb. Pr. N. S.* 9. Commented on in *Thomps. on Prov. Rem.* 21.
- *v. Shields*, 24 *Wend.* 322. Rev'd in 26 *Jl.* 341. See *First Baptist Church v. Bigelow*. Decision in 26 *Wend.* explained and approved (Subscription required by statute of frauds) in *James v. Patten*, 6 *N. Y.* 9; *Justice v. Lang*, 42 *Id.* 493, 517. Applied in *Vielie v. Osgood*, 8 *Barb.* 132. Applied to undertaking in *Weisbrod v. Marquardt*, 8 *Abb. N. C.* 243, 245. Quoted in 1 *Benj. on Sales*, § 251, *n.* 47 (Corbin's 4 Am. ed.). Opinion of *Walworth*, Chancellor quoted (Bought and sold notes—variances) in 1 *Pars. on Contr.* 547, *n. r.* Commented on (Will—on what to be written) in *Willard on Executors*, 113.
- *v. Smith*, 14 *How. Pr.* 187. Not followed (Amendment after verdict) in *Elting v. Campbell*, 5 *Blatchf. C. Ct.* 183, 185.
- *v. Society for Prevention of Cruelty to Animals*, 6 *Daly*, 81. Aff'd in 75 *N. Y.* 362. Disting'd with *Birch v. Cavanaugh*, 12 *Abb. Pr. N. S.* 410; *Murphy v. Board of Police*, 11 *Abb. N. C.* 337 (Enjoining of arrest) in *Manhattan Iron Works Co. v. French*, 12 *Abb. N. C.* 446.
- *v. Spencer*, 24 *N. Y.* 386. Explained (Effect of agreement between payee and maker of note to apply indebtedness of former) in *Brand v. Brand*, 49 *Barb.* 346.
- *v. Stover*, 16 *Abb. Pr. N. S.* 225. Subsequent decision referred to in *Id.* 227, *n.* was rev'd in 58 *N. Y.* 473.
- *v. Sturtevant*, 4 *Duer*, 151. Followed (Counsel fees in proceedings for contempt) in *Van Valkenburgh v. Doolittle*, 4 *Abb. N. C.* 72, 74.
- *v. Tallcot*, 12 *N. Y.* 184. Rev'd *Davis v. Talcott*, 14 *Barb.* 611. See *Gates v. Preston*; *Staats v. Ten Eyck*; *Winfield v. Bacon*. Decision in 12 *N. Y.* approved (Unnecessary action not allowed) in *Auburn City Bank v. Leonard*, 20 *How. Pr.* 193, 197. See *Beltinger v. Craigie*, 31 *Barb.* 534, 537, 540. See to the contrary (Set-off) *Burnham v. Webster*, 1 *Woodb. & M.* 172. See also *Abb. Tr. Ev.* 834. Disting'd (Former adjudication) in *Schwinger v. Raymond*, 83 *N. Y.* 192, 197. Decision in 14 *Barb.* relied on

- with *Griffin v. Colver*, 16 *N. Y.* 489; *Messmore v. N. Y. Shot & Lead Co.*, 40 *Id.* 422; (*Recovery for loss of profits*) in *Wolcott v. Mount*, 9 *Vroom (N. J.)* 496; s. c., 20 *Am. R.* 425. Cited in *Whart. Com. on Ag.* § 392.
- *v. Van Buren*, 6 *Daly*, 391. Aff'd in *Id.* 398.
- Davison's Case**, 13 *Abb. Pr.* 129. Subsequent decision in 12 *Id.* 386, which was rev'd in 37 *Barb.* 97.
- Davison, Matter of.** See *Matter of Burke*.
- Davison v. Associates of Jersey Co.**, 6 *Hun.* 470. Aff'd in 71 *N. Y.* 333. See *Hubbell v. Von Schoening*.
- *v. City Bank*, 37 *N. Y.* 81. Followed (*Liability for freight, of consignee who accepts goods*) in *Hatch v. Tucker*, 12 *R. I.* 501; s. c., 34 *Am. R.* 707.
- *v. Seymour*, 1 *Bosw.* 88. Followed (*Contracts against public policy*) in *Pease v. Walsh*, 39 *Super. Ct. (J. & S.)* 514, 517.
- Davoue v. Fanning**, 2 *Johns. Ch.* 252. See *Green v. Winter*; *Pritchard v. Hicks*. Followed as the leading case and one followed in *N. Y.* without qualification (*Trustee not to purchase trust property*) in *Cumberland Co. v. Sherman*, 30 *Barb.* 564; *Gardner v. Ogden*, 22 *N. Y.* 349. Principle herein approved as sanctioned in *Wormley v. Wormley*, 8 *Wheat.* 441. Approved and applied in *Gallatien v. Cunningham*, 8 *Cow.* 373; *Chapin v. Weed*, *Clarke*, 466; *Rogers v. Rogers*, *Hopk.* 525; *Same v. Same*, 3 *Wend.* 516. Applied in *Johnson v. Bennett*, 39 *Barb.* 250; *Terwilliger v. Brown*, 59 *Id.* 13; *Woodruff v. Cook*, 2 *Edw.* 264; *Brinkerhoff v. Brown*, 4 *Johns. Ch.* 676; *Case v. Abeel*, 1 *Paige*, 397. Applied with *Ames v. Downing*, 1 *Bradf.* 321; *Forbes v. Halscy*, 26 *N. Y.* 53, and *Graves v. Waterman*, 63 *Id.* 657, explained in *People v. Stockbrokers' Building Co.*, 28 *Hun.* 276. Approved in *Schwarz v. Wendell*, *Walk. Ch. (Mich.)* 297; *Michoud v. Girod*, 4 *How. (U. S.)* 503. Followed with *Van Epps v. Van Epps*, 9 *Paige*, 237; *Lytle v. Beveridge*, 58 *N. Y.* 592; *Fulton v. Whitney*, 66 *Id.* 548, in *Marshall v. Carson*, 38 *N. J. Eq. (11 Stew.)* 250; s. c., 48 *Am. R.* 319. Followed and approved with *Torrey v. Bank of Orleans*, 9 *Paige*, 649, in *Dwight v. Blackmar*, 2 *Mich.* 330; s. c., 57 *Am. Dec.* 130. Followed and highly approved in *Harrison v. McHenry*, 9 *Ga.* 164; s. c., 52 *Am. Dec.* 435, with note. Cited in *Hyndman v. Hyndman*, 19 *Verm.* 9; s. c., 46 *Am. Dec.* 171, with note, as a case where the authorities are sufficiently referred to and digested, *Bergen v. Bennett*, 1 *Cal. Cas.* 1, being cited as somewhat of an elaborate case. Followed in *Scott v. Freeland*, 7 *Smedes & M. (Miss.)* 409; s. c., 45 *Am. Dec.* 310, with note. Approved in *Allan v. Gillet*, *U. S. Cir. Ct. W. D. La.* 21 *Fed. Rep.* 276. Quoted in *Benj. on Sales*, § 24, n. 22 (*Corbin's 4 Am. ed.*). Included in *Zinn's Lead. Cas. on Trust*, 1.
- Davy v. Hallett**, 3 *Cal.* 16; s. c., 2 *Am. Dec.* 241; 2 *N. Y. Com. L. Law. ed.* 488, with brief note. Explained (*Effect of abandonment of ship on right to freight*) in *Hutbell v. Great Western Ins. Co.*, 74 *N. Y.* 246, 261. Followed (*Right to freight, as affected by loss on return voyage*) in *Patapsco Ins. Co. v. Biscoe*, 7 *Gill & J. (Md.)* 293; s. c., 28 *Am. Dec.* 219, 223, with note.
- *v. Morgan*, 56 *Barb.* 218. Collated with other cases (*Validity of contracts made on unstamped paper*) in 59 *Am. Dec.* 557, n. Commented on and compared in 1 *Add. on Contr.* 158, n., *Abb. ed.* Discussed (*Evidence—writings—admissions*) in 2 *Best on Ev.* § 525, n. a, *Wood's ed.*
- Dawes v. North River Ins. Co.**, 7 *Cow.* 462. See *Ætna Fire Ins. Co. v. Tyler*. Applied (*Proof of loss requisite in case of fire insurance*) in *Leadbetter v. Ætna Ins. Co.*, 13 *Me.* 265; s. c., 29 *Am. Dec.* 505.
- Dawley v. Brown**, 9 *Hun.* 461. Rev'd in 79 *N. Y.* 390. Former decision in 65 *Barb.* 107. Decision in 79 *N. Y.* explained and applied (*Prior action a bar only as to points necessarily passed on therein*) in *Masten v. Olcott*, 24 *Hun.* 587, 589. Quoted in *Sedgw. & W. on Tr. of Tit. to Land*, § 635. Disting'd (*Effect of a tortment made in reference to proceedings that are afterward set aside*) in *Ross v. Kernan*, 31 *Hun.* 164.
- *v. —*, 43 *How. Pr.* 22. Discussed (*Ejectment—writ of possession*) in *Sedgw. & W. on Tr. of Tit. to Lands*, § 568.
- Dawson v. Coles.** See *Andrews v. Beecker*.
- *v. Horan*, 51 *Barb.* 459. Approved and followed, notwithstanding *Baxter v. Putney*, 37 *How. Pr.* 140 (*Constitutionality of laws enlarging jurisdiction of justices*) in *Knight v. Campbell*, 62 *Barb.* 16.
- *v. Kittle*, 4 *Hill*, 107; s. c., 15 *N. Y. Com. L. Law. ed.* 761, with note. Followed (*Evidence of meaning of words "on freight"*) in *Outwater v. Nelson*, 20 *Barb.* 31. Cited as authority in *Stoney v. Farmers' Transp. Co.*, 17 *Hun.* 582. Explained in *Lawrence v. Gallagher*, 42 *Super. Ct. (J. & S.)* 321. Examined with other cases in *Walls v. Bailey*, 49 *N. Y.* 464, 475.
- *v. People*, 5 *Park.* 118. Aff'd in 25 *N. Y.* 399. Decision in 5 *Park.* reviewed with other cases (*Bills of exceptions and writs of error, and return thereto*) in *Manke v. People*, 74 *N. Y.* 420. Followed in *Woodin v. People*, 6 *Hun.* 654. Decision in 25 *N. Y.* doubted (*Fatality of duplicity in indictment*) in *Polinski v. People*, 73 *Id.* 65, 72. Disting'd in *Pontius v. People*, 82 *Id.* 339, 345.
- Day, Matter of.** 1 *Bradf.* 476. Followed with *Matter of Diez*, 50 *N. Y.* 88 (*Validity of joint will*) in *Betts v. Harper*, 39 *Ohio St.* 639; s. c., 48 *Am. R.* 477. Reviewed with other cases in *Schumaker v. Schmidt*, 44 *Ala.* 454; s. c., 4 *Am. R.* 135, 138.
- Day v. Alverson**, 9 *Wend.* 223. Examined with *Jackson v. Denison*, 4 *Id.* 558; *Jackson v. Cole*, 4 *Cow.* 587 (*Title sufficient to*

- sustain ejectment) in *Mt. Sterling v. Givens*, 17 *Ill.* 255.
- **v. Brooklyn City R. R. Co.**, 12 *Hun.* 435. Aff'd, it seems, in 76 *N. Y.* 593, but without opinion.
- **v. Crossman**, 1 *Hun.* 570. For authorities cited by counsel, see s. c., 4 *Sup'm. Ct. (T. & C.)* 122.
- **v. Hammond**, 57 *N. Y.* 479. Approved (Setting aside of award, on what principle based) in *Pross v. Bradstreet*, 9 *Cin. L. Bul.* 244. Compare (Calling in umpire) *Code Civ. Pro.* § 2367. Compare (Waiver of oath) *Id.* § 2369.
- **v. Leal**, 14 *Johns.* 404; s. c., 5 *N. Y. Com. L. Law. ed.* 916, with brief note. Followed (Obligation taken as security for and not in satisfaction of a debt) in *Weakly v. Bell*, 9 *Watts (Pa.)* 273; s. c., 36 *Am. Dec.* 116, 122, with note.
- **v. Lee**, 52 *How. Pr.* 95; s. c. as *People ex rel. Day v. Jones*, 1 *Abb. N. C.* 172.
- **v. Mayor, &c. of N. Y.**, 6 *Hun.* 92. Rev'd in 66 *N. Y.* 592.
- **v. Mooney**, 4 *Hun.* 134. Reported in 6 *Sup'm. Ct. (T. & C.)* 382. Followed (Assumption of mortgage) in *Best v. Brown*, 25 *Hun.* 223.
- **v. N. Y. Central R. R. Co.**, 31 *Barb.* 548. Further decision in 53 *Id.* 250, which was rev'd in 51 *N. Y.* 583. Also further decision in 22 *Hun.* 412. Decision in 51 *N. Y.* discussed (Statute of frauds—verbal contract—partial performance) in *Browne on Stat. of Frauds*, § 122 a, 4 ed.
- **v. Pool**, 63 *Barb.* 506. Aff'd in 52 *N. Y.* 416; s. c., 11 *Am. R.* 719. See *Hargous v. Stone*; *Reed v. Randall*; *Voorhees v. Earl*. Decision in 52 *N. Y.* applied (Buyer's remedy on warranty) in *Nichols v. Townsend*, 7 *Hun.* 378; *Parks v. Morris Ax & Tool Co.*, 54 *N. Y.* 591; *Dounce v. Dow*, 57 *Id.* 22; *Gurney v. Atlantic, &c. R'y Co.*, 58 *Id.* 365; *Marcus v. Thornton*, 44 *Super. Ct. (J. & S.)* 415; *Smith v. Holbrook*, 1 *Buff. Super. Ct. (Sheldon)* 481. Followed and *Reed v. Randall*, 29 *N. Y.* 358, approved in *Kent v. Friedman*, 17 *Weekly Dig.* 484. Disting'd in *Dounce v. Dow*, 64 *N. Y.* 416. Disting'd as inapplicable to contract for labor procured by illegal combination,—in *People v. Stephens*, 51 *How. Pr.* 250. Compare *Gaylord Manuf. Co. v. Allen*, 53 *N. Y.* 515. Explained in 1 *Benj. on Sales*, § 626 (Corbin's 4 *Am. ed.*); 2 *Id.* § 1856, n. 11. Quoted (Sale by sample) in 2 *Id.* § 977, n. 29. Disting'd (What constitutes express warranty) in *Cahen v. Platt*, 42 *Super. Ct. (J. & S.)* 490.
- **v. Roth**, 18 *N. Y.* 448. See *Witzel v. Chapin*. Applied (Resulting trust created by one person taking deed to land paid for by another) in *Fairchild v. Fairchild*, 5 *Hun.* 412, which was aff'd in 64 *N. Y.* 477, which see; *Siemon v. Schurck*, 18 *Id.* 612. Applied (Informal agreement creating trust) in *Neilly Neilly*, 23 *Hun.* 653. Examined with other cases (Substituted agreement, as satisfac-
- tion of prior demand) in dissenting opinion of MULLEN, J., in *Osborn v. Robbins*, 37 *Barb.* 490. Disting'd in *Clapp v. Hawley*, 69 *N. Y.* 526. Explained in 2 *Chitty on Contr.* 1126, n. a, 11 *Am. ed.*
- **v. Saunders**, 3 *Keyes*, 347. Misreported. See opinion of court in 1 *Abb. Ct. App. Dec.* 495. Applied (Surrender of paper, whether due or overdue, as creating holder for value) in *Phoenix Ins. Co. v. Church*, 56 *How. Pr.* 496, which was rev'd in 81 *N. Y.* 223, which see. Applied in *Pratt v. Coman*, 37 *Id.* 442; *Clothier v. Adrance*, 51 *Id.* 322, 327. Explained and followed in *Powers v. Freeman*, 2 *Lans.* 127.
- **v. Stone**, 5 *Daly*, 353; s. c., more fully, 15 *Abb. Pr. N. S.* 137.
- **v. U. S. Car Spring Co.**, 2 *Duer*, 608. Compare (Jurisdiction over foreign corporations *Code Civ. Pro.* §§ 263, 264, 1780.
- Dayton v. Borst**, 7 *Bosw.* 115. Aff'd in 31 *N. Y.* 435. See *Mann v. Pentz*; *Spear v. Crawford*. Decision in 31 *N. Y.* disting'd (Liability for amount unpaid on stock) in *Wintringham v. Rosenthal*, 25 *Hun.* 580, 582. Followed (Right of receiver of foreign corporation to sue for unpaid subscriptions) in *Winans v. M. Kean R. R. & Nav. Co.*, 6 *Blatchf. C. Ct.* 215, 223.
- **v. Johnson**, 69 *N. Y.* 419. Disting'd (Proper plaintiff in action on official bond) in *People ex rel. Becar v. Struller*, 16 *Hun.* 234. Compare *Code Civ. Pro.* §§ 1886-1890, 2607-2609, 3347, subd. 11.
- **v. Tillou**, 1 *Kobt.* 21. Collated with *Bunn v. Winthrop*, 1 *Johns. Ch.* 329, and other cases (What constitutes "furniture") in 47 *Am. R.* 197, n.
- **v. Trull**, 23 *Wend.* 345. Included (Debt—note or bill taken for) in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 250.
- **v. Wilkes**, 17 *How. Pr.* 510. Followed (Injunction to restrain publication of paper) in *Pratt v. Underwood*, 4 *Civ. Pro. R. (Browne)* 167. Discussed (Partnership—good will) in 1 *Collyer on Partn.* § 117, n. 1, *Wood's Am. ed.*
- De Agreda v. Mantel**, 1 *Abb. Pr.* 130. See (Entry of judgment) *Code Civ. Pro.* 1881, § 1354, n.
- Deal v. Maxwell**, 51 *N. Y.* 652. Explained (Sales—agreements for work and labor, distinguished from) in *Benj. on Sales*, § 109, n. y (Bennett's 4 *Am. ed.*).
- Dean, Matter of**, 86 *N. Y.* 398. Applied (Commissions of assignees, &c.) and *Cox v. Schermerhorn*, 18 *Hun.* 16, disting'd in *Matter of Fulton*, 30 *Id.* 258. Discussed (Assignment for benefit of creditors—assignee carrying on business) in *Burrill on Assign.* § 397, 4 ed.
- Dean v. Etna Life Ins. Co.**, 2 *Hun.* 358; s. c., 4 *Sup'm. Ct. (T. & C.)* 497; less fully in 48 *How. Pr.* 36. Rev'd in 62 *N. Y.* 642. Decision in 62 *N. Y.* disting'd (Waiver of condition in insurance policy) in *Marvin v. Universal Life Ins. Co.*, 16 *Hun.* 494.

- **v. De Wolf**, 16 *Hun.* 186. Aff'd in 82 *N. Y.* 626. See Aiken *v.* Wasson.
- **v. Eldridge**, 29 *How. Pr.* 218. Approved (Action against joint debtors) in Lane *v.* Salter, 51 *N. Y.* 1.
- **v. Gridley**, 10 *Wend.* 254. Explained (Bill of exceptions) in Hunnicutt *v.* Peyton, 102 *U. S.* 333, 359.
- **v. Hall**, 17 *Wend.* 214. -See Brush *v.* Reeves; Herrick *v.* Carman; Mitchell *v.* Culver; Packer *v.* Willson. Explained (Liability of one indorsing note before delivery to payee) in Phelps *v.* Vischer, 50 *N. Y.* 69. Collated with Richards *v.* Warring, 1 *Keyes*, 576; Cromwell *v.* Hewitt, 40 *N. Y.* 491; Phelps *v.* Vischer, 50 *Id.* 69; Seabury *v.* Hungerford, 2 *Hill*, 80; Hall *v.* Newcomb, 7 *Id.* 416, and other cases from *N. Y.* and elsewhere, and criticised and disapproved in so far as they distinguish between negotiable and non-negotiable paper, in Rothschild *v.* Grix, 31 *Mich.* 150; *s. c.*, 18 *Am. R.* 171, 174. Cited and approved in Bright *v.* Carpenter, 9 *Ohio*, 139; *s. c.*, 34 *Am. Dec.* 432, with note. Collated with other cases in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 401.
- **v. Hewitt**. See Van Keuren *v.* Parmelee.
- **v. Mace**, 19 *Hun.* 391. Followed (Enforcing liability of stockholder—judgment, where to be obtained) in Viele *v.* Wells, 9 *Abb. N. C.* 277, 279.
- **v. Pitts**, 10 *Johns.* 35. See Danforth *v.* Culver. Reviewed with Danforth *v.* Culver, 11 *Johns.* 146, and other cases (Sufficient acknowledgment to take debt out of statute of limitations) in Bangs *v.* Hall, 2 *Pick. (Mass.)* 368; *s. c.*, 13 *Am. Dec.* 437, 441, with note. Followed with Johnson *v.* Beardslee, 15 *Johns.* 3, in Beitz *v.* Fuller, 1 *McCord (S. C.)* 541; *s. c.*, 10 *Am. Dec.* 693, with note.
- **v. Thornton**, 13 *N. Y.* 266. Approved (One defendant testifying as to matter which would exonerate both) in Hall *v.* Nash, 11 *Ind.* 34.
- Deane v. O'Brien**, 13 *Abb. Pr.* 11. Applied (Amendment that removes bar of statute of limitations) in Hatch *v.* Central Nat'l Bk., 78 *N. Y.* 487, 490. Disting'd with Hatch *v.* Central Nat'l Bk., in Greene *v.* Martine, 27 *Hun.* 246.
- De Angelis, Matter of**, 1 *Edm. Sel. Cas.* 476. See (Superior city courts) *Code Civ. Pra.* § 268.
- Deansville Cemetery Association, Matter of**, 5 *Hun.* 482. Rev'd in 66 *N. Y.* 569; *s. c.*, 23 *Am. R.* 86. With decision in 66 *N. Y.* see cases cited (Public use of private property) in 24 *Am. R.* 564, *n.*
- Dearborn v. Cross**, 7 *Cow.* 48. See Fleming *v.* Gilbert; Keating *v.* Price; Lattimore *v.* Harsen. Explained as not authority, with Lattimore *v.* Harsen, 14 *Johns.* 330 (Written contract modified by parol contract) in Allen *v.* Jaquish, 21 *Wend.* 628. See also Eddy *v.* Graves, 23 *Id.* 82. Disting'd as inapplicable in Richardson *v.* Johnson, 41 *Wis.* 100; *s. c.*, 22 *Am. R.* 712, 714.
- **v. Kent**, 14 *Wend.* 184. Overruled (Attacking declaration on demurrer to replication) in Auburn Canal Co. *v.* Leitch, 4 *Den.* 65.
- Deas v. Wandell**, 3 *Sup'm. Ct. (T. & C.)* 128; *mem. s. c.*, 1 *Hun.* 120. Aff'd, it seems, in 59 *N. Y.* 636, but without opinion. Decision in 59 *N. Y.* applied (Evidence of undue influence on testator) in Tucker *v.* Field, 5 *Redf.* 139, 177. Disting'd in Van Kleeck *v.* Phipps, 4 *Id.* 99, 131.
- De Bary v. Stanley**, 48 *How. Pr.* 349; *s. c.*, more fully, 5 *Daly.* 412.
- De Baun v. Mayor, &c. of N. Y.**, 16 *Barb.* 392. Dissenting opinion in 2 *Edm. Sel. Cas.* 396. See Adriance *v.* Same; Christopher *v.* Same.
- De Beerske v. Paige**, 47 *Barb.* 172. Aff'd in 36 *N. Y.* 537.
- De Bow v. People**, 1 *Den.* 9. See People *v.* Supervisors of N. Y.; Purdy *v.* People; Thomas *v.* Dakin. Overruled (Validity of general banking law) in Gifford *v.* Livingston, 2 *Den.* 380. So referred to in Leavitt *v.* Yates, 4 *Edw.* 177. Examined (Non-existent corporation not subject to be defrauded) in Noakes *v.* People, 25 *N. Y.* 387, which aff'd 5 *Park.* 298, which see. Disting'd in People *v.* Chadwick, 2 *Id.* 164. Applied (Conclusiveness of enrolled bill, as law) in People *v.* Comm'rs of Highways of Marlborough, 54 *N. Y.* 279. Criticised and disting'd in State *v.* Swift, 10 *Nev.* 176; *s. c.*, 21 *Am. R.* 727. Disting'd in Mayor of Annapolis *v.* Harwood, 32 *Md.* 471; *s. c.*, 3 *Am. R.* 161.
- De Bussierre v. Holladay**, 4 *Abb. N. C.* 121. Approved (What is jurisdiction) in Monarque *v.* Monarque, 19 *Hun.* 332. Compare (Jurisdiction to set aside will) *Redf. Surr. Pr.* 357, *n.* 2.
- De Camp v. Eveland**. See Thomas *v.* Dakin.
- De Caters v. Le Ray De Chazmont**, 3 *Paige*, 178. Previous decision in 2 *Id.* 490. Decision in 3 *Id.* followed (Trustee not to purchase trust property) in Terwilliger *v.* Brown, 59 *Barb.* 9. Decision in 2 *Paige*, reviewed at length with Searing *v.* Brinkerhoff, 5 *Johns. Ch.* 332; Hyslop *v.* Clark, 14 *Johns.* 458; Austin *v.* Bell, 20 *Id.* 442; Mackie *v.* Cairns, 5 *Cow.* 580 (Validity of assignment containing provision for release by assenting creditors) in Atkinson *v.* Jordan, 5 *Ohio*, 293; *s. c.*, 24 *Am. Dec.* 281, 287, with note. Explained in *Durill on Assign.* § 477, 4 ed.
- Decker v. Boice**, 19 *Hun.* 152. Aff'd in 83 *N. Y.* 215. Decision in 83 *N. Y.* explained and followed (Mortgage and assignment) in Smyth *v.* Knickerbocker Life Ins. Co., 84 *Id.* 589, 593. With decision in 19 *Hun.*, compare (Parties entitled to notice of sale of mortgaged premises) *Code Civ. Pro.* § 2388, subd. 4.
- **v. Furniss**, 3 *Duer*, 291. Rev'd in 14 *N. Y.* 611. Decision in 14 *N. Y.* followed

- (Executed and executory contract) in *Springsteen v. Samson*, 32 *Id.* 703.
- **v. Gardiner**, 8 *N. Y.* 29. Applied (Costs in case of two or more defendants) to action on contract, in *Corbett v. Ward*, 3 *Bosw.* 632, 633. Superseded in *Allis v. Wheeler*, 56 *N. Y.* 50.
- **v. Gaylord**, 8 *Hun.* 110. Disting'd (Continuance of liability of surety on renewal of lease) in *Knowles v. Cuddeback*, 19 *Id.* 590. Disting'd (Joinder of actions) in *Harris v. Eldridge*, 9 *Abb. N. C.* 278, 280.
- **v. Judson**, 16 *N. Y.* 449. Disting'd (Release of surety by entry of judgment against co-surety) in *Waggoner v. Walrath*, 24 *Hun.* 443, 445. Applied (Meaning of words "color of office") in *Kelly v. McCormick*, 28 *N. Y.* 321; *Richardson v. Crandall*, 30 *How. Pr.* 141. Cited as authority (Effect of judgment against principal or surety) in *Miller v. White*, 50 *N. Y.* 142. Applied (Estoppel of surety in undertaking in replevin) in *Harrison v. Wilkin*, 69 *Id.* 418.
- **v. Livingston**, 15 *Johns.* 479. See *Austin v. Hall*; *Rawson v. Adams*; *Sherman v. Ballou*. Explained (Diverse actions by tenants in common for rent) in *Sherman v. Ballou*, 8 *Cow.* 308.
- **v. Matthews**, 5 *Sandf.* 493. Aff'd in 12 *N. Y.* 313. Decision in 12 *N. Y.* applied (Action for conversion of *choses in action*) in *Carver v. Creque*, 46 *Barb.* 513, which was aff'd in 48 *N. Y.* 389, which see. Applied (Action by maker of note not enforceable by payee but transferred to *bona fide* holder) in *Newell v. Gregg*, 51 *Barb.* 266. Explained and applied in *Thayer v. Manley*, 8 *Hun.* 551. Applied to action by creditor who has been fraudulently induced to compromise, in *Whiteside v. Hyman*, 10 *Id.* 221. Applied. (Property in instrument before its inception) in *De Silver v. Holden*, 50 *Super. Ct. (J. & S.)* 236. Followed (Damages in action for conversion of note) in *Potter v. Merchants' B'k*, 28 *N. Y.* 655; *Thayer v. Manley*, 73 *Id.* 308.
- **v. Saltzman**, 1 *Hun.* 421; s. c., 3 *Sup'm. Ct. (T. & C.)* 589. Aff'd in 59 *N. Y.* 275. See *Patrick v. Metcalf*.
- Decouche v. Savetier**, 3 *Johns. Ch.* 190; s. c., 8 *Am. Dec.* 478, *n.* Overruled (Application of statute of limitations to express trusts) in *Kane v. Bloodgood*, 7 *Johns. Ch.* 125. Reviewed at length and results approved with *Coster v. Murray*, 5 *Id.* 522; 20 *Johns.* 285; *Kane v. Bloodgood*, 7 *Johns. Ch.* 90, in *App v. Dreisbach*, 2 *Rawle (Pa.)* 287; s. c., 21 *Am. Dec.* 447, 450, with note. Commented on in *Ang. on Limit.* § 167, 6 ed. Said not to have been followed to the full extent of its doctrine (*Lex loci* governing marriage contract) in 8 *Am. Dec.* 490, *n.* Followed in *Bonati v. Welsch*, 24 *N. Y.* 157. Referred to in *Tyler on Inf. & Cov.* 2 ed., § 323, as laying down a doctrine that has been often confirmed both in this country and in England. Quoted (Bankruptcy—distinction between right and remedy) in 3 *Pars. on Contr.* 437, *n. t.*
- De Courcy v. Stewart**, 20 *Hun.* 561. Compare (Jurisdiction of actions for injuries to land without the State) 22 *Abb. L. J.* 47, 119, 147, 219.
- Dederich v. McAllister**, 4 *Hun.* 670. Reported in 49 *How. Pr.* 351.
- Dederick v. Richley**, 19 *Wend.* 108. Applied (Reference—where only allowed) in *McMaster v. Booth*, 4 *How. Pr.* 427; *Dewey v. Field*, 18 *Id.* 437, 439; *Ross v. Mayor, &c. of N. Y.*, 32 *Id.* 164; *De Graff v. MacKinley*, 38 *Super. Ct. (J. & S.)* 203, 207. Applied (Compulsory reference) in *Turner v. Taylor*, 2 *Daly*, 282; *Townsend v. Hendricks*, 40 *How. Pr.* 162. Applied (Application of statute limiting time within which to set aside judgment for irregularity) in *Bonnell v. Henry*, 13 *How. Pr.* 145.
- Deديو v. People**, 22 *N. Y.* 178. Examined, and in general approved (Conviction of offense for lesser degree than set forth in indictment) in *Keefe v. People*, 7 *Abb. Pr. N. S.* 76. Followed (What constitutes dwelling within statute of arson) in *Levy v. People*, 19 *Hun.* 383, 387, which was aff'd in 80 *N. Y.* 327, which see.
- Deering, Matter of**, 55 *How. Pr.* 296. The "Matter of Deering" in which a decision is noted in 21 *Hun.* 618, and which was rev'd in C. of App. in Apr. 1881, was a different case.
- Deering v. Metcalf**, 74 *N. Y.* 501. See *Dering v. Metcale*. Cited as authority (Testimony of witness, when not to be disregarded) in *Moett v. People*, 85 *N. Y.* 373, 378.
- De Fonclear v. Shottenkirk**, 3 *Johns.* 170. Approved (What words will make contract of sale) in *Chapman v. Campbell*, 13 *Gratt. (Va.)* 105.
- De Forest v. Farley**, 4 *Hun.* 640; aff'd, it seems, in 62 *N. Y.* 628. Decision in 62 *N. Y.* disting'd (Validity of objection to title of purchaser at judicial sale) in *Muller v. Struppman*, 6 *Abb. N. C.* 343, 348.
- **v. Frary**, 6 *Cow.* 151. Disting'd (Necessity of certainty of time of payment of negotiable note) in *Charlton v. Reed*, 61 *Iowa*, 106; s. c., 47 *Am. R.* 808.
- **v. Fulton Ins. Co.**, 1 *Hall*, 84. Cited as authority (Damages for negligence of agent to insure) in *Beardsley v. Davis*, 52 *Barb.* 166. Applied (Insurable interest in agent) in *Kline v. Queen Ins. Co.*, 7 *Hun.* 271; *Sturm v. Atlantic Mut. Ins. Co.*, 63 *N. Y.* 80, which aff'd 38 *Super. Ct. (J. & S.)* 302, which see. Applied to administrator—in *Herkimer v. Rice*, 27 *Id.* 179. To carrier in *Van Natta v. Mut. Security Ins. Co.*, 2 *Sandf.* 494. To creditor in *Rohrbach v. Aetna Ins. Co.*, 1 *Sup'm. Ct. (T. & C.)* 344. To assignee for creditors,—in *White v. Hudson River Ins. Co.*, 7 *How. Pr.* 347. Applied (Provision in fire policy for insurance of



- property held "in trust," "on commission," &c.) in *Stillwell v. Staples*, 6 *Duer*, 66, which was rev'd in 19 *N. Y.* 404, which see. Examined in *Lee v. Adsit*, 37 *Id.* 90. Reviewed with *Stillwell v. Staples*, 19 *Id.* 401; *Waring v. Fire Ins. Co.*, 45 *Id.* 606, and other cases in *Lucas v. Ins. Co.*, 23 *W. Va.* 258; s. c., 48 *Am. R.* 383. Discussed and compared in 3 *Am. L. Reg. N. S.* 662. Discussed in 3 *Kent. Com.* 371. Cited in *Whart. Com. on Ag.* § 204.
- *v. Jewett*, 19 *Hun.* 509. Further decision in 23 *Hun.* 490, which was aff'd in 88 *N. Y.* 264. See *Wright v. N. Y. Central R. R. Co.*
- *v. Leete*, 16 *Johns.* 122. Disting'd (Traversing allegation of special damage) in *Thompson v. Lumley*, 7 *Daly*, 74, 77.
- Defreeze v. Trumper**, 1 *Johns.* 274; s. c., 3 *Am. Dec.* 329; 3 *N. Y. Com. L. Law. ed.* 139, with note. See *Seixas v. Woods*. Disting'd (Damages for breach of warranty of title to personal property) in *O'Brien v. Jones*, 91 *N. Y.* 193. Quoted and explained in 1 *Pars. on Contr.* 575, n. e.; 2 *Story on Contr.* 5 ed. § 1062, n. 3.
- De Gogorza v. Knickerbocker Life Ins. Co.**, 65 *N. Y.* 232. See *Breasted v. Farmers' Loan & Trust Co.* Recognized as authority (Effect of self-destruction on right to recover on life policy) in *Supreme Commandery Knights Golden Rule v. Ainsworth*, 71 *Ala.* 486; s. c., 46 *Am. R.* 332.
- De Graaf v. Teerpenning**, 52 *Hov. Pr.* 313. Rev'd as *De Groff v. Terpenning*, 14 *Hun.* 301.
- De Graff v. N. Y. Central, &c. R. R. Co.**, 3 *Sup'm. Ct. (T. & C.)* 255. Further decision on appeal after second trial in 76 *N. Y.* 125. See *Warner v. Erie R'y. Co.* Decision in 76 *N. Y.* disting'd (Evidence of negligence in not furnishing suitable machinery) in *Jones v. N. Y. Central, &c. R. R. Co.*, 28 *Hun.* 364; *Kain v. Smith*, 25 *Id.* 146, 149; *Brann v. Chicago, R. I. & P. R. Co.*, 53 *Iowa*, 595; s. c., 36 *Am. R.* 243, 245. Reviewed with other cases, in *Ballou v. Chicago & N. W. R'y Co.*, 54 *Wisc.* 266.
- De Graw v. Elmore**, 50 *N. Y.* 1. Applied (No recovery as on contract, where complaint shows cause of action in tort) in *Berrian v. Mayor, &c. of N. Y.*, 15 *Abb. Pr. N. S.* 209; *People v. Denison*, 19 *Hun.* 147. Applied to recovery for tort, in *Beard v. Yates*, 2 *Id.* 467. Disting'd in *Graves v. Waite*, 59 *N. Y.* 162. See to the contrary, *Code Civ. Pro.* § 529. See also *Abb. Tr. Ev.* 285. Cited as authority (Action founded on deceit or fraud, when not maintainable) in *Indianapolis, P. & C. R. R. Co. v. Tyng*, 2 *Hun.* 320.
- De Groff v. American Linen Thread Co.**, 24 *Barb.* 375. Rev'd in 21 *N. Y.* 124. With decision in 21 *N. Y.* see for a stricter rule (Burden of proof as to corporate acts) *People ex rel. Town of Rochester v. Deyoc*, 2 *Sup'm. Ct. (T. & C.)* 142. See also *Abb. Tr. Ev.* 36. Quoted and collated with other cases (*Ultra vires*—completed contract) in *Field on Ultra Vires*, 185.
- De Groot v. Jay**, 30 *Barb.* 483; s. c., 9 *Abb. Pr.* 364. Quoted (Receiver—permission to sue) in *Hugh on Receiv.* § 254, n. 1.
- *v. Van Duzer*, 17 *Wend.* 170. Rev'd in 20 *Id.* 390. See *Thalhimer v. Brinkerhoff*. Decision in 20 *Wend.* questioned (Effect of knowledge by vendor of purchaser's intent) in *Wallace v. Lark*, 12 *S. C.* 576; s. c., 32 *Am. R.* 516. Approved (Invalidity of contract to enable one to break the law) in *Waterman on Sp. Perf.* § 217, n.
- De Grove v. Metropolitan Ins. Co.**, 61 *N. Y.* 594; s. c., 19 *Am. R.* 305, with note.
- De Hart v. Hatch**, 3 *Hun.* 375. Explained (Removal of cause to Marine Court) in *Heath v. Hubbell*, 6 *Daly*, 183.
- Deidericks v. Commercial Ins. Co.**, 10 *Johns.* 234. Followed (Severability of contract of insurance) in *Merrill v. Agricultural Ins. Co.*, 73 *N. Y.* 452, 460.
- De Jonge v. Goldsmith**, 46 *Super. Ct. (J. & S.)* 131. Aff'd, it seems, in 86 *N. Y.* 614, on opinion in *Brunner v. Cohn*, *Id.* 11.
- De Kay v. Irving**, 5 *Den.* 646. Applied (Effect of lawful provision in will connected with illegal direction) in *Williams v. Williams*, 8 *N. Y.* 539; *Post v. Hover*, 33 *Id.* 598; *Oxley v. Lane*, 35 *Id.* 349; *Matter of Ruppert*, *Tuck.* 490. Disting'd (Suspension of power of alienation) in *Provost v. Provost*, 70 *N. Y.* 145. Applied (Provision in will, invalid as trust, but valid as power) in *Manice v. Manice*, 43 *Id.* 364.
- Delacroix v. Bulkley**, 13 *Wend.* 71. Applied (Sealed contract, as affected by subsequent parol agreement) in *French v. New*, 20 *Barb.* 492, which was rev'd in 28 *N. Y.* 150, which see; *Townsend v. Empire Stone Dressing Co.*, 6 *Duer*, 214; *Ailen v. Jaquish*, 21 *Wend.* 632; *Lynch v. McBeth*, 7 *Hov. Pr.* 120. Relied on in dissenting opinion of *GRIDLEY, J.*, in *Pierrepoint v. Barnard*, 6 *N. Y.* 296. Disting'd in *Friss v. Rider*, 24 *Id.* 369; *Jenks v. Robertson*, 2 *Sup'm. Ct. (T. & C.)* 237. Cited as authority in *Dodge v. Crandall*, 30 *N. Y.* 307; *Clough v. Murray*, 3 *Robt.* 18; *Hart v. Brady*, 1 *Sandf.* 627.
- Delafield v. De Granw**, 9 *Bosw.* 1. Aff'd in 3 *Keyes*, 467; s. c., 1 *Abb. Ct. App. Dec.* 500.
- *v. Hand*, 3 *Johns.* 310. Disting'd as relating to the adjudications of foreign municipal courts, and *Gardere v. Columbian Ins. Co.*, 7 *Id.* 510, as a case where the question was waived.—(Effect of seal of court of admiralty) in *Thompson v. Stewart*, 3 *Conn.* 171; s. c., 8 *Am. Dec.* 168.
- *v. Parish*, 1 *Redf.* 1. Aff'd in 25 *N. Y.* 9. Report in 25 *N. Y.* corrected in 1 *Redf.* 204, n. See *Culver v. Haslam*; *Stewart v. Lisenard*. Opinion of *Sup'm. Ct.* is in 42 *Barb.* 274. Decision in 25 *N. Y.* explained in reference to principle laid down in *Stewart v. Lisenard*, 26 *Wend.* 255, and approved as a safe and reliable guide (Testamentary capacity) in *Ean v. Snyder*, 46 *Barb.*

230. Followed as decisive with Van Guysling v. Van Kuren, 35 N. Y. 70; Tyler v. Gardiner, *Id.* 559, in Kinne v. Johnson, 60 Barb. 69. Applied in Van Guysling v. Van Kuren, 35 N. Y. 74; Mairs v. Freeman, 3 Redf. 198; Harper v. Harper, 1 Sup'm. Ct. (T. & C.) 358. Followed and explained in Legg v. Myer, 5 Redf. 628. Examined in dissenting opinion of POTTER, J., in Nexsen v. Nexsen, 3 Abb. Ct. App. Dec. 368. Commented on and quoted in *Ewell Lead. Cas. on Inf.*, &c. 656. Quoted in 1 *Jarm. on Wills*, Rand. & T. ed. 69, n. 10. Included in *Redf. Lead. Cas. on Wills*, 158. Cited as authority (Undue influence on testator) in Marvin v. Marvin, 3 Abb. Ct. App. Dec. 205. Applied in Tyler v. Gardiner, 35 N. Y. 583, 590, 607. Explained in Booth v. Kitchen, 3 Redf. 59. Compare Swenarton v. Hancock, 9 Abb. N. C. 326, 361. Applied (Burden of proof as to testamentary capacity) in Rollwagen v. Rollwagen, 63 N. Y. 517. Explained in Dickie v. Van Vleck, 5 Redf. 284. Followed and approved in Williams v. Robinson, 42 Vt. 658; s. c., 1 Am. R. 359, 365. Criticised in 24 *Alb. L. J.* 58, 59. Reviewed in 16 *Am. L. Rev.* 118, 125. Followed (Implied revocation) in Ordish v. McDermott, 2 Redf. 460, 463. Applied (Testimony of attending physician as to testator's capacity) in Staunton v. Parker, 19 Hun, 59.
- **v. State of Illinois**, 2 Hill, 159; s. c., 26 Wend. 192. Aff'd 8 Paige, 752. The report in *Hill*, is based on the opinion of Justice BRONSON; that in *Wend.* on the opinion of Senator VERPLANK. Decisions in 26 Wend. and 2 Hill applied (Test of right to ratify unauthorized act of public agent) in Richardson v. Crandall, 47 Barb. 367. Decision in 26 Wend. applied in State of Michigan v. Phoenix Bk., 33 N. Y. 11. Decisions in 2 Hill and 8 Paige applied (Suit by State in State court) to action by foreign republic,—in Republic of Mexico v. Arrangois, 11 How. Pr. 6. Decision in 2 Hill disting'd (Negotiable securities) in Mechanics' Bk. v. N. Y. & New Haven R. R. Co., 13 N. Y. 625. Decision in 26 Wend. applied in Finnegan v. Lee, 18 How. Pr. 188. Decisions in 8 Paige and 2 Hill, followed in Farmers' & Mech. Bk. v. Butchers' & Drovers' Bk., 14 N. Y. 629; 16 *Id.* 137; Bank of Rome v. Village of Rome, 19 *Id.* 24; Brainerd v. N. Y. & Harlem R. R. Co., 25 *Id.* 499. Decision in 26 Wend. cited as authority ("Bills of credit" within meaning of U. S. Const. art. 1, § 10) in State of Indiana v. Woram, 6 Hill, 37. Applied (Ratification of unauthorized act of agent) in Seymour v. Wyckoff, 10 N. Y. 224. Decision in 2 Hill cited as authority (Jurisdiction of State courts) in Gilbert v. Priest, 63 Barb. 346; Burning of the Henry Clay, 10 N. Y. Leg. Obs. 313; People v. Sheriff of Westchester, 1 Park. 682. Followed in Teall v. Felton, 1 N. Y. 545; People v. Gardiner, 6 Park. 153. Cited as authority (Exclusive jurisdiction of U. S. courts) in Woolsey v. Judd, 4 Duer, 382. Disting'd in Dudley v. Mayhew, 3 N. Y. 18. Discussed (State bonds—negotiability) in 1 *Pars. on Contr.* 291, n. j. Cited as authority (State as defendant in State court), in Kiersted v. People, 1 Abb. Pr. 392. Decisions in 26 Wend. and 2 Hill applied to action by U. S.,—in U. S. v. Graff, 67 Barb. 306.
- **v. Union Ferry Co. of Brooklyn**, 10 Bosw. 216. Further decision in 5 Robt. 207, which was aff'd, it seems, in 51 N. Y. 671, but without opinion.
- Delamater v. Bush**, 63 Barb. 168. Disting'd and criticised (Parol evidence to vary consideration) in Anthony v. Harrison, 14 Hun, 198, 213.
- **v. Byrne**, 57 How. Pr. 170. Other proceedings in 59 *Id.* 71, and 81 N. Y. 621.
- **v. People**, 5 Lans. 332. Followed (Privilege of accused to testify in his own behalf) in Newman v. People, 6 *Id.* 460.
- **v. Pierce**, 3 Den. 315. Aff'd in 3 How. Pr. 162. See points of counsel on appeal in *How. App. Cas.* 1.
- **v. Russell**, 4 How. Pr. 234. Criticised and disapproved (Personal injury,—liability of defendant, in action therefor, to arrest) in Wagner v. Lathers, 26 Wis. 436, notwithstanding decision in Straus v. Schwartzwalden, 4 Bosw. 627.
- De Lamatre v. Fonda, Johnstown, & C. R. R. Co.**, 3 Weekly Dig. 295. Aff'd in 71 N. Y. 590, but without opinion.
- Delancey, Matter of**, 52 N. Y. 80. Explained and followed (Only party "aggrieved" by assessment relieved) in Wilkes v. Mayor, &c. of N. Y., 8 Daly, 407.
- De Lancey v. Ga Nun**, 12 Barb. 120. Aff'd as De Lancey v. Ganong, 9 N. Y. 9. Decision in 9 N. Y. commented on (Ejection—landlord and tenant (in *Sedgw. & W. on Tr. of Tit. to Land*, § 369).
- **v. Stearns**, 66 N. Y. 157. Further decision in 14 Hun, 50. Decision in 66 N. Y. reviewed with other cases (Rights of assignee of mortgage) in *Thomas on Mort.* 108.
- Delaney v. Brett**, 4 Robt. 712; s. c., more fully, 1 Abb. Pr. N. S. 421. Aff'd in 51 N. Y. 78. Decision in 51 N. Y. cited as authority (Contracts not maritime) in King v. Greenway, 71 *Id.* 418. Compare (Motion for new trial on minutes) *Code Civ. Pro.* § 999.
- **v. Van Aulen**, 21 Hun, 274. Rev'd in 84 N. Y. 16. Decision in 84 N. Y. followed (Annuity payable only out of annual profits) on subsequent appeal in 16 Weekly Dig. 543.
- De Laney v. Blizzard**, 7 Hun, 7. Further decision in *Id.* 66.
- Delano v. Blake**, 11 Wend. 85; s. c., 25 Am. Dec. 617. See Jackson v. Carpenter. Followed (Ratification of infant's contract) in Hastings v. Dollarhide, 24 Cal. 211, 215. Explained in 1 *Pars. on Contr.* 326, n. y. Collated with other cases, in *Ewell Lead. Cas. on Inf. &c.* 174, n. Quoted (Affirmance of voidable acts) in *Wait on Fraud. Conv.* § 493.

**Delaplaine v. Lawrence**, 10 *Paige*, 604. Subsequent proceeding on appeal in 3 *N. Y.* 301. Decision in 10 *Paige* commented on (Sale of decedent's real estate) in *Willard on Executors*, 326. With decision in 3 *N. Y.* see *Code Civ. Pro.* 1881, §§ 2773, n., 2775, n.

**De Lavalette v. Wendt**, 11 *Hun*, 432. Modified and aff'd in 75 *N. Y.* 579; s. c., 31 *Am. R.* 494, with note as to interest on recovery in action for breach of contract.

**Delavan v. Duncan**, 49 *N. Y.* 485. Subsequent decision in 4 *Hun*, 29. With decision in 49 *N. Y.* see also (Performance by vendor in contract to sell land) *Rinaldo v. Housmann*, 1 *Abb. N. C.* 312.

— **v. Florence**, 9 *Abb. Pr.* 277, n. Commented on (Judgment when presumed to be paid) in *Throop's Justice's Man.* 2 ed. 173. Compare *Code Civ. Pro.* §§ 376, 382, subd. 7, § 414.

**Delavergne v. Norris**, 7 *Johns.* 358; s. c., 5 *Am. Dec.* 281; 4 *N. Y. Com. L. Law. ed.* 351, with brief note. Applied (Damages for breach of covenant against incumbrances) in *Stanard v. Eldridge*, 16 *Johns.* 256. Examined in *Dimmick v. Lockwood*, 10 *Wend.* 151. Explained with *Hall v. Dean*, 13 *Johns.* 105; and *Dimmick v. Lockwood* followed in *Foot v. Burnett*, 10 *Ohio*, 317; s. c., 36 *Am. Dec.* 90, 93, with note. Applied to breach of covenant to convey, — in *Baldwin v. Munn*, 2 *Wend.* 406.

— **v. Noxon**, 14 *Johns.* 333. Explained (Settlement of bastards) in *Overseers of Canajoharie v. Overseers of Johnstown*, 17 *Id.* 41.

**Delavigne v. United Ins. Co.**, 1 *Johns. Cas.* 310; s. c., 1 *N. Y. Com. L. Law. ed.* 335, with citation of cases in support.

**Delaware v. Ensign**, 21 *Barb.* 85. Considered with *Dutcher v. Swartwood*, 15 *Hun*, 31; *Parshall v. Eggert*, 54 *N. Y.* 18, — citing also cases in *Wis.*, *Minn.* and *Cal.* (Fraud in mortgage not cured as against creditors by taking actual possession) in *Wells v. Langbein*, *U. S. Cir. Ct. W. D. Iowa*, 20 *Fed. Rep.* 183, 186.

**Delaware & Hudson Canal Co., Matter of**, 3 *Weekly Dig.* 232. Appeal dismissed in 69 *N. Y.* 209. Decision in 69 *N. Y.* applied (Review of action of commissioners in condemnation proceedings) in *Matter of Prospect Park & C. I. R. R. Co.*, 85 *Id.* 489, 498.

**Delaware & Hudson Canal Co. v. Dubois**, 15 *Wend.* 87. Examined with other cases (Effect of agreements to arbitrate) in *Delaware & Hud. Canal Co. v. Pa. Coal Co.*, 50 *N. Y.* 250, 264.

— **v. Lawrence**, 2 *Hun*, 163. Aff'd in 56 *N. Y.* 612, on opinion below without further opinion. Decision in 2 *Hun* cited as settled law (Water rights) in *People v. Staten Island Ferry Co.*, 7 *Id.* 112. Decision in 9 *N. Y.* discussed in *Wood on Nuis.* 2 ed. § 492.

— **v. Pennsylvania Coal Co.**, 50 *N. Y.* 250. Previous decision as *Pennsylvania Coal Co. v. Delaware & Hud. Canal Co.*, in 3 *Abb. Ct. App. Dec.* 470. See *Larkin v.*

*Robbins*. Decision in 50 *N. Y.* applied (Effect of agreement to arbitrate) in *Altman v. Altman*, 5 *Daly*, 437; *Whiteman v. Mayor & C. of N. Y.*, 21 *Hun*, 117, 121. Disting'd in *Gibbs v. Continental Ins. Co.*, 13 *Id.* 611, 616; *Mark v. National Fire Ins. Co. of N. Y.*, 24 *Id.* 565, 568. Followed in *Weeks v. Little*, 47 *Super. Ct. (J. & S.)* 1, 10, in preference to *Hurst v. Litchfield*, 39 *N. Y.* 377. Examined with other cases, in 16 *Abb. L. J.* 464. Collated with other cases, in 29 *Am. R.* 602, n. Cited and followed in *Holmes v. Richet*, 56 *Cal.* 307; s. c., 38 *Am. R.* 54. Approved in *Hudson v. McCartney*, 33 *Wis.* 331, 345. Cited and followed in *Perkins v. U. S. Electric Light Co., U. S. Cir. Ct. S. D. N. Y.*, 15 *Reporter*, 680.

**Delaware Bk. v. Jarvis**, 20 *N. Y.* 226. See *Case v. Hall*; *Elwood v. Diefendorf*. Disting'd and limited (Warranty on transfer of note) in *Littauer v. Goldman*, 72 *N. Y.* 510, which rev'd 9 *Hun*, 232, which see. Followed in *Fake v. Smith*, 7 *Abb. Pr. N. S.* 106, 118; *Whitney v. National Bank of Potsdam*, 45 *N. Y.* 305; *Morford v. Davis*, 28 *Id.* 485; *Bell v. Dagg*, 2 *Sup'm. Ct. (T. & C.)* 625. Cited in *Challiss v. McCrum*, 22 *Kans.* 157; s. c., 31 *Am. R.* 181, as applicable to case of indorsement without recourse. Disting'd (Recovery over of expense incurred in attempting to enforce obligation) in *Weston v. Chamberlain*, 56 *Barb.* 424.

**Delaware, Lackawanna, & R. R. Co. v. Bowns**, 36 *Super. Ct. (J. & S.)* 126. Rev'd in 58 *N. Y.* 573. Decision in 58 *N. Y.* disting'd (Excusing performance of contract) in *Kemp v. Knickerbocker Ice Co.*, 51 *How. Pr.* 36, which was rev'd in 69 *N. Y.* 56, which see; *Booth v. Cleveland Mill Co.*, 74 *Id.* 22.

**Delecomyn v. Chamberlain**, 48 *How. Pr.* 409. Aff'd in 39 *Super. Ct. (J. & S.)* 359. With decision in 48 *How. Pr.* compare (Costs of commission). *Code Civ. Pro.* § 3256.

**De Llamosas v. De Llamosas**, 2 *Hun*, 380; s. c. as *Llamosas v. Llamosas*, 4 *Sup'm. Ct. (T. & C.)* 574. Appeal dismissed as *De Llamosas v. Llamosas* in 62 *N. Y.* 618. Decision in 62 *N. Y.* explained (Orders reviewable on appeal) in *Collins v. Collins*, 10 *Hun*, 272, 277.

**Delmonico v. Guillaume**, 2 *Sandf. Ch.* 366. Followed (Title of heir of deceased partner to real property of firm) in *Andrews' Heirs v. Brown*, 21 *Ala.* 437; s. c., 56 *Am. Dec.* 252; *Shanks v. Klein*, 104 *U. S.* 18, 23. Opinion of Assistant V. C. quoted in 1 *Pars. on Contr.* 150, n. h.

— **v. Mayor & C. of N. Y.**, 1 *Sandf.* 222. See *Mayor & C. of N. Y. v. Bailey*; *Rochester White Lead Co. v. City of Rochester*. Cited (Liability of municipal corporation for failure to perform its duties) in *Gilman v. Laconia*, 55 *N. H.* 130; s. c., 20 *Am. R.* 175, 182. Compared (Negligence of contractor) in 3 *Am. L. Reg. N. S.* 359.

**Delonguemare v. Tradesmen's Ins. Co.**, 10

- Johns*. 120. See *Fowler v. Aetna Fire Ins. Co.* Followed (Marine policy covering risks in port) in *Bradley v. Nashville Ins. Co.*, 3 *La. Ann.* 708; s. c., 48 *Am. Dec.* 465, with note. Cited as authority (Arrival at port of discharge) and *Dickie v. United Ins. Co.*, 11 *Johns*. 358 disting'd in *Bramhall v. Sun Mut. Ins. Co.*, 104 *Mass.* 510; s. c., 6 *Am. R.* 261.
- De Marcellin, Matter of**, 4 *Redf.* 299. Aff'd, in effect, in 24 *Hun.* 207.
- Demarest v. Daig**, 11 *Abb. Pr.* 9. Aff'd, as *Demarest v. Darg*, 32 *N. Y.* 281; s. c., less fully, 29 *Hov. Pr.* 266. See *Hess v. Beckman*. Decision in 32 *N. Y.* followed with *Brown v. Mayor, &c. of N. Y.*, 66 *Id.* 391 (Effect of summary proceeding as conclusive adjudication) in *Leavitt v. Wolcott*, 95 *Id.* 212. Followed in *Brown v. Mayor, &c. of N. Y.*, 66 *Id.* 391. Applied in *Rinehart v. Young*, 2 *Lans.* 359. Recognized but disting'd in *People v. Eddy*, 57 *Barb.* 602. Disting'd in *Gillilan v. Spratt*, 3 *Daly*, 445; *People ex rel. Wilbur v. Eddy*, 3 *Lans.* 82. Applied in action on recognizance,—in *People v. Smith*, 51 *Barb.* 364. Applied to proceedings by debtor for discharge,—in *Matter of Thomas*, 10 *Abb. Pr. N. S.* 116; *Matter of Roberts*, 10 *Hun.* 253, 255. Applied (Who bound by judgment) in *Bush v. Knox*, 2 *Hun.* 579.
- **v. Haring**. See *Gibbs v. Dewey*.
- **v. Mayor, &c. of N. Y.**, 11 *Hun.* 19. Aff'd in 74 *N. Y.* 161.
- **v. Wickham**, 67 *Barb.* 312; mem. s. c., 4 *Hun.* 627. Aff'd in 63 *N. Y.* 320, without passing on point here raised.
- **v. Willard**, 8 *Cow.* 206. Applied (Rent when not passing by assignment of reversion) in *Burden v. Thayer*, 3 *Metc. (Mass.)* 76; s. c., 37 *Am. Dec.* 117, 120, with note. Cited in *Beal v. Boston Spring Car Co.*, 125 *Mass.* 157; s. c., 28 *Am. R.* 216.
- **v. Wynkoop**, 3 *Johns. Ch.* 129; s. c., 8 *Am. Dec.* 467. See *Pratt v. Huggins*. Relied on (Wife's power to mortgage her separate property) in *Hollis v. Francois*, 5 *Tex.* 195; s. c., 51 *Am. Dec.* 760, 766, with note, which was followed on this point, in *Sampson v. Williamson*, 6 *Tex.* 102; s. c., 55 *Am. R.* 762, 765, with note. Followed (Statute of limitations—cumulative disabilities) in *Cozzens v. Farnan*, 30 *Ohio St.* 491; s. c., 27 *Am. R.* 470, 473; *Dugan v. Gittings*, 3 *Gill (Md.)* 138; s. c., 43 *Am. Dec.* 306, 315, with note; *McDonald v. Hovey*, 110 *U. S.* 623; *Thompson v. Smith*, 7 *Serg. & R. (Pa.)* 209; s. c., 10 *Am. Dec.* 453. Explained (Disabilities in respect to real property) in *Ang. on Limit.* §§ 479, 480, 485, 6 ed. Applied (Construction of statute of limitations) in *Ten Eyck v. Wing*, 1 *Mich.* 42.
- De Mets v. Dagron**, 53 *N. Y.* 635. Applied (Authority of attorney employed to collect debt) in *Herriman v. Shoman*, 24 *Kans.* 387.
- Deming, Matter of**, 10 *Johns.* 232. Limited (Effect of executive pardon) in *Matter of* —, an Attorney, 86 *N. Y.* 563, 569.
- Deming v. Bailey**, 10 *Bosw.* 258. Further decision in 2 *Robt.* 1.
- **v. Colt**, 3 *Sandf.* 284. Collated with *Hayes v. Heyer, Id.* 293; *Havens v. Hussey*, 5 *Paige*, 30; *Fisher v. Murray*, 1 *E. D. Smith*, 341; *Wetter v. Schlieper*, 4 *Id.* 707; *Kimball v. Hamilton*, 8 *Bosw.* 495; *Kelly v. Baker*, 2 *Hill* 531; *Haggerty v. Granger*, 15 *Hov. Pr.* 243; *Paton v. Wight*, 15 *Id.* 481; *Pettee v. Orser*, 18 *Id.* 442; *Welles v. March*, 30 *N. Y.* 344; *Coope v. Bowles*, 42 *Barb.* 88, and authorities from other States (Power of partner to make assignment for benefit of creditors) in 22 *Am. L. Reg.* 38. Discussed in *Burrill on Assign.* § 79, 4 ed.
- **v. Kemp**, 4 *Sandf.* 147. See *Seymour v. Davis*. Explained (Making parol contract valid, by subsequent acts) in *Boutwell v. O'Keefe*, 32 *Barb.* 434, 437.
- **v. Puleston**, 35 *Super. Ct. (J. & S.)* 309. Aff'd in 55 *N. Y.* 655. Former decision in 33 *Super. Ct. (J. & S.)* 231. Decision in 33 *Super. Ct. (J. & S.)* followed (Liability of trustees holding over their term) in *Read v. Keese*, 37 *Id.* 269, 275, which was aff'd in 60 *N. Y.* 616, which see. Decision in 35 *Super. Ct. (J. & S.)* followed (Liability of trustee of manufacturing corporation, when not affected by notes taken by creditor) in *Jones v. Barlow*, 38 *Id.* 142, 146, which was rev'd in 62 *N. Y.* 202, which see. Applied (Effect of judgment against corporation) in *Lewis v. Armstrong*, 8 *Abb. N. C.* 385, 388.
- Demott v. Field**, 7 *Cow.* 58. See *Austin v. Munro*. Cited with other cases (Liability of trust estates on contracts) in 15 *Am. L. Rev.* 449.
- **v. McMullen**, 8 *Abb. Pr. N. S.* 335. Criticised (Married woman's liability for debts incurred as agent of husband) in *Covert v. Hughes*, 8 *Hun.* 305. Applied with *Smith v. Allen*, 1 *Lans.* 101, in *Wilson v. Herbert*, 12 *Vroom (N. J.)* 454; s. c., 32 *Am. R.* 243, 246.
- De Mott v. Hagerman**, 8 *Cow.* 220. Reviewed with other cases (Distinction between lease and letting on shares) in *Taylor v. Bradley*, 4 *Abb. Ct. App. Dec.* 363, 372. Followed in *Henderson v. Allen*, 23 *Cal.* 521. Disapproved (*Replevin* for crops) in *Rowell v. Klein*, 44 *Ind.* 290; s. c., 15 *Am. R.* 235.
- **v. Laraway**, 14 *Wend.* 225; s. c., 28 *Am. Dec.* 523. Explained (Delivery by carrier) in 1 *Chitty on Contr.* 702, n. 2, 11 *Am. ed.* Quoted and explained in 2 *Pars. on Contr.* 183, n. h.
- **v. Starkey**, 3 *Barb. Ch.* 403. Explained (*Bona fide* purchaser of negotiable paper) in *Dows v. Kidder*, 84 *N. Y.* 121, 135.
- Dempsey's Estate, Tuck**. 51. See (Retraction of renunciation) *Code Civ. Pro.* 1881, § 2639, n.
- Dempsey v. Kipp**, 62 *Barb.* 311. Rev'd in 61 *N. Y.* 462.

- Demuth v. American Institute of N. Y.**, 42 *Super. Ct. (J. & S.)* 336. Aff'd in 75 *N. Y.* 502.
- Denham v. Cornell**, 7 *Hun.* 662. Aff'd in 67 *N. Y.* 556.
- Denike v. Harris**, 23 *Hun.* 213. Rev'd in 84 *N. Y.* 89.
- **v. N. Y. & Rosendale Lime, &c. Co.**, 80 *N. Y.* 599. Relied on (When insolvent corporation is not to be regarded as dissolved) in *Dewey v. St. Albans Trust Co.*, 56 *Vt.* 476; s. c., 48 *Am. R.* 803.
- Denn v. Cornell**, 3 *Johns. Cas.* 174; s. c., 1 *N. Y. Com. L. Law. ed.* 659, with brief note. Cited as authority with *Sinclair v. Jackson*, 8 *Cow.* 586; *Jackson v. Parkhurst*, 9 *We.d.* 209 (Estoppel by recitals in deeds) in *Doe v. Dowdall*, 3 *Houst. (Del.)* 369; s. c., 11 *Am. R.* 757, 762.
- Denning v. Corwin**, 11 *Wend.* 647. See *Bloom v. Burdick*. Overruled (Judgment of superior court void if record does not show jurisdiction) in *Foot v. Stevens*, 17 *Wend.* 483; latter case explained in *Hart v. Seixas*, 21 *Id.* 40.
- **v. Roome**, 6 *Wend.* 651; s. c., 10 *N. Y. Com. L. Law. ed.* 1226, with brief note. Cited as authority (Evidence of transactions of public bodies, &c.) in *People v. Zeyst*, 23 *N. Y.* 140, 143. Collated with other cases (Highways—dedication) in *Mills Thomps. on Highw.* 3 ed. 59.
- **v. Smith**, 3 *Johns. Ch.* 332. See *Goldsmith v. Osborne*. Approved (Special authority to be strictly pursued) in *Agent of State Prison v. Lathrop*, 1 *Mich.* 443.
- Dennis v. Cummins**, 3 *Johns. Cas.* 297; s. c., 1 *N. Y. Com. L. Law. ed.* 702, with brief note. Reviewed with *Spear v. Smith*, 1 *Den.* 464; *Lampman v. Cochran*, 6 *N. Y.* 275; *Bagley v. Peddie*, 5 *Sandf.* 192; 16 *N. Y.* 469 (Liquidated damages or penalties) in 1 *Am. Dec.* 331, n.
- **v. Kennedy**, 19 *Barb.* 517. Consult (Voluntary associations) *Ebbinghausen v. Worth Club*, 4 *Abb. N. C.* 300.
- **v. Ludlow**, 2 *Cai.* 111; s. c., 2 *N. Y. Com. L. Law. ed.* 346, with brief note on being under weigh.
- **v. Ryan**, 5 *Lans.* 350; s. c., more fully, 63 *Barb.* 145. Aff'd in 65 *N. Y.* 385; s. c., 22 *Am. R.* 635, with note. Decision in 65 *N. Y.* approved (Liability of prosecutor for untrue statements) in 13 *Cent. L. J.* 262, 266. Explained in *Moak's Underhill's Torts*, 1 *Am. ed.* 165.
- **v. Tarpenny**. See *Meriam v. Harsen*.
- Dennison v. Collins**, 1 *Cow.* 111. See *Brant v. Fowler*. See (Costs in justice's courts) *Code Civ. Pro.* 1881, § 3074, n.
- **v. Ely**, 1 *Barb.* 610. Compare (Effect of cancellation of deed to pass title) in *Schutt v. Large*, 6 *Barb.* 373.
- **v. Plumb**, 18 *Barb.* 89. See (Limitation of time within which to sue officer) *Code Civ. Pro.* 1881, § 385, n.
- Denniston v. Bacon**, 10 *Johns.* 198; s. c., 4 *N. Y. Com. L. Law. ed.* 996, with brief note.
- **v. N. Y. & N. H. R. R. Co.**, 1 *Hill.* 62. Followed (Citizenship of corporations) in *Kranshaar v. New Haven Steamboat Co.*, 7 *Robt.* 356.
- Denny v. Manhattan Co.**, 2 *Den.* 115. Aff'd in 5 *Id.* 639.
- **v. N. Y. Central, &c. R. R. Co.**, 5 *Daly.* 50. Disting'd (Conductor's authority to waive regulation as to "stop over" ticket) in *Tarbell v. Northern Cent. Ry. Co.*, 24 *Hun.* 51, 54.
- **v. Smith**, 18 *N. Y.* 567. See *Brown v. Delafield*. See (Commencement of action) *Code Civ. Pro.* 1881, § 398, n.
- Denottback v. Astor**, 16 *Barb.* 412. Aff'd in 13 *N. Y.* 98.
- Denston v. Morris**, 2 *Edw.* 37. Aff'd, it seems, in 3 *Ch. Sent.* 29, but without opinion.
- Dent v. People**, 46 *How. Pr.* 264. Reviewed with other cases (Return to writ of error) in *Manke v. People*, 74 *N. Y.* 415, 421.
- **v. Watkins**, 49 *How. Pr.* 275. Disapproved (Indorsement on order of arrest) in *Kopelowich v. Kersburg*, 13 *Hun.* 178.
- Denton v. Denton**, 1 *Johns. Ch.* 364. See *Mix v. Mix*. Explained (*Alimony pendente lite*) in 2 *Bish. on Mar. & D.* § 461, n. 6, 6 ed.
- **v. Jackson**, 2 *Johns. Ch.* 320. See cases collected (Religious societies) in 12 *Am. L. Reg. N. S.* 346, n.
- **v. Livingston**, 9 *Johns.* 96; s. c., 6 *Am. Dec.* 264. Explained (Private corporation—transfer of stock) in *Ang. & A. on Corp.* § 588, 11 ed.
- **v. Nanny**, 3 *Barb.* 618. Approved (Dower in surplus) in *Vartie v. Underwood*, 18 *Id.* 561, 564. Disapproved with *Vartie v. Underwood* in *Newhall v. Lynn Savings Bank*, 101 *Mass.* 432; s. c., 3 *Am. R.* 389. Explained in 1 *Washb. on Real Prop.* 4 ed. 295.
- **v. Noyes**, 6 *Johns.* 296; s. c., 5 *Am. Dec.* 237, with note; 4 *N. Y. Com. L. Law. ed.* 131, with brief note, saying it has been criticised but not overruled. See *Adams v. Gilbert*; *Green v. Beals*. Shown to be contrary to the current of recent American decisions, though not overthrown as an authority in *N. Y.* (Unauthorized appearance by attorney) in 5 *Am. Dec.* 244, n. Disting'd in *Everson v. Gehrman*, 1 *Abb. Pr.* 174; *Ferguson v. Crawford*, 70 *N. Y.* 256; *Griswold v. Blanchard*, 14 *How. Pr.* 448. Criticised in *Williams v. Van Valkenburg*, 16 *Id.* 149. Disapproved in *Allen v. Stone*, 10 *Barb.* 550. Applied in *Ellsworth v. Campbell*, 31 *Barb.* 137; *Bean v. Mather*, 1 *Daly.* 441; *Sterne v. Bentley*, 3 *How. Pr.* 333; *Grazebrook v. McCreddie*, 9 *Wend.* 440. Approved in *Bates v. Voorhees*, 20 *N. Y.* 528. Cited as authority in *Brown v. Nichols*, 9 *Abb. Pr. N. S.* 12, 26; *Acker v. Ledyard*, 8 *N. Y.* 65. Disting'd as inapplicable to courts not of record, in *Sperry v. Reynolds*, 65 *Id.* 183. Reviewed, with other cases, in *Keith v. Wilson*, 6 *Mo.* 435; s. c.,

- 35 *Am. Dec.* 443, 445, with note. Followed and approved in *Piggott v. Addicks*, 3 *G. Greene (Iowa)* 427; s. c., 56 *Am. Dec.* 547; *Bunton v. Lyford*, 37 *N. H.* 514. Followed in *Tally v. Reynolds*, 1 *Ark.* 99; s. c., 31 *Am. Dec.* 737, 739. Disapproved in *Haslet v. Street*, 2 *McCord (S. C.)* 310; s. c., 13 *Am. Dec.* 724. Doctrine discussed and cases collected in 5 *Am. L. Reg. N. S.* 391. Applied (Averment in judgment—when not conclusive) in *Harrod v. Barretto*, 2 *Hall*, 304. Criticised (Relieving party whose rights are concluded by neglect of attorney) in *Meacham v. Dudley*, 6 *Wend.* 515.
- Denvrey v. Fox.** See *Shepard v. Rowe*.
- Department of Public Parks, Matter of,** 48 *How. Pr.* 285; mem. s. c., 2 *Hun*, 374; 4 *Sup'm. Ct. (T. & C.)* 549. Aff'd in 60 *N. Y.* 319.
- , —, 6 *Hun*, 486. Rev'd and report of referee confirmed in 73 *N. Y.* 560. See *Astor v. Hoyt*. Compare with decision in 73 *N. Y.* (Award of commissioners—how far binding between parties interested) *Livingston v. Sulzer*, 19 *Hun*, 375, 383. Disting'd in *Matter of Eleventh Ave.*, 81 *N. Y.* 436, 447.
- Department of Public Works, Matter of,** 24 *Hun*, 378. Aff'd in 86 *N. Y.* 437.
- Depau v. Ocean Ins. Co.**, 5 *Cov.* 63; s. c., 15 *Am. Dec.* 431. Approved (Conclusiveness of adjustment of general average, made in foreign country) in *Peters v. Warren Ins. Co.*, 1 *Story*, 463, 471; 3 *Sumn.* 393, as according to the weight of authority.
- Depew v. Dewey**, 2 *Sup'm. Ct. (T. & C.)* 515; s. c., 46 *How. Pr.* 441. Appeal dismissed in 56 *N. Y.* 657.
- De Peyster, Matter of**, 4 *Sandf. Ch.* 511. Applied (Compensation of trustees, &c.) in *Matter of Leggett*, 4 *Redf.* 148, 151; *Matter of Moffat*, 24 *Hun*, 325, 327; *Ward v. Ford*, 4 *Redf.* 34, 41, 47.
- , —, 18 *Hun*, 445. Aff'd in 80 *N. Y.* 565.
- De Peyster v. Clendining**, 8 *Paige*, 295. Aff'd as *Bulkey v. De Peyster*, in 26 *Wend.* 21. Decision in 8 *Paige* disting'd (Time when will takes effect) in *Ellison v. Miller*, 11 *Barb.* 335; *Parker v. Bogardus*, 5 *N. Y.* 314. Compared with other cases, in *Campbell v. Rawdon*, 19 *Barb.* 501. Approved in *Wakefield v. Phelps*, 37 *N. H.* 295. Applied to validity of execution of will as affected by law of place,—in *Moultrie v. Hunt*, 23 *N. Y.* 398. Followed (Alienability of trust interests in personal property) in *Arnold v. Gilbert*, 3 *Sandf. Ch.* 555. Applied (Power of administrator with will annexed) in *Bain v. Matteson*, 54 *N. Y.* 667. Applied (Vested remainders) in *Williamson v. Field*, 2 *Sandf. Ch.* 550. Both decisions disting'd (Suspension of power of alienation) in *Jennings v. Jennings*, 5 *Sandf.* 177. Explained in *Mason v. Mason*, 2 *Sandf. Ch.* 466.
- v. **Columbian Ins. Co.**, 2 *Cal.* 85. Reviewed (Injury to insured vessel when sufficient to justify abandonment) in *Hyde v. Louisiana State Ins. Co.*, 2 *Mart. N. S. (La.)* 410; s. c., 14 *Am. Dec.* 196. See 2 *Am. Dec.* 187, n.
- v. **Hasbrouck**, 11 *N. Y.* 582. See *Wishwall v. Hall*. Approved (Reformation of contract) in *Waterman on Sp. Perf.* § 372, n.
- v. **Hildreth**, 2 *Barb. Ch.* 109. Applied (Duty of creditor having lien on two funds) in *Ingalls v. Morgan*, 10 *N. Y.* 188.
- v. **Michael**, 6 *N. Y.* 467; s. c., 57 *Am. Dec.* 470, with note. Explained (Condition repugnant to grant) in *Van Rensselaer v. Hays*, 19 *N. Y.* 78, 95. Approved and followed in *Mandlebaum v. McDonell*, 29 *Mich.* 78; s. c., 18 *Am. R.* 61, as overruling *Jackson v. Schultz*, 18 *Johns.* 174; s. c., 9 *Am. Dec.* 195, with note, wherein *De Peyster v. Michael*, is said to establish the doctrine on this point. Followed in *McCleary v. Ellis*, 54 *Iowa*, 315; s. c., 20 *Am. L. Reg. N. S.* 180, with note containing further explanation. Doctrine discussed in 9 *Id.* 397. Quoted and collated with other cases, in *Sharsv. & B. Cas. on Real Prop.* 133. Quoted in *Wait on Fraud. Conv.* § 362. Quoted and collated with other cases (Grantor's estate after re-entry upon condition for forfeiture) in *Sharsv. & B. Cas. on Real Prop.* 150. Collated with other cases (Feudal tenures) in *Gerard Titles to Real Est.* 2 ed. 132, 138.
- v. **Murphy**, 39 *Super. Ct. (J. & S.)* 255. Rev'd in 66 *N. Y.* 622.
- v. **San Mutual Ins. Co.**, 19 *N. Y.* 272. Aff'g 17 *Barb.* 306; s. c., 12 *N. Y. Leg. Obs.* 75. See *Le Roy v. Gouverneur*. Decision in 17 *Barb.* collated with other cases (Marine insurance—terms of memorandum) in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 750.
- v. **Warne**. See *Howell v. Denniston*.
- De Pieris, Matter of**, 20 *Hun*, 305. Rev'd in 82 *N. Y.* 243.
- De Pol v. Sohlke**, 7 *Robt.* 280. Disting'd (Injunction to prevent breach of contract for theatrical performance) in *Daly v. Smith*, 38 *Super. Ct. (J. & S.)* 158, 169. Reconciled with *Lumley v. Wagner*, 5 *De Gex & S.* 485, in 16 *Fed. Rep.* 45, n.
- Depuy v. Strong**, 37 *N. Y.* 372. Followed (When objection of defect of parties may be taken by answer) in *Hees v. Nellis*, 1 *Sup'm. Ct. (T. & C.)* 118, 121.
- v. **Swart**, 3 *Wend.* 125; s. c., 20 *Am. Dec.* 673. Followed (Effect of new promise to pay obligation that has been discharged) in *Dusenbury v. Hoyt*, 36 *Super. Ct. (J. & S.)* 94, 97, which was rev'd in 53 *N. Y.* 521, 524, which see; *Stafford v. Bacon*, 1 *Hill*, 535; *Clark v. Atkinson*, 2 *E. D. Smith*, 115; *Moore v. Viele*, 4 *Wend.* 421; *Fitzgerald v. Mullen*, 19 *Id.* 403; *Stafford v. Bacon*, 25 *Id.* 385. Applied in *Ross v. Hamilton*, 3 *Barb.* 609, 612; *Carshore v. Huyck*, 6 *Id.* 587. Disting'd in *Soulden v. Van Rensselaer*, 9 *Wend.* 297. Examined and followed in *Stearns v. Tappin*, 5 *Duer*, 300. Explained

- and not followed in *Graham v. O'Hern*, 24 *Hun*, 221. Examined, at length, with other cases in *Henry v. Root*, 33 *N. Y.* 531. Disapproved with *Moore v. Viele*, 4 *Wend.* 420, in *Way v. Sperry*, 6 *Cush. (Mass.)* 286; s. c., 52 *Am. Dec.* 779, with note.
- Deraismes v. Merchants' Mutual Ins. Co.**, 1 *N. Y.* 371. Examined and applied (Validity of note made for premiums in advance) in *Brown v. Crooke*, 4 *Id.* 51.
- Derby v. Hannin**, 15 *How. Pr.* 32; s. c., more fully, 5 *Abb. Pr.* 150. Approved (Notice of appeal) in *Avery v. Woodbeck*, 62 *Barb.* 557, 563.
- **v. Yale**, 13 *Hun*, 273. See (Extent of application of statute of limitations) *Code Civ. Pro.* 1881, § 414, n.
- Dering v. Metcale**, 72 *N. Y.* 613. Further decision on the merits as *Deering v. Metcalf*, 74 *N. Y.* 501.
- De Rivafinoli v. Corsetti**, 4 *Paige*, 264; s. c., 25 *Am. Dec.* 532. See *Hamblin v. Dinneford*. Disting'd (Injunction to prevent breach of contract for theatrical performance) in *Daly v. Smith*, 38 *Super. Ct. (J. & S.)* 158, 166.
- De Roe v. Smith**, 4 *Sup'm. Ct. (T. & C.)* 690. See also (Voluntary associations) *Ebbinghausen v. Worth Club*, 4 *Abb. N. C.* 300.
- De Rutte v. N. Y., Albany & Buffalo Tel. Co.**, 1 *Daly*, 547; s. c., 30 *How. Pr.* 403. Also reported as *Telegraph Co. v. De Rutte*, 5 *Am. L. Reg. N. S.* 407, with note. See *Baldwin v. U. S. Tel. Co.*; *Leonard v. N. Y., & C. Tel. Co.* Cited with *Breese v. U. S. Tel. Co.*, 45 *Barb.* 274; *Baldwin v. Same*, 6 *Abb. Pr. N. S.* 405; *Leonard v. N. Y., & C. Tel. Co.*, 41 *N. Y.* 544; *Bryant v. Am. Tel. Co.*, 1 *Daly*, 575 (Ability of telegraph company to limit liability by contract) in 14 *Fed. Rep.* 718, n. Collated with other cases (Negligence in telegraph company for errors in message) in *Bigel. Cus. on Torts*, 622, 623. Explained (Relation of telegraph company to recipient of message) in 2 *Pars. on Contr.* 257 q, n. x. Quoted (Telegraph company whether common carriers) in *Id.* 257 c, n. b.
- De Ruyter v. St. Peter's Church**, 3 *Barb. Ch.* 119. Aff'd in 3 *N. Y.* 233. See *Partidge v. Badger*. Decision in 3 *Barb. Ch.* followed (Restraints on alienation of church property) in *Madison Ave. Bapt. Church v. Bapt. Church in Oliver St.*, 11 *Abb. Pr. N. S.* 132. Commented on (Validity of assignment by corporation for benefit of creditors) in 3 *South. L. Rev. N. S.* 554, where other cases are collected. Quoted in *Burrill on Assign.* § 64, 4 ed. Explained (Sale) in *Id.* § 4. Collated with other cases (Surplus moneys or foreclosure of mortgage—appearing before referee) in *Colby on Forecl.* 18.
- Des Arts v. Leggett**, 16 *N. Y.* 582. See *Coit v. Houston*. Disting'd (Relief against mistake of fact) and *Leger v. Bonnaiffe*, 2 *Barb.* 480, applied in *Knapp v. Fowler*, 30 *Hun*, 512. Commented on (Sale of specific chattels unconditionally) in 1 *Benj. on Sales*, § 339 (Corbin's 4 *Am. ed.*).
- Desham v. Lee**, 23 *Alb. L. J.* 216; s. c., more fully, as *Derham v. Lee*, 47 *Super. Ct. (J. & S.)* 174; s. c., 60 *How. Pr.* 334.
- Despard v. Churchill**, 53 *N. Y.* 192; s. c., 7 *Alb. L. J.* 415. Applied (Remitting proceeds to executor of domicile) in *Sherman v. Page*, 21 *Hun*, 59, 65, which was aff'd in 85 *N. Y.* 123, which see. Compare *Code Civ. Pro.* § 2700. See (Will—validity and construction) *Code Civ. Pro.* 1881, § 2624, n.
- **v. Walbridge**, 15 *N. Y.* 374. Disting'd (Implied contract to pay rent, in case of holding over) in *Lore v. Pierson*, 10 *Daly*, 272; *Hazeltine v. Weld*, 73 *N. Y.* 156, 161. Followed in *Mack v. Burt*, 5 *Hun*, 30. Applied (Equitable defenses) in *Van Valkenburgh v. Stuppelbeen*, 49 *Barb.* 101. Applied (Parol evidence of equitable interest) in *Robinson v. McManus*, 4 *Lans.* 385; *Smith v. Beattie*, 31 *N. Y.* 544; *Ryan v. Dox*, 34 *Id.* 313; *Anthony v. Atkinson*, 2 *Sweeny*, 233. See also *Thompson v. Hickey*, 8 *Abb. N. C.* 159, 163.
- Dethlefs v. Tamsen**, 7 *Daly*, 354. See *Reeves v. Denicke*. Explained (Contracts in restraint of trade) in 2 *Benj. on Sales*, § 807, n. 15 (Corbin's 4 *Am. ed.*).
- Detmold v. Drake**, 46 *N. Y.* 318. See *Embury v. Conner*. Applied (Effect of deferring the making of compensation for land taken for public purposes) in *Hammersley v. Mayor, &c. of N. Y.*, 56 *N. Y.* 533, 536.
- Detouches v. Peck**, 9 *Johns.* 210; s. c., 4 *N. Y. Com. L. Law. ed.* 733, with brief note.
- Deuchars v. Wheaton**, 16 *How. Pr.* 471. Referred to in *Vedder v. Van Buren*, 14 *Hun*, 250, as criticised, if not overruled (Notice of appeal from justice's court) in *Sanders v. Keough*, 27 *How. Pr.* 477; and since *Sperry v. Reynolds*, 65 *N. Y.* 179, not to be deemed authoritative.
- Deutsch v. Reilly**, 8 *Daly*, 132; s. c., 57 *How. Pr.* 75. Said in 8 *Daly*, 134, n., to have been aff'd in Ct. of App. Statement at end of case in 57 *How. Pr.* 75, that motion to go to Ct. of App. was denied, seems to be an error. Decision in 57 *How. Pr.* disapproved (Right of sheriff levying on goods to show fraudulent character of general assignment) in *Carr v. Van Hoesen*, 26 *Hun*, 315.
- Devanbagh v. Devanbagh**, 5 *Paige*, 554; s. c., 28 *Am. Dec.* 443, with extended note. See *Walsh v. Sayre*. Applied (Physical incapacity as ground for divorce) in *J. G. v. H. G.*, 33 *Md.* 401; s. c., 3 *Am. R.* 183. See *Allen v. Allen*, 8 *Abb. N. C.* 175; also *Id.* 193, n., 194, n., 200, n., 206, n., 207, n. Quoted (Right of inspection of person in process for divorce) in 2 *Bish. on Mar. & D.* §§ 591, 592, 6 ed.
- Deveau v. Fowler**, 2 *Paige*, 400. Disapproved with *Rebb v. Stevens*, *Clark*, 191, 195 (Effect of agreement by continuing partner to pay firm debts and indemnify

- retiring partner) in *Cory v. Long*, 2 *Sweeny*, 491, as weakened by *Ketchum v. Durkee*, 1 *Barb. Ch.* 480.
- Develin v. Cooper**, 20 *Hun*, 188. Aff'd in 84 *N. Y.* 410.
- Devendorf v. Beardsley**, 23 *Barb.* 656. See *Shaughnessy v. Rensselaer Ins. Co.* Followed (Validity of premium notes) in *Otis v. Harrison*, 36 *Barb.* 210, 214. Quoted (Receiver of corporation) in *High on Receiv.* § 318, n. 2.
- Devenpeck v. Lambert**, 44 *Barb.* 596. Examined with other cases (Right of action for encroaching on or obstructing highway) in *Marvin v. Pardee*, 64 *Id.* 359.
- Devens v. Mechanics' & Traders Ins. Co.**, 83 *N. Y.* 168. Followed (What amounts to waiver of defense) in *Woolner v. Hill*, 47 *Super. Ct. (J. & S.)* 470, 476.
- Devin v. Patchin**, 26 *N. Y.* 441; s. c., less fully, 25 *How. Pr.* 5. Rev'd Patchin v. Devin, 37 *Barb.* 430. Decision in 26 *N. Y.* confirmed (Proof on which surrogate's decree is to be reviewed) in *Howell v. Howell*, 30 *Hun*, 625. Cited (Allowances by surrogates) in *Noyes v. Children's Aid Soc.*, 10 *Id.* 289, 292. Approved in *Ross v. Ross*, 6 *Id.* 80, 87.
- Devine v. People**, 20 *Hun*, 98. Disting'd (Jurisdiction over misdemeanors) in *McDonald v. People*, 13 *Weekly Dig.* 548. Explained in *People ex rel. Comaford v. Dutcher*, 83 *N. Y.* 240, 243.
- Devlin v. Brady**, 32 *Barb.* 518. Aff'd in 36 *N. Y.* 531. Decision in 36 *N. Y.* followed (*Bona fide* holder of promissory note) in *Coleman v. Lansing* 4 *Lans.* 70. Included in 1 *Ames Cas. on B. & N.* 328.
- **v. Cooper**, 20 *Hun*, 188. Aff'd in 84 *N. Y.* 410.
- **v. Crary**, 1 *Hun*, 489; s. c., 3 *Sup'm. Ct. (T. & C.)* 765. Aff'd in 60 *N. Y.* 635.
- **v. Devlin**, 67 *Barb.* 290; mem. s. c., 4 *Hun*, 651. Aff'd with hesitation in 69 *N. Y.* 212; s. c., 25 *Am. R.* 173. Decision in 69 *N. Y.* quoted (Injunction—trade-mark) in 2 *High on Inj.* 2 ed. § 1069, n. 2.
- **v. Mayor, &c. of N. Y.**, 4 *Duer*, 337. Collated with other cases (Municipal contracts—changes of plan) in 5 *Abb. N. C.* 48, n.
- **v. —**, 15 *Abb. Pr. N. S.* 31. Further decision on the merits in 48 *How. Pr.* 457, which was rev'd in part and aff'd in part in 63 *N. Y.* 8; s. c., 50 *How. Pr.* 1. Further proceedings in 54 *Id.* 11; s. c., less fully, 6 *Daly*, 486, appeal from which was dismissed, it seems, in 67 *N. Y.* 590, but without opinion. Further decision in 54 *How. Pr.* 50. Also one in *Id.* 64, which was rev'd in *Id.* 383; s. c., 7 *Daly*, 466. Still further decisions in 62 *How. Pr.* 163; s. c., 9 *Daly*, 334; also 62 *How. Pr.* 166; *Id.* 260; also in 63 *Id.* 206, which was, rev'd it seems, in 90 *N. Y.* 688, but without opinion. Decision in 62 *How. Pr.* 163 disting'd (Appointment of new referee) in *May v. Moore*, 24 *Hun*, 351.
- **v. Murphy**, 5 *Abb. N. C.* 242. See to same effect (Release of assumption) *Drury v. Hayden*, 111 *U. S.* 223.
- **v. O'Neill**, 6 *Daly*, 305. Aff'd, it seems, in 68 *N. Y.* 622, but without opinion. Decision in 6 *Daly* explained (Sale of specific chattels conditionally) in *Benj. on Sales*, § 319, n. c (Bennett's 4 Am. ed.).
- **v. Platt**, 11 *Abb. Pr.* 398. Disting'd (Proceedings when terminated and reviewable by certiorari) in *People ex rel. Gilmore v. Donahue*, 22 *Hun*, 470.
- **v. Shannon**, 8 *Hun*, 531. But see (Affidavit of merits when required) *Code Civ. Pro.* § 980.
- Devoy v. Brandt**, 58 *Barb.* 493. Rev'd in 53 *N. Y.* 462. Decision in 53 *N. Y.* disting'd with *Hennequin v. Naylor*, 24 *Id.* 140 (Proof of fraud) in *Jaffray v. Cunningham*, *N. Y. Daily Reg.* April 17, 1884. Followed (Title under fraudulent purchase) in *Weiss v. Brennan*, 41 *Super. Ct. (J. & S.)* 177, 180. Disting'd in *Am. Express Co. v. Smith, &c.*, 57 *Iowa*, 244. Cited, with numerous other cases to same effect,—in 15 *Am. L. Rev.* 386. Quoted and explained in 1 *Benj. on Sales*, § 640, n. 7 (Corbin's 4 Am. ed.).
- **v. Hackley**, 3 *Robt.* 679. Disting'd (Control of court over judgments) in *Alfaro v. Davidson*, 39 *Super. Ct. (J. & S.)* 408. Explained (Jurisdiction of trial court as to hearing of exceptions at General Term) in *Post v. Hathorn*, 54 *N. Y.* 147, 151.
- **v. Ithaca & Oswego R. R. Co.** See *White v. Geraerd*.
- Devoy v. Mayor, &c. of N. Y.**, 35 *Barb.* 264; s. c., 22 *How. Pr.* 226. Judgment on second trial aff'd in 39 *Barb.* 169, and that in 36 *N. Y.* 449.
- Devyr v. Schaefer**, 55 *N. Y.* 446. Explained (Title—adverse possession—intent) in *Sedgw. & W. on Tr. of Tit. to Land*, § 760.
- Dewey v. Goodenough**, 56 *Barb.* 54. Disting'd (Widow's right to sue for distributive share) in *Betsinger v. Chapman*, 24 *Hun*, 15, 18. Disting'd (Who included as "next of kin") in *Murdock v. Ward*, 67 *N. Y.* 391.
- **v. Moyer**, 9 *Hun*, 473. Aff'd in 72 *N. Y.* 70, and that aff'd as *Moyer v. Dewey*, 103 *U. S.* 301. Decision in 72 *N. Y.* followed (Action by creditor to set aside fraudulent conveyance of bankrupt) in *Bates v. Bradley*, 24 *Hun*, 84. Disting'd (Judgment when not affected by discharge in bankruptcy) in *Blumenthal v. Anderson*, 28 *Id.* 93.
- **v. Osborne**, 4 *Cow.* 329. Quoted (Ejectment—mesne profits and damages) in *Sedgw. & W. on Tr. of Tit. to Land*, § 665.
- **v. Stewart**, 6 *How. Pr.* 465. Followed (Trial fee taxable if juror is withdrawn) in *Mott v. Consumers' Ice Co.*, 8 *Daly*, 244, 248.
- **v. Supervisors of Niagara**, 2 *Hun*, 392; s. c., 4 *Sup'm. Ct. (T. & C.)* 606. Rev'd in 62 *N. Y.* 294.
- Dewint v. Wiltzie**, 9 *Wend.* 325; s. c., 11



- N. Y. Com. L. Law. ed.* 629. Explained (Measure of damages) as probably turning on the ground that the breach was fraudulent in *Blanchard v. Ely*, 21 *Wend.* 342. Disting'd in *Albert v. Bleecker Street, &c. R. R. Co.*, 2 *Daly*, 389.
- De Witt v. Barley**, 13 *Barb.* 555. Rev'd in 9 *N. Y.* 371. Subsequent decision in 17 *Id.* 340. See *Stewart v. Lispenard*. Decision in 9 *N. Y.* disting'd (Opinions of witness as to testator's capacity) in *Van Pelt v. Van Pelt*, 30 *Barb.* 141. Limited in decision in 17 *N. Y.* Applied in *Deshon v. Merchants' B'k*, 8 *Bosw.* 463 (where decision in 17 *N. Y.* was disting'd). Discussed in *Willard on Executors*, 181. Applied to accused person in *O'Brien v. People*, 48 *Barb.* 280, which was aff'd in 36 *N. Y.* 282, which see. Applied (Opinions of witnesses) in *McGregor v. Brown*, 10 *Id.* 119; *Tompkins v. Wadley*, 3 *Sup'm. Ct. (T. & C.)* 427. Disting'd in *Robertson v. Knapp*, 85 *N. Y.* 92. Opposed in *Elwell's Malpr.* 425-430. Decision in 17 *N. Y.* applied (Opinions of witnesses) in *Harpending v. Shoemaker*, 37 *Barb.* 288; *Brand v. Brand*, 39 *How. Pr.* 265; *Nellis v. McCarn*, 35 *Barb.* 118. Disting'd in *Armstrong v. Smith*, 44 *Id.* 124, as not conflicting with *Morehouse v. Mathews*, 2 *N. Y.* 514. Disting'd in *Hardenburgh v. Cockcroft*, 5 *Daly*, 82. Approved in *State v. Pike*, 49 *N. H.* 399; s. c., 6 *Am. R.* 551. Cited and approved with *People v. Eastwood*, 14 *N. Y.* 562; *McKee v. Nelson*, 4 *Cow.* 355, in *Hardy v. Merrill*, 56 *N. H.* 227; s. c., 22 *Am. R.* 441, 450, 457. Applied (Opinions as to testator's capacity) in *Gardiner v. Gardiner*, 34 *N. Y.* 165.
- **v. Chandler**, 11 *Abb. Pr.* 459. Compare (Bequest to unincorporated society) *Betts v. Betts*, 4 *Abb. N. C.* 317. Applied (Actions against unincorporated associations) in *Poulney v. Bachman*, 10 *Abb. N. C.* 252, 254. See also *Ebbinghausen v. Worth Club*, 4 *Abb. N. C.* 300. Compare (Judgment dismissing complaint) *Code Civ. Pro.* § 1209.
- **v. Elmira Nobles M'fg Co.**, 5 *Hun.* 301. Aff'd in 66 *N. Y.* 459; s. c., 23 *Am. R.* 73.
- **v. Hastings**, 40 *Super. Ct. (J. & S.)* 463. Aff'd in 69 *N. Y.* 518.
- **v. Morris**, 13 *Wend.* 496. Followed (Insufficient description in replevin) in *Talcott v. Belding*, 36 *Super. Ct. (J. & S.)* 84, 91. Applied in *Stevens v. Osman*, 1 *Mich.* 92; s. c., 48 *Am. Dec.* 696, with note.
- **v. Walton**, 9 *N. Y.* 571; s. c., 2 *Am. Dec.* 514, with note, wherein it is collated with other cases, and referred to as a well considered case. See *Barker v. Mechanics' Fire Ins. Co.*; *Stanton v. Camp*. Disting'd (Liability of agent signing contract) in *Chase v. Patberg*, *N. Y. Daily Reg.* July 24, 1883. Doubted in *Green v. Skeel*, 5 *Sup'm. Ct. (T. & C.)* 23. Followed and approved in *Tannatt v. Rocky Mountain Nat. B'k*, 1 *Col.* 278; s. c., 9 *Am. R.* 156.
- Dewitt v. Brisbane**, 16 *N. Y.* 508. See *Cox v.*
- Wightman*. Approved (No recovery on valid security transferred on illegal transaction) in *Fish v. De Wolff*, 4 *Bosw.* 573, 582. Disting'd in *Merritt v. Millard*, 5 *Id.* 645, 651.
- **v. Buchanan**, 54 *Barb.* 32. See *Maloney v. Dows*. Followed (Jurisdiction of *N. Y.* courts over action for personal injuries committed abroad) in *Newman v. Goddard*, 5 *Sup'm. Ct. (T. & C.)* 299.
- **v. Post**, 11 *Johns.* 460. Followed (Effect of appearance by infant without guardian) in *McMurray v. McMurray*, 60 *Barb.* 117; *Fairweather v. Satterly*, 7 *Robt.* 546. Applied (When writ of error *coram nobis* will lie) in *Dows v. Harper*, 6 *Ohio*, 518; s. c., 27 *Am. Dec.* 270.
- **v. Yates**, 10 *Johns.* 156; s. c., 6 *Am. Dec.* 326. Commented on (Legacies—satisfaction of) in *Lawson's Lead. Eq. Cas. Simplified*, 56.
- De Wolf v. Capital City Ins. Co.**, 16 *Hun.* 116. Reviewed with *Foster v. Van Reed*, 5 *Hun.* 321; *Excelsior Fire Ins. Co. v. Royal Ins. Co.*, 55 *N. Y.* 343; this last case being referred to as clearly stating the true view (What is to be deemed subject of insurance where mortgagee insures independently of mortgagor) in 54 *Am. Dec.* 693, *n.*
- **v. Crandall**, 1 *Sweeny*, 556. Subsequent action on the same contract in 34 *Super. Ct. (J. & S.)* 14.
- **N. Y. Fireman's Ins. Co.**, 20 *Johns.* 214. Aff'd in 2 *Cow.* 56. See *Ludlow v. Bowne*.
- **v. Williams**, 69 *N. Y.* 621. Disting'd (Opinion of witness) in *Nicolay v. Unger*, 80 *Id.* 54, 57.
- Dexheimer v. Gautier**, 34 *How. Pr.* 472. Approved and followed with *Irish v. Nutting*, 47 *Barb.* 370 (Requisites of gift *mortis causa*) and *Bedell v. Carll*, 33 *N. Y.* 581, also approved (Distinction between a gift *inter vivos* and *mortis causa*) in *Smith v. Dorsey*, 38 *Ind.* 451; s. c., 10 *Am. R.* 118, 124.
- Dexter v. Adams**, 2 *Den.* 646. Subsequent decision aff'd in *How. App. Cas.* 771,—where points of counsel are given, but no opinion reported.
- **v. Broat**. See *Williams v. N. Y. Central R. R. Co.*
- **v. Clark**, 22 *How. Pr.* 289. Compare (Judgment dismissing complaint) *Code Civ. Pro.* § 1209.
- **v. Hazen**. See *Fowler v. Hait*.
- **v. Norton**, 55 *Barb.* 62. Aff'd in 47 *N. Y.* 62. See *Harmony v. Bingham*. Decision in 47 *N. Y.* disting'd (Accident excusing performance) in *Booth v. Spuyten Duyvil Mill Co.*, 60 *Id.* 487, 491. Compare (Executory contract of sale—loss) *Camp v. Norton*, 52 *Barb.* 96. Explained in *Benj. on Sales*, § 570 (Bennett's 4 *Am. ed.*); 2 *Id.* § 862, *n.* 11. (Corbin's 4 *Am. ed.*).
- **v. Syracuse, Binghamton & N. Y. R. R. Co.**, 42 *N. Y.* 326; s. c., 1 *Am. R.* 527. Collated with other cases (What constitutes

- baggage, for loss of which carrier is liable) in 8 *Am. R.* 302, n.
- **v. Taber**, 12 *Johns.* 239. Followed with *Van Rensselaer v. Dole*, 1 *Johns. Cas.* 279 (Evidence of relation in which slanderous words were spoken) in *Brite v. Gill*, 2 *T. B. Monr. (Ky.)* 65; s. c., 15 *Am. Dec.* 122. Followed with *Van Rensselaer v. Dole*, 1 *Johns. Cas.* 279; *Green v. Long*, 2 *Cai.* 91, in *Norton v. Ladd*, 5 *N. H.* 203; s. c., 20 *Am. Dec.* 573, with note. Quoted and commented on (Libel—functions of court and jury) in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 155.
- Dey v. Dox**, 9 *Wend.* 129; s. c., 24 *Am. Dec.* 137, with note, wherein it is shown to have been frequently approved in N. Y. (Measure of damages for non-delivery of goods).
- **v. Dunham**, 2 *Johns. Ch.* 182. Rev'd as *Dunham v. Dey*, in 15 *Johns.* 555; s. c., 8 *Am. Dec.* 282, with note, and that aff'd in *Dunham v. Gould*, 16 *Johns.* 367; s. c., 8 *Am. Dec.* 323. See *Peterson v. Clark*. Decision in 2 *Johns. Ch.* followed with *James v. Johnson*, 6 *Id.* 417 (Effect of absolute deed given as security) in *North v. Belden*, 13 *Conn.* 376; s. c., 35 *Am. Dec.* 83, with note. Followed with *Clark v. Henry*, 2 *Cow.* 324; *James v. Johnson*, 6 *Johns. Ch.* 417; *Henry v. Davis*, 7 *Id.* 40, in *Stephens v. Sherrod*, 6 *Tex.* 294; s. c., 55 *Am. Dec.* 776. Disting'd as resting on a statute, and moreover questioned in dissenting opinion of *Top, J.*, in *Friedley v. Hamilton*, 17 *Serg. & R. (Penn.)* 70; s. c., 17 *Am. Dec.* 638, with note. Referred to as not having been followed by the courts of N. Y. (Precedent debt as sufficient consideration for mortgage) in *Moore v. Fuller*, 6 *Oreg.* 272; s. c., 25 *Am. R.* 524. Quoted (Assignment for benefit of creditors—right to make) in *Burrill on Assign.* § 13, n. 3, 4 ed. Explained (Consideration) in *Id.* § 236. Discussed (Prior unrecorded mortgage) in *Id.* § 391.
- **v. Poughkeepsie Mutual Ins. Co.**, 23 *Barb.* 623. Sustained (Transfer of policy) in *Hoffman v. Aetna Ins. Co.*, 32 *N. Y.* 410. Compared and doubted (Assignment of policy after loss) in 9 *Am. L. Reg. N. S.* 462.
- Deyermant v. Chamberlain**, 22 *Hun.* 110. Further decision in 13 *Weekly Dig.* 60. Decision in 22 *Hun.* followed (Assumption of mortgage) in *Best v. Brown*, 25 *Id.* 223, 225.
- Deyo v. Jones**, 20 *Wend.* 491. Discussed (Statute of limitations—acknowledgment by agents, executors, &c.) in *Ang. on Limit.* § 264, 6 ed.
- **v. N. Y. Central R. R. Co.**, 34 *N. Y.* 9. Compare (Duty of carrier to provide vehicle-worthy road) *McPadden v. N. Y. Central R. R. Co.*, 47 *Barb.* 247. Explained in *Ang. on Carr.* § 538, n. a, 5 ed.
- **v. Van Valkenburgh**, 5 *Hill.* 242. See *Jackson v. Anderson*. Limited (Effect of discharge of insolvent to extinguish judgment) in *Kelly v. Thayer*, 34 *How. Pr.* 163. Applied in *Schaeffer v. Soule*, 23 *Hun.* 583, 586.
- Dezell v. Odell**, 3 *Hill.* 215; s. c., 38 *Am. Dec.* 628, with note, wherein it is said to have been frequently approved in N. Y. See *Lansing v. Montgomery*. Applied (Estoppel *in pais*) in *Hawley v. Griswold*, 42 *Barb.* 23; *Stackpole v. Robbins*, 47 *Id.* 219; *Young v. Bushnell*, 8 *Bosw.* 15; *Frost v. Saratoga Mut. Ins. Co.*, 5 *Den.* 157; *Hibbard v. Stewart*, 1 *Hill.* 208; *Andrews v. Aetna Life Ins. Co.*, 18 *Hun.* 166; *Bank of Genesee v. Patchin Bk.*, 13 *N. Y.* 316; *Baker v. Union Mutual Life Ins. Co.*, 43 *Id.* 289; *Kelly v. Scott*, 49 *Id.* 601; *Blair v. Wait*, 69 *Id.* 116; *Vietor v. Internat. Nav. Co.*, 45 *Super. Ct. (J. & S.)* 143. Examined with other cases, in *Shapley v. Abbott*, 42 *N. Y.* 449. Explained in *Miller v. Platt*, 5 *Duer.* 279; *Andrews v. Aetna Life Ins. Co.*, 85 *N. Y.* 334, 344. Disting'd in *White v. Ashton*, 51 *Id.* 286. Opinion of *Bronson, J.*, applied in *Trustcott v. Davis*, 4 *Barb.* 498; *Griffith v. Beecher*, 10 *Id.* 432, 436; *Carpenter v. Stilwell*, 12 *Id.* 136; *Tilton v. Nelson*, 27 *Id.* 600; *Huntley v. Perry*, 38 *Id.* 573; *Requa v. Holmes*, 19 *How. Pr.* 445; *Plumb v. Cattaraugus Co. Mut. Ins. Co.*, 18 *N. Y.* 392, 395; *Finnegan v. Carraher*, 47 *Id.* 500; *Gillespie v. Carpenter*, 1 *Kobt.* 70; *Kingsley v. Vernon*, 4 *Sandf.* 364; *Maybee v. Sniffen*, 2 *E. D. Smith*, 14. Reviewed in *Commonwealth v. Moltz*, 10 *Pa. St.* 527; s. c., 51 *Am. Dec.* 499, with note. Followed in *McCraive v. Remson*, 19 *Ala.* 430; s. c., 54 *Am. Dec.* 194, with note. Approved in *Eldred v. Hazlett*, 33 *Pa.* 307. Cited with *Carpenter v. Stillwell*, 12 *Barb.* 135; *Welland Canal Co. v. Hathaway*, 8 *Wend.* 483; *Frost v. Saratoga Mut. Ins. Co.*, 5 *Den.* 154, in *Horn v. Cole*, 51 *N. H.* 287; s. c., 12 *Am. R.* 111, 122, 124, as giving a broad application to the doctrine. Opposed in *Martin v. Zellerbach*, 38 *Cal.* 300. Followed in *Taylor v. Zepp*, 14 *Mo.* 482; s. c., 55 *Am. Dec.* 113. Approved in *Turnipseed v. Hudson*, 50 *Missis.* 429; s. c., 19 *Am. R.* 15, 19. Disting'd (Estoppel by giving receipt to officer levying) in *Clark v. Weaver*, 17 *Hun.* 485. Followed in *People v. Reeder*, 25 *N. Y.* 303; *Cornell v. Dakin*, 38 *Id.* 257. Followed (Special property as authorizing recovery in trover, &c.) in *City B'k v. Rome, Watertown, &c. R. R. Co.*, 44 *N. Y.* 138.
- De Zeng v. Fyfe**, 1 *Bosw.* 335. Disapproved with the dicta in *Robbins v. Richardson*, 2 *Bosw.* 253; *Cole v. Saulpaugh*, 43 *Barb.* 105; *Lathrop v. Morris*, 5 *Sandf.* 9 (Precedent debt constituting holder for value) in *Bowman v. Van Kuren*, 29 *Wis.* 209; s. c., 9 *Am. R.* 554; *Coddington v. Bay*, 20 *Johns.* 637, being approved as according with the current of authority and weight of reason; *Grandin v. Le Roy*, 2 *Paige*, 509, being criticised as a case, where it does not clearly

- appear whether there was any new consideration; *Stalker v. McDonald*, 6 *Hill*, 98, being however cited in this connection.
- Dezengreuel v. Dezengreuel**, 12 *Weekly Dig.* 286. Reported as *Dezengremel v. Dezengremel* in 24 *Hun*, 457.
- Dias v. Bouchaud**, 3 *Edw.* 485. Aff'd in 10 *Paige*, 445, and that rev'd in 1 *N. Y.* 201. See *Bouchaud v. Dias*.
- **v. Brunell**, 24 *Wend.* 9. Followed (Court of law without jurisdiction of suit to recover trust fund) in *Curtis v. Smith*, 6 *Blatchf. C. Ct.* 537, 543.
- **v. Glover**, *Hoffm.* 71. Cited in 2 *Kent Com.* 133, n. d (Husband and wife as tenants in common) in connection with *Preston on Abstr. of Tit.* II, 41.
- Dibble v. Camp**, 10 *Abb. N. S.* 92; s. c., 60 *Barb.* 150. Compare (Appeal in arbitration case) *Code Civ. Pro.* § 2381, superseding 2 *R. S.* 543, 544.
- **v. N. Y. & Erie R. R. Co.**, 25 *Barb.* 183. Followed (Action to recover for causing death—when barred) in *Littlewood v. Mayor, &c.* of *N. Y.*, 47 *Super. Ct. (J. & S.)* 547; which was aff'd in 89 *N. Y.* 24, 29, which see. Criticised in *Schlichting v. Wintgen*, 25 *Hun*, 626.
- **v. People**, 4 *Park.* 199. Aff'd as *People v. Dibble*, in 5 *Id.* 28.
- **v. Rogers**. See *Baldwin v. Brown*.
- Dickens v. N. Y. Central R. R. Co.**, 28 *Barb.* 41. Former decision in 13 *How. Pr.* 223. Subsequent decision in 23 *N. Y.* 158. Also in 1 *Keyes*, 23; s. c., 1 *Abb. Ct. App. Dec.* 504. See *Comstock v. Hoeft*. Decision in 13 *How. Pr.* disting'd (Statement of separate grounds of relief) in *Velie v. Newark City Ins. Co.*, 12 *Abb. N. C.* 309. Doctrine in 23 *N. Y.* re-aff'd (Husband not "next of kin") in *Drake v. Gilmore*, 52 *Id.* 389, 392.
- Dickenson v. Cook**. See *Beals v. Guernsey*.
- **v. Codwise**, 11 *Paige*, 189. Followed with *Williamson v. Field*, 2 *Barb. Ch.* 281 (Judgment whether interlocutory or final) in *Williams v. Field*, 2 *Wis.* 421; s. c., 60 *Am. Dec.* 426, with note.
- **v. Gilliland**, 1 *Cow.* 481. See *Little v. Harvey*. Followed (Payment by check) in *Woodbury v. Lewis*, *Walk. Ch.* 259.
- Dickerson v. Seelye**, 12 *Barb.* 99. Explained and approved (Explaining terms of bill of lading) in *Ellis v. Willard*, 9 *N. Y.* 529. Followed in *O'Brien v. Gilchrist*, 34 *Me.* 554; s. c., 56 *Am. Dec.* 676. Applied with *Armour v. Michigan Central R. R. Co.*, 65 *N. Y.* 111 (Estoppel created by bill of lading) in *Sioux City, &c. R. R. Co. v. First Nat. B'k of Fremont*, 10 *Neb.* 556; s. c., 35 *Am. R.* 488. See, also, *Witzler v. Callins*, 70 *Me.* 290; s. c., 35 *Am. R.* 327.
- **v. Tillinghast**, 4 *Paige*, 215; s. c., 25 *Am. Dec.* 528, with note. See *Bay v. Codrington*; *Padgett v. Lawrence*; *Root v. French*. Applied (Who is not *bona fide* purchaser) in *Barnes v. Camack*, 1 *Barb.* 397; *Hoyt v. Hoyt*, 8 *Bow.* 527. Applied to assignee for creditors in *Van Heusen v. Radcliff*, 17 *N. Y.* 583; *De Lancey v. Stearns*, 66 *Id.* 157, 162. Disting'd in *Curtis v. Leavitt*, 15 *Id.* 196; *Wood v. Morehouse*, 45 *Id.* 377. Explained in *Taylor v. Baldwin*, 10 *Barb.* 637. Applied to mortgagee of chattels in *Tiffany v. Warren*, 37 *Barb.* 577. Approved and followed in *Zorn v. R. R. Co.*, 5 *So. Car.* 90. Commented on in *Morse v. Godfrey*, 3 *Story C. Ct.* 364.
- **v. Wason**, 48 *Barb.* 412. Further decision in 54 *Id.* 230, and that rev'd in 47 *N. Y.* 439. Intimation in 6 *Alb. L. J.* 169, that decision in 48 *Barb.* was rev'd, is an error. Decision in 54 *Barb.* 230, limited (Lien of banks as collecting agents) in *Dod v. Fourth Nat. B'k*, 59 *Id.* 265. Decision in 47 *N. Y.* questioned in *Hyde v. First Nat. Bk. of Lacon*, 7 *Biss.* 156, 160. Disting'd (Title to paper deposited with bank) in *Metropolitan Nat. Bk. v. Loyd*, 25 *Hun*, 101, 103.
- Dickey v. N. Y. Ins. Co.**, 4 *Cow.* 222. Aff'd in *Dickey v. American Ins. Co.*, 3 *Wend.* 658; s. c., 20 *Am. Dec.* 763.
- **v. United Ins. Co.** See *De Longuemere v. N. Y. Fire Ins. Co.*
- Dickinson v. Benham**, 10 *Abb. Pr.* 390; s. c., 19 *How. Pr.* 410. Aff'd in 12 *Abb. Pr.* 138; s. c., 20 *How. Pr.* 343. See *Wilson v. Britton*. Both decisions opposed (Supplemental affidavits on motion to vacate attachment) in *Gasherie v. Apple*, 14 *Abb. Pr.* 64, 67. Decision in 12 *Abb. Pr.* applied in *Brewer v. Tucker*, 13 *Id.* 76, 78. Disting'd (Threats of assignment as evidence of fraud) in *Anthony v. Stype*, 19 *Hun*, 265.
- **v. City of Poughkeepsie**, 7 *Hun*, 1. Decision on appeal after further trial, in 75 *N. Y.* 65. Statement in latter that it is reported below, in 7 *Hun*, 1, is incorrect. See vol. 433, *Cas. in Ct. of App.* Law Inst. Libr. Former decision in 2 *Hun*, 615; s. c., 5 *Sup'm. Ct. (T. & C.)* 185, as *Dickinson v. Water Commissioners of Poughkeepsie*. Decision in 75 *N. Y.* disting'd (Municipal contract) in *Kingsley v. City of Brooklyn*, 78 *Id.* 200, 213.
- **v. Dickey**, 14 *Hun*, 617. Appeal dismissed in 76 *N. Y.* 602.
- **v. Dudley**, 17 *Hun*, 569. Disting'd (Title derived from agent acting without authority) in *Swan v. Produce Bank*, 24 *Hun*, 277, 280.
- **v. Edwards**, 2 *Abb. N. C.* 300; s. c., 53 *How. Pr.* 40. Rev'd in 13 *Hun*, 405, which was aff'd in 77 *N. Y.* 573; s. c., 7 *Abb. N. C.* 65; 58 *How. Pr.* 24; 33 *Am. R.* 671. Decision in 77 *N. Y.* applied (Contract as governed by law of place of performance) in *Marie v. Garrison*, 13 *Abb. N. C.* 210, 300. Compared in *Hibernian Nat. Bk. v. Lacombe*, 84 *N. Y.* 367, 378. Followed (Usury as governed by law of place) in *Le Baron v. Brunt*, 9 *Daly*, 349. Disting'd in *Sheldon v. Haxton*, 24 *Hun*, 196; *Wayne Co. Savings B'k v. Low*, 81 *N. Y.* 566. Compare *Tilden v. Blair*, 21 *Wall.* 241.
- **v. Mitchell**. See *Swift v. Wells*.

- **v. Rawson**, 25 *Hun.* 60. Abridgt. s. c., 12 *Weekly Dig.* 553.
- **Water Comm'rs of Poughkeepsie**. See *Dickinson v. City of Poughkeepsie*.
- Dickson v. Broadway, &c. R. R. Co.**, 33 *Super. Ct. (J. & S.)* 330; s. c., 41 *How. Pr.* 151. Appeal from order granting new trial dismissed, in 47 *N. Y.* 507. See *Wright v. Hunter*.
- **v. Frazer**, 9 *Hun.* 191. Aff'd, it seems, in 70 *N. Y.* 607, but without opinion.
- **v. McCoy**, 39 *N. Y.* 400. Denied in part (Liability for injuries resulting from unlawful or negligent act) in *Fallon v. O'Brien*, 12 *R. I.* 518; s. c., 34 *Am. R.* 713. Collated with *McCahill v. Kip*, 2 *E. D. Smith*, 413; *Sheridan v. Brooklyn, &c. R. R. Co.*, 36 *N. Y.* 39, and other cases in 22 *Am. L. Reg. N. S.* 58.
- Diddell v. Diddell**, 3 *Abb. Pr.* 167. Super-seded (Counter-claim in action for divorce) by *L.* 1881, c. 703, which amended *Code Civ. Pro.* § 1770.
- Didieu v. People**, 4 *Park.* 593; s. c. as *People v. Didieu*, 17 *How. Pr.* 224. Rev'd on the merits, as *Didieu v. People*, 22 *N. Y.* 178.
- Dieckerhoff v. Ahlborn**, 2 *Abb. N. C.* 372. Applied (Discharge of debtor as affected by prior bankruptcy proceedings) in *Matter of Fitzgerald*, 8 *Daly*, 188.
- Diedrick v. Richley**, 2 *Hill*, 271; s. c., 15 *N. Y. Com. L. Law. ed.* 356, with brief note. See *Browning v. Wheeler*.
- Dieffendorf v. Reformed Calvinist Church**. See *Baptist Church in Hartford v. Witherell*.
- Dietrick v. Allen**, 25 *Hun.* 66. See *Rodgers v. Fletcher*. See to the contrary (General objection) *Rodgers v. Fletcher*, 13 *Abb. Pr.* 299.
- Dietz v. Farish**, 53 *How. Pr.* 217; s. c., with affirmance, in 44 *Super. Ct. (J. & S.)* 190, and that aff'd in 79 *N. Y.* 520. Another proceeding in 43 *Super. Ct. (J. & S.)* 87.
- **v. McCallum**, 44 *How. Pr.* 493. Explained (Effect of settlement between parties on attorney's rights) in *McCabe v. Fogg*, 60 *Id.* 488.
- Diez, Matter of**, 56 *Barb.* 591. Aff'd in 50 *N. Y.* 88. Statement in *Id.* that prior application was under act of 1840, is error. It was under 2 *R. S.* 67, §§ 63–67. See *Matter of Day*.
- Dike v. Lewis**, 4 *Den.* 237. Further decision in 2 *Barb.* 344. Both decisions approved (Validity of controller's sale) in *Tallman v. White*, 2 *N. Y.* 66, 72. Applied to sheriffs' sale in *Mason v. White*, 11 *Barb.* 173.
- **v. Reitlinger**, 23 *Hun.* 241. Collated with *Clew v. McPherson*, 1 *Bosw.* 480, and other cases (Implied warranty on sale by sample) in 17 *Am. L. Rev.* 480. But see (Effect of opportunity to inspect bulk) *Beirne v. Dord*, 5 *N. Y.* 95; *Hargous v. Stone*, *Id.* 73; *Sands v. Taylor*, 5 *Johns.* 395. Discussed (Sales to arrive) in 2 *Benj. on Sales*, § 880, n. 20 (Corbin's 4 *Am. ed.*).
- Dikeman v. Puckhafer**, 1 *Abb. Pr. N. S.* 32. Applied (Effect of failure to index mortgage) in *Mutual Life Ins. Co. v. Dake*, 1 *Abb. N. C.* 381, 390.
- Dillaye v. Commercial Bank of Whitehall**, 51 *N. Y.* 345. Compare (Trust created by ante-nuptial contract) *Dillaye v. Greenough*, 45 *Id.* 438. Disting'd (Rights of assignee of mortgage) in *Trustees of Union College v. Wheeler*, 61 *Id.* 88, 106.
- **v. Greenough**, 45 *N. Y.* 438. See *Dillaye v. Commercial Bank*. Explained (Effect of transfer in violation of trust) and *Fellows v. Longyor*, 91 *N. Y.* 324, applied in *Wetmore v. Porter*, 92 *N. Y.* 76.
- **v. Wilson**, 43 *Barb.* 261. See (Action to recover real property—distinct occupants) *Code Civ. Pro.* 1881, § 1516, n.
- Dilleber v. Home Life Ins. Co.**, 69 *N. Y.* 256; s. c., 25 *Am. R.* 182. Subsequent decision in 87 *N. Y.* 79, which rev'd 10 *Weekly Dig.* 180. See *Edington v. Mut. Life Ins. Co.*; *Valton v. Nat. Fund Life Assurance Co.*; *Whiting v. Barney*. Decision in 69 *N. Y.* disting'd (Effect of admitting part of writing in evidence) in *Grattan v. Metropolitan Life Ins. Co.*, 92 *Id.* 274. Followed (Privileged communications between physician and patient) in *Grattan v. Metropolitan Life Ins. Co.*, 80 *Id.* 281, 298. Applied to case of attorney and client,—in *Pearsall v. Elmer*, 5 *Redf.* 181, 184. Applied (Distinction between fraud and breach of warranty) in *Mowry v. World Mut. Life Ins. Co.*, 7 *Daly*, 321, 324.
- **v. Knickerbocker Life Ins. Co.**, 7 *Daly*, 540. Aff'd in 76 *N. Y.* 567.
- Dillenberg v. Jerome**, 7 *Cow.* 294. Criticised and explained and said to be contrary to decisions in England and several in America (Right to maintain trover against one taking property from possession of one holding it under an obligation to return it) in 1 *Am. Dec.* 588, n. Disapproved in *Thayer v. Hutchinson*, 13 *Verm.* 504; s. c., 37 *Am. Dec.* 607.
- Dillingham v. Bolt**. See *Same v. Ladue*; *Meech v. Patchin*.
- **v. Ladue**, 35 *Barb.* 38. Rev'd as *Dillingham v. Bolt*, in 37 *N. Y.* 198.
- Dillon v. Anderson**, 43 *N. Y.* 231. Applied (Party when affected by notice to agent) in *Bank for Savings v. Frank*, 56 *How. Pr.* 414; *Broadhead v. Lycoming Fire Ins. Co.*, 23 *Hun.* 401. Disting'd (Duty of injured party to reduce damages) in *Becar v. Flues*, 64 *N. Y.* 520. Applied (Allowing witness to testify as to his own intent) in *West v. First Nat. Bk.*, 20 *Hun.* 414. Explained (Damages for wrongful discharge from employment) in *Everson v. Powers*, 60 *How. Pr.* 166. Explained (Right of party to contract, to create breach by notice of non-compliance) in *Kadish v. Young*, 108 *Ill.* 170; s. c., 48 *Am. R.* 548, 555.
- **v. Horn**, 5 *How. Pr.* 35. See *Innes v. Lansing*. Overruled (Right of creditor at large to maintain creditor's suit against

- general partnership) in *Crippen v. Hudson*, 13 *N. Y.* 163.
- *v. Masterson*, 39 *Super. Ct. (J. & S.)* 133. Further decision in 42 *Id.* 176.
- *v. N. Y. & Erie R. R. Co.* See *Bostwick v. Champion*.
- *v. People*, 1 *Hun.* 670; s. c., 4 *Sup'm. Ct. (T. & C.)* 203. Aff'd, it seems, in 58 *N. Y.* 669, but without opinion.
- Dimmick v. Lockwood**, 10 *Wend.* 142. See *De La Vergne v. Norris*; *Pitcher v. Livingston*. Approved (Damages for breach of covenant against incumbences) in *Grant v. Tallman*, 20 *N. Y.* 191.
- Dimon v. Bridges**, 8 *How. Pr.* 16. Rev'd as *Dimon v. Dunn*, in 15 *N. Y.* 498.
- *v. Delmonico*, 35 *Barb.* 554. Aff'd at General Term, 1863, for reason stated by court at Special Term.
- *v. Dunn*, 15 *N. Y.* 498. Rev'g *Dimon v. Bridges*, 8 *How. Pr.* 16.
- *v. Hazard*, 32 *N. Y.* 65. Followed (Effect of transfer of one partner to another, of firm property) in *Cory v. Long*, 2 *Sweeny*, 491. Limited in *Menagh v. Whitwell*, 52 *N. Y.* 146, 160, 167. Collated with *Menagh v. Whitwell*, and other cases, in 30 *Am. L.* 533, n.
- Dinehart v. Wells**, 2 *Barb.* 432. Followed (Costs in action for assault when title to real property came in question) in *Lillis v. O'Connor*, 8 *Hun.* 281.
- *v. Wilson*. See *Putnam v. Wise*; *Stewart v. Doughty*.
- Dingeldein v. Third Avenue R. R. Co.**, 9 *Bosw.* 79. Rev'd in 37 *N. Y.* 575. Decision in 37 *N. Y.* disting'd (Party-wall agreement) in *Scott v. McMillan*, 8 *Daly.* 320.
- Dingman v. Clancey**, 3 *Weekly Dig.* 428; s. c., more fully, as *Dingens v. Clancey*, 67 *Barb.* 566. Commented on (Effect of tender) in *Thomas on Mort.* 127.
- Dinlany v. N. Y. & N. H. R. R. Co.**, 49 *N. Y.* 546. Disting'd (Liability for baggage retained without check) in *Mattison v. N. Y. Central R. R. Co.*, 57 *Id.* 552, 556.
- Dinsmore v. Adams**, 48 *How. Pr.* 274. Aff'd in 49 *Id.* 238; mem. s. c., 5 *Hun.* 149, and that approved and appeal dismissed in 66 *N. Y.* 618.
- *v. Duncan*, 4 *Daly.* 199. Rev'd in 57 *N. Y.* 573; s. c., 15 *Am. R.* 534, with note.
- Dintruff v. Crittenden**, 1 *Sup'm. Ct. (T. & C.)* 143. Applied (Effect of assignment of chose in action) in *George v. Tate*, 102 *U. S.* 571.
- Diossy v. Martin**, 6 *Weekly Dig.* 54. Followed (Effect of mechanic's lien act of 1875) in *Heckmann v. Pinkney*, 6 *Abb. N. C.* 371, 374.
- *v. Morgan*, 74 *N. Y.* 11. Disting'd (Estoppel created by giving receipt, &c. to officer levying) in *Clark v. Weaver*, 17 *Hun.* 481, 486.
- Direct U. S. Cable Co. v. Dominion Tel. Co.**, 22 *Hun.* 568. Rev'd in 84 *N. Y.* 153.
- Disbro v. Disbro**, 37 *How. Pr.* 147. Cited as authority (Injunction, &c. pending appeal) in opinions in *Fellows v. Heermans*, 13 *Abb. Pr. N. S.* 1, 12, 18.
- Dishrow v. Garcia**, 52 *N. Y.* 654. Explained (Effect of extra allowance on right to damages for injunction) in *Park v. Musgrave*, 6 *Hun.* 223. Disting'd (Counsel fees as damages) in *Newton v. Russell*, 24 *Id.* 40, 42. Followed in *Troxell v. Haynes*, 5 *Daly.* 389, 391.
- *v. Mills*, 2 *Hun.* 132; mem. s. c., 4 *Sup'm. Ct. (T. & C.)* 682. Aff'd in 62 *N. Y.* 604.
- Dissozway v. Winant**, 34 *Barb.* 578; s. c., 13 *Abb. Pr.* 216. Rev'd in 33 *How. Pr.* 460; s. c., 3 *Keyes*, 412; 1 *Abb. Ct. App. Dec.* 508.
- Distin v. Rose**, 7 *Hun.* 83. Aff'd in 69 *N. Y.* 122. With decision in 69 *N. Y.* see to the contrary (Evidence of words spoken before suit brought,—malice) cases cited in *Abb. Tr. Ev.* 666, n. 14.
- Ditchett v. Spuyten Duyvil & Port Morris R. R. Co.**, 5 *Hun.* 165. Rev'd in 67 *N. Y.* 425. See *Fish v. Dodge*. Decision in 5 *Hun.* collated with other cases (Contributory negligence in disabled, &c. person) in 6 *Abb. N. C.* 117, n.
- Dittenhoeffer v. Lewis**, 5 *Daly.* 72. Collated with other cases (What cases are referable) in 1 *Abb. N. C.* 110, n.
- D'Ivernois v. Leavitt**, 23 *Barb.* 63. Discussed (Assignment for benefit of creditors—*lex loci*—real estate) in *Burrill on Assign.* § 305, 4 ed.
- Divver v. McLaughlin**, 2 *Wend.* 596; s. c., 20 *Am. Dec.* 655, with extended note on the subject of mortgages to secure future advances. See *Barrow v. Paxton*. Referred to as not according with the prevailing authorities, in *Jones on Chat. M.* § 96, n.
- Dix v. Palmer**, 5 *How. Pr.* 233. See (Notice to defendant in default) *Code Civ. Pro.* 1881, § 1219, n.
- *v. Van Wyck*, 2 *Hill.* 522. See *Aeby v. Rapelye*. Followed as having been approved in *Mason v. Lord*, 40 *N. Y.* 488 (Right to set up usury) in *Carow v. Kelly*, 59 *Barb.* 239, 249. See *Jackson v. Tuttle*, 9 *Cow.* 233. Cited as authority in *Madison University v. White*, 25 *Hun.* 490, 497. Compared (Ratification of usury) in 4 *Am. L. Reg. N. S.* 324.
- Dixon v. Beach**, 8 *Daly.* 284. Appeal dismissed, it seems, in 80 *N. Y.* 641, on authority of *Liddell v. Patton*, 67 *N. Y.* 393, but without opinion.
- *v. Buck*. See *Simmons v. Sherman*.
- *v. Frazee*, 1 *E. D. Smith*, 32. Applied (What constitutes guaranty) in *Post v. Geoghegan*, 5 *Daly.* 216, 218.
- Doane v. Eddy**. See *Collins v. Brush*.
- Dob v. Halsey**, 16 *Johns.* 34; s. c., 8 *Am. Dec.* 203, with note; 6 *N. Y. Com. L. Law. ed.* 47, with brief note. See *Everghim v. Ens-worth*; *Foot v. Sabin*; *Livingston v. Roosevelt*. Followed (Application of firm property to payment of private debt) in *Ross v.*

- Whitefield, 36 *Super. Ct. (J. & S.)* 50. Said in 8 *Am. Dec.* 297, *n.* (citing cases) to have been denied in Mass., N. H. and N. J. though followed in Pa. and elsewhere. Followed in *Lanier v. McCabe*, 2 *Fla.* 32; *s. c.*, 48 *Am. Dec.* 172. Approved in *Rogers v. Batchelor*, 12 *Pet.* 231. Reviewed with Evernghim *v.* Ensoworth, 7 *Wend.* 326; *Livingston v. Roosevelt*, 4 *Johns.* 251, in *Ex parte* Goulding, cited in *Rogers v. Batchelor* and *Story on Partn.* 7 ed. § 133, *n.*, p. 235; *Gale v. Miller*, 44 *Barb.* 420, being also cited in *Story on Partn.* Applied (Burden of proof on creditor) in *Rust v. Hauselt*, 41 *Super. Ct. (J. & S.)* 467, 474. Cited with *Foot v. Sabin*, 19 *Johns.* 154, 157. *Gansevoort v. Williams*, 14 *Wend.* 133, 135, in *Story on Partn.* 7 ed. § 133, *n.*
- Dobke v. McClaran**, 41 *Barb.* 491. Applied (Power of surrogate to open or correct decrees) in *Bailey v. Stewart*, 2 *Redf.* 212, 224.
- Dobson v. Pearce**, 1 *Duer*, 142; *s. c.*, 10 *N. Y. Leg. Obs.* 170. Aff'd in 12 *N. Y.* 156; *s. c.*, with opinion of DENIO, J., in 1 *Abb. Pr.* 97. See *Konitzky v. Meyer*; *Pepoon v. Jenkins*; *Ross v. Wood*. Reference in *Crauer v. Benton*, 60 *Barb.* 227, explained in *Same v. Same*, 64 *Id.* 525. Decision in 12 *N. Y.* applied (Inquiry into jurisdiction) in *Ansonia Brass & Copper Co. v. New Lamp Chimney Co.*, 64 *Barb.* 487; *People ex rel. Comm'rs v. Smith*, 13 *Hun*, 417; *Kinnier v. Kinnier*, 45 *N. Y.* 542; *Bolton v. Jacks*, 6 *Robt.* 200. Disting'd (Relief against fraudulent or iniquitous judgment) in *Farrington v. Bullard*, 40 *Barb.* 518; *Methodist Episc. Ch. at Harlem v. Mayor, &c. of N. Y.*, 55 *How. Pr.* 60. Applied in *Ross v. Wood*, 8 *Hun*, 187. Applied to certificate of election, in *People ex rel. Stemmler v. McGuire*, 2 *Id.* 274. To release, in *Dambman v. Schulting*, 4 *Id.* 51. To award, in *State of Michigan v. Phoenix B'k*, 33 *N. Y.* 27, which modified 7 *Bosw.* 20, 84, which see. To order for sale in *Hackley v. Draper*, 60 *Id.* 93. Explained (Distinction between law and equity) in *Marsh v. Benson*, 11 *Abb. Pr.* 248. Re-aff'd (Equitable defense to legal claim) in *Crary v. Goodman*, 12 *N. Y.* 267; *Phillips v. Gorham*, 17 *Id.* 275; *Pitcher v. Hennessey*, 48 *Id.* 422. See comments in *Pomeroy on Rem.* §§ 70, *n.*, 90, 93. Disting'd (Controversies to be determined in one action) in *McHenry v. Hazard*, 45 *Id.* 587.
- **v. Racey**, 3 *Sandf. Ch.* 60. Subsequent decision in 8 *N. Y.* 216. Decision in 8 *N. Y.* followed (Effect of title acquired by or through mortgagee, to foreclose equity of redemption) in *Elliott v. Wood*, 45 *Id.* 71.
- Dodd, Matter of**, 27 *N. Y.* 629. Doubted with *People ex rel. Harvey v. Heath*, 20 *How. Pr.* 304 (What is special proceeding) in *People ex rel. Clute v. Boardman*, 3 *Abb. Ct. App. Dec.* 484. So referred to in *Matter of Hudson Ave.*, 6 *Hun*, 356, 363. Not followed in *Matter of Presbytery of N. Y.*, 54 *How. Pr.* 226, where the later case of *Matter of Tappan* was followed. Explained and disting'd in *Matter of Jetter*, 78 *N. Y.* 601, 604. Limited as a case of an application, made out of court, in *Pinckney's Case*, 18 *Abb. Pr.* 356, but see this limitation disapproved in *Matter of Thayer*, 30 *How. Pr.* 277.
- Dodd v. Curry**, 4 *How. Pr.* 123. Approved with *Moffatt v. Ford*, 14 *Barb.* 577; *Rogers v. Degen*, 10 *Abb. Pr.* 313 (What is a trial) in *Mora v. Great Western Ins. Co.*, 10 *Bosw.* 622.
- Dodge, Ex parte**, 7 *Cow.* 147. Doubted (Excepting Sunday in computation of statutory time) in *Keating v. Serrell*, 5 *Daly*, 278, 282.
- Dodge v. Berry**, 26 *Hun*, 246. Followed with *Marshall v. Peters*, 12 *How. Pr.* 218 (Right to ice) in *Brookville & Metamora Hydraulic Co. v. Butler*, 91 *Ind.* 134; *s. c.*, 46 *Am. R.* 580, the contrary case of *Myer v. Whitaker*, 5 *Abb. N. C.* 172, being disapproved as against the weight of authority, as condemned by the courts of N. Y., as being the decision of a single judge, and as not being well reasoned.
- **v. County of Platte**, 16 *Hun*, 285. Rev'd in 82 *N. Y.* 218.
- **v. Crandall**, 30 *N. Y.* 294. See *Hess v. Fox*. Disting'd (Non-performance of portion of contract void by statute of frauds) in *Weir v. Hill*, 2 *Lans.* 278.
- **v. Dodge**, 31 *Barb.* 418; *s. c.*, more fully, 10 *Abb. Pr.* 401; 21 *How. Pr.* 63. Explained (Widow, when deprived of dower by provision in will) in *Tobias v. Ketchum*, 30 *Barb.* 306.
- **v. Manning**, 1 *N. Y.* 298. See *Harris v. Fly*; *Reynolds v. Reynolds*. Applied (Legacy when payable) in *Wheeler v. Ruthven*, 2 *Redf.* 491, 494.
- **v. Pond**, 23 *N. Y.* 69. Cited (Equitable conversion) in *Flanagan v. Flanagan*, 8 *Abb. N. C.* 413, 417. Cited as authority with *Bunce v. Vandergrift*, 8 *Paige*, 37; *Kane v. Gott*, 24 *Wend.* 641; *Bogert v. Hertell*, 4 *Hill*, 492; *Stagg v. Jackson*, 1 *N. Y.* 206; *Hood v. Hood*, 85 *Id.* 561, in *Shaw v. Chambers*, 48 *Mich.* 355.
- **v. Porter**, 13 *Abb. Pr.* 253. See (Directing sheriff to pay money into court) *Code Civ. Pro.* 1881, § 675, *n.*
- **v. Potter**, 18 *Barb.* 193. Applied (Parol evidence of property intended in mortgage) in *Kennedy v. Nat. Union Bk. of Watertown*, 23 *Hun*, 494, 497.
- **v. Sheldon**. See *Bostwick v. Burnett*.
- **v. Wellman**, 42 *Barb.* 390. Aff'd in 1 *Abb. Ct. App. Dec.* 512; *s. c.*, 43 *How. Pr.* 427. See *Hess v. Fox*. Decision in 43 *How. Pr.* explained (Ejectment against vendee in possession) in *Carr v. Carr*, 52 *N. Y.* 251, 259.
- **v. Wilbur**, 5 *Sandf.* 397. Aff'd in 10 *N. Y.* 579.
- Dodge & Stevenson M'fg Co., Matter of**, 14

- Hun*, 440. Rev'd in 77 *N. Y.* 101; s. c., 83 *Am. R.* 579. See Walker v. Crain.
- Doe v. Butler.** See Brandt v. Ogden; Schaubert v. Jackson.
- **v. Campbell**, 10 *Johns.* 475. See Brandt v. Ogden; Jackson v. Lunn. Quoted (Statute of limitations—adverse possession) in *Ang. on Limit.* § 392, 6 ed.
- **v. Howland**, 8 *Cow.* 277; s. c., 18 *Am. Dec.* 445. See Jackson v. Stevens.
- **v. Phelps**, 9 *Johns.* 169. See Jackson v. Lunn. Disting'd (Recitals in deed, as evidence) in *McKinnon v. Bliss*, 21 *N. Y.* 206, 211.
- **v. Roe**, 1 *Johns. Cas.* 25; s. c., 1 *N. Y. Com. L. Law. ed.* 223, with brief note, on admissibility and effect of confessions of adultery.
- **v. —**, 1 *Johns. Cas.* 402. See Verplanck v. Sterry.
- **v. —**, 1 *Wend.* 541. Followed (What real estate passes by devise) in *Sharp v. Dimmick*, 4 *Lans.* 496, 498.
- **v. Thompson**, 5 *Cow.* 371; s. c., 8 *N. Y. Com. L. Law. ed.* 687, with brief note of cases as to course, distance, &c.
- Dohring v. People**, 2 *Sup'm. Ct. (T. & C.)* 458. Aff'd, in part, as *People v. Dohring*, in 59 *N. Y.* 375; s. c., 17 *Am. R.* 349. Decision in 2 *Sup'm. Ct. (T. & C.)* disting'd (Right of justice to hold office after age of seventy) in *People ex rel. Lawrence v. Mann*, 32 *Hun*, 440.
- Doke v. James**, 4 *N. Y.* 568. Disting'd with *Briggs v. Smith*, 20 *Barb.* 418; *Campbell v. Western*, 3 *Paige*, 126 (Vacating of award on evidence furnished by arbitrators) in *National Bank of Republic v. Darragh*, 30 *Hun*, 29. Commented on, in *Briggs v. Smith*, 20 *Barb.* 409.
- Dolan v. Fagan.** See *Lee v. Woolsey*.
- **v. Mayor, &c. of N. Y.**, 6 *Hun*, 506. Aff'd, it seems, in 67 *N. Y.* 609.
- **v. —**, 62 *N. Y.* 472. Followed (Effect of confirmation of report of commissioners of estimate and assessment) in *Astor v. Mayor, &c. of N. Y.*, *Id.* 580.
- **v. —**, 8 *Hun*, 440. Aff'd in 68 *N. Y.* 274; s. c., 23 *Am. R.* 168. See *Conner v. Mayor, &c. of N. Y.*; *Smith v. Mayor, &c. of N. Y.* Decision in 68 *N. Y.* explained (Right of officer to compensation) in *McVeany v. Mayor, &c. of N. Y.*, 80 *Id.* 185, 191, 194, which aff'd 59 *How. Pr.* 106, which see. Compare *Comm'r's of Saline Co. v. Anderson*, 20 *Kans.* 298; s. c., 27 *Am. R.* 171. Disting'd in *Stuhr v. Curran*, 15 *Vroom (N. J.)* 181, 187.
- **v. —**, 4 *Abb. Pr. N. S.* 397. Disting'd (Injunction to restrain laying of pavements) in *Greaton v. Griffin*, *Id.* 310.
- **v. People**, 6 *Hun*, 493. Aff'd in 64 *N. Y.* 485. Previous proceeding as *People v. Dolan* in 6 *Hun*, 232. Decision in 6 *Hun*, 493 followed (Removal to Oyer and Terminer) in *Leighton v. People*, 10 *Abb. N. C.* 261, 265.
- Dole v. Bull.** See *Love v. Palmer*.
- **v. Fellows**, 5 *How. Pr.* 451. Cited (Application for inspection of private writings, how made) *Exchange Bank v. Monteath*, 4 *Id.* 280, being also cited (Who may make such application) in 1 *Whart. Com. on Ev.* § 750.
- **v. Gold**, 5 *Barb.* 490; s. c., 7 *N. Y. Leg. Obs.* 247. See *Cook v. Litchfield*. To the contrary see (Sufficiency of notice to indorser) *Cayuga County Bank v. Warden*, 1 *N. Y.* 413.
- **v. N. Y. Central, &c. R. R. Co.**, 1 *Buff. Super. Ct. (Sheldon)* 291. Brief mem. of previous decision in 49 *N. Y.* 677.
- **v. Van Rensselaer**, 1 *Johns. Cas.* 330; s. c., 1 *N. Y. Com. L. Law. ed.* 342, with brief note as to words spoken relative to officer.
- Dolevin v. Wilder**, 7 *Robt.* 319; s. c., 34 *How. Pr.* 488. See (Mitigating circumstances, how pleaded) *Code Civ. Pro.* 1881, § 536, n.
- Dolf v. Bassett**, 15 *Johns.* 21. See *Shaw v. White*. Collated with other cases (Dower—valuation of land for) in *Sharsv. & B. Cas. on Real Prop.* 399.
- Doll v. Earle**, 65 *Barb.* 298. Aff'd in 59 *N. Y.* 638.
- **v. Harlow**, 5 *Sup'm. Ct. (T. & C.)* 699. Reported in 2 *Hun*, 659.
- Dollard v. Taylor**, 33 *Super. Ct. (J. & S.)* 496. Compare (Appeal from order appointing or refusing to appoint receiver) *McKelsey v. Lewis*, 3 *Abb. N. C.* 61.
- Dollfus v. Froesch**, 5 *Hill.* 493; s. c., 40 *Am. Dec.* 363, with note, wherein are collected citations of the case as to when a motion once denied may be renewed without leave of court.
- Dollner v. Gibson**, 3 *Code R.* 153. Rev'd at General Term, Nov. 6, 1852.
- **v. Lintz**, 9 *Daly*, 17. Aff'd, it seems, in 84 *N. Y.* 669.
- **v. Ward**, 12 *Weekly Dig.* 31; mem. s. c., as *Dollner v. Lintz*, in 84 *N. Y.* 669.
- Dolson v. Kerr**, 5 *Hun*, 643. Further decision in 52 *How. Pr.* 481. Collated with other cases (Assignment for benefit of creditors—surrender to bankruptcy assignee) in *Bishop on Assign.* § 233. Explained (Possession by assignee) in *Burrill on Assign.* § 369, n. 1, 4 ed.
- Dominick v. Eacker**, 3 *Barb.* 17. Relied on with *Savacool v. Boughton*, 5 *Wend.* 170, and other cases (When officer is protected by process) in *Gurney v. Tufts*, 37 *Me.* 130; s. c., 58 *Am. Dec.* 777.
- **v. Michael**, 4 *Sandf.* 374. Examined with other cases (Power of administrator with will annexed) in *Paret v. Keneally*, 30 *Hun*, 15. Cited as authority in *Van Gieszen v. Bridgford*, 83 *N. Y.* 348, 354. Explained (Effect of power given to executor) in *Clapp v. Brown*, 4 *Redf.* 201. Reviewed with *Jackson v. Bouchin*, 14 *Johns.* 124; *Voorhis v. Voorhis*, 24 *Barb.* 150; *Palmer v. Miller*, 25 *Id.* 399 (Deed of infant, as affected by conveyance made after coming

- of age) in *Tyler on Inf. & Cov.* 2 ed. § 33. Approved (Effect of original statute) in the Louisiana Lottery cases, *U. S. v. Dauphin*, *U. S. Cir. Ct. E. D. La.* 20 *Fed. Rep.* 628.
- Doming v. Miller**, 33 *Barb.* 386. To the contrary see cases cited (Grantor's title) in *Abb. Tr. Ev.* 705, n. 3.
- Donaldson v. Wood**, 17 *Wend.* 550. Aff'd in 22 *Id.* 395. See *Wood v. Donaldson*.
- Donnelly v. Vandenberg**, 3 *Johns.* 26; s. c., 3 *N. Y. Com. L. Law. ed.* 516, with brief note.
- Donely v. Rockefeller**, 4 *Cow.* 253. Rev'd in 8 *Id.* 623.
- Donnell v. Walsh**, 6 *Bow.* 621. Aff'd in 33 *N. Y.* 43.
- **v. Williams**, 21 *Hun.* 216. Explained and followed (Attachment in action on firm debt) in *Buckingham v. Swezey*, 25 *Id.* 84. Applied (Invalid attachment) to case of arrest,—in *Southern Inland Nav. & Imp. Co. v. Sherwin*, 1 *Civ. Pro. R.* 44, 46.
- Donnelly v. Corbett**, 7 *N. Y.* 500. Examined with other cases (Effect of insolvent's discharge) in *Ritchie v. Garrison*, 10 *Abb. Pr.* 246, 248. Followed in *Hawley v. Hunt*, 27 *Iowa*, 303; s. c., 1 *Am. R.* 273, 274, 277. Cited with *Soule v. Chase*, 39 *Id.* 342; *Pratt v. Chase*, 44 *Id.* 597; *Matter of Coates*, 3 *Abb. Ct. App. Dec.* 231, in 29 *Alb. L. J.* 186. Explained in 3 *Para. on Contr.* 439, n. v.
- **v. Shaw**, 7 *Abb. N. C.* 264. Rev'd in 17 *Hun.* 564. Statement in early copies of 7 *Abb. N. C.* that no appeal was prosecuted was an error.
- Donovan v. Board of Education of N. Y.**, 46 *Super. Ct. (J. & S.)* 565. Aff'd in 85 *N. Y.* 117. Prior decision in 1 *Civ. Pro. R.* 311, n. See *Union Trust Co. v. Whiton*. Decision in 1 *Civ. Pro. R.* applied (Costs allowed on amendment of answer) in *Havemeyr v. Havemeyr*, 62 *How. Pr.* 476, 478.
- **v. Finn**, *Hopk.* 59; s. c., 14 *Am. Dec.* 531, with note inclining to favor the view that the weight of authority is against the doctrine of the power of equity in ordinary cases to reach choses in action. This view I think an error; the better sustained opinion at the present day, being, I understand, in favor of the power. See *Tolles v. Wood*, 16 *Abb. N. C.* 1, and note; *Ager v. Murray*, 105 *U. S.* 126, 131; *Artzbacher v. Mayer*, 53 *Wisc.* 380; *Pendleton v. Perkins*, 49 *Mo.* 565; *Marsh v. Burroughs*, 1 *Woods*, 463; s. c., 10 *Am. Law Reg. N. S.* 718, and to the contrary, *Hardenburgh v. Blair*, 30 *N. J. Eq.* 456, which rev'd *Id.* 42. See also *Drake v. Rice*, 130 *Mass.* 413; *Carver v. Peck*, 131 *Id.* 291; *Scott v. Indianapolis Wagon Works*, 43 *Ind.* 79. Opposed in *Hadden v. Spader*, 20 *Johns.* 554, and see *Pettit v. Candler*, 3 *Wend.* 621. Contrary provided by 2 *R. S.* 173, § 38 (same Stat. revised in *Code Civ. Pro.* § 1871). Compare *Bramhall v. Ferris*, 14 *N. Y.* 41. Commented on, in *Craig v. Howe*, 2 *Edw.* 554; *Congdon v. Lee*, 3 *Id.* 304; *Adsit v. Sanford*, 23 *Hun.* 45, 49. Followed in *Erwin v. Oldham*, 6 *Yerg. (Tenn.)* 185; s. c., 27 *Am. Dec.* 458, with note.
- **v. McAlpin**, 46 *Super. Ct. (J. & S.)* 111. Aff'd in 85 *N. Y.* 185; s. c., 39 *Am. R.* 649.
- **v. Mayor, &c. of N. Y.**, 44 *Barb.* 180; s. c., 19 *Abb. Pr.* 58. Rev'd in 33 *N. Y.* 291. Decision in 33 *N. Y.* disting'd (Recovery on municipal contract) in *Jones v. Mayor, &c. of N. Y.*, 7 *Robt.* 209. Collated with other cases, in 5 *Abb. N. C.* 43, n. Disting'd with *Hodges v. City of Buffalo*, 2 *Den.* 110, in *City of Memphis v. Adams*, 9 *Heisk. (Tenn.)* 518; s. c., 24 *Am. R.* 331, 337.
- **v. Vandemark**, 18 *Hun.* 200. Rev'd in 78 *N. Y.* 244. Further proceeding in 22 *Hun.* 307. See *First Nat. Bank of Meadville v. Fourth Nat. Bk.*; *Leggett v. Perkins*; *Union Trust Co. v. Whiton*.
- **v. Willson**, 26 *Barb.* 138. See *Bennett v. Hall*. Followed (What is sale within statute of frauds) in *Ferren v. O'Hara*, 62 *Id.* 517. Compare *Passaic Manuf. Co. v. Hoffman*, 3 *Daly*, 495, where it is treated as overruled. Explained and compared, in *Cooke v. Millard*, 65 *N. Y.* 362.
- **v. Woodruff**, 1 *Hun.* 439. Fuller mem., in 3 *Sup'm. Ct. (T. & C.)* 773. Rev'd, it seems, in 63 *N. Y.* 636, but without opinion.
- Doolin v. Ward**, 6 *Johns.* 194; s. c., 4 *N. Y. Com. L. Law. ed.* 97, with brief note. See *Jones v. Caswell*. Applied with *Wilbur v. How*, 8 *Johns.* 444 (Validity of agreement not to bid) in *Thompson v. Davies*, 13 *Id.* 112, and these three cases disting'd in *Corning v. Pond*, 29 *Hun.* 129. Disting'd in *Marsh v. Russell*, 66 *N. Y.* 292. Disting'd with *Wilbur v. How*; in *Bellows v. Russell*, 20 *N. H.* 427; s. c., 52 *Am. Dec.* 238. Collated with *Wilbur v. How*, *Thompson v. Davies*; *Atchison v. Mallon*, 43 *N. Y.* 147; *Jones v. Caswell*, 3 *Johns. Cas.* 29, and other cases, in 22 *Am. L. Reg.* 16.
- Doolittle v. Dinianny**, 81 *N. Y.* 350. Explained (Effect of undertaking) in *Seaman v. Reynolds*, 50 *How. Pr.* 425. Applied in *Humerton v. Hay*, 65 *N. Y.* 384; *Lowry v. Tew*, 25 *Hun.* 257, 259.
- **v. Howard**. See *Casey v. Mann*.
- **v. Lewis**, 7 *Johns. Ch.* 45; s. c., 11 *Am. Dec.* 389, with note. See *Williams v. Storrs*. Explained (Power of foreign executors, &c.) in *Robbins v. Wells*, 1 *Robt.* 66. Examined and approved in *Parsons v. Lyman*, 20 *N. Y.* 103, 112, 114. See to the contrary *Carmichael v. Saint*, 16 *Ark.* 28. See also *Abb. Tr. Ev.* 54. Explained in *Dial v. Gary*, 14 *So. Car.* 532. Commented on in *Hutchins v. State B'k*, 12 *Met. (Mass.)* 424, as holding a doctrine which would probably not be accepted to its full extent in Mass. Disting'd in *Reynolds v. McMullen*, 22 *Northw. Rep.* 41, 45. Explained (Power—who may execute) in 2 *Washb. on. Real Prop.* 4 ed. 654.
- **v. Naylor**, 2 *Bow.* 206. Disapproved



- (Whether original promise within statute of frauds) in *Prime v. Koehler*, 7 *Daly*, 345.
- *v. Southworth*, 3 *Barb.* 79. Discussed (Assignment for benefit of creditors—designation of debts to be paid) in *Burrill on Assign.* § 313, 4 ed.
- *v. Supervisors of Broome*, 18 *N. Y.* 155. See *Christopher v. Mayor, &c. of N. Y.* Followed and approved with *Roosevelt v. Draper*, 23 *N. Y.* 318 (Power of private individual to maintain proceedings to restrain or avoid public corporate act) in *Phelps v. City of Watertown*, 61 *Barb.* 121. Disting'd in *People ex rel. Stephens v. Halsey*, 37 *N. Y.* 344; *People ex rel. Haskins v. Supervisors of Westchester*, 8 *Abb. Pr. N. S.* 277; *Lutes v. Briggs*, 5 *Hun.* 71. Limited in *People v. Miner*, 2 *Lans.* 396, 410. Approved in *Brooklyn City, &c. R. R. Co. v. Coney Island, &c. R. R. Co.*, 35 *Barb.* 364, 372. See *People v. Mayor, &c. of N. Y.*, 32 *Id.* 102, 105; *People v. Kerr*, 20 *How. Pr.* 130, 135. Applied in *Delaware & Hudson Canal Co. v. Lawrence*, 2 *Hun.* 163, 194, 196. Dissented from in *Board of Comm'rs of Clay Co. v. Markle*, 46 *Ind.* 96, 103. Disapproved in *State ex rel. Silver v. Kendall*, 18 *Northw. Rep.* 85, 92. Commented on in 1 *Pomeroy on Eq. Jur.* § 266, n. 2.
- *v. Tice*, 41 *Barb.* 181. See (Adverse possession under claim of title not written) *Code Civ. Pro.* 1881, § 372, n.
- Doran v. Dempsey*, 1 *Bradf.* 490. Disting'd (Attachment against executor for failure to pay) in *Saltus v. Saltus*, 2 *Lans.* 9. See *Code Civ. Pro.* 1881, § 2555, n.
- *v. Franklin Fire Ins. Co.*, 10 *Weekly Dig.* 555; mem s. c., 22 *Hun.* 313. Rev'd in 13 *Weekly Dig.* 229; mem. s. c., 86 *N. Y.* 635.
- Dorchester v. Coventry*, 11 *Johns.* 510. See *Humphrey v. Phinney*; *Shaw v. White*. Collated with other cases (Dower—valuation of land for) in *Sharrow & B. Cas. on Real Prop.* 399. Discussed in 4 *Kent Com.* 68.
- Doremus v. Lewis*, 8 *Barb.* 124. Collated with other cases (General assignment for benefit of creditors—assigning only part of debtor's property) in *Bishop on Assign.* § 167.
- Dorlan v. Sammis*, 2 *Johns.* 179. Followed with *Holden v. Dakin*, 4 *Id.* 121; *Davis v. Meeker*, 5 *Id.* 354, 404 (Fraud as barring action for recovery of purchase price of goods) in *Reed v. Prentiss*, 1 *N. H.* 174; s. c., 8 *Am. Dec.* 50. Quoted and explained in 2 *Pars. on Contr.* 783, n. d.
- Dorlon v. City of Brooklyn*, 46 *Barb.* 604. Rev'd in 1 *Alb. L. J.* 315.
- Dorman v. Kellam*, 14 *How. Pr.* 184; s. c., more fully, 4 *Abb. Pr.* 202.
- Doru v. Backer*, 61 *Barb.* 597. Rev'd in 61 *N. Y.* 261. Decision in 61 *N. Y.* disting'd (Liability of assessors) in *Stewart v. Fonda*, 19 *Hun.* 191, which was aff'd in 86 *N. Y.* 339, 348, which see.
- *v. Fox*, 6 *Lans.* 162. Rev'd in 61 *N. Y.* 264. Decision in 61 *N. Y.* examined with other cases (Restraining tax by injunction) in *Mann v. Board of Education*, 53 *How. Pr.* 289, 298. Followed (Interpleader) in *Pustet v. Flannelly*, 60 *Id.* 67, 69.
- Doron v. McLoughlin*, 14 *Hun.* 628. See *Wynkoop v. Halbut*. See (Notice of appeal in justice's court) *Code Civ. Pro.* 1881, § 3070, n.
- Dorr v. Birge*, 5 *How. Pr.* 323. See (Appeal from judgment, &c.) *Code Civ. Pr.* 1881, § 1294, n.
- *v. Munsell*, 13 *Johns.* 430. See *Sherwood v. Johnson*. Disting'd and *Belden v. Davies*, 2 *Hall*, 434, applied (Sufficiency of plea that execution of instrument was obtained by fraud) in *Saunders v. Stotts*, 6 *Ohio*, 380; s. c., 27 *Am. Dec.* 263. Followed in *Taylor v. King*, 6 *Munf. (Va.)* 358; s. c., 8 *Am. Dec.* 746, with note.
- *v. N. J. Steam Nav. Co.*, 11 *N. Y.* 485. Previous decision in 4 *Sandf.* 136. See *Cole v. Goodwin*; *Hollister v. Nowlen*; *Welles v. N. Y. Central R. R. Co.* Decision in 11 *N. Y.* referred to as the leading case and one that has been repeatedly followed (Right of carrier to limit liability) in *Fibel v. Livingston*, 64 *Barb.* 179, 188. Cited in *Christenson v. American Express Co.*, 15 *Minn.* 270; s. c., 2 *Am. R.* 122, with note, collating cases, as showing the law to be settled by the great preponderance of authority. Cited as authority in *Mulligan v. Illinois Central R'y Co.*, 36 *Iowa*, 181; s. c., 14 *Am. R.* 514. Cited with *Belger v. Dinsmore*, 51 *N. Y.* 166; *Wetzell v. Dinsmore*, 54 *Id.* 496; in 19 *Cent. L. J.* 322. See cases collected in 5 *Am. L. Reg. N. S.* 525. Included, with notes, in 2 *Redf. Am. Railw. Cas.* 227. Decision in 4 *Sandf.* cited as overruling former cases in 13 *Am. L. Reg. N. S.* 151. Examined with other cases in *Railroad Co. v. Lockwood*, 17 *Wall.* 357, 363.
- *v. Peters*, 3 *Edw.* 132. Limited (Assumption of mortgage) in *Smith v. Truslow*, 84 *N. Y.* 660, 662.
- *v. Shaw*, 4 *Johns.* Ch. 17. See *Sells v. Hubbell*. Disting'd (Rights of one having lien on two funds, when to be determined) in *Molson's Bank v. Howard*, 40 *Super. Ct. (J. & S.)* 15, 22.
- Dorris v. Sweeney*, 64 *Barb.* 636. Aff'd in 60 *N. Y.* 463. Decision in 64 *Barb.* disting'd (Liability for subscription for stock) in *Dorris v. French*, 4 *Hun.* 292, 294.
- Dorothy v. Rapp*, 11 *Hun.* 374. Rev'd in 72 *N. Y.* 307; s. c., 4 *Abb. N. C.* 292. Decision in 72 *N. Y.* explained and cases cited to the contrary (Master's liability for servant's torts) in *Moak's Underhill's Torts*, 1 *Am. ed.* 39.
- Dorwin v. Potter*, 5 *Den.* 306. Disting'd (Damages resulting from breach of covenant to repair) in *City of Brooklyn v. Brooklyn City R. R. Co.*, 47 *N. Y.* 482. Applied with *City of Brooklyn v. Brooklyn City R. R. Co.*, in *Sparks v. Bassett*, 49 *Super. Ct. (J. & S.)* 270.

**Doscher v. Shaw**, 35 *Super. Ct. (J. & S.)* 562. Aff'd in 52 *N. Y.* 602.

**Doty v. Baker**, 11 *Hun.* 222. See *Simar v. Canaday*. Followed (Release of inchoate right of dower) in *Smart v. Haring*, 14 *Id.* 276.

— **v. Bates**, 11 *Johns.* 544. See *Hunt v. Chapin*. Cited with other cases (Partnership paper *prima facie* valid) in 11 *Am. L. Reg. N. S.* 544.

— **v. Brown**, 4 *N. Y.* 71; s. c., 53 *Am. Dec.* 350, with note, collating cases. Disting'd (Effect of former adjudication) in *Wilcox v. Lee*, 1 *Abb. Pr. N. S.* 250, 255; *Johnson v. Albany, &c. R. R. Co.*, 5 *Lans.* 225. Compared with other cases, in *Davis v. Talcott*, 14 *Barb.* 620. Cited as settled law, in *Castle v. Noyes*, 14 *N. Y.* 331. Applied in *Hudson v. Smith*, 39 *Super. Ct. (J. & S.)* 461. Compare *Brown v. Pratt*, 4 *Wis.* 520. Applied (Evidence of grounds of justice's judgment) in *Royce v. Burt*, 42 *Barb.* 665. Subsequent proceedings on justice's judgment referred to herein, narrated, in *Rinckey v. Stryker*, 28 *N. Y.* 53. Disting'd (Evidence as to controversy in former action) in *Phelps v. Gee*, 29 *Hun.* 202. Reviewed with *Brewster v. Countryman*, 12 *Wend.* 446; *Castle v. Noyes*, 14 *N. Y.* 329; *Kip v. Brigham*, 6 *Johns.* 158; *Waldo v. Levy*, 7 *Id.* 173; *Lee v. Clark*, 1 *Hill*, 56 (Judgment against one privy as binding upon others) in *Smith v. Moore*, 7 *So. Car.* 209; s. c., 24 *Am. R.* 479, 483, 485, 487.

— **v. —**, 3 *How. Pr.* 375. See (How time enlarged) *Code. Civ. Pro.* 1881, § 781, n.

— **v. Miller**, 43 *Barb.* 529. Cited with other cases (Broker entitled to commissions where sale fails through defect of title) in 10 *Am. L. Reg. N. S.* 638.

— **v. Turner**, 8 *Johns.* 20. See *Crary v. Turner*. Followed (Effect of leaving property levied on in possession of defendant) in *Keyser's Appeal*, 13 *Pa. St.* 409; s. c., 53 *Am. Dec.* 487, with note.

— **v. Wilson**, 5 *Lans.* 7. Modified in 47 *N. Y.* 580. See *Ingraham v. Gilbert*; *Nash v. Russell*.

**Doubleday v. Heath**. See *Kundolph v. Thalheimer*.

— **v. Kress**, 60 *Barb.* 181. Rev'd in 50 *N. Y.* 410; s. c., 10 *Am. R.* 502. Decision in 50 *N. Y.* cited (Authority derived by agent from possession of promissory note) in *Whart. Com. on Ag.* § 208, n. See to the contrary, 2 *Greenl. on Ev.* 13 ed. 52; also *Abb. Tr. Ev.* 801.

— **v. Supervisors of Broome**, 2 *Cow.* 533. Questioned and disting'd (Charges by officers for performance of duties imposed by law) in *Croft v. Brandt*, 58 *N. Y.* 106, 113.

**Dougan v. Champlain Transp. Co.**, 6 *Lans.* 430. As to jurisdiction confirmed in 56 *N. Y.* 1, where a non-suit granted on the second trial was sustained. Decision in 56

*N. Y.* applied (Inadmissibility of evidence of acts done subsequent to accident causing injury) in *Salters v. Delaware & Hudson Canal Co.*, 3 *Hun.* 341; *Payne v. Troy & Boston R. R. Co.*, 9 *Id.* 526; *Morrell v. Peck*, 24 *Id.* 38. Followed with *Baird v. Daly*, 63 *N. Y.* 547; *Dale v. Delaware, Lackawanna, &c. R. R. Co.*, 73 *Id.* 472, in *Delaney v. Hilton*, 50 *Super. Ct. (J. & S.)* 341. Followed with *Baird v. Daly*; *Salters v. Delaware & Hudson Canal Co.*, 3 *Hun.* 338; *Morrell v. Peck*, 24 *Id.* 37, in *Henkel v. Murr*, 31 *Id.* 31. Disting'd in *Westfall v. Erie R'y Co.*, 5 *Id.* 77; *Sewell v. City of Cohoes*, 75 *N. Y.* 54, which aff'd 11 *Hun.* 630, which see. Cited as authority (Evidence of prior accidents) in *Quinlan v. City of Utica, Id.* 220. Disting'd (Negligence, as shown by failure to use appliances for safety) in *Cleveland v. N. J. Steamboat Co.*, 5 *Id.* 527, which was rev'd in 68 *N. Y.* 310, which see; *Ring v. City of Cohoes*, 13 *Hun.* 84. Followed in *McMahon v. N. Y. Elevated R. R. Co.*, 50 *Super. Ct. (J. & S.)* 507; *Loftus v. Union Ferry Co.*, 84 *N. Y.* 460; *Carpenter v. Bost. & Alb. R. R. Co.*, 24 *Hun.* 104, 108. Disting'd (Jurisdiction of State courts in maritime matters) in *Bartlett v. Spicer*, 75 *N. Y.* 534.

**Dougherty v. Bunting**. See *Dygart v. Schenck*.

— **v. Van Nostrand, Hoffm.** 68. See *Williams v. Wilson*. Explained as a leading authority (Good-will of business does not survive to continuing partner) in *Williams v. Wilson*, 4 *Sundf. Ch.* 380; *Howe v. Searing*, 19 *How. Pr.* 17.

**Doughty v. Brill**, 36 *Barb.* 488. Aff'd in 3 *Keyes*, 612; s. c., 1 *Abb. Ct. App. Dec.* 524. Decision in 36 *Barb.* followed (Liability for encroachments on highways) in *Marvin v. Pardee*, 64 *Id.* 353, 359.

— **v. Devlin**, 1 *E. D. Smith*, 625. Applied (Proceedings to foreclose mechanic's lien) in *Gross v. Daly*, 5 *Daly.* 540, 550. Disting'd in *Preusser v. Florence*, 4 *Abb. N. C.* 136, 138.

— **v. Hope**, 3 *Den.* 249. Motion for second new trial denied, in *Id.* 594, and judgment aff'd, in 1 *N. Y.* 79, but without further opinion. Decision in 1 *N. Y.* followed (Necessity of publication of redemption notice after sale of land for taxes) in *Westbrook v. Willey*, 47 *Id.* 457. Cited with *Van Alstyne v. Erwin*, 11 *Id.* 331; *Wood v. Chapin*, 13 *Id.* 509; *Town of Guilford v. Supervisors of Chenango, Id.* 143; *Moore v. Mayor, &c. of N. Y.*, 8 *Id.* 110, and *People ex rel. Albany, &c. R. R. Co. v. Mitchell*, 45 *Barb.* 208; *People v. Mayor, &c. of N. Y.*, 10 *Wend.* 398, disting'd (Constitutional power of legislature to declare act or instrument conclusive evidence of legal title or right) in *McCreedy v. Sexton*, 29 *Iowa*, 356; s. c., 4 *Am. R.* 214, 230.

— **v. Stillwell**, 2 *Bradf.* 300. See *Walton v. Walton*. Disting'd (Liability of widow

- for assessments to be deducted from income given her by will) in *Bohde v. Bruner*, 2 *Relf.* 333, 338.
- Douglas v. Cruger**, 80 *N. Y.* 15. See *McWhorter v. Agnew*. Applied (Extinguishment of trust) in *Thebaud v. Schermerhorn*, 10 *Abb. N. C.* 72, 77. Compare contrary cases, in 2 *Pomeroy on Eq. Jur.* 539, n.
- **v. Douglas**, 5 *Hun.* 140. Further proceedings in 7 *Id.* 272, and 11 *Id.* 406. With decision in 7 *Id.* sec to same effect (Exceptions filed *nunc pro tunc*) *Rust v. Hauselt*, 46 *Super. Ct. (J. & S.)* 22, 33. Collated with other cases in note on divorce for impotence in 8 *Abb. N. C.* 205, n.
- **v. Haberstro**. See *Douglass v. Same*.
- **v. Knickerbocker Life. Ins. Co.**, 55 *How. Pr.* 104; s. c., 45 *Super. Ct. (J. & S.)* 313, where it is aff'd on opinion below, and that aff'd in 83 *N. Y.* 492.
- **v. Valentine**, 7 *Johns.* 273. Explained (Trespass upon land) in *Thompson v. Bennett*, 2 *Keyes*, 503.
- Douglass, Matter of**, 9 *Abb. Pr. N. S.* 84; s. c., 40 *How. Pr.* 201; 58 *Barb.* 174. Rev'd in 12 *Abb. Pr. N. S.* 84; s. c., 46 *N. Y.* 42. Decision in 46 *N. Y.* disting'd (Validity of assessment proceedings) in *Matter of Prot. Episc. Public School*, 47 *N. Y.* 556; *Moore v. Mayor*, &c. of *N. Y.*, 73 *Id.* 238, 240; s. c., 29 *Am. R.* 134, which rev'd 4 *Hun.* 545, which see. Followed in *Matter of Astor*, 50 *N. Y.* 363, 365. Applied in *Matter of Burke*, 2 *Hun.* 281, 283. Decision in 58 *Barb.* followed in *Matter of Agnew*, 4 *Hun.* 435, 438.
- Douglass v. Clark**, 14 *Johns.* 177. See *Matter of Negus*. Referred to as overruled (Action on indemnity bond) in *Thomas v. Allen*, 1 *Hill*, 145.
- **v. Haberstro**, 19 *Hun.* 1; s. c., 58 *How. Pr.* 264. Further proceedings in *Id.* 276; s. c., 8 *Abb. N. C.* 230. Also another in 21 *Hun.* 320; s. c., 8 *Abb. N. C.* 230; 59 *How. Pr.* 194, which was dismissed on appeal in 82 *N. Y.* 572. Still further proceeding in 25 *Hun.* 262, which was rev'd in 88 *N. Y.* 611. Decision in 58 *How. Pr.* doubted (Sufficiency of notice of appearance) in *Krause v. Averill*, 4 *Civ. Pro. R. (Browne)* 410.
- **v. Howland**, 24 *Wend.* 35; s. c., 14 *N. Y. Com. L. Luv.* ed. 524, with brief note, and (p. 532) analytic list of cases citing this case. See *Allen v. Rightmere*; *Bartlett v. Campbell*; *Leonard v. Vredenburg*; *Watson v. McLaren*. Cited as authority (Judgment against principal as concluding surety) in *Thayer v. Clark*, 4 *Abb. Ct. App. Dec.* 395; *Bridgeport Fire & Marine Ins. Co.*, 7 *Bow.* 434. Examined with other cases in dissenting opinion of *DANIELS, J.*, in *Tyng v. Clarke*, 9 *Hun.* 276. Followed in *Moss v. McCullough*, 5 *Hill*, 134; *Thomas v. Hubbell*, 15 *N. Y.* 407, which rev'd 18 *Barb.* 11, which see. *Annett v. Terry*, 35 *N. Y.* 261. Applied in *Bridgeport Ins. Co. v. Wilson*, 34 *Id.* 281; *Germain v. Wing*, 1 *Sheld.* 444. Compare *Ex parte Young*, 45 *L. T. R. N. S.* 90. Disting'd (Effect of admissions of principal against surety) in *Hatch v. Elkins*, 65 *N. Y.* 493. Commented on and explained in *Rapelye v. Prince*, 4 *Hill*, 122; *Jackson v. Griswold*, *Id.* 529. Explained in *Thomson v. MacGregor*, 81 *N. Y.* 597. Cited as settled law (Notice of acceptance of absolute guaranty not necessary) in *Union B'k v. Coster*, 3 *Id.* 212, which aff'd 1 *Sandf.* 563, 568, which see. Commented on and applied with *Smith v. Dann*, 6 *Hill*, 543; *Union B'k v. Coster*, 3 *N. Y.* 203, in *Wilcox v. Draper*, 12 *Neb.* 138, 142. Dissented from with *Union Bank v. Coster*, 3 *N. Y.* 203, as contrary to reason and authority, in *Menard v. Scudder*, 7 *La. Ann.* 385; s. c., 56 *Am. Dec.* 610. Explained in 2 *Pars. on Contr.* 14, n. e. Quoted and collated, with other cases, in *Holcombe, Lead. Cas. on Com. L.* 195. Applied (Liability of guarantor as affected by failure to give notice) in *Deck v. Works*, 18 *Hun.* 271; *Brown v. Curtiss*, 2 *N. Y.* 231. Applied to maker, in *Genesee College v. Dodge*, 26 *Id.* 215. Quoted and collated, with other cases, in 2 *Hare & W. Am. Lead. Cas.* 62, 106, 110, 119, 5 ed. Explained and questioned (Expression of consideration for guaranty) in *Bennett v. Pratt*, 4 *Den.* 236. Examined with other cases by *Jewett, J.*, in *Staats v. Howlett*, *Id.* 563. Examined with other cases in *Hall v. Farmer*, 5 *Id.* 494. Applied (Construction of guaranty) in *Draper v. Snow*, 20 *N. Y.* 333. Followed ("Value received" as expression of consideration) in *Moore v. Cross*, 23 *Barb.* 538; *Miller v. Cook*, 23 *N. Y.* 497. Followed (Seal as sufficient expression of consideration) in *Barnum v. Childs*, 1 *Sandf.* 61; *Rosenbaum v. Gunter*, 2 *E. D. Smith*, 416. Language of *COWEN, J.*, quoted with great approval (Construction of statutes) in 1 *Kent Com.* 468, n. d.
- **v. Ireland**, 73 *N. Y.* 100. Disting'd (Liability of stockholders) in *Jessup v. Carnegie*, 80 *Id.* 441, 457.
- **v. Tousey**, 2 *Wend.* 352; s. c., 20 *Am. Dec.* 616, 620, with note, wherein it is said to have been frequently noticed and approved (Setting aside verdict as against evidence). See *Root v. King*.
- **v. Warren**, 19 *Hun.* 1; s. c., 58 *How. Pr.* 264. Further proceeding in *Id.* 276.
- **v. Wells**. See *Burr v. Beers*.
- **v. Wiggins**, 1 *Johns. Ch.* 435. Followed with *Steward v. Winters*, 4 *Sandf. Ch.* 587 (Enjoining improper use of demise premises) in *Maddox v. White*, 4 *Md.* 72; s. c., 59 *Am. Dec.* 67, with note.
- **v. Wilkeson**, 6 *Wend.* 637. Explained and disting'd (Effect of indorsement for part only of contents of note) in *Shoop v. Clark*, 4 *Abb. Ct. App. Dec.* 235, 239. Disapproved (Admissibility of instrument not negotiable, under money counts) in *Taplin v. Packard*, 8 *Barb.* 220.
- **v. Wilkinson**, 17 *Wend.* 431. Aff'd in 22 *Id.* 559.

- Dougrey v. Topping**, 4 *Paige*, 94. Explained (Necessity of showing acts and declarations to preclude widow from claiming dower) in *O'Brien v. Elliott*, 15 *Me.* 125; s. c., 32 *Am. Dec.* 137, 139.
- Dounce v. Dow**, 57 *N. Y.* 16. Further decision in 6 *Sup'm. Ct. (T. & C.)* 653, which was aff'd in 64 *N. Y.* 411. See *Hoe v. Sanborn*; *Reed v. Randall*; *Seixas v. Woods*. Decision in 57 *N. Y.* disting'd (Warranty on sale) in *Cahen v. Platt*, 40 *Super. Ct. (J. & S.)* 483, 490. Decision in 64 *N. Y.* followed in *White v. Miller*, 71 *Id.* 118, 129. See other cases collected in 15 *Am. L. Rev.* 668. Explained in 2 *Benj. on Sales*, § 933, n. 8 (Corbin's 4 *Am. ed.*); *Id.* § 600, n. p. (Bennett's 4 *Am. ed.*); *Id.* § 661, n. g.
- Doupe v. Genin**, 1 *Sweeny*, 25; s. c., 37 *How. Pr.* 5. Aff'd in 45 *N. Y.* 119. See *Witty v. Matthews*. Decision in 45 *N. Y.* disting'd with *Witty v. Matthews*, 52 *Id.* 512 (Liability of lessor to repair) in *Avery v. City of Syracuse*, 29 *Hun.* 537. Approved in *Fox v. Abbott*, 16 *Weekly Dig.* 159.
- Dow, Ex parte**, 1 *Cow.* 205. Overruled (Adjudication as to settlement of paupers) in *People v. Supervisors of Oswego*, 2 *Wend.* 291; *Ex parte Overseers of Gates*, 4 *Cow.* 137.
- Dow v. Platner**, 16 *N. Y.* 562. Explained (Assignment for benefit of creditors—trust in assignor's favor) in *Burrill on Assign.* § 200, n. 4, 4 ed.
- **v. Smith**, 1 *Cai.* 32. Collated with other cases (Effect of adjustment of claim for insurance) in 35 *Am. R.* 775, n.
- **v. Way**, 64 *Barb.* 255. Discussed (Statute of frauds—verbal contracts—collateral agreements) in *Browne on Stat. of Frauds*, § 117, b, 4 ed.
- **v. Whelton**, 8 *Wend.* 160. See to the contrary (Contract of insurance—intention of parties) *Ionides v. Pacific Ins. Co.*, *L. R.* 7 *Q. B.* 517; 6 *Id.* 674; s. c., 6 *Am. L. Rev.* 297. See *Abb. Tr. Ev.* 478.
- Dowd, Matter of**, 58 *How. Pr.* 107; s. c. as *Dowd's Will*, 8 *Abb. N. C.* 118.
- Dowdle v. Camp**, 12 *Johns.* 451. See *Abbott v. Draper*; *Lockwood v. Burnes*. Followed (Recovery back of money paid on land contract) in *Sims v. Hutchins*, 8 *Smedes & M. (Miss.)* 328; s. c., 47 *Am. Dec.* 90. Questioned with *Abbott v. Draper*, 4 *Den.* 51; *Rice v. Peet*, 15 *Johns.* 503; *Thayer v. Rock*, 13 *Wend.* 53, in *Scott v. Bush*, 26 *Mich.* 418; s. c., 12 *Am. R.* 311, 313.
- Dowdney v. Mayor, &c. of N. Y.**, 54 *N. Y.* 186. Disting'd (Existence of assessment as lien) in *De Peyster v. Murphy*, 66 *Id.* 622. Compare as to taxes generally, *Edwards v. Cogswell*, 1 *Sup'm. Ct. (T. & C.)* 416.
- Dowe v. Schutt**, 2 *Den.* 621. See *Acby v. Rapelye*. Followed (Estoppel to set up usury in note) in *Chamberlain v. Townsend*, 7 *Abb. Pr.* 31; *Mason v. Anthony*, 3 *Abb. Ct. App. Dec.* 208; *Mechanic's Bk. of Brooklyn v. Townsend*, 29 *Barb.* 575; *Ferguson v. Hamilton*, 35 *Id.* 435. Explained by *MARVIN, J.*, in *Truscott v. Davis*, 4 *Id.* 501. Commented on in *Bank of Genesee v. Patchin Bk.*, 13 *N. Y.* 316. Applied (What is not accommodation paper) in *McSpedon v. Troy City Bk.*, 3 *Abb. Ct. App. Dec.* 138, which aff'd 33 *Barb.* 84, which see; *Coburn v. Baker*, 6 *Duer*, 537; *Burhans v. Carter*, 13 *Hun.* 153, 157; *Davis v. McCready*, 17 *N. Y.* 232. Disting'd in *Catlin v. Gunter*, 11 *Id.* 372. Explained in *Bayliss v. Cockcroft*, 81 *Id.* 372. Disting'd (Note as subject of sale) as inapplicable to case of a mortgage, in *Bank of Albion v. Burns*, 2 *Lans.* 55.
- Dowling v. Bucking**, 52 *N. Y.* 638. Fully reported in 15 *Abb. Pr. N. S.* 190. Followed (Liability of assignee of collateral security for costs) in *Peck v. Yorks*, 75 *N. Y.* 424. Compare *Code Civ. Pro.* § 3247.
- Down v. McGourkey**, 15 *Hun.* 444. Aff'd, it seems, in 78 *N. Y.* 614, but without opinion. See *Noyes v. Children's Aid Society*.
- Downer v. Eggleston**, 15 *Wend.* 51. Examined with *Sherman v. Ballou*, 8 *Cow.* 304 (Set-off and recoupment) in *Pierce v. Hoffman*, 4 *Wisc.* 278. Explained at length (Agreement preventing set-off) in *Gutchess v. Daniels*, 49 *N. Y.* 613, which rev'd 58 *Barb.* 401, which see.
- **v. Madison Co Bank**, 6 *Hill.* 648. See to the contrary (Liability of banks as collecting agents) *Guelick v. Nat. State Bank of Burlington*, 56 *Iowa*, 436, citing many cases.
- **v. Remer**, 21 *Wend.* 10. Rev'd in 23 *Id.* 620; 25 *Id.* 277; opinion of VERPLANCK, Senator, being given in 25 *Id.* Whether the reversal can be deemed to have settled any principles, *Query?* But see (Sufficiency of service of notice on indorser) *Seneca County Bank v. Neass*, 3 *N. Y.* 442.
- **v. Thompson**, 2 *Hill.* 137. Rev'd in 6 *Id.* 208; s. c., 16 *N. Y. Com. L. Law. ed.* 334, with brief note. Subsequent decision in 6 *Hill.* 377. Decision in 2 *Hill* explained (Effect of delivery to carrier, as delivery to vendee) in *Hague v. Porter*, 3 *Id.* 141. Followed as not affected on this point by reversal (Passing of title to property sold) in *Field v. Moore*, 1 *Hill & D.* 422. Decision in 6 *Hill.* 377 explained (Amendment of declaration) in *Alston v. Mechanic's Mut. Ins. Co.*, 1 *How. Pr.* 85. Explained (Sales—waiver of extra delivery) in 1 *Benj. on Sales*, § 534 (Corbin's 4 *Am. ed.*).
- Dowues v. Phoenix Bank**, 6 *Hill.* 297; s. c., 16 *N. Y. Com. L. Law. ed.* 365, with brief note. Approved (Necessity of demand before suit) in *Payne v. Gardiner*, 29 *N. Y.* 146, 169. Applied with *Howland v. Edmonds*, 24 *Id.* 307, in *Brown v. Brown*, 23 *Minn.* 502.
- Downing v. Kelly**, 49 *Barb.* 547. Appeal dismissed in 48 *N. Y.* 433. Decision in 48

- N. Y.* re-aff'd (Opinion of general term, when not to be resorted to) in *Kirkland v. Leary*, 50 *Id.* 678.
- *v. Mann*, 9 *How. Pr.* 204; s. c., more fully, 3 *E. D. Smith*, 36.
- *v. Marshall*, 23 *N. Y.* 366. Dissenting opinion of DAVIES, J., in 23 *How. Pr.* 4. Decision as to costs in 37 *N. Y.* 394. See *Lang v. Ropke*. Decision in 23 *N. Y.* applied (Powers in trust) in *McGrath v. Van Stavoren*, 8 *Daly*, 460; *Blanchard v. Blanchard*, 4 *Hun*, 287, 292; *Garvey v. McDevitt*, 11 *Id.* 461. Approved in *N. Y. Dry Dock Co. v. Stillman*, 30 *N. Y.* 193. Followed in *Crittenden v. Fairchild*, 41 *Id.* 292. Disting'd (Devise void for alienage) in *Hall v. Hall*, 81 *Id.* 138. Disting'd (Continuance of trust beyond life of beneficiary) in *Thomson v. Thomson*, 55 *How. Pr.* 511. Applied (Capacity of society to take personal property by testamentary gift) on *Sherwood v. American Bible Society*, 4 *Abb. Ct. App. Dec.* 231; *Harris v. Slaght*, 46 *Barb.* 504, which was rev'd in 4 *Abb. Pr. N. S.* 426, which see; *Betts v. Betts*, 57 *How. Pr.* 355, n. Disting'd in *Burrill v. Boardman*, 43 *N. Y.* 206. Applied (Operation of statute of uses) in *Eysaman v. Eysaman*, 24 *Hun*, 430, 433. Collated with other cases (Effect of R. S. on trusts) in *Gerard Titles to Real Est.* 2 ed. 272. See (Voluntary associations) *Ebbinghausen v. Worth Club*, 4 *Abb. N. C.* 300. Discussed (Trust to receive and pay over rents and profits) in 4 *Kent. Com.* 313, n. 1. *Comstock's ed.* Applied (Invalidity of charitable trusts) in *Levy v. Levy*, 33 *N. Y.* 121; *Bascom v. Albertson*, 34 *Id.* 594. Examined with *Beekman v. Bonsor*, 23 *Id.* 298; *Williams v. Williams*, 8 *Id.* 525; *Owens v. Missionary Society of the M. E. Church*, 14 *Id.* 380, in *Grimes' Executors v. Harmon*, 35 *Ind.* 198; s. c., 9 *Am. R.* 690, 693, 694, 717. Quoted in 1 *Jarm. on Wills*, Rand. and T. ed. 410, n. Applied with *McCartee v. Orphan Asylum*, 7 *Cov.* 437 (Disability of corporations to take and hold real estate) in *Starkweather v. American Bible Society*, 72 *Ill.* 50; s. c., 22 *Am. R.* 133. Collated with other cases in 18 *Am. Dec.* 542, n. Decision in 37 *N. Y.* followed (Costs in action for construction of will) in *Rose v. Rose Assoc.*, 28 *Id.* 190; *Wetmore v. Parker*, 52 *Id.* 466. Applied (Costs in equity actions discretionary under the Code) in *Black v. O'Brien*, 23 *Hun*, 82, 85. Followed (Equity without jurisdiction to order costs, independent of statute) in *Sheehan v. Huerstil*, 46 *Super. Ct. (J. & S.)* 64. Applied (Review of order granting allowance) in *Leslie v. Leslie*, 6 *Abb. Pr. N. S.* 193. Disting'd (Right of one acting in *autre droit*, to indemnity for expenses) in *Crofut v. Brandt*, 5 *Daly*, 124, 127.
- *v. Rugar*, 21 *Wend.* 178; s. c., 34 *Am. Dec.* 223, with note, wherein are collected citations. Cited as authority (Presumption that act of public duty was duly performed) in *Scott v. Lessee, &c.*, 1 *Doug. (Mich.)* 150. Applied (Execution of power delegated to several) in *First Nat. Bk. of North Bennington v. Town of Mt. Tabor*, 52 *Vt.* 87; s. c., 36 *Am. R.* 734, 739. Shown in 1 *Am. Dec.* 200, n., to lay down a rule which has been frequently applied.
- DOWNS v. N. Y. Central R. R. Co.**, 47 *N. Y.* 83. Further decision in 1 *Sup'm. Ct. (T. & C.)* 20, which was aff'd in 56 *N. Y.* 664. With decision in 47 *Id.* see other cases collected (Contributory negligence of parent, &c.) in 6 *Abb. N. C.* 116, n. Doctrine discussed and cases cited, in 12 *Am. L. Reg. N. S.* 758. Collated with other cases, in 2 *Thomps. on Negl.* 1181. Cited with *McCormick v. Penn. Central R. R. Co.*, 49 *N. Y.* 315 (Admissibility of memoranda in evidence) in 1 *Whart. Com. on Ev.* § 522, n.
- *v. Ross*, 23 *Wend.* 270. See *Bennett v. Hall*; *Bronson v. Wiman*. Compare (What is sale within statute of frauds) *Bronson v. Wiman*, 10 *Barb.* 406, with which it is said to conflict, in *Ferron v. O'Hara*, 62 *Id.* 517. Referred to as overruled, in *Passaic Manuf. Co. v. Hoffman*, 3 *Daly*, 495. Doctrine explained and compared, in *Cooke v. Millard*, 65 *N. Y.* 361. Compared in 13 *Am. L. Reg. N. S.* 734. Quoted and explained in 2 *Story on Contr.* 5 ed. § 1005, n. 2. Quoted in *Benj. on Sales*, § 109, n. 8 (*Corbin's* 4 *Am. ed.*). Cited as a case in which the subject was discussed with great ability by *BRONSON, J.*, and cases reviewed—in *Id.* § 109, n. 3 (*Bennett's* 4 *Am. ed.*).
- *v. Sprague*. See *Tinney v. N. J. Steamboat Co.*
- DOWS v. Greene**, 16 *Barb.* 72. Further decision in 32 *Id.* 490, which was aff'd in 24 *N. Y.* 638. Decisions in 16 *Barb.*; 24 *N. Y.* with *Dows v. Rush*, 28 *Barb.* 183; *Dows v. Perrin*, 16 *N. Y.* 325; *Bank of Rochester v. Jones*, 4 *Id.* 497, followed as decisive authorities (What is a bill of lading) in *Rawls v. Deshler*, 4 *Abb. Ct. App. Dec.* 12, 19. Decision in 24 *N. Y.* disting'd in *Mechanics' & Trad. Bk. v. Farmers' & Mech. Nat. Bk.*, 60 *N. Y.* 40, 49, 52. Decision in 32 *Barb.* disting'd (Effect of bill of lading in passing title) in *Pattison v. Culton*, 33 *Ind.* 240; s. c., 5 *Am. R.* 199.
- *v. Kidder*, 45 *Super. Ct. (J. & S.)* 639. Aff'd in 84 *N. Y.* 121. Decision in 84 *N. Y.* quoted (Sales of specific chattels unconditionally) in 1 *Benj. on Sales*, § 339 (*Corbin's* 4 *Am. ed.*).
- *v. McMichael*, 2 *Paige*, 345. See *Fish v. Miller*. Followed and approved (Relief to which complainant is entitled, in case of plea being found false) in *Hurlbut v. Britain*, 2 *Doug. (Mich.)* 194. Applied in *Kennedy v. Creswell*, 101 *U. S.* 641, 645.
- *v. Perrin*, 16 *N. Y.* 325. For cases arising on same facts see *Dows v. Greene*, 16 *Barb.* 72; *Dows v. Rush*, 28 *Id.* 157. Applied (Parol authority to execute instrument) in *Bank of North America v. Embury*, 33 *Id.* 325. Examined (Construction of

- bill of lading) in *First Nat. B'k of Toledo v. Shaw*, 61 *N. Y.* 292. Criticised as too restricted and not involved in the judgment, — (Negotiability of bills of lading) in *Dows v. Rush*, 28 *Barb.* 185. Applied (*Bona fide* holder of bill of lading) in *Wilmot v. Richardson*, 7 *Bosw.* 589. Disting'd (Rights of transferee of bill of lading) in *Blossom v. Champion*, 28 *Barb.* 223; *Holbrook v. Vose*, 6 *Bosw.* 111; *Meyer v. Peck*, 28 *N. Y.* 599. Compare *Wolfe v. Myers*, 3 *Sandf.* 7; *Covill v. Hill*, 4 *Den.* 323. Quoted (Sale—stoppage in transitu) in 2 *Benj. on Sales*, § 1286, *n.* 27 (Corbin's 4 *Am. ed.*).
- **v. Rush**. See *Dows v. Greene*.
- Dox v. Backenstose**, 12 *Wend.* 542. Questioned (Enforcement of judgments against decedent's estate) in *Marine Bank of Chicago v. Van Brunt*, 49 *N. Y.* 160, 164.
- **v. Dey**. See *Cook v. Ferral*.
- Doyle v. Gibbs**. See *People ex rel. Hubbard v. Annis*.
- **v. Lord**, 48 *How. Pr.* 142; *s. c.*, more fully, with affirmance, in 39 *Super. Ct. (J. & S.)* 421, which was rev'd in 64 *N. Y.* 432; *s. c.*, 21 *Am. R.* 629. See (Implied covenants in leases for years) 2 *Abb. N. Y. Dig.* 472–3. Decision in 64 *N. Y.* explained and followed (Ancient lights) in *Shipman v. Beers*, 2 *Abb. N. C.* 435, 438. Commented on in *Wood on Nuis.* 2 *ed.* § 155. Quoted and commented on (Lease—"apportances") in *McAdam on Landl. & T.* 2 *ed.* § 63.
- **v. Peerless Petroleum Co.**, 44 *Barb.* 239. Disting'd (Title acquired by grantor subsequent to execution of conveyance) in *Tefft v. Munson*, 63 *Id.* 31, 38.
- **v. Russell**, 30 *Barb.* 300. Disting'd (Action for false imprisonment) in *Dusenbury v. Keiley*, 85 *N. Y.* 383. Collated with other cases and explained, in *Bigel. Cas. on Torts*, 277.
- **v. Sharpe**, 41 *Super. Ct. (J. & S.)* 312. Mem. of confirmation in 43 *Id.* 545, which was aff'd in 74 *N. Y.* 154, and that rev'd in *Sharpe v. Doyle*, 102 *U. S.* 686. Decision in 74 *N. Y.* explained (Seizure by marshal) in *Diderick v. Fiske*, 59 *How. Pr.* 73.
- Drake v. Cockroft**, 4 *E. D. Smith*, 34. Explained (Counter-claim in action for rent) in *Walker v. Shoemaker*, 4 *Hun.* 579.
- **v. Goodridge**, 54 *Barb.* 78. Rev'd (Sufficiency of notice of attachment) in *Clarke v. Same*, 41 *N. Y.* 210.
- **v. Hudson River R. Co.**, 7 *Barb.* 508. Explained and applied (Right of owner of property abutting on street occupied by railroad) in *Caro v. Metrop. Elev. Ry. Co.*, 46 *Super. Ct. (J. & S.)* 138, 161. Explained in *Kellinger v. Forty-second Street, &c. R. R. Co.*, 50 *N. Y.* 211. Followed in *Greene v. N. Y. Central, &c. R. R. Co.*, 12 *Abb. N. C.* 124.
- **v. Mayor, &c. of N. Y.**, 77 *N. Y.* 611. Former decision in another action, in 7 *Lans.* 340.
- **v. Miller**, *Col. & C. Cas.* 89. Overruled (Process as invalidated by return) in *Williams v. Rogers*, 5 *Johns.* 163; *Morrell v. Waggoner*, *Id.* 233.
- **v. Price**, 7 *Barb.* 388. Aff'd in 5 *N. Y.* 430. See *Valentine v. Valentine*; *Westerfield v. Westerfield*. Decision in 5 *N. Y.* followed (Commissions of executors, &c.) in *Betts v. Betts*, 4 *Abb. N. C.* 317, 437. Explained in *Matter of Carman*, 3 *Redf.* 48. Applied in *Hall v. Hall*, 78 *N. Y.* 535, 539. Decision in 7 *Barb.* explained in *Ward v. Ford*, 4 *Redf.* 34, 44.
- Draper v. Commercial Ins. Co.**, 4 *Duer*, 234. Rev'd in 21 *N. Y.* 378.
- **v. Day**, 11 *How. Pr.* 439. Explained (Referable action) in *Batchelor v. Albany City Ins. Co.*, 6 *Abb. Pr. N. S.* 240.
- **v. Romeyn**, 18 *Barb.* 166. Disting'd (Discharge of surety by agreement for extension) in *Abel v. Alexander*, 45 *Ind.* 523; *s. c.*, 15 *Am. R.* 270, 273. Approved in *Berry v. Pullen*, 69 *Me.* 101; *s. c.*, 31 *Am. R.* 248.
- **v. Snow**, 6 *Duer*, 662. Aff'd in 20 *N. Y.* 331. See *Leonard v. Vredenburg*. Decision in 20 *N. Y.* applied (Guaranty, when not within statute of frauds) in *Thomas v. Murray*, 32 *Id.* 605, 615. Applied (Parol evidence of date of execution of written agreement) in *Weller v. Hersee*, 10 *Hun.* 431, 434.
- **v. Stouvenel**, 38 *N. Y.* 219. See decision in action brought in *Super. Ct.* in 35 *Id.* 507.
- **v. Sweet**. See *Hamilton v. McPherson*.
- Dresser v. Ainsworth**, 9 *Barb.* 619. Explained and cited as a valuable case (Sales of chattels—warranty of title) in 1 *Pars. on Contr.* 575, *n. e.* Quoted in 2 *Story on Contr.* 5 *ed.* § 1062, *n.* 3.
- **v. Brooks**, 3 *Barb.* 429. See *Clark v. Rowling*. Commented on (Supplying defect in evidence) in *Fry v. Bennett*, 1 *Abb. Pr.* 289, 316. Disting'd as inapplicable under act of 1867, with *Clark v. Rowling*, 3 *N. Y.* 216 (Effect of discharge in bankruptcy on judgment) in *Boynton v. Ball*, 105 *Ill.* 627, 633, 636. Compare *Moore v. Upton*, 50 *N. Y.* 593.
- **v. Dresser**, 35 *Barb.* 573. Subsequent proceeding in 40 *Id.* 300, which was rev'd in *Ct. of App.*, without passing on this question. See *Woolever v. Knapp*. Decision in 35 *Barb.* followed (Validity of parol contract that is to terminate with death of party) in *Kent v. Kent*, 3 *Sup'm. Ct. (T. & C.)* 630, which was reversed in 62 *N. Y.* 560, which see.
- **v. Wickes**, 2 *Abb. Pr.* 460. See *Stoddard v. Clark*. Overruled (Costs on several issues) in *Stoddard v. Clark*, 9 *Abb. Pr. N. S.* 310. See *Code Civ. Pro.* 1881, § 3234, *n.*
- Drew v. Sixth Ave. R. R. Co.**, 26 *N. Y.* 49. See *Higgins v. Watervliet Turnpike Co.*; *Isaacs v. Third Ave. R. R. Co.* Explained (Infantile negligence) in *Mowrey v. Central*

- City R'y, 66 *Barb.* 43, 54, 56. Collated with other cases, in 2 *Thomps. on Negl.* 1188.
- *v.* —, 3 *Keyes*, 429. Explained (Duty of brakeman and drivers, as to helping passengers to enter or alight) in 1 *Add. on Torts*, 591, *n.*, Wood's ed.
- Driggs v. Dwight**, 17 *Wend.* 71; *s. c.*, 31 *Am. Dec.* 283, with note, wherein are collected citations (Measure of damages for not performing contract). See *Bush v. Cole*; *Brinckerhoff v. Phelps*; *Staats v. Ten Eyck*; *Trull v. Granger*. Explained with *Trull v. Granger*, 8 *N. Y.* 115; *Brinckerhoff v. Phelps*, 24 *Barb.* 100, in *Bush v. Cole*, 28 *N. Y.* 261, as not overruled (Liability of vendor who contracts to sell lands to which he has no color of title) in *Conger v. Weaver*, 20 *Id.* 140. Followed (Recovery of expenses as damages) in *Farwell v. Davis*, 66 *Barb.* 73, 82.
- *v. Rockwell*. See *Bay v. Coddington*.
- *v. Simson*, 3 *Sup'm. Ct. (T. & C.)* 786. Aff'd in 60 *N. Y.* 641.
- *v. Smith*, 36 *Super. Ct. (J. & S.)* 283; *s. c.*, 45 *How. Pr.* 447. Another proceeding in 47 *Id.* 211.
- Drinkwater v. Dinsmore**, 16 *Hun.* 250. Rev'd in 80 *N. Y.* 390. Decision in 80 *N. Y.* explained and case cited to the contrary (Personal injury—medical attendance) in *Moak's Underhill's Torts*, 1 *Am. ed.* 79.
- Driscoll v. Mayor, &c. of N. Y.**, 11 *Hun.* 101. Applied with *Darling v. Mayor, &c. of N. Y.*, 18 *Id.* 340; *Evans v. City of Utica*, 69 *N. Y.* 166 (Care required in one using sidewalk) in *Thomas v. Mayor, &c. of N. Y.*, 28 *Hun.* 110. Applied to one injured by railroad switch,—in *Lowrey v. Brooklyn City, &c. R. R. Co.*, 4 *Abb. N. C.* 32, 40. Applied with *Plank v. N. Y. Central, &c. R. R. Co.*, 60 *N. Y.* 607, to one injured on ship, in *The Carl, etc., U. S. Dist. Ct. S. D. N. Y.* 18 *Fed. Rep.* 655.
- *v. Newark & Rosendale Lime, &c. Co.* See *Nicholson v. Erie R'y Co.*
- *v. West Bradley, &c. M. Co.*, 36 *Super. Ct. (J. & S.)* 488. Aff'd in 59 *N. Y.* 96. Decision in 59 *N. Y.* referred to in 11 *Am. Dec.* 581, *n.*, as a well considered case, but shown to be at variance with decisions in Missouri. Approved (Power of corporation to make by-laws regulating transfers of stock) in *Anglo-California Bank v. Granger's Bank*, 63 *Cal.* 359, 364.
- Drummond v. Burrell**, 13 *Wend.* 307. Explained (Contracts not to be performed within a year) in *McKinney v. McKinney*, 8 *Daly*, 368, 370.
- *v. Husson*, 14 *N. Y.* 60. Disting'd (Liability of sureties on undertaking) in *McSpedon v. Bouton*, 5 *Daly*, 30, 32. Examined and approved in *Palmer v. Foley*, 71 *N. Y.* 106, 109. Denied in *Simpson v. Prather*, 5 *Oreg.* 86.
- *v.* —, 1 *Duer*, 633. Disting'd and limited (Effect of decision of demurrer relating to part of pleading) in *Mora v. Sun Mutual Ins. Co.*, 13 *Abb. Pr.* 304.
- Drury v. Clark**, 16 *How. Pr.* 424. Explained (Parties and pleading in foreclosure) in *Frost v. Koon*, 30 *N. Y.* 428, 448.
- *v. Russell*, 27 *How. Pr.* 130. Followed as a decisive authority (Service on attorney) in *Miller v. Miller*, 37 *Id.* 1.
- Dry Dock Bank v. Am. Life Ins. & Trust Co.**, 3 *N. Y.* 344. See *Schermerhorn v. Talman*. Referred to as leading to act of 1850 (Defense of usury by corporations) in *Butterworth v. O'Brien*, 23 *N. Y.* 275. Disting'd in *Thomas v. Murray*, 24 *Barb.* 157, 167, 171; and see *Williams v. Fowler*, 22 *How. Pr.* 4, 6.
- Dry Dock, &c. R. R. Co. v. N. Y. & Harlem R. R. Co.**, 30 *How. Pr.* 39. Rev'd in 54 *Barb.* 388. Latter decision with points of counsel, at length, in 32 *How. Pr.* 193.
- Dubois v. Baker**, 30 *N. Y.* 355. Followed (Admissibility of expert testimony to test writings) in *Frank v. Chemical Nat. Bank of N. Y.*, 37 *Super. Ct. (J. & S.)* 26, 31. Explained in *Johnson v. Hicks*, 1 *Lans.* 150, 160. Applied in *Miles v. Loomis*, 10 *Hun.* 372, 376, which was aff'd in 75 *N. Y.* 288, which see. Collated, with other cases, in 1 *Whart. Com. on Ev.* § 718.
- *v. Beaver*, 25 *N. Y.* 123. Aff'g *Relyea v. Beaver*, 34 *Barb.* 547. Decision in 25 *N. Y.* applied (Joinder of distinct causes of action in single count) under the Code,—in *Richardson v. Northrup*, 66 *Barb.* 85, 87. Compare *Code Civ. Pro.* § 483.
- *v. Budlong*, 15 *Abb. Pr.* 445. Explained (Retaining injunction where plaintiff's allegations are controverted) in *Secor v. Weed*, 7 *Robt.* 67. Commented on with other cases (What constitutes nuisance) in *Heeg v. Licht*, 8 *Abb. N. C.* 355, 360.
- *v. Cassidy*, 75 *N. Y.* 298. See *Rockwell v. Merwin*. Disting'd (Right of receiver to maintain partition action) in *Rutherford v. Hewey*, 59 *How. Pr.* 231, 237, as inapplicable to assignee in bankruptcy. See also *Payne v. Becker*, 22 *Hun.* 28, 32.
- *v. City of Kingston*, 30 *Hun.* 500. Appeal dismissed in 87 *N. Y.* 634, but without opinion. Decision in 20 *Hun.* not followed (Prospective operation of statute of limitations) in *Carpenter v. Shimer*, 24 *Id.* 464.
- *v. Delaware & Hudson Canal Co.*, 4 *Wend.* 285. Further decision in 12 *Id.* 334, which was aff'd in 15 *Id.* 87. See *Randall v. Van Vechten*. Decision in 4 *Wend.* explained (Personal liability of officer of corporation on contract) in *Bellinger v. Bentley*, 4 *Sup'm. Ct. (T. & C.)* 71, 74. Explained (Contracts for work, labor and services) in 2 *Chitty on Contr.* 830, *n.* 1, 11 *Am. ed.* Quoted (Contracts—breach by one party as a defense) in 2 *Pars. on Contr.* 679, *n.* *x.*
- *v. Dubois*, 6 *Cov.* 494. Cited as authority (Money in custody of officer on process not subject to levy or attachment) in *Hardy v. Tilton*, 68 *Me.* 195; *s. c.*, 28 *Am. R.* 34, with note, collating cases.
- *v. Hermance*, 1 *Sup'm. Ct. (T. & C.)* 293. Aff'd in 56 *N. Y.* 673.

- **v. Miller**, 5 *Hun*, 332. Explained (Loss of support as ground of action under Civil Damage Act) in *Quain v. Russell*, 8 *Hun*, 319. Compared with other cases, in *Mead v. Stratton*, 87 *N. Y.* 497.
- Du Bois v. Ray**, 7 *Bosw.* 244. Rev'd in 35 *N. Y.* 162; s. c., 33 *How. Pr.* 292.
- **v. Sands**, 43 *Barb.* 412. Disting'd (Jurisdiction of surrogate to enforce payment of trust funds) in *Savage v. Olmstead*, 2 *Redf.* 478, 481.
- **v. Thompson**, 1 *Daly*, 309. Disting'd (Arrest of factor) in *Trunninger v. Bush*, 7 *Id.* 124, 126.
- Ducker v. Rapp**, 41 *Super. Ct. (J. & S.)* 235. Rev'd in part in 67 *N. Y.* 464.
- Duckworth v. Roach**, 8 *Daly*, 159. Aff'd in 81 *N. Y.* 49.
- Duden v. Waitzfelder**, 2 *Abb. N. C.* 295. Further decision in 16 *Hun*, 337. Decision in 2 *Abb. N. C.* followed (New trial after dismissal of complaint) and *Van Doren v. Horton*, 19 *Hun*, 7; *Dusenbury v. Dusenbury*, 1 *Civ. Pro. R.* 292; *Hill v. Hotchkiss*, 24 *Hun*, 414, disapproved in *Pollock v. Wannamaker*, 65 *How. Pr.* 508.
- Dudley v. Bolles**. See *People v. Vane*.
- **v. Hawley**, 40 *Barb.* 397. Aff'd as *Sprights v. Hawley*, in 39 *N. Y.* 441.
- **v. Mayhew**, 3 *N. Y.* 9. Applied (State courts, when without jurisdiction in questions respecting patent rights) in *Tomlinson v. Battel*, 4 *Abb. Pr.* 269. Re-aff'd in *Hovey v. Rubber Tip Pencil Co.*, 57 *N. Y.* 125. Disting'd as inapplicable to case arising out of bankrupt law,—in *Gilbert v. Priest*, 63 *Barb.* 348; *Gilbert v. Crawford*, 46 *How. Pr.* 224; *Cook v. Whipple*, 55 *N. Y.* 163. To action founded on contract,—in *Middlebrook v. Broadbent*, 47 *Id.* 446. Approved in *Judson v. Union Rubber Co.*; *Tomlinson v. Battel*, *Law's Dig. of Pat. & Cop. L.* 78. Applied (Assent cannot confer jurisdiction) in *Harriott v. N. J. R. R. Co.*, 8 *Abb. Pr.* 286; *Ansonia Brass & Copper Co. v. New Lamp Chimney Co.*, 64 *Barb.* 435, 438. Applied (Right, when confined to statutory remedy) in *Hollister v. Hollister Bk.*, 2 *Abb. Ct. App. Dec.* 370; *Lowry v. Inman*, 6 *Abb. Pr. N. S.* 401; *First Nat. Bk. of Whitehall v. Lamb*, 57 *Barb.* 434; *People v. Green*, 1 *Hun*, 11; *Matter of Townsend*, 4 *Id.* 31, 33; *Davidson v. Mayor, &c. of N. Y.*, 2 *Robt.* 242. Disting'd in *Smith v. City of Albany*, 7 *Lans.* 18; *People ex rel. Hatzel v. Hall*, 80 *N. Y.* 125. Applied with *Almy v. Harris*, 5 *Johns.* 175; *McKeon v. Caherty*, 3 *Wend.* 494; *Renwick v. Morris*, 7 *Hill*, 575; *People v. Hazard*, 4 *Id.* 207; *People v. Hall*, 80 *N. Y.* 117, in *Pentlarge v. Kirby*, *U. S. Dist. Ct. S. D. N. Y.* 19 *Fed. Rep.* 506. Relied on in *Corey v. Ripley*, 57 *Me.* 69; s. c., 2 *Am. R.* 19.
- Duer v. Small**. See *People ex rel. Hoyt v. Comm'rs of Taxes*.
- Duff, Matter of**. See *White v. Munroe*.
- Duffany v. Furgeson**, 5 *Hun*, 106. Rev'd as *Duffany v. Ferguson*, and re-argument denied in 65 *N. Y.* 482. Decision in 66 *N. Y.* explained in *Scott v. Stebbins*, 27 *Hun*, 335, as not being a bar to the action there brought.
- Duffee v. Mason**, 8 *Cow.* 25. See *Chapman v. Murch*. Quoted (Question of warranty in parol contracts of sale—whether for jury) in *Borrekin v. Bevan*, 3 *Rawls (Pa.)* 23; s. c., 23 *Am. Dec.* 85, 91, with note.
- Duffield v. Horton**, 10 *Hun*, 140. Aff'd in 73 *N. Y.* 218. Decision in 73 *N. Y.* cited as authority with other cases (Parties claiming under attachment, when becoming liable as for conversion, through subsequent institution of bankruptcy proceedings) in *Conner v. Long*, 104 *U. S.* 228, the cases of *Savacool v. Boughton*, 5 *Wend.* 170; *Webber v. Gay*, 24 *Id.* 485, being followed as denying the liability of the sheriff.
- Duffy v. Donovan**, 52 *N. Y.* 634. See brief note of decision below, in 7 *Alb. L. J.* 414.
- **v. Duncan**, 32 *Barb.* 587. Aff'd in 35 *N. Y.* 187. Decision in 35 *N. Y.* quoted (Assignment for benefit of creditors—assignee's compensation) in *Burrill on Assign.* § 145, n. 7, 4 ed. Quoted and explained (Assignee continuing business) in *Id.* § 397. Commented on (Expenses of the trust) in *Id.* § 418, n. 4.
- **v. Lynch**, 36 *How. Pr.* 509. Examined with other cases (Right to examination before trial) in *Phoenix v. Dupuy*, 7 *Daly*, 238, 242.
- **v. N. Y. & Harlem R. R. Co.** See *Adams v. Van Alstyne*.
- **v. People**, 1 *Hill*, 355. Rev'd in 6 *Id.* 75.
- **v. —**, 26 *N. Y.* 588. Aff'g 5 *Park.* 321. Decision in 26 *N. Y.* applied (State-ments, &c. of person under duress, in evidence) in *State v. Graham*, 74 *N. C.* 646; s. c., 21 *Am. R.* 493.
- **v. Thompson**, 1 *Abb. Pr.* 326, n.; s. c., fully reported, in 4 *E. D. Smith*, 178.
- **v. Wunsch**, 8 *Abb. Pr. N. S.* 113; s. c., more fully, 42 *N. Y.* 243. See *Leonard v. Vredenburg*. Decision in 42 *N. Y.* disting'd (What is promise to answer for debt of another) in *Prime v. Koehler*, 7 *Daly*, 345, 352.
- Dugro, Matter of**, 50 *N. Y.* 513. Collated with other cases (Municipal contracts—inviting proposals) in 5 *Abb. N. C.* 41, n.
- Duguet v. Rhineland**, 1 *Johns. Cas.* 360. Rev'd in 2 *Id.* 476; s. c., 1 *Cal. Cas.* 25. Decision in 1 *Johns. Cas.* cited with *Jackson v. N. Y. Ins. Co.*, 2 *Id.* 191, as showing the prevailing doctrine in this country, though contrary to *Grotius*, *Vattel*, and *Puffendorf* (Rights of emigrant from belligerent country) in *Waples Proc. in Rem.* § 288.
- Duguid v. Edwards**, 50 *Barb.* 288. Rev'g 32 *How. Pr.* 254. See *Whitaker v. Chapman*. Decision in 50 *Barb.* cited (Commission merchant acts in fiduciary capacity) in *Lemcke v. Booth*, 47 *Mo.* 385; s. c., 4 *Am.*



- R.* 326. Decision in 32 *How. Pr.* collated with other cases in *Thomps. on Prov. Rem.* 30.
- *v. Ogilvie*, 1 *Abb. Pr.* 145. Examined (Power of referee) in *Ayrault v. Sackett*, 9 *Id.* 154, *n.*
- Duigan v. Hogan**, 1 *Bosw.* 645. Followed (Injunction against supplementary proceedings) in *Marks v. Wilson*, 11 *Abb. Pr.* 87.
- Duke of Cumberland v. Codrington.** See *Cumberland v. Codrington*.
- *v. Graves*, 7 *N. Y.* 305. See *Morrison v. N. Y. Central R. R. Co.* Approved and followed as to validity of titles here involved,—in *People v. Snyder*, 41 *N. Y.* 397.
- Dunbar v. Williams**, 10 *Johns.* 249. See *Bartholomew v. Jackson*. Applied (Recovery for gratuitous services) in *Hewitt v. Bronson*, 5 *Daly*, 1, 6. Explained in 2 *Pars. on Contr.* 41, *n. u.*
- Duncan v. Berlin**, 5 *Robt.* 547; *s. c.*, 4 *Abb. Pr. N. S.* 34. Rev'd in 11 *Id.* 116. See *Lunt v. Bank of North America*.
- *v.* —, 38 *Super. Ct. (J. & S.)* 31. Aff'd in 60 *N. Y.* 151.
- *v. Blair*, 5 *Den.* 196. Doubted (Parol evidence) in 12 *Moak's Eng. R.* 243, *n.*
- *v. De Witt*, 49 *How. Pr.* 131. Another proceeding in 7 *Hun.* 184. Decision in 7 *Hun.* disting'd (Exercise of discretion in granting extra allowance) and *Morrison v. Agate*, 9 *Weekly Dig.* 286, followed in *Talman v. Syracuse, &c. R. R. Co.*, 31 *Hun.* 397. Explained (Right to discontinue on payment of costs) in *Carpentier v. Wilson*, 14 *Abb. N. C.* 101.
- *v. Dodd*. See *Lansing v. McPherson*; *Williamson v. Dale*.
- *v. Great Western Ins. Co.*, 5 *Bosw.* 369. Aff'd in 1 *Abb. Ct. App. Dec.* 562.
- *v. Katen*, 6 *Hun.* 1. Aff'd, it seems, in 64 *N. Y.* 625, but without opinion.
- *v. Lawrence*, 6 *Abb. Pr.* 304. Disting'd (Denial of plaintiff's title to note) in *Hays v. Southgate*, 10 *Hun.* 511, 514.
- *v. Lyon*, 3 *Johns. Ch.* 351; *s. c.*, 8 *Am. Dec.* 513. Followed (When equity will not grant relief after decision at law) in *Green v. Dodge*, 6 *Ohio*, 80; *s. c.*, 25 *Am. Dec.* 736, with note; *Kearney v. Smith*, 3 *Yerg. (Tenn.)* 127; *s. c.*, 24 *Am. Dec.* 550, with note; *More v. Bagley, Breese (Ill.)* 94; *s. c.*, 12 *Am. Dec.* 144. See *Freeman on Judgments*, § 502. Followed and approved (Unliquidated damages—set-off) in *Dugan v. Cureton*, 1 *Ark.* 31; *s. c.*, 31 *Am. Dec.* 727, 735, with note.
- *v. Spear*, 11 *Wend.* 54. See *Schermerhorn v. Van Volkenburgh*. Followed (Effect of possession of chattels, as against wrongdoer) in *Lowremore v. Berry*, 19 *Ala.* 130; *s. c.*, 54 *Am. Dec.* 188, with note. See 53 *Id.* 207, *n.* Disting'd with *Daniels v. Ball*, 11 *Wend.* 57, *n.*, in *Stearns v. Vincent*, 50 *Mich.* 209; *s. c.*, 45 *Am. R.* 37, 42.
- *v. Stanton*, 30 *Barb.* 533. Rev'd by *Ct. of App.* in *Sept.* 1865.
- *v. Sun Fire Ins. Co.* See *Grim v. Phoenix Ins. Co.*
- Dunckle v. Kocker**, 11 *Barb.* 387. Reviewed with *Jeffrey v. Bigelow*, 13 *Wend.* 518; *Vandenburgh v. Truax*, 4 *Den.* 467; *Guille v. Swan*, 19 *Johns.* 380 (Liability for injurious consequences flowing from illegal or mischievous acts) in *Cate v. Cate*, 50 *N. H.* 144; *s. c.*, 9 *Am. R.* 179. Disting'd (Liability for injuries caused by vicious animal) in *Scott v. Grover*, 56 *Vt.* 499; *s. c.*, 48 *Am. R.* 814.
- *v. Wiles*, 5 *Den.* 296. Subsequent proceedings in 6 *Barb.* 515; 11 *N. Y.* 420, in latter of which decision in 5 *Den.* is approved.
- Duncomb v. N. Y. Housatonic & N. R. R. Co.**, 22 *Hun.* 133. Modified in 84 *N. Y.* 190. Subsequent proceeding in 23 *Hun.* 291, and that aff'd, it seems, in 88 *N. Y.* 1. See *Torrey v. Bank of Orleans*. Decision in 88 *N. Y.* disting'd with *Dutcher v. Importers' & Traders' Bank*, 59 *Id.* 5 (Transfer by corporation in contemplation of insolvency) in *Kingsley v. First Nat. Bk. of Bath*, 31 *Hun.* 329. Decision in 84 *N. Y.* explained and criticised with *Jackson v. N. Y. Central, &c. R. R. Co.*, 2 *Sup'm. Ct. (T. & C.)* 653 (Validity of contracts made by directors of corporations) in *Metropolitan Elevated R'y Co. v. Manhattan R'y Co.*, 14 *Abb. N. C.* 103, 256. Disting'd (Continuance of disabilities arising from peculiar relations sustained by one party to another) in *Marietta & Cincinnati R. R. Co. v. Mowry*, 28 *Hun.* 79.
- Dunderdale v. Grymes**, 16 *How. Pr.* 195. Disting'd (Joint cause of action) in *Bates v. Merrick*, 2 *Hun.* 568, 572.
- Dunford v. Weaver**, 21 *Hun.* 349. Aff'd in 84 *N. Y.* 445.
- Dung v. Parker**, 3 *Daly*, 89. Rev'd in 52 *N. Y.* 495. Decision in 52 *N. Y.* applied with *Rice v. Manley*, 66 *Id.* 87; *Wheeler v. Reynolds*, *Id.* 227; *Roe v. Barker*, 82 *Id.* 431; *O'Neill v. N. Y. Central R. R. Co.*, *Id.* 138 (Invalidity of contract unauthorized by statute of frauds) in *Marie v. Garrison*, 13 *Abb. N. C.* 210, 261. Disting'd in *Rice v. Manley*, 66 *N. Y.* 87, which rev'd 2 *Hun.* 492, which see. Discussed in *Browne on Stat. of Frauds*, § 135, 4 ed. Commented on (Remedy for assumption of authority) in *Noe v. Gregory*, 7 *Daly*, 283, 285.
- Dunham v. Bower**, 77 *N. Y.* 79. See *Gates v. Preston*; *Schwinger v. Raymond*. Disapproved (Effect of former adjudication) in *Resseque v. Byers*, 52 *Wis.* 650.
- *v. Commercial Ins. Co.*, 11 *Johns.* 315; *s. c.*, 6 *Am. Dec.* 374. Approved (Application of rule of allowing one third new for old in case of repairs to vessel) in *Orrock v. Commonwealth Ins. Co.*, 21 *Pick. (Mass.)* 456; *s. c.*, 32 *Am. Dec.* 271, 276, with note.
- *v. Dey*, 13 *Johns.* 40. Aff'd in *Dunham v. Gould*, 16 *Id.* 367. Another decision in action between same parties in 15 *Id.* 554; *s. c.*, 8 *Am. Dec.* 282.

- **v. Dodge**, 10 *Barb.* 566. See Van Keuren v. Parmelee. Followed (Effect of payments made by one of several joint debtors, to remove bar of statute of limitations) in Shoemaker v. Benedict, 11 *N. Y.* 176.
- **v. Gould**. See Dey v. Dunham.
- **v. Jackson**, 6 *Wend.* 22. Examined with Green v. Hart, 1 *Johns.* 580 (What is responsive to bill) in Schwaz v. Wendell, *Walk. Ch.* 295; citing Hart v. Ten Eyck, 2 *Johns. Ch.* 62, 92, *n.* Disting'd (Tender of deed necessary to put purchaser in default) in Lawrence v. Miller, 86 *N. Y.* 131, 138.
- **v. Jarvis**. See Nicoll v. Mumford.
- **v. Minard**, 4 *Paige*, 441. See Jackson v. Wood. Disting'd (Lien, when cut off by partition suit) in Mead v. Jenkins, 29 *Hun.* 253. Applied (Purchaser when not authorized to object to title) in Pangburn v. Miles, 10 *Abb. N. C.* 42, 46.
- **v. Mower**, 23 *Alb. L. J.* 338. Collated with other cases (Liability for failure of agent to collect) in 36 *Am. R.* 266, *n.*
- **v. Osborn**, 1 *Paige*, 634. See Bear v. Suydam. Explained with Cregier's Case, 1 *Barb. Ch.* 598, and latter case corrected (Meaning of word "purchase") in Durando v. Durando, 23 *N. Y.* 331, 334. Cited with Reynolds v. Reynolds, 5 *Paige*, 160; Safford v. Safford, 7 *Id.* 259 (Priority of right in case of two dowers in same estate) in McLeery v. McLeery, 65 *Me.* 172; *s. c.*, 20 *Am. R.* 683.
- **v. Pettee**, 8 *N. Y.* 508. Subsequent decisions in 4 *B. D. Smith*, 500; 1 *Daly*, 112. Decision in 1 *Daly*, explained (Warehouseman—usages as to delivery of goods) in 1 *Add. on Contr.* 203, *n.* 1, *Abb. ed.* Decision in 8 *N. Y.* included (Mutual and concurrent conditions in contracts) in 2 *Langdell's Cas. on Contr.* 2 ed. 762.
- **v. Sage**, 5 *Lans.* 451. Rev'd and previous decision in 7 *Id.* 419, aff'd in 52 *N. Y.* 229. Decision in 52 *N. Y.* explained and applied (Statute of limitations as against married women) in Acker v. Acker, 81 *Id.* 143, 146.
- **v. Simmons**, 3 *Hill*, 609. Explained (Sufficiency of objection to testimony) in Rodgers v. Fletcher, 13 *Abb. Pr.* 299.
- **v. Trustees of Rochester**, 5 *Cow.* 462. Disting'd (Requisites of municipal ordinance) in City of Brooklyn v. Breslin, 57 *N. Y.* 591, 596. Cited as authority in Barling v. West, 29 *Wis.* 307; *s. c.*, 9 *Am. R.* 576. Followed in Commonwealth v. Stodder, 2 *Cush. (Mass.)* 562; *s. c.*, 48 *Am. Dec.* 679, 685. Disting'd in Mayor of Mobile v. Yuille, 3 *Ala.* 137; *s. c.*, 36 *Am. Dec.* 441, 445. Disting'd with Mayor, &c. of N. Y. v. Second Ave. R. R. Co., 32 *N. Y.* 273, in City of Newton v. Atchison, 31 *Kans.* 151; *s. c.*, 47 *Am. R.* 486, 494. Explained in *Ang. and A. on Corp.* § 336, 11 ed. Collated with Mayor, &c. of N. Y. v. Nichols, 4 *Hill*, 209; People v. Mulholland, 82 *N. Y.* 324, and other cases, in 35 *Am. R.* 702, *n.*
- **v. Waterman**, 17 *N. Y.* 9; *s. c.*, more fully, 6 *Abb. Pr.* 357. Rev'd 3 *Duer*, 166. Decision in 17 *N. Y.* questioned (Particularity required in confessing judgment under the Code) in Clements v. Gerow, 80 *Barb.* 325, 328, which was however rev'd in 1 *Keyes*, 297. Applied in Freligh v. Brink, 30 *Barb.* 145; Winnebrenner v. Edgerton, *Id.* 186. Explained in Gandall v. Finn, 1 *Keyes*, 217. Approved (Who may impeach judgment taken by confession) in Daly v. Matthews, 12 *Abb. Pr.* 406, *n.* Explained at length (Debtor making assignment not to authorize delay) in Benedict v. Huntington, 32 *N. Y.* 224. Disapproved in Perry Ins. & Trust Co. v. Foster, 58 *Ala.* 502; *s. c.*, 29 *Am. R.* 784. Quoted and explained in *Burrill on Assign.* § 212, 4 ed. Quoted (Preferences) in *Id.* § 166. Discussed (Judgments) in *Id.* § 356. Quoted (General assignment when void *per se*) in *Wait on Fraud. Conv.* § 322. Quoted (Disposition by debtor of assigned property) in *Id.* §§ 330, 332, *n.* 6.
- **v. Whitehead**. See Curtis v. Leavitt.
- **v. Williams**. See Jackson v. Hathaway.
- **v. Wyckoff**, 3 *Wend.* 280; *s. c.*, 20 *Am. Dec.* 695, with note. See Judd v. Fox. Followed (What is sufficient possession for maintaining replevin) in Haythorn v. Rushforth, 4 *Harr. (N. J.)* 160; *s. c.*, 38 *Am. Dec.* 540, with note.
- Dunkin v. Vandenbergh**, 1 *Paige*, 622. See Rooney v. Second Ave. R. Co. Reviewed with other cases (Attorney's lien as barring set-off) in Nicoll v. Nicoll, 16 *Wend.* 446.
- Dunkley v. Van Buren**, 3 *Johns. Ch.* 330. Compared (Personal judgment in addition to recovery in rem.) in Burroughs v. Tostevan, 75 *N. Y.* 567, 572.
- Dunlap v. Hawkins**, 2 *Sup'm. Ct. (T. & C.)* 292. Aff'd in 59 *N. Y.* 342. See McCartney v. Bostwick. Decision in 59 *N. Y.* commented on (Debtor's alienations of property—existing creditors—fraud) in *Wait on Fraud. Conv.* § 95.
- **v. Hunting**, 2 *Den.* 643; *s. c.*, 43 *Am. Dec.* 763, with note. Disting'd (Rights of officer making title under process) in Hill v. Haynes, 54 *N. Y.* 153, 157.
- **v. Snyder**. See Putnam v. Payne.
- Dunlevy v. Talmadge**, 32 *N. Y.* 457. Rev'd 18 *Abb. Pr.* 48. See Fassett v. Talmadge. Applied (When only creditor to be relieved in equity) in Voorhees v. Howard, 4 *Abb. Ct. App. Dec.* 504; Sloan v. Waring, 55 *How. Pr.* 63; Briggs v. Oliver, 68 *N. Y.* 340. Disting'd in Everingham v. Vanderbilt, 51 *How. Pr.* 185; Stewart v. Beale, 7 *Hun.* 415.
- Dunlop v. Gregory**, 10 *N. Y.* 241. See Chappel v. Brockway; Nobles v. Bates. Disting'd (Contract in restraint of trade) in Ebling v. Bauer, 17 *Weekly Dig.* 497. Applied with Lawrence v. Kidder, 10 *Barb.* 641, in Oregon Steam Navigation Co. v. Hale, 1 *Wash. T.* 283; *s. c.*, 34 *Am. R.* 803,

806. Explained in *Benj. on Sales*, § 521, *n. a* (Bennett's 4 Am. ed.).
- **v. Patterson**, 5 *Cov.* 243. See *Dunn v. People*. Questioned if not distinctly overruled (Effect of proof that witness has previously sworn differently) in *Dunn v. People*, 29 *N. Y.* 529. Applied, however, in *People v. Evans*, 40 *Id.* 6. Disapproved in *Warren v. Haight*, 62 *Barb.* 490. Examined with other cases, in *Deering v. Metcalf*, 74 *N. Y.* 501, 504.
- **v. Patterson Fire Ins. Co.**, 12 *Hun.* 627. Aff'd in 74 *N. Y.* 145; *s. c.*, 30 *Am. R.* 283. See *Wehle v. Conner*. Decision in 74 *N. Y.* applied (Sheriff when excused for not paying over) in *Parker v. Bradley*, 46 *Super. Ct. (J. & S.)* 244, 249. Followed (Attachment of funds in custody of officer) in *Wehle v. Conner*, 83 *N. Y.* 231, 237.
- Dunn v. Chambers**, 4 *Barb.* 376. Relied on (When contract will be set aside on ground of fraud) in *Tracy v. Sackett*, 1 *Ohio St.* 54; *s. c.*, 59 *Am. Dec.* 610, with note.
- **v. Dunn**, 4 *Paige*, 425. See *Huggins v. King*; *Jackson v. Jackson*. Explained (Irregularity distinguished from want of jurisdiction) in *Holmes v. Holmes*, 8 *Abb. Pr. N. S.* 1. Quoted (Cohabitation—meaning of) in 1 *Bish. on Mar. & D.* § 777, *n.* 2, 6 ed.
- **v. Hewitt**, 2 *Den.* 637. Followed (Parol evidence of purchase excluded by existence of bill of sale) in *Barnett v. Williams*, 7 *Kans.* 339.
- **v. Hornbeck**, 7 *Hun.* 629. Aff'd in 72 *N. Y.* 80. In *Id.* 81, in fourth line from bottom for "plaintiff," read "defendant."
- **v. James**, 62 *How. Pr.* 307. Aff'd it seems, on this opinion, in 85 *N. Y.* 642.
- **v. People**, 29 *N. Y.* 526. Followed in preference to *Dunlop v. Patterson*, 5 *Cov.* 243, and *People v. Evans*, 40 *N. Y.* 1 (Effect of proof that witness has previously sworn differently) in *Warren v. Haight*, 62 *Barb.* 490. Followed in *White v. McLean*, 47 *N. Y.* 199; *Lee v. Chadsey*, 2 *Keyes*, 549. Recognized as authority in *Roth v. Wells*, 29 *N. Y.* 492. Examined in *Deering v. Metcalf*, 74 *Id.* 501, 504. Cited in 1 *Whart. Com. on Ev.* § 557. Applied (Discretion in order of receiving proof) in *McCarney v. People*, 83 *N. Y.* 408, 415. Followed (Woman on whom abortion committed not an accomplice) in *Watson v. State*, 9 *Tex. Ct. App.* 237, 244.
- **v. Rector of St. Andrews' Church**, 14 *Johns.* 118. See *Danforth v. Schoharie Turnpike Co.* Applied (Power of corporation to bind itself by contract not under seal) in *Gottfried v. Miller*, 104 *U. S.* 521. Explained in *Ang. & A. on Corp.* § 238, 11 ed.; *Id.* § 284.
- Dunning v. Clark**, 2 *E. D. Smith*, 535. Followed (Effect of deposit of money to remove mechanic's lien) in *People ex rel. Flynn v. Butler*, 61 *How. Pr.* 274.
- **v. Fisher**, 20 *Hun.* 178. Rev'd as *Dunning v. Leavitt*, 85 *N. Y.* 30.
- **v. Ocean Nat. Bank**, 6 *Lans.* 296. Aff'd in 61 *N. Y.* 497; *s. c.*, 19 *Am. R.* 293. See *Conklin v. Egerton*. Decision in 61 *N. Y.* followed (Surplus on foreclosure sale, to be regarded as realty) in *Fliess v. Buckley*, 22 *Hun.* 551, 556. See *Code Civ. Pro.* 1881, § 2798, *n.* Examined with other cases (Power of administrator with will annexed) in *Paret v. Kenealy*, 30 *Hun.* 17. Explained in *Matter of Clark*, 5 *Redf.* 466, 471. See (Power of sale of trust estate) *Betts v. Betts*, 4 *Abb. N. C.* 317.
- **v. Roberts**, 35 *Barb.* 463. Doctrine discussed (Agency of telegraph operator) in 4 *Am. L. Reg. N. S.* 207. Explained with *Trevor v. Wood*, 36 *N. Y.* 307 (Primary and secondary evidence in case of telegrams) in *Howley v. Whipple*, 48 *N. H.* 487, 490. Cited with *Trevor v. Wood*, 36 *N. Y.* 307; *Beach v. Raritan, &c. R. R. Co.*, 37 *Id.* 457, in 1 *Whart. Com. on Ev.* § 76. Quoted and explained (Contracts by telegraph) in 2 *Pars. on Contr.* 257, *v. n. c.*
- **v. Stearns**, 9 *Barb.* 630. Examined with other cases (Distinction between chattel mortgage and pledge) in *Thomas on Mort.* 443.
- Dunphy v. Mayor, &c. of N. Y.**, 8 *Hun.* 479. Followed (Effect of refusal to make appropriations for salaries) in *Brinck v. Mayor, &c. of N. Y.*, 16 *Id.* 340, 343.
- Dunsecomb v. Dunsecomb**, 1 *Johns. Ch.* 508; *s. c.*, 7 *Am. Dec.* 504, with note. Reviewed and applied with *Schieffelin v. Stewart*, 1 *Johns. Ch.* 620, and other cases (When trustees are chargeable with interest) in *Ringgold v. Ringgold*, 1 *Harr. & G. (Md.)* 11; *s. c.*, 18 *Am. Dec.* 250, 265, with note. Explained (Time within which trust moneys are to be invested) in 1 *Pars. on Contr.* 123, *n. g.*
- Dupre v. Thompson**, 4 *Barb.* 279. Aff'd in 8 *Id.* 538.
- Dupuy v. Seymour**. See *Dupuy v. Wurtz*.
- **v. United Ins. Co.**, 3 *Johns. Cas.* 182. See *Smith v. Bell*. Overruled (What constitutes technical total loss) in *Smith v. Bell*, 2 *Cai. Cas.* 153.
- **v. Wurtz**, 53 *N. Y.* 556. Aff'g *Dupuy v. Seymour*, 64 *Barb.* 156. Further proceeding in 47 *How. Pr.* 225; *mem. s. c.*, in 1 *Hun.* 119; also further proceeding in 53 *How. Pr.* 48. Decision in 53 *N. Y.* followed (Burden of proof of change of domicile) in *Tucker v. Field*, 5 *Redf.* 139, 174; *Von Hoffman v. Ward*, 4 *Id.* 244. Cited with *Tucker v. Field*, 5 *Id.* 139 (What is necessary to obtain French domicile) in extended note to *Harrall v. Wallis*, 37 *N. J. Eq.* (10 *Stew.*) 459, where the contrary doctrine seems to prevail.
- Durand v. Hankerson**, 39 *N. Y.* 287. Discussed (Creditor's actions—joinder of parties defendant) in *Wait on Fraud. Conv.* § 134.
- **v. Hollins**, 3 *Duer*, 686. Examined in dissenting opinion of *BRADY, J.* (Appearance when regular) in *Chatham Nat. Bk.*

- v. Merchants' Nat. Bk. of West Virginia*, 4 *Sup'm. Ct. (T. & C.)* 198, 202.
- Durando v. Darando**, 32 *Barb.* 529. *Aff'd*, in effect, in 33 *N. Y.* 331. Decision in 23 *N. Y.* quoted and collated with other cases (Dower upon dower) in *Sharsw. & B. Cas. on Real Prop.* 319.
- Durant v. Abendroth**, 41 *Super. Ct. (J. & S.)* 53. *Aff'd* in 69 *N. Y.* 148; s. c., 25 *Am. R.* 158, with note. Decision in another action, in 44 *Super. Ct. (J. & S.)* 463. Decision in 69 *N. Y.* applied (Effect of check as payment) to case of subscription, in *Excelsior Grain Binding Co. v. Stayner*, 25 *Hun.* 93.
- **v. Cook**, 1 *How. Pr.* 45. Applied (Affidavit of merits) in *State Bk. of Syracuse v. Gill*, 23 *Hun.* 406.
- **v. Supervisors of Albany**, 26 *Wend.* 66. Limited (Test of equity jurisdiction) in *Haines v. Meyer*, 25 *Hun.* 414, 417.
- Durbrow v. McDonald**, 5 *Bosw.* 130. Further decision as *Winne v. McDonald*, 39 *N. Y.* 233. Decision in 5 *Bosw.* 130, disting'd (*Bona fide* purchaser) in *Barnard v. Campbell*, 58 *N. Y.* 73, 78.
- Durell v. Mosher**, 8 *Johns.* 445. See *Bristol v. Burt*. Followed and *People v. Vermilyea*, 7 *Cow.* 381, explained (Disqualification of juror) in *Smith v. Eames*, 3 *Scam. (Ill.)* 76; s. c., 36 *Am. Dec.* 515, 518, with note.
- Durgin v. Ireland**, 44 *N. Y.* 322. *Sedgwick v. Stanton* disting'd (Effect of composition) in *Orr v. McEwen*, 1 *City Ct.* 141. Cited in 2 *Whart. Com. on Ev.* § 1022 (Parol evidence to reform assignment for creditors). Disting'd in *Errico v. Brand*, 9 *Hun.* 654, 656, a case of a bill of sale.
- Durkee v. Mott**, 8 *Barb.* 423. Disting'd (Damages for unearned profits) in *Mitchell v. Cornell*, 44 *Super. Ct. (J. & S.)* 401, 404.
- **v. Saratoga & Washington R. R. Co.** See *Dunning v. Roberts*; *Getty v. Hudson River R. R. Co.*
- Durkin v. City of Troy**, 61 *Barb.* 437. See *Mosey v. City of Troy*. Disting'd (Contributory negligence in one injured by defect in sidewalk) in *Driscoll v. Mayor, &c. of N. Y.*, 11 *Hun.* 101, 103. Followed in *City of Erie v. Magill*, 101 *Penn. St.* 616; s. c., 47 *Am. R.* 739, with note.
- Durst v. Burton**, 2 *Lans.* 137. *Aff'd* in 47 *N. Y.* 167. Decision in 47 *N. Y.* included (Damages for sale of goods by agent's false representations) in *Sedgwn. Cus. on Dama.* 513.
- Duryea v. Lester**, 43 *Super. Ct. (J. & S.)* 564. *Aff'd* in 75 *N. Y.* 442.
- **v. Mayor, &c. of N. Y.**, 2 *Hun.* 293; s. c., 4 *Sup'm. Ct. (T. & C.)* 512. *Rev'd* in 62 *N. Y.* 592.
- Duryee v. Dennison**, 5 *Johns.* 248. Followed with *Miller v. Hackley*, 5 *Id.* 375; *Griffin v. Goff*, 12 *Id.* 423 (Waiver of notice by indorser) in *Ladd v. Kenney*, 2 *N. H.* 340; s. c., 9 *Am. Dec.* 77. Followed with *Bunn v. Hoyt*, 3 *Johns.* 255; *Shumway v. Fowler*, 4 *Id.* 425 (Newly discovered evi-
- dence to discredit or impeach witness not ground for new trial) in *State v. Carr*, 21 *N. H.* 166; s. c., 53 *Am. Dec.* 179, with note.
- Dusabury v. Ellis**, 3 *Johns. Cas.* 70; s. c., 2 *Am. Dec.* 144, with note. See *Rossiter v. Rossiter*. Referred to with *White v. Skinner*, 13 *Johns.* 307; *Feeter v. Heath*, 11 *Wend.* 487; *Rossiter v. Rossiter*, 8 *Id.* 494; *Meech v. Smith*, 7 *Id.* 315; *Palmer v. Stephens*, 1 *Den.* 480; *Plumb v. Milk*, 19 *Barb.* 74 (Liability of agent signing contract without authority) in *White v. Madison*, 26 *N. Y.* 117, as shaken by *Walker v. Bk. of State of N. Y.*, 9 *Id.* 582. Explained in *Hegeman v. Johnson*, 35 *Barb.* 205. Several of the above cases also referred to in *Whart. Com. on Ag.* § 533, as shaken by later *N. Y.* cases, though *Grafton B'k v. Flanders*, 4 *N. H.* 239; *Weare v. Grove*, 44 *Id.* 198, are referred to as upholding the earlier *N. Y.* rule. Thought in 2 *Am. Dec.* 144, n., to be still good doctrine as to cases of misrepresentation or concealment. Also referred to with *White v. Skinner*, in *Walker v. Bank of N. Y.*, as inapplicable to cases, where there is no fraud or deceit. Included in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 751.
- **v. Hoyt**, 45 *How. Pr.* 147. *Aff'd* in 14 *Abb. Pr. N. S.* 132; s. c., 36 *Super. Ct. (J. & S.)* 94, and that *rev'd* in 53 *N. Y.* 521; s. c., 13 *Am. R.* 543. Decision in 53 *N. Y.* disting'd (Effect of discharge in bankruptcy on right to recover on original indebtedness) in *Wilson v. Gould*, 21 *Hun.* 446. Applied in *Graham v. O'Hern*, 24 *Id.* 221. Included in 1 *Langdell's Cas. on Contr.* 2 ed. 387.
- **v. Hulbert**, 2 *Sup'm. Ct. (T. & C.)* 177. *Rev'd* in 59 *N. Y.* 541.
- **v. Keiley**, 8 *Daly*, 537; s. c., 58 *How. Pr.* 286. *Aff'd* in 85 *N. Y.* 383; s. c., 61 *How. Pr.* 408.
- Dustan v. McAndrew**, 10 *Bosw.* 130. *Aff'd* in 44 *N. Y.* 72. See *Bument v. Smith*; *Hayden v. Demets*. Decision in 10 *Bosw.* questioned (Damages for breach of contract to purchase) in *Bridgford v. Crocker*, 60 *N. Y.* 627. Decision in 44 *Id.* followed in *Schoonmaker v. Reed*, 1 *Hun.* 611. Examined with other cases, in 10 *Alb. L. J.* 385. Explained in 2 *Benj. on Sales*, § 1125, n. 6 (Corbin's 4 *Am. ed.*). Relied on with *Hayden v. Demets*, 53 *N. Y.* 426 (Title must have passed, to enable action for price of personal property sold to be maintained) in *Dwiggins v. Clark*, 94 *Ind.* 49; s. c., 43 *Am. R.* 140.
- Dutch v. Harrison**, 37 *Super. Ct. (J. & S.)* 306. Collated with other cases (Usage to vary contracts) in 1 *Abb. N. C.* 472, n.
- **v. Mead**, 36 *Super. Ct. (J. & S.)* 427. *Aff'd*, it seems, in 59 *N. Y.* 628, but without opinion. Decision in 36 *Super. Ct. (J. & S.)* commented upon and compared (Contract in writing invalid for informality) in 1 *Add. on Contr.* 153, n. *Abb. ed.*
- Dutch Church of Albany v. Bradford**, 8

- Cow.* 457. Approved and followed (Decisions of ecclesiastical tribunals—how far regarded by civil courts) in *Connitt v. Reformed Protestant Dutch Church of New Prospect*, 4 *Lans.* 339, 346. Approved (Right of clergyman to salary) in *Chase v. Cheney*, 58 *Ill.* 509; s. c., 11 *Am. R.* 95.
- Dutcher v. Importers' & Traders' Nat. Bank**, 1 *Sup'm. Ct. (T. & C.)* 400. Rev'd in 59 *N. Y.* 5. See *Duncombe v. N. Y., Housatonic, & C. R. Co.* Decision in 1 *Sup'm. Ct. (T. & C.)* overruled (Transfer of corporate property) in *Binns v. Williams*, 15 *Weekly Dig.* 17; mem. s. c., 88 *N. Y.* 660. Decision in 59 *Id.* applied in *Paulding v. Crome Steel Co.*, 94 *Id.* 339.
- *v. Swartwood*, 15 *Hun.* 31. See *Delaware v. Ensign*. Disting'd (Effect of vendor, &c. continuing in possession) in *Bainbridge v. Richmond*, 17 *Hun.* 391, 394. Approved in *Stimson v. Wrigley*, 86 *N. Y.* 332, 339.
- Dutchess Cotton Manufactory v. Davis**, 14 *Johns.* 238; s. c., 7 *Am. Dec.* 459, with note, wherein it is shown to have been frequently recognized in N. Y. and elsewhere; also s. c., 5 *N. Y. Com. L. Law. ed.* 848, with brief note. See *Bank of Michigan v. Williams*; *Bank of Utica v. Smalley*; *Jackson v. Plumb*; *Jenkins v. Union Turnpike Co.* Cited as authority (Necessity of averment of incorporation) in *Connecticut B'k v. Smith*, 9 *Abb. Pr.* 174. Doubted as dictum (Estoppel to deny corporate existence) in *Welland Canal Co. v. Hathaway*, 8 *Wend.* 481. Followed with *Bank of Michigan v. Williams*, 5 *Wend.* 482; *Bank of Auburn v. Weed*, 19 *Johns.* 300; *Farmers' & Mechanics' Bank v. Rayner*, 2 *Hall.* 195; *Jackson v. Plumb*, 8 *Johns.* 378 (Judicial notice of capacity of corporations to sue) in *Lewis v. Bank of Kentucky*, 12 *Ohio*, 132; s. c., 40 *Am. Dec.* 469, 473, with note. Examined and disting'd (Necessity of demand for payment of obligation given to corporation) in *Howland v. Edmonds*, 24 *N. Y.* 307, 316. Discussed (Subscriptions and assessments) in *Ang. & A. on Corp.* § 518, 11 ed.
- Dutchess Company v. Harding**, 49 *N. Y.* 321. See *Hargous v. Stone*. Quoted and explained (Sale by sample) in 2 *Benj. on Sales*, § 977, n. 29 (Corbin's 4 *Am. ed.*).
- Dutchess Co. Mut. Ins. Co. v. Hachfield**, 4 *Sup'm. Ct. (T. & C.)* 158; s. c., 47 *How. Pr.* 330. Further decision in 73 *N. Y.* 226. See *Brainerd v. N. Y. & Harlem R. R. Co.* Compare (Motion for new trial on minutes) *Code Civ. Pro.* § 999.
- Dutchess & Columbia Co. R. R. Co. v. Mabbett**, 58 *N. Y.* 397. Quoted and explained (Private corporation—subscriptions for shares) in *Morawetz on Corp.* §§ 257, 263.
- Duval v. Covenhoven**, 4 *Wend.* 561. Cited (Answer of referee to be within scope of reference) in 2 *Whart. Com. on Ev.* § 1191.
- Davall v. English Ev. Church of St. James**, 35 *Super. Ct. (J. & S.)* 505. Aff'd in 53 *N. Y.* 500.
- Duvoll v. Wilson**, 9 *Barb.* 487. Approved and followed (Duty to provide for wife or child, as consideration) in *Whitaker v. Whitaker*, 52 *N. Y.* 368, 373. Cited in 1 *Add. on Contr.* 4, n. 1, *Abb. ed.*
- Dwight's Case**, 15 *Abb. Pr.* 259. Collated with other cases (Application to intervene) in 6 *Abb. N. C.* 306, n.
- Dwight v. Brooklyn Life Ins. Co.** *Dwight v. Homœopathic Life Ins. Co.*; *Dwight v. Manhattan Life Ins. Co.*; *Dwight v. Metropolitan Life Ins. Co.*; *Dwight v. Washington Life Ins. Co.* For all these cases see *Dwight v. Germania Life Ins. Co.*
- *v. Enos*, 9 *N. Y.* 470. Explained (Reversal of judgment in replevin) in *Ingersoll v. Bostwick*, 22 *Id.* 425.
- *v. Germania Life Ins. Co.*, 22 *Hun.* 167. Appeal dismissed in 84 *N. Y.* 493. Decision in 84 *N. Y.* disting'd (Bill of particulars) in *Higenbotam v. Green*, 25 *Hun.* 217. Compared with *Tilton v. Beccher*, 59 *N. Y.* 176, in *Wilson v. Pearson*, *U. S. Cir. Ct. S. D. N. Y.*, 14 *Reporter*, 391; s. c., 13 *Fed. Rep.* 386. For a number of recent cases see 30 *Moak's Eng.* 692, n., 31 *Id.* 246, n.
- *v. St. John*, 25 *N. Y.* 203. Explained (Effect of orders as former adjudications) in *Riggs v. Pursell*, 74 *Id.* 370. See also 26 *Moak's Eng.* 103.
- Dwinelle v. Howland**, 1 *Abb. Pr.* 87. Approved (Executing commission to take testimony abroad) in *Creamer v. Jackson*, 4 *Id.* 413.
- Dwyer v. Dwyer**, 13 *Abb. Pr. N. S.* 269. Compare (Effect of default) *Code Civ. Pro.* § 1607.
- Dyckman v. Mayor, &c. of N. Y.**, 5 *N. Y.* 434. Aff'g 7 *Barb.* 498. Decision in 5 *N. Y.* followed (Effect of judgment of court of general jurisdiction) in *Diana v. Virginia F. & M. Ins. Co.*, 13 *Reporter*, 459. Approved (Power to be strictly followed) in *Harbeck v. City of Toledo*, 11 *Ohio St.* 222. Explained in connection with decision in 7 *Barb.* (Evidence of jurisdictional facts) in *Bolton v. Jacks*, 6 *Robt.* 166, 209.
- *v. Valiente*, 28 *How. Pr.* 346; s. c., more fully, 43 *Barb.* 131. Aff'd in 42 *N. Y.* 549. See *Wilson v. Reed*.
- Dyer v. Dyer**, 48 *Barb.* 190. Disting'd (Evidence of conversation, &c. with deceased) in *Marsh v. Gilbert*, 2 *Redf.* 465, 475.
- *v. Erie R'y Co.*, 71 *N. Y.* 228. Followed (Imputing negligence of driver to one injured in crossing track) in *Masterson v. N. Y. Central, &c. R. R. Co.*, 84 *Id.* 247, 254; *Callaghan v. Rome, W. & O. R. R. Co.*, 13 *Weekly Dig.* 395. Applied to one injured by defect in street,—in *Platz v. City of Cohoes*, 8 *Abb. N. C.* 392, 397.
- Dyett v. North Am. Coal Co.**, 20 *Wend.* 570; s. c., 32 *Am. Dec.* 598, with note, collecting citations (Liability of wife's separate property). See *Jaques v. M. E. Church*.
- *v. Pendleton*, 8 *Cow.* 727. Reviewed at length and explained (Constructive eviction) in *Edgerton v. Page*, 5 *Abb. Pr.* 5, which rev'd 12 *How. Pr.* 58, but was

- aff'd in 20 *N. Y.* 283, which see. Applied in *Peck v. Hiler*, 24 *Barb.* 181; *Cohen v. Dupont*, 1 *Sandf.* 264. Examined with other cases in *Home Life Ins. Co. v. Sherman*, 46 *N. Y.* 372. Disting'd in *Mattoon v. Monroe*, 21 *Hun.* 82; *Gilhooley v. Washington*, 4 *N. Y.* 219, which aff'd 3 *Sandf.* 330, 333, which see. Limited and explained in *Ogilvie v. Hull*, 5 *Hill.* 54. Criticised as extreme in *McGlashan v. Tallmadge*, 37 *Barb.* 315; *Vanderbilt v. Persse*, 3 *E. D. Smith*, 430; *Etheridge v. Osborn*, 12 *Wend.* 532; *Royce v. Guggenheim*, 106 *Mass.* 201; s. c., 8 *Am. R.* 322, in which last case *Palmer v. Wetmore*, 2 *Sandf.* 316; *Myers v. Gemmel*, 10 *Barb.* 537; *Edgerton v. Page*, 1 *Hill.* 320; 20 *N. Y.* 281, were also cited. Criticised and disting'd in *De Witt v. Pierson*, 112 *Mass.* 8; s. c., 17 *Am. R.* 58, 61. Applied with *St. John v. Palmer*, 5 *Hill.* 599; *Greenvault v. Davis*, 4 *Id.* 643, in *Marsh v. Butterworth*, 4 *Mich.* 577. Collated with *Ogilvie v. Hull*, 5 *Hill.* 52; *Edgerton v. Page*, 5 *Abb. Pr.* 1; 14 *How. Pr.* 116; *Cohen v. Dupont*, 1 *Sandf.* 260; *Rogers v. Ostrom*, 35 *Barb.* 523; *Gilhooley v. Washington*, 3 *Sandf.* 330; 4 *N. Y.* 217; *Howard v. Doolittle*, 3 *Duer.* 464; *Cleves v. Willoughby*, 7 *Hill.* 83; *McGlashan v. Tallmadge*, 37 *Barb.* 313; *Lounsbury v. Snyder*, 31 *N. Y.* 514, and other cases, in 17 *Am. R.* 62, n. Explained in 2 *Chitty on Contr.* 980, n. k, 11. Am. ed.; 1 *Washb. on Real Prop.* 4 ed. 529, 532. Collated with other cases, in *McAdam on Landl. & T.* 2 ed. § 212. Applied (Effect of eviction from part of premises) in *Christopher v. Austin*, 11 *N. Y.* 218; *Vermilya v. Austin*, 2 *E. D. Smith*, 205; *Lewis v. Payn*, 4 *Wend.* 427. Followed with *Christopher v. Austin*, in *Hayner v. Smith*, 63 *Ill.* 430; s. c., 12 *Am. R.* 124, 127. Explained and disting'd (Effect of enforcing judgment on right to appeal) in *Knapp v. Brown*, 45 *N. Y.* 207.
- Dygert v. Remerschnider**, 39 *Barb.* 417. Aff'd in 32 *N. Y.* 629. Decision in 32 *N. Y.* disting'd (Effect of gift, &c. from husband to wife) in *Little v. Willets*, 55 *Barb.* 129. Applied in *Ford v. Johnston*, 7 *Hun.* 567. Criticised as impaired by *Ocean Nat. Bk. v. Olcott*, 46 *N. Y.* 12 (Enforcing trust in property conveyed to wife) in *Chillingworth v. Freeman*, 67 *Id.* 383. Applied (Contract in consideration of marriage, when void) in *Brown v. Conger*, 8 *Hun.* 627. Decision in 39 *Barb.* referred to as contrary to *Henry v. Henry*, 27 *Ohio St.* 121 (Marriage as part performance of parol contract to convey land) in *Tyler on Inf. & Cov.* 2 ed. § 330.
- **v. Schenck**, 23 *Wend.* 445; s. c., 35 *Am. Dec.* 575, with note. See *Irvine v. Wood*; *Storrs v. City of Utica*. Collated with *Lansing v. Smith*, 4 *Wend.* 9; *Pierce v. Dart*, 7 *Cow.* 609; *Lansing v. Wiswall*, 5 *Den.* 218; *Fort Plain Bridge Co. v. Smith*, 30 *N. Y.* 44; *Strickland v. Woolworth*, 3 *Sup'm. Ct. (T. & C.)* 286; *Peckham v. Henderson*, 27 *Barb.* 207; *Goldsmith v. Jones*, 43 *How. Pr.* 415; *Dougherty v. Bunting*, 1 *Sandf.* 4; *Van Brunt v. Ahearn*, 13 *Hun.* 888; *Adams v. Rivers*, 11 *Barb.* 390, and other cases (Right to maintain private action for obstructing highway) in 25 *Am. R.* 533, n. where *Dougherty v. Bunting*, 1 *Sandf.* 4, is thought not to be distinguishable from *Stetson v. Faxon*, 19 *Pick. (Mass.)* 147, the decisions in the two cases being, however, contrary. Approved with *Heacock v. Sherman*, 14 *Wend.* 58; *Creed v. Hartmann*, 29 *N. Y.* 595; *Congreve v. Smith*, 18 *Id.* 79 (Liability of one interfering with highways) in *Pres't & Trustees, &c. v. Mann*, *Wisc.* 1883, 17 *Northw. Rep.* 972. Included in 1 *Thomps. on Negl.* 328, with note. Quoted in *Wood on Nuis.* 2 ed. § 274, n. 2. Elaborately reviewed with *Varick v. Corporation of N. Y.*, 4 *Johns. Ch.* 53, and other cases (Whether municipal corporations are bound by statutes of limitation) in *City of Wheeling v. Campbell*, 12 *W. Va.* 36; s. c., 48 *Am. R.* 24, n.
- Dyke v. Erie R'y Co.**, 45 *N. Y.* 113. Re-aff'd (Damages when not limited by foreign statute) in *Lyon v. Erie R'y Co.*, 57 *Id.* 489.
- Dykens v. Allen**, 3 *Hill.* 393. Aff'd in 7 *Id.* 497; s. c., 42 *Am. Dec.* 87, with note, collecting citations. Dicta of *Walworth, Ch.*, in 7 *Hill* commented on (Sale by pledgee) in *Milliken v. Dehon*, 27 *N. Y.* 364.
- **v. Leather Manuf. Bk.**, 11 *Paige*, 612. Applied (Check not assignment of fund) in *Butterworth v. Peck*, 5 *Bosw.* 341, 343.
- **v. Townsend**, 24 *N. Y.* 57. Applied (Authority to sign memorandum required by statute of frauds to contract for sale of land) in *Pringle v. Spaulding*, 53 *Barb.* 21. Applied to contract by municipal corporation, not to be performed within a year,— in *Argus Co. v. Mayor, &c. of Albany*, 55 *N. Y.* 501. Cited as settled law, in *Briggs v. Partridge*, 64 *Id.* 362. Followed with *McWharther v. McMahon*, 10 *Paige*, 356, in *Neaves v. North State Mining Co.*, 90 *N. C.* 412; s. c., 47 *Am. R.* 529, with note. Followed and *Hall v. Shultz*, 4 *Johns.* 240; *Sherrill v. Crosby*, 14 *Id.* 358; *Van Alstine v. Wimple*, 5 *Cow.* 162, disting'd as cases of such agreements to create a trust as can only be proved by writing, in *Baker v. Wainwright*, 36 *Md.* 336; s. c., 11 *Am. Dec.* 495, 501. Quoted in 1 *Benj. on Sales*, § 237, n. 36 (Corbin's 4 *Am. ed.*). Explained and qualified (Signature to memorandum required by statute of frauds) in *Justice v. Lang*, 42 *N. Y.* 493, 512, which rev'd 2 *Robt.* 347, which see. Applied (Negating exception in statute) in *Harris v. White*, 81 *N. Y.* 548.
- **v. Woodward**, 7 *How. Pr.* 313. Seems overruled (Time to answer in case of service of summons by publication) by *Kerner v. Leonard*, 15 *Abb. Pr. N. S.* 96.

## E.

**Eadie v. Slimmon**, 26 *N. Y.* 9. See *Barry v. Brune*. Explained with *Barry v. Equitable Life Ins. Co.*, 59 *N. Y.* 587; *Smillie v. Quinn*, 25 *Hun.* 332; 90 *N. Y.* 492 (Wife's interest in policy on husband's life) in *Bolt v. Kehoe*, 30 *Hun.* 619. Followed as applicable to daughter, in *Glanz v. Gloeckler*, 104 *Ill.* 577. To heirs, in *Gosling v. Caldwell*, 1 *Lea (Tenn.)* 454; s. c., 27 *Am. R.* 774. Explained and applied (Assignability of policy in favor of wife) in *Barry v. Equitable Life Assur. Soc.*, 14 *Abb. Pr. N. S.* 386, n., which was aff'd in 59 *N. Y.* 592, which see. Applied in *Lockwood v. Bishop*, 51 *How. Pr.* 225; *Wilson v. Lawrence*, 13 *Hun.* 241; *Smillie v. Quinn*, 25 *Id.* 335. Followed in *Beer v. Sanger*, 17 *Weekly Dig.* 340. Applied to endowment policy,—in *Brummer v. Cohn*, 86 *N. Y.* 11, 13, 15, which aff'd 9 *Daly*, 36, which see, but disting'd as to endowment policy taken out before L. 1866, c. 656, in *Living v. Domett*, 26 *Hun.* 150. Disting'd in *Ainsworth v. Backus*, 5 *Id.* 417; *Olmsted v. Keyes*, 85 *N. Y.* 593, 605; *Charter Oak Life Ins. Co. v. Brant*, 47 *Mo.* 419; s. c., 4 *Am. R.* 328; *Robinson v. Mut. Benefit Life Ins. Co.*, 16 *Blatchf. C. Ct.* 194, 206. Criticised (Insurable interest in life of another at common law) in *Deronge v. Elliott*, 23 *N. J. Eq.* 486. Disting'd (Validity of instrument executed by wife under duress) as inapplicable to case of threats, &c. made by husband,—in *Rexford v. Rexford*, 7 *Lans.* 8. Disting'd in *Lefebore v. Dutruit*, 51 *Wis.* 326; s. c., 37 *Am. R.* 833. Applied (Validity of appropriation of property by wife to save her husband from imprisonment) in *Jones v. Diederich*, 3 *Daly*, 177. Explained in 3 *Washb. on Real Prop.* 4 ed. 261. Applied (Sufficiency of findings) in *Voorhis v. Voorhis*, 50 *Barb.* 125.

**Eager, Matter of**, 10 *Abb. Pr. N. S.* 229; s. c., 58 *Barb.* 557; 41 *How. Pr.* 107. Aff'd in 46 *N. Y.* 100; s. c., 12 *Abb. Pr. N. S.* 151. Decision in 46 *N. Y.* followed (Effect of not stating objection in petition to vacate assessment) in *Matter of Clark*, 31 *Hun.* 198. Reconciled (Irregularity in assessment) in *Matter of Brady*, 85 *N. Y.* 263, 271.

**Eager v. Crawford**. See *Gibson v. Stone*.

— **v. Price**. See *Candler v. Pettit*.

— **v. Roberts**, 2 *Redf.* 247. Disting'd (Commissions of executors, etc.) in *Ward v. Ford*, 4 *Id.* 34, 40.

— **v. Wiswall**, 2 *Paige*, 369. Followed (Compelling defendant to produce papers not in his possession, if under his control) in *Robbins v. Davis*, 1 *Blatchf. C. Ct.* 238, 241.

**Eagle v. Emmet**, 4 *Bradf.* 117. Followed (Presumption of death) in *Matter of Ackerman*, 2 *Redf.* 523.

— **v. Swayze**, 2 *Daly*, 140. Reconciled (Liability of lessor for repairs) in 50 *Am. Dec.* 777, n., with cases there cited.

**Eagle Fire Ins. Co. v. Lent**, 1 *Ed.s.* 301. Aff'd in 6 *Paige*, 635. Decision in 6 *Paige* approved with *Banks v. Walker*, 3 *Barb. Ch.* 438; *Holcomb v. Holcomb*, 2 *Barb.* 20 (Parties in foreclosure) in *Chamberlain v. Lyell*, 3 *Mich.* 460. Explained as not deciding that prior mortgagee may not be party, in *Walsh v. Rutgers Fire Ins. Co.*, 13 *Abb. Pr.* 33, 39.

**Eagle Iron Works, Matter of**, 3 *Edw.* 385. Rev'd as to the lien of judgment, in *Matter of Waterbury*, 8 *Paige*, 380, but aff'd as to the appointment of receivers, in *Matter of Eagle Iron Works, Id.* 385.

**Earl v. Camp**, 16 *Wend.* 562. See *Carter v. Simpson*; *Savacool v. Boughton*. Disting'd (Justification of officer by his process) in *Hill v. Haynes*, 54 *N. Y.* 153, 157; *Clearwater v. Brill*, 4 *Hun.* 728, 730. Followed with *Cornell v. Barnes*, 7 *Hill*, 35, in *Nevburg v. Munshower*, 29 *Ohio St.* 617; s. c., 23 *Am. R.* 769. Approved with *Savacool v. Boughton*, 5 *Wend.* 170; *McGuinity v. Herrick, Id.* 240; *Rogers v. Mulliner*, 6 *Id.* 597, in *Beach v. Botsford*, 1 *Doug. (Mich.)* 204; citing *Hotchkiss v. McVickar*, 12 *Johns.* 403.

— **v. David**, 20 *Hun.* 527. Aff'd as *Earle v. David*, in 86 *N. Y.* 634.

— **v. Grim**, 1 *Johns. Ch.* 494. Followed (Effect of introductory clause on construction of will) in *Youngs v. Youngs*, 45 *N. Y.* 254.

— **v. Shaw**, 1 *Johns. Cas.* 314; s. c., 1 *Am. Dec.* 117. See *Marcus v. St. Louis Mut. Life Ins. Co.*

— **v. Van Alstyne**, 8 *Barb.* 630. Explained (Liability for injuries done by animals) in 1 *Add. on Torts*, 43, n. 1, *Wood's ed.* Included in 1 *Thomps. on Negl.* 182, with note.

**Earle v. N. Y. Life Ins. Co.**, 7 *Daly*, 303. Aff'd, it seems, in 74 *N. Y.* 618, but without opinion.

**Eastburn v. Kirk**, 2 *Johns. Ch.* 317. Prior decision in 1 *Id.* 444. Decision in 2 *Johns. Ch.* disting'd with *Hotaling v. Marsh*, 14 *Abb. Pr.* 164; *Campbell v. Mesier*, 4 *Johns. Ch.* 333; *Barnes v. At. Mut. L. Ins. Co.*, 59 *How. Pr.* 240 (Allowance out of trust fund) in *Attorney-General v. North Amer. Life Ins. Co.*, 91 *N. Y.* 57. Applied (Costs in equity) in *Black v. O'Brien*, 23 *Hun.* 82, 85. Decision in 1 *Johns. Ch.* quoted and case cited to the contrary (Injunction—admission of affidavits) in 2 *High on Inj.* 2 ed § 1603, n. 2.

**Easterly v. Barber**, 4 *Hun.* 426. Confirmed on point stated but rev'd on another, in 66 *N. Y.* 428. Former decision in 3 *Sup'm. Ct. (T. & C.)* 421, which is substantially overruled in 66 *N. Y.* Former appeal in 65 *Id.* 252. See *Barry v. Ransom*; *Pechner v. Phoenix Ins. Co.* With decision in 65 *N. Y.* see other cases collated (Liability of officers, &c. of corporations) in 6 *Abb. N. C.* 259, n. With decision in 66 *N. Y.* compare (Objection that remedy is at

- law and not in equity) *De Bussiere v. Holladay*, 4 *Abb. N. C.* 111. Cited approvingly (Special agreement requisite to constitute indorser's co-sureties) in 11 *Am. Dec.* 792, *n.*
- Eastern Plank-road Co. v. Vaughan**, 20 *Barb.* 155. Aff'd in 14 *N. Y.* 546.
- East N. Y. & Jamaica R. R. Co. v. Lighthall**, 6 *Robt.* 407. Disting'd and doubted (Payment on stock) in *Tasker v. Wallace*, 6 *Daly*, 364, 368.
- Easton v. Calendar**, 11 *Wend.* 90. See *Weaver v. Devendorf*. Disting'd (Liability of school trustees in making assessment) in *Jewell v. Van Steenburgh*, 58 *N. Y.* 85, 89.
- **v. Chamberlin**, 3 *How. Pr.* 412. Approved (Computation of time) in *Taylor v. Corbiere*, 8 *Id.* 385.
- **v. Clark**, 35 *N. Y.* 225. Disting'd (Duty of third person dealing with agent) in *Talmage v. Nevins*, 2 *Sweeny*, 38. Cited in *Whart. Com. on Ag.* § 137, *n.*
- **v. Pickersgill**, 55 *N. Y.* 310. Further decision in 75 *Id.* 599. With decision in 55 *N. Y.* compare (Duties of referee in foreclosure) *People ex rel. Day v. Bergen*, 53 *Id.* 404; 6 *Hun.* 267. Explained and followed in *Weseman v. Wingrove*, 85 *N. Y.* 353, 355, 359. Applied (General usage) in *People ex rel. Academy of the Sacred Heart v. Comm'rs of Taxes, &c. of N. Y.*, 6 *Hun.* 109, 114.
- East River Bank v. Butterworth**, 45 *Barb.* 476; *s. c.*, 30 *How. Pr.* 444. Aff'd, it seems, without agreeing on the grounds, in 51 *N. Y.* 637.
- **v. Hoyt**, 41 *Barb.* 441. Rev'd in 32 *N. Y.* 119; *s. c.*, less fully, 29 *How. Pr.* 280. Previous decision in 23 *Id.* 478.
- East River Nat. Bank v. McCaffrey**, 3 *Redf.* 97. Disting'd and approved (Costs of foreclosure, when debt that may be enforced against estate of decedent) in *Hurd v. Callahan*, 5 *Redf.* 393. See *Code Civ. Pro.* 1881, § 2757, *n.*
- Eastwood v. People**, 3 *Park.* 25. Aff'd in 14 *N. Y.* 562, on other grounds. Decision in 3 *Park.* disapproved (Separation of jury as cause for setting aside verdict) in *Stephens v. People*, 4 *Id.* 396, 501-505; citing *People v. Douglass*, 4 *Cov.* 26, as authority. Said to be clearly contrary to the general current of authority in *N. Y.*, in 43 *Am. Dec.* 75, *n.* Explained and limited in *People v. Montgomery*, 13 *Abb. Pr. N. S.* 207. Disting'd (Affidavits available on appeal) in *People v. Draper*, 28 *Hun.* 1.
- Eaton v. Alger**, 2 *Keyes*, 41; *s. c.*, 2 *Abb. Ct. App. Dec.* 41. Further decision in 57 *Barb.* 179, and that aff'd in 47 *N. Y.* 345. See *Ryan v. Ward*. Disting'd (Who entitled to sue on note) in *Hays v. Hathorn*, 74 *N. Y.* 486, 489. Decision in 57 *Barb.* approved in *Pomeroy on Rem.* § 129, *n.* 1.
- **v. Aspinwall**, 6 *Duer*, 176; *s. c.*, 3 *Abb. Pr.* 417; 13 *How. Pr.* 184. Aff'd in 19 *N. Y.* 119. See *Hargar v. McCullough*. Decision in 19 *N. Y.* followed (Evidence of existence of corporation *de facto*) in *Bank of Toledo v. International Bk.*, 21 *N. Y.* 542; *Buffalo & Allegany R. R. Co. v. Cary*, 26 *Id.* 78; *Aspinwall v. Sacchi*, 57 *Id.* 338; *Disting'd in De Witt v. Hastings*, 40 *Super. Ct. (J. & S.)* 463, 479.
- **v. Benton**, 2 *Hill.* 570. Disting'd (Conclusiveness of finding by referee or jury) in *Matter of Kings Co. Elev. R. R. Co.*; 82 *N. Y.* 95, 101. Explained (Parol evidence of testator's intention) in *Reynolds v. Robinson*, 82 *N. Y.* 103, 108. Explained (Suit for services rendered in expectation of testamentary provision) in 2 *Para. on Contr.* 47, *n. k.*
- **v. Delaware, L. & W. R. R. Co.**, 57 *N. Y.* 382; *s. c.*, 15 *Am. R.* 513. Decisions below stated in 4 *Abb. L. J.* 92; 5 *Id.* 334; *s. c.*, 13 *Am. L. Reg. N. S.* 665, with note. Decision in 57 *N. Y.* disting'd (Liability to gratuitous passenger) in *Blair v. Erie R'y Co.*, 66 *N. Y.* 318; *Pool v. Chicago, Milwaukee, &c. R'y Co.*, 53 *Wisc.* 659. Decision in 13 *Am. L. Reg.* disting'd (Right of trespasser to recover against railroad company for negligence) in *Rounds v. Delaware, L. & W. R'y Co.*, 3 *Hun.* 329. With decision in 57 *N. Y.* see cases collated in 6 *Abb. N. C.* 118, *n.* Followed with *Robertson v. N. Y. & Erie R. R. Co.*, 22 *Barb.* 91 (Presumption that one riding gratuitously was there without authority) in *Little Rock & Fort Scott R'y v. Miles*, 40 *Ark.* 298; *s. c.*, 48 *Am. R.* 10, with note. Relied on in *Waterbury v. N. Y. Central, &c. R. R. Co.*, 21 *Blatchf. C. Ct.* 314; *s. c.*, 48 *Am. R.* 15, *n.*
- **v. Erie R'y Co.** See *Johnson v. Hudson River R. R. Co.*
- **v. Wells**, 22 *Hun.* 123. Aff'd in 82 *N. Y.* 576. Decision in 82 *N. Y.* disting'd (Tender, when an estoppel) in *Talmage v. Third Nat. Bk.*, 91 *Id.* 531.
- Eaton, Cole & B. Co. v. Avery**, 18 *Hun.* 44. Aff'd in 83 *N. Y.* 31; *s. c.*, 38 *Am. R.* 389. Decision in 83 *N. Y.* followed with *Barnett v. Selling*, 70 *Id.* 495 (Fraudulent representations) in *Schulz v. Harris*, *N. Y. Daily Reg.*, May 12, 1884. Explained in 1 *Benj. on Sales*, § 643, *n.* 11 (Corbin's 4 *Am. ed.*); *Moak's Underhill's Torts*, 1 *Am. ed.* 525.
- Eaustapere v. Ketchum**, 2 *Weekly Dig.* 377; *s. c.*, reported as *Eustaphie v. Ketchum*, 6 *Hun.* 621.
- Ebbighousen v. Worth Club**, 4 *Abb. N. C.* 300. Compare (Association not a partnership) *Ash v. Guic*, 24 *Abb. L. J.* 83; *s. c.*, 12 *Reporter*, 281; *Ferris v. Shaw*, 5 *Mo. App.* 279. See also (Voluntary associations) *Flagg v. Swift*, 25 *Hun.* 623, 625. Collated with *Wells v. Gates*, 18 *Barb.* 537; *Park v. Spaulding*, 10 *Hun.* 128; *Sizer v. Daniels*, 66 *Barb.* 426; *Waller v. Thomas*, 42 *How. Pr.* 337; *Livingston v. Lynch*, 4 *Johns. Ch.* 573; *Austin v. Searing*, 16 *N. Y.* 123, and other cases (Right of expulsion and liabilities of members of social club) in 27 *Abb. L. J.* 326.
- Eberle v. Mehrbach**, 55 *N. Y.* 682. Ex-



- plained (Sales on Sunday) in 2 *Benj. on Sales*, § 842, n. 34 (Corbin's 4 Am. ed.).
- Ebner v. Bradford**, 3 *Abb. Pr. N. S.* 248. See (Attachment of property) *Code Civ. Pro.* 1881, ch. VII, tit. III, art. 1, n.
- Eckerson v. Vollmer**, 11 *How. Pr.* 42. Examined (Wife answering separately) in *Harley v. Ritter*, 9 *Abb. Pr.* 400.
- Eckert v. Long Island R. R. Co.**, 57 *Barb.* 555. Aff'd in 43 *N. Y.* 502. See *Mark v. Hudson River Bridge Co.* Decision in 43 *N. Y.* explained (What amounts to contributory negligence) in *Rexter v. Starin*, 73 *Id.* 602. Explained in *Moak's Underhill's Torts*, 1 Am. ed. 285. Cited (Contributory negligence not imputed to one injured while seeking to save human life) in *Linnahan v. Sampson*, 126 *Mass.* 506; s. c., 30 *Am. R.* 692, 694.
- Eckford v. De Kay**, 8 *Paige*, 89. Aff'd in 26 *Wend.* 29. See *Jackson v. Van Dusen*. Decision in 8 *Paige*, disting'd (Right of minor cestui que trust, to repudiate purchase made by trustees) in *Baker v. Disbrow*, 3 *Redf.* 360. Cited with *Hassard v. Rowe*, 11 *Barb.* 22, as contrary to the general rule (Power of guardian to change property of ward from real to personal, and vice versa, without order of court) in *Tyler on Inf & Cov.* 2 ed. § 175.
- Eckhardt v. People**, 22 *Hun.* 525. Aff'd in 83 *N. Y.* 462; s. c., 38 *Am. R.* 462.
- Eckstein v. Frank**, 1 *Daly*, 334. Disting'd (Infant's liability for tort) in *Hewitt v. Warren*, 10 *Hun.* 560, 563.
- Eddy v. Beach**, 7 *Abb. Pr.* 17. Followed as decisive with *Shaw v. Jayne*, 4 *How. Pr.* 119 (Evidence upon which charge of malice in procuring arrest is based, not to be pleaded) in *Solis v. Manning*, 37 *Id.* 13.
- **v. Traver**, 6 *Paige*, 521. Approved and followed (Payment, when ineffective, as against one entitled to substitution) in *Re Foot*, 12 *Bankr. Reg.* 337.
- Edeck v. Ranuer**, 2 *Johns.* 423. Criticised and disapproved (Unstamped note as evidence) in *Green v. Holway*, 101 *Mass.* 243; s. c., 3 *Am. R.* 339, 344.
- Edgell v. Hart**, 13 *Barb.* 380. Aff'd in 9 *N. Y.* 213; s. c., 59 *Am. Dec.* 532, with note. See *Gardner v. McEwen*. Decision in 9 *N. Y.* approved and applied (Validity of chattel mortgage which creates fluctuating lien only) in *Mittnacht v. Kelly*, 5 *Abb. Pr. N. S.* 442. Followed in *Gardner v. McEwen*, 19 *N. Y.* 123. Disting'd in *Conkling v. Shelley*, 28 *Id.* 360. Questioned with *Sheldon v. Carpenter*, 4 *Id.* 579; *Williston v. Jones*, 6 *Duer*, 504; *Ford v. Williams*, 13 *N. Y.* 577, in *Gay v. Bidwell*, 7 *Mich.* 519. Denied as authority in *Ross v. Wilson*, 7 *Bush (Ky.)* 35; s. c., 43 *Am. Dec.* 606, n. Quoted in *Wait on Fraud. Conv.* § 349. Decision in 13 *Barb.* explained in 1 *Par. on Contr.* 571, n. u.
- Edgerly v. Bush**, 16 *Hun.* 80. Rev'd in 81 *N. Y.* 199.
- Edgerton v. Ford**, 11 *Abb. Pr.* 415. Disting'd (Requiring stipulation not to sue) in *Faulkner v. Morey*, 22 *Hun.* 379, 385.
- **v. N. Y. & Harlem R. R. Co.**, 35 *Barb.* 193. Further decision to similar effect, in *Id.* 389, and that aff'd in 39 *N. Y.* 227. See *Bissell v. Michigan Southern, &c. R. R. Co.*; *Mullen v. St. John*. Decision in 39 *N. Y.* relied on with *Carroll v. N. Y. & New Haven R. R. Co.*, 1 *Duer*, 578 (Liability for safety of passengers riding in unusual or prohibited place) in *Dunn v. Grand Trunk R'y*, 58 *Me.* 187; s. c., 4 *Am. R.* 267, 271. Decision in 35 *Barb.* explained in *Ang. on Carr.* § 528, n. b, 5 cd.
- **v. Page**, 12 *How. Pr.* 58. Rev'd in 14 *Id.* 116; s. c., more fully, 5 *Abb. Pr.* 1; yet more fully 1 *Hill.* 320. Latter judgment aff'd in 20 *N. Y.* 281; s. c., more fully, 10 *Abb. Pr.* 119; with points of counsel, 18 *How. Pr.* 359. See *Dyett v. Pendleton*. Decision in 20 *N. Y.* disting'd (Effect of eviction, &c. on liability of tenant) in *Mattoon v. Monroe*, 21 *Hun.* 74, 82; *Walker v. Shoemaker*, 4 *Id.* 580. Explained in 1 *Washb. on Real Prop.* 4 ed. 532. Collated with other cases, in *McAdam on Landl. & T.* 2 ed. § 212.
- **v. Peckham**, 11 *Paige*, 352. See *Hubbell v. Van Schoening*. Relied on (Extent of application of rule that time is not of essence of contract) in *Bacon v. Smith*, 52 *Ga.* 505.
- Edick v. Crim**, 10 *Barb.* 447. See *McCoy v. Artcher*. Quoted, with cases to the contrary, and commented on (Sales of goods—implied warranty) in 2 *Story on Contr.* 5 ed. § 1062, n. 3.
- Edington v. Aetna Life Ins. Co.**, 13 *Hun.* 543. Rev'd in 77 *N. Y.* 564. See *Edington v. Mut. Life Ins. Co.*; *Johnson v. Johnson*; *Whiting v. Barney*. Decision in 77 *N. Y.* disting'd (Communications to physician when privileged) in *Grattan v. Metropolitan Life Ins. Co.*, 80 *N. Y.* 281, 299; *Linz v. Mass. Mut. Life Ins. Co.*, 8 *Mo. App.* 370. Cited and considered at length with *Grattan v. Metropolitan Life Ins. Co.*, 24 *Hun.* 43; *Dilleber v. Home Life Ins. Co.*, 69 *N. Y.* 256; *Cohen v. Conn. Life Ins. Co.*, *Id.* 303; *Sloane v. N. Y. Central R. R. Co.*, 45 *Id.* 125, in 33 *Am. R.* 435, n., where the Edington case was regarded as not very authoritative, and with slight, if any, distinctions from that of *Edington v. Mut. Life Ins. Co.*, 67 *N. Y.* 185. Criticised in *Pearsall v. Elmer*, 5 *Redf.* 181, 188. Disapproved in *Masonic Mut. Benefit Ass'n v. Beck*, 77 *Ind.* 203; s. c., 40 *Am. R.* 295.
- **v. Mutual Life Ins. Co. of N. Y.**, 5 *Hun.* 1. Rev'd in 67 *N. Y.* 185. See *Edington v. Aetna Life Ins. Co.*; *Whiting v. Barney*. Decision in 5 *Hun.* disting'd (Declarations of applicant for policy) in *Estes v. World Mut. Life Ins. Co.*, 6 *Id.* 349, 352. Compare *Mulliner v. Guardian Mut. Life Ins. Co.*, 1 *Sup'm. Ct. (T. & C.)* 448, and see *Abb. Tr. Ev.* 501. Followed (Communications to physicians when privileged)

- in *Grattan v. Metropolitan Life Ins. Co.*, 80 *N. Y.* 281, 297. Cited in *Pearsall v. Elmer*, 5 *Redf.* 181, 184. Disting'd with *Edgington v. Aetna Life Ins. Co.*, 77 *N. Y.* 564; *Grattan v. Metrop. Life Ins. Co.*, 80 *Id.* 281; *Bacon v. Frisbie*, *Id.* 394; *Root v. Wright*, 84 *Id.* 72; *Dilleber v. Home Life Ins. Co.*, 87 *Id.* 79, in *Whelpley v. Loder*, 1 *Dem.* 368.
- Edmeston v. Lyde**, 1 *Paige*, 637; s. c., 19 *Am. Dec.* 454. Explained (Procedure in creditor's suit) in *Dawley v. Brown*, 65 *Barb.* 107, 119. Approved and collated with *McDermott v. Strong*, 4 *Johns. Ch.* 687; *Williams v. Brown*, *Id.* 682; *Purdy v. Doyle*, 1 *Paige*, 558, and other cases, in *Freedman's Savings & Trust Co. v. Earle*, 110 *U. S.* 710, 716. Compare note to *Donovan v. Finn*, 14 *Am. Dec.* 531, and to *Tolles v. Wood*, 16 *Abb. N. C.* 1.
- Edmonston v. McLoud**, 19 *Barb.* 356. Aff'd in 16 *N. Y.* 543. Decision in 16 *N. Y.* collated, with other cases (Receiver—how appointment of operates on passing debtor's real property) in *Thomps. on Prov. Rem.* 481.
- Edmonstone v. Thompson**. See *Retan v. Drew*.
- Edsall v. Brooks**, 2 *Robt.* 29; s. c., 17 *Abb. Pr.* 221; 26 *How. Pr.* 426. Subsequent decision in 2 *Robt.* 414; s. c., 33 *How. Pr.* 191; also in 3 *Robt.* 284. Decision in 2 *Robt.* approved (Term "blackmailing" libelous *per se*) in *Robertson v. Bennett*, 44 *Super. Ct. (J. & S.)* 66, 70.
- Edson v. Weston**, 7 *Cov.* 278. Disting'd (Taking of goods from bailee or carrier, as justification for not delivering) in *Mierson v. Hope*, 2 *Sweeny*, 561. Cited as authority (Evidence admissible under general denial) in *Oscaryan v. Winchester Rep. Arms. Co.*, 103 *U. S.* 261, 267.
- Edwards v. Bishop**, 4 *N. Y.* 61. Explained (Ejectment—co-tenants—ouster) in *Sedgw. & W. on Tr. of Tit. to Land*, § 284.
- **v. Bodine**, 11 *Paige*, 223. Followed (Damages on injunction-bond) in *Corcoran v. Judson*, 24 *N. Y.* 106, 108. Followed with *Andrews v. Glenville Woolen Co.*, 50 *Id.* 282, in *Bolling v. Tate*, 65 *Ala.* 417; s. c., 39 *Am. R.* 5, with note, citing contrary cases.
- **v. Cogswell**, 1 *Sup'm. Ct. (T. & C.)* 416. Overruled in effect (Taxes, &c. as lien on real estate) in *Dowdney v. Mayor, &c. of N. Y.*, 54 *N. Y.* 186.
- **v. Davis**, 16 *Johns.* 281; s. c., 6 *N. Y. Com. L. Law.* ed. 141, with brief note. See *Van Valkenburgh v. Watson*. Followed with *Jackson v. Vanderheyden*, 17 *Johns.* 167; *Whitbeck v. Cook*, 15 *Id.* 483 (Liability of wife on personal contract made during coverture) in *Wadleigh v. Glines*, 6 *N. H.* 17; s. c., 23 *Am. Dec.* 705, a case of covenant of warranty. Explained (Obligation to support parent) in 1 *Pars. on Contr.* 304, *n. k.*
- **v. Drew**, 2 *E. D. Smith*, 55. See (Notice of appeal from justice's judgment) *Code Civ. Pro.* 1881, § 8064, *n.*
- **v. Farmers' Fire Ins. & Loan Co.**, 21 *Wend.* 467. Aff'd in 26 *Id.* 541. See *Jackson v. Crafts*; *Kortright v. Cady*. Decision in 21 *Wend.* 467 approved (Effect of tender of mortgage debt after law day) in *Kortright v. Cady*, 21 *N. Y.* 343, 350. Explained (Private corporation—powers relating to property) in *Ang. & A. on Corp.* § 157, 11 ed.
- **v. Lent**, 8 *How. Pr.* 28. Followed (Sufficiency of denial) in *Lloyd v. Burns*, 33 *Super. Ct. (J. & S.)* 423. Explained as probably decided before amendment to the Code in 1852 (§ 149) in *Sands v. Maclay*, 2 *Mont.* 35.
- **v. Russell**, 21 *Wend.* 63. See *Higbie v. Leonard*. See (Costs in justices' court) *Code Civ. Pro.* 1881, § 3075, *n.*
- **v. Varick**, 5 *Den.* 664. See *Jackson v. Waldron*. Overruled (Release of contingent interest) in *Miller v. Emans*, 19 *N. Y.* 384.
- Eells v. Lynch**, 8 *Bosw.* 465. Followed (Trust for accumulation) in *Ruppert's Estate*, 1 *Tuck.* 480, 489. Discussed in 1 *Jarm. on Wills*, Rand. & T. ed. 512, *n.*
- Egan v. Mutual Ins. Co.**, 5 *Den.* 326. Applied (Policy, when avoided by incumbency) in *Dacey v. Agricultural Ins. Co.*, 21 *Hun.* 83, 91. Disting'd in *Baley v. Homestead Fire Ins. Co.*, 80 *N. Y.* 21, 23.
- Egberts v. Wood**, 3 *Paige*, 517; s. c., 24 *Am. Dec.* 236, with note. See *Havens v. Hussey*. Examined with *Havens v. Hussey*, 5 *Paige*, 30; *Hitchcock v. St. John*, *Hoffm.* 511 (Power of one partner to assign for benefit of creditors) in *Kirby v. Ingersoll*, 1 *Doug. (Mich.)* 485. Quoted in *Burrill on Assign.* §§ 68, 72, 89, 4 ed. Quoted and collated, with other cases, in *Holcombe, Lead. Cas. on Com. L.* 75. Explained in 1 *Pars. on Contr.* 178, *n. t.* Followed (Trust character and application of partnership property) in *Roop v. Herron*, 15 *Neb.* 80.
- Egerton v. Conklin**, 25 *Wend.* 224. Approved (Time of execution of power to sell testator's real estate) in *Richardson v. Sharpe*, 29 *Barb.* 222.
- Eggler v. People**, 3 *Sup'm. Ct. (T. & C.)* 796. Aff'd in 56 *N. Y.* 642. Decision in 56 *N. Y.* applied (Evidence of character of deceased for violence, upon trial for murder) in *Nichols v. People*, 23 *Hun.* 165, 167.
- Eggleston v. Columbia Turnpike Road**, 18 *Hun.* 146. Rev'd in 82 *N. Y.* 278.
- **v. N. Y. & Harlem R. R. Co.**, 35 *Barb.* 162. Followed with *Miller v. Auburn & Syracuse R. R. Co.*, 6 *Hill*, 61 (License revoked by transfer of title to land) in *Jenkins v. Lykes*, 19 *Fla.* 148; s. c., 45 *Am. R.* 19.
- **v. Smiley**, 17 *Johns.* 133. Cited with approval, but limited (Taking advantage of cause of challenge, after verdict) in *Rollins v. Ames*, 2 *N. H.* 349; s. c., 9 *Am. Dec.* 79.
- Egleston v. Knickerbacker**, 6 *Barb.* 458. Approved with *White v. Parker*, 8 *Id.* 48

- Parol evidence to explain receipt that embodies contract) in *Coon v. Knap*, 8 *N. Y.* 402. Compare *McCotter v. Hooker*, 4 *Id.* 497.
- Ehle v. Bingham**, 4 *Hill*, 595. See *Robertson v. Smith*. Doubtful (Witnesses' fees) in *Wheeler v. Ruckman*, 5 *Robt.* 702.
- **v. Chittenango B'k**, 24 *N. Y.* 548. See *Thompson v. Sloan*. Compared (Payment of dividend in specie) in 4 *Am. L. Reg. N. S.* 846, 851.
- **v. Judson**, 24 *Wend.* 97. See *Geer v. Archer*; *Nash v. Russell*; *Smith v. Ware*; *Wilson v. Burr*. Applied (Effect of express promise to revive consideration) in *Geer v. Archer*, 2 *Barb.* 425; *Chilcott v. Trimble*, 13 *Id.* 508; *Watkins v. Halstead*, 2 *Sandf.* 314. Disting'd with *Smith v. Wane*, 13 *Johns.* 257, in *Goulding v. Davidson*, 26 *N. Y.* 605. Collated, with other cases, in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 187.
- **v. Moyer**, 8 *How. Pr.* 244. Explained (Entry of judgment after death of party) in *Kissam v. Hamilton*, 20 *Id.* 369, 375.
- Ehrichs v. De Mill**, 75 *N. Y.* 370. Followed (Necessity of ordering new trial on reversal of judgment) in *Guernsey v. Miller*, 80 *Id.* 181, 184.
- Eightieth Street, Matter of**, 16 *Abb. Pr.* 169. Further decision in 17 *Id.* 324.
- Eisenlord v. Dillenback**, 15 *Hun.* 23. Aff'd in 79 *N. Y.* 617.
- **v. Snyder**, 71 *N. Y.* 45. Applied (Necessity of evidence of intent to charge separate estate of married woman) in *Salmon v. McEnany*, 23 *Hun.* 87.
- Elder v. Morrison**, 10 *Wend.* 128; s. c., 25 *Am. Dec.* 548, with note. Reviewed at length and followed (Liability of one aiding officer to execute process) in *Mitchell v. State*, 12 *Ark.* 50; s. c., 54 *Am. Dec.* 253, with note. Followed in *Hooker v. Smith*, 19 *Verm.* 151; s. c., 47 *Am. Dec.* 679, 682, with note.
- Eldridge, Matter of**, 82 *N. Y.* 161. Explained (Attorney amenable to summary jurisdiction of court) in 2 *Greenl. on Ev.* 14 ed. § 147, n. a.
- Eldridge v. Reed**, 2 *Sweeny*, 155. Rev'd in 50 *N. Y.* 635.
- **v. Strenz**, 34 *Super. Ct. (J. & S.)* 491. Aff'd, it seems, in 65 *N. Y.* 556. Further decision in 39 *Super. Ct. (J. & S.)* 295. Decision in 39 *Super. Ct. (J. & S.)* disting'd with *McGregor v. Buell*, 1 *Keyes*, 153 (Power to grant additional allowance, &c. after decision by Court of Appeals) in *Parrott v. Sawyer*, 26 *Hun.* 466.
- **v. Underhill**, 17 *Hun.* 241. See (Amendment in case of appeal from justice's judgment) *Code. Civ. Pro.* 1881, § 3049, n.
- Eleventh Ward Sav'gs B'k v. Hay**, 8 *Daly.* 328; s. c., 55 *How. Pr.* 438. Aff'd, it seems, in 73 *N. Y.* 609, but without opinion.
- Elizabethport Manuf. Co. v. Campbell**, 13 *Abb. Pr.* 86. Examined with other cases (Answer when to be stricken out as false or sham) in *McCarty v. O'Donnell*, 7 *Robt.* 634.
- Elkins v. Atheam**. See *People ex rel. Doughty v. Judges of Dutchess*.
- Ellicott v. Mosier**, 11 *Barb.* 574. Aff'd in 7 *N. Y.* 201. With decision in 7 *N. Y.* see (Action for dower against occupant) *Code Civ. Pro.* 1881, § 1599, n.
- Ellicottville & Great Valley Plankr. Co. v. Buffalo & P. R. R. Co.**, 20 *Barb.* 644. Followed (Right of railroad company to cross plankroads, &c.) in *Jamaica & B. Plankr. Co. v. N. Y. & Manhattan Beach R. R'y. Co.*, 25 *Hun.* 585.
- Ellinghausen v. Leask**, *Langbein's Dist. Ct. Pr.* 49. Reported as *People ex rel. Ellinghausen v. Leask*, 1 *Abb. N. C.* 299.
- Elliot v. Brown**, 2 *Wend.* 497; s. c., 20 *Am. Dec.* 644. See *Lincoln v. Saratoga & Schenectady R. R. Co.* Approved with *Nolton v. Moses*, 3 *Barb.* 31 (Informing jury as to costs) in *Waffle v. Dillenback*, 38 *N. Y.* 53. Included with notes, in *Bigel. Cas. on Torts*, 219.
- Elliott v. Buckland**, 37 *How. Pr.* 71. See (Appeal from judgment) *Code Civ. Pro.* 1881, § 1329, n.
- **v. Cronk**, 13 *Wend.* 35. Applied (Place of trial of action against public officer) in *People v. Tweed*, 13 *Abb. Pr. N. S.* 419, 421.
- **v. Gibbons**, 30 *Barb.* 498. Aff'd in 31 *N. Y.* 67.
- **v. Lewis**, 10 *Hun.* 486. Further decision in 16 *Id.* 581.
- **v. Pell**, 1 *Paige*, 268. Applied (Effect of decree between co-defendants) in *Dusenbury v. Fisher*, 47 *Super. Ct. (J. & S.)* 482, 487.
- **v. Rossell**, 10 *Johns.* 1; s. c., 6 *Am. Dec.* 306; 4 *N. Y. Com. L. Law. ed.* 909, with brief note. See *Colt v. McMechen*. Relied on in dissenting opinion of *Gibson, J.* (Liability of carrier by water) in *Gordon v. Little*, 8 *Serg. & R. (Pa.)* 533; s. c., 11 *Am. Dec.* 632, 642. Explained in *Ang. on Carr.* § 80, 5 ed.; 1 *Pars. on Contr.* 170, n. j. Discussed (Act of God) in *Ang. on Carr.* § 185, 5 ed.
- **v. Wood**, 53 *Barb.* 285. Aff'd in 45 *N. Y.* 71. Decision in 45 *N. Y.* explained (Powers of sale inserted in mortgages) in 2 *Washb. on Real Prop.* 4 ed. 73.
- Ellis v. Albany City Fire Ins. Co.**, 4 *Lans.* 433. Aff'd in 50 *N. Y.* 402; s. c., 10 *Am. R.* 495, with note.
- **v. Andrews**, 56 *N. Y.* 83; s. c., 15 *Am. R.* 379, with note. See *Simar v. Canaday*. Followed (Fraudulent statements by vendor) and *Simar v. Canaday*, 53 *N. Y.* 298, disting'd in *Chrysler v. Canaday*, 90 *Id.* 272. Doubled in *Grafenstein v. Eptein*, 23 *Kans.* 443; s. c., 33 *Am. R.* 174. Discussed with other cases in 13 *Alb. L. J.* 160. Discussed in 2 *Add. on Torts*, 422, n. 1, *Wood's ed.*; *Benj. on Sales*, § 430 (*Bennett's* 4 *Am. ed.*).
- **v. Brown**. See *Hall v. Newcomb*; *Herrick v. Carman*; *Lamoureux v. Hewitt*.

- **v. Duncan**, 21 *Barb.* 230. See *Goodale v. Tuttle*. Followed (Diversion of subterranean waters) in *Chase v. Silverstone*, 62 *Me.* 175; s. c., 16 *Am. R.* 419, 426. Collated with *Bliss v. Greeley*, 45 *N. Y.* 671, and other cases,—in *Chesley v. King*, 74 *Me.* 164; s. c., 43 *Am. R.* 569, where *Phelps v. Nowlen*, 72 *N. Y.* 39, was disting'd. Collated with *Goodale v. Tuttle*, 29 *N. Y.* 459, and other cases, in 9 *Am. R.* 284, n.
- **v. Hoskins**, 14 *Johns.* 363. Relied on with *Hudson v. Swift*, 20 *Id.* 26; *Benedict v. Lynch*, 1 *Johns. Ch.* 370; *Hatch v. Cobb*, 4 *Id.* 559 (Effect of failure to comply with terms of land contract); *Ketchum v. Evertson*, 13 *Johns.* 365, being thought to state the rule rather strongly,—in *Estes v. Brown*, 11 *Tex.* 237; s. c., 60 *Am. Dec.* 238, with note. Followed as conclusive with *Caswell v. Black River Co.*, 14 *Johns.* 453; *Fuller v. Hubbard*, 6 *Cov.* 13; *Gale v. Nixon*, *Id.* 445 (When too late to rescind land contract) in *Fay v. Oliver*, 20 *Vt.* 118; s. c., 49 *Am. Dec.* 764.
- **v. Messervie**, 11 *Paige*, 467. Aff'd in *Evans v. Ellis*, 5 *Den.* 640.
- **v. People**, 21 *How. Pr.* 356. Examined with other cases (Comparison of handwriting) in *Miles v. Loomis*, 10 *Hun.* 372, 375; *Gilbert v. Simpson*, 6 *Daly*, 29, 31. Followed in *Frank v. Chemical Nat. Bank of N. Y.*, 37 *Super. Ct. (J. & S.)* 26, 30.
- Ellison, Matter of**, 5 *Johns. Ch.* 261. Applied (Enforcing lien on avails of estate) in *Price v. Palmer*, 23 *Hun.* 504, 507.
- Ellison v. Moffatt**, 1 *Johns. Ch.* 46. Followed with *Arden v. Arden*, *Id.* 313 (Stale claims not favored in equity) in *De Cordova, Adm'r v. Smith's Adm'r*, 9 *Tex.* 129; s. c., 58 *Am. Dec.* 136.
- Ellsworth v. Fulton**, 24 *How. Pr.* 20. See (Defects in proceedings on appeal how supplied) *Code Civ. Pro.* 1881, § 1303, n.
- **v. Lockwood**, 42 *N. Y.* 89. Disting'd (Right of junior mortgage to subrogation) in *Twombly v. Cassidy*, 82 *Id.* 155, 160. See also cases cited in 23 *Moak's Eng.* 219. Explained (Mortgagee becoming purchaser by virtue of power in mortgage) in 2 *Washb. on Real Prop.* 4 ed. 74.
- **v. Smith**, 56 *How. Pr.* 257. Officially reported as *Ellsworth v. Brown*, 16 *Hun.* 1.
- Ellwood v. Monk**, 5 *Wend.* 235. Explained with *Mercein v. Andrus*, 10 *Id.* 461; *Farley v. Cleveland*, 4 *Cov.* 439 (Promise to answer for debt of another, when not within statute of frauds) in *Spann v. Baltzell*, 1 *Fla.* 301; s. c., 46 *Am. Dec.* 346, 360, with note. Discussed in *Browne on Stat. of Frauds*, § 169, 4 ed.
- Elmendorf v. Harris**, 5 *Wend.* 516. Rev'd in 23 *Id.* 628; s. c., 35 *Am. Dec.* 587, 591, with note, wherein it is thought not to be supported by the British cases relied on though shown to hold what is a well-established doctrine in *N. Y.* (Validity of award made without giving parties opportunity to be heard). See *Huy v. Brown*; *Peters v. Newkirk*. Decision in 23 *Wend.* followed in *Day v. Hammond*, 57 *N. Y.* 479, 436.
- **v. Lockwood**, 4 *Lans.* 393. Aff'd in 57 *N. Y.* 322. Cited as holding what is now the better opinion (Effect of release of dower to one not having legal fee) in *Tyler on Inf. & Cov.* 2 ed. § 402. See 22 *Abb. L. J.* 319.
- Elmer v. Oakley**, 3 *Lans.* 34. Followed (Acts of agent when not creating usury) in *Van Buren v. Stokes*, 3 *Sup'm. Ct. (T. & C.)* 511.
- Elmore v. Jaques**, 2 *Hun.* 130; mem. s. c., 4 *Sup'm. Ct. (T. & C.)* 679. Rev'd in 60 *N. Y.* 610.
- **v. Sands**, 54 *N. Y.* 512; s. c., 13 *Am. R.* 617. Followed (Effect of conditions in railroad ticket) in *Wentz v. Erie R'y Co.*, 5 *Sup'm. Ct. (T. & C.)* 556; Collated with *Hill v. Syracuse, &c. R. R. Co.*, 63 *N. Y.* 101; *Wentz v. Erie R'y Co.*, 5 *Sup'm. Ct. (T. & C.)* 556, and other cases, in 24 *Am. R.* 22, n.
- Elsten v. Schilling**, 6 *Robt.* 544. Aff'd in 42 *N. Y.* 79.
- Elston v. Potter**, 9 *Bosw.* 636. See *Tracy v. Griffin*. Followed (Form of order of arrest) in *Josuez v. Murphy*, 6 *Daly*, 324. Disapproved in *Tracy v. Griffin*, 50 *Barb.* 70. See, also, *Tracy v. Veeder*, 35 *How. Pr.* 209; *Sherlock v. Sherlock*, 7 *Abb. Pr. N. S.* 22.
- Elsworth v. Muldoon**, 46 *How. Pr.* 246; s. c., 15 *Abb. Pr. N. S.* 440. See (Acknowledgment and record of certificate of redemption) *Code Civ. Pro.* § 1470. Examined with other cases (Merger of judgment debt, &c. in judgment of foreclosure) in 20 *Am. L. Reg. N. S.* 685.
- Elting v. Vanderlyn**, 4 *Johns.* 237; s. c., 3 *N. Y. Com. L. Law. ed.* 808, with brief note. See *Stewart v. McGuin*. Applied (Forbearance as consideration) in *Mut. Life Ins. Co. v. Smith*, 23 *Hun.* 535, 542. Approved in *Rood v. Jones*, 1 *Doug. (Mich.)* 190; citing *Gould v. Armstrong*, 2 *Hall*, 266. Relied on in *Calkins v. Chandler*, 36 *Mich.* 320; s. c., 24 *Am. R.* 593. Cited with approval in *Thomas v. Croft*, 2 *Rich. (S. C.)* 118; s. c., 44 *Am. Dec.* 279, 281, with note.
- Elton v. Markham**, 20 *Barb.* 343. Disting'd (Sufficiency of denial) in *Meehan v. Harlem Savings Bank*, 5 *Hun.* 440.
- Elverson v. Vanderpoel**, 41 *Super. Ct. (J. & S.)* 257. Aff'd in 69 *N. Y.* 610.
- Elwell v. Chamberlain**, 2 *Bosw.* 230. Subsequent decisions in 4 *Bosw.* 320, and 31 *N. Y.* 611. See *Bennett v. Judson*. Decision in 31 *N. Y.* followed (Ratifying agents' acts) in *Estes v. World Mut. L. Ins. Co.*, 6 *Hun.* 349.
- **v. Dodge**, 33 *Barb.* 336. Applied (Presumption as to validity of corporate acts) in *Cheever v. Gilbert Elev. R'y Co.*, 43 *Super. Ct. (J. & S.)* 478, 486. Disting'd with *Matter of Excelsior Fire Ins. Co.*, 16 *Abb. Pr.* 8; *Robertson v. Bullions*, 11 *N. Y.* 243; *Matter of St. Ann's Church*, 23 *How. Pr.* 285 (Powers of directors of corporation) in

- Metropolitan, &c. R'y. Co. v. Manhattan R'y Co., 14 *Abb. N. C.* 103, 251.
- *v. Johnson*, 3 *Hun.* 558. Appeal dismissed in 74 *N. Y.* 80.
- *v. McQueen*, 10 *Wend.* 520. See *Hess v. Beckman*. Applied (Conclusiveness of judgment in justices' court) in *Blum v. Hartman*, 3 *Daly*, 48.
- *v. Robbins*, 43 *How. Pr.* 108. Not followed (Proceedings to recover surplus moneys on foreclosure, whether special proceedings) in *Matter of Gibbs*, 58 *Id.* 504.
- *v. Skiddy*, 8 *Hun.* 73. Further decision in 77 *N. Y.* 282. Decision in 8 *Hun.* collated with *Fisher v. Abeel*, 66 *Barb.* 381, and other cases (Ships' lien upon cargo for demurrage) in *Waples Proc. in Rem.*, § 531, *n.*
- Elwood v. Deifendorf**, 5 *Barb.* 398. See *Harris v. Fly*; *Myers v. Welles*. Explained and limited (Right of surety to charge principal with costs of suit) in *Holmes v. Weed*, 24 *Barb.* 547. Disting'd with *Thompson v. Taylor*, 72 *N. Y.* 32; *Dela-ware B'k v. Jarvis*, 20 *Id.* 226, in *Corn Exchange B'k v. Nassau B'k*, 91 *Id.* 74. Followed (Devisee of land charged with payment of debts, when not liable at law) in *Gridley v. Gridley*, 33 *Barb.* 253. Disting'd (Enforcing demand in equity against real estate of decedent) in *Stilwell v. Swarthout*, 81 *N. Y.* 116. Applied (One of several executors when not authorized to bind others or estate) in *Bailey v. Spofford*, 14 *Hun.* 88. Applied to case of sole administrator,—in *Church v. Howard*, 79 *N. Y.* 418. Reviewed with other cases (Application of ten years' limitation in equity) in *Hubbell v. Sibley*, 5 *Lans.* 60. Explained in dissenting opinion of *ALLEN, J.* (Effect of contingent liability as debt) in *Leggett v. Bank of Sing Sing*, 24 *N. Y.* 292. Applied (Surety, when not discharged by taking security from principal debtor) in *Van Etten v. Troudden*, 67 *Barb.* 347; *Pomeroy v. Tanner*, 70 *N. Y.* 551. Compared with other cases in *Maier v. Canavan*, 8 *Daly*, 276. Followed (Effect of note to pay debt) in *Bates v. Rosekrans*, 23 *How. Pr.* 98, 107. Disting'd in *Ferdon v. Jones*, 2 *E. D. Smith*, 111. Approved (Objections to evidence must be specific) in *Dunnally v. State*, 2 *Dutcher (N. J.)* 463.
- *v. Gardner*, 9 *Abb. Pr. N. S.* 99. Aff'd in 10 *Abb. Pr. N. S.* 238; *s. c.*, less fully, 45 *N. Y.* 349. Disting'd (Execution against person) in *Church of the Redeemer v. Crawford*, 36 *Super. Ct. (J. & S.)* 314. Disting'd with *Smith v. Knapp*, 30 *N. Y.* 581, but *Corwin v. Freeland*, 6 *Id.* 560, followed in *Segelken v. Meyer*, 5 *Civ. Pro. R. (Browne)* 258. Applied in *Graves v. Waite*, 59 *N. Y.* 160. Applied (Action, when in tort) in *Peck v. Root*, 5 *Hun.* 550. Applied (Right to move to vacate order of arrest) in *Liddell v. Paton*, 7 *Hun.* 198.
- *v. Klock*, 18 *Barb.* 50. Followed (Correcting certificate of acknowledgment by married woman) in *Gilbraith v. Gallivan*, 78 *Mo.* 452, 458.
- *v. Smith*, 9 *How. Pr.* 528. Overruled (Replevin against one who has parted with possession) in *Nichols v. Michael*, 23 *N. Y.* 262, 269.
- *v. Western Union Tel. Co.*, 45 *N. Y.* 549. See *Leonard v. N. Y., Albany, &c. Tel. Co.*; *Rittenhouse v. Independent Line of Tel. Applied* (Effect of testimony of uncontradicted witness) in *Hodge v. City of Buffalo*, 1 *Abb. N. C.* 360, with note; *Nicholson v. Conner*, 8 *Daly*, 215; *Sheridan v. Mayor, &c. of N. Y.*, 8 *Hun.* 428; *Koehler v. Adler*, 78 *N. Y.* 291. Explained (Right to demand proof of authority to send message) in *Atlantic & Pacific Tel. Co. v. Western Union Tel. Co.*, 4 *Daly*, 534.
- Elwyn v. Drake**, 3 *Johns. Cas.* 594; *s. c.*, more fully, 1 *Cal.* 184.
- Ely v. Carnley**, 3 *E. D. Smith*, 489. Aff'd in 19 *N. Y.* 496. See *Meech v. Patchin*. Decision in 19 *N. Y.* applied (Filing of chattel mortgage) in *Stockham v. Allard*, 4 *Sup'm. Ct. (T. & C.)* 279. Approved in *Gilhespie v. Brown*, 16 *Neb.* 462. Followed in *Platt v. Stewart*, 13 *Blatchf. C. Ct.* 481, 499. Cited with other cases in *Jones on Chat. M.* § 290.
- *v. City of Rochester*, 26 *Barb.* 133. See *Radcliff v. Mayor, &c. of Brooklyn*. Followed (When construction of bridge by municipal corporation will not be enjoined) in *Swett v. City of Troy*, 12 *Abb. Pr. N. S.* 100.
- *v. Cook*, 2 *Hilt.* 406; *s. c.*, 9 *Abb. Pr.* 366. Aff'd, in part, in 28 *N. Y.* 365; *s. c.*, 2 *Abb. Ct. App. Dec.* 14. See *Rooney v. Second Ave. R. R. Co.* Decision in 28 *N. Y.* applied (Attorneys' lien as subject to set-off) in *Perry v. Chester*, 36 *Super. Ct. (J. & S.)* 228. Cited as authority with *Williams v. Ingersoll*, 89 *N. Y.* 508 (Doctrine of equitable assignment as applied to contracts between client and attorney for payment out of judgment) in *Terney v. Wilson*, 16 *Vroom (N. J.)* 285. Decision in 18 *Barb.* quoted (What circumstances justify making of assignment for creditors) in *Burrill on Assign.* § 63, 4 ed.
- *v. Holton*, 15 *N. Y.* 595. Applied (Amendment of statutes) in *Calhoun v. Delhi & Middletown R. R. Co.*, 28 *Hun.* 379. Followed in *Bay v. Gage*, 36 *Barb.* 447, 450; *Moore v. Mausert*, 5 *Lans.* 173.
- *v. Lowenstein*, 9 *Abb. Pr. N. S.* 42. Another decision in *Id.* 37. With decision on p. 42 see (Place of trial) *Code Civ. Pro.* 1881, § 982, *n.*
- *v. Lyons*, 18 *Wend.* 644. Compare (Arrest of non-resident) *L.* 1840, c. 165.
- *v. McNight*, 30 *How. Pr.* 97. Disting'd (Satisfaction of mortgage) in *De Lisle v. Herbs*, 25 *Hun.* 485, 488.
- *v. New Haven Steamboat Co.*, 53 *Barb.* 207. Explained (Delivery by carrier) as decided upon its own peculiar circumstances,

- in *Redmond v. Liverpool, &c. Steamboat Co.*, 46 *N. Y.* 578. Referred to in *Russell & Erwin Manuf. Co. v. N. H. St. Co.*, 50 *N. Y.* 121, as overruled in *McAndrew v. Whitlock*, 52 *Id.* 51.
- *v. Ormsby*, 12 *Barb.* 570. Explained (Statute of frauds—verbal contract—third parties) in *Browne on Stat. of Frauds*, § 138, *n. f.*, 4 ed.
- *v. Spofford*, 22 *Barb.* 231. Said in 41 *N. Y.* 619, to have been rev'd in Ct. of App., March 1869, but this is erroneous, as appeal then determined was from decision in 35 *Barb.* 251.
- *v. Supervisors of Niagara*, 36 *N. Y.* 297. Aff'g *Moody v. Supervisors, &c.*, 46 *Barb.* 659. Decision in 36 *N. Y.* applied (Municipal liability for riot) in *Allegheny Co. v. Gibson*, 90 *Penn. St.* 397; *s. c.*, 35 *Am. R.* 670, 675. Approved in *Brightman v. Inhabitants of Bristol*, 65 *Me.* 426; *s. c.*, 20 *Am. R.* 717. Quoted and explained in *Wood on Nuis.* 2 ed., § 32.
- Emans v. Turnbull*, 2 *Johns.* 313; *s. c.*, 3 *Am. Dec.* 427. Explained (Right to seaweed) in *Mather v. Chapman*, 40 *Conn.* 382; *s. c.*, 16 *Am. R.* 48, with note. Approved in principle, but disting'd in facts, in *Chapman v. Kimball*, 9 *Conn.* 38; *s. c.*, 21 *Am. Dec.* 707, with note. Limited in 3 *Washb. on Real Prop.* 54, 55, 59.
- Emerson's Case*, 16 *Abb. Pr.* 457. Disting'd and limited (Jurisdiction to grant discharge to insolvent) in *Morrow v. Freeman*, 61 *N. Y.* 515, 520.
- Embree v. Ellis*, 2 *Johns.* 119; *s. c.*, 3 *N. Y. Com. L. Law. ed.* 323, with brief note. Cited as conclusive (Widow's remedy against alienee of husband for detention of dower) in *Sellman v. Bowen*, 8 *Gill & J. (Md.)* 50; *s. c.*, 29 *Am. Dec.* 524, with note.
- *v. Hanna*, 5 *Johns.* 101. Disting'd (Effect of proceedings pending in another State) in *Williams v. Ingersoll*, 89 *N. Y.* 508. Opposed in *Lynch v. Hartford Fire Ins. Co.*, *U. S. Cir. Ct. D. N. H.*, 17 *Fed. Rep.* 628. Examined with *Holmes v. Remsen*, 4 *Johns. Ch.* 460, in *Scott v. Coleman*, 5 *Litt. (Ky.)* 349; *s. c.*, 15 *Am. Dec.* 71, 74. Appears to be disting'd in *Merrill v. New England Mut. Life Ins. Co.*, 103 *Mass.* 245; *s. c.*, 4 *Am. R.* 548. Quoted and explained in 2 *Para. on Contr.* 607, *n. v.* Disting'd (Plea of attachment pending) in *Crawford v. Slade*, 9 *Ala.* 887; *s. c.*, 44 *Am. Dec.* 463, 465. Followed with *Bowne v. Joy*, 9 *Johns.* 221, in *Crawford v. Clute*, 7 *Ala.* 157; *s. c.*, 41 *Am. Dec.* 92. Reviewed with other cases in 25 *Am. Dec.* 195, *n.*
- Embury v. Conner*, 2 *Sandf.* 98. Rev'd in 3 *N. Y.* 511; *s. c.*, 53 *Am. Dec.* 325, with note, wherein it is said to have been frequently referred to in *N. Y.* and elsewhere with approval. See *Baker v. Brame*; *Wynehamer v. People*. Decision in 53 *N. Y.* applied (Waiver of statutory or constitutional right) in *Sherman v. McKeon*, 8 *Bosw.* 111; *Keating v. Serrell*, 5 *Daly*, 281; *Heath v. Hubbell*, 6 *Id.* 185; *Bartow v. Draper*, 5 *Duer*, 136; *People ex rel. Jennys v. Brennan*, 3 *Hun.* 666, 674; *Vose v. Cockroft*, 44 *N. Y.* 424; *Gutchess v. Daniels*, 49 *Id.* 608; *Baird v. Mayor, &c. of N. Y.*, 74 *Id.* 386. Cited as authority in *Barlage v. Detroit, G. H. & M. Ry Co.*, 54 *Mich.* 570. Followed with *Detmold v. Drake*, 46 *N. Y.* 318, in *State v. Iron Cliffs Co.*, 54 *Mich.* 362. Applied (Effect of former adjudication) in *Freer v. Stotenbur*, 2 *Abb. Ct. App. Dec.* 189, 196; *Baldwin v. McArthur*, 17 *Barb.* 420; *Glackin v. Zeller*, 52 *Id.* 151; *Clemens v. Clemens*, 37 *N. Y.* 74; *Kelsey v. Ward*, 38 *Id.* 83. Disting'd (Authority of legislature to vest in municipal corporation title to land of private person) in *Heyward v. Mayor, &c. of N. Y.*, 7 *Id.* 323. Applied (Proceedings under powers specially conferred by statute) in *Morse v. Williamson*, 35 *Barb.* 477; *Astor v. Mayor, &c. of N. Y.*, 37 *Super. Ct. (J. & S.)* 585. Applied ("Due process of law") in *Wynehamer v. People*, 13 *N. Y.* 416; *People ex rel. Town of Rochester v. Deyoe*, 2 *Sup'm. Ct. (T. & C.)* 143. Applied (Question whether use for which private property is taken, is public or private, is judicial) in *Matter of Deansville Cemetery Assoc.*, 66 *N. Y.* 571.
- *v. Sheldon*, 50 *How. Pr.* 324. Aff'd, in effect, in 68 *N. Y.* 227; *s. c.*, more fully, 2 *Abb. N. C.* 404. Decision in 68 *N. Y.* followed (Effect of devise with remainder over in case of death) in *Leonard v. Kingsland*, 67 *How. Pr.* 431. Disting'd in *Buel v. Southwick*, 70 *N. Y.* 581, 586. See (Time, when legacies vest) *Betts v. Betts*, 4 *Abb. N. C.* 317.
- Emerson v. Bleakley*, 5 *Abb. Pr. N. S.* 350; *s. c.*, 2 *Abb. Ct. App. Dec.* 22. See *Bucklin v. Bucklin*. Followed (Vesting of trusts on death of trustee) in *Matter of Howell*, 61 *How. Pr.* 179. Cited (Reproducing testimony of deceased party) in 1 *Whart. Com. on Ev.* § 480. Collated, with other cases (Assignment for benefit of creditors—parties in suits by assignee) in *Bishop on Assign.* § 315. Quoted and collated with other cases (Death of assignee) in *Id.* § 348.
- *v. Bowers*, 14 *Barb.* 658. Rev'd in 14 *N. Y.* 449. Decision in 14 *N. Y.* disting'd (Removal of executor, &c. for incompetency) in *Savage v. Gould*, 60 *How. Pr.* 234, 254. Commented on in *Willard on Executors*, 137, 205. See *Code Civ. Pro.* 1881, § 2685, *n.*
- *v. Burney*, 6 *How. Pr.* 32. See *Bacon v. Reading*. Disapproved (Effect of appeal from order as stay of proceedings) in *Bacon v. Reading*, 1 *Duer*, 622.
- *v. Parsons*, 2 *Sweeny*, 447. Aff'd in 46 *N. Y.* 560. Decision in 46 *N. Y.* cited (What is evidence of dissolution of partnership) in *Story on Partn.* § 268, *n.*
- *v. Spicer*, 55 *Barb.* 428; *s. c.*, more fully, 38 *How. Pr.* 114. Aff'd in 46 *N. Y.* 594. Decision in 46 *N. Y.* collated with other cases (Lease by guardian) in *McAdam on Landl. & T.* 2 ed. § 50.

- Emery v. Hitchcock**, 12 *Wend.* 156. Approved (Awards) in *Dolph v. Clemens*, 4 *Wisc.* 186. Applied (Separate action by one of covenantees) in *Lahy v. Holland*, 8 *Gill* (Md.) 445; s. c., 50 *Am. Dec.* 705, 708, with note.
- **v. Pease**, 20 *N. Y.* 62. Applied (Granting relief consistent with facts stated) in *Denman v. Prince*, 40 *Barb.* 218; *Genet v. Howland*, 45 *Id.* 569; *Mackey v. Auer*, 8 *Hun.* 184; *Jones v. Jones*, 18 *Id.* 440; *Corn Exchange Ins. Co. v. Babcock*, 42 *N. Y.* 647; *Rindge v. Baker*, 57 *Id.* 223. See *Code Civ. Pro.* 1881, § 488, n. Disting'd (Power of general term over judgments) in *Cuff v. Dorland*, 57 *N. Y.* 565.
- Emigrants' Industrial Sav'gs B'k, Matter of**, 75 *N. Y.* 888. Disting'd (Delegation of power by common council) in *Edwards v. City of Watertown*, 24 *Hun.* 426, 428. Followed in *Matter of Presbytery of N. Y.*, 9 *Daly*, 116. Disting'd in dissenting opinion of MILLER, J. (What is included in authority to lay out streets) in *Matter of Deering*, 85 *N. Y.* 1, 14. Applied (Letting out contract for municipal work) in *Matter of Merriam*, 84 *Id.* 596, 603. Followed in *Matter of Robbins*, 82 *Id.* 131, 142.
- Emigrant Industrial Sav'gs B'k v. Goldman**, 75 *N. Y.* 127. See *Pardee v. Van Anken*. Followed and explained (Prior lien, when cut off by mortgage sale) in *Smith v. Roberts*, 91 *N. Y.* 470, which aff'd 62 *How. Pr.* 196, 200, which see. Reviewed with *Frost v. Yonkers Sav'gs B'k*, 70 *N. Y.* 553, in *Adams v. McPartlin*, 11 *Abb. N. C.* 369. Applied in *Payn v. Grant*, 23 *Hun.* 134, 136. Commented on in 13 *Cent. L. J.* 384.
- Emmet v. Hoyt**, 17 *Wend.* 416. Disting'd (Power of court to confirm, &c. award) in *Matter of Kings Co. Elev. R'y Co.*, 82 *N. Y.* 95, 101.
- **v. Reed**, 4 *Sandf.* 229. Aff'd in 8 *N. Y.* 312.
- Emmons v. Barnes**, 4 *Daly*, 418. Aff'd in 55 *N. Y.* 643, but without opinion.
- **v. Cairns**, 2 *Sandf. Ch.* 369. Rev'd in 3 *Barb.* 243. See *Jansen v. Cairnes*. Decision in 3 *Barb.* discussed (Perpetuities) in 1 *Jarm. on Wills*, Rand. & T. ed. 512, n.
- **v. Wheeler**, 3 *Hun.* 545; s. c., reported fully, 5 *Sup'm. Ct. (T. & C.)* 617.
- Empire City Bank, Matter of**, 6 *Abb. Pr.* 385. Rev'd in 18 *N. Y.* 199; s. c., more fully, 8 *Abb. Pr.* 192. Decision in 8 *Abb. Pr.* followed (Sufficiency of notice by publication) in *Campbell v. Evans*, 45 *N. Y.* 356. Decision in 6 *Abb. Pr.* applied with *Matter of Reciprocity Bank*, 22 *N. Y.* 17 (Liability of stockholders) in *Briggs v. Cornwell*, 9 *Daly*, 436.
- Enders v. Sternbergh**, 52 *Barb.* 222. Rev'd in 2 *Abb. Ct. App. Dec.* 31.
- Eugh v. Greenbaum**, 2 *Hun.* 136; s. c., 4 *Sup'm. Ct. (T. & C.)* 426. Aff'd, it seems, in 64 *N. Y.* 642, but without opinion.
- English v. Delaware & Hud. Canal Co.**, 4 *Hun.* 683. Aff'd in 66 *N. Y.* 454; s. c., 23 *Am. R.* 69.
- Englishbe v. Helmuth**, 3 *N. Y.* 294. Rev'g 7 *N. Y. Leg. Obs.* 186. See repeal of act of 1833 in *L.* 1845, c. 115, § 14.
- Ennis v. Currie**, 22 *Hun.* 584. Complaint dismissed in 61 *How. Pr.* 1.
- **v. Harmony Fire Ins. Co.**, 3 *Bow.* 516. Followed (When owner of equity of redemption cannot recover on policy) in *Roussel v. St. Nicholas Ins. Co.*, 41 *Super. Ct. (J. & S.)* 283.
- Eno v. Crooke**, 6 *How. Pr.* 462. Approved (Effect of memorandum handed down by General Term of decision of appeal) in *Knapp v. Roche*, 82 *N. Y.* 369. See *Code Civ. Pro.* 1881, § 1354, n.
- **v. Del Vecchio**, 4 *Duer.* 53. Another proceeding, in 6 *Id.* 17. Decision in 4 *Duer* examined with other cases (Rights in party walls) in *Brooks v. Curtis*, 50 *N. Y.* 639. Followed as abundantly sustained by authority, and *Brooks v. Curtis*, 50 *N. Y.* 639, relied on in *Andrae v. Hazeltime*, 58 *Wis.* 395; s. c., 46 *Am. R.* 635. See cases collected in 7 *Am. L. Reg. N. S.* 12. Decision in 6 *Duer* explained in *Bigel. Cus. on Torts*, 555. Collated with other cases in *McAdam, on Landl. & T.* 2 ed. § 233.
- **v. Mayor, &c. of N. Y.**, 53 *How. Pr.* 382. Aff'd in 7 *Hun.* 320, and that rev'd on point in second head note, as to obligation to enforce bond, in 68 *N. Y.* 214. With decision in 68 *N. Y.* see (Fund for satisfying municipal contract) *Bigler v. Mayor, &c. of N. Y.*, 5 *Abb. N. C.* 51, 65.
- **v. Woodworth**, 4 *N. Y.* 249. Followed (Action to recover purchase money) in *Wooster v. Sage*, 6 *Hun.* 285, 288, which was aff'd in 67 *N. Y.* 67, which see.
- Enoch v. Wehrkamp**. See *Heins v. Peine*.
- Enos v. Thomas**, 5 *How. Pr.* 361. See *Seeley v. Prichard*. Said not to have authority of a General Term decision, in *Toll v. Thomas*, 18 *How. Pr.* 324.
- Ensign v. St. Louis & San Francisco R'y Co.** See *Larkin v. Robbins*.
- **v. Sherman**, 13 *How. Pr.* 35. Rev'd in 14 *Id.* 439.
- **v. Supervisors of Livingston**, 12 *Weekly Dig.* 362. Reported in 23 *Hun.* 20.
- **v. Webster**, 1 *Johns. Cas.* 145; s. c., 1 *Am. Dec.* 108. Reviewed and criticised with *House v. Low*, 2 *Johns.* 378; *Southwick v. Hayden*, 7 *Cov.* 335 (Effect of receipt) in *Fuller v. Crittenden*, 9 *Conn.* 401; s. c., 23 *Am. Dec.* 362, with note.
- Eppendorf v. Brooklyn & Newtown R. R. Co.**, 51 *How. Pr.* 472. Aff'd in 69 *N. Y.* 195; s. c., 25 *Am. R.* 171.
- Equitable Life Assur. Soc. v. Cuyler**, 12 *Hun.* 247. Aff'd in 75 *N. Y.* 511.
- Erben v. Lorillard**, 19 *N. Y.* 299. Rev'g 23 *Barb.* 82. Decision in 19 *N. Y.* explained and applied (Recovery for services, &c. rendered under contract void by statute of frauds) in *Bailey v. Gardner*, 6 *Abb. N. C.* 150. Approved and applied in *Day v. N. Y.*

Central R. R. Co., 53 *Barb.* 255, which was rev'd in 51 *N. Y.* 590, which see. Explained in *Van Valkenburg v. Croffut*, 15 *Hun.* 151. Applied (Invalidity of agreement void by statute of frauds, as evidence of damages) in *Hobbs v. Wetherwax*, 31 *Barb.* 389. Disting'd (Effect of admission of improper evidence) as inapplicable to case of error in charge, in *Ruloff's Case*, 11 *Abb. Pr. N. S.* 294. Criticised and disting'd as a case before a jury, in *Garfield v. Kirk*, 65 *Barb.* 469. Disting'd in *Mandeville v. Guernsey*, 51 *Id.* 103; *Meyer v. Clark*, 2 *Daly*, 519; *Dolan v. Aetna Ins. Co.*, 22 *Hun.* 402; *People v. Greenfield*, 23 *Id.* 471; *Tochman v. Brown*, 33 *Super. Ct. (J. & S.)* 422; *Logan v. Ogdensburgh, &c. R. R. Co.*, 13 *Weekly Dig.* 335. Applied in *Decker v. Myers*, 31 *How. Pr.* 375; *Neuman v. Goddard*, 48 *Id.* 365; *Arthur v. Griswold*, 55 *N. Y.* 408; *O'Sullivan v. Roberts*, 39 *Super. Ct. (J. & S.)* 371. See to the contrary (Broker's commissions) *Elting v. Sturtevant*, 41 *Conn.* 176. But see *Abb. Tr. Ev.* 380.

**Erickson v. Quinn**, 3 *Lans.* 299. Aff'd, with modifications, in 47 *N. Y.* 410. Further decision in 15 *Abb. Pr. N. S.* 166; mem. s. c., 50 *N. Y.* 697. Mem. of further proceeding in 3 *Hun.* 549.

— **v. Smith**, 2 *Abb. Ct. App. Dec.* 64. Applied (Effect of record as against stranger) in *Mutual Benefit Life Ins. Co. v. Tisdale*, 91 *U. S.* 245.

**Eriesson v. Brown**, 38 *Barb.* 390. See *Balch v. N. Y. & Oswego Midland R. R. Co.* Applied (Meaning of "laborers") in *Stryker v. Cassidy*, 10 *Hun.* 18. Disting'd in *Gurney v. Atlantic & Gt. W. R'y Co.*, 58 *N. Y.* 358, 367.

**Erie & N. Y. City R. R. Co. v. Owen**, 32 *Barb.* 616. Disting'd (Requisites of subscription for stock) in *Buffalo & Jamestown R. R. Co. v. Clark*, 22 *Hun.* 359, 362; *Sodus Bay & Corning R. R. Co. v. Hamlin*, 24 *Id.* 390, 394.

**Erie Railway Co. v. Ramsay**, 3 *Lans.* 178. Aff'd in 45 *N. Y.* 637. See *N. Y. & New Haven R. R. Co. v. Ketchum*; *People ex rel. Morris v. Randall*. Decision in 45 *N. Y.* disting'd (Injunction, when superseded) in *Gardner v. Gardner*, 62 *How. Pr.* 265, 267.

**Ernst v. Bartle**, 1 *Johns. Cas.* 319. Quoted and explained (Private corporations—how created) in *Ang. & A. on Corp.* § 30, 11 ed.

— **v. Hudson River R. R. Co.**, 32 *Barb.* 159; s. c., less fully, 19 *How. Pr.* 205. Subsequent imperfectly reported decision in 24 *Id.* 97, dissenting opinion of SUTHERLAND, J., being in 32 *Id.* 262. Further proceedings in 35 *N. Y.* 9; s. c., 32 *How. Pr.* 61; 3 *Abb. Pr. N. S.* 82; also in 39 *N. Y.* 61; s. c., 36 *How. Pr.* 84. See *Beisiegel v. N. Y. Central R. R. Co.*; *Brown v. N. Y. Central, &c. R. R. Co.*; *Dascomb v. Buffalo & State Line R. R. Co.*; *Gordon v. Grand St. & Newtown R. R. Co.* Decision in 35 *N. Y.* applied (Negligence in one

crossing railroad track) in *Gonzales v. N. Y. & Harlem R. R. Co.*, 6 *Robt.* 102; compare dissenting opinion in *Id.* 297. Explained in *Same v. Same*, 39 *How. Pr.* 414. Approved and followed with *Wilcox v. Rome, &c. R. R. Co.*, 39 *N. Y.* 358, in *Havens v. Erie R'y Co.*, 41 *Id.* 299. Disting'd in *Gillespie v. City of Newburgh*, 54 *Id.* 468. Explained and applied (Non-suit for contributory negligence) in *Thrings v. Central Park R. R. Co.*, 7 *Robt.* 616. Applied (Evidence of contributory negligence) in *Ochsenbein v. Shapley*, 85 *N. Y.* 225. Cited with other cases (Negligence and the rule of damages) in 14 *Am. L. Reg. N. S.* 267. Decision in 39 *N. Y.* applied (Failure to keep flag-man at crossing, as evidence of negligence) in *Casey v. N. Y. Central, &c. R. R. Co.*, 78 *N. Y.* 518, 524, which aff'd 6 *Abb. N. C.* 104, 125, which see.

**Ervin v. Oregon Steam Nav. Co.**, 22 *Hun.* 566. Another proceeding in *Id.* 598.

**Erwin v. Downes**, 15 *N. Y.* 575. Followed with *Dalrymple v. Hillenbrand*, 2 *Hun.* 488 (Indorser when liable without demand and notice) in *Butler v. Slocomb*, 33 *La. Ann.* 170; s. c., 39 *Am. R.* 265; s. c., 13 *Reporter*, 74. Commented on in *Bigel. on B. & N.* 2 ed. 167.

— **v. Loper**, 43 *N. Y.* 521. Disting'd (Limitation of action for debt against next of kin) in *Selover v. Coe*, 63, *Id.* 438, 444.

— **v. Neversink Steamboat Co.**, 23 *Hun.* 573. Aff'd in 88 *N. Y.* 184. Decision in 23 *Hun.* overruled (Interest, by what law governed) in *Salter v. Utica & Black River R. R. Co.*, 86 *N. Y.* 401, 403. Followed in *Smith v. Hathorn*, 25 *Hun.* 159, 162.

— **v. Olmsted**, 7 *Cov.* 229. Cited as authority (Liability of tenant in common to co-tenant for trespass) in *King v. Phillips*, 1 *Lans.* 421, 434. Followed in *Maddox v. Goddard*, 15 *Me.* 218; s. c., 33 *Am. Dec.* 604, 606. Disting'd (Whether agreement for sale of land gives right of possession) in *Miller v. Ball*, 64 *N. Y.* 286, 294.

— **v. Saunders**, 1 *Cov.* 249; s. c., 13 *Am. Dec.* 520. See *Keating v. Price*; *Lattimore v. Harsen*; *Pechner v. Phoenix Ins. Co.* Followed (Parol evidence to show that note or acceptance absolute on face, was conditional) in *Heaverin v. Donnell*, 7 *Smedes & M. (Miss.)* 244; s. c., 45 *Am. Dec.* 302.

— **v. Voorhees**, 26 *Barb.* 127. Said to have been rev'd by Ct. of App. in 1862.

**Esmond v. Apgar**, 7 *Daly*, 379. Aff'd in 76 *N. Y.* 359.

— **v. Van Benschoten**. See *Bagley v. Peddie*; *Keating v. Price*.

**Espie, Matter of**, 2 *Redf.* 445. Further proceeding in 3 *Id.* 270. See proceedings affecting same estate, in *McNaughton v. Chave*, 5 *Abb. N. C.* 225. With decision in 3 *Redf.* see (Enforcing surrogate's decree by punishment for contempt) *Code Civ. Pro.* 1881, § 2555, n.

**Esselstyn v. Weeks**, 2 *F. D. Smith*, 116. Approved, as to question of pleading, but



- rev'd, as to sufficiency of oral new promise, in 12 *N. Y.* 635; s. c., with copy of pleadings and substance of opinion below, but without dissenting opinion, in Ct. of App., 2 *Abb. Pr.* 272. Decision in 12 *N. Y.* distinguishing and explained (Necessity of written promise to take out of statute of limitations demand that had accrued when Code Pro. went into effect) in *Van Allen v. Feltz*, 4 *Abb. Ct. App. Dec.* 439, 442.
- Essex Co. Bank v. Russell**, 29 *N. Y.* 673. Disting'd (Amount of recovery by *bona fide* holder for value) in *Huff v. Wagner*, 63 *Barb.* 215, 233.
- Esterly v. Cole**, 1 *Barb.* 235. Aff'd in 3 *N. Y.* 502. Referred to as an instructive case where the authorities are collated at length, —(Interest by right of usage) in 6 *Am. Dec.* 192, n. Included in *Lawson on Usages and Customs*, 198, with note, at p. 317. Collated and discussed with other cases (Necessity of knowledge to sustain usage) in *Walls v. Bailey*, 49 *N. Y.* 474.
- **v. Purdy**. See *Estevez v. Purdy*.
- Estes v. Wilcox**, 67 *N. Y.* 264. See *Adsit v. Sanford*; *Chautauque Co. Bank v. White*. Applied (Relief against fraudulent conveyance) in *Adsit v. Sanford*, 23 *Hun*, 45, 48. Disting'd in *Barton v. Hosner*, 24 *Id.* 467, 471. Discussed in *Wait on Fraud. Conv.* § 79. Followed with *Allyn v. Thurston*, 53 *N. Y.* 622; *Ocean Nat. B'k v. Olcott*, 46 *Id.* 12; *Adsit v. Butler*, 87 *Id.* 585; 23 *Hun*, 45; *Southard v. Benner*, 72 *N. Y.* 424 (Rights of simple contract creditor of deceased) and *Loomis v. Tift*, 16 *Barb.* 541; *Spicer v. Ayers*, 2 *Sup'm. Ct. (T. & C.)* 624, disapproved in *Gardner v. Lansing*, 28 *Hun*, 413.
- **v. World Mut. Life Ins. Co.**, 6 *Hun*, 349. Motion herein said in 8 *Id.* v; 10 *Id.* x, to have been granted.
- Estevez v. Purdy**, 6 *Hun*, 46. Rev'd in 66 *N. Y.* 446, which aff'd *Esterly v. Purdy*, 50 *How. Pr.* 350. See *Algur v. Gardner*; *Condit v. Baldwin*; *Lee v. Chadsey*. Decision in 66 *N. Y.* followed, though doubted (Usury as determined by agreement made by agent) in *Stout v. Rider*, 12 *Hun*, 574. Decision in 6 *Id.* disapproved in *Gray v. Van Blarcom*, 29 *N. J. Eq. (Stew.)* 455.
- Eten v. Luyster**, 37 *Super. Ct. (J. & S.)* 486. Aff'd in 60 *N. Y.* 252. See *Williams v. Vanderbilt*. Decision in 60 *N. Y.* relied on (Proximate consequences of wrongful act) in *Baltimore City Pass. R'y Co. v. Kemp*, 61 *Md.* 74; s. c., 47 *Am. R.* 381, n.; 30 *Alb. L. J.* 92, with note. Followed in *Brown v. Chicago, Milwaukee & St. Paul R'y Co.*, 54 *Wis.* 342; s. c., 41 *Am. R.* 41.
- Ettenheimer v. Heffernan**, 66 *Barb.* 374. See *Jackson v. Adams*. Compare (*Escheat*) *Mooers v. White*, 6 *Johns.* 360; *Hauenstein v. Lynham*, 100 *U. S.* 483.
- Etz v. Daily**, 20 *Barb.* 32. Explained (*Ejectment* by owner in fee) in *Sedgw. & W. on Tr. of Tit. to Lands*, § 134.
- Eustaphie v. Ketchum**, 6 *Hun*, 621. See *Euastapere v. Ketchum*. Disting'd (*Liability of married woman for rent*) in *Bush v. Babbitt*, 25 *Hun*, 213.
- Evangelical Lutheran, &c. St. John Orphans' Home v. Buffalo Hyd. Assoc.**, 6 *Sup'm. Ct. (T. & C.)* 589; mem. s. c., 4 *Hun*, 419. Aff'd in 64 *N. Y.* 561. Decision in 64 *N. Y.* applied (*Execution against corporation*) in *Gooch v. McGee*, 83 *N. C.* 59; s. c., 35 *Am. R.* 558, 560.
- Evans v. Chapin**, 20 *How. Pr.* 289. Explained (*Provision in assignment act, when directory*) in *Rennie v. Bean*, 24 *Hun*, 123, 127.
- **v. Cleveland**, 12 *Hun*, 140. Rev'd in 72 *N. Y.* 486. Decision in 72 *N. Y.* applied (*Continuance of action notwithstanding lapse of time*) in *Greene v. Martine*, 21 *Hun*, 136, 138.
- **v. Ellis**, 5 *Den.* 640. Criticised with *Berrien v. McLane*, 1 *Hoffm.* 421; *Starr v. Vanderheyden*, 9 *Johns.* 253, as laying down too strict a rule (*Burden of proving fairness of contracts between attorney and client*) in *Stanton v. Haskin*, 1 *McArth.* 558; s. c., 29 *Am. R.* 612.
- **v. Evans**, 9 *Paige*, 178. Cited (*Right of surviving partners to close up affairs of firm*) in *Story on Partn.* 7 ed., §§ 328, 344, 347; *Betts v. Junc.* 51 *N. Y.* 613, being also cited in *Id.* § 344.
- **v. Hill**, 18 *Hun*, 464. Disting'd (*Action to set aside fraudulent conveyance*) as inapplicable to suit by administrator under L. 1858, c. 314, in *Barton v. Hosner*, 24 *Id.* 467, 471.
- **v. Kalbfleisch**, 16 *Abb. Pr. N. S.* 13; s. c., 36 *Super. Ct. (J. & S.)* 450. Disting'd (*Referable action*) in *Place v. Chesebrough*, 63 *N. Y.* 317; *Maryott v. Thayer*, 39 *Super. Ct. (J. & S.)* 417. Followed in *Ross v. Combes*, 37 *Id.* 289, 295; *Flanders v. Odell*, 2 *Hun*, 664.
- **v. Moran**, 12 *Wend.* 180. Overruled (*Proceedings for non-payment of rent*) in *Stratton v. Lord*, 22 *Id.* 611.
- **v. U. S. Life Ins. Co.**, 3 *Hun*, 587; s. c., 6 *Sup'm. Ct. (T. & C.)* 331. Aff'd in 64 *N. Y.* 304. Decision in 64 *N. Y.* followed (*Effect of non-payment of premium*) in *Wheeler v. Conn. Mut. Life Ins. Co.*, 82 *Id.* 543, 551.
- **v. Post**, 5 *Hun*, 338. Followed (*Record in summary proceedings as evidence*) in *Boller v. Mayor, &c. of N. Y.*, 40 *Super. Ct. (J. & S.)* 523, 536.
- **v. Wells**, 22 *Wend.* 324. See *Dubois v. Delaware & Hudson Canal Co.*; *Witherby v. Mann*. Disting'd (*Ratification of execution of instrument by agent*) in *Schaefer v. Henkel*, 75 *N. Y.* 378, 387.
- Everett v. Saltus**, 15 *Wend.* 474. Aff'd in 20 *Id.* 267. Decision in 15 *Id.* followed (*Lien on property when lost by setting up title independent of lien*) in *Thompson v. Rose*, 16 *Conn.* 71; s. c., 41 *Am. Dec.* 121, 127, with note. Explained (*Consignee's right of action against carrier*) in 7 *South.*

- L. Rev. N. S.* 260 as misapprehended in *Southern Express Co. v. Armstead*, 50 *Ala.* 350.
- *v. Vendryes*, 25 *Barb.* 383. Aff'd in 19 *N. Y.* 436. Decision in 19 *N. Y.* disting'd (Law of place of note, &c.) in *Wayne Co. Sav'gs B'k v. Low*, 6 *Abb. N. C.* 76, 86. Followed in *Hibernia Nat. B'k v. Lacombe*, 84 *N. Y.* 367, 378, 381.
- Everingham v. Vanderbilt**, 51 *How. Pr.* 177. Aff'd in 12 *Hun.* 75. Decision in 51 *How. Pr.* followed (Execution not condition precedent to action to reach assets fraudulently transferred by administrators) in *Malloy v. Vanderbilt*, 4 *Abb. N. C.* 127, 129.
- Everit v. Strong**, 5 *Hill*, 163. Aff'd in 7 *Id.* 585. See *Mabbett v. White*. With decision in 5 *Hill* see cases collected (Seal does not vitiate act of partner otherwise valid) in 9 *Am. L. Reg. N. S.* 271. Decision in 7 *Hill* explained (Assignment for benefit of creditors—power of partners to make) in *Burrill on Assign.* § 67, n. 1, 4 ed.
- *v. Watts*, 3 *Edw.* 486. Aff'd in 10 *Paige*, 82.
- Everitt v. Everitt**, 29 *Barb.* 112. Rev'd in 29 *N. Y.* 39. See *Dan v. Brown*; *Gott v. Cook*; *Loder v. Hatfield*; *Manice v. Manice*. Decision in 29 *N. Y.* followed (Perpetuities) in *Stevenson v. Lesley*, 49 *How. Pr.* 230, which was modified and aff'd in 9 *Hun.* 637, which see; *Meserole v. Meserole*, 1 *Id.* 71; *Moore v. Hegeman*, 72 *N. Y.* 383; *Monarque v. Monarque*, 80 *Id.* 324. Discussed in 1 *Jarm. on Wills*, Rand. & T. ed. 512. Applied (Effect of trust embracing both lawful and unlawful purposes) in *Harrison v. Harrison*, 36 *N. Y.* 548. Applied (Estate, when vested) in *Hays v. Gourley*, 1 *Hun.* 40; *McKinstry v. Sanders*, 2 *Sup'm. Ct. (T. & C.)* 194. Disting'd and applied in *Cotton v. Fox*, 67 *N. Y.* 352. With decision in 41 *Barb.* see (Limitation of action to establish will) *Code Civ. Pro.* 1881, § 382, n.
- Everingham v. Eusworth**, 7 *Wend.* 326. See *Dob v. Halsey*; *Livingston v. Roosevelt*; *Stall v. Catskill Bank*. Followed with *Dob v. Halsey*, 16 *Johns.* 34; *Gram v. Cadwell*, 5 *Cow.* 489 (Effect of attempt of partner to apply firm assets to payment of individual debt) in *Cotzhausen v. Judd*, 43 *Wis.* 213; s. c., 28 *Am. E.* 539.
- Evers v. People**, 3 *Hun.* 716; s. c., 6 *Sup'm. Ct. (T. & C.)* 156. Aff'd, it seems, as *People v. Evers*, 63 *N. Y.* 625, but without opinion.
- Everson v. Carpenter**, 17 *Wend.* 419. Approved (Effect of conditional promise to execute contract made during infancy) in *Chandler v. Glover*, 32 *Penn.* 509. Followed in *Ederly v. Shaw*, 25 *N. H.* 514; s. c., 57 *Am. Dec.* 349. Followed (Witness, when not to be impeached by proof of contradictory statements) in *Doe d. Sutton v. Reagan*, 5 *Blackf. (Ind.)* 217; s. c., 33 *Am. Dec.* 466.
- *v. Gehrman*, 1 *Abb. Pr.* 167; s. c., 10 *How. Pr.* 301. Approved (Confession of judgment by partner for firm) in *Griswold v. Griswold*, 14 *Id.* 446. Explained in *Lahey v. Kingon*, 13 *Abb. Pr.* 192, 194.
- Everts v. Adams**. See *Bartholomew v. Jackson*.
- *v. Everts*, 62 *Barb.* 577. Applied with *Brownell v. Akin*, 6 *Hun.* 378 (Liability of executor indebted to estate) and *Adair v. Brimmer*, 74 *N. Y.* 539 disting'd in dissenting opinion of *MILLER, J.*, in *Baucus v. Stover*, 89 *Id.* 6, which rev'd 24 *Hun.* 109, 112, which see.
- Evertson v. Booth**, 19 *Johns.* 486. Followed (Effect of assignment of note secured by mortgage) in *Terry v. Woods*, 6 *Smedes & M. (Miss.)* 139; s. c., 45 *Am. Dec.* 274, 276, with note.
- *v. Givan*, 16 *How. Pr.* 25. Commented on (Surplus moneys on foreclosure of mortgage—exceptions to referee's report) in *Colby on Forecl.* 31.
- *v. Miles*, 6 *Johns.* 138. Followed (Necessity of averment of fraud in sale, in order to admit proof of it) in *Dean v. Mason*, 4 *Conn.* 428; s. c., 10 *Am. Dec.* 162. *Dean v. Mason* was followed on this point in *Bartholomew v. Bushnell*, 20 *Conn.* 271; s. c., 52 *Am. Dec.* 338, with note, and its doctrine noticed in 1 *Id.* 83, n.
- *v. National Bank of Newport*, 4 *Hun.* 692. Rev'd as to the interest warrants, and aff'd as to the coupons, in 66 *N. Y.* 14; s. c., 23 *Am. R. 9.* Decision in 66 *N. Y.* cited at length (Negotiable character of coupons) in 14 *Am. Dec.* 425, n. Included in 2 *Ames Cas. on B. & N.* 775. Cited as authority in *McKim v. King*, 58 *Md.* 505.
- *v. Sawyer*. See *Thomas v. Crofut*.
- *v. Tappen*. See *Green v. Burtis*.
- Every v. Merwin**. See *Lion v. Wint*.
- Ewing v. Johnson**. See *Nobles v. Bates*.
- Excelsior Fire Ins. Co., Matter of**, 38 *Barb.* 297; s. c., more fully, 16 *Abb. Pr.* 8.
- Excelsior Fire Ins. Co. v. Royal Ins. Co. of Liverpool**, 7 *Lans.* 138. Further decision in 55 *N. Y.* 343; s. c., 14 *Am. R.* 271. See *De Wolf v. Capital City Ins. Co.*; *Foster v. Van Reed*. Decision in 55 *N. Y.* approved (Insurance of mortgagee's interest) in *Foster v. Van Reed*, 5 *Hun.* 321, 325, which was rev'd in 70 *N. Y.* 19, which see. Examined with other cases, in 20 *Am. Dec.* 512, n. Approved in 1 *Jones on Mort.* § 419. Cited as authority in *Dick v. Franklin Fire Ins. Co.*, 10 *Mo. App.* 384.
- Excelsior Grain Binding Co. v. Stayner**, 58 *How. Pr.* 273. Aff'd in 24 *Alb. L. J.* 190; s. c., 61 *How. Pr.* 456.
- Excelsior Petroleum Co. v. Embury**, 4 *Hun.* 648; s. c., more fully, 67 *Barb.* 261. Compare *Same v. Lacey*.
- *v. Lacey*, 3 *Hun.* 111; s. c., 5 *Sup'm. Ct. (T. & C.)* 305. Further decision on the merits, in 63 *N. Y.* 422. Compare *Same v. Embury*.
- Excelsior Savings Bank v. Campbell**, 4 *Sup'm. Ct. (T. & C.)* 549; s. c., 48 *How. Pr.* 347, and mem. s. c., 2 *Hun.* 375.

Aff'd, it seems, in 62 *N. Y.* 637, but without opinion.

**Exchange Bank v. Monteath**, 17 *Barb.* 171. Subsequent decisions in 24 *Id.* 371 and 26 *N. Y.* 505, 509, in which last see extended explanation of effect of decision in *North River Bk. v. Aymar*, 3 *Hill*, 262, on the decisions herein. See *Dole v. Fellows*. Decision in 26 *N. Y.* collated with other cases (*Ultra vires*—corporation making negotiable paper) in *Field on Ultra Vires*, 94.

**Exchange Fire Ins. Co. v. Delaware & Hudson Canal Co.**, 10 *Bosw.* 180. Cited as authority (Character of liability of canal company) in *Penn. Canal Co. v. Burd*, 90 *Penn. St.* 281; s. c., 35 *Am. R.* 659.

— *v. Early*, 4 *Abb. N. C.* 78. See (Omission of referee's oath) *Browning v. Marvin*, 5 *Abb. N. C.* 285; *McGowan v. Newman*, 4 *Id.* 80. See also *Code Civ. Pro.* 1881, § 1016, n.

**Ex parte** —. See name of party in its alphabetical place in this table.

**Eyre v. Higbee**, 15 *How. Pr.* 45. Rev'd in 35 *Barb.* 502; s. c., 22 *How. Pr.* 198. See *Woolsey v. Judd*. Decision in 35 *Barb.* commented on (Enjoining publication of letters) in 2 *High on Inj.* 2 ed. § 1012, n. 2. Referred to as an instructive case (Property in letters) in 5 *Am. Dec.* 725, n.

## F.

**Fabbri v. Kalbfleisch**, 2 *Sweeny*, 252. Aff'd in 52 *N. Y.* 28.

— *v. Mercantile Mut. Ins. Co.*, 6 *Lans.* 446; s. c., more fully, 64 *Barb.* 85.

**Faber v. Faber**. See *Clark v. Clark*; *Fetridge v. Wells*.

**Fabre v. Colden**. See *Pritchard v. Hicks*.

**Fagan v. Dugan**, 2 *Redf.* 341. Applied (Undue influence over testator) in *McCoy v. McCoy*, 4 *Id.* 54, 59.

— *v. Mayor, &c. of N. Y.*, 84 *N. Y.* 348. Followed, but point not indicated, in *Golden v. Same*, *Id.* 657.

**Fagen v. Davison**, 2 *Duer*, 153. Limited (Right of amendment) in *Van Ness v. Bush*, 14 *Abb. Pr.* 33, 36.

**Fagnan v. Knox**, 40 *Super. Ct. (J. & S.)* 41. Rev'd in 66 *N. Y.* 525; s. c., 1 *Abb. N. C.* 246.

**Fahy v. North**, 19 *Barb.* 341. Explained (Master and servant—entire agreement) in 2 *Pars. on Contr.* 38, n. k.

**Fairbanks v. Mothersell**, 60 *Barb.* 406; s. c., 41 *How. Pr.* 274. Dictum qualified (Married woman's power to contract with husband) in *Perkins v. Perkins*, 62 *Barb.* 531. Disting'd (Husband's agency to contract for wife) in *Jones v. Walker*, 63 *N. Y.* 613.

— *v. Wood*, 17 *Wend.* 329. Marginal note corrected (Computing time of limitation of actions, under provision in revision of 1830) in *Johnson v. Burrell*, 2 *Hill*, 238; *Millard v. Whitaker*, 5 *Id.* 408; *Burch v. Newberry*,

3 *How. Pr.* 271. Explained in *Ang. on Limit.* § 50, 6 ed. Reviewed with *Small v. Edrick*, 5 *Wend.* 138; *Columbus Turnpike Co. v. Haywood*, 10 *Id.* 423, and other cases (Computing time prescribed in statutory enactments) in *Stebbins v. Anthony*, 5 *Col.* 348; s. c., 46 *Am. R.* 410, n., where numerous other cases are collated.

**Fairchild v. Case**, 24 *Wend.* 381. Applied (Liability of officer for voluntary escape) in *Riley v. Whittaker*, 49 *N. H.* 145; s. c., 6 *Am. R.* 474, 478.

— *v. Fairchild*, 64 *N. Y.* 471. Aff'g 5 *Hun.* 407. See *Buckley v. Buckley*. Decision in 64 *N. Y.* followed (*Copartnership books*) in *Cheever v. Lamar*, 19 *Hun.* 130, 134. See to the contrary (*Parol evidence as to title to real property between partners*) *Le Fevre's Appeal*, 69 *Penn. St.* 122; *Ehbert's Appeal*, 70 *Id.* 79. But see *Abb. Tr. Ev.* 228. Collated with other cases (*Real estate purchased with partnership funds*) in 27 *Am. R.* 270, n. Quoted and commented on in 1 *Collyer on Partn.* § 114, n. 2, *Wood's Am. ed.* Decision in 5 *Hun.* disting'd (Resulting trust) in *Randall v. Constans*, 23 *Northw. Rep.* 530, 534.

— *v. Gwynne*, 14 *Abb. Pr.* 121. Rev'd in 16 *Id.* 23. See *Griswold v. Atlantic Dock Co.*

— *v. Liverpool, &c. Ins. Co.*, 48 *Barb.* 420. Aff'd in 51 *N. Y.* 65.

— *v. Lynch*, 42 *Super. Ct. (J. & S.)* 265. Compare (Objection that remedy is at law and not in equity) *De Bussiere v. Holladay*, 4 *Abb. N. C.* 111, and *Id.* 112, n. See also (Liability created by assumption of mortgage) 5 *Id.* 230, n.

— *v. Slocum*, 19 *Wend.* 329. Aff'd in 7 *Hill*, 292. See *Bostwick v. Champion*; *Van Santvoord v. St. John*. Decision in 19 *Wend.* disting'd with *Weed v. Saratoga, &c. R. R. Co.*, *Id.* 534; *St. John v. Van Santvoord*, 25 *Id.* 660 (Second carrier—when not agent for first) in *Walker v. Cassaway*, 4 *La. Ann.* 19; s. c., 50 *Am. Dec.* 551. Explained in *Ang. on Carr.* § 94, 5 ed.

**Fairfax v. N. Y. Central, &c. R. R. Co.**, 37 *Super. Ct. (J. & S.)* 516. Further decision in 40 *Id.* 128, and that rev'd in 67 *N. Y.* 11. Also in 43 *Super. Ct. (J. & S.)* 18, and that aff'd in 73 *N. Y.* 167; s. c., 29 *Am. R.* 119. Decision in 67 *N. Y.* applied (Carrier's liability for failure to deliver baggage) in *Flaherty v. Greenman*, 7 *Daly*, 491, 484. See to the contrary, *Jackson v. Sacramento, &c. R. R. Co.*, 23 *Cal.* 268. And see *Abb. Tr. Ev.* 555.

**Fairweather v. Satterly**, 7 *Robt.* 546. Followed (Effect of appearance of infant by attorney) in *McMurray v. McMurray*, 60 *Barb.* 117.

**Fake v. Eddy**, 15 *Wend.* 76. Explained (Time when interest commences) in *Cook v. Rogers*, 5 *Sup'm. Ct. (T. & C.)* 493, 495. Approved and followed (Recovery of interest after payment of principal) *Tillotson v. Preston*, 3 *Johns.* 229, being disting'd in

- Robbins v. Cheek, 32 *Ind.* 328; s. c., 2 *Am. R.* 348. Cited as authority with Tilton v. Preston, 3 *Johns.* 229, in American Bible Society v. Wells, 68 *Me.* 572; s. c., 28 *Am. R.* 82.
- v. Smith, 7 *Abb. Pr. N. S.* 106. Disting'd (Liability of vendor of usurious note) in Littauer v. Goldman, 72 *N. Y.* 506, 511.
- v. Whipple, 39 *Barb.* 339. Aff'd in 39 *N. Y.* 394.
- Falconer v. Buffalo & J. R. R. Co.**, 7 *Hun.* 499. Aff'd in 69 *N. Y.* 491, and that aff'd in 103 *U. S.* 821. With decision in 69 *N. Y.* compare (Effect of constitutional amendment prohibiting town bonding) People *ex rel.* Murphy v. Kelly, 5 *Abb. N. C.* 383, 444. Followed in People *ex rel.* Hetfield v. Trustees of Fort Edward, 70 *N. Y.* 33. Decision in 69 *Id.* applied to amendment forbidding exclusive grant of railroad privileges,—in Negus v. City of Brooklyn, 10 *Abb. N. C.* 180, 185. Applied (Affixing conditions in town bonding proceedings) in People *ex rel.* N. Y. Canada R. R. Co. v. Hutton, 18 *Hun.* 120.
- v. Freeman, 4 *Sandf. Ch.* 565. Examined (Attachment lien as enabling to impeach transfer) in Thayer v. Willet, 5 *Bosw.* 344, 357, 367. Disting'd in Mills v. Block, 30 *Barb.* 549, 552. Applied in Rinchey v. Stryker, 28 *N. Y.* 45.
- Falkenau v. Fargo**, 35 *Super. Ct. (J. & S.)* 332; s. c., 44 *How. Pr.* 325. Aff'd, it seems, in 55 *N. Y.* 642, but without opinion.
- Falkland v. St. Nicholas Nat. B'k of N. Y.**, 21 *Hun.* 450. Rev'd in 84 *N. Y.* 145.
- Fallon v. Central Park, & C. R. R. Co.**, 6 *Daly*, 8. Aff'd in 64 *N. Y.* 13.
- v. McCunn, 7 *Bosw.* 141. Opinion of HOFFMAN, J., corrected in Haviland v. Wehle, 43 *How. Pr.* 59, 62.
- v. People, 6 *Park.* 256. Aff'd in 2 *Abb. Ct. App. Dec.* 83.
- Falls v. Belknap**, 1 *Johns.* 486. Collated with other cases (Custody of illegitimate children) in 56 *Am. Dec.* 258, n.
- Fanning v. Consequa**, 17 *Johns.* 511; s. c., 8 *Am. Dec.* 442. See Hosford v. Nichols. Compared with other cases (Law of place of contract) in Hibernia Nat. B'k v. Lacombe, 84 *N. Y.* 367, 378.
- v. Dunham, 5 *Johns. Ch.* 122; s. c., 9 *Am. Dec.* 283. Disting'd (Impeaching judgment in creditor's action) in Bank of Wooster v. Stevens, 1 *Ohio St.* 233; s. c., 59 *Am. Dec.* 619, with note.
- v. Lent, 3 *E. D. Smith*, 206. See to the contrary (Proof of executor's official character) Trimble v. Brichta, 10 *La. Ann.* 778. See also *Abb. Tr. Ec.* 56.
- v. Trowbridge, 5 *Hill*, 428. Disting'd (Adjournment by justice) in Thompson v. Sayre, 1 *Den.* 175.
- Fargo v. Brown**. See Brown v. Fargo.
- Farley v. Cleveland**, 4 *Cow.* 432; s. c., 15 *Am. Dec.* 387, 393, with note, wherein it is said to have been frequently approved in *N. Y.*; also s. c., 8 *N. Y. Com. L. Law. ed.* 439, with brief note. Aff'd in 9 *Cow.* 639. See Ellwood v. Monk; Jackson v. Rayner; Leonard v. Vredenburg. Applied (Promise to pay debt of another, when not within statute of frauds) in Blunt v. Boyd, 3 *Barb.* 212; Hale v. Boardman, 27 *Id.* 85; Brown v. Curtiss, 2 *N. Y.* 234; Connor v. Williams, 2 *Robt.* 49; Ellwood v. Monk, 5 *Wend.* 237; Meech v. Smith, 7 *Id.* 318; Rogers v. Kneeland, 13 *Id.* 122. Disting'd in Kingsley v. Balcome, 4 *Barb.* 133; Stern v. Drinker, 2 *E. D. Smith*, 404; Watson v. Randall, 20 *Wend.* 204. Criticised and disting'd in Mallory v. Gillett, 23 *Barb.* 616, which was aff'd in 21 *N. Y.* 422, which see. Explained by ULSHOEFFER, J., in Rexford v. Burnett, 1 *N. Y. Leg. Obs.* 398. Followed in Tindal v. Touchberry, 3 *Strob. (S. C.)* 177; s. c., 49 *Am. Dec.* 637, 639. Followed with Mallory v. Gillett, 21 *N. Y.* 412, in Calkins v. Chandler, 36 *Mich.* 320; s. c., 24 *Am. R.* 593, 597. Quoted and collated with other cases in *Holcombe Lead. Cas. on Com. L.* 427. Discussed in *Browne on Stat. of Frauds*, § 169, 4 ed. Applied (Right of third person to maintain action on promise made for his benefit) in Barker v. Bucklin, 2 *Den.* 55; Judson v. Gray, 17 *How. Pr.* 295. Re-aff'd in Lawrence v. Fox, 20 *N. Y.* 270. Examined with other cases in Vrooman v. Turner, 69 *Id.* 285.
- v. McConnell, 7 *Lans.* 428. Aff'd in 52 *N. Y.* 630, but without opinion. Compare (Presumption of surrogate's jurisdiction) *Code Civ. Pro.* §§ 2473, 2474.
- Farmers' & Citizens' Bank v. Sherman**, 6 *Bosw.* 181. Aff'd in 33 *N. Y.* 69.
- Farmers' & Manuf. Bank v. Whinfield**, 24 *Wend.* 419. See Pechner v. Phoenix Ins. Co. Dissented from (Allowing jury to take documentary evidence to their room) in Langworthy v. Connelly, 14 *Neb.* 340; s. c., 45 *Am. R.* 117.
- Farmers' & Mechanics' Bank v. Butchers' & Drovers' Bank**, 4 *Duer*, 219. Aff'd in 16 *N. Y.* 125. Other proceedings in 14 *Id.* 623, and 28 *Id.* 425. See Marine Nat. Bank v. Nat. City Bank; North River Bank v. Aymar; Willets v. Phoenix Bank. Decision in 16 *N. Y.* disting'd (Liability on certified check) as inapplicable to stock certificates,—in *N. Y. & N. H. R. R. Co. v. Schuyler*, 8 *Abb. Pr.* 241; in dissenting opinion of PRABODY, J., in Cazeaux v. Mali, 25 *Barb.* 593. Applied to stock certificates,—in Seizer v. Mali, 32 *Id.* 78; *N. Y. & N. H. R. R. Co. v. Schuyler*, 38 *Id.* 552; Cross v. Sackett, 2 *Bosw.* 658. Elaborately examined as to such certificates, with other cases, in *N. Y. & N. H. R. R. Co. v. Schuyler*, 34 *N. Y.* 61 *et seq.*, and explained on this point in *N. Y. & N. H. R. R. Co. v. Schuyler*, 17 *How. Pr.* 465. Applied in Clafin v. Farmers' & Citizens' B'k, 36 *Barb.* 540, 546, which was rev'd in 25 *N. Y.* 293, 297, which see; Nolan v. B'k of N. Y. Nat. B'k'g Assoc., 67 *Barb.* 34; Irving B'k v. Wetherald, 36 *N. Y.*

- 337; *Meads v. Merchants' B'k of Albany*, 25 *Id.* 146. Disting'd in *Bank of State of N. Y. v. Farmers' Branch, &c. of Ohio*, 36 *Barb.* 334, a case of indorsement by cashier, but applied on this point in *Bank of State of N. Y. v. Bank of Ohio*, 29 *N. Y.* 632. Applied to indorsement by president, in *Marine B'k of N. Y. v. Clements*, 31 *Id.* 45, 49. Disting'd as not authority for holding corporation liable as accommodation indorser, —in *Bridgeport City B'k v. Empire Stone Dressing Co.*, 30 *Barb.* 424, but applied to such indorsement in *Mechanics' B'k'g Co. v. N. Y. & Saugerties Lead Co.*, 20 *How. Pr.* 510; 23 *Id.* 74, 80. Applied to town bonds, —in *Gould v. Town of Venice*, 29 *Barb.* 451, but disting'd on this point in *Gould v. Town of Sterling*, 23 *N. Y.* 463. To indorsement by cashier, in *Bank of Genesee v. Patchin B'k*, 19 *Id.* 319. Explained in *Marine Nat. B'k v. Nat. City B'k*, 59 *Id.* 72. Disting'd in *Clarke National B'k v. B'k of Albion*, 52 *Barb.* 597; *Salt Springs B'k v. Syracuse Sav'gs Inst.*, 62 *Id.* 108. Commented on in *Cooke v. State Nat. B'k of Boston*, 52 *N. Y.* 116. Included with notes, in *Redf. & B. Lead. Cas. on B. of Exch.* 727. Compared in *Bigel. on B. & N.* 2 cd. 55. Compare 2 *Am. L. Reg. N. S.* 301. Applied (Liability of bank for acts of agent) in *Reynolds v. Kenyon*, 43 *Barb.* 600; *Continental Nat. B'k v. Nat. B'k of Commonwealth*, 50 *N. Y.* 581. Disting'd in *Booth v. Farmers' & Mech. Nat. B'k*, 4 *Lans.* 306. Applied to liability of firm, in *Griswold v. Haven*, 25 *N. Y.* 595, 601. Applied (Liability on paper negotiated by agent) in *Exchange B'k v. Montearth*, 26 *Id.* 510, 512. Quoted and explained (Private corporations—*ultra vires*) in *Moravetz on Corp.* § 98.
- *v. Empire Stone Dressing Co.* See *Bissell v. Michigan Southern and Northern, &c. R. R. Co.*
- *v. Evans*, 4 *Barb.* 487. Disting'd (Limitation of guarantor's liability) in *Pratt v. Matthews*, 24 *Hun.* 386, 390.
- *v. Joslyn*, 37 *N. Y.* 353. Cited as authority (Trial of issues in equity action) in *Hatch v. Peugnet*, 64 *Barb.* 196. Disting'd (Recovery on debt for which note has been given) in *Hansce v. Phinney*, 20 *Hun.* 154. Followed (Valid contract as affected by usurious agreement) in *Winsted B'k v. Webb*, 39 *N. Y.* 332. Applied in *Patterson v. Birdsall*, 64 *Id.* 298.
- *v. Raynor*. See *Bank of Michigan v. Williams; Dutchess Cotton Manufactory v. Davis*.
- Farmers' & Mechanics' Bank of Rochester v. Gregory**, 49 *Barb.* 155. See *Beach v. Hollister; Goelet v. Gori; Rogers v. Benson; Wright v. Saddler*. Disapproved (Effect of married woman's acts on tenancy by entirety) in *Meeker v. Wright*, 76 *N. Y.* 262, 269.
- Farmers' & Mechanics' Nat. Bank of Buffalo v. Atkinson**, 43 *Super. Ct. (J. & S.)* 546. Aff'd, it seems, in 74 *N. Y.* 587. Decision in 74 *N. Y.* followed, but point not indicated, in *Same v. Hazeltine*, 45 *Super. Ct. (J. & S.)* 576, which was aff'd in 78 *N. Y.* 104, which see.
- *v. Brown*, 42 *Super. Ct. (J. & S.)* 522. Aff'd as *Same v. Logan*, in 74 *N. Y.* 568.
- *v. Dearing*, 59 *N. Y.* 659 (no opinion). Rev'd, it seems (Effect of usurious loan by national bank) in 91 *U. S.* 29.
- *v. Hazeltine*, 45 *Super. Ct. (J. & S.)* 576. Aff'd in 78 *N. Y.* 104.
- *v. Logan*, 74 *N. Y.* 568. See *Same v. Brown; Marine Bank v. Wright*. Followed, but point not indicated, in *Farmers' & M. Nat. B'k v. Hazeltine*, 45 *Super. Ct. (J. & S.)* 576. Explained (Sales—reservation of *jus disponendi*) in 1 *Benj. on Sales*, § 581 (Corbin's 4 Am. ed.). Explained (Torts—conversion) in *Moak's Underhill's Torts*, 1 Am. ed. 573.
- *v. Sprague*, 2 *Hun.* 522; s. c., 5 *Sup'm. Ct. (T. & C.)* 713. Previous decision vacating order of arrest, in 52 *N. Y.* 605. Decision in 52 *N. Y.* disting'd (Fiduciary capacity of factor) in *Kelly v. Scripture*, 9 *Hun.* 283. Cited (When usage will not relieve factor from duty or liability) in *Whart. Com. on Ag.* §§ 739, 742.
- Farmers' Bank of Amsterdam v. Blair**, 44 *Barb.* 641. Approved (Settlement of controversy as consideration) in *Scott v. Warner*, 2 *Lans.* 49. Disting'd in *Pauzerbeiter v. Waydell*, 21 *Hun.* 161.
- Farmers' Bank of Bridgeport v. Vail**. See *Mead v. Engs.*
- Farmers' Bank of Fayetteville v. Hale**, 15 *Abb. Pr. N. S.* 276. Rev'd in 59 *N. Y.* 53. See *First Nat. B'k of Whitehall v. Lamb*. Decision in 59 *N. Y.* overruled, and the doctrine of the decision in 15 *Abb. Pr. N. S.* established in *Farmers' & Mechanics' B'k, &c. v. Dearing*, 91 *U. S.* 29. Deemed overruled (Penalties for usury by national banks) in *Hintermister v. First Nat. B'k of Chittenango*, 64 *N. Y.* 212, 214.
- Farmers' Fire Ins. & Loan Co. v. Edwards**, 26 *Wend.* 541. Explained (Mortgage—tender after day stipulated for payment) in 4 *Kent Com.* 193, *n. d.*
- Farmers' Ins. & Loan Co. v. Snyder**, 16 *Wend.* 481, 493; s. c., 30 *Am. Dec.* 118, 123, with note. Reviewed with *Alston v. Mechanics' Mut. Ins. Co. of Troy*, 4 *Hill.* 330; *Jennings v. Chenango Co. Mut. Ins. Co.*, 2 *Den.* 75 (Representations and warranties in insurance contract) in *Glendale Woolen Co. v. Protection Ins. Co.*, 21 *Conn.* 19; s. c., 54 *Am. Dec.* 309, with note. Relied on with *Alston v. Mechanics' Insurance Co.*, in *Hartford Protection Ins. Co. v. Harmer*, 2 *Ohio St.* 452; s. c., 59 *Am. Dec.* 695, 699.
- Farmers' Loan & Trust Co. v. Carroll**, 5 *Barb.* 613. Further decision in 2 *N. Y.* 566. Decision in 5 *Barb.* approved (What is usury) in *Schermerhorn v. Talman*, 14 *N. Y.* 93, 120. See to the contrary, *Mum-*

- ford v. American Life Ins. Co., 4 *N. Y.* 463, 475. Approved (Corporation limited in mode of exercise of power) in Brady v. Mayor of N. Y., 2 *Bosw.* 183.
- v. Clowes, 4 *Edw.* 575. Further decision in *Id.* 578, and that aff'd in 3 *N. Y.* 470; s. c., more fully, 8 *N. Y. Leg. Obs.* 249. Decision in 3 *N. Y.* followed (Burden of proof as to loan by corporation) in Cheever v. Gilbert Elev. R. R. Co., 43 *Super. Ct. (J. & S.)* 478, 485. For a stricter rule, see *People ex rel. Town of Rochester v. Deyoe*, 2 *Sup'm. Ct. (T. & C.)* 142. See also *Abb. Tr. Ev.* 36.
- v. Curtis, 7 *N. Y.* 466. For a stricter rule (Burden of proof as to corporate acts) see *People ex rel. Town of Rochester v. Deyoe*, 2 *Sup'm. Ct. (T. & C.)* 142. See also *Abb. Tr. Ev.* 36.
- v. Dickson, 9 *Abb. Pr.* 61; s. c., 17 *How. Pr.* 477. Disapproved (Printed subscription of summons by attorney) in *Mutual Life Ins. Co. v. Ross*, 10 *Abb. Pr.* 260, n.; *Barnard v. Heydrick*, 2 *Abb. Pr. N. S.* 47.
- v. Harmony Fire, &c. Ins. Co., 51 *Barb.* 38. Said in 41 *N. Y.* 619 to have been aff'd in Ct. of App. in Dec. 1869. See *Boynton v. Clinton & Essex Mut. Ins. Co.*
- v. Hendrickson, 25 *Barb.* 484. See *Hoyle v. Plattsburgh & Montreal R. R. Co.*; *Voorhees v. McGinnis*. Overruled (Rolling stock of railroad deemed fixtures) in *Stevens v. Buffalo & N. Y. R. R. Co.*, 31 *Barb.* 590; *Beardsley v. Ontario Bank*, *Id.* 619; *Randall v. Elwell*, 52 *N. Y.* 521, 525. Disapproved in *Boston C. & M. R. Co. v. Gilmore*, 37 *N. H.* 410. Followed (Filing railroad mortgage as chattel mortgage) in *Stevens v. Buffalo, &c. R. R. Co.*, 31 *Barb.* 590. Opposed in *Bement v. Plattsburgh, &c. R. R. Co.*, 47 *Id.* 104. See 2 *L.* 1868, c. 779. Followed (Railroad track as realty) in *City of New Haven v. Fair Haven & Westfield R. R. Co.*, 38 *Conn.* 422; s. c., 9 *Am. R.* 399, 403.
- v. Hunt, 16 *Barb.* 514. Other proceedings as *Hunt v. Farmers' Loan & Trust Co.*, in 8 *How. Pr.* 416, and in 1 *Code R. N. S.* 1.
- v. Kursch, 5 *N. Y.* 558. Explained (Costs of ejectment) in *Perrigo v. Dowdall*, 25 *Hun.* 234.
- v. Maltby, 8 *Paige*, 361. Disting'd (Purchaser when bound by mortgage) in *Tefft v. Munson*, 63 *Barb.* 31, 38. Disting'd in *Trustees of Union College v. Wheeler*, 61 *N. Y.* 88, 108. Expained in *Edwards v. McKernan*, 22 *Northw. Rep.* 20, 22. See 2 *Pomeroy on Eq. Jur.* 100, n.
- v. Mayor, &c. of N. Y., 4 *Bosw.* 80. Disting'd (Lease to municipal corporation) in *Davies v. Mayor, &c. of N. Y.*, 83 *N. Y.* 207, 214.
- Farmers' Nat. Bk. of Ft. Edward v. Leland**, 50 *N. Y.* 673. Followed (Sham answer) in *Roby v. Hallock*, 5 *Abb. N. C.* 86, 88.
- Farnham, Matter of**, 14 *Hun.* 159. Aff'd in 75 *N. Y.* 187. Decision in 75 *N. Y.* explained (Provisions in assignment act, when directory) in *Rennie v. Bean*, 24 *Hun.* 127.
- Farnham v. Campbell**, 34 *N. Y.* 480. Followed (Removal of cloud on title) in *Mulligan v. Baring*, 3 *Daly*, 79.
- v. Farnham, 9 *How. Pr.* 231. Followed (Striking out pleading of party in contempt) in *Walker v. Walker*, 82 *N. Y.* 260, 264.
- v. Hildreth, 32 *Barb.* 277. See *Holley v. Mix*. Explained and followed (Misnomer), in *Muldoon v. Pierz*, 1 *Abb. N. C.* 309, 311.
- v. Mallory, 2 *Abb. Ct. App. Dec.* 100. See to the contrary (Proof of executor's official character) *Shorter v. Urquhart*, 28 *Ala. N. S.* 360. See also *Abb. Tr. Ev.* 56.
- v. Ross. See *Bagley v. Peddie*.
- Farquaharson v. Kimball**, 18 *How. Pr.* 33; s. c., 9 *Abb. Pr.* 385, n. See (Service of injunction order) *Code Civ. Pro.* 1881, §§ 2452, n., 2454, n.
- Farr v. Smith**, 9 *Wend.* 338; s. c., 24 *Am. Dec.* 162. See *Toof v. Bentley*; *Wilson v. Reed*. Disting'd (Property of tenants in common) in *Channon v. Lusk*, 2 *Lans.* 211.
- Farrand v. Marshall**, 19 *Barb.* 380. Further decision in 21 *Id.* 409. Decision in 21 *Barb.* applied (Right of owner of land to use thereof) in *Pickard v. Collins*, 23 *Id.* 458. Examined with other cases in *Losee v. Buchanan*, 61 *Id.* 107, which was rev'd in 51 *N. Y.* 479, which see. Examined with other cases (Nuisances) in *Heeg v. Licht*, 80 *Id.* 582. Examined with other cases (Right to adjacent and subjacent support) in dissenting opinion of *Johnson, C.*, in *Ryckman v. Gillis*, 57 *Barb.* 77. Disting'd in *Austin v. Hudson River R. R. Co.*, 25 *N. Y.* 345. Decision in 19 *Barb.* explained in *People ex rel. Barlow v. Canal Board*, 2 *Sup'm. Ct. (T. & C.)* 277. Decision in 21 *Barb.* disting'd and *Panton v. Holland*, 7 *Johns.* 92; *Lasala v. Holbrook*, 4 *Paige*, 169; *Radcliff's Ex'rs v. Mayor, &c. of Brooklyn*, 4 *N. Y.* 197, cited in *City of Quincy v. Jones*, 76 *Ill.* 23; s. c., 20 *Am. R.* 243-247. Quoted and cases cited to the contrary in *Bigel. Cas. on Torts* 549. Commented on in 1 *High on Inj.* 2 ed. § 753, n. 5. Quoted and discussed in *Wood on Nuis.* 2 ed. §§ 173, 182.
- Farrar v. Chauffetete**, 5 *Den.* 527. Criticised as not furnishing a reliable test of fixture, in *Teaff v. Hewitt*, 1 *Ohio St.* 511; s. c., 59 *Am. Dec.* 635, 643.
- v. Phoenix Ins. Co., 3 *Sup'm Ct. (T. & C.)* 789. Aff'd, it seems, in 60 *N. Y.* 626, but without opinion.
- Farrell v. Calkins**, 10 *Barb.* 348. Said in *Van Slyck v. Snell*, 6 *Lans.* 299, not to have been expressly overruled (Reversal of joint judgment if erroneous as to one defendant) though questioned in *Gerard v. Stagg*, 10 *How. Pr.* 369; *Field v. Mould*, 15 *Abb. Pr.* 6, 11, contrary opinions being also expressed in *Kasson v. Mills*, 8 *How. Pr.* 377, 379; 6 *N. Y.* 86, n. Also disapproved in *Van Slyck v. Snell* as opposed to *Code. Pro.* § 366 and contrary to *Campbell v. Perkins*, 8 *N. Y.* 480.

- **v. Higley**, *Hill & D.* 87. Explained (Contracts—estoppel) in 2 *Par. on Contr.* 793, *n. q.*
- **v. People**, 21 *Hun.* 485. Aff'd in 84 *N. Y.* 656, but without opinion.
- Farrington v. Frankfort Bank**, 31 *Barb.* 183. Previous report in 24 *Barb.* 554, with opinion of BACON, J. See *Spear v. Myers*.
- **v. Sinclair**. See *Bliss v. Ball*.
- Fash v. Third Ave. R. R. Co.**, 1 *Daly*, 148. Followed (Obligation of city railroad company to keep its track in good order) in *Worster v. Forty-second Street, &c. R. R. Co.*, 3 *Daly*, 278. Questioned in *Lowery v. Brooklyn City & Newtown R. R. Co.*, 76 *N. Y.* 28, 31.
- Fassett v. Smith**, 23 *N. Y.* 252. Disting'd (Statutory definition of felony) in *People v. Park*, 41 *N. Y.* 24. Approved (Obtaining property by false pretences, not a felony) in *Nickelson v. Wilson*, 60 *Id.* 369. Disting'd (Title to goods obtained by false pretences) as inapplicable to case of larceny, — in *Florence Sewing Machine Co. v. Warford*, 1 *Sweeney*, 450. See 24 *Moak's Eng.* 359, stating rule in other States. Compared with decision to the contrary in 1 *Benj. on Sales*, § 650, *n.* 17 (Corbin's 4 *Am. ed.*).
- **v. Tallmadge**, 18 *Abb. Pr.* 48. Rev'd as *Dunlevy v. Tallmadge*, in 32 *N. Y.* 457; *s. c.*, 29 *Hov. Pr.* 397.
- **v.** —, 37 *Barb.* 436; *s. c.*, more fully, 14 *Abb. Pr.* 188. Decision at General Term less fully reported in 23 *Hov. Pr.* 244. Decision in 23 *Id.* disting'd (Arrest in action to set aside conveyance) in *Bruce v. Kelly*, 5 *Hun.* 229.
- Fassin v. Hubbard**, 61 *Barb.* 548. See *Bank of Albion v. Smith*. Explained (Notarial certificate as evidence) in *Lawson v. Pinckney*, 40 *Super. Ct. (J. & S.)* 187, 196.
- Fatman v. Lobach**, 1 *Duer*, 354. See to the contrary (Negotiability of stock certificates) *Stebbins v. Phoenix Fire Ins. Co.*, 3 *Paige*, 350. Approved in *Mechanics' Bank v. N. Y. & N. H. R. R. Co.*, 4 *Duer*, 480, which was rev'd in 13 *N. Y.* 599, which see. Disting'd from *McCready v. Rumsey*, 6 *Duer*, 574, and approved in *McNeil v. Tenth Nat. Bk.*, 46 *N. Y.* 325, 335.
- Faucett v. Nichols**, 4 *Sup'm. Ct. (T. & C.)* 597; *mem. s. c.*, 2 *Hun.* 421. Rev'd in 64 *N. Y.* 377. Decision in *Id.* cited (Admissibility of collateral facts upon issue of *casus* or accident) in *Whart. Com. on Ev.* § 38. See as to fires set by locomotives, *Sheldon v. Hudson River R. R. Co.*, 14 *N. Y.* 221, cited in § 43, and *Field v. N. Y. Central R. R. Co.*, 32 *N. Y.* 339, cited in § 43, *n.*
- Faugier v. Hallett**, 2 *Johns. Cas.* 233; *s. c.*, 1 *N. Y. Com. L. Law. ed.* 499, with brief note of supporting authorities on adjustment.
- Faulkner, Matter of**, 4 *Hill*, 598. Applied (Affidavit for attachment) in *Easton v. Malavazi*, 7 *Daly*, 147, 149.
- Faulkner v. Delaware & Raritan Canal Co.**, 1 *Den.* 441. Not followed (Statute of limitations as applied to foreign corporations) in *Blossburg & Corning R. R. Co. v. Tioga R. R. Co.*, 5 *Blatchf. C. Ct.* 387, 390. Overruled in *Olcott v. Tioga R. R. Co.*, 20 *N. Y.* 210, 226. Followed with *McQueen v. Middleton Manuf. Co.*, 16 *Johns.* 5, in *Clarke v. Bank of Mississippi*, 10 *Ark.* 516; *s. c.*, 52 *Am. Dec.* 248, with note. Applied (Jurisdiction over foreign corporations) in *McCormick v. Penn. Central R. R. Co.*, 49 *N. Y.* 303.
- **v. Erie R'y Co.**, 49 *Barb.* 324. Explained in *Tinney v. Boston & Albany R. R. Co.*, 62 *Id.* 218, as not holding that a railway company is bound to provide its employees with a safe roadway.
- **v. Hart**, 44 *Super. Ct. (J. & S.)* 471. Rev'd in 82 *N. Y.* 413; *s. c.*, 37 *Am. R.* 574. Decision in 82 *N. Y.* explained (Conflict of laws) in 2 *Par. on Contr.* 568, *n.* 1 Keller's *ed.*
- Faure v. Martin**, 13 *Barb.* 394. Aff'd in 7 *N. Y.* 210; *s. c.*, 57 *Am. Dec.* 515, with note. Decision in 7 *N. Y.* doubted (Construction of contract of sale of lands) in *Wilson v. Randall*, 67 *Id.* 338, 342. Disting'd in *Belknap v. Sealey*, 14 *Id.* 143.
- Favill v. Roberts**, 3 *Lans.* 14. Aff'd in 50 *N. Y.* 222. Decision in *Id.* followed (Estoppel to set up title to land) in *Mattoon v. Young*, 2 *Hun.* 559, 564. Explained in 3 *Washb. on Real Prop.* 4 *ed.* 80.
- Fay v. Ames**, 44 *Barb.* 327. See *Bartlett v. Campbell*. Disapproved (Judgment against principal as evidence against surety) in *Stephens v. Shafer*, 48 *Wis.* 54; *s. c.*, 33 *Am. R.* 798.
- **v. Bell**, *Hill & D.* 25. Overruled (Consideration for parol promise to answer for debt of another) in *Mallory v. Gillett*, 21 *N. Y.* 412.
- **v. O'Neill**, 36 *N. Y.* 11. Followed (Recognition before magistrate) in *Van De Wiele v. Callanan*, 7 *Daly*, 386.
- Fearing v. Irwin**, 4 *Daly*, 385. Aff'd in 55 *N. Y.* 486. Further decision in 5 *Daly*, 383. See *Milhau v. Sharp*; *Wetmore v. Law*.
- Fearn v. Gelpcke**, 13 *Abb. Pr.* 473. Followed (Waiver of right to ask for security for costs) in *Perse & Brooks Paper Works v. Willet*, 14 *Id.* 119, 121.
- Feeter v. Heath**, 11 *Wend.* 477. See *Dusenbury v. Ellis*; *Lawrence v. Barker*. Approved as settled law (Effect of memorandum used by witness) in *Green v. Brown*, 3 *Barb.* 124. Criticised in *Kendall v. Stone*, 2 *Sandf.* 286. Examined with other cases in *Merrill v. Ithaca & Owego R. R. Co.*, 16 *Wend.* 596. Applied in *Stuart v. Binsse*, 10 *Borc.* 444; *Taylor v. Crowninshield*, 5 *N. Y. Leg. Obs.* 212. Qualified in *Halsey v. Sinsebaugh*, 15 *N. Y.* 487. Qualified with *Lawrence v. Barker*, 5 *Wend.* 301, in *Guy v. Mead*, 22 *N. Y.* 465. Followed (Review of referee's conclusions) in *Esterly v. Cole*, 3 *Id.* 505. See *People v. Superior Ct. of N. Y.*, 18 *Wend.* 575. Reviewed with other

- cases (Allowance of interest) in *White v. Miller*, 78 *N. Y.* 398. Disting'd (Liability of agent contracting without authority) in *Walker v. B'k of State of N. Y.*, 13 *Barb.* 639; *Hegeman v. Johnson*, 35 *Id.* 205; *Aspinwall v. Torrance*, 1 *Lans.* 387.
- *v. Weber*, 44 *Super. Ct. (J. & S.)* 255. Aff'd in 78 *N. Y.* 334.
- Feibel v. Obersky**, 13 *Abb. Pr. N. S.* 402, *n.* Followed (Infant's promise to marry not binding) in *Leichtweiss v. Treskow*, 21 *Hun.* 488. Cited with other cases in 20 *Am. L. Reg. N. S.* 459, *n.*
- Fellerman's Case**, 2 *Abb. Pr.* 155. See (Discontinuance of supplementary proceedings) *Code Civ. Pro.* 1881, § 2454, *n.*
- Fellinger v. People**. See *People v. Fellinger*.
- Fellows v. Commissioners of Oneida**, 36 *Barb.* 655. Disting'd (No ratification of act not done avowedly for principal) in *Goodnow v. Stryker*, 61 *Iowa*, 263.
- *v. Cook*, 50 *Hov. Pr.* 95. Rev'd in 6 *Daly*, 204. See as to the rule under *Code Civ. Pro.* (Arrest in action under foreign judgment) *Baxter v. Drake*, 85 *N. Y.* 502.
- *v. Emperor*, 13 *Barb.* 92. Quoted (Consideration for debtor's voluntary conveyances) in *Wait on Fraud. Conv.* § 213.
- *v. Fellows*, 4 *Cov.* 682, *s. c.*, 15 *Am. Dec.* 412, with note. Another decision in proceedings between same parties as it seems, in 4 *Johns. Ch.* 25. Decision in 4 *Cov.* approved with *Brinkerhoff v. Brown*, 6 *Johns. Ch.* 139, (Bill, when not multifarious) in *Ingersoll v. Kirby*, *Walk. Ch.* 69. Said in 15 *Am. Dec.* 428, *n.*, to have been generally followed in *N. Y.* and elsewhere (Joinder of fraudulent debtor and his assignees in one bill) notwithstanding the doubt expressed in *Story on Eq. Pl.* § 286, as to whether this case and *Brinkerhoff v. Brown*, 6 *Johns. Ch.* 139, are sustained by the English authorities. Doubt as extreme in *Johnson v. Brown*, 2 *Humph. (Tenn.)* 327; *s. c.*, 37 *Am. Dec.* 556. Compare (Requisites of bill against several persons) *Garner v. Harmony Mills*, 6 *Abb. N. C.* 212, 217.
- *v. Harrington*, 3 *Barb. Ch.* 652. Opinion of vice-chancellor in 4 *N. Y. Leg. Obs.* 340. Decision in 3 *Barb. Ch.* explained (Time when interest commences) in *Cook v. Rogers*, 5 *Sup'm. Ct. (T. & C.)* 493, 495.
- *v. Heermans*, 4 *Lans.* 230. Subsequent decision in 13 *Abb. Pr. N. S.* 1. Decision in 4 *Lans.* 254, followed (Trust to receive rents and profits of land) in *Heermans v. Robertson*, 5 *Sup'm. Ct. (T. & C.)* 596, which was aff'd in 64 *N. Y.* 332, which see. Decision in 13 *Abb. Pr. N. S.* explained (Injunction after judgment) in *Spears v. Matthews*, 6 *Hun.* 489; which was rev'd in 66 *N. Y.* 127, which see. See (*Ne exeat*) *Code Civ. Pro.* 1881, § 548, *n.*
- *v. Muller*, 38 *N. Y. Super. Ct. (J. & S.)* 137. Followed (Sham answer) in *Roby v. Hallock*, 5 *Abb. N. C.* 86, 88.
- *v. Niver*, 18 *Wend.* 563. Disting'd (Effect of failure of infant to appear by guardian *ad litem*) in *McMurray v. McMurray*, 60 *Barb.* 117; *Fairweather v. Satterly*, 7 *Robt.* 546.
- *v. Prentiss*, 3 *Den.* 512; *s. c.*, 45 *Am. Dec.* 484, with note wherein are collected citations. See *Bingham v. Weiderwax*; *Murray v. Smith*. Applied (Discharge of surety) in *President, &c. of Agawam Bk. v. Strever*, 16 *Barb.* 85; *Eisner v. Keller*, 3 *Daly*, 492; *Hart v. Hudson*, 6 *Duer*, 305; *Pomeroy v. Tanner*, 70 *N. Y.* 550; *Hubbard v. Gurney*, 64 *Id.* 467. Relied on in *Smith v. Shelden*, 35 *Mich.* 42; *s. c.*, 24 *Am. R.* 529. Disting'd and head note criticised (Continuing guaranties) in *Sickle v. Marsh*, 44 *Hov. Pr.* 93. Cited as authority in *Gates v. McKee*, 13 *N. Y.* 237. See to the contrary *Rose. N. P.* 457; and see *Abb. Tr. Ev.* 473. Disting'd (Extension of time as consideration) in *Cary v. White*, 52 *N. Y.* 143. Examined with other cases (Construction of guaranties) in *Crist v. Burlingame*, 62 *Barb.* 356. Explained by *SELDEN, J.*, with *McCrea v. Purmort*, 16 *Wend.* 460; *Murray v. Smith*, 1 *Duer*, 412; *Bingham v. Weiderwax*, 1 *N. Y.* 509 (Parol evidence to explain agreement) in *Halliday v. Hart*, 30 *Id.* 474, 493. Collated with other cases (Note or bill taken for debt) in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 277.
- Felter v. Mulliner**, 2 *Johns.* 181. Applied with *Hess v. Beekman*, 11 *Id.* 457 (Effect of verdict in justice's court) in *Gaines v. Betts*, 2 *Doug. (Mich.)* 100. Applied with *Thompson v. Button*, 14 *Johns.* 84, in *Lamberton v. Foote*, 1 *Doug. (Mich.)* 104. Cited (Application of rule forbidding verdict to be put in evidence) in 2 *Whart. Com. on Ev.* § 831, *n.*
- Fenby v. Pritchard**, 2 *Sandf.* 151. Overruled (*Bona fide* purchaser) in *Barnard v. Campbell*, 58 *N. Y.* 73. See *Nickerson v. Ruger*, 43 *Super. Ct. (J. & S.)* 258. Collated with other cases in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 424.
- Fenly v. Stewart**, 5 *Sandf.* 101. Approved (Charging person not party to written contract) in *Briggs v. Partridge*, 39 *Super. Ct. (J. & S.)* 339, 342. Explained and discussed in 1 *Pars. on Contr.* 56, *n. x.* Quoted in 3 *Id.* 9, *n. l.*
- Fenner v. Buffalo & State Line R. R. Co.**, 46 *Barb.* 103. Rev'd in 44 *N. Y.* 505; *s. c.*, 4 *Am. R.* 710. Decision in 44 *N. Y.* followed and approved with *McDonald v. Western R. R. Co.*, 34 *Id.* 97; *Mills v. Michigan Central R. R. Co.*, 45 *Id.* 622 (Intermediate carrier's liability) in *Conkey v. Milwaukee & St. Paul R'y Co.*, 31 *Wis.* 619; *s. c.*, 11 *Am. R.* 630, 640. Cited with *Mills v. Mich. Central R. R. Co.*, 45 *N. Y.* 622, in 7 *Am. R.* 592, *n.* collating cases. Approved with *Zinn v. N. J. Steamboat Co.*, 49 *N. Y.* 442 (Liability of carrier after transit) in *L. L. & G. R. R. Co. v. Maris*, 16 *Kan.* 333, 337.
- *v. Lewis*, 10 *Johns.* 38. Disting'd (Ad-



- missions of principal against surety) in *Hatch v. Elkins*, 65 *N. Y.* 497. Cited with a *query* as to cases arising under statutes enabling the principal to be called, in 2 *Whart. Com. on Ev.* § 1212. Discussed (Husband and wife as witnesses for or against each other) in 2 *Kent. Com.* 180.
- *v. Sanborn*, 37 *Barb.* 610. Followed as overruling *People v. Hulbert*, 5 *How. Pr.* 446 (Compelling assignment by judgment debtor) in *Clan Ranald v. Wyckoff*, 41 *Super. Ct. (J. & S.)* 529.
- Fenno v. Dickinson**, 4 *Den.* 84. Applied (Proceedings begun in court not of record) in *Mellen v. Hutchins*, 8 *Abb. N. C.* 228. Disting'd (Damages on bond given in action) in *Bennett v. Brown*, 31 *Barb.* 158, 162.
- Fenton v. Folger**, 21 *Wend.* 676. Disting'd and questioned (Execution against partnership property) in *Ryder v. Gilbert*, 16 *Hun.* 163. Cited as authority in *Bowker v. Smith*, 48 *N. H.* 111; s. c., 2 *Am. R.* 189, 197.
- *v. People*, 4 *Hill.* 126. Limited (Indictment for obtaining signature) in *People v. Chapman*, 4 *Park.* 56, 59.
- *v. Reed*, 4 *Johns.* 52; s. c., 3 *N. Y. Com. L. Law. ed.* 740, with brief note; 4 *Am. Dec.* 244, with note, wherein it is said to be regarded as a leading case in *N. Y.* See *Starr v. Peck*. Applied (Evidence of marriage) in *Bissell v. Bissell*, 7 *Abb. Pr. N. S.* 20; *Caujolle v. Ferrie*, 26 *Barb.* 185, which aff'd 4 *Bradf.* 28, 86, which see, and was aff'd in 23 *N. Y.* 106, which see; *Rockwell v. Tunncliffe*, 62 *Barb.* 415; *Starr v. Peck*, 1 *Hill.* 273; *Jackson v. Claw*, 18 *Johns.* 350; *Rose v. Clark*, 8 *Paige*, 581; *Durand v. Durand*, 2 *Sweeny*, 321; *Dann v. Kingdom*, 1 *Sup'm. Ct. (T. & C.)* 493; *Blanchard v. Lambert*, 43 *Iowa*, 228; s. c., 22 *Am. R.* 248. Cited as authority in *Londonderry v. Chester*, 2 *N. H.* 268; s. c., 9 *Am. Dec.* 61, 72; *Taylor v. Robinson*, 29 *Me.* 328. Followed in *Newbury v. Brunswick*, 2 *Verm.* 151; s. c., 19 *Am. Dec.* 703, 706, with note; *Hutchins v. Kimmell*, 31 *Mich.* 130. Disting'd in *Clayton v. Wardell*, 5 *Barb.* 217, which was aff'd in 4 *N. Y.* 234, which see; *Cheney v. Arnold*, 15 *Id.* 351; *O'Gara v. Eisenlohr*, 38 *Id.* 300; *Machini v. Zanoni*, 5 *Redf.* 492, 495; *Cram v. Burnham*, 5 *Greenl. (Me.)* 213; s. c., 17 *Am. Dec.* 218, with note. Examined with other cases in *Jaques v. Public Adm'r*, 1 *Bradf.* 507; *Wright v. Wright*, 48 *How. Pr.* 2; *Gahagan v. People*, 1 *Park.* 385. Collated with *People v. Humphrey*, 7 *Johns.* 314, and other cases, in *Cook v. State*, 11 *Ga.* 53; s. c., 56 *Am. Dec.* 410, 417. Cited as authority with *Jackson v. Winne*, 7 *Wend.* 47; *Rose v. Clark*, 8 *Paige*, 574; *Starr v. Peck*, 1 *Hill.* 270; *Clayton v. Wardell*, 4 *N. Y.* 230; *Cheney v. Arnold*, 15 *Id.* 345; *O'Gara v. Eisenlohr*, 38 *Id.* 296, in *Matthewson v. Phoenix Iron Foundry*, *U. S. Cir. Ct. R. I.*, 20 *Fed. Rep.* 281, 284. Explained in 2 *Pars. on Contr.* 77, n. r.
- Ferdon v. Cunningham**. See *Pennington v. Townsend*; *Swords v. Owen*.
- Ferguson, Matter of**, 9 *Johns.* 239. See *Ferrie v. Paris*; *Taylor v. Bates*. Approved and followed (State court without jurisdiction to inquire into validity of enlistment, on *habeas corpus*) in *Reilly's Case*, 2 *Abb. Pr. N. S.* 334. See article on *habeas corpus* and martial law, in *N. Am. Rev.* (Oct. 1861), vol. 93, pp. 471, 484, where it is suggested that, as the officer made return without objecting that by the existence of war he was exempted from the operation of the writ, that question cannot be deemed touched by the decision. Cited and reviewed (Concurrent State and federal jurisdiction) in 1 *Kent Com.* 400. \* Applied with approval with *Matter of Stacy*, 10 *Johns.* 328, in *Bruen v. Ogden*, 6 *Halst. (N. J.)* 370; s. c., 20 *Am. Dec.* 593, 602.
- Ferguson v. Broome**, 1 *Bradf.* 10. Disapproved (Time within which creditor may enforce lien against estate of deceased debtor) and *Gilchrist v. Rea*, 9 *Paige*, 66; *Hyde v. Tanner*, 1 *Barb.* 75, disting'd in *Mead v. Jenkins*, 29 *Hun.* 253. *Ferguson v. Broome* also disting'd in *Hurd v. Callahan*, 5 *Redf.* 398. Applied in *U. S. Life Ins. Co. v. Jordan*, *Id.* 207. See *Code Civ. Pro.* 1881, § 2750, n. See also (Judgment against executor for decedent's death) *Id.* 2757, n.
- *v. Crawford*, 7 *Hun.* 25. Rev'd in 70 *N. Y.* 253; s. c., 26 *Am. R.* 589. Subsequent decision in 86 *N. Y.* 609. See *Hunt v. Hunt*. Decision in 70 *N. Y.* applied with *People ex rel. Tweed v. Liscomb*, 60 *Id.* 568; *People ex rel. Rogers v. Spencer*, 55 *Id.* 1; *Hard v. Shipman*, 6 *Barb.* 621 (Inquiry into jurisdiction of court) in *Craig v. Town of Andes*, 93 *N. Y.* 405. Disting'd in *Diossy v. West*, 8 *Daly*, 298. Collated with other cases in *Mastin v. Gray*, 19 *Kans.* 458; s. c., 27 *Am. R.* 149. Cited as authority in *Reynolds v. Fleming*, 30 *Kans.* 106; s. c., 46 *Am. R.* 86.
- *v. Ferguson*, 2 *N. Y.* 360. Disting'd (Damages for breach of contract to support another for life) in *Schell v. Plumb*, 55 *Id.* 592, 598.
- *v. Kimball*, 3 *Barb. Ch.* 616. Modified in *Ferguson v. Ferguson*, 2 *N. Y.* 360.
- *v. Morris*, 1 *Hun.* 619; fuller mem. s. c., 4 *Sup'm. Ct. (T. & C.)* 696.
- *v. Tweedy*, 43 *N. Y.* 543. Aff'g *Ferguson v. Tweedy*, 56 *Barb.* 168.
- Ferlat v. Gofjon**, *Hopk.* 478; s. c., 14 *Am. Dec.* 554. See *Wightman v. Wightman*.
- Fernan v. Doubleday**, 3 *Lans.* 216. Followed (Discharge of surety by usurious agreement) in *Thayer v. King*, 31 *Hun.* 437. Disting'd in *Nat. B'k of Gloversville v. Place*, 15 *Id.* 564, 567.
- Fernandez v. Great Western Ins. Co.**, 3 *Robt.* 457. Rev'd in 48 *N. Y.* 571. Decision in *Id.* applied with *Vos v. Robinson*, 9

- Johns*. 192; *Stevens v. Commercial Mut. Ins. Co.*, 26 *N. Y.* 397 (Deviation that avoids marine policy) in *Snyder v. Atlantic Mut. Ins. Co.*, 95 *Id.* 196.
- Fero v. Buffalo & State Line R. R. Co.** See *Cook v. Champlain Transportation Co.*; *Rood v. N. Y. & Erie R. R. Co.*; *Teall v. Barton*.
- *v. Ruscoe*, 4 *N. Y.* 162. Doctrine discussed (Justification of slander) in 12 *Am. L. Reg. N. S.* 432.
- Ferren v. O'Hara**, 62 *Barb.* 517. Compare (What is contract of sale within statute of frauds) *Passaic Manuf. Co. v. Hoffman*, 3 *Daly*, 495, where the authorities on which this case was decided are reviewed, and held overruled.
- Ferrer v. Pyne**, 18 *Hun.* 411. Aff'd in 81 *N. Y.* 281; s. c., 1 *Am. Prob. R.* 556, with note.
- Ferrero v. Buhlmeier**, 34 *How. Pr.* 33. Discussed (Dissolution of partnership) in 1 *Collyer on Partn.* § 275, n. 1, *Wood's Am. ed.*
- Ferrie v. Public Administrator**, 4 *Bradf.* 28. Aff'd as *Caujolle v. Ferrie*, in 26 *Barb.* 177. Prior decision in 3 *Bradf.* 151. See *Foster v. Hawley*. Decision in 3 *Bradf.* reviewed at length with *Bissel v. Bissel*, 55 *Barb.* 326, and other cases (Evidence of marriage) in *Dyer v. Brannock*, 66 *Mo.* 391; s. c., 27 *Am. R.* 359, 368, 374.
- Ferrier v. American Glass Silvering Co.**, 3 *Abb. Pr. N. S.* 419; s. c., 34 *How. Pr.* 496; 7 *Robt.* 288. See (Attachment of property) *Code Civ. Pro.* 1881, ch. VII., tit. III., art. 1, n.
- Ferrin v. Myrick**, 53 *Barb.* 76. Rev'd in 41 *N. Y.* 315. Decision in *Id.* disting'd (Contracts of executors, &c.) in *Tradesmen's Nat. B'k v. McFeely*, 61 *Barb.* 525. Applied in *Hall v. Richardson*, 22 *Hun.* 449; *Casoni v. Jerome*, 58 *N. Y.* 321; *Lunt v. Lunt*, 8 *Abb. N. C.* 90. Cited as settled law in *Austin v. Munro*, 47 *N. Y.* 366. Cited as authority (Allowance for headstone, &c. as part of funeral expenses) in *Owens v. Bloomer*, 14 *Hun.* 297; *Cornwell v. Deck*, 2 *Keif.* 90; *Matter of Erlacher*, 3 *Id.* 13; *Matter of Luckey*, 4 *Id.* 97. Examined with other cases (Liability of trust estates on contracts made for their benefit) in 15 *Am. L. Rev.* 449, 456. Cited as authority (Joinder of causes of action against executor as such and individually) in *Pomeroy on Rem.* § 484.
- Ferris, Matter of**, 35 *N. Y.* 262; s. c., more fully, 32 *How. Pr.* 411.
- Ferris v. Crawford**, 2 *Den.* 595. Aff'g *Watt v. Crawford*, 11 *Paige*, 470. See *Jumel v. Jumel*.
- *v. Douglass*, 20 *Wend.* 627. Approved with *Smith v. Kingsley*, 19 *Id.* 620 (Writ of error not demandable of right) in *Higbie v. Comstock*, 1 *Den.* 652.
- *v. Holmes*, 8 *Daly*, 217. See (Married woman's answer) *Code Civ. Pro.* 1881, § 450, n.
- *v. Kilmer*, 47 *Barb.* 411. Rev'd (Liability of principal for purchases by agent) in 48 *N. Y.* 300.
- *v. Paris*, 10 *Johns.* 285. Commented on with *Taylor v. Bates*, 5 *Cow.* 376; *Exparte Ferguson*, 6 *Id.* 596; *Rathbun v. Ingals*, 7 *Wend.* 320; *Stafford v. Richardson*, 15 *Id.* 302 (Liability of collecting agent to action, without request to pay) in *Lille v. Hoyt*, 5 *Hill*, 395. Discussed in *Ang. on Limit.* § 181, 6 ed.
- *v. People*, 48 *Barb.* 17; s. c., 1 *Abb. Pr. N. S.* 193. Aff'd in 35 *N. Y.* 125; s. c., 31 *How. Pr.* 140. Decision in 35 *N. Y.* examined with other cases (Review of decisions of *N. Y.* General Sessions in Court of Appeals) in *Levy v. People*, 80 *Id.* 327, 337.
- *v. Van Vechten*, 9 *Hun.* 12. Rev'd in 73 *N. Y.* 113. Decision in 73 *N. Y.* disting'd (Commingling moneys) as to moneys held in trust to pay creditors, in *Falkland v. St. Nicholas Nat. B'k of N. Y.*, 84 *Id.* 145, 151. Commented on (Fiduciaries purchasing with trust funds) in 2 *Pomeroy on Eq. Jur.* 623, n.
- Ferriss v. North American Ins. Co.**, 1 *Hill*, 71. Disting'd (Provision in policy against fraud, &c. in connection with proofs of loss—what avoids) in *Moore v. Va. Fire & Marine Ins. Co.*, 28 *Gratt. (Va.)* 508; s. c., 26 *Am. R.* 373.
- Ferry v. Stephens**, 5 *Hun.* 109. Aff'd in 66 *N. Y.* 321. See *Gray v. Barton*.
- Fetherly v. Waggoner**, 11 *Wend.* 599. See *Dan v. Brown*. Followed (Attestation of will, as evidence of due execution) in *Greenough v. Greenough*, 11 *Pa. St.* 489; s. c., 51 *Am. Dec.* 567, 573.
- Fetridge v. Merchant**, 4 *Abb. Pr.* 156. See *Burnett v. Phalon*. Commented on in connection with *Fetridge v. Wells*, *Id.* 144 (Restraining use of name as trade-mark) in *Corwin v. Daly*, 7 *Bow.* 222, 231. Quoted in 2 *Pars. on Contr.* 257 *bn*, n. o. Collated with other cases in *Thomps. on Prov. Rem.* 262.
- *v. Wells*, 4 *Abb. Pr.* 144; s. c., 13 *How. Pr.* 385. See *Amoskeag Manuf. Co. v. Spear*; *Barnett v. Phalon*. Compare (Restraining use of name as trade-mark) *Fetridge v. Merchant*, 4 *Abb. Pr.* 158. Disting'd in *Curtis v. Bryan*, 2 *Daly*, 316; *Hennessy v. Wheeler*, 69 *N. Y.* 275. Applied in *Newman v. Alvord*, 49 *Barb.* 591; *Taylor v. Gillies*, 59 *N. Y.* 334; *Swift v. Dey*, 4 *Robt.* 612. Compared with other cases in *Congress & Empire Spring Co. v. High Rock Congress Spring Co.*, 57 *Barb.* 534; *Corwin v. Daly*, 7 *Bow.* 229; *Wolfe v. Goulard*, 18 *How. Pr.* 68. Approved in *Manhattan Medicine Co. v. Wood*, 108 *U. S.* 218, 226; *Tomlinson v. Battell*, cited in *Law's Dig. of Pat. and Cop. L.* 79. Reviewed with *Samuel v. Berger*, 24 *Barb.* 164; *Partridge v. Menck*, 2 *Sandf. Ch.* 622; 2 *Barb.* 101; *How. App. Cas.* 547, and *Faber v. Faber*, 49 *Barb.* 357; *Clark v. Clark*, 25 *Id.* 76, also cited in the concurring opinion of *POTTER, J.*, in

- Carmichel v. Latimer, 11 R. I. 395; s. c., 23 Am. R. 481, 486, 490. Applied with Hobbs v. Francois, 19 How. Pr. 567, in Laird v. Wilder, 9 Bush (Ky.) 131; s. c., 15 Am. R. 707. Cited with other cases in 10 Am. L. Reg. N. S. 708. Quoted in 2 Pars. on Contr. 257 bn, n. o. Collated with other cases in *Thomps. on Prov. Rem.* 262.
- Fettretch v. McKay**, 11 Abb. Pr. N. S. 453; s. c., 47 N. Y. 426. Disting'd (Disregarding counter-claim) in *Burroughs v. Garrison*, 15 Abb. Pr. N. S. 144, 147.
- **v. Totten**, 2 Abb. Pr. N. S. 264. Followed (Discharge of mechanic's lien) in *Dowdney v. McCollom*, 5 Daly, 240.
- Fibel v. Livingston**, 64 Barb. 179. Disapproved (Liability of common carrier on receipt not read) in *Kirkland v. Dinmore*, 4 Sup'm. Ct. (T. & C.) 304, 307. Criticised in *Ayres v. Western R. R. Corporation*, 14 Blatchf. Ct. Ct. 9, 14. Also criticised in *Lawson's Contr. of Carr.* xlv.
- Fidler v. Delavan**. See *Bissell v. Cornell*.
- Fiedler v. Darrin**, 59 Barb. 651. Rev'd in 50 N. Y. 437. See *Seymour v. Wilson*. Decision in 50 N. Y. disting'd (Evidence of usury) in *Haughwout v. Garrison*, 69 Id. 339; *More v. Deyoe*, 22 Hun, 208, 233.
- **v. Day**, 2 Sandf. 594. Collated with other cases (Assignment for benefit of creditors, when in part void) in *Bishop on Assign.* § 195. Explained (When void in toto) in *Burrill on Assign.* § 353, 4 ed.
- Field v. Blair**, 1 Code R. N. S. 292. Aff'd in *Id.* 361.
- **v. Chapman**, 13 Abb. Pr. 320; s. c. as *Field v. Hunt*, 22 How. Pr. 329. Further decision in 14 Abb. Pr. 138; s. c., 23 How. Pr. 80; but the former aff'd, and the latter overruled in 15 Abb. Pr. 434; s. c., 24 How. Pr. 463. Decision in 13 Abb. Pr. cited and followed with *Rogers v. Paterson*, 4 Paige, 450 (Legal rights of party in contempt to be protected) in *Koehler v. Dobberpuhl*, 56 Wis. 501.
- **v. Field**, 73 N. Y. 588. Further decision in 77 Id. 294. Another proceeding in 2 Redf. 160. Decision in 77 N. Y. disting'd (Allowance of costs against executor) in *Horton v. Brown*, 29 Hun, 654; *Gouley v. Smith*, 5 Month. L. Bul. 17. Applied (Claim when made out) in *Minick v. City of Troy*, 83 N. Y. 514, 516. See (Presentation of claim against estate) *Code Civ. Pro.* § 1822.
- **v. —**, 4 Sandf. Ch. 528. Discussed (Perpetuities) in 1 *Jarm. on Wills*, Rand. & T. ed. 513, n.
- **v. —**, 9 Wend. 394. Cited as authority with *Gable v. Miller*, 10 Paige, 627; *Miller v. Gable*, 2 Den. 492, 548; *People v. Steele*, 2 Barb. 397 (Diversion of funds of religious corporation) in *Hale v. Everett*, 53 N. H. 9; s. c., 16 Am. R. 82, 112–115, where *Robertson v. Bullions*, 9 Barb. 64, 132; 11 N. Y. 243, 267; *Parish of Bellport v. Tooker*, 29 Barb. 256, 265; *Petty v. Tooker*, 21 N. Y. 267, are criticised and aid to rest on special statutory provisions in N. Y. Applied as incorporated in statute (Meeting of religious corporation, when competent to transact business) in *Moore v. Rector, &c. of St. Thomas*, 4 Abb. N. C. 51, 56.
- **v. Gibson**, 56 How. Pr. 232. Aff'd in 20 Hun, 274.
- **v. Holbrook**, 3 Abb. Pr. 377. Further decision in 6 Duer, 597; s. c., 14 How. Pr. 103.
- **v. Hunt**. See *Field v. Chapman*.
- **v. Leavitt**, 37 Super. Ct. (J. & S.) 215. Further proceeding in *Id.* 537.
- **v. Mayor, &c. of N. Y.**, 6 N. Y. 179; s. c., 57 Am. Dec. 435, with notes. See *Andrews v. Newcomb*; *Munsell v. Lewis*. Applied (Assignment of demand to become due) in *Ely v. Cook*, 9 Abb. Pr. 376; *Hall v. City of Buffalo*, 2 Abb. Ct. App. Dec. 307; *Stover v. Eycleshimer*, 4 Id. 312, which aff'd 46 Barb. 90, which see; *Seymour v. Canandaigua, &c. R. R. Co.*, 25 Id. 306; *People ex rel. Grattan v. Dayton*, 50 How. Pr. 149; *Parker v. City of Syracuse*, 31 N. Y. 379. Disting'd in *Risley v. Smith*, 39 Super. Ct. (J. & S.) 150. Approved and followed in *Bacon v. Bonham*, 6 Stew. (N. J.) 614. Relied on in *Kane v. Clough*, 36 Mich. 436; s. c., 24 Am. R. 599. Disting'd (Suit in equity by assignee of chose in action) in *N. Y. Guaranty Co. v. Memphis Water Co.*, 107 U. S. 205, 214. Approved with *Risley v. Phoenix Bank*, 83 N. Y. 318 (Validity of assignment of part of chose in action) in *Exchange Bank v. McLoon*, 73 Me. 498. Applied (Facts proved not available, if not pleaded) in *Allen v. Mercantile Mut. Ins. Co.*, 46 Barb. 656; *Robins v. Richardson*, 2 Bosw. 256; *Williams v. Birch*, 6 Id. 678. Disting'd in *Barnes v. Perine*, 12 N. Y. 31; *Voorhees v. Burchard*, 55 Id. 104; *Richards v. Allen*, 3 E. D. Smith, 407. Cited as authority (Duty of assignee of chose in action to notify debtor) in *Heermans v. Ellsworth*, 64 N. Y. 161.
- **v. Munson**, 47 N. Y. 221. Followed (Parol evidence to explain written contract) in *White's Bank of Buffalo v. Myles*, 73 Id. 335, 339.
- **v. N. Y. Central R. R. Co.**, 29 Barb. 176. Aff'd in 32 N. Y. 339. See *Cook v. Champlain Trans. Co.*; *Faucett v. Nichols*; *Road v. N. Y. & Erie R. R. Co.*; *Sheldon v. Hudson River R. R. Co.*; *Wright v. N. Y. Central R. R. Co.* Decision in 32 N. Y. followed (Evidence to show liability of railroad company for fire caused by passing engine) in *Westfall v. Erie R'y. Co.*, 5 Hun, 77; *McCoun v. N. Y. Central, &c. R. R. Co.*, 66 Barb. 338. Said to be inconsistent with the doctrine of *Ryan v. N. Y. Central R. R. Co.*, 35 N. Y. 214; and the latter also disapproved as inconsistent with every reported case except *Kerr v. Penn. R. R. Co.*, 62 Penn. St. 353; s. c., 1 Am. R. 431,—in *Fent v. Toledo, Peoria, &c. R'y Co.*, 59 Ill. 349; s. c., 14 Am. R. 13, 19. Applied in *Longabaugh v. Virginia*

- &c. R. R. Co., 9 *Nev.* 271, 286. Cited as authority in Jackson v. Chicago & Northwestern R'y Co., 31 *Iowa*, 176; s. c., 7 *Am. R.* 120. Followed (Question of negligence is one of mingled law and fact) in Gagg v. Vetter, 41 *Ind.* 228; s. c., 13 *Am. R.* 322, 342. Decision in 29 *Barb.* followed with Wright v. N. Y. Central R. R. Co., 28 *Id.* 80; Johnson v. McIntosh, 31 *Id.* 267 (Corporation as a person) in La Farge v. Exchange, Fire Ins. Co., 22 *N. Y.* 352, 354.
- **v. Schieffelin**, 7 *Johns. Ch.* 150; s. c., 11 *Am. Dec.* 441. See Sutherland v. Brush. Followed (Power of guardian to assign choses in action of ward) in Tuttle v. Heavy, 59 *Barb.* 334, 343. Disapproved in McDuffee v. McIntyre, 11 *So. Car.* 551; s. c., 32 *Am. R.* 500, 502. Discussed in 1 *Pars. on Contr.* 1 4, n. b. Approved (Power of executors, trustees, &c. to dispose of trust property) in Graff v. Castleman, 5 *Rand. (Va.)* 195; s. c., 16 *Am. Dec.* 741, 749, with note. See 11 *Am. Dec.* 386, n. Applied (Liability of purchaser from executor, trustee, &c.) in Carter v. Manufacturers' Nat. Bk. of Lewiston, 71 *Me.* 448; s. c., 36 *Am. R.* 338, 341. Reviewed with other cases in Shaw v. Spencer, 100 *Mass.* 382; s. c., 1 *Am. R.* 115, 121. Quoted in 2 *Perry on Trusts*, 3 ed. § 814, n. Applied (Liability of third party for misappropriation of trust fund) in Fifth Nat. Bk. v. Village of Hyde Park, 101 *Ill.* 595; s. c., 40 *Am. R.* 218.
- Fielden v. Lahans**, 9 *Bosw.* 436. Aff'd as to the merits, but rev'd in respect to non-suit, in 6 *Abb. Pr. N. S.* 341; s. c., 2 *Abb. Ct. App. Dec.* 111. Decision in 2 *Abb. Ct. App. Dec.* included (Bona fide holder of negotiable paper) in 1 *Ames. Cas. on B. & N.* 738.
- Fields v. Moul**, 15 *Abb. Pr.* 6. See Farrell v. Calkins. Collated with Sammis v. Smith, 1 *Sup'm. Ct. (T. & C.)* 444; Bitting v. Vandenberg, 17 *How. Pr.* 80; Ford v. Johnson, 34 *Barb.* 364, and other cases (What are tools, &c. within meaning of statutes of exemption) in 25 *Am. R.* 63, n.
- Fiero v. Fiero**, 52 *Barb.* 288. See Millsbaugh v. Putnam. Doubted (Validity of parol agreement for employment of broker to sell real estate) in Badenhop v. McCahill, 42 *How. Pr.* 192.
- Figaniere v. Jackson**, 11 *How. Pr.* 462. This decision was not at General Term as here stated, but at Special Term; and it was rev'd at General Term, 4 *E. D. Smith*, 477.
- Filer v. N. Y. Central R. R. Co.**, 49 *N. Y.* 47; s. c., 10 *Am. R.* 327. Further decisions in 59 *N. Y.* 351, and 68 *Id.* 124. See also decision in action by husband of plaintiff herein, in 49 *N. Y.* 42. See Morrison v. Erie R'y Co. Decision in 49 *N. Y.* 47, reviewed with Brooks v. Schwerin, 54 *Id.* 343; Reynolds v. Robinson, 64 *Id.* 589; Whitaker v. Whitaker, 52 *Id.* 368; Birbeck v. Ackroyd, 74 *Id.* 357 (Right of husband to services of wife) in Coleman v. Burr, 93 *Id.* 17. Decision in 49 *Id.* 42, followed (Right of husband to recover for injuries to wife) in Sloan v. N. Y. Central R. R. Co., 1 *Hun*, 541. Decision on p. 47, disting'd in Brooks v. Schwerin, 54 *Id.* 343, 350. Followed in Clark v. Dillon, 6 *Daly*, 526. Decision on p. 42 applied (Hypothetical questions to expert witnesses) in Dolz v. Morris, 10 *Hun*, 201, 205. Decision on p. 47 disting'd (Right of passenger to rely on directions of agents in charge of train) in Burrows v. Erie R'y Co., 63 *N. Y.* 560. Followed in Louisville & Nashville R. R. Co. v. Kelly, 92 *Ind.* 371; s. c., 47 *Am. R.* 149.
- Filkins v. Brockway**, 19 *Johns.* 170. See also (*Functus officio*) Bigler v. Mayor, &c. of N. Y., 5 *Abb. N. C.* 51.
- **v. People**, 1 *Buff. Super. Ct. (Sheldon)* 504. Rev'd in 69 *N. Y.* 101; s. c., 25 *Am. R.* 143.
- **v. Whyland**, 24 *Barb.* 379. Aff'd in 24 *N. Y.* 338. See Mumford v. McPherson. Decision in 24 *N. Y.*, applied (Distinction between receipt and contract) in People, *ex rel.* Coppers v. Trustees, 21 *Hun*, 184, 191. Examined with other cases in Howard v. Norton, 65 *Barb.* 161, 167. See Lamb v. Crafts, 12 *Metc. (Mass.)* 353. See also *Abb. Tr. Ev.* 345.
- Fillo v. Jones**, 2 *Abb. Ct. App. Dec.* 121. See Brown v. Buffalo & State Line R. R. Co. Explained (Liability for damage caused by explosion) in Heeg v. Licht, 80 *N. Y.* 579, 584.
- Finch v. Calvert**, 13 *How. Pr.* 13. Approved (Expense of foreign commission taxable) in Case v. Price, 9 *Abb. Pr.* 111, 115.
- **v. Parker**, 49 *N. Y.* 1. The judgment was *aff'd*, not *rev'd*, as stated at foot of p. 11.
- Finck, Matter of**, 59 *How. Pr.* 145. Compare (Meaning of "just and fair") Matter of Fowler, 8 *Daly*, 548.
- Fincke v. Fincke**, 53 *N. Y.* 528. Further decision as Rodman v. Fincke, in 69 *Id.* 239.
- Fink v. Cox**, 18 *Johns.* 145; s. c., 9 *Am. Dec.* 191; 6 *N. Y. Com. L. Law. ed.* 538, with brief note. See Pearson v. Pearson. Examined (Effect of executory contract when not supported by valuable consideration) Schemerhorn v. Vanderheyden, 1 *Johns.* 139; Weston v. Barker, 12 *Id.* 276, being explained as to when a third person for whose benefit such contract is made may enforce it,—in Ross v. Milne, 12 *Leigh (Va.)* 204; s. c., 37 *Am. Dec.* 646, 650, with note.
- Finlay v. Cook**, 54 *Barb.* 9. Applied (Effect of deed given on invalid sale, as foundation of adverse possession) in Hilton v. Bender, 4 *Sup'm. Ct. (T. & C.)* 270, 272.
- Finn v. Slight**, 8 *Barb.* 401. Discussed (Estoppel of husband's grantee, to deny his seisin as against widow) in 1 *Washb. on Real Prop.* 4 ed. 239.
- Finnegan v. Carahar**, 61 *Barb.* 252. Aff'd in 47 *N. Y.* 493. Decision in *Id.* disting'd (Estoppel created by admission) in Warder v. Baker, 54 *Wis.* 57. Discussed (Eject-

- ment against landlord) in *Sedgw. & W. on Tr. of Tit. to Land*, § 264.
- Fire Department v. Buhler**, 1 *Daly*, 391. Rev'd in 35 *N. Y.* 177; s. c., 33 *Hov. Pr.* 378.
- **v. Harrison**, 9 *Abb. Pr.* 1. Additional opinion of DALY, J., in 2 *Hilt.* 455; s. c., 18 *Hov. Pr.* 181.
- **v. Kip**, 10 *Wend.* 266. Approved (Statute to be strictly complied with) in *Cross v. Pinkneywell Manuf. Co.*, 17 *Ill.* 56. Examined and reviewed (Corporate creation and existence) in 8 *South. L. Rev. N. S.* 529.
- **v. Noble**, 3 *E. D. Smith*, 440. Re-asserted (Constitutionality of provisions for taxation of business of foreign insurance companies) in *Same v. Wright*, *Id.* 453, which is there said to have been aff'd in *Ct. of App.* See opinions of eminent counsel in *Id.* 458, *n.* Decision in 3 *E. D. Smith* applied to regulation of theater business in *Wallack v. Mayor, &c. of N. Y.*, 3 *Hun.* 84. Compare (Regulation of business of foreign insurance companies) *People v. Imlay*, 20 *Barb.* 69.
- **v. Williamson**, 16 *Abb. Pr.* 195. Rev'd in *Id.* 402; s. c., 1 *Robt.* 476.
- **v. Wright**. See *Same v. Noble*.
- Firemen's Ins. Co., Ex parte**, 6 *Hill*, 243. See *Shipley v. Mechanics' Bank*. Explained (Compelling transfer on stock book) in *Cushman v. Thayer M'fg Jewelry Co.*, 7 *Daly*, 330, 332. Disting'd (Right to mandamus, when not taken away by existence of right of action) in *People v. Meade*, 24 *N. Y.* 114, 120.
- Fireman's Ins. Co. of Albany v. Bay**, 4 *Barb.* 407. Aff'd as Albany Fire Ins. Co. *v. Bay*, in 4 *N. Y.* 9.
- Firmenich v. Bovee**, 1 *Hun.* 532. See authorities cited by counsel for plaintiff in 4 *Sup'm. Ct. (T. & C.)* 98.
- First Baptist Church v. Bigelow**, 16 *Wend.* 28; s. c., 12 *N. Y. Com. L. Law. ed.* 1013, with brief note. Compare (Mutual subscription under statute of frauds) *Levy v. Brush*, 8 *Abb. Pr. N. S.* 418; *Justice v. Lang*, 42 *N. Y.* 493. Cited as authority with *Davis v. Shields*, 26 *Wend.* 341 (Requisites of memorandum) in *Norris v. Blair*, 39 *Ind.* 90; s. c., 10 *Am. R.* 135, 138.
- **v. Brooklyn Ins. Co.**, 18 *Barb.* 69. Subsequent decisions in 19 *N. Y.* 305; 23 *Hov. Pr.* 448; and the latter aff'd in 28 *N. Y.* 153. Decision in 19 *N. Y.* followed (Parol waiver of condition in insurance policy) in *Carroll v. Charter Oak Ins. Co.*, 1 *Abb. Ct. App. Dec.* 320; *Post v. Aetna Ins. Co.*, 43 *Barb.* 363; *Boehen v. Williamsburgh Ins. Co.*, 35 *N. Y.* 132; *Bodine v. Exchange Fire Ins. Co.*, 51 *Id.* 122; *Goodwin v. Mass. Mut. Life Ins. Co.*, 73 *Id.* 491; *Dilleber v. Knickerbocker Life Ins. Co.*, 76 *Id.* 573. Disting'd in *Underwood v. Farmer's Joint Stock Ins. Co.*, 57 *Id.* 506. Compared with other cases in dissenting opinion of MILLER, J., in *Merserau v. Phoenix Mut. Life Ins. Co.*, 66 *Id.* 282; in *Van Schoick v. Niagara Fire Ins. Co.*, 68 *Id.* 439. Applied (Contracts not to be performed within a year) in *Dresser v. Dresser*, 35 *Barb.* 577; *Van Woert v. Albany, &c. R. R. Co.*, 1 *Sup'm. Ct. (T. & C.)* 258; *Smith v. Conlin*, 19 *Hun.* 235. Re-aff'd (Validity of parol contract of insurance) in *Fish v. Cottenet*, 44 *N. Y.* 543. Approved in dissenting opinion of McCUNN, J., in *Tyler v. New Amsterdam Fire Ins. Co.*, 4 *Robt.* 160. Reviewed with *Audubon v. Excelsior Ins. Co.*, 27 *N. Y.* 216 (Validity of contract of insurance indefinite as to time or rate of premium) in *Strohn v. Hartford Fire Ins. Co.*, 37 *Wis.* 625; s. c., 19 *Am. R.* 777, 779. Decision in 28 *N. Y.* disting'd (Admissions by officer of corporation) in *Pierson v. Atlantic Nat. Bank*, 77 *Id.* 304, 310.
- **v. Utica & Schenectady R. R. Co.**, 6 *Barb.* 313. See to the contrary (Action for disturbance caused to religious society by running train) *First Baptist Church of Schenectady v. Schenectady & Troy R. R. Co.*, 5 *Id.* 79. Cited as authority with *Hentz v. Long Island R. R. Co.*, 13 *Barb.* 646; *People v. Denslow*, 1 *Cai.* 177 (What has been authorized by law not to be regarded as nuisance) in *Chope v. Detroit & Howell Plank R. R. Co.*, 37 *Mich.* 195; s. c., 26 *Am. R.* 512.
- **v. Witherell**, 3 *Paige*, 296; s. c., 24 *Am. Dec.* 223, with note, containing citations of the case on the points decided respecting religious associations, &c.
- First Baptist Society v. Rapalee**, 16 *Wend.* 605. Criticised as not recognizing distinction (Corporations *de facto*, and *de jure*) in *Buffalo & Alleghany R. R. Co. v. Cary*, 23 *N. Y.* 75.
- First Nat. Bank of Angelica v. Hall**, 44 *N. Y.* 395. See *N. Y. African Society v. Varick*. Included with notes (Negotiable paper—agent contracting for principal) in 2 *Ames Cas. on B. & N.* 565.
- First Nat. Bank of Ballston Spa. v. Ins. Co. of N. A.**, 5 *Lans.* 203. Aff'd in 50 *N. Y.* 45.
- First Nat. Bank of Berlin v. Wheeler**. Reported under *First Nat. Bank of Oxford v. Wheeler*, 72 *N. Y.* 201.
- First Nat. Bank of Canandaigua v. Garlinghouse**. See *Brittin v. Wilder*.
- First Nat. Bank of Chittenango v. Morgan**, 6 *Hun.* 346. Aff'd in 73 *N. Y.* 593. See *Getty v. Binns*; *Olcott v. Rathbone*.
- First Nat. Bank of Cincinnati v. Kelley**, 57 *N. Y.* 34. Explained (Sales—reservation of *jus disponendi*) in 1 *Benj. on Sales*, § 586 (Corbin's 4 *Am. ed.*).
- First Nat. Bank of Cooperstown v. Tamajo**, 17 *Hun.* 240. Aff'd in 77 *N. Y.* 476. See *Chase v. James*. Decision in 77 *N. Y.* disting'd (Review of allowance of referee's fees, by Court of Appeals) in *Kearney v. McKeon*, 85 *Id.* 136, 142.
- First Nat. Bank of Jersey City v. Leach**, 52 *N. Y.* 350. See *Cooke v. State Nat. B'k of Boston*; *Marine Nat. B'k v. National City*

- B'k; Willets v. Phenix B'k.** Applied (What constitutes payment of check) in *Briggs v. Central Nat. B'k*, 61 *How. Pr.* 257. Disting'd (Effect of certification of check) in *Thomson v. B'k of British N. A.*, 45 *Super. Ct. (J. & S.)* 1, which was aff'd in 82 *N. Y.* 1, which see. Included, with notes, in 2 *Ames Cas. on B. & N.* 744.
- First Nat. Bank of Lyons v. Ocean Nat. Bank**, 48 *How. Pr.* 148. Rev'd in 60 *N. Y.* 278; s. c., 19 *Am. R.* 181, with note. See *Talmage v. Pell*. Decision in 60 *N. Y.* disting'd (Admission by officer of corporation) in *Pierson v. Atlantic Nat. Bank*, 77 *Id.* 304, 310. Cited in 2 *Whart. Com. on Ev.* § 1180. Cited and approved (Power of National banks to receive special deposits) in *Whitney v. First Nat. B'k of Brattleboro*, 50 *Vt.* 388; s. c., 28 *Am. R.* 503, 509. Disting'd in *First Nat. B'k of Carlisle v. Graham*, 79 *Penn. St.* 106; s. c., 21 *Am. R.* 49, 55. Compare *Same v. Same*, 85 *Penn. St.* 91; s. c., 27 *Am. R.* 628. Disting'd in *Third Nat. B'k of Baltimore v. Boyd*, 44 *Md.* 47; s. c., 22 *Am. R.* 35, 39. Collated with other cases in 9 *Am. Dec.* 183, n. Commented on as not deciding question of each liability,—in 17 *Abb. L. J.* 343; 6 *South. L. Rev. N. S.* 518. Cited as sustaining the principle (Irrelevancy of evidence of negligence, similar to that in issue) in 1 *Whart. Com. on Ev.* § 40.
- First Nat. Bank of Meadville v. Fourth Nat. Bank of N. Y.**, 16 *Hun*, 332. Rev'd in 77 *N. Y.* 320; s. c., 33 *Am. R.* 618. Further proceeding in 22 *Hun*, 563, and the latter rev'd in 84 *N. Y.* 469; s. c., 60 *How. Pr.* 436. Still further proceeding in 24 *Hun*, 241, and that modified and aff'd in 89 *N. Y.* 412. See *Howell v. Van Sicken; Union Trust Co. v. Whiton*. Decision in 84 *N. Y.* disting'd with *Donovan v. Vandemark*, 22 *Hun*, 307; *Sanders v. Townshend*, 63 *How. Pr.* 343 (Costs on appeal) and *Sisters of Charity v. Kelly*, 68 *N. Y.* 628, followed and explained in *Newcomb v. Hale*, 12 *Abb. N. C.* 338. Applied in *Havemeyer v. Havemeyer*, 62 *How. Pr.* 476.
- First Nat. Bank of New Berlin v. Church**, 3 *Sup'm. Ct. (T. & C.)* 10. Aff'd, it seems, in 60 *N. Y.* 634, but without opinion.
- First Nat. Bank of N. Y. v. Morris**, 1 *Hun*, 680. Commented on (Usury as determined by law of place) in *Wayne Co. Sav'gs B'k v. Low*, 6 *Abb. N. C.* 76, 89.
- First Nat. Bank of Oxford v. Wheeler**, 72 *N. Y.* 201. Followed with *People ex rel. N. Y. & Harlem R. R. Co. v. Havemeyer*, 47 *How. Pr.* 494, 516. (Custodian of public moneys, when not justified in refusing to pay them over) in *People ex rel. Masterson v. Gallup*, 12 *Abb. N. C.* 64. Disting'd in *Shepherd's Fold v. Mayor, &c. of N. Y.*, 13 *Weekly Dig.* 573.
- First Nat. Bank of Plattsburgh v. Heaton**, 3 *Hun*, 414; s. c. reported fully, 6 *Sup'm. Ct. (T. & C.)* 37.
- First Nat. Bank of Sandy Hill v. Fancher**, 52 *Barb.* 138. Aff'd in 48 *N. Y.* 525.
- First Nat. Bank of Toledo v. Shaw**, 61 *N. Y.* 283. Reiterated in 69 *Id.* 624, but without opinion. Decision in 61 *Id.* quoted (Factor's act) in *Benj. on Sales*, § 20, n. 14 (Corbin's 4 *Am. ed.*).
- First Nat. Bank of Utica v. Ballou**, 49 *N. Y.* 155. Disting'd (Payment that stops running of statute of limitations) in *McMullen v. Rafferty*, 24 *Hun*, 363, 366. Approved in *Nat. B'k of Delavan v. Cotton*, 53 *Wis.* 34.
- First Nat. Bank of Whitehall v. Lamb**, 57 *Barb.* 429. Rev'd in 50 *N. Y.* 95; s. c., 10 *Am. R.* 438. Principle of decision in 50 *N. Y.* approved without adopting reasoning (National banks subject to State usury laws) in *Re Wild*, 11 *Blatchf. C. Ct.* 243, 248. Followed in *Hintermister v. First Nat. B'k of Chittenango*, 3 *Hun*, 345, which was modified in 64 *N. Y.* 212, which see. Overruled in *Farmers', &c. Nat. Bank v. Dearing*, 91 *U. S.* 29, 36. Disapproved in *First Nat. Bank of Columbus v. Garlinghouse*, 22 *Ohio St.* 492; s. c., 10 *Am. R.* 758; *Central Nat. Bank v. Pratt*, 115 *Mass.* 539; s. c., 15 *Am. R.* 138, 146. Compare *Farmers' Bank of Fayetteville v. Hale*, 15 *Abb. Pr. N. S.* 276. Applied (National banks—how far subject to State jurisdiction) in *First Nat. Bank v. Peterborough*, 56 *N. H.* 38; s. c., 22 *Am. R.* 416, 420. Applied with *Farmers' B'k of Fayetteville v. Hale*, 59 *N. Y.* 53; *Cooke v. Nat'l B'k of Boston*, 52 *Id.* 96, in *Dow v. Irasburgh Nat. B'k of Orleans*, 50 *Vt.* 112; s. c., 28 *Am. R.* 493.
- *v. Tisdale*, 18 *Hun*, 151. Aff'd in 84 *N. Y.* 655.
- Fischer v. Hope Mut. Life Ins. Co.**, 40 *Super. Ct. (J. & S.)* 291. Aff'd in 69 *N. Y.* 161. Another decision in 40 *Super. Ct. (J. & S.)* 550, granting leave to appeal to Ct. of App.
- *v. Raab*, 56 *How. Pr.* 218. Aff'd in 58 *Id.* 221, and both rev'd in 81 *N. Y.* 235. Another decision in 57 *How. Pr.* 87. Final appeal dismissed, it seems, in 86 *N. Y.* 640, but without opinion. Decision as to liability of attorney respecting order of arrest granted herein, reported in *Fisher v. Langbein*, 62 *How. Pr.* 238. With decision in 58 *How. Pr.* compare (Attachment to compel payment) *Frese v. Biedenfeld*, 14 *Blatchf. C. Ct.* 402.
- Fish's Estate**, 19 *Abb. Pr.* 209; s. c., 1 *Tuck.* 122. Rev'd as *Campbell v. Cowdrey*, in 31 *How. Pr.* 172. Decision in 19 *Abb. Pr.* followed (Interest on legacies) in *Lynch v. Mahoney*, 2 *Redf.* 434, 437.
- Fish v. Clark**, 2 *Lans.* 176. Aff'd in 49 *N. Y.* 122.
- *v. Crane*, 9 *Abb. Pr. N. S.* 252. See (Costs against executor and administrator) *Code Civ. Pro.* 1881, § 1835, n. Compare *Id.* § 3246.
- *v. Dodge*, 4 *Den.* 311; s. c., 47 *Am. Dec.* 254, with note, wherein are collected cita-

- tions. See *Jefferson Ins. Co. v. Cotheal*. Followed (Liability for so carrying on business as to produce nuisance) in *McKeon v. Sec.* 51 *N. Y.* 300, 306. Discussed (Noise) in *Wood on Nuis.* 2 ed., § 619. Explained in 1 *Add. on Torts*, 249, n. 1, Wood's ed. Relied on (Agent's liability to third persons for nonfeasance, &c.) in *Labadie v. Hawley*, 61 *Tex.* 177; s. c., 48 *Am. R.* 278. Approved with *Pickard v. Collins*, 23 *Barb.* 460; *Ditchett v. Spuyten Duyvil*, &c. R. R. Co., 68 *N. Y.* 425 (Landlord's liability for tenant's negligence) in *McCarty v. York Co. Sav. B'k*, 74 *Me.* 324; s. c., 27 *Abb. L. J.* 266.
- *v.* —, 38 *Barb.* 163. Overruled (Officer's liabilities) in *Robinson v. Chamberlain*, 34 *N. Y.* 389.
- *v. Emerson*. See *Stephens v. Santee*.
- *v. Ferris*. 4 *Duer*, 49. Disting'd (Liability of infant for overdriving horse) in *Moore v. Eastman*, 4 *Sup'm. Ct. (T. & C.)* 37, 40.
- *v. Folley*, 6 *Hill*, 54. Further facts stated and decision explained (Damages for breach of continuing covenant) in *Crain v. Beach*, 2 *Barb.* 120. Disting'd (Effect of judgment for part of demand) in *O'Dougherty v. Remington Paper Co.*, 81 *N. Y.* 496, 499.
- *v. Howland*, 1 *Paige*, 20. Examined (Waiver of vendor's lien) in *Sears v. Smith*, 2 *Mich.* 248. Followed in *Conover v. Warren*, 1 *Gilm. (Ill.)* 498; s. c., 41 *Am. Dec.* 196, with note. Reviewed, with other cases, in *Boos v. Ewing*, 17 *Ohio*, 500; s. c., 49 *Am. Dec.* 478, 480, with note.
- *v. Hubbard*, 21 *Wend.* 651. Examined (Explaining ambiguity) in *Ives v. Kimball*, 1 *Mich.* 314.
- *v. Jacobsohn*, 5 *Bosw.* 514. Aff'd in 1 *Keyes*, 539; s. c., 2 *Abb. Ct. App. Dec.* 132.
- *v. Mayor, &c. of Rochester*, 6 *Paige*, 268. Collated, with other cases (Action for damage to adjoining property caused by labor on highways) in *Mills Thomps. on Highw.* 3 ed. 206.
- *v. Miller*, 5 *Paige*, 26. Explained (Effect of waiving answer under oath) in further decision in *Hoffm.* 267, which was aff'd in 4 *Ch. Sent.* 16, but without opinion. Decision in 5 *Paige* approved with *Bogardus v. Trinity Church*, 4 *Id.* 178; *Daws v. McMichael*, 6 *Id.* 139 (Truth of plea alone to be tried) in *Hurlbut v. Britain*, *Walk. Ch.* 455.
- *v. Skut*. See *Cady v. Fairchild*.
- *v. Stoughton*, 2 *Johns. Cas.* 407; s. c., 1 *N. Y. Com. L. Law. ed.* 558, with brief note on expatriation.
- *v. Thrasher*, 21 *Hun*, 15. Referred to as superseded by statute (Appeal to General Term in action commenced in justice's court) in *Warner v. Henderson*, 25 *Id.* 303.
- *v. Weatherwax*, 2 *Johns. Cas.* 215. Disapproved with *Horne v. Barney*, 19 *Johns.* 247 (Error will not lie where judgment has been arrested) in *Favor v. Philbreck*, 5 *N. H.* 359. See *Bemis v. Faxon*, 2 *Mass.* 141. Followed with *People v. Mayor, &c. of N. Y.*, 3 *Johns. Cas.* 79; *People v. Stevens*, 5 *Hill*, 626 (When mandamus will not be granted to admit one to office) in *People ex rel. Smith v. Olds*, 3 *Cal.* 167; s. c., 58 *Am. Dec.* 398.
- *v. Wood*, 4 *E. D. Smith*, 327. Further decision in 2 *Abb. Pr.* 419. Decision in 4 *E. D. Smith* opposed (Liability of undisclosed principal) in *Bonnell v. Briggs*, 45 *Barb.* 470. Decision in 2 *Abb. Pr.* disting'd (Amendment of case on appeal) in *O'Gorman v. Kamak*, 5 *Daly*, 517, 519.
- Fisher v. Abeel.** See *Elwell v. Skiddy*.
- *v. Banta*, 4 *Sup'm. Ct. (T. & C.)* 691; s. c., 1 *Hun*, 610. Further decision in 4 *Id.* 425, and that aff'd in 66 *N. Y.* 468. Previous decision as *Fisher v. Hubbell*, 7 *Lans.* 481; s. c., 65 *Barb.* 74; 1 *Sup'm. Ct. (T. & C.)* 97.
- *v. Clark*, 41 *Barb.* 329. Commented on (Torts caused by negligence) in *Moak's Underhill's Torts*, 1 Am. ed. 303. Disapproved (Cause of action for infection) in 16 *Moak's Eng.* 446, n.
- *v. Curtis*, 2 *Sandf.* 660. Criticized as not authority (Arrest or attachment before commencement of action) in *Gould v. Bryan*, 3 *Bosw.* 626, 629.
- *v. Fields*, 10 *Johns.* 495. Followed (Sufficient declaration of trust) in *Buck v. Swazey*, 35 *Me.* 41; s. c., 56 *Am. Dec.* 681; *Chamberlain v. Thompson*, 10 *Conn.* 243; s. c., 26 *Am. Dec.* 390, with note. Explained in *Browne on Stat. of Frauds*, § 110, 4 ed. Quoted in 3 *Jarm. on Wills*, Rand. & T. ed. 53, n.
- *v. Fredenhall*. See *Masson v. Bovet*.
- *v. Gould*, 9 *Weekly Dig.* 44. Appeal dismissed in 81 *N. Y.* 228. See *Bearns v. Gould*. Decision in 81 *N. Y.* followed (Appellate court looking into opinions) in *Townsend v. Nebenzahl*, 8 *Abb. N. C.* 427, 436.
- *v. Hepburn*, 48 *N. Y.* 41. Limited and explained (Review by single judge) in *Kamp v. Kamp*, 59 *Id.* 212, 217. See (Determination of claims to real property) *Code Civ. Pro.* 1881, ch. XIV, tit. I, art. 5, n. Approved (Defendants in suit to quiet title) in *Pomeroy on Rem.* § 372. Explained in *Sedgw. & W. on Tr. of Tit. to Land*, § 239.
- *v. Hersey*, 17 *Hun*, 370. Appeal dismissed in 78 *N. Y.* 387.
- *v. Hubbell*, 1 *Sup'm. Ct. (T. & C.)* 97; s. c., 7 *Lans.* 481, and with points of counsel in 65 *Barb.* 74. Re-aff'd in *Fisher v. Banta*, 4 *Hun*, 425.
- *v. Marvin*, 47 *Barb.* 159. Overruled (Merging indebtedness of corporation in note) in *Jagger Iron Co. v. Walker*, 76 *N. Y.* 521, 526, which aff'd 43 *Super. Ct. (J. & S.)* 275, which see.
- *v. Mayor, &c. of N. Y.*, 4 *Lans.* 451. Rev'd in 57 *N. Y.* 344. Further decision in 3 *Hun*, 648; s. c., 6 *Sup'm. Ct. (T. & C.)* 100. Still further decision in 6 *Hun*, 64, and that rev'd in 67 *N. Y.* 73. Decision in

- Id.* followed (Presumption of payment of assessment) in *Dorgeloh v. Bassford*, 50 *Super. Ct. (J. & S.)* 450. Disting'd with *Taylor v. Mayor, &c. of N. Y.*, 67 *N. Y.* 88. (Right of action against city for money due, when complete) in *Mason v. Mayor, &c. of N. Y.*, 28 *Hun.* 115.
- *v. Murray*, 1 *E. D. Smith*, 341. See *Deming v. Colt*; *Robinson v. McIntosh*; *Welles v. March*. Followed with *Welles v. March*, 30 *N. Y.* 344 (Validity of assignment by one partner without preference) in *Rumery v. McCulloch*, 54 *Wis.* 572. Explained in *Burrill on Assign.* § 80, 4 ed.
- *v. N. Y. Central, &c. R. R. Co.*, 46 *N. Y.* 644. See *Central Cross Town R. R. Co. v. Twenty-Third Street R. R. Co.*; *Sturgis v. Spofford*. Disting'd (Recovery for successive offenses) in *Suydam v. Smith*, 52 *N. Y.* 383, 388; *Grover v. Morris*, 73 *Id.* 473, 479; *Hintermister v. First Nat. B'k of Chittenango*, 64 *Id.* 212, 217. Followed (Recovery for excessive railroad fares) in *Micks v. N. Y. Central, &c. R. R. Co.*, 49 *Id.* 654; *Casey v. N. Y. Central, &c. R. R. Co.*, *Id.* 675; *Baker v. N. Y. Central, &c. R. R. Co.*, 61 *Id.* 655. Disting'd in *Pittsburgh, Cin. & St. Louis Ry Co. v. Moore*, 33 *Ohio St.* 384; s. c., 31 *Am. R.* 543.
- *v. Verplanck*, 17 *Hun.* 150. Further decision in 23 *Id.* 286.
- *v. World Mut. Life Ins. Co.*, 47 *How. Pr.* 451. Facts stated in fuller report in 15 *Abb. Pr. N. S.* 363.
- Fishkill Sav'gs Inst. v. Bostwick**, 19 *Hun.* 354. Aff'd in *Same v. Nat. B'k of Fishkill*, 80 *N. Y.* 162.
- Fisk v. Chicago, R. I., &c. R. R. Co.**, 3 *Abb. Pr. N. S.* 430. See *Stevens v. Phoenix Ins. Co.* Followed (Compelling affidavit of party on motion) in *Cockey v. Hurd*, 36 *Super. Ct. (J. & S.)* 42, 45. Disapproved in *Hodgkin v. Atlantic & Pacific R. R. Co.*, 5 *Abb. Pr. N. S.* 73. Not followed in *Spratt v. Huntington*, 2 *Hun.* 341, 343.
- *v. —*, 53 *Barb.* 472. Followed (Removal of cause from State to Federal Court) in *Beery v. Irick*, 22 *Gratt. (Va.)* 484; s. c., 12 *Am. R.* 539.
- *v. Fisk*, 3 *Sup'm. Ct. (T. & C.)* 791. Rev'd, it seems, in 60 *N. Y.* 631.
- *v. Newton*, 1 *Den.* 45; s. c., 43 *Am. Dec.* 649, with note, wherein are collected citations. Disting'd (Termination of liability of carrier as such) in *Goold v. Chapin*, 20 *N. Y.* 264; *McDonald v. Western R. R. Co.*, 34 *Id.* 497. Followed in *Northrop v. Syracuse, &c. R. R. Co.*, 5 *Abb. Pr. N. S.* 425; *Mierson v. Hope*, 2 *Sweeny*, 561. Commented on in *Western Transp. Co. v. Barber*, 56 *N. Y.* 544, 549. Applied in *Rankin v. Memphis & Cincinnati Packet Co.*, 9 *Heisk. (Tenn.)* 564; s. c., 24 *Am. R.* 339, 343. Discussed in *Ang. on Carr.* § 291, 5 ed.; *Id.* § 313.
- Fisk Pavement, &c. Co. v. Evans**, 37 *Super. Ct. (J. & S.)* 482. Aff'd, it seems, in 60 *N. Y.* 640, but without opinion.
- Fiske v. Anderson**, 33 *Barb.* 71; s. c., more fully, 12 *Abb. Pr.* 8. Explained with *Force v. Gower*, 23 *How. Pr.* 294 (Effect of judgment obtained on service by publication) in *McKinney v. Collins*, 88 *N. Y.* 216. See cases collected in 6 *Am. L. Reg. N. S.* 5.
- *v. Bailey*, 51 *N. Y.* 150. Applied (Disseverance of husband and wife, as to her separate estate) in *Porter v. McGrath*, 41 *Super. Ct. (J. & S.)* 84, 102, 104.
- Fitch, Matter of**, 2 *Wend.* 298. Followed (Belief of non-residence sufficient proof to authorize warrant of arrest) in *Noble v. Halliday*, 1 *N. Y.* 330, 336. But compare *Kingsland v. Cowman*, 5 *Hill*, 608; *Ex parte Haynes*, 23 *Wend.* 611; 2 *Wend.* 299, n. a; *Carhart v. Blaisdell*, 18 *Wend.* 531.
- Fitch v. American Pop. Life Ins. Co.**, 2 *Sup'm. Ct. (T. & C.)* 247. Rev'd in 59 *N. Y.* 557; s. c., 17 *Am. R.* 372; 11 *Alb. L. J.* 91. Decision in 59 *N. Y.* applied (Suicide when not defense to action on policy) in *Patrick v. Excelsior Life Ins. Co.*, 67 *Barb.* 202. Collated with other cases in 21 *Am. R.* 542, n. Explained and applied (Effect of statements in policy as warranties) in *Ritzler v. World Life Ins. Co.*, 42 *Super. Ct. (J. & S.)* 416. Followed (Breach of warranty, when not defense to action on policy) in *Van Valkenburgh v. Am. Pop. Life Ins. Co.*, 9 *Hun.* 583, which was aff'd in 70 *N. Y.* 605, which see. Cited as authority (Interest of beneficiary in life policy) in *Greeno v. Greeno*, 23 *Hun.* 482.
- *v. Baldwin, Clarke*, 106. Referred to as overruled (Right of assignee of judgment to file creditor's bill without taking out execution) in *Walker v. Donovan*, 6 *Daly*, 552, 556.
- *v. Bates*, 11 *Barb.* 471. Disapproved (Competency of assignor for creditors as witness) in *Allen v. Franklin Fire Ins. Co.*, 9 *How. Pr.* 501.
- *v. Buffalo, N. Y., &c. R. R. Co.*, 13 *Hun.* 668. Collated with other cases (Negligence in case of cattle injured while straying upon railroad track) in 1 *Thomps. on Negl.* 529.
- *v. Carpenter*, 43 *Barb.* 40. See *Coit v. Commercial Ins. Co.* Collated with other cases (Parol evidence to explain ambiguous business terms in contract) in 2 *Whart. Com. on Ev.* § 961.
- *v. Casler*. See *Wintermute v. Clark*.
- *v. Commissioners of Kirkland*, 22 *Wend.* 132. Approved, and *Tucker v. Rankin*, 15 *Barb.* 471, to the contrary, disapproved (Validity of order of commissioner of highways) in *People ex rel. Ottman v. Commissioners of Seward*, 27 *Barb.* 94. See *People v. Williams*, 36 *N. Y.* 441; *Marble v. Whitney*, 28 *Id.* 287.
- *v. Devlin*, 15 *Barb.* 47. Followed (Relief on appeal) in *Waring v. McKinley*, 62 *Id.* 612.
- *v. Hall*, 25 *Barb.* 13. Later decision



- directly to the contrary, in 16 *How. Pr.* 175. Also further decision in 18 *Id.* 314. Decision in *Id.* cited as authority (Place to make motion) in *Attrill v. Rockaway Beach Imp. Co.*, 25 *Hun.* 376, 382.
- *v. Humphrey*, 1 *Den.* 163. Followed (Refling of chattel mortgage) in *Marsden v. Cornell*, 62 *N. Y.* 215. Disting'd in *Stockham v. Allard*, 2 *Hun.* 67, 69.
- *v. Livingston*, 7 *How. Pr.* 410. Disting'd (Amendment of case, after decision in appellate court) in *O'Gorman v. Kamak*, 5 *Daly*, 517, 520.
- *v. —*, 4 *Sandf.* 712. See (Suspension of lien) *Code Civ. Pro.* 1881, § 1256, *n.*
- *v. Smith*. See *Adams v. Dyer*.
- *v. Snedaker*, 38 *N. Y.* 248. See *Hatch v. Mann*. Collated with other cases (Right to reward) in 16 *Ohio. L. N.* 346. Included in 1 *Langdell's Cas. on Contr.* 2 ed. 118.
- *v. Witbeck*, 2 *Barb. Ch.* 161. See (Petition for sale of decedent's real estate) *Code Civ. Pro.* 1881, § 2750, *n.*
- Fitzburgh v. Everingham.** See *Osborn v. Meyer*.
- Fitzgerald, Matter of**, 2 *Cai.* 318. Disapproved with *Ex parte Schroeder*, 6 *Cow.* 603 (Right of non-resident creditor to sue out attachment) in *Matter of Marty*, 2 *Edm. Sel. Cas.* 454. Reviewed with *Caldwell's case*, 5 *Cow.* 293, in *Matter of Bonnafie*, 23 *N. Y.* 169, 179. Confirmed in *Ex parte Schroeder*, 6 *Cow.* 603.
- , 8 *Daly*, 188. Limited and explained (Discharge from imprisonment, of adjudged bankrupt) in *Matter of Fowler, Id.* 548.
- Fitzgerald v. Fuller**, 19 *Hun.* 180. Quoted and explained (Sale of specific chattels conditionally) in 1 *Benj. on Sales*, § 448 (Corbin's 4 Am. ed.).
- *v. People*, 49 *Barb.* 122. Aff'd as *Fitzgerrold v. People*, 37 *N. Y.* 413, 685; *s. c.*, 4 *Abb. Pr. N. S.* 68. Additional opinion by *MASON, J.*, in 5 *Transc. App.* 286. Decision in 37 *N. Y.* commented on (Killing perpetrated without design to effect death) in *People v. Waltz*, 50 *How. Pr.* 210. Followed in *Buel v. People*, 78 *N. Y.* 500. Applied in *Foster v. People*, 50 *Id.* 602. Re-aff'd in *Lanergan v. People*, 39 *Id.* 40. Followed (Sufficiency of indictment for murder) in *Kennedy v. People*, *Id.* 250; *Cox v. People*, 80 *Id.* 514. Followed with *Kennedy v. People*, 39 *N. Y.* 245, in *State v. Pike*, 49 *N. H.* 399; *s. c.*, 6 *Am. R.* 533, 540. Disapproved in *Hogan v. State*, 30 *Wis.* 428. Followed (Conviction for lesser degree of crime than that charged in indictment) in *Keefe v. People*, 40 *N. Y.* 353.
- Fitzhugh v. Runyon**, 8 *Johns.* 375. Approved with *Thompson v. Ketcham, Id.* 189; *Wells v. Baldwin*, 18 *Id.* 45 (Parol evidence to vary written agreements) in *Erwin v. Saunders*, 1 *Cow.* 249. But see *McNulty v. Prentice*, 25 *Barb.* 204.
- *v. Wiman*, 7 *N. Y.* 559. Cited (Liability of sureties on replevin bond) in *Hager v. Clutz*, 10 *Hun.* 447, 450.
- Fitzpatrick v. Brady**, 6 *Hill*, 581. Explained with *Kidd v. Chapman*, 2 *Barb. Ch.* 414 (Jurisdiction of surrogate to determine disputed claims) in *Andrews v. Wallace*, 29 *Barb.* 350. Overruled, with *Smith's Estate*, 1 *Bradf.* 224, in *Tucker v. Tucker*, 4 *Keyes*, 136; *Shaw's Estate*, 1 *Tuck.* 352.
- Fitzsimons v. Woodruff**, 1 *Sup'm. Ct. (T. & C.)* 2. Rev'd in effect in 74 *N. Y.* 621.
- Five Points House of Industry v. Amerman**, 11 *Hun.* 161; *s. c.*, less fully, 2 *Redf.* 547. Rev'g *Booth v. Cornell, Id.* 261.
- Flagg v. Thurber**, 14 *Barb.* 186. Modified, as *Flagg v. Munger*, 9 *N. Y.* 483. Decision in 9 *N. Y.* applied (Defense in action on assumption clause in deed) in *Dunning v. Leavitt*, 85 *N. Y.* 30, 36, 42.
- Flake v. Van Wagenen**, 54 *N. Y.* 25. Followed (No appeal from default) in *Goldschmidt v. Goldschmidt*, 47 *Super. Ct. (J. & S.)* 184, 186; *Innes v. Purcell*, 58 *N. Y.* 388. See *Code Civ. Pro.* 1881, § 1294, *n.*
- Flanagan v. Demarest**, 3 *Robt.* 173. Quoted and explained ("Cargo" defined) in 2 *Benj. on Sales*, § 888, *n.* 21 (Corbin's 4 Am. ed.).
- *v. People*, 5 *Hun.* 187. Aff'd in 66 *N. Y.* 237. Case in 52 *N. Y.* 467; *s. c.*, 11 *Am. R.* 731, is entirely different.
- *v. —*, 52 *N. Y.* 467; *s. c.*, 11 *Am. R.* 731. Followed (Criminal responsibility of the insane) in *People v. Moett*, 23 *Hun.* 60, 64; which was aff'd in 85 *N. Y.* 373, 379, which see. Doctrine discussed in 10 *Alb. L. J.* 97. Cited as showing the question to be unsettled in *N. Y.* (Burden of proof of insanity) in *Boswell v. State*, 63 *Ala.* 307; *s. c.*, 35 *Am. R.* 20, with note.
- *v. Tinen*, 53 *Barb.* 587; *s. c.*, 37 *How. Pr.* 130. Overruled with *Wilgus v. Bloodgood*, 33 *Id.* 289 (Execution against lands of deceased judgment debtor) in *Wallace v. Swinton*, 64 *N. Y.* 188. Disapproved, in *Marine Bank of Chicago v. Van Brunt*, 61 *Barb.* 361.
- Flanders v. Odell**, 16 *Abb. Pr. N. S.* 247; *s. c.*, 2 *Hun.* 664. Collated, with other cases (What cases are referable) in 1 *Abb. N. C.* 110, *n.*
- Flandrow, Matter of**, 20 *Hun.* 36. Aff'd in 84 *N. Y.* 1. For the present statute (Service of attachment) see *Code Civ. Pro.* § 649, subd. 3.
- Fleeman v. McKean**, 25 *Barb.* 474. See *Wait v. Green*. Disting'd (When title passes to vendee) in *Morey v. Medbury*, 10 *Hun.* 540, 543. Approved (Right of bona fide purchaser from vendee) in *Wait v. Green*, 36 *N. Y.* 556. Dictum overruled in *Ballard v. Burgett*, 40 *Id.* 314, 321.
- Fleet v. Dorland**, 11 *How. Pr.* 489. Disapproved (Right of one having interest in reversion or remainder to maintain action for partition) *Blakely v. Calder*, 13 *Id.* 477, being, however, followed as controlling, in *McGlone v. Goodwin*, 3 *Daly*, 185.
- *v. Hegeman*, 14 *Wend.* 42. Approved (Trespass on oyster-beds) in 1 *Am. L. Reg. N. S.* 579.

**Fleetwood v. City of N. Y.**, 2 *Sandf.* 475. See *Forrest v. Mayor, &c. of N. Y.* Disting'd (Effect of voluntary payment) in *Meyer v. Clark*, 2 *Daly*, 497; *Peyser v. Mayor, &c. of N. Y.*, 70 *N. Y.* 502. Cited in *Tutt v. Ide*, 3 *Blatchf. C. Ct.* 249, 253. Cited with approval in *McMillan v. Richards*, 9 *Cal.* 417; *Bucknall v. Story*, 46 *Id.* 589; s. c., 13 *Am. R.* 220, 224.

**Fleischauer v. Doellner**, 58 *How. Pr.* 190. Another proceeding in 60 *Id.* 438.

**Fleischman v. Bennett**, 23 *Hun*, 200. Aff'd in 87 *N. Y.* 231. Different proceeding from 79 *Id.* 579. See *Fry v. Bennett*. With decision in 23 *Hun* compare (*Slander*) *Havemeyer v. Fuller*, 10 *Abb. N. C.* 9.

— *v. Stern*, 24 *Hun*, 265; s. c., 61 *How. Pr.* 124. Re-argument denied in 24 *Hun*, 382, but without opinion. Decision in 24 *Hun* aff'd in 90 *N. Y.* 110.

**Fleming v. Brooklyn City R. R. Co.**, 1 *Abb. N. C.* 433. Aff'd, it seems, in 74 *N. Y.* 618, but without opinion. With decision in 1 *Abb. N. C.* see to same effect (Liability of railroad company for injury to newsboy) *Duff v. Allegheny R. R. Co.*, 36 *Am. R.* 675. Followed (Liability for injury to one not passenger) in *Buckley v. N. Y. & Harlem R. R. Co.*, 43 *Super. Ct. (J. & S.)* 187, 190.

**Fleming v. Gilbert**, 3 *Johns.* 528. See *Freeman v. Adams*; *Keating v. Price*; *Lattimore v. Harsen*. Disting'd (Waiver of performance) in *Second Nat. Bank of Oswego v. Poucher*, 56 *N. Y.* 348, 352. Applied in *Edminster v. Cochrane*, 8 *Daly*, 138, 140. Followed with *Keating v. Price*, 1 *Johns. Cas.* 221; *Stevens v. Cooper*, 1 *Johns. Ch.* 429; *Botsford v. Burr*, 2 *Id.* 416, in support of the well settled rule (Subsequent parole agreement, discharging executory contract in writing not under seal) in *Grafton Bank v. Woodward*, 5 *N. H.* 99; s. c., 20 *Am. Dec.* 566. See *Id.* 475. Approved with *Dearborn v. Cross*, 7 *Cow.* 48; *Langworthy v. Smith*, 2 *Wend.* 587 (Parole discharge of obligation under seal) in *Herzog v. Sawyer*, 61 *Md.* 353. Quoted and collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 592.

— *v. Griswold*. See *Jackson v. Moore*.

— *v. Hollenback*, 7 *Barb.* 271. Overruled (Return of commissioner to take testimony) in *Pendell v. Coon*, 20 *N. Y.* 134. See *Thurman v. Cameron*, 24 *Wend.* 87. Disting'd in *Goodyear v. Vosburgh*, 41 *How. Pr.* 421.

— *v. People*, 27 *N. Y.* 329. Aff'g 5 *Park.* 353. See *Hart v. Cleis*. Decision in 27 *N. Y.* disting'd (Sufficiency of indictment) in *Case v. People*, 6 *Abb. N. C.* 151, 157.

**Fletcher v. Auburn & Syracuse R. R. Co.**, 25 *Wend.* 462. See *Chapman v. Albany & Schenectady R. R. Co.*; *Trustees of Presbyterian Society in Waterloo v. Auburn & Rochester R. R. Co.* Applied (Liability of railroad company for damage done in constructing road) in *Trustees of Presb. Soc.*

in *Waterloo v. Auburn & Rochester R. R. Co.*, 3 *Hill*, 569. Seems to be approved in *Brown v. Cayuga & Susquehanna R. R. Co.*, 12 *N. Y.* 486; but see this statement explained in *Bellinger v. N. Y. Central R. R. Co.*, 23 *Id.* 42, 52, where *Fletcher v. Auburn & Syracuse R. R. Co.* is considered to be overruled by *Radcliff v. Mayor, &c. of Brooklyn*. Questioned in *Radcliff v. Mayor, &c. of Brooklyn*, 4 *N. Y.* 205. Applied in *Lowrey v. Brooklyn City, &c. R. R. Co.*, 4 *Abb. N. C.* 32, 36. Disting'd in *Kellinger v. Forty-Second Street R. R. Co.*, 50 *N. Y.* 206, 211. Followed in *Little Miami R. R. Co. v. Naylor*, 2 *Ohio St.* 235; s. c., 59 *Am. Dec.* 667. Collated, with other cases, in *Mills Thomps. on Highw.* 3 ed. 409. Commented on with other cases in 15 *Am. L. Rev.* 592. Followed with *Wasmer v. Delaware, Lack., &c. R. R. Co.*, 80 *N. Y.* 212; *People ex rel. Green v. Dutchess & Columbia R. R. Co.*, 58 *Id.* 153; *Worster v. Forty-second Street R. R. Co.*, 50 *Id.* 203 (Duty of railroad company as to condition of highway used by it) in *Bell v. N. Y. Central, &c. R. R. Co.*, 29 *Hun*, 560.

— *v. Button*, 6 *Barb.* 646. Aff'd in 4 *N. Y.* 396. See *Gazly v. Price*. Decision in 4 *N. Y.* explained (Contract for sale of real property) in 1 *Chitty on Contr.* 429, n. o, 11 *Am. ed.* Decision in 6 *Barb.* discussed in *Id.* 437, n. p.

— *v. Urdike*, 3 *Hun*, 350; s. c. reported in 5 *Sup'm. Ct. (T. & C.)* 513.

**Flewelling v. Brandon**, 4 *Daly*, 333. Disting'd (Payment of costs before second action) in *Lewis v. Davis*, 8 *Id.* 185.

**Flike v. Boston & Albany R. R. Co.**, 53 *N. Y.* 549; s. c., 13 *Am. R.* 545. See *Crispin v. Babbitt*; *Laning v. N. Y. Central R. R. Co.* Examined with other cases (Liability for negligence of co-servant) in *Coulter v. Board of Education*, 4 *Hun*, 575; *Ross v. N. Y. Central, &c. R. R. Co.*, 5 *Id.* 494. Applied in *Stevenson v. Jewett*, 16 *Id.* 212; *McCosker v. Long Island R. R. Co.*, 21 *Id.* 507; *Chapman v. Erie R'y Co.*, 55 *N. Y.* 583; *Sprong v. Boston & Albany R. R. Co.*, 58 *Id.* 58, which aff'd 3 *Sup'm. Ct. (T. & C.)* 57, which see; *Corcoran v. Holbrook*, 59 *N. Y.* 20; *Fort v. Whipple*, 11 *Hun*, 592; *Booth v. Boston & Albany R. R. Co.*, 73 *N. Y.* 38; *Fuller v. Jewett*, 80 *Id.* 52; *Hener v. Heiuvelman*, 45 *Super. Ct. (J. & S.)* 90. Disting'd in *Besel v. N. Y. Central, &c. R. R. Co.*, 70 *N. Y.* 174; *Malone v. Hathaway*, 64 *Id.* 10; *Slater v. Jewett*, 85 *Id.* 61, 71. Explained in *Crispin v. Babbitt*, 81 *Id.* 521. Followed with approval in *Lewis v. St. Louis & Iron Mountain R. R. Co.*, 59 *Mo.* 495; s. c., 21 *Am. R.* 385, 391. Collated with *Laning v. N. Y. Central R. R. Co.*, 49 *N. Y.* 521; *Brickner v. Same*, 2 *Lans.* 506; 49 *N. Y.* 672, in *Gilmore v. Northern Pac. R'y Co., U. S. Cir. Ct., D. Oreg.*, 18 *Fed. Rep.* 870. Disting'd with *Malone v. Hathaway*, 64 *N. Y.* 5, in *Peterson v. Whitebreast Coal & Mining Co.*, 50 *Iowa*,

- 673; s. c., 32 *Am. R.* 143. Followed and stated not to have been overruled,—in *Brann v. Chicago, R. L. & C. R. R. Co.*, 53 *Iowa*, 597. Explained (Liability of corporation for injuries caused to employes through negligence) in *Rose v. Boston & Albany R. R. Co.*, 58 *N. Y.* 219. Applied in *Smith v. Oxford Iron Co.*, 13 *Vroom (N. J.)* 467; s. c., 36 *Am. R.* 535, 538. Followed in *Tierney v. Minneapolis & St. L. R'y Co.*, *Minn.* 1885, 23 *Northw. Rep.* 229, 232.
- Flinn v. Powers.** See *Flynn v. Powers*.
- Flint v. Corbitt**, 6 *Daly*, 429. Discussed (Contract to manufacture as distinguished from sale) in *Benj. on Sales*, § 109, n. y (Bennett's 4 *Am. ed.*).
- *v. Craig*, 59 *Barb.* 319. Rev'd as *Booth v. Powers*, 56 *N. Y.* 22.
- Flood v. Mitchell**, 4 *Hun*, 813. Confirmed in 68 *N. Y.* 507, but rev'd on other points.
- *v. Reynolds*, 13 *How. Pr.* 112. Disting'd (Denial of plaintiff's title to note) in *Hays v. Southgate*, 10 *Hun*, 511, 514.
- Florence v. Bulkeley**, 1 *Duer*, 705. Followed (Denying leave to sue *in forma pauperis*) in *Alexander v. Meyers*, 8 *Daly*, 112.
- *v. Hopkins*, 46 *N. Y.* 182. Disting'd (Adverse possession by tenant in common) in *Kathan v. Rockwell*, 16 *Hun*, 90, 92. Disting'd (Right to maintain action for partition) in *Jordan v. Van Epps*, 85 *N. Y.* 427, 434. Commented on (Partition not a substitute for ejectment) in *Sedgw. & W. on Tr. of Tit. to Land*, § 166.
- Florence Sewing Machine Co. v. Warford**, 1 *Sweeny*, 433. Approved (Distinction between larceny and false pretenses) in 15 *Am. L. Rev.* 367.
- Florentine v. Wilson**, *Hill & D.* 303. Referred to as in accordance with the general doctrine (Agreement between husband and wife for separation) in *Tyler on Inf. & Cov.* 2 ed. § 338.
- Flower v. Allen**, 5 *Cow.* 650. Quoted (Private corporation—liability of members) in *Ang. & A. on Corp.* § 630, 11 ed.
- *v. Lance*. See *Peyser v. Mayor, & C. of N. Y.*
- Floyd v. Blake**. See *Hernstein v. Mathewson*.
- *v. Jayne*, 6 *Johns. Ch.* 479. Followed (Jurisdiction of equity to grant new trial) in *Oliver v. Pray*, 4 *Ohio*, 175; s. c., 19 *Am. Dec.* 595, 600, with lengthy note.
- Flynn v. Equitable Life Assur. Soc.**, 7 *Hun*, 337. Rev'd in 67 *N. Y.* 500; s. c., 23 *Am. R.* 134. Further decision in 15 *Hun*, 521, and that aff'd in 78 *N. Y.* 568. Also another proceeding in 18 *Hun*, 212. Decision in 78 *N. Y.* followed (Filling out of application by agent) in *Grattan v. Metropolitan Life Ins. Co.*, 80 *Id.* 231, 294. Decision in 7 *Hun* applied (Medical examiner as agent of insurance company) in *Taylor v. Mut. Benefit Life Ins. Co.*, 10 *Id.* 52, 55.
- *v. Hatton*, 4 *Daly*, 552. See cases collected (Negligence of parent) in 14 *Am. L. Reg. N. S.* 676.
- *v. McKeon*, 6 *Duer*, 203. Cited (Parol evidence that rescinded contract has been reinstated) in 2 *Whart. Com. on Ec.* § 1017.
- *v. Powers*, 35 *How. Pr.* 279. Aff'd in 54 *Barb.* 550; s. c. as *Flinn v. Powers*, in 36 *How. Pr.* 289—where points of counsel are given, and the latter rev'd as *Walsh v. Powers* in 43 *N. Y.* 23.
- *v. Stoughton*, 5 *Barb.* 115. Referred to (Exemption of consul from suits in State courts) in *Republic of Mexico v. Arrangois*, 11 *How. Pr.* 1, as overruled in *Valarino v. Thompson*, 7 *N. Y.* 576.
- Fobes v. Shattuck**, 22 *Barb.* 568. See *Carroll v. Newton*. Limited (Right of severance of property of tenants in common) in *Channon v. Lusk*, 2 *Lans.* 211.
- Foden v. Sharp**, 4 *Johns.* 183. See *Wolcott v. Van Santvoord*. Reviewed and applied with *Wolcott v. Van Santvoord*, 17 *Johns.* 248, and other cases, on what is said to be the soundest and best supported rule (Necessity of averment of presentment at place of payment of note) in *Weed v. Van Houten*, 4 *Halst. (N. J.)* 189; s. c., 17 *Am. Dec.* 468, with note. Followed (Interest as governed by law of place of payment) in *Kavanaugh v. Day*, 10 *R. I.* 393; s. c., 14 *Am. R.* 691.
- Foersch v. Blackwell**, 14 *Barb.* 607. Discussed (*Prima facie* evidence) in 1 *Best on Ev.* § 275, n. a, Wood's ed.
- Fogal v. Pirro**, 17 *Abb. Pr.* 113. See (Limitation of action to redeem from mortgage) *Code Civ. Pro.* 1881, §§ 365, 379, n.
- Fogerty v. Jordan**, 2 *Robt.* 319. Cited (Right of attorney to set up, as against client, the illegal acquisition by client of his claim) in *Whart. Com. on Ag.* § 610.
- Fogg v. Edwards**, 57 *How. Pr.* 290. Further decision on appeal from judgment entered on report of referee in 20 *Hun*, 90.
- Foland v. Johnson**, 16 *Abb. Pr.* 235. Approved (Pleading facts in mitigation in action for malicious wrong) in *Beckett v. Lawrence*, 7 *Abb. Pr. N. S.* 403.
- Foley, Matter of**, 39 *How. Pr.* 356. Overruled by later unreported decision granting relief sought.
- Foley v. Egan**, 13 *Abb. Pr. N. S.* 361, n. Disting'd (Executor's, &c. commissions) in *Ward v. Ford*, 4 *Relf.* 34, 40.
- *v. Foley*, 17 *Hun*, 235. Aff'd, but construction of will in question overruled, in *Hennessy v. Paterson*, 85 *N. Y.* 91.
- Follett v. People**, 17 *Barb.* 193. Rev'd in 12 *N. Y.* 268.
- Folliard v. Wallace**. See *Greenby v. Wilcocks*.
- Folsom, Matter of**, 2 *Sup'm. Ct. (T. & C.)* 55. Aff'd in 56 *N. Y.* 60. Decision in 56 *N. Y.* disting'd (Designation of official paper) in *Matter of Burke*, 62 *Id.* 224, 227; *Matter of Burmeister*, 76 *Id.* 174, 177.
- Folts v. Huntley**, 7 *Wend.* 210. Approved (Lease determinable only at will of lessee) in *Effinger v. Lewis*, 32 *Penn.* 367.
- Fonda v. Borst**, 2 *Keyes*, 48; s. c., 2 *Abb. Ct. App. Dec.* 155. Followed (Effect of grant

- described as bounding on street) in *Cox v. James*, 59 *Barb.* 144. Compare (Necessity of acceptance of road by public) *L.* 1873, c. 315, § 8, which was repealed by *L.* 1874, c. 613, § 2.
- *v. Sage*, 46 *Barb.* 109. Aff'd in 48 *N. Y.* 173.
- *v. Van Horne*, 15 *Wend.* 631. Disting'd (Liability for acts of sheriff in making levy) in *Chapman v. Douglas*, 5 *Daly*, 244, 252. Applied (Voidable acts of infant) in *Harner v. Dipple*, 31 *Ohio St.* 72; s. c., 27 *Am. R.* 496.
- Fontaine v. Phoenix Ins. Co.**, 10 *Johns.* 58. Disting'd (Seaworthiness) in *Rogers v. Sun Mut. Ins. Co.*, 46 *Super. Ct. (J. & S.)* 65, 74.
- *v. —*, 11 *Johns.* 293. See *Kennedy v. Strong*; *Suydam v. Marine Ins. Co.* Questioned (Forfeiture of vessel) in *Wilkes v. People's Fire Ins. Co.*, 19 *N. Y.* 187. Doubted and criticised in *Mariatigui v. Louisiana Ins. Co.*, 8 *La.* 65; s. c., 28 *Am. Dec.* 129, 132. Disapproved with *Amory v. McGregor*, 15 *Johns.* 24, in *Clark v. Protection Ins. Co.*, 1 *Story Ct. Ct.* 109. Cited as authority (Proceeding in rem is based on presumption of guilt) in *Waples Proc. in Rem.* § 39. Reviewed with other cases (Choice of remedies in case of false swearing to obtain registry of vessel) in *Id.* § 205.
- Foot v. Etna Life Ins. Co.**, 4 *Daly*, 285. Rev'd in 61 *N. Y.* 571. Decision in 61 *N. Y.* followed (Effect of statements in policy as warranty) in *Ritzler v. World Life Ins. Co.*, 42 *Super. Ct. (J. & S.)* 409, 416. Cited as authority in 16 *Cent. L. J.* 366, where it is added, that this seems to be the rule also in *N. C.*, *N. J.*, *Iowa*, *Me.*, and is so laid down in *Throop v. N. A. Fire Ins. Co.*, 19 *Mich.* 440; but that the rule appears to be otherwise in *Tenn.*, *Mo.* and possibly in *Minn.*
- *v. Bentley*, 44 *N. Y.* 166; s. c., 4 *Am. R.* 652. Approved (Action by purchaser on warranty, without return of article sold) in *Day v. Pool*, 52 *N. Y.* 416, 421. Followed (Letter-press copies as evidence) in *Delany v. Erickson*, 10 *Neb.* 492; s. c., 35 *Am. R.* 487. See, also, *Eborn v. Zimpleman*, 47 *Tex.* 503; s. c., 26 *Am. R.* 319, with note, collating cases. Cited in 1 *Whart. Com. on Ev.* § 93, n.
- *v. Bronson*. See *Bellogs v. Sackett*.
- *v. Brown*, 8 *Johns.* 64; s. c., 4 *N. Y. Com. L. Law. ed.* 467, with brief note. Approved (Words as to calling, when not actionable) in *Camp v. Martin*, 23 *Conn.* 89. Disapproved in *Secor v. Harris*, 18 *Barb.* 425.
- *v. Farrington*, 41 *N. Y.* 164. See (Limitation of action on ground of fraud) *Code Civ. Pro.* 1881, § 382, n.
- *v. Gunmaer*, 12 *Wend.* 195. Overruled (Costs, as affected by certificate that executors have unreasonably resisted demand) in *Carhart v. Blaisdell*, 18 *Id.* 531; *Gansevoort v. Nelson*, 6 *Hill*, 389.
- *v. Harris*, 2 *Abb. Pr.* 454. Disting'd (Affidavit authorizing order for substituted service) in *Simpson v. Burch*, 4 *Hun.* 315, 317.
- *v. Marsh*, 51 *N. Y.* 288. Explained (Sale of chattel not specific) in 1 *Benj. on Sales*, § 479 (Corbin's 4 *Am. ed.*).
- *v. Morgan*, 1 *Hill*, 654. See *Higbe v. Leonard*. Doubted (Effect of relationship of judge to one not party) in *Matter of Dodge & Stevenson Manuf. Co.*, 77 *N. Y.* 101. See (Costs in justices' court) *Code Civ. Pro.* 1881, § 3075, n.
- *v. Sabin*, 19 *Johns.* 154; s. c., 10 *Am. Dec.* 208. See *Dob v. Halsey*. Followed (Power of partner to bind firm as sureties) in *Andrews v. Planters' Bank*, 7 *Smedes & M. (Miss.)* 192; s. c., 45 *Am. R.* 300, with note. Disapproved with *Dob v. Halsey*, 10 *Johns.* 88, in *Flemming v. Prescott*, 3 *Rich. L. (S. C.)* 307; s. c., 45 *Am. Dec.* 766, with note. Followed, and *Livingston v. Hastie*, 2 *Cal.* 246; *Livingston v. Roosevelt*, 4 *Johns.* 251; *Lansing v. Gaine*, 2 *Id.* 300; *Dob v. Halsey*, 16 *Id.* 34; cited as sustaining the decision,—in *N. Y. Firemen's Ins. Co. v. Bennett*, 5 *Conn.* 574; s. c., 13 *Am. Dec.* 109, with note collating cases. Disting'd as a case where the note specified on its face that the firm was a surety,—in *Hawes v. Dutton*, 1 *Bailey L. (S. C.)* 146; s. c., 19 *Am. Dec.* 663.
- *v. Stevens*, 17 *Wend.* 483. See *Wheeler v. Raymond*. Followed (Presumption as to jurisdiction of courts of common pleas) in *Pringle v. Woolworth*, 90 *N. Y.* 502. Followed with *Hart v. Seixas*, 21 *Wend.* 40; *Bloom v. Burdick*, 1 *Hill*, 130; *Mills v. Martin*, 19 *Johns.* 7, and said to be at variance with *Diehl v. Page*, 2 *Green (N. J.)* 143; *Pittenger v. Pittenger*, *Id.* 156 (Presumption as to courts of general jurisdiction) in *Horner v. State B'k of Indiana*, 1 *Ind.* 130; s. c., 48 *Am. Dec.* 355, 358, with note. Followed with *Wheeler v. Raymond*, 8 *Cow.* 314; *Bloom v. Burdick*, 1 *Hill*, 130; in *Reynolds v. Stansbury*, 20 *Ohio*, 344; s. c., 55 *Am. Dec.* 459.
- *v. Tracy*, 1 *Johns.* 46; s. c., 3 *N. Y. Com. L. Law. ed.* 52, with brief note. See *Root v. King*. Followed with *Paddock v. Salisbury*, 2 *Cow.* 811; *Root v. King*, 7 *Id.* 613 (Evidence of character in action for libel, &c.) in *Stone v. Varney*, 7 *Metc. (Mass.)* 86; s. c., 39 *Am. Dec.* 762, with note. Compare *Learned v. Buffington*, 3 *Mass.* 546; *King v. Waring*, 5 *Esp.* 14. Commented on in 1 *Greenl. on Ev.* 14 *ed.* § 55, n. 2.
- *v. Webb*, 59 *Barb.* 38. Explained (Statute of frauds—note or memorandum in writing—terms of payment) in 1 *Benj. on Sales*, § 254, n. 50 (Corbin's 4 *Am. ed.*).
- Foote v. Beecher**, 12 *Hun.* 374; s. c. in full in 7 *Abb. N. C.* 360. Confirmed in part, but rev'd in 78 *N. Y.* 155; s. c., more fully, 7 *Abb. N. C.* 358.
- *v. Bryant*, 47 *N. Y.* 544; aff'g. *Foote*

- v. Foote**, 58 *Barb.* 258. Decision in 47 *N. Y.* followed (What is valid under statute of trusts) in *Hazewell v. Coursen*, 36 *Super. Ct. (J. & S.)* 459, 468; *Moyer v. Moyer*, 21 *Hun.* 67, 72.
- **v. Colvin**, 3 *Johns.* 216; s. c., 3 *Am. Dec.* 478, with note, wherein what is said to be the generally received doctrine is stated (Sale on execution of estate of beneficiary, in case of resulting trust), though statutory changes in *N. Y.* have made it otherwise there,—citing *Freem. on Exec.* § 189. See *Boyd v. McLean*. Cited with *Jackson v. Bateman*, 2 *Wend.* 570; *Bogart v. Perry*, 1 *Johns. Ch.* 52; *Lynch v. Utica Ins. Co.*, 18 *Wend.* 236; *Jackson v. Walker*, 4 *Id.* 462; *Jackson v. Parker*, 9 *Cow.* 73; in *Pitts v. Bul-lard*, 3 *Ga.* 5; s. c., 46 *Am. Dec.* 405, 412, as applicable to case of purchaser in contract for sale of real estate. Approved as a sufficient authority (Nature of contract to work farm on shares, in *Andrew v. Newcomb*, 32 *N. Y.* 417. Reviewed, with many other cases, in *Taylor v. Bradley*, 4 *Abb. Ct. App. Dec.* 363, 370. Disapproved (Conveyance of land passes grain growing thereon) and *Whipple v. Foote*, 2 *Johns.* 418; *Newcombe v. Ramer*, *Id. n.*; *Stewart v. Doughty*, 9 *Id.* 108, cited to show that such grain is a chattel, in *Smith v. Johnston*, 1 *Penr. & W. (Pa.)* 471; s. c., 21 *Am. Dec.* 404. Compare *Co. Litt.* 556, and notes.
- **v. Foote**, 58 *Barb.* 258. Aff'd as *Foote v. Bryant*, 47 *N. Y.* 544. Decision in 58 *Barb.* applied (Enforcing parol trust created on conveyance) in *Moyer v. Moyer*, 21 *Hun.* 67, 72.
- **v. Lathrop**, 53 *Barb.* 183. Appeal dismissed in 41 *N. Y.* 358. Decision in 41 *N. Y.* followed, but point not indicated, in *Ives v. Memphis, &c. R. R. Co.*, 58 *Id.* 630. Disting'd (Appeal as involving substantial right) as inapplicable to appeal from Special to General Term,—in *Matter of Duff*, 10 *Abb. Pr. N. S.* 421. Disting'd (Order non-appealable as discretionary) in *Depew v. Dewey*, 2 *Sup'm. Ct. (T. & C.)* 517. Applied in *Keck v. Werder*, 86 *N. Y.* 264, 269. Disting'd (Right to stay proceedings on judgment) in *Kamp v. Kamp*, 59 *Id.* 212, 223. Decision in 53 *Barb.* applied (Service upon husband only, when good as to wife) in *White v. Coulter*, 3 *Sup'm. Ct. (T. & C.)* 617.
- **v. Morris**, 12 *N. Y. Leg. Obs.* 61. Cited in *Tyler on Inf. & Con.* 2 ed. § 220, as holding an erroneous view of *L. 1853, c. 576* (Liability of wife for debts contracted before marriage).
- **v. People**, 2 *Sup'm. Ct. (T. & C.)* 216. Rev'd in 56 *N. Y.* 321.
- **v. Schieder**, 5 *Weekly Dig.* 463. Aff'd it seems, in 76 *N. Y.* 592, on opinion below.
- **v. Storrs**, 2 *Barb.* 326. Quoted with cases to the contrary (Onus of proving negligence in case of bailment) in 2 *Story on Contr.* 5 ed. § 902, n. 6. Explained in *Ang. on Carr.* § 61, n. 5, 5 ed.
- **v. West**, 1 *Den.* 544. Applied (Right of purchaser in land contract to sue thereon, when complete) in *Hartley v. James*, 50 *N. Y.* 38.
- **v. Whipple**, 5 *Weekly Dig.* 154; s. c., more fully as *Fort v. Whipple*, 11 *Hun.* 586.
- Forbes' Case**, 11 *Abb. Pr.* 52; s. c., 4 *Park.* 611; 19 *How. Pr.* 457. Opposed (Requisites of commitment) in *Gray's Case*, 11 *Abb. Pr.* 56.
- Forbes v. Halsey**, 26 *N. Y.* 53. See *Davoue v. Fanning*. Disting'd (Validity of sale of decedent's real estate) in *Kelley's Estate*, 1 *Abb. N. C.* 102, 106.
- **v. Logan**, 4 *Bosw.* 475. Aff'd as *Forbes v. Waller*, 25 *N. Y.* 430; s. c., less fully, as *Forbes v. Walter*, 25 *How. Pr.* 166.
- Force v. Gower**, 23 *How. Pr.* 294. See *Fiske v. Anderson*. See (Action upon judgment). *Code Civ. Pro.* 1881, § 1913, n.
- Ford v. Adams**, 2 *Barb.* 349. Quoted and explained (Contracts—change of parties by novation) in 1 *Story on Contr.* 5 ed. § 483, n.
- **v. Andrews**, 9 *Wend.* 312. See *Buel v. Gordon*. Relied on (What debts are to be satisfied out of insolvent's estate) in *Rome Exchange Bank v. Eames*, 4 *Abb. Ct. App. Dec.* 83, 92.
- **v. Babcock**, 2 *Sandf.* 518; s. c., more fully, 7 *N. Y. Leg. Obs.* 270. See *Cole v. Jessup*.
- **v. Belmont**, 35 *Super. Ct. (J. & S.)* 135. Aff'd in 69 *N. Y.* 567. Previous proceeding in 7 *Robt.* 508, which aff'd *Id.* 97. With decision in 35 *Super. Ct. (J. & S.)* compare (Judgment awarding defendant possession in action to compel determination of claim to real property) *Code Civ. Pro.* §§ 1641–1643.
- **v. Cobb**, 20 *N. Y.* 344. Applied (Machinery, &c. when not a fixture) in *Voorhies v. McGinnis*, 46 *Barb.* 251, which was rev'd in 48 *N. Y.* 278, 289, which see; *Sheldon v. Edwards*, 35 *Id.* 283; *Tift v. Horton*, 53 *Id.* 380; *Sisson v. Hibbard*, 75 *Id.* 542, 546, which aff'd 10 *Hun.* 420, 422, which see. Disting'd in *Potter v. Cromwell*, 40 *N. Y.* 293. Relied on in *Eaves v. Estes*, 10 *Kans.* 314; s. c., 15 *Am. R.* 345.
- **v. David**, 1 *Bosw.* 569. Authorities on which this was held said to have been criticised (Liability on agreement to assume debt secured by mortgage on chattels) in *Thomas on Mort.* 456.
- **v. Ford**, 10 *Abb. Pr. N. S.* 74; s. c., 41 *How. Pr.* 169. See *Woodruff v. Dickie*. Followed (Imprisonment for non-payment of alimony) in *Allen v. Allen*, 8 *Abb. N. C.* 175, 187. Followed (Striking out pleading of party in contempt) in *Walker v. Walker*, 82 *N. Y.* 260, 264.
- **v. Harrington**, 16 *N. Y.* 285. Disting'd (Effect of fraudulent conveyance as between parties) in *Renfrew v. McDonald*, 11 *Hun.* 254, 257. Discussed in *Wait on Fraud. Conv.* § 400. Applied (Contracts between

- attorney and client) in *Haight v. Moore*, 37 *Super. Ct. (J. & S.)* 161, 163. Compared with other cases in *Waterman on Sp. Perf.* § 210, n.
- **v. James.** See *Frost v. Beekman*.
- **v. Johnson.** See *Fields v. Moul*.
- **v. Jones**, 62 *Barb.* 484. See *People v. Jackson*. Compare (Evidence of specific acts of lewdness) *Woods v. People*, 55 *N. Y.* 515. Applied (Evidence of want of chastity in action for seduction) in *Wandell v. Edwards*, 25 *Hun.* 498, 501. Discussed (Impeaching credibility of witness) in 1 *Best on Ev.* § 263, n. a, Wood's ed.
- **v. Mayor, &c. of N. Y.**, 4 *Hun.* 587. Aff'd in 63 *N. Y.* 640.
- **v. Monroe**, 20 *Wend.* 210; s. c., 13 *N. Y. Com. L. Law. ed.* 829, with brief note of contrary cases. Explained and criticised as not authority (Damages for injuries causing death) in *Green v. Hudson River R. R. Co.*, 2 *Abb. Ct. App. Dec.* 280. Disapproved in *Covington Street R'y Co. v. Packer*, 9 *Bush. (Ky.)* 455; s. c., 15 *Am. R.* 726. Criticised in *Carey v. Berkshire R. R. Co.*, 1 *Cush. (Mass.)* 475; s. c., 48 *Am. Dec.* 616, with extended note, where the right to maintain such an action was denied. Explained and questioned in 8 *South. L. Rev.* 68, 73. Quoted and discussed in *Ang. on Carr.* § 596, 5 ed. Examined and approved (Taking objections at trial) in *Jencks v. Smith*, 1 *N. Y.* 90, 93.
- **v. Ransom.** See *Hall v. Sampson*.
- **v. Stuart**, 19 *Johns.* 342. See *Hendricks v. Judah*. Doubted with *O'Callaghan v. Sawyer*, 5 *Johns.* 118 (Set-off, as defense to discredited note) in *Chandler v. Drew*, 6 *N. H.* 469; s. c., 26 *Am. Dec.* 704, with note.
- **v. Walsworth**, 19 *Wend.* 334. Discussed with other cases (Effect of release of covenant running with land) in 2 *Am. L. Reg. N. S.* 264.
- **v. Williams**, 24 *N. Y.* 359. Previous decision in 13 *Id.* 577. See *Dubois v. Delaware & Hudson Canal Co.*; *Edgell v. Hart*; *Gaillard v. Smart*. Decision in 24 *N. Y.* disting'd (Effect of agreement allowing mortgagor of chattels to sell) in *Ball v. Slaughter*, 26 *Hun.* 353; *City Bank v. Westbury*, 16 *Id.* 458. Followed in *Miller v. Lockwood*, 32 *N. Y.* 293. Collated with *Miller v. Lockwood*, and other cases, in 17 *Am. L. Rev.* 335. Relied on with *Miller v. Lockwood* in *Kleine v. Katzenberger*, 20 *Ohio St.* 110; s. c., 5 *Am. R.* 630. Approved in *Southard v. Benner*, 7 *Daly*, 41, 43. Cited (Attorney's liabilities to third parties) in *Whart. Com. on Ag.* § 611, n. Decision in 13 *N. Y.* applied (Liability for act of sheriff in making levy) in *Chapman v. Douglas*, 5 *Daly*, 244, 250.
- Fordham v. Smith**, 46 *N. Y.* 683; s. c., 44 *How. Pr.* 372. Explained and disting'd (Discrediting witness) in *Stilwell v. Carpenter*, 2 *Abb. N. C.* 238, 257. Disting'd in *Warner v. N. Y. Central R. R. Co.*, 52 *N. Y.* 437, 439.
- Foreman v. Marsh**, 7 *Barb.* 215. Rev'd as *Forman v. Marsh*, 11 *N. Y.* 544.
- Forman's Estate**, 1 *Tuck.* 205. Aff'd in 54 *Barb.* 274. Decision in 1 *Tuck.* reviewed with others (Publication of will) in *Neugent v. Neugent*, 2 *Redf.* 369, 374. Decision in 54 *Barb.* quoted (Personal disabilities of testators) in 1 *Jarm. on Wills*, Rand. & T. ed. 104, n.
- Forman v. Forman**, 17 *How. Pr.* 255. Dictum disapproved (Notice of appeal from justice's decision) in *Avery v. Woodbeck*, 62 *Barb.* 557, 564.
- **v. Marsh.** See *Foreman v. Marsh*.
- Forrest v. Forrest**, 25 *N. Y.* 501. Aff'g 8 *Bow.* 640; 6 *Duer*, 102; s. c., 3 *Abb. Pr.* 144. Other decisions in 3 *Bow.* 551, 561; 5 *Id.* 672; 9 *Id.* 686; 3 *Code R.* 121, 254; 10 *Barb.* 46; s. c., 5 *How. Pr.* 125. See *Fuller v. Emeric*; *Shepard v. Shepard*. Decision in 25 *N. Y.* applied (New trial, when not granted for admission of improper evidence) in *Clark v. Brooks*, 2 *Abb. Pr. N. S.* 388; *Page v. Ellsworth*, 44 *Barb.* 440; *Lamb v. Camden & Amboy R. R. & Transp. Co.*, 2 *Daly*, 475; Consolidated *Fruit Jar Co. v. Mason*, 7 *Daly*, 67. Applied but disting'd in *Bennett v. Austin*, 5 *Hun.* 539. Disting'd in *Foot v. Beecher*, 78 *N. Y.* 157, which rev'd 12 *Hun.* 374, which see. Applied (Alimony, when not affected by subsequent conduct of wife) in *Shepherd v. Shepherd*, 1 *Hun.* 241. Applied (Time from which alimony is payable) in *Leslie v. Leslie*, 6 *Abb. Pr. N. S.* 208. Followed (Reference to ascertain amount of alimony. Appeal from order granting alimony) in *Galinger v. Galinger*, 61 *Barb.* 31. Applied (Granting alimony after judgment) in *Kamp v. Kamp*, 37 *Super. Ct. (J. & S.)* 246. Applied (Jurisdiction of superior city courts) in *Story v. N. Y. Elevated R. R. Co.*, 3 *Abb. N. C.* 488; *Schmalholz v. Polhaus*, 49 *How. Pr.* 59; *Forrest v. Havens*, 38 *N. Y.* 469. Applied (Jurisdiction of Supreme Court, when not exclusive) in *Danser v. Jeremiah*, 3 *Redf.* 134. Approved (Reviewing trial by jury ordered in equity case) in *Vermilyea v. Palmer*, 52 *N. Y.* 477. Decision in 6 *Duer* approved (Power of court to compel wife to release her dower in action for divorce) in *Crain v. Cavana*, 36 *Barb.* 410, 414. See *Code Civ. Pro.* 1881, § 1759, n. Decision in 10 *Barb.* approved and followed with *Bushnell v. Bushnell*, 15 *Id.* 399; *Breck v. Smith*, 55 *Id.* 212; *Neville v. Neville*, 22 *How. Pr.* 500; *Marston v. Haggerty* (MS. 6 Dist. PARKER, J.) (Right to issue writ of *ne exeat* in equitable cases) in *Beckwith v. Smith*, 4 *Lans.* 182. See *Code Civ. Pro.* 1881, § 548, n. Decision in 5 *Bow.* explained (Alimony pendente lite) in 2 *Bishop on Mar. & D.* § 461, n. 6, 6 ed.
- **v. Kissam**, 7 *Hill*, 463. Disting'd and in part disapproved (Right of prisoners to cross-examination of witnesses) in *Cole v. People*, 2 *Lans.* 370, which was aff'd in 43 *N. Y.* 508, which see.

- **v. Mayor, &c. of N. Y.** Relied on with *Fleetwood v. City of N. Y.*, 2 *Sandf.* 475; *Lott v. Swezy*, 29 *Barb.* 87; *N. Y. & Harlem R. R. Co. v. Marsh*, 12 *N. Y.* 303; *Union B'k v. Mayor, &c. of N. Y.*, 51 *Barb.* 159 (Recovery of taxes, &c. levied under illegal statute) in *Detroit v. Martin*, 34 *Mich.* 170; s. c., 22 *Am. R.* 512, 516, with note collating cases.
- Forrester v. Wilson**, 1 *Duer*, 624. Criticised as an exceptional case (Injunction against supplementary proceedings) in *Marks v. Wilson*, 11 *Abb. Pr.* 87. Followed in *Landon v. Superv's of Schenectady*, 24 *Hun*, 75, 77.
- Forsyth v. Clark**, 3 *Wend.* 637. Cited (Real estate as partnership property) in *Story on Partn.* 7 ed. § 94, n.
- **v. Edminston**, 11 *How. Pr.* 409. Disting'd (Construction of complaint as containing distinct causes of actions) in *People v. Tweed*, 63 *N. Y.* 201.
- **v. Ferguson**, 27 *How. Pr.* 67. Followed with *Gray v. Hannah*, 30 *Id.* 155 (Notice of appeal from justice's decision) in *Hotchkiss v. Banks*, 36 *Id.* 61. Followed in *Gray v. Hannah*, 30 *Id.* 158; *Wallace v. Patterson*, 29 *Id.* 174. Considered in *Barnard v. Pierce*, 28 *Id.* 235. Disting'd in *Younghouse v. Fingar*, 63 *Barb.* 299. See *Code Civ. Pro.* 1881, § 3070, n.
- **v. Ganson**, 5 *Wend.* 558; s. c., 21 *Am. Dec.* 241. Doubted and explained as to be sustained, if at all, on express contract (Legal obligation to support) in *Raymond v. Loyl*, 10 *Barb.* 486.
- **v. Burch**, 5 *Den.* 187. Approved (Rights of assignee of mortgage) in *Bush v. Lathrop*, 22 *N. Y.* 549; *Decker v. Boice*, 83 *Id.* 215, 221. Applied in *Westbrook v. Gleason*, 79 *Id.* 31. Disting'd in *De Lancey v. Stearns*, 66 *Id.* 161; *Trustees of Union College v. Wheeler*, 61 *Id.* 117. Explained in *Schafer v. Reilly*, 50 *Id.* 68. Reviewed with other cases in *Bank for Savings in N. Y. v. Frank*, 45 *Super. Ct. (J. & S.)* 412.
- Fort Edward & Fort Miller Plank-road Co. v. Payne**, 17 *Barb.* 567. Rev'd in 15 *N. Y.* 583. See *Butternuts & Oxford Turnpike Co. v. North*.
- Fort Plain Bridge Co. v. Smith**, 30 *N. Y.* 44. See *Dyger v. Schenck*. Collated with other cases (Power of legislature to impair or take away franchise) in 26 *Am. R.* 293, n.
- Forward v. Harris**, 30 *Barb.* 338. See other cases collected (Testimony of parties) in 1 *Abb. N. C.* 362, n.
- Fosdick v. Cornell**, 1 *Johns.* 440; s. c., 3 *Am. Dec.* 340, with note, wherein it is shown, notwithstanding dissenting views of *KENT, C.*, in *Anderson v. Jackson*, 16 *Johns.* 382, to have received the highest indorsement both in the Federal and N. Y. courts (When words "dying without issue" and the like, do not create an estate tail). Applied (What is good as executory devise) in *Rapp v. Rapp*, 6 *Pa. St.* 49.
- Fosgate v. Herkimer Manuf. Co.**, 9 *Barb.* 287. Further proceeding in 12 *Id.* 352, and that aff'd in 12 *N. Y.* 580. See *La Frombois v. Jackson*. Decision in 12 *N. Y.* disting'd (Joinder of defendants) in *Morenus v. Crawford*, 15 *Hun*, 45. Discussed in *Sedgw. & W. on Tr. of Tit. to Lands*, § 328.
- Foshay v. Ferguson**, 5 *Hill*, 154. See *Greer v. Tweed*; *Shepherd v. Watrous*. Disting'd (Duress) in *Kissock v. House*, 23 *Hun*, 86. Disting'd as not authority in *Harmon v. Harmon*, 61 *Me.* 227; s. c., 14 *Am. R.* 556. Applied in *Spaids v. Barrett*, 57 *Ill.* 289; s. c., 11 *Am. R.* 10. Quoted in 1 *Story on Contr.* 5 ed. § 511, n. 2. Language of *BRONSON, J.*, quoted in 1 *Pars. on Contr.* 395, n. w. Thought in 26 *Am. Dec.* 377, n., not to state a doctrine broader than that prevailing.
- **v. —**, 2 *Den.* 617. Definition of probable cause here quoted, criticised and questioned in *Miller v. Milligan*, 48 *Barb.* 30, 40.
- Foster, Matter of**, 10 *Hun*, 307. Further proceeding in 15 *Id.* 387.
- Foster v. Beals**, 21 *N. Y.* 247. Disting'd (Evidence of authority to receive payment) in *Doubleday v. Kress*, 50 *Id.* 413. Cited (Contradicting receipt) in *Megargel v. Megargel*, 105 *Penn. St.* 479. See to the contrary (Date of assignor's receipt) *Rose. N. P.* 38; *Pringle v. Pringle*, 59 *Penn. St.* 289. See also *Abb. Tr. Ev.* 14.
- **v. Coleman**, 1 *E. D. Smith*, 85. See (Books of account as evidence) *Clarke v. Smith*, 46 *Barb.* 30. But see *Abb. Tr. Ev.* 372. Disting'd in *Knight v. Cunningham*, 6 *Hun*, 100, 103.
- **v. Conger**, 61 *Barb.* 145. Doctrine discussed (Liability of married women in 13 *Am. L. Reg. N. S.* 130. See *Code Civ. Pro.* 1881, § 450, n.
- **v. Foster**, 7 *Paige*, 48. See (Who may appear at probate although not cited) *Code Civ. Pro.* 1881, § 2617, n.
- **v. Hawley**, 8 *Hun*, 68. See *Starr v. Peck*. Reviewed with *Adee v. Campbell*, 14 *Hun*, 551; 79 *N. Y.* 52; *Hurtin v. Prael*, 3 *Bradf.* 414; *Ferrie v. Public Adm'r*, 3 *Id.* 151, 249; 4 *Id.* 28; *Caujolle v. Ferrie*, 23 *N. Y.* 90; *Hallett v. Hare*, 5 *Paige*, 315. *Rose v. Clark*, 8 *Id.* 574 (Power of surrogate to determine disputes as to distributive shares) in *Du Bois v. Brown*, 1 *Dem.* 317.
- **v. Julien**, 24 *N. Y.* 28; s. c., 1 *Am. L. Reg. N. S.* 362. Compared (Presentment of bill of exchange for payment) in *Bigel. on B. & N.* 2 ed. 251.
- **v. Milliner**, 50 *Barb.* 385. Relied on as authority (Decree in rem cannot be collaterally attacked) in *Waples Proc. in Rem*, § 112.
- **v. Newbrough**, 66 *Barb.* 645. Rev'd in 58 *N. Y.* 481. See *Hubbard v. Russell*.
- **v. People**, 3 *Hun*, 6; s. c., 49 *How. Pr.* 69; mem. s. c., 5 *Sup'm. Ct. (T. & C.)* 670. Aff'd in 63 *N. Y.* 619.
- **v. —**, 50 *N. Y.* 598. Disting'd (Murder committed while perpetrating another

- offense) and applied (Charge on criminal trial) in *Buel v. People*, 78 *Id.* 492, 499.
- *v. Persch*, 6 *Daly*, 164. Rev'd in 68 *N. Y.* 400.
- *v. Pettibone*, 7 *N. Y.* 433; s. c., 57 *Am. Dec.* 530, with note. Subsequent proceedings in 20 *Barb.* 350. Decision in 7 *N. Y.* followed (Test of bailment) in *Marsh v. Titus*, 6 *Sup'm. Ct. (T. & C.)* 29. Doctrine discussed in 3 *Am. L. Reg. N. S.* 329. Decision in 20 *Barb.* explained as based on reason that has ceased since enactment of *Code Pro.* (Officer's liability in replevin) in *Bullis v. Montgomery*, 50 *N. Y.* 352. Disting'd in *Manning v. Keenan*, 9 *Hun*, 686, 689. Approved as criticising *Stimpson v. Reynolds*, 14 *Barb.* 506—in *Weiner v. Van Rensselaer*, 14 *Vroom (N. J.)* 547.
- *v. Scofield*, 1 *Johns.* 297. Disapproved with *Clark v. Fitch*, 2 *Wend.* 459; *Gillet v. Mead*, 7 *Id.* 193; *Brownell v. M'Ewen*, 5 *Den.* 367 (Evidence of promise of marriage in action for seduction) in *White v. Campbell*, 13 *Gratt. (Va.)* 573. See *Ingersoll v. Jones*, 5 *Barb.* 661. Cited in *Weaver v. Bachert*, 2 *Penn. St.* 80; s. c., 44 *Am. Dec.* 159, 161, with extended note to sustain the converse proposition. See also cases collated in note, where the doctrine of the Pennsylvania case above cited is shown to be contrary to the weight of authority. Discussed in 2 *Pars. on Contr.* 70, n. n.
- *v. Smith*, 10 *Wend.* 377. Applied (Practice on assessment of damages) in *Thompson v. Lumley*, 7 *Daly*, 74, 83.
- *v. Townshend*, 12 *Abb. Pr. N. S.* 469; s. c., 6 *Daly*, 136. Rev'd in 68 *N. Y.* 203; s. c., 2 *Abb. N. C.* 29, 43. Decision in 2 *Abb. N. C.* followed (Suit by sequestrator in his own name) in *Donnelly v. West*, 17 *Hun*, 564, 568, which rev'd *Donnelly v. Shaw*, 7 *Abb. N. C.* 264, which see.
- *v. Trull*, 12 *Johns.* 456. Explained (Contracts—agreement to discontinue suit—defense) in 2 *Pars. on Contr.* 685, n. p.
- *v. Van Reed*, 5 *Hun*, 321. Rev'd in 70 *N. Y.* 19; s. c., 26 *Am. R.* 544. See *De Wolf v. Capital City Ins. Co.* Decision in 5 *Hun* criticised in connection with *Excelsior Fire Ins. Co. v. Royal Ins. Co. of Liverpool*, 55 *N. Y.* 343 (Insurer's right to subrogation, in case of insurance by mortgagee) in 54 *Am. Dec.* 697, n. Followed in *Dick v. Franklin Fire Ins. Co.*, 10 *Mo. App.* 386.
- *v. Wilber*, 1 *Paige*, 537. Explained (Surrogate's courts, jurisdiction) in *Willard on Executors*, 46. Quoted (Enforcing payment of legacies against executors) in *Id.* 414.
- *v. Wood*, 6 *Johns. Ch.* 87. Applied (Relief against judgment) in *Hamel v. Grimm*, 10 *Abb. Pr.* 150, 152; *Huggins v. King*, 3 *Barb.* 619; *Ross v. Wood*, 70 *N. Y.* 10; *Norton v. Woods*, 22 *Wend.* 524. Disting'd in *Crippen v. Culver*, 13 *Barb.* 429; *People of Michigan v. Phoenix B'k*, 7 *Bosw.* 84. Applied to surety in *Kenner v. Cald-*
- well*, 1 *Bailey (S. C.)* 149; s. c., 21 *Am. Dec.* 538, with note. Approved as settled law in 2 *White & Tudor's Lead. Eq. Cas.* 1329, which was cited in *Pollock v. Gilbert*, 16 *Geo.* 398; s. c., 60 *Am. Dec.* 732, with note.
- Fougera v. Moissen**, 16 *Hun*, 237. The order herein was aff'd, not rev'd; and the opinion (except the concluding clause directing affirmance) is a dissenting opinion. The decision was directly contrary to the body of the opinion and the head-note.
- Fowler v. Etna Fire Ins. Co.**, 6 *Cow.* 673; s. c., 16 *Am. Dec.* 460, with note, wherein it is said to have been followed in *N. Y.* (Description of property in fire and marine policy) though *Jolly v. Baltimore Equitable Soc'y*, 1 *Harr. & G. (Md.)* 295, seems to be to the contrary, and *Inman v. Western Fire Ins. Co.*, 12 *Wend.* 460; *Burritt v. Saratoga Co. Mut. Fire Ins. Co.*, 5 *Hill*, 193; *De-longuemare v. Tradesman's Ins. Co.*, 2 *Hall*, 589, are particularly referred to. See *Ruan v. Perry*. Approved (Evidence of good character when admissible) in *Barton v. Thompson*, 56 *Iowa*, 571; s. c., 41 *Am. R.* 119, with note. Cited with *Gough v. St. John*, 16 *Wend.* 646; *Ruan v. Perry*, 3 *Cal.* 120, being referred to as overruled by *Gough v. St. John*,—in *Dudley v. McCluer*, 65 *Mo.* 241; s. c., 27 *Am. R.* 273, 275. Cited in *Gebhart v. Burkett*, 57 *Ind.* 378; s. c., 26 *Am. R.* 61. Collated with *Gough v. St. John*, 16 *Wend.* 646; *Ruan v. Perry*, 3 *Cal.* 120, and other cases, in 26 *Abb. L. J.* 364. Commented on in 1 *Greenl. on Ev.* 14 ed. § 54, n. 3.
- *v. Burns*, 7 *Bosw.* 637. Approved (Answer upon motion to dissolve injunction) in *Middletown v. Rondout R. R. Co.*, 12 *Abb. Pr.* 276, 279.
- *v. Buttery*, 53 *How. Pr.* 471. Aff'd in 44 *Super. Ct. (J. & S.)* 148, and that aff'd in 78 *N. Y.* 68.
- *v. Clearwater*, 35 *Barb.* 143. Followed (Effect of guaranty made for paying one's own debt) in *Eagle Mowing and Reaping Machine Co. v. Shattuck*, 53 *Wis.* 455; s. c., 40 *Am. R.* 780.
- *v. Griffin*, 3 *Sandf.* 385. Applied (Validity of assignment of dower) in *Gibbs v. Esty*, 22 *Hun*, 266, 269.
- *v. Hait*, 10 *Johns.* 111. Overruled with *Dexter v. Hazen*, *Id.* 246; *Brown v. Wilde*, 12 *Id.* 455 (Admissibility of evidence of former trial and judgment, under general issue) in *Young v. Rummel*, 2 *Hill*, 478.
- *v. Hunt*, 10 *Johns.* 464. Referred to as having been sustained by later *N. Y.* decisions, and also relied on (Effect of absence on running of statute of limitations) in *Campbell v. White*, 22 *Mich.* 178, 194. Quoted in 3 *Pars. on Contr.* 95, n. a.
- *v. Lockwood*, 3 *Redf.* 465. See (Additional allowance in settling administrator's accounts) *Code Civ. Pro.* 1881. § 2562, n.
- *v. Lowenstein*, 7 *Lans.* 167; s. c., as *Wilmerdings v. Fowler*, 45 *How. Pr.* 142.



- Aff'd in 14 *Abb. Pr. N. S.* 249, but on re-argument rev'd in 15 *Abb. Pr. N. S.* 249.
- *v. Martin*, 1 *Sup'm. Ct. (T. & C.)* 377. Aff'd, it seems, in 56 *N. Y.* 676, but without opinion.
- *v. Milliman*, 5 *Sup'm. Ct. (T. & C.)* 718; s. c., reported in 2 *Hun*, 408.
- *v. Mott*, 19 *Barb.* 204. Collated with other cases (Highway—changing purpose for which land has been dedicated) in *Mills Thomps. on Highw.* 3 ed. 17.
- *v. N. Y. Gold Exchange Bank*, 6 *Hun*, 186. Rev'd in 67 *N. Y.* 138.
- *v. N. Y. Indemnity Ins. Co.*, 23 *Barb.* 143. Rev'd in 26 *N. Y.* 422. See *Babcock v. Bonnell*; *Grosvenor v. Atlantic Fire Ins. Co.* Decision in 23 *Barb.* disapproved (Averment of interest unnecessary, in declaring on fire policy) in *Freeman v. Fulton Fire Ins. Co.*, 14 *Abb. Pr.* 398, 404. See to similar effect (Presumption of truth of representations) *Nichols v. Fayette Mut. Ins. Co.*, 1 *Allen (Mass.)* 63.
- *v. Poling*, 2 *Barb.* 300. Rev'd in 6 *Id.* 165. See *Beddoe v. Wadsworth*; *Green-vault v. Davis*. Decision in 6 *Barb.* explained (Evictions under covenants of warranty and those for quiet enjoyment) in 3 *Washb. on Real Prop.* 4 ed. 477.
- *v. Seaman*, 40 *N. Y.* 592. Disting'd (Husband's agency to contract for wife) in *Jones v. Walker*, 63 *Id.* 613.
- *v. Westervelt*, 40 *Barb.* 374; s. c., with points of counsel, 17 *Abb. Pr.* 59.
- Fox, Matter of**, 63 *Barb.* 157. Aff'd in 52 *N. Y.* 530; s. c., 11 *Am. R.* 751; and that aff'd as *U. S. v. Fox* in 94 *U. S.* 315. Decision in 94 *Id.* disting'd (Validity of trust for charitable purposes) in *Russell v. Allen*, 107 *Id.* 163, 170. Disting'd on the ground of peculiarities in the law of *N. Y.* (Validity of devise to the *U. S.*) in *Dickson v. U. S.*, 125 *Mass.* 311; s. c., 28 *Am. R.* 230, 234. Decision in 52 *N. Y.* quoted (Who may take devise or legacy) in *Jarm. on Wills*, Rand. & T. ed. 180, n. 1.
- Fox v. Baker**, 2 *Wend.* 244. Disapproved (Withdrawing plea as condition of relief) in *Lovett v. Cowman*, 6 *Hill*, 223, 253. Overruled in *Allen v. Mapes*, 20 *Wend.* 633.
- *v. Carr*, 16 *Hun*, 434. Another proceeding in *Id.* 566.
- *v. Drake*, 8 *Cow.* 191. Examined, with other cases, as authority for statement in 1 *Purson B. & N.* 97 (Liability on note, &c. executed by public officer or agent) in 37 *Am. R.* 143, n.
- *v. Dunkel*, 38 *How. Pr.* 136; s. c., 55 *Barb.* 431. See *Cook v. Gregg*. Followed (Constitutionality of acts authorizing seizure of animals) in *Squares v. Campbell*, 60 *Barb.* 391. Criticised in *Leavitt v. Thompson*, 56 *Id.* 542, 552.
- *v. Fox*, 24 *How. Pr.* 409. Disting'd (Compelling payment of attorney's compensation) in *Porter v. Parmly*, 39 *Super. Ct. (J. & S.)* 219, 239. Followed (Attorney's lien for costs) in *Wilber v. Baker*, 24 *Hun*, 25.
- *v. —*, 5 *Hun*, 53. Compare (Costs against executor, &c.) *Code Civ. Pro.* §§ 1814, 3246.
- *v. Heath*, 21 *How. Pr.* 384. Another proceeding in 16 *Abb. Pr.* 163. Referred to as contrary to *Yates v. Lyon*, 61 *N. Y.* 344 (Effect of assignment by infant partner) in *Burrill on Assign.* 60, n., 4 ed. Collated with other cases in *Bishop on Assign.* § 138.
- *v. Jackson*, 8 *Barb.* 355. See (Who may not act as attorney in justice's court) *Code Civ. Pro.* 1881, § 2889, n.
- *v. McGregor*, 11 *Barb.* 41. Questioned (Remedy to enforce lien) in *Trust v. Person*, 3 *Abb. Pr.* 84.
- *v. Moyer*, 54 *N. Y.* 125. Explained (Parties in creditor's action) in *Miller v. Hall*, 40 *Super. Ct. (J. & S.)* 262, 269, which was aff'd in 70 *N. Y.* 250, which see. Discussed in *Wait on Fraud. Conv.* § 129. Cited (Voluntary conveyance in good faith, when only valid) in *Beecher v. Clark*, 12 *Blatchf. Ct.* 256, 259.
- *v. Nellis*, 25 *How. Pr.* 144. Approved (Requisites of notice of appeal from justice's decision) in *Loomis v. Higbie*, 29 *Id.* 232; *Wynkoop v. Halbut*, 43 *Barb.* 266; Disapproved in *Barnard v. Pierce*, 28 *How. Pr.* 232; *Wallace v. Patterson*, 29 *Id.* 170; *Gray v. Hannah*, 1 *Abb. Pr. N. S.* 43. Compare *Youngbanse v. Fingar*, 43 *How. Pr.* 260, and cases cited. See *Code Civ. Pro.* 1881, § 3070, n.
- *v. Phelps*, 17 *Wend.* 393. Aff'd in 20 *Id.* 437. See *Jackson v. Merrill*. Decision in 20 *Wend.* quoted (Conditions in wills) in 2 *Jarm. on Wills*, Rand. and T. ed. 507, n. Explained in *Id.* 508, n.
- *v. Reil*, 3 *Johns.* 477; s. c., 3 *N. Y. Com. L. Law. ed.* 675, with brief note. See *Hall v. Phelps*. Cited with *Henry v. Bishop*, 2 *Wend.* 575 to show that the same rule prevails in America as in England (Necessity of producing attesting witness) in 2 *Taylor on Ex.* 157 t.
- *v. Smith*, 3 *Cow.* 23. Collated with *Jackson v. Hawks*, 2 *Wend.* 620; *Labar v. Koplin*, 4 *N. Y.* 550; *Blakely v. Sheldon*, 7 *Johns.* 32; *People v. Perkins*, 1 *Wend.* 91; *Root v. Sherwood*, 6 *Johns.* 68 (Right to poll jury in civil cases) in 30 *Am. R.* 497, n.
- *v. Vanderbeck*, 5 *Cow.* 513. Examined with *Miller v. Miller*, 8 *Johns.* 74 (Pleading and proof in slander) in *Zorg v. Ort*, 3 *Chand. (Mich.)* 31; citing *Nestle v. Van Slyck*, 2 *Hill*, 287.
- Foxell v. Fletcher**, 11 *Hun*, 643. Another proceeding in 59 *How. Pr.* 88. Compare very brief mem. in 23 *Hun*, 149.
- Foy v. Troy & Boston R. R. Co.**, 24 *Barb.* 382. See *Bostwick v. Champion*; *Weed v. Saratoga & Schenectady R. R. Co.* Compared with other cases (Liability of carrier beyond line) in *Berg v. Narragansett S. S. Co.*, 5 *Daly*, 395. Cited in *East Tenn. & Va. R. R. Co. v. Rogers*, 6 *Heisk. (Tenn.)*

- 143; s. c., 19 *Am. R.* 589. Cited as authority in *Taylor v. Little Rock, &c. R. R. Co.*, 32 *Ark.* 393; s. c., 29 *Am. R.* 1.
- Fralich v. People.** See *Brandon v. People*.
- **v. Betts**, 13 *Hun.* 633. Cited with *Crawford v. Collins*, 45 *Barb.* 269; *King v. Greenway*, 71 *N. Y.* 413 (What constitutes a "vessel") in *Yarnberg v. Watson*, *Sup'm. Ct., Oreg., March*, 1884, 4 *Pac. Rep.* 297. Compare *Hicks v. Williams*, 17 *Barb.* 523.
- France v. Erie R'y Co.**, 2 *Hun.* 673; s. c. reported in 5 *Sup'm. Ct. (T. & C.)* 12. *O'Meara v. Comm'rs of Allegany*, 3 *Id.* he relied on (Constitutional right of domain) has since been rev'd by Ct. of App.
- Franchot v. Leach**, 5 *Cow.* 506. See *Keating v. Price*. Explained (Damages for breach of contract to purchase real estate) in *Congregation Beth Elohim v. Central Presbyterian Church*, 10 *Abb. Pr. N. S.* 495. Cited as authority in *Richards v. Edick*, 17 *Barb.* 265. Explained in 3 *Pars. on Contr.* 232, n. c. Followed (Fraud, when not to be set up to avoid agreement under seal) in *Jackson v. Hills*, 8 *Cow.* 293; *Belden v. Davies*, 9 *Id.* 447. Disting'd (Parol enlargement of place, &c. of performance of written contract) in *Blood v. Goodrich*, 9 *Wend.* 78. Disting'd (Waiver of omission of notice) in *Marshall v. Vultee*, 1 *E. D. Smith*, 308. Applied (Offer to perform, when excused) in *Clarke v. Crandall*, 27 *Barb.* 77; *Crist v. Armour*, 34 *Id.* 387; *Shaw v. Republic Life Ins. Co.*, 69 *N. Y.* 293.
- Francia v. Joseph**, 3 *Edw.* 182. See *Wardell v. Howell*. Included (Who is *bona fide* holder of negotiable paper) in 1 *Ames Cus. on B. & N.* 635.
- Francis v. City of Troy**, 10 *Hun.* 515. Rev'd in 74 *N. Y.* 338.
- **v. Ocean Ins. Co.**, 6 *Cow.* 404. Aff'd in 2 *Wend.* 64.
- **v. Schoellkopf**, 53 *N. Y.* 152. Applied with *Jutte v. Hughes*, 67 *Id.* 267 (Measure of damages for maintenance of nuisance) in *Taylor v. Metropolitan Elevated R'y Co.*, 50 *Super. Ct. (J. & S.)* 311. Followed in *Wiel v. Stewart*, 19 *Hun.* 272. Followed (Private action for public nuisance) in *Hardy v. City of Brooklyn*, 7 *Abb. N. C.* 403, 407; *Shepherd v. Barnett*, 52 *Tat.* 638. Discussed in 1 *Add. on Torts*, 296, n. 1, Wood's ed. Quoted and discussed in *Wood on Nuis.* 2 ed. § 678. Quoted and discussed (Tannery as nuisance) in *Id.* §§ 538, 603.
- Francisco v. People**, 18 *How. Pr.* 475; s. c., more fully, 4 *Park.* 139.
- Frank v. Chemical Nat. Bank of N. Y.**, 37 *Super. Ct. (J. & S.)* 26. Further decision in 45 *Id.* 452; s. c., 56 *How. Pr.* 403, and that aff'd in 84 *N. Y.* 209; s. c., 38 *Am. R.* 501. With decision in 37 *Super. Ct. (J. & S.)* see to the contrary, cases cited (Comparison of hands) in *Abb. Tr. Ev.* 397, n. 1.
- **v. Levie**, 5 *Robt.* 599. See (Practice where name of defendant is unknown) *Code Civ. Pro.* 1881, § 451, n.
- Franklin v. Hunt.** See *Barlètt v. Campbell*.
- **v. Low**, 1 *Johns.* 396; s. c., 3 *N. Y. Com. L. Law. ed.* 187, with brief note. Cited as authority (Jurisdiction of State court over U. S. officer) in *Coleman v. Frazier*, 4 *Rich. L. (S. C.)* 146; s. c., 53 *Am. Dec.* 727, with note.
- **v. Osgood.** See *Raymond v. Squire*.
- **v. Pendleton**, 3 *Sandf.* 572. Aff'd in 7 *N. Y.* 508.
- **v. Robinson.** See *Bradford v. Kimberly*.
- **v. Talmadge**, 5 *Johns.* 84. Followed (Immateriality of middle name) in *State v. Smith*, 12 *Ark.* 622; s. c., 56 *Am. Dec.* 287. Followed with *Roosevelt v. Gardiner*, 2 *Cow.* 463; *Milk v. Christie*, 1 *Hill*, 102; *People v. Cook*, 14 *Barb.* 259, 307, in *Choen v. State*, 52 *Ind.* 347; s. c., 21 *Am. R.* 179, with note, wherein see also *Van Voorhis v. Budd*, 39 *Barb.* 479; *Matter of Snook*, 2 *Hill*, 566, and other cases collated.
- **v. Underhill**, 2 *Johns.* 374. Explained with *Tillinghast v. King*, 6 *Cow.* 591, as not authority since *R. S.* (Requisites of affidavit to change venue)—in *Anonymous*, 1 *Hill*, 668.
- Franklin Bank, Matter of**, 1 *Paige*, 249; s. c., 19 *Am. Dec.* 413, with extended note. See *Chaffee v. Fort*. Applied (Title to deposits in bank) in *Metropolitan Nat. B'k v. Loyd*, 25 *Hun.* 101, 105. Disting'd with *People v. Security Life Ins. Co.*, 78 *N. Y.* 122 (Right of creditors of corporation to preference in payment) in *People v. Mechanics' & Traders' Sav'gs Inst.*, 28 *Hun.* 375.
- Franklin Fire Ins. Co. v. Jenkins**, 3 *Wend.* 130. See *Scott v. Depeyster*. Disting'd (Corporation directors not liable for error in judgment merely) in *Van Dyck v. McQuade*, 86 *N. Y.* 38, 46. Cited (Liability of directors as such and as individuals) in *Godbold v. Branch Bank at Mobile*, 11 *Ala.* 191; s. c., 46 *Am. Dec.* 211.
- Frary v. Dakin**, 7 *Johns.* 75. Applied (Limitation of jurisdiction to grant discharge to insolvent debtor) in *Morrow v. Freeman*, 61 *N. Y.* 515, 518.
- **v. —**, 8 *Johns.* 353. Applied (Right to security for costs, in case of appeal) in *Flint v. Van Deusen*, 24 *Hun.* 440.
- Fraschieris v. Henriques**, 6 *Abb. Pr. N. S.* 251. See *Nellis v. Bradley*. Applied (Who may exercise right of stoppage *in transitu*) in *Gossler v. Schepeler*, 5 *Daly*, 476, 479. Disting'd (Withdrawing special question submitted to jury) in *Ebersole v. Northern Cent. R'y Co.*, 23 *Hun.* 114, 117.
- Fraser v. Freeman**, 56 *Barb.* 234. Rev'd in 43 *N. Y.* 566.
- **v. Wyckoff**, 2 *Hun.* 545; mem. s. c.; 5 *Sup'm. Ct. (T. & C.)* 707. Aff'd in 63 *N. Y.* 445.
- Frasier v. Frasier**, 9 *Johns.* 80. Stated in 20 *Id.* 297, n. a, that moving party here was a judgment creditor.

**Frazer v. Kimler**, 2 *Hun.* 514; s. c. reported in 5 *Sup'm. Ct. (T. & C.)* 16.

— **v. Phelps**, 3 *Sandf.* 741. Further decision in 4 *Id.* 682. Decision in 3 *Sandf.* explained and that in 4 *Id.* limited (Power of referee to compel production of books, &c.) in *North v. Platt*, 7 *Robt.* 207.

— **v. Western**, 1 *Barb. Ch.* 220. Aff'd by Ct. of App., though a majority of the judges did not agree upon grounds of affirmance, in *How. App. Cas.* 448, 479. Both decisions examined (Doctrine of constructive notice) in *Belmont Branch Bank v. Hoge*, 7 *Bosw.* 543, 563.

**Frazier v. McCloskey**, 2 *Sup'm. Ct. (T. & C.)* 266. Rev'd in 60 *N. Y.* 337; s. c., 19 *Am. R.* 193. Decision in 60 *N. Y.* disting'd (Evidence of repetition of slander) in *Flanders v. Groff*, 25 *Hun.* 553, 555. See to the contrary cases cited in *Abb. Tr. Ed.* 666, n. 14. Commented on in *Folkard's Starkie on Slander*, 4 Eng. ed., § 640, n. 7.

**Frear's Case**, 15 *Abb. Pr.* 350. See (Punishment by surrogate for contempt) *Code Civ. Pro.* 1881, § 2555, n.

**Frear v. Evertson**. See *Mauran v. Lamb*; *Phoenix v. Dey*.

— **v. Hardenbergh**, 5 *Johns.* 272; s. c., 4 *Am. Dec.* 356. See *Bank of Lansingburgh Crary*; *Newcomb v. Ramer*. Cited with approval (Moral consideration insufficient to support contract) in *Society v. Wheeler*, 2 *Gall.* 143. Relied on in 1 *Pars. on Contr.* 434, 446. Discussed in 1 *Chitty on Contr.* 34, n. b, 11 *Am. ed.* Collated, with other cases, in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 187. Relied on with *Bartholomew v. Jackson*, 20 *Johns.* 28, in *Whart. Com. on Ag.* § 372. Followed with *Danforth v. Culver*, 11 *Johns.* 146 (Contract for sale of improvements on public lands not within statute of frauds) in *Zickafosse v. Hulick*, 1 *Morris (Iowa)* 175; s. c., 39 *Am. Dec.* 458, with note. Quoted and explained in *Broune on Stat. of Frauds*, § 233, 4 ed.

**Frecking v. Rolland**, 33 *Super. Ct. (J. & S.)* 499. Rev'd in 53 *N. Y.* 422. Decision in 53 *N. Y.* applied (Liability of married woman as to real estate) in *Westervelt v. Ackley*, 2 *Hun.* 262, which was aff'd in 62 *N. Y.* 108, which see; *Cashman v. Henry*, 75 *Id.* 112. Applied (Sufficiency of answer to complaint on note made by married woman) in *Ferris v. Holmes*, 8 *Daly*, 217. Applied (Sufficiency of complaint in action on instrument executed by married woman) in *Broome v. Taylor*, 13 *Hun.* 342. Followed (Incidental powers of married woman) in *Porter v. Haley*, 55 *Mass.* 66; s. c., 30 *Am. R.* 502. Disting'd with *Corn Exchange Ins. Co. v. Babcock*, 42 *N. Y.* 613, as resting on special statutory provisions (Liability of married woman) in *Stockton v. Farsey*, 10 *W. Va.* 171; s. c., 27 *Am. R.* 566, 569. See cases cited in 5 *Abb. N. C.* 230, n.

**Fredricks v. Mayer**, 13 *How. Pr.* 566. Aff'd in 1 *Bosw.* 227. Decision in 13 *How. Pr.* disting'd (Injunction to restrain violation of

contract for personal services) in *Daly v. Smith*, 38 *Super. Ct. (J. & S.)* 158, 168.

**Freeborn v. Wagner**, 49 *Barb.* 43. Aff'd in 4 *Keyes*, 27.

**Freeholders of Cattaraugus, Petition of**, 59 *N. Y.* 316. Rev'g *O'Meara v. Commissioners of Alleghany, &c.*, 3 *Sup'm. Ct. (T. & C.)* 235.

**Freeland v. McCullough**, 1 *Den.* 414; s. c., 43 *Am. Dec.* 685, with extended note. Further decision in 4 *How. Pr.* 183, based on *Corning v. McCullough*, 1 *N. Y.* 47. See *Corning v. McCullough*; *Moss v. Oakley*. Decision in 1 *Den.* overruled (Nature of liability of stockholders) in *Corning v. McCullough*, 1 *N. Y.* 47. Explained (Statute of limitations—what actions may be barred) in *Ang. on Limit.* § 70, n. 1, 6 ed.

**Freelove v. Cole**, 41 *Barb.* 318. Said in 41 *N. Y.* 619 to have been aff'd in Ct. of App. in December 1869. Decision in 41 *Barb.* disting'd (Validity of fraudulent conveyance, as against grantor) in *Renfrew v. McDonald*, 11 *Hun.* 254, 257. Quoted in *Wait on Fraud. Conv.* § 400.

**Freeman v. Adams**, 9 *Johns.* 115. Reviewed with *Langworthy v. Smith*, 2 *Wend.* 587; *Fleming v. Gilbert*, 3 *Johns.* 528; *Keating v. Price*, 1 *Johns. Cas.* 22; *Thompson v. Ketcham*, 8 *Id.* 149; *Van Hagen v. Van Rensselaer*, 18 *Id.* 420, and other cases (Effect upon written contract, of subsequent parol agreement) in *Ford v. Campfield*, 6 *Halst. (N. J.)* 327; s. c., 20 *Am. Dec.* 589, 592. See contrary to this case and *Myers v. Dixon*, 2 *Hall*, 456 (Action of debt on arbitration bond, where time for making award has been extended) *Greig v. Talbot*, 2 *Barn. & C.* 179.

— **v. Atlantic Mut. Ins. Co.**, 13 *Abb. Pr.* 124. Explained (Ordering reference as involving long account) in *Batchelor v. Albany City Ins. Co.*, 6 *Abb. Pr. N. S.* 240.

— **v. Auld**, 25 *How. Pr.* 327; s. c., more fully, 37 *Barb.* 587. Further decision in 44 *Id.* 14, and that rev'd in 44 *N. Y.* 50. Decision in *Id.* followed (Estoppel to deny existence of lien on real estate) in *Lyon v. Adde*, 63 *Barb.* 98; *Parkinson v. Sherman*, 74 *N. Y.* 92. Disting'd in *Bennett v. Bates*, 26 *Hun.* 364. Disting'd (Assignee of mortgage, as trustee for mortgagor) in *Grissler v. Powers*, 53 *How. Pr.* 194, which was aff'd in effect in 81 *N. Y.* 57, 61, which see.

— **v. Barber**, 1 *Hun.* 433. Fully reported in 3 *Sup'm. Ct. (T. & C.)* 574. See *Beach v. Hollister*; *Goelet v. Gori*. Disapproved by *DANFORTH, RAPALLO and MILLER, JJ.* (Effect of married woman's acts on tenancy by entirety) in *Meeker v. Wright*, 76 *N. Y.* 262, 270.

— **v. Clute**, 4 *Barb.* 424. See *Staats v. Ten Eyck*. Quoted (Measure of damages in action for breach of contract of sale) in 2 *Story on Contr.* 5 ed., § 1098, n. 4.

— **v. Cram**, 3 *N. Y.* 305. Explained (Personal judgment in proceedings to enforce

- mechanic's lien) in *Barton v. Herman*, 8 *Abb. Pr. N. S.* 399, 403. Applied in *Grant v. Vandercook*, *Id.* 455. Limited in *Donnelly v. Libby*, 1 *Sweeney*, 259, 270. Cited as authority in *Maltby v. Green*, 3 *Abb. Ct. App. Dec.* 144, 148. Disting'd (Continuance of lien) in *Fox v. Kidd*, 77 *N. Y.* 489.
- *v. Falconer*, 44 *Super. Ct. (J. & S.)* 132. Further decision in *Id.* 579, and 45 *Id.* 383. Decision in *Id.* followed (Real party in interest who may maintain action on negotiable paper) in *Amy v. Stein*, 48 *Id.* 512. Followed in *Potts v. Mayer*, 46 *Id.* 183, which was rev'd in 10 *Abb. N. C.* 63.
- *v. Freeman*, 51 *Barb.* 306. Aff'd in 43 *N. Y.* 34; s. c., 3 *Am. R.* 657. See *Hess v. Fox*; *Lobdell v. Lobdell*. Decision in 43 *N. Y.* applied (Enforcing verbal trust concerning real estate) in *Moyer v. Moyer*, 21 *Hun.* 67, 72; *Dana v. Wright*, 23 *Id.* 29, 32. Followed with approval in *Hardesty v. Richardson*, 44 *Id.* 617; s. c., 22 *Am. R.* 57, 62.
- *v. Fulton Fire Ins. Co.* See *Babcock v. Bonnell*; *Grosvenor v. Atlantic Fire Ins. Co.*; *Ruse v. Mut. Benefit Ins. Co.*
- *v. Kendall*, 41 *N. Y.* 518. See *Isaacs v. Beth Hamedrash Soc.* See (Writ of error) *Code Civ. Pro.* 1881, § 1293, n.
- *v. Ogden*, 40 *N. Y.* 105. See (Writ of error) *Code Civ. Pro.* 1881, § 1293, n.
- *v. Orser*, 5 *Duer*, 476. Explained (Liability of wife's property for husband's debts) in *Burger v. White*, 2 *Bosw.* 92, 96, 99.
- *v. People*, 4 *Den.* 9; s. c., 47 *Am. Dec.* 216, with note, wherein are collected citations. See *People v. Bodine*; *People v. Huntington*. See also *The Trial of William Freeman*, reported by *Benj. F. Hall*, 1 vol., 8vo., Auburn, 1848. See *Mr. Seward's* speech in the trial court, in *Snyder's Great Sp.* 149. The prisoner was not tried again. He died in his cell and his brain was found to have long been diseased. See *Id.* 190. Applied (Duty of jurors of competency of jurors) in *Smith v. Floyd*, 18 *Barb.* 524; in dissenting opinion of *INGRAHAM, J.*, in *Allen v. People*, 57 *Id.* 351, which was rev'd in 43 *N. Y.* 32, which see. Followed (Effect of peremptory challenge by prisoner) in *Friery v. People*, 2 *Abb. Ct. App. Dec.* 220, which aff'd 54 *Barb.* 319, 341, which see. Approved and sustained (Challenge for principal cause) in *Dowenberg v. People*, 27 *N. Y.* 336. Applied in *Carnal v. People*, 1 *Park.* 278. Cited as authority in *People v. Stout*, 4 *Id.* 109; *Lindsley v. People*, 6 *Id.* 244. Compare, as to effect of *L. 1872, c. 475*, *Balbo v. People*, 80 *N. Y.* 493. Disting'd in *Greenfield v. People*, 74 *Id.* 282. Rule as to assigning ground of challenge qualified in 6 *Abb. N. C.* 16, n. Applied (Test of insanity in criminal cases) in *People v. Montgomery*, 13 *Abb. Pr. N. S.* 246, 246; *Willis v. People*, 32 *N. Y.* 719, which aff'd 5 *Park.* 621, 644, which see. Followed in *Flanagan v. People*, 52 *N. Y.* 467, 469. Cited and said to conflict with *People v. Klein*, 1 *Edm.* 13, in *State v. Jones*, 50 *N. H.* 309; s. c., 9 *Am. R.* 242, 253. Commented on in 1 *Ben-nett & H. Cas. on Crim. L.* 97. Applied (Time for exceptions in criminal cases) in *Hartung v. People*, 4 *Park.* 330. Followed (Questions not reached by bill of exceptions) in *People v. Gardiner*, 6 *Id.* 149.
- *v. Spalding*. See *Van Dusen v. Worrell*.
- Freer v. Denton**, 61 *N. Y.* 492. See *Burtis v. Thompson*. Applied (Action as stamped in tort by allegations of complaint) in *Sparman v. Keim*, 83 *N. Y.* 250. Cited (Action on refusal to perform contract) in 2 *Benj. on Sales*, § 860, n. 9 (Corbin's 4 *Am. ed.*).
- *v. Stotenbur*, 36 *Barb.* 641. Rev'd in 2 *Keyes*, 467; s. c., 34 *How. Pr.* 440.
- Frees v. Ford**, 6 *N. Y.* 176. Disting'd (Jurisdiction of county courts) in *Burns v. O'Neil*, 10 *Hun.* 495; *Dake v. Miller*, 15 *Id.* 356, 358. See to the contrary, *Kundolf v. Thalheimer*, 17 *Barb.* 506, which was rev'd in 12 *N. Y.* 600, which see. See also 17 *Barb.* 512, n. Cited as conclusive in *Judge v. Hall*, 5 *Lans.* 69.
- Freeson v. Bissell**, 63 *N. Y.* 168. Disting'd (Necessity of offer to perform, in action to foreclose lien for purchase money) in *Thomson v. Smith*, *Id.* 305.
- Freiberg v. Branigan**, 18 *Hun.* 344. Aff'd, without opinion, in 82 *N. Y.* 627. Another proceeding in 3 *Abb. N. C.* 121.
- Freligh v. Brink**, 30 *Barb.* 144; s. c., 16 *How. Pr.* 272. Rev'd in 18 *Id.* 89, and the latter aff'd in 22 *N. Y.* 418. See *Lanning v. Carpenter*; *Moody v. Townsend*. Decision in 22 *N. Y.* held in *Lyon v. Sherman*, 14 *Abb. Pr.* 393, to overrule (Judgment on confession) *Clain v. Sanger*, 11 *Id.* 338; *Moody v. Townsend*, 3 *Id.* 375; *Davis v. Morris*, 21 *Barb.* 151. Followed in *Frost v. Koon*, 30 *N. Y.* 428, 442; *Harrison v. Gibbons*, 71 *Id.* 58, 61.
- Fremont v. Stone**, 42 *Barb.* 169. Disting'd (Agreements for management of corporation — when not against public policy) in *Havemeyer v. Havemeyer*, 43 *Super. Ct. (J. & S.)* 506, 513.
- French v. Buffalo, N. Y. & Erie R. R. Co.**, 2 *Abb. Ct. App. Dec.* 106; s. c., 4 *Keyes*, 108. Denied (Burden of proof of carrier's negligence) in *Shriver v. Sioux City and St. Paul R. R. Co.*, 24 *Minn.* 506; s. c., 31 *Am. R.* 355. Criticised (Degrees of negligence of carrier) in *Lawson's Contr. of Carr.* § 128.
- *v. Carhart*, 1 *N. Y.* 96. Rev'g *Hill & D.* 17; s. c., 2 *Leg. Obs.* 367. See opinion delivered in court below, in *How. App. Cas.* 47. Decision in 1 *N. Y.* disting'd (Extrinsic evidence to explain written instrument) in *Giles v. Comstock*, 4 *Id.* 273; *Levy v. Burgess*, 33 *Super. Ct. (J. & S.)* 438. Applied in *Bridger v. Pierson*, 45 *N. Y.* 604; *White's B'k v. Myles*, 73 *Id.* 339; *Kingsland v. Chittenden*, 6 *Lans.* 19, which was aff'd, it seems, in 61 *N. Y.* 618, which see.

- **v. Conelly**, 1 *Weekly Dig.* 196. Quoted and commented on (Injunction in copyright case) in 2 *High on Inj.* 2 ed., § 1043, n. 1.
- **v. Donaldson**, 5 *Lans.* 293. Aff'd on the merits in 57 *N. Y.* 496.
- **v. Kennedy**, 7 *Barb.* 452. Explained (Interest, when payable) in *Cook v. Rogers*, 5 *Sup'm. Ct. (T. & C.)* 493, 495.
- **v. Maguire**. See *Shook v. Daly*.
- **v. New**, 20 *Barb.* 481. Rev'd in 2 *Abb. Ct. App. Dec.* 209; s. c., less fully, 28 *N. Y.* 147. See *Keating v. Price*.
- **v. People**, 3 *Park.* 114. Approved (Indictment without preliminary examination) in *People, ex rel. Phelps v. Westbrook*, 12 *Hun.* 649.
- **v. Powers**, 80 *N. Y.* 146. Followed (Invalidity of court rule affecting time given by Code for filing exceptions) in *Gormley v. McGlynn*, 84 *Id.* 284, 286.
- **v. Redman**, 13 *Hun.* 502. Further decision as *Hun v. Cary*, 59 *How. Pr.* 426. Doctrine of decision in 13 *Hun* discussed (Liability of corporate trustees) in 15 *Am. L. Rev.* 160.
- **v. Shotwell**, 5 *Johns. Ch.* 555. Decision in 20 *Johns.* 668 said in report thereto to be on appeal from decision in 5 *Johns. Ch.*, but see this statement corrected in *Shufelt v. Shufelt*, 9 *Paige*, 146. Decision in 5 *Johns. Ch.* approved and followed (Estoppel by waiver of former owner) in *Graham v. R. R. Co.*, 102 *U. S.* 143, 154.
- **v. Willet**, 4 *Bosw.* 649; s. c., 10 *Abb. Pr.* 99. Modified (Sheriff's liability) in effect, in further decision, in 10 *Bosw.* 566.
- Frets v. Frets**. See *Larkin v. Robbins*.
- Freund v. Importers' and Traders' Nat. B'k**, 12 *Hun.* 537. Aff'd in 76 *N. Y.* 352. Previous decision in 3 *Hun.* 689; s. c., 6 *Sup'm. Ct. (T. & C.)* 236.
- Frick v. White**, 57 *N. Y.* 103. Disting'd (Unliquidated claim) in *Bullard v. Sherwood*, 85 *Id.* 253, 256.
- Fried v. Royal Ins. Co.**, 47 *Barb.* 127. Aff'd in 50 *N. Y.* 243.
- Friedman, Matter of**, 8 *Weekly Dig.* 99. Aff'd in 82 *N. Y.* 609, with mem. of opinion.
- Friedman v. Dewes**, 33 *Super. Ct. (J. & S.)* 450. See also (Performance of contract for sale of land) *Rinaldo v. Housmann*, 1 *Abb. N. C.* 312.
- Friery v. People**, 54 *Barb.* 319. Aff'd in 2 *Keyes*, 424; s. c., 2 *Abb. Ct. App. Dec.* 215. Decision in 2 *Keyes* applied (Effect of irregularity in obtaining jurors) in *Pierson v. People*, 18 *Hun.* 242; *Cox v. People*, 19 *Id.* 439, which was aff'd in 80 *N. Y.* 511, which see. Followed (Statutory provisions for summoning jurors are simply directory) in *People v. Tweed*, 50 *How. Pr.* 262.
- Frink v. Hampden Ins. Co.** See *Grosvenor v. Atlantic Fire Ins. Co.*
- **v. Morrison**, 13 *Abb. Pr.* 80. Approved (Execution after death of judgment debtor) in *Marine Bank of Chicago v. Van Brunt*, 61 *Barb.* 361.
- Frisbee v. Hoffnagle**, 11 *Johns.* 50. See *Sill v. Rood*. Disting'd and said to have been virtually overruled in *Vibbard v. Johnson*, 19 *Johns.* 77 (Failure of consideration as defense to action for purchase price) in *Whitney v. Lewis*, 21 *Wend.* 134. So also considered in *Lamerson v. Marvin*, 8 *Barb.* 15, but regarded as sound in *Tibbets v. Ayer, Hill & D.* 179. Also referred to in *Morrison v. Edgar*, 16 *Mo.* 411; s. c., 57 *Am. Dec.* 236, as overruled by these and other cases. Said in *Long v. Allen*, 2 *Fla.* 403; s. c., 50 *Am. Dec.* 281, with note, to have been overruled in cases there cited. Followed in *Tyler v. Young*, 2 *Scam. (Ill.)* 444; s. c., 35 *Am. Dec.* 116, with note.
- Frisbey v. Thayer**, 25 *Wend.* 396. See *Hastings v. Belknap*. Followed (Right of distraint) in *Martin v. Black*, 3 *Edw.* 580. Disting'd in *Redman v. Hendricks*, 1 *Sandf.* 33. Disting'd (Right of sheriff to show fraudulent nature of transfer by debtor) in *Hall v. Stryker*, 27 *N. Y.* 604, which rev'd 29 *Barb.* 111, which see; *Thayer v. Willet*, 5 *Bosw.* 368. Explained and disting'd with *Hastings v. Belknap*, 1 *Den.* 190, in *Rinchey v. Stryker*, 28 *N. Y.* 45.
- Frisbie v. Larned**, 21 *Wend.* 452. Explained and criticised with *Cole v. Sackett*, 1 *Hill*, 516; *Waydell v. Luer*, 5 *Id.* 448; *Rice v. Dewey*, 54 *Barb.* 455 (New promise as defense on original cause of action) in *Weldrick's Adm'r v. Swain*, 7 *Stew. (N. J.)* 167. Followed (Effect of acceptance of notes as payment) in *Doebling v. Loos*, 45 *Mo.* 150; and see *McMurray v. Taylor*, 30 *Id.* 263. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 271.
- Frith v. Barker**, 2 *Johns.* 327. Relied on with *Woodruff v. Merchants' Bank*, 25 *Wend.* 674; *Bowen v. Newell*, 8 *N. Y.* 194 (Evidence of usage) in *Pedersen v. Engster*, 14 *Fed. Rep.* 423. See also *Beirne v. Dord*, 5 *N. Y.* 95; *Simmons v. Law*, 3 *Keyes*, 219. Applied in *Gordon v. Little*, 8 *Serg. & R. (Pa.)* 533; s. c., 11 *Am. Dec.* 632.
- **v. Crowell**, 5 *Barb.* 209. Explained (Jurisdiction to determine questions of salvage) in *Cashmere v. De Wolf*, 2 *Sandf.* 379.
- **v. Lawrence**, 1 *Paige*, 434. Rev'd in *Mactier v. Frith*, 6 *Wend.* 103.
- Fritz v. Muck**, 62 *How. Pr.* 69. In statement that the association was "incorporated," "incorporated" is a misprint for "unincorporated."
- Frost v. Beekman**, 1 *Johns. Ch.* 288. Rev'd in 18 *Johns.* 544; s. c., 9 *Am. Dec.* 246. See *Wendell v. Wadsworth*. Decision in 1 *Johns. Ch.* explained (Effect of mistakes in recording conveyances, &c.) in *Heilbrun v. Hammond*, 13 *Hun.* 474, 480. Cited as authority in *Kilpatrick v. Kilpatrick*, 23 *Miss.* 124; s. c., 55 *Am. Dec.* 79. Collated with other cases, and dissented from in *Mangold v. Barlow*, 61 *Miss.* 593; s. c., 48 *Am. R.* 84. Followed in *Shepherd v. Burkhalter*, 13 *Geo.* 443; s. c., 58 *Am. Dec.* 523. Dis-

- ting'd in *Sinclair v. Slawson*, 44 *Mich.* 123; s. c., 38 *Am. R.* 235. Collated with *Ford v. James*, 4 *Keyes*, 300; *Peck v. Mallams*, 10 *N. Y.* 518; *N. Y. Life Ins. Co. v. White*, 17 *Id.* 469, and other cases in 26 *Am. R.* 311, n. See other cases collected in 3 *South. L. Rev. N. S.* 540. See 10 *Abb. L. J.* 210. Explained in 2 *Am. L. Reg. N. S.* 2. Cited with *Jewett v. Palmer*, 7 *Johns. Ch.* 65; *Dickerson v. Tillinghast*, 4 *Paige*, 215 (Plea of *bona fide* purchaser without notice) in *Thomas v. Graham*, *Walk. Ch. (Mich.)* 118; citing, also, *Grimstone v. Carter*, 3 *Paige*, 421. Explained (Relation back of time of delivery of deed) in 3 *Washb. on Real Prop.* 4 ed. 309.
- **v. Brisbin**, 19 *Wend.* 11; s. c., 32 *Am. Dec.* 423, with note. Collated with other cases (Attachment as affected by law of domicile) in *Thomps. on Prov. Rem.* 358.
- **v. Carter**. See *Buel v. Gordon*.
- **v. Hotchkiss**, 1 *Abb. N. C.* 27; s. c., 14 *Bank. Reg.* 443. Disting'd (Jurisdiction of State court in bankruptcy proceedings) in *Southard v. Pinckney*, 5 *Abb. N. C.* 184, 189. Disapproved with *Olcott v. Maclean*, 10 *Hun*, 277,—preferring the decision in *Goodrich v. Wilson*, 119 *Mass.* 429,—in *Wente v. Young*, 12 *Hun*, 220.
- **v. Koon**, 30 *N. Y.* 428. Aff'g *Frost v. Quackenbush*, 18 *Abb. Pr.* 3. Decision in 30 *N. Y.* applied (Who not bound by judgment of foreclosure) in *Payn v. Grant*, 23 *Hun*, 134, 136.
- **v. McCarger**, 14 *How. Pr.* 131. Approved (Vacating order of arrest) in *Barret v. Gracie*, 34 *Barb.* 20.
- **v. Mott**, 35 *N. Y.* 253. See *Hoyt v. Van Alstyne*; *Twinan v. Swart*. Limited (Right of attaching creditor to impeach fraudulent acts) in *Mechanics' & Traders' B'k v. Dakin*, 50 *Barb.* 587, 594, which was rev'd in 51 *N. Y.* 523, which see. Cited as authority in *Parshall v. Eggert*, 54 *Id.* 22. Applied to mortgage of chattels, in *Anderson v. Hunn*, 5 *Hun*, 82. Disting'd in *Jacobs v. Hogan*, 15 *Id.* 199. Explained and criticised (Duty of execution debtor to claim exemption) in *Turner v. Borthwick*, 20 *Id.* 120, 122.
- **v. Peacock**, 4 *Edw.* 678. See *Titus v. Nelson*.
- **v. Quackenbush**. See *Frost v. Koon*.
- **v. Raymond**, 2 *Cai.* 188. Cited as authority (Covenants implied from use of words "grant, bargain, sell, &c.") in *Bethell v. Bethell*, 54 *Ind.* 428; s. c., 23 *Am. R.* 650. Followed by *YEATES, J.*, in *Dorsey v. Jackman*, 1 *Serg. & R. (Pa.)* 42; s. c., 7 *Am. Dec.* 611; *Seixas v. Woods*, 2 *Cai.* 48, being cited as an analogous case having reference to personal property. Explained and qualified in 4 *Kent Com.* 474. Collated with *Kent v. Welch*, 7 *Johns.* 258; *Vanderkarr v. Vanderkarr*, 11 *Id.* 122, and other cases (Effect of express warranty) in *Weiser v. Weiser*, 5 *Watts (Pa.)* 279; s. c., 30 *Am. Dec.* 316, 319.
- **v. Saratoga Mut. Ins. Co.**, 5 *Den.* 154; s. c., 49 *Am. Dec.* 234, with note, wherein are collated citations of the case. See *Dezell v. Odell*. Cited as authority (Equitable estoppel) in *Andrews v. Aetna Life Ins. Co.*, 85 *N. Y.* 334, 344.
- **v. Warren**, 42 *N. Y.* 204. Disting'd (Validity of chattel mortgage, as affected by sales made by mortgagor) in *Southard v. Benner*, 72 *Id.* 424, 431, which aff'd 7 *Daly*, 41, which see.
- **v. Yonkers Sav'gs B'k**, 8 *Hun*, 26. Rev'd in part in 70 *N. Y.* 553; s. c., 26 *Am. R.* 627. See *Emigrant Industrial Sav'gs B'k v. Goldman*. Decision in 70 *N. Y.* applied (Agreement as to priority of mortgage lien) in *Taylor v. Wing*, 23 *Hun*, 233, 236. Followed (Effect of tender by junior mortgagee) in *Day v. Strong*, 29 *Hun*, 505. Collated with *Hale v. Clauson*, 60 *N. Y.* 339, and other cases (Title obtained by purchaser at judicial sale) in 26 *Am. R.* 38, n. Disting'd with *Wood v. Colvin*, 2 *Hill*, 566; *Carpenter v. Stilwell*, 11 *N. Y.* 61; *Craft v. Merrill*, 14 *Id.* 456, in *Jaqueth v. Merritt*, 29 *Hun*, 584.
- Froude v. Froude**, 1 *Hun*, 76. Appeal dismissed, as it seems, in *Anonymous*, 59 *N. Y.* 313. See (Rogatory letters) *Code Civ. Pro.* 1881, § 913, n.
- Fry v. Bennett**, 1 *Abb. Pr.* 289; s. c., 4 *Duer*, 247, 651. Further proceedings in 3 *Boro.* 200; and that aff'd in 28 *N. Y.* 324. Other proceedings in 9 *Abb. Pr.* 45; 16 *How. Pr.* 402; 5 *Sandf.* 54. See *Cook v. Ellis*; *Van Vechten v. Hopkins*. Decision in 5 *Sandf.* followed with *Fleischmann v. Bennett*, 87 *N. Y.* 238 (Office of innuendo) in *Bradley v. Cramer*, 59 *Wis.* 309; s. c., 48 *Am. R.* 511, where *Van Vechten v. Hopkins*, 5 *Johns.* 211, was also cited as a leading case respecting the office of an averment, colloquium or innuendo. Approved and applied (Innuendoes which may be regarded as surplusage) in *Krans v. Sentinel Co.*, 60 *Wis.* 480. Decision in 28 *N. Y.* cited as authority (Disproving truth of charge, in action for libel) in *Malloy v. Bennett*, *U. S. Cir. Ct. S. D. N. Y.*, 15 *Reporter*, 321. Approved as well illustrating the rule (Liability for criticism) in 8 *Smith. L. Rev. N. S.* 184. Decision in 3 *Boro.* applied (Damages for libel) in *Myer v. Press Publishing Co.*, 46 *Super. Ct. (J. & S.)* 127, 130. Cited with *Willis v. Forrest*, 3 *Duer*, 310; *Mitchell v. Borden*, 8 *Wend.* 570 (Inadmissible evidence to be entirely excluded from consideration of jury) in *Scripps v. Reilly*, 35 *Mich.* 371; s. c., 24 *Am. R.* 575, 583. Decision in 16 *How. Pr.* followed (Notice of judgment to limit time to appeal) in *Devlin v. Mayor, &c. of N. Y.* 62 *Id.* 167. With decision in 9 *Abb. Pr.* see (Order of disposition of issues) *Code Civ. Pro.* 1881, § 967, n.
- **v. Fry**, 7 *Paige*, 461. Collated with *Palmer v. Palmer*, 1 *Paige*, 276; *Atwater v. Atwater*, 53 *Barb.* 621; *Perry v. Perry*, 2 *Barb. Ch.* 311, and other cases (*Alimony* in

- in case of divorce for wife's fault) in 60 *Am. Dec.* 670, *n.*
- Fryatt v. Sullivan**, 5 *Hill*, 116. *Aff'd* in 7 *Id.* 529. Decision in 5 *Hill* explained (Fixtures attached to freehold) in *Voorhies v. McGinnis*, 46 *Barb.* 242. Explained and approved (Conversion of fixtures into realty) in *Ford v. Cobb*, 20 *N. Y.* 344.
- Frye v. Lockwood**, 4 *Cow.* 454. See *Hearsey v. Pruyn*. Referred to as very correctly giving the reason of the decision in *Ripley v. Gelston*, 9 *Johns.* 201 (Liability of public officer to refund money paid by compulsion) in 6 *Am. Dec.* 273, *n.*
- Fryer v. Rockefeller**, 4 *Hun.* 800. *Aff'd* in 63 *N. Y.* 268.
- Fuchs v. Pohlman**, 2 *Daly*, 210. See (Appeal from justice's decision) *Code Civ. Pro.* 1881, § 3046, *n.*
- Fudickar v. Guardian Mut. Life Ins. Co.**, 45 *How. Pr.* 462. *Aff'd* in 37 *Super. Ct. (J. & S.)* 358. And that *aff'd* in 62 *N. Y.* 392. Decision in *Id.* followed (Waiver of objection to proceeding before referee, &c.) *Stebbins v. Brown*, 65 *Barb.* 272, being distinguishing in *Katt v. Germania Fire Ins. Co.*, 4 *Month. L. Bul.* 59. Applied (Effect of refusal of arbitrators to hear evidence) in *Halstead v. Seaman*, 82 *N. Y.* 27, 31.
- Fullager v. Reveille**, 3 *Hun.* 600. Disting'd (Rescission of contract) in *Roe v. Conway*, 74 *N. Y.* 201, 206.
- Fuller, Matter of**, 21 *Hun.* 497. Compare (Power of Commissioners of Central Park as to street improvements) *Matter of Dearing*, *Id.* 618, which was rev'd in 85 *N. Y.* 1.
- Fuller v. Acker**, 1 *Hill*, 473. Doubted (Parol evidence to supply blank) in 12 *Moak's Eng.* 249, *n.*
- **v. Emeric**, 2 *Sandf.* 626; *s. c.*, 2 *Code R.* 58; 7 *N. Y. Leg. Obs.* 300. See *Johnston v. Johnston*. Reconsidered, and approved and followed notwithstanding *Forest v. Forest*, 10 *Barb.* 46; *Bushnell v. Bushnell*, 15 *Id.* 399; *Neville v. Neville*, 22 *How. Pr.* 500 (*Ne exeat* is abolished by Code) in *Johnston v. Johnston*, 16 *Abb. Pr.* 43. Opposed in *Beckwith v. Smith*, 4 *Lans.* 182. See *Code Civ. Pro.* 1881, § 548, *n.*
- **v. Fenner**. See *Bradt v. Towsley*.
- **v. Hubbard**, 6 *Cow.* 13; *s. c.*, 16 *Am. Dec.* 423, with note, wherein it is said to have been followed frequently in N. Y. (Duty of purchaser of land to demand conveyance) but to be not now followed in N. Y. and elsewhere (What will satisfy contract to convey in fee). Thought in same note not to have been modified by *Carpenter v. Brown*, 6 *Barb.* 149, "so as to dispense with the second request" (as was thought in *Gray v. Dougherty*, 25 *Cal.* 279); and is said to have been erroneously referred to (Duty of purchaser in N. Y. to prepare and tender deed) in *Cooper v. Brown*, 2 *McLean*, 498. See *Connelly v. Pierce*; *Ellis v. Hoskins*; *Gazley v. Price*. Referred to as substantially overruled (What will satisfy contract to convey in fee) in *Penfield v. Clark*, 62 *Barb.* 584, 591.
- **v. Jewett**, 80 *N. Y.* 46. See *Crispin v. Babbitt*; *Laning v. N. Y. Central R. R. Co.* Applied (Duty of master to provide safe machinery) in *Kain v. Smith*, 25 *Hun.* 146, 148. Disting'd in *Murphy v. Boston & Albany R. R. Co.*, 88 *N. Y.* 146; *Slater v. Jewett*, 85 *Id.* 61, 71, 73. Followed in *Tierney v. Minneapolis & St. Louis R'y Co.*, 33 *Minn.* 315.
- **v. Lewis**, 3 *Abb. Pr.* 383. Overruled (Necessity of averring demand and refusal in action of claim and delivery) in *Scofield v. Whitelegge*, 33 *Super. Ct. (J. & S.)* 179. See note.
- **v. Read**, 15 *How. Pr.* 236. Disting'd (Effect of another action pending) in *Litchfield v. Smith*, 7 *Robt.* 306.
- **v. Robinson**, 21 *Hun.* 232. Reported in 10 *Weekly Dig.* 487. Rev'd in 86 *N. Y.* 306.
- **v. Rowe**, 59 *Barb.* 344. Rev'd in 57 *N. Y.* 23. With decision in 57 *N. Y.* compare (Defective organization of corporation) *Raisbeck v. Oesterricher*, 4 *Abb. N. C.* 444, with note; *Humphreys v. Mooney*, 5 *Col.* 282.
- **v. Scribner**, 16 *Hun.* 130. *Aff'd* in 76 *N. Y.* 190. With decision in *Id.* see (Effect of notice of lis pendens) *Code Civ. Pro.* 1881, § 1671, *n.*
- **v. Van Geesen**, 4 *Hill*, 171. *Aff'd* in *How. App. Cas.* 240, but without opinion. Decision in 4 *Hill*, explained (When deed executed on foreclosure sale takes effect) in *Mut. Life Ins. Co. v. Balch*, 4 *Abb. N. C.* 200, 202.
- **v. Webster Fire Ins. Co.**, 12 *How. Pr.* 293. Applied (Amendment by substitution of defendant) in *N. Y.*, &c. *Milk Pan Co. v. Remington Agric. Works*, 25 *Hun.* 475, 477, 480.
- **v. Williams**, 7 *Cow.* 53; *s. c.*, 17 *Am. Dec.* 498. See *Connelly v. Pierce*.
- Fullerton v. Dalton**, 58 *Barb.* 236. *Aff'd*, it seems, in 49 *N. Y.* 659, but without opinion.
- **v. McCurdy**, 55 *N. Y.* 637. Disting'd (Specific performance of contract to convey) in *Candee v. Burke*, 10 *Hun.* 350, 355. See also (Effect of deed absolute in form, as mortgage) *Thompson v. Heckey*, 8 *Abb. N. C.* 159, 163.
- **v. Taylor**, 6 *How. Pr.* 259. Disapproved (Separate judgment against one of several defendants) in *Zink v. Attenburgh*, 18 *Id.* 108; *People v. Cram*, 8 *Id.* 151.
- **v. Viall**, 42 *How. Pr.* 294. See *Union Nat. B'k v. Warner*. Examined with *Briggs v. Merrill*, 58 *Barb.* 389; *Union Nat. B'k v. Warner*, 12 *Hun.* 306; *Salomon v. Moral*, 53 *How. Pr.* 342; *Beals v. Guernsey*, 8 *Johns.* 446 (Transfers void as to creditors) in *Billings v. Billings*, 31 *Hun.* 65. Followed in *Smith v. Sands*, 17 *Neb.* 501. Discussed in *Wait on Fraud. Conv.* § 177.
- **v. —**, 28 *How. Pr.* 244. Overruled

- (Limitation of term fees in Court of Appeals) in *Hakes v. Peck*, 30 *Id.* 104.
- Fulton v. Mathews**, 15 *Johns.* 433; s. c., 8 *Am. Dec.* 261. See *Gahn v. Niemcewicz*; *Pain v. Packard*. Followed (Surety when not discharged by discontinuance of suit brought by creditor) in *Bank of Montpelier v. Dixon*, 4 *Vt.* 587; s. c., 24 *Am. Dec.* 640, with note. Cited and applied with *Lyman v. Mut. Ins. Co.*, 17 *Johns.* 374; *Keating v. Price*, 1 *Johns. Cas.* 22 (Parol agreement to enlarge time of performance of written contract) in *Ferguson v. Hill*, 3 *Stew. (Ala.)* 485; s. c., 21 *Am. Dec.* 641, with note.
- **v. Whitney**, 5 *Hun.* 16. Aff'd in 66 *N. Y.* 548. See *Davoue v. Fanning*. Decision in 66 *N. Y.* applied (Effect of provision in decree of foreclosure allowing parties to purchase at sale) in *Bennett v. Austin*, 81 *Id.* 308, 322, 327, 337. See 14 *Alb. L. J.* 271. Cited in *Thomas on Mort.* 354.
- Fulton Bank v. Beach**, 1 *Paige*, 429. Aff'd in 3 *Wend.* 573. Another decision in 2 *Paige*, 307, and that aff'd in 6 *Wend.* 36.
- **v. N. Y. & Sharon Canal Co.**, 4 *Paige*, 127. See *Welsh v. German American Bank*. Disting'd (Imputing knowledge of agent, &c. to corporation) in *Holden v. N. Y. & Erie B'k*, 82 *N. Y.* 286, 295; *First Nat. B'k of Hightstown v. Christopher*, 11 *Vroom (N. J.)* 435; s. c., 29 *Am. R.* 262, 265. Applied in *Wickersham v. Chicago Zinc Co.*, 18 *Kans.* 481; s. c., 26 *Am. R.* 784. Cited in *Whart. Com. on Ag.* § 673. Explained in *Ang. & A. on Corp.* § 245, 11 ed. Collated with other cases and the conflicting opinions discussed in 17 *Am. L. Rev.* 849, 868. Discussed (Pleadings in action against private corporation) in *Ang. & A. on Corp.* § 678, 11 ed.
- **v. Phenix Bank** 1 *Hall*, 562. See *Bay v. Coddington*; *Root v. French*.
- **v. Stafford**, 2 *Wend.* 483. Disting'd (Estoppel to allege incompetency of witness) in *Montgomery v. Miller*, 3 *Redf.* 159.
- Fulton Fire Ins. Co. v. Baldwin**, 37 *N. Y.* 648. Followed (Liability of canal contractor for negligence) in *French v. Donaldson*, 5 *Lans.* 294; *Conroy v. Gale*, *Id.* 346; *Stack v. Bangs*, 6 *Id.* 263. Applied (Disregarding demurrer) in *People ex rel. Lord v. Crooks*, 53 *N. Y.* 649.
- Fults v. Wynn**, 2 *Lans.* 153. See (Notice of appeal in justice's court) *Code Civ. Pro.* 1881, § 3070, n.
- Funck v. Merian**, 2 *N. Y. Leg. Obs.* 126. Rev'd in 4 *Den.* 110, and the latter aff'd in *How. App. Cas.* 659, but without opinion.
- Funcke v. N. Y. Mut. Life Ins. Co.**, *N. Y. Super. Ct.* 1876. Collated with other cases (Use of photography, in connection with production of evidence) in 1 *Whart. Com. on Ev.* § 676, n.
- Funk v. Brigaldi**. See *Shaw v. Lenke*.
- Ferguson v. Tweedy**, 56 *Barb.* 168. Aff'd as *Ferguson v. Tweedy*. in 43 *N. Y.* 543.
- Furman v. Mayor, &c. of N. Y.**, 5 *Sandf.* 16. Aff'd in 10 *N. Y.* 567. See *Whitney v. Mayor, &c. of N. Y.* Decision in 5 *Sandf.* cited as authority (Right to wharfage) in *Langdon v. Mayor, &c. of N. Y.*, 6 *Abb. N. C.* 314, 328.
- **v. Van Sise**, 56 *N. Y.* 435; s. c., 15 *Am. R.* 441, with note. See *Bartley v. Richtmyer*; *Simpson v. Buck*. Applied (Who may maintain action for seduction) in *Certwell v. Hoyt*, 6 *Hun.* 575, 577, 580; *Lavery v. Crooke*, 52 *Wis.* 619. Cited with approval in 4 *Am. Dec.* 405, n. Collated with other cases in *Bigel. Cas. on Torts*, 303. See 10 *Alb. L. J.* 354. Cited in *Tyler on Inf. & Cov.* 2 ed., § 190, as showing tendency of later decisions.
- **v. Walter**, 13 *How. Pr.* 348. Qualified and followed (Moving to discharge attachment) in *Gasherie v. Apple*, 14 *Abb. Pr.* 64, 67.
- Furman Street, Matter of**, 17 *Wend.* 649; s. c., 13 *N. Y. Com. L. Law. ed.* 265, with brief note. See *Matter of Albany St.*; *Matter of Mercer St.* Cited (Nature of power to grade and improve streets) in *McCormack v. Patchin*, 53 *Mo.* 33; s. c., 14 *Am. R.* 440.
- Furniss v. Ferguson**, 15 *N. Y.* 437. Further decision in 3 *Robt.* 269, and that aff'd in 34 *N. Y.* 485.
- **v. Furniss**, 51 *How. Pr.* 64. Further proceeding in 2 *Redf.* 497.
- Furst v. Second Av. R. R. Co.**, 72 *N. Y.* 542. Disting'd (Effect of error in receiving evidence) in *Logan v. Ogdensburgh, &c. R. R. Co.*, 18 *Weekly Dig.* 335; *McCarney v. People*, 83 *N. Y.* 408, 417.

## G.

- Gable v. Miller**, 10 *Paige*, 627. Rev'd in 2 *Den.* 492. See *Field v. Field*; *First Baptist Church v. Witherell*.
- Gaffney v. Bigelow**, 48 *How. Pr.* 475. Rev'd in 2 *Abb. N. C.* 311.
- **v. People**, 1 *Buff. Super. Ct. (Sheldon)* 304; s. c., 14 *Abb. Pr. N. S.* 36. Aff'd in part in 50 *N. Y.* 416. See *Speyer v. Stern*. Decision in 50 *N. Y.* followed (Impeachment of witness by proof of inconsistent statement) in *Pratt v. Norton*, 2 *Hun.* 517.
- Gage v. Angell**, 8 *How. Pr.* 335. Disapproved (Counter-claim between partners) in *Ives v. Miller*, 19 *Barb.* 196. Approved in *Waddell v. Darling*, 51 *N. Y.* 327, 332.
- **v. Brewster**, 30 *Barb.* 387. Rev'd in 31 *N. Y.* 218, as stated in 28 *How. Pr.* 582. Statement in 31 *N. Y.* 228, that judgment was aff'd, is erroneous. See *People v. Beebe*. Decision in 31 *N. Y.* disapproved (Merger of mortgage lien in judgment of foreclosure) in *Evansville Gas Light Co. v. State of Indiana*, 73 *Ind.* 219, 228.
- **v. Dauchy**, 28 *Barb.* 622. Rev'd in 34 *N. Y.* 293. See *Buckley v. Wells*. Decision in 34 *N. Y.* followed (Property of married woman not liable to husband's creditors) in *Whedon v. Champlin*, 59 *Barb.* 61.



- Gage v. Kendall**, 15 *Wend.* 639. Examined, in connection with provisions of Code Pro., with *City Bank v. Perkins*, 29 *N. Y.* 568; *Brown v. Penfield*, 36 *Id.* 475 (Right of action on promissory note) in *Sanford v. Sanford*, 45 *Id.* 723. Modified in *Hays v. Hathorn*, 64 *Id.* 486, 490. Included in 1 *Ames Cas. on B. & N.* 326.
- Gahagan v. People**, 1 *Park.* 378. See *People v. Humphrey*. Applied (proof of marriage) in *Halbrook v. State*, 34 *Ark.* 511; s. c., 36 *Am. R.* 17, 21. Quoted and explained in 1 *Bish. on Mar. & D.* § 499, 6 ed. Explained and cases cited to the contrary in 3 *Greenl. on Ev.* 14 ed. § 204, n. c.
- Gahn v. Niemcewicz**, 11 *Wend.* 312. Explained (Discharge of surety by indulgence to principal debtor) in *Hubbard v. Gurney*, 64 *N. Y.* 457, 468. Followed with *King v. Baldwin*, 2 *Johns. Ch.* 559; *Fulton v. Matthews*, 15 *Johns.* 433; *Pain v. Packard*, 13 *Id.* 174, in *Burke v. Cruger*, 8 *Ter.* 65; s. c., 58 *Am. Dec.* 102. Cited and approved with *Halliday v. Hart*, 30 *N. Y.* 474, as applicable to sureties on penal bonds, in *Lindeman v. Rosenfield*, 67 *Ind.* 246; s. c., 33 *Am. R.* 79, 83, with note. Cited as authority (Right of wife to mortgage her separate estate) in *Sampson v. Williamson*, 6 *Ter.* 102; s. c., 55 *Am. Dec.* 762.
- Gaillard v. Smart**, 6 *Cow.* 385. Cited (Authority of attorney of record) in *Whart. Com. on Ag.* § 585, where *People v. Mayor, &c.* of *N. Y.*, 11 *Abb. Pr.* 66; *Clusman v. Merkel*, 3 *Bosw.* 402; *Read v. French*, 28 *N. Y.* 285; *Quinn v. Lloyd*, 5 *Abb. Pr.* 281, are, however, cited as showing the limitations upon such authority. Collated with *Ford v. Williams*, 13 *N. Y.* 577, and many other cases, in 30 *Am. R.* 358, n.
- Galatian v. Erwin**, *Hopk.* 48. Aff'd as *Galatian v. Cunningham*, in 8 *Cow.* 361.
- Gale, Matter of**, 75 *N. Y.* 526. Explained (Disbarring attorney for misconduct) in 2 *Greenl. on Ev.* 14 ed. § 147, n. a.
- Gale v. Mead**, 4 *Hill*, 109. Aff'd in 2 *Den.* 232.
- **v. Miller**, 1 *Lans.* 451. Aff'd in 54 *N. Y.* 536. Previous decision in 44 *Barb.* 420.
- **v. N. Y. Central, &c. R. R. Co.**, 53 *How. Pr.* 385. Aff'd in 13 *Hun.* 1, and that aff'd in 76 *N. Y.* 594. See *Dana v. Tucker*. Decision in 53 *How. Pr.* collated with other cases (Setting aside verdict on ground of juror having been improperly influenced) in 48 *Am. R.* 347, n.
- **v. Nixon**, 6 *Cow.* 445. See *Ellis v. Hoskins*; *Vincent v. Germond*. Cited as authority (Action of covenant on sealed instrument) in *Johnsons v. Muzzy*, 45 *Vt.* 419; s. c., 12 *Am. R.* 214, 217.
- Gallagher v. Brunel**, 6 *Cow.* 346. Applied (Right of action cannot be based on contract void by statute of frauds) in *Dung v. Parker*, 52 *N. Y.* 494, 499. Discussed in *Browne on Stat. of Frauds*, § 183, 4 ed.
- Gallagher, Estate of**. See *Macpherson v. Clark*.
- Gallagher v. Egan**, 2 *Sandf.* 742. Disting'd (Sheriff's fees) in *Croft v. Brandt*, 58 *N. Y.* 106, 112, which aff'd 5 *Daly*, 124, 126, which see. Criticised (Costs on discontinuance of suit) in *Pennell v. Wilson*, 2 *Abb. Pr. N. S.* 466.
- **v. Waring**, 9 *Wend.* 20. Aff'd as *Waring v. Mason*, in 18 *Id.* 425. See *Howard v. Hoey*.
- **v. Vought**. See *Williams v. Hutchinson*.
- **v. White**. See *Moakley v. Riggs*.
- Gallarati v. Orser**, 4 *Bosw.* 94. Rev'd in 27 *N. Y.* 324. Decision in 4 *Bosw.* with *Metcalfe v. Stryker*, 31 *Barb.* 62 followed (Sheriff's liability as bail) in *Bensel v. Lynch*, 2 *Robt.* 448. Decision in 27 *N. Y.* applied (Liability of sureties on replevin bond) in *Hager v. Clute*, 10 *Hun.* 447, 449. Followed in *Jaggar v. Lalance & Grosjeau Mfg. Co.*, 8 *Daly*, 251, 253.
- Galleo v. Eagle**, 1 *Sup'm. Ct. (T. & C.)* 124; s. c., as *Gallie v. Eagle*, with points of counsel, 65 *Barb.* 583. See (Action by infant for partition) *Code Civ. Pro.* 1881, § 1534, n.
- Gallup v. Albany Ry. Co.**, 7 *Lans.* 471. Aff'd in 65 *N. Y.* 1.
- **v. Babson**, 3 *Hun.* 598; s. c., 6 *Sup'm. Ct. (T. & C.)* 400. Appeal dismissed, it seems, in 68 *N. Y.* 615, but without opinion.
- **v. Lederer**, 1 *Hun.* 282; s. c., 3 *Sup'm. Ct. (T. & C.)* 710. For action against same defendant, and arising out of similar transaction, see *Bassett v. Lederer*, 1 *Hun.* 274; s. c., 3 *Sup'm. Ct. (T. & C.)* 671.
- **v. Perne**, 10 *Hun.* 525. Followed, but point not indicated, in *Bullard v. Sherwood*, 22 *Id.* 462, which was rev'd in 85 *N. Y.* 253.
- **v. Wright**, 61 *How. Pr.* 286. Reviewed with *Lefevre v. Lefevre*, 29 *N. Y.* 434; *Trustees v. Colgrove*, 4 *Hun.* 362, and other cases (Extrinsic evidence to identify devise, &c.) in 46 *Am. R.* 76, n.
- Galoupeau v. Ketchum**. See *Mead v. Bunn*.
- Galway v. U. S. Steam Sugar Refining Co.**, 13 *Abb. Pr.* 211; s. c., 21 *How. Pr.* 313. Aff'd in 36 *Barb.* 256.
- Gambling v. Haight**, 14 *Abb. Pr. N. S.* 398, n. Aff'd in 5 *Daly*, 152; and that aff'd in 58 *N. Y.* 623.
- Gandal v. Finn**, 13 *How. Pr.* 418; s. c., 23 *Barb.* 652. Rev'd as *Gandall v. Finn* in 33 *How. Pr.* 444; s. c., 1 *Keyes*, 217; 2 *Abb. Ct. App. Dec.* 232. See *Moody v. Townsend*; *Stebbins v. East Soc. of M. E. Church*.
- Gans v. Frank**, 36 *Barb.* 320. See (Effect of foreign statute of limitations) *Code Civ. Pro.* 1881, § 390, n.
- Gansevoort v. Williams**, 14 *Wend.* 133. See *Dob v. Halsey*. Disting'd (Liability on firm note issued by partner) in *Osgood v. Glover*, 7 *Daly*, 367, 371. Explained in 1 *Collyer on Partn.* § 416, n. 1, *Wood's Am. ed.* Referred to as authority (Indorsement of accommodation paper, not within ordinary

- scope of partnership business) in *Tanner v. Hall*, 1 *Pa. St.* 417, which is cited in 13 *Am. Dec.* 117, *n.*
- Ganson v. Tift**, 71 *N. Y.* 48. Qualified (Instructing jury to disregard) in *Abb. Tr. Brief*, XVII. 15. See authorities reviewed (Subleases and assignments) in 16 *Am. L. Rev.* 31.
- Gantz, Matter of**, 23 *Hun.* 350. Rev'd in 85 *N. Y.* 536.
- Garbutt v. Smith**, 40 *Barb.* 22. Disting'd (When crops, &c. may be levied on under execution against grantor in fraudulent conveyance) in *Pierce v. Hill*, 35 *Mich.* 194; *s. c.*, 24 *Am. R.* 541, 545.
- Garcie v. Sheldon**, 3 *Barb.* 232. Doctrine discussed, and cases to the contrary cited (Damages by reason of injunction) in 2 *Am. L. Reg. N. S.* 547.
- Gardere v. Columbian Ins. Co.**, 7 *Johns.* 514. See *Delafield v. Hand*. Followed with *Schieffelin v. N. Y. Ins. Co.*, 9 *Johns.* 21; *Grim v. Phoenix Ins. Co.*, 13 *Id.* 451 (Master of vessel acts as agent of owner of cargo) in *Natchez Ins. Co. v. Stanton*, 2 *Smedes & M. (Miss.)* 340; *s. c.*, 41 *Am. Dec.* 592, 597, with note.
- Gardiner v. Clark**, 6 *How. Pr.* 449. Overruled (Plea in abatement) by further decision in 21 *N. Y.* 399.
- **v. Gardiner**, 34 *N. Y.* 155. Applied (Undue influence on testator) in *Burk's Will*, 2 *Redf.* 239, 243; *Mairs v. Freeman*, 3 *Id.* 184; *McCoy v. McCoy*, 4 *Id.* 58. Disting'd in *Fagan v. Dugan*, 2 *Id.* 341, 346. Approved as containing a well-stated rule in *Wade v. Halbrook*, *Id.* 378, 387.
- **v. —**, 3 *Abb. N. C.* 1. See (Arrest) *Code Civ. Pro.* 1881, § 550, *n.*
- **v. Pollard**, 10 *How.* 674. Approved (Action by stockholder against trustees of corporation, when not maintainable) in *Smith v. Rathbun*, 66 *Barb.* 402, 410.
- **v. Smith**, 1 *Johns. Cas.* 142. Followed (Effect of provision in marine policy, covering goods until "landed") in *Chadsey v. Guion*, 48 *Super. Ct. (J. & S.)* 267. Collocated, with other cases (What constitutes constructive total loss) in 2 *Hare & W. Am. Lead. Cas.* 706.
- **v. Tyler**, 2 *Abb. Ct. App. Dec.* 247; *s. c.*, 3 *Keyes*, 506. Applied (Allowance to receiver) to lunatic's committee, in *Matter of Colah*, 6 *Daly*, 51, 58.
- **v. —**, 36 *How. Pr.* 63. Aff'd as *Gardner v. Tyler*, in 5 *Abb. Pr. N. S.* 33.
- Gardner v. Adams**, 12 *Wend.* 297. Dissented from (Assignability of cause of action) in *Howell v. Kroose*, 2 *Abb. Pr.* 172; *Robinson v. Weeks*, 6 *How. Pr.* 161. Explained in *People v. Tioga Com. Pl.*, 19 *Wend.* 73. Commented on and questioned in *Hall v. Robinson*, 2 *N. Y.* 295. So referred to in *Hyde v. Tufts*, 45 *Super. Ct. (J. & S.)* 56, 58. Explained in *Burrill on Assign.* § 100, *n.* 3, 4 *ed.*
- **v. Astor**, 3 *Johns. Ch.* 53; *s. c.*, 8 *Am. Dec.* 465. Approved with *Mills v. Com-*
- stock*, 5 *Id.* 214; *Starr v. Ellis*, 6 *Id.* 393 (Merger of legal and equitable claims) in *James v. Morey*, 2 *Cow.* 246, 304, 318.
- **v. Barney**, 24 *How. Pr.* 467. Followed (Liability of sureties on undertaking on appeal) in *Richardson v. Kropf*, 5 *Daly*, 385. Disting'd in *Hinckley v. Kreitz*, 58 *N. Y.* 583, 588, which rev'd 36 *Super. Ct. (J. & S.)* 413, which see.
- **v. Bartholomew**, 40 *Barb.* 325. Approved in part and criticised in part (Conviction of crime as impeaching evidence) in *Sims v. Sims*, 75 *N. Y.* 473. Cited in 1 *Whart. Com. on Ev.* § 569.
- **v. Bennett**, 38 *Super. Ct. (J. & S.)* 197. Followed (Principal, when not liable for negligence of contractor's servants) in *Burmeister v. N. Y. Elevated R. R. Co.*, 47 *Id.* 264, 268.
- **v. Board of Health**, 4 *Sandf.* 153. Aff'd in 10 *N. Y.* 409. Decision in 10 *N. Y.* criticised (What is corporation capable of being sued) in *Clarissy v. Metropolitan Fire Department*, 7 *Abb. Pr. N. S.* 352, 358. Disting'd in *Maximilian v. Mayor, &c. of N. Y.*, 2 *Hun.* 263, 268.
- **v. Buckbee**, 3 *Cow.* 120; *s. c.*, 15 *Am. Dec.* 256; 8 *N. Y. Com. L. Law. ed.* 72, with brief note. See *Rice v. King*. Followed as having been approved by the U. S. Sup'm. Ct. and frequently recognized by the Indiana Sup'm. Ct. (Effect of judgment on one of series of notes) in *Cleveland v. Creviston*, 93 *Ind.* 31; *s. c.*, 47 *Am. R.* 367. Disting'd in *Felton v. Smith*, 88 *Ind.* 149; *s. c.*, 45 *Am. R.* 454. Explained in 2 *Pars. on Contr.* 729, *n. o.* Relied on with *Wright v. Butler*, 6 *Wend.* 289 (Giving in evidence matter not pleaded as estoppel) in *Isaacs v. Clark*, 12 *Vt.* 692; *s. c.*, 36 *Am. Dec.* 372.
- **v. Campbell**. See *Thompson v. Button*.
- **v. Clark**, 17 *Barb.* 538. Disting'd (Examination of assignor of thing in action as witness) in *Forward v. Harris*, 30 *Id.* 338, 344. Dissented from in *Carpenter v. Smith*, 4 *E. D. Smith*, 383.
- **v. Commissioners of Warren**, 10 *How. Pr.* 181. Compare (Issuing writ of certiorari without notice) *People v. City of Rochester*, 21 *Barb.* 656. Followed (Certiorari not to be granted by judge at chambers) in *People ex rel. Kilmer v. McDonald*, 2 *Hun.* 70, 73. See *Code Civ. Pro.* 1881, § 2127, *n.*
- **v. Gardner**, 5 *Paige*, 170. Explained and corrected (*Ex parte* application for dismissal of appeal from surrogate's decision) in *Suffern v. Lawrence*, 4 *How. Pr.* 129.
- **v. —**, 7 *Paige*, 112. Rev'd in 22 *Wend.* 526; *s. c.*, 34 *Am. Dec.* 340, with note, wherein it is shown to have been frequently recognized as authority both in N. Y. and elsewhere. See *Grangiac v. Arden*; *Jaques v. M. E. Church*. Decision in 7 *Paige* explained (Surrogate's power to enforce right of subrogation) in *Leviness v. Cassebeer*, 3 *Redf.* 497. Applied with

- Boughton v. Flint**, 74 *N. Y.* 476; *Shakespeare v. Markham*, 72 *Id.* 400; *Kyle v. Kyle*, 67 *Id.* 400; *Kearney v. McKeon*, 85 *Id.* 136; *Baucus v. Stover*, 89 *Id.* 1, and *Richardson v. Root*, 19 *Hun.* 473, disting'd (Claims within jurisdiction of surrogate) in *Matter of Potter*, 32 *Id.* 599. Decision in 22 *Wend.* included (Drunkenness as affecting capacity to make will) in *Redf. Lead. Cas. on Wills*, 311.
- **v. Heartt**, 2 *Barb.* 165. Rev'd in 1 *N. Y.* 528. Other proceedings in 1 *Den.* 466; 3 *Id.* 232. See *Mayor, &c. of N. Y. v. Bailey*. Decision in 3 *Den.* cited with other cases (Gross negligence) in 14 *Am. L. Reg. N. S.* 268.
- **v. Heyer**. See *Cromer v. Pinckney*.
- **v. Kelly**, 2 *Sandf.* 632. Disting'd (Security for costs) as inapplicable to case of pendency of appeal, in *Flint v. Van Deusen*, 24 *Hun.* 440, 442.
- **v. Keteltas**, 3 *Hill.* 330. Quoted and collated with other cases (Lessor's duty to give lessee possession) in *McAdam on Landl. & T.* 2 ed. § 78.
- **v. McEwen**, 19 *N. Y.* 123. See *Wood v. Lowry*. Approved, but disting'd, with *Edgell v. Hart*, 9 *N. Y.* 213 (Effect of agreement enabling mortgagor of chattels to remain in possession and sell) in *Konkling v. Shelley*, 28 *Id.* 362. Approved in *Southard v. Benner*, 7 *Daly.* 41, 43. Disting'd (Mortgage of after-acquired property) in *McCaffrey v. Woodin*, 65 *N. Y.* 467. Applied and *Seymour v. Canandaigua, &c. R. R. Co.*, 25 *Barb.* 284; *Stevens v. Watson*, 4 *Abb. Ct. App. Dec.* 302; *McCaffrey v. Woodin*, 65 *N. Y.* 460, disting'd in *Farmer's Loan & Trust Co. v. Long Beach Impr. Co.*, 27 *Hun.* 89. Cited with approval in *Griffith v. Douglass*, 73 *Me.* 532; s. c., 40 *Am. R.* 395; 14 *Reporter*, 494.
- **v. Mayor, &c. of Troy**, 26 *Barb.* 423. See *Rheel v. Hicks*; *Schwinger v. Hickcock*. Disting'd (Recovery back of consideration money paid for real estate, title to which is void) in *Granger v. Olcott*, 1 *Lans.* 169.
- **v. Miller**, 19 *Johns.* 188. Disting'd (Suits between executors) in *Bates v. Underhill*, 3 *Redf.* 371. Cited as authority (Liability of executor for debt due his testator) in *Kaster v. Pierson*, 27 *Iowa*, 90; s. c., 1 *Am. R.* 254.
- **v. Ogden**, 22 *N. Y.* 327. See *Torrey v. Bank of Orleans*. Applied (Power of trustees, &c. to purchase, &c.) in *Green v. Green*, 2 *Redf.* 408, 412. Disting'd in *Lingke v. Wilkinson*, 57 *N. Y.* 445, 451. Cited (Agent not to use trust information against his principal) in *Whart. Com. on Ag.* § 241. See (Jurisdiction in actions affecting lands out of State) *Code Civ. Pro.* § 982, n. Included in *Zinn's Lead. Cas. on Trusts*, 115. Approved (Joinder of causes of action) in *Pomeroy on Rem.* § 481.
- **v. People**, 3 *Hun.* 222; s. c., 5 *Sup'm. Ct. (T. & C.)* 678. Aff'd in 62 *N. Y.* 299. Decision in *Id.* cited as authority (Guilt when irrespective of motive or intent) in *Cowley v. People*, 8 *Abb. N. C.* 1, 37. Disting'd (Jurisdiction of courts of sessions) in *Ryan v. People*, 79 *N. Y.* 599.
- **v. Picket**, 19 *Wend.* 186. Cited (When trial judge may properly comment on the evidence) in *Potts v. House*, 6 *Ga.* 324; s. c., 50 *Am. Dec.* 329, 341, with note.
- **v. Thomas**. See *Johnson v. Dalton*.
- **v. Trustees of Newburgh**, 2 *Johns. Ch.* 161; s. c., 7 *Am. Dec.* 526, with note, wherein it is said to have been extensively followed as an authority. See *Canal Com'r's v. People*; *People v. Canal Appraisers*; *Reid v. Gifford*. Said in *Olmsted v. Loomis*, 9 *N. Y.* 423, to be, even if overruled by *Reid v. Gifford*, 6 *Johns. Ch.* 19, yet re-aff'd (Restraining diversion of water) by *Belknap v. Trimble*, 3 *Paige*, 577, 585, 600. Followed in *Plumleigh v. Dawson*, 1 *Gilm. (Ill.)* 544; s. c., 41 *Am. Dec.* 199, 202, with note; *Campbell v. Smith*, 3 *Halst. (N. J.)* 140; s. c., 14 *Am. Dec.* 400. Cited as authority in dissenting opinion of *Alvey, J.*, in *Mayor, &c. of Cumberland v. Willison*, 50 *Md.* 138; s. c., 33 *Am. R.* 316, n. Followed (Right to compensation for private property taken for public use) in *Ex parte Martin*, 13 *Ark.* 198; s. c., 58 *Am. Dec.* 321. Followed and approved in *Hooker v. New Haven & N. Co.*, 14 *Conn.* 146; s. c., 36 *Am. Dec.* 477, 484, with note. Followed with *Crittenden v. Wilson*, 5 *Cow.* 166 (last case said to be limited by *Rogers v. Bradshaw*, 2 *Johns.* 735), (Liability of one who interferes with private property though he act in pursuance of a statute) in *Sinnickson v. Johnson*, 2 *Harr. (N. J.)* 129; s. c., 34 *Am. Dec.* 184. See also *Rogers v. Bradshaw*; *Calking v. Baldwin*, 4 *Wend.* 667; *Steele v. Western Inland, &c. Co.*, 2 *Johns.* 283, cited in concurring opinion of *Nevius, J.* Disting'd with *Brown v. Cayuga & Susquehanna R. R. Co.*, 12 *N. Y.* 486; *Rochester White Lead Co. v. City of Rochester*, 3 *Id.* 463; *Radcliff v. Mayor of Brooklyn*, 4 *Id.* 195; *Bailey v. Mayor of N. Y.*, 3 *Hill.* 531, but *Bloodgood v. Mohawk & Hudson R. R. Co.*, 14 *Wend.* 51; *Beekman v. Saratoga & Schenectady R. R. Co.*, 3 *Paige*, 45, relied on in *Slatten v. Des Moines Valley R. R. Co.*, 29 *Iowa*, 148; s. c., 4 *Am. R.* 205.
- **v. Turner**, 9 *Johns.* 260. Doubted (Effect of triors' finding against challenge to juror) in *Pringle v. Huse*, 1 *Conn.* 435.
- Garfield v. Hatmaker**, 15 *N. Y.* 475. See *McCartney v. Bostwick*; *Wood v. Robinson*. Applied (Enforcement of pure trusts in favor of creditors against grantee of land) in *McCartney v. Bostwick*, 32 *N. Y.* 53. Disting'd in *Underwood v. Sutcliffe*, 77 *Id.* 58. This and other earlier cases as *Wood v. Robinson*, 22 *Id.* 564; *McCartney v. Bostwick*, 32 *Id.* 53, that regarded such trust as enforceable without taking any legal proceedings against debtor are con-

- trusted with later decisions that confine remedy to judgment creditors, as *Ocean Nat. B'k v. Olcott*, 46 *N. Y.* 12; *Dunlap v. Hawkins*, 59 *Id.* 342; 2 *Sup'm. Ct. (T. & C.)* 292, in 2 *Pomeroy on Eq. Jur.* 615. See *Code Civ. Pro.* 1881, § 1431, *n.*
- Garland v. Chattle**, 12 *Johns.* 430. Discussed (Service of process so as to avoid bar of statute of limitations) in *Ang. on Limit.* § 317, 6 ed.
- Garlick v. Strong**. See *Shepard v. Shepard*; *Simar v. Canaday*.
- Garlinghouse v. Jacobs**, 29 *N. Y.* 297. Explained and commented on in connection with *Robinson v. Chamberlain*, 34 *Id.* 389 (Liability of highway commissioners) in *Hover v. Barkhoof*, 44 *Id.* 113. Disting'd in *Day v. Crossman*, 1 *Hun.* 571.
- Garner v. Hannah**, 6 *Duer*, 262. Applied (Remedy under re-entry clause in lease) in *Giles v. Austin*, 38 *Super. Ct. (J. & S.)* 215, 237, 242, 244, which was aff'd in 62 *N. Y.* 486, which see.
- **v. Thorn**, 56 *How. Pr.* 452; *s. c.*, more fully, as *Garner v. Harmony Mills*, 6 *Abb. N. C.* 212.
- **v. Wright**, 24 *How. Pr.* 144. Further decision in 28 *Id.* 92.
- Garniss v. Gardiner**, 1 *Edw.* 128. Applied (Allowance of compound interest) in *Bennett v. Cook*, 2 *Hun.* 526, 530.
- Garnsey v. Knights**, 1 *Sup'm. Ct. (T. & C.)* 259. Aff'd, it seems, in 60 *N. Y.* 646, but without opinion.
- **v. Rogers**, 47 *N. Y.* 233. Another decision as *Garnsey v. Knights*, which see. See *Campbell v. Smith*; *Hamill v. Gillespie*; *Lawrence v. Fox*; *Marsh v. Pike*. Explained and applied (Liability of one assuming payment of mortgage) in *Ranney v. McMullen*, 5 *Abb. N. C.* 258. Applied in *Whiting v. Gearty*, 14 *Hun.* 501; *Douglass v. Wells*, 18 *Id.* 93; *Deyermard v. Chamberlin*, 22 *Id.* 114; *Thayer v. Marsh*, 11 *Id.* 504. Examined with other cases in *Vrooman v. Turner*, 69 *N. Y.* 284; *Real Estate Co. v. Balch*, 45 *Super. Ct. (J. & S.)* 533. Disting'd in *Campbell v. Smith*, 8 *Hun.* 6, which was aff'd in 71 *N. Y.* 28, which see; *Pardee v. Treat*, 18 *Hun.* 301, which was rev'd in 82 *N. Y.* 388, which see. Explained in *Thomas on Mort.* 187. Disting'd (Right of third party to enforce promise made for his benefit) in *Schindler v. Euell*, 45 *How. Pr.* 36; *Barlow v. Myers*, 3 *Hun.* 720, 724. Applied in *Roe v. Barker*, 82 *N. Y.* 435. Followed and *Burr v. Beers*, 24 *Id.* 178; *Hutchings v. Minor*, 46 *Id.* 456; *Hand v. Kennedy*, 83 *Id.* 149; *Vrooman v. Turner*, 69 *Id.* 280; *Kent v. Quicksilver M. Co.*, 12 *Hun.* 53; 78 *N. Y.* 159; *Boardman v. Lake Shore, &c. R. R. Co.*, 84 *Id.* 157, disting'd in *People ex rel. Content v. Metropolitan Elev. R'y Co.*, 26 *Hun.* 82. Reviewed with *Simson v. Brown*, 6 *Id.* 251; 68 *N. Y.* 355; *Stephens v. Casbacker*, 8 *Hun.* 116 (Whether parties can release assumption before creditor has accepted it), and the question answered in the affirmative, in *Gilbert v. Sanderson*, 56 *Iowa*, 349; *s. c.*, 41 *Am. R.* 103.
- Garr v. Bright**, 1 *Barb. Ch.* 157. See (Jurisdiction against State) *People v. Denison*, 9 *Abb. N. C.* 128, and cases cited in 130, *n.*
- **v. Gomez**, 9 *Wend.* 649. Followed (Right to sue on negotiable paper) in *Thompson v. Cartwright*, 1 *Tex.* 87; *s. c.*, 46 *Am. Dec.* 95, with note.
- **v. Martin**, 1 *Hill.* 358. Rev'd in 20 *N. Y.* 306.
- **v. Selden**, 6 *Barb.* 416. Rev'd in 4 *N. Y.* 91; *s. c.*, more fully, as *Selden v. Garr*, in 9 *N. Y. Leg. Obs.* 137. Decision in 6 *Barb.* opposed (Words not actionable *per se*) in *Ganvreau v. Superior Publishing Co.*, 62 *Wis.* 403, 408.
- Garretson v. Clark**, *Hill & D.* 162. Disting'd (Effect of authority to "lay out" street) in dissenting opinion of *Moller, J.*, in *Matter of Deering*, 85 *N. Y.* 1, 14.
- Garrigue v. Loescher**, 3 *Bosw.* 578. Compare (Allegation of assignment of cause of action) *Bowman v. Kelman*, 65 *N. Y.* 598. See also *Abb. Tr. Ev.* 2.
- Garrison v. Akin**, 2 *Barb.* 25. Quoted and discussed (Admissions as evidence) in 2 *Best on Ev.* § 519, *n. a.*, *Wood's ed.*
- **v. Howe**, 17 *N. Y.* 458. See *Corning v. McCullough*; *Moss v. Oakley*; *Wiles v. Suydam*. Applied (Liability of trustees of corporation) in *Shaler & Hall Quarry Co. v. Brewster*, 10 *Abb. Pr.* 467; *Bird v. Hayden*, 2 *Abb. Pr. N. S.* 67; *Huguenot Nat. B'k v. Studwell*, 6 *Daly*, 15; *Craw v. Easterly*, 1 *Lans.* 522; *Shaler & Hall Quarry Co. v. Bliss*, 27 *N. Y.* 297, 300; *Bruce v. Platt*, 80 *Id.* 381; *Nimmons v. Hennion*, 2 *Sweeney*, 667. Explained in *McHarg v. Eastman*, 4 *Robt.* 638. Approved in *Reed v. Kerce*, 37 *Super. Ct. (J. & S.)* 275. Applied in *Stern Engine Co. v. Hubbard*, 101 *U. S.* 188, 192, 196. Approved with *Boughton v. Otis*, 21 *N. Y.* 261; *Chambers v. Lewis*, 28 *Id.* 454; *Shaler & Hall Quarry Co. v. Bliss*, 34 *Barb.* 309; *Bank of California v. Collins*, 5 *Hun.* 209; *Reynolds v. Mason*, 54 *How. Pr.* 213, in *Mitchell v. Hotchkiss*, 48 *Conn.* 9; *s. c.*, 40 *Am. R.* 146. Applied (Liability of stockholders) to case arising under banking law, in *Matter of Hollister Bank*, 27 *N. Y.* 298. Explained in *Collins v. Coghill*, 7 *Robt.* 93. Disting'd with *Lewis v. Ryder*, 13 *Abb. Pr.* 1, in *McIntyre v. Strong*, 48 *Super. Ct. (J. & S.)* 127. Applied (Set off of claim as creditor against liability as stockholder) in *Matter of Empire City B'k*, 18 *N. Y.* 227; *Mathez v. Neidig*, 72 *Id.* 105. Applied (Right of stockholder to contribution when sued to enforce his individual liability) in *Aspinwall v. Torrance*, 1 *Lans.* 385. Examined with other cases (Effect of contingent liability) in *Leggett v. Bank of Sing Sing*, 24 *N. Y.* 292. Cited as authority (Place of contract for services) in *Mullin v. Hicks*, 49 *Barb.* 250, 254. Disting'd (Who

- may bring action to charge trustee, &c.) in *Anderson v. Speers*, 21 *Hun*, 571. Applied (Action by single creditor to enforce stockholder's liability) in *Weeks v. Love*, 50 *N. Y.* 570.
- *v. Mayor, &c. of N. Y.* See *McGinity v. Mayor, &c. of N. Y.*
- Garson v. Green**, 1 *Johns. Ch.* 308. Cited and followed (Vendor's lien on real estate) in *Manly v. Slason*, 21 *Vt.* 271; s. c., 52 *Am. Dec.* 60, with note. Followed (Presumption as to existence of such lien) in *Briscoe v. Bronaugh*, 1 *Tex.* 326; s. c., 46 *Am. Dec.* 103, 112, with note. Disting'd in *Kendrick v. Eggleston*, 56 *Iowa*, 128; s. c., 41 *Am. R.* 90; 12 *Reporter*, 77.
- Garvey, Matter of**, 77 *N. Y.* 523. Applied (Width of flagging of side-walk) in *Matter of Blodgett*, 27 *Hun*, 12. Disting'd (What is repavement) in *Matter of Grube*, 81 *N. Y.* 130, 141; *Matter of Brady*, 85 *Id.* 268, 271.
- Garvey v. Fowler**, 4 *Sandf.* 667. Applied (Necessity of averring facts that excuse giving notice of non-payment of note, &c.) in *Clift v. Rodger*, 25 *Hun*, 39, 42.
- *v. Jarvis*, 54 *Barb.* 179. Aff'd in 46 *N. Y.* 310.
- *v. McCue*, 3 *Redf.* 313. Rev'd in 14 *Hun*, 562. Contrary to decision in 3 *Redf.* see authorities from other States cited (Husband's right to charge wife's funeral expenses against her separate estate) in 19 *Am. L. Rev.* 262.
- *v. McDevitt*, 11 *Hun*, 457. Aff'd in 72 *N. Y.* 556.
- Garwood v. N. Y. Central, &c. R. R. Co.**, 17 *Hun*, 356. Aff'd in 83 *N. Y.* 400; s. c., 38 *Am. R.* 452. Decision in 83 *N. Y.* relied on with *Olmsted v. Loomis*, 9 *Id.* 423; *Markham v. Stowe*, 66 *Id.* 574; *Comstock v. Johnson*, 46 *Id.* 615; *Corning v. Troy I. & N. Factory*, 40 *Id.* 191 (Equitable remedy for breach of contract for use of water) in *Lawson v. Menasha Wooden-Ware Co.*, 59 *Wis.* 393; s. c., 48 *Am. R.* 528.
- Gasherie v. Apple**, 14 *Abb. Pr.* 64. Followed (When threats of assignment will sustain attachment) in *Anthony v. Stype*, 19 *Hun*, 265. Collated with other cases, in *Bishop on Assign.* § 223. Quoted in *Wait on Fraud. Conv.* § 342.
- Gaskin v. Anderson**, 7 *Abb. Pr. N. S.* 1; s. c., 55 *Barb.* 259. Aff'd as *Gaskin v. Meek*, in 8 *Abb. Pr. N. S.* 312; s. c., 42 *N. Y.* 186. With decision in *Id.* see criticisms (Constitutionality of laws embracing subjects not disclosed by title) in *Kerrigan v. Force*, 68 *N. Y.* 381.
- *v. Meek*. See *Gaskin v. Anderson*.
- Gasper v. Adams**, 24 *Barb.* 287. Cited (Amendment after trial) in *Barnett v. Meyer*, 10 *Hun*, 110.
- Gates v. Andrews**, 37 *N. Y.* 657. Disting'd (Limitation of action in case of fraud) in *Morris v. Budlong*, 78 *Id.* 543, 559. Disting'd as turning on the terms of the statute, in *Phillips v. Shipp*, 81 *Ky.* 436, 441.
- *v. Beecher*, 3 *Sup'm. Ct. (T. & C.)* 404. Aff'd in 60 *N. Y.* 518; s. c., 19 *Am. R.* 207. Decision in *Id.* followed (Power of partner after dissolution) in *Hart v. Woodruff*, 24 *Hun*, 510, 512. Cited with *Hubbard v. Matthews*, 54 *N. Y.* 43; *Gillilan v. Sun Mut. Ins. Co.*, 41 *Id.* 376, in *Story on Partn.* 7 ed., § 328, n.
- *v. Brower*, 9 *N. Y.* 205. Disting'd (Husband's agency to contract for wife) in *Jones v. Walker*, 63 *Id.* 613. Explained in 1 *Chitty on Contr.* 239, n. o, 11 *Am. ed.*
- *v. Green*, 4 *Paige*, 355; s. c., 27 *Am. Dec.* 68, 71, with note, wherein it is said to have, among other cases, settled in *N. Y.* the doctrine (Effect of destruction of leased premises by fire). See *Graves v. Berdan*. Disting'd (Reformation of lease) in *Wilson v. Deen*, 74 *N. Y.* 531, 536.
- *v. Lounsbury*, 20 *Johns.* 427. Disting'd (When in action for trespass, intention is material) in *French v. Marstin*, 24 *N. H.* 440; s. c., 57 *Am. Dec.* 294.
- *v. McKee*, 13 *N. Y.* 232. See *Leonard v. Vredenergh*. Examined and re-aff'd (Continuing guaranty) in *Rindge v. Judson*, 24 *Id.* 65, 70, 72. Approved in *White's Bk. of Buffalo v. Myles*, 73 *Id.* 335, 341. Applied (Consideration for guaranty) in *Evansville Nat. B'k v. Kaufmann*, 24 *Hun*, 612, 615. Followed in *Dunning v. Roberts*, 35 *Barb.* 463, 469. Cited as sustaining the English doctrine, in *Benj. on Sales*, § 232, n. u (Bennett's 4 *Am. ed.*).
- *v. Madison County Mut. Ins. Co.*, 3 *Barb.* 73. Rev'd in 2 *N. Y.* 43. Subsequent decision in 5 *Id.* 469; s. c., 55 *Am. Dec.* 360, with note, containing citations. See *Burritt v. Saratoga, &c. Ins. Co.*; *Hynds v. Schenectady County Mut. Ins. Co.*; *Jennings v. Chenango, &c. Ins. Co.*; *St. John v. Am. Mut. Fire & Marine Ins. Co.* Decision in 5 *N. Y.* approved (Recovery on policy when not defeated by act of insurer) in *Mathews v. Howard Ins. Co.*, 11 *Id.* 14. Relied on with *Breasted v. Farmers' Loan & Trust Co.*, 8 *Id.* 306, in *Karow v. Continental Ins. Co. of N. Y.*, 57 *Wis.* 56; s. c., 46 *Am. R.* 16. Approved in *Troy Fire Ins. Co. v. Carpenter*, 4 *Wis.* 29; citing *O'Niel v. Buffalo Fire Ins. Co.*, 3 *N. Y.* 126. Disting'd (Warranty respecting occupancy) in *Wustum v. City Fire Ins. Co.*, 15 *Wis.* 138. Followed (Continuing warranty) in *Blumer v. Phoenix Ins. Co.*, 45 *Id.* 649. Followed with *N. Y. Equit. Ins. Co. v. Langdon*, 6 *Wend.* 623 (Hazardous use of insured premises) in *Hartford Protection Ins. Co. v. Harmer*, 2 *Ohio St.* 452; s. c., 59 *Am. Dec.* 704.
- *v. Preston*, 41 *N. Y.* 113. Applied (Former judgment as bar) in *Dunham v. Bower*, 77 *Id.* 80. Denied with *Blair v. Bartlett*, 75 *Id.* 150; *Bellinger v. Craigua*, 31 *Barb.* 534; *Dunham v. Bower*, 77 *N. Y.* 76, in *Ressequie v. Byers*, 52 *Wis.* 650; s. c., 38 *Am. R.* 775. Criticised,—*Sykes v. Bonner*, *Cin. Super. Ct.* 464, being referred to

- as holding a contrary view, and *Davis v. Tallcot*, 12 *N. Y.* 184, explained,—in 2 *Whart. Com. on Ev.* § 790. Disting'd in *Schwinger v. Raymond*, 83 *N. Y.* 192, 197. Re-aff'd (Judgment in favor of physician for services, as bar to action for malpractice) in *Blair v. Bartlett*, 75 *Id.* 152.
- *v. Ward*, 17 *Barb.* 424. Cited (Amendments in justice's and district courts) in *Lowe v. Rummell*, 5 *Daly*, 17. Approved in *Gilmore v. Jacobs*, 48 *Barb.* 336. Disting'd (Waiver of objection) in *Logan v. Ogdensburgh, &c. R. R. Co.*, 13 *Weekly Dig.* 335.
- *v. Whitcomb*, 4 *Hun*, 137; s. c. reported in 6 *Sup'm. Ct. (T. & C.)* 341.
- Gaul v. Clark**, 1 *Weekly Dig.* 209. Collated with other cases (Proceedings of imprisoned debtor to be just and fair) in *Bishop on Assign.* § 121.
- Gauntley v. Wheeler**, 31 *How. Pr.* 137. Further proceeding in 4 *Lans.* 491.
- Gautier v. Douglass M'fg Co.**, 52 *How. Pr.* 325. Modified and aff'd in 13 *Hun.*, 514. Decision in *Id.* disting'd (What is debt of trust estate) in *Storrs v. Flint*, 46 *Super. Ct. (J. & S.)* 498, 518.
- Gawtry v. Doane**, 48 *Barb.* 148. Aff'd in 51 *N. Y.* 84. See *Bank of Attica v. Phillips*. Decision in 51 *N. Y.* cited as authority (Notarial certificates as evidence) *Commercial B'k v. Varnum*, 3 *Lans.* 86 being cited (Admissibility of custom to vary duties of notary) in 1 *Whart. Com. on Ev.* § 123, n. Also cited (Entries made in notaries' books by deceased clerks) in *Id.* § 251. See *Code Civ. Pro.* 1881, § 923, n.
- Gay v. Ballou**, 4 *Wend.* 403; s. c., 21 *Am. Dec.* 158, with note. Cited with approval (Liability for necessities furnished infant without express promises) in *Tyler on Inf. & Cov.* 2 ed. § 62.
- *v. Gay*, 10 *Paige*, 369. See also decision on appeal heard *ex parte* in 3 *Ch. Sent.* 50. See *Coster v. Griswold*.
- *v. Paine*, 5 *How. Pr.* 107. Approved with *Adams v. Sherrill*, 14 *Id.* 297 (Sufficiency of averment of presentment of negotiable paper for payment) in *Ferner v. Williams*, 14 *Abb. Pr.* 215, 219. These cases overruled in effect, in *Conkling v. Gandall*, 1 *Abb. Ct. App. Dec.* 423.
- Gaylord v. Van Loan**, 15 *Wend.* 308; s. c., 12 *N. Y. Com. L. Law. ed.* 874, with brief note. Explained and disapproved, in part (Estoppel from pleading of statute of limitations) in *Shapley v. Abbott*, 42 *N. Y.* 443, 454.
- Gaylord M'fg Co. v. Allen**, 35 *Super. Ct. (J. & S.)* 571. Aff'd, it seems, in 53 *N. Y.* 515. See *Hargous v. Stone*; *Reed v. Randall*. As to decision in 53 *N. Y.* it is otherwise (Effect of acceptance by purchaser in barring claim for compensation for defects) where there is a warranty, especially if the defects are latent. See *Day v. Pool*, 52 *Id.* 416. Explained (Sale by sample) in 2 *Benj. on Sales*, § 977, n. 29 (*Corbin's 4 Am. ed.*).
- Gazley v. Price**, 16 *Johns.* 267. Questioned with *Parker v. Parmele*, 20 *Id.* 130 (Effect of covenant to give good, &c. deed) in *Fletcher v. Button*, 4 *N. Y.* 396. Denied in *Pomeroy v. Drury*, 14 *Barb.* 418. Referred to with *Parker v. Parmele*, 20 *Johns.* 130; *Fuller v. Hubbard*, 6 *Cow.* 13, as substantially overruled by *Burwell v. Jackson*, 9 *N. Y.* 535, and many other cases (*Burwell v. Jackson* being followed on this point) in *Penfield v. Clark*, 62 *Barb.* 584, 590. Referred to as overruled by *Burwell v. Jackson*, in *Delavan v. Duncan*, 49 *N. Y.* 485, 487. Cited with *Ketchum v. Evertson*, 13 *Johns.* 359, in *Kyle v. Kavanagh*, 103 *Mass.* 356; s. c., 4 *Am. R.* 560. Reviewed with *Clute v. Robinson*, 2 *Johns.* 611; *Parker v. Parmele*, 20 *Id.* 130; *Carpenter v. Bailey*, 17 *Wend.* 244; *Fletcher v. Button*, 4 *N. Y.* 396; *Pomeroy v. Drury*, 14 *Barb.* 418; *Hill v. Ressegieu*, 17 *Id.* 162; *Atkins v. Barrett*, 19 *Id.* 639; *Traver v. Halsted*, 23 *Id.* 66; *Burwell v. Jackson*, 9 *N. Y.* 535, in 11 *Am. Dec.* 84, n., as showing the course of decisions in *N. Y.* Followed in *Tinney v. Ashley*, 15 *Pick. (Mass.)* 546; s. c., 26 *Am. Dec.* 620, 624, with note.
- Geary v. Page**, 9 *Bow.* 290. See *Millsprague v. Putnam*. Followed (Delivery essential to gift) in *Northrop v. Hale*, 73 *Me.* 69.
- Geenia v. Keah**. See *Webster v. Bond*.
- Geer v. Archer**, 2 *Barb.* 420. See *Ingraham v. Gilbert*; *Nash v. Russell*. Disting'd with *Smith v. Ware*, 13 *Johns.* 257; *Ehle v. Judson*, 24 *Wend.* 97; *Bartlett v. Wyman*, 14 *Johns.* 260 (Validity of promise made in settlement of controversy) in *Vanderbilt v. Schreyer*, 91 *N. Y.* 392. Disting'd in *Scott v. Warner*, 2 *Lans.* 49. Considered and disapproved with *Nash v. Russell*, 5 *Barb.* 556; *Ingraham v. Gilbert*, 20 *Id.* 151 (When moral obligation is good consideration for promise) in *Gould v. Davidson*, 26 *N. Y.* 605. Discussed in 1 *Par. on Contr.* 435, n. v. Quoted in 1 *Story on Contr.* 5 ed., § 591, n. 2.
- *v. Kissam*, 8 *Edw.* 129. Followed (Jurisdiction to order cancellation of note) in *Hoffman v. Treadwell*, 39 *Super. Ct. (J. & S.)* 183, 187.
- Geery v. Cockroft**, 33 *Super. Ct. (J. & S.)* 146. Applied (Application of firm property to payment of individual debt) in *Ross v. Whitefield*, 36 *Id.* 50.
- *v. Geery*, 63 *N. Y.* 252. Further decision in 79 *Id.* 565. See *Chautauqua Co. Bank v. White*; *McElwain v. Willis*. Decision in 63 *Id.* followed (Necessity of enforcing remedy by execution on judgment, prior to creditor's action) in *Miller v. Miller*, 7 *Hun.* 208. Compare subsequent decision in *Miller v. Miller*, 1 *Abb. N. C.* 30. See also *Southard v. Pinckney*, 5 *Abb. N. C.* 184, and cases cited in *Id.*, n. Quoted and discussed in *Wait on Fraud. Conn.* § 80, 121.
- Geis v. Loew**, 15 *Abb. Pr. N. S.* 94. Criticised (Appealability of order requiring

- party to make pleading more definite, &c.) in *Sprague v. Dunton*, 14 *Hun*, 490.
- Gellatly v. Lowery**, 6 *Bow*, 113. Applied (Right to read entire deposition in evidence) in *Marshall v. Watertown Steam Engine Co.*, 10 *Hun*, 463, 465.
- Geller v. Hoyt**, 7 *How. Pr.* 265. Approved (Order, when not made without jurisdiction) in *Pinckney v. Hagerman*, 4 *Lans.* 374.
- Gelpcke v. Quentell**, 59 *Barb.* 250. Further decision in 66 *Id.* 617. Mem. of further decision in 74 *N. Y.* 599.
- Gelston v. Hoyt**, 1 *Johns. Ch.* 543. Another proceeding in 13 *Johns.* 141, which was aff'd in *Id.* 561, and that aff'd in 3 *Wheat. (U. S.)* 246. See *Jackson v. Potter*. Decision in 1 *Johns. Ch.* explained (Bill of discovery in aid of action sounding in damages) in *Shaw v. Van Rensselaer*, 60 *How. Pr.* 143. Criticised and limited (Bill seeking discovery in aid of jurisdiction of court) in 1 *Pomeroy on Eq. Jur.* § 197, n. 1. Decision in 13 *Johns.* examined with *Sands v. Hildreth*, 12 *Id.* 493; *Palmer v. Lorillard*, 16 *Id.* 348; *Henry v. Cuyler*, 17 *Id.* 469; *Beekman v. Frost*, 18 *Id.* 544; *Colden v. Knickerbacker*, 2 *Cow.* 31; *Campbell v. Stakes*, 2 *Wend.* 137 (Restrictions on appeal to Court of Errors) in *Stevens v. Townsend*, 1 *Doug. (Mich.)* 84. Explained (Writ of error on judgment by default) in *Colden v. Knickerbacker*, 2 *Cow.* 31.
- **v. Shields**, 16 *Hun*, 143. Aff'd in 78 *N. Y.* 275.
- Genesee River Nat. B'k v. Mead**, 18 *Hun*, 303. See *McElwain v. Willis*. Disting'd (Right to maintain action to set aside fraudulent conveyance) in *Barton v. Hosner*, 24 *Hun*, 467, 471.
- Genet, Matter of**, 3 *Sup'm. Ct. (T. & C.)* 734; s. c., 1 *Hun*, 292. Aff'd in 59 *N. Y.* 80.
- Genet v. Beekman**, 45 *Barb.* 382. Approved with *Ontario Bank v. Root*, 3 *Paige*, 482 (Right of creditor to reach trust estate too small to support debtor) in *Tolland Co. Fire Ins. Co. v. Underwood*, 50 *Conn.* 493.
- **v. Davenport**, 66 *Barb.* 412. Aff'd in 56 *N. Y.* 576. Further decisions in 58 *Id.* 607; 59 *Id.* 648; 60 *Id.* 194. With decision in 58 *Id.* compare (Costs in case of transfer, &c. of cause of action) *Code Civ. Pro.* § 3247.
- **v. Delaware & Hudson Canal Co.**, 86 *N. Y.* 625. Aff'g 10 *Weekly Dig.* 386; mem. s. c., 21 *Hun*, 588.
- **v. Lawyer**, 61 *Barb.* 211. Approved (Exclusion of testimony of co-plaintiff or co-defendant respecting transaction with deceased) in *Bennett v. Austin*, 5 *Hun*, 536, 539. Followed in *Alexander v. Dutcher*, 7 *Id.* 440. See (Several judgment) *Code Civ. Pro.* § 1205, n.
- **v. Mayor, &c. of N. Y.**, 76 *N. Y.* 625. Disting'd (Right of officer *ad interim* to compensation) in *Blunt v. Mayor &c. of N. Y.*, 60 *How. Pr.* 482, 488.
- **v. Tallmadge**, 1 *Code R. N. S.* 346. Overruled (Demurring on ground of statute of limitations) in *Butler v. Mason*, 16 *How. Pr.* 546; *Sands v. St. John*, 36 *Barb.* 628, 633.
- **v. —**, 1 *Johns. Ch.* 3. Followed (Right of father, as such, to receive legacy of child) in *Johnson v. Johnson*, 2 *Hill Ch. (S. C.)* 277; s. c., 29 *Am. Dec.* 72, 79, with note.
- Genin v. Tompkins**, 12 *Barb.* 265. See (Signature to warrant of attachment) *Code Civ. Pro.* 1881, § 641, n.
- Gentil v. Arnard**, 38 *How. Pr.* 94. Aff'd in 1 *Sweeney*, 641.
- George v. Grant**, 56 *How. Pr.* 244. Another proceeding in 20 *Hun*, 372.
- Geortner v. Trustees of Canajoharie**. See *Sanford v. Mickles*.
- Gerald v. Quam**, 10 *Abb. N. C.* 28. Disapproved (Joining husband to wife as defendant in action for wife's tort) in *Fitzsimons v. Harrington*, 1 *Civ. Pro. R.* 363. Followed in *Trebing v. Vetter*, 12 *Abb. N. C.* 302. Criticised in *Muser v. Lewis*, 50 *Super. Ct. (J. & S.)* 431, which modified *Muser v. Miller*, 12 *Abb. N. C.* 305, n., which see.
- Gerard v. Pronty**, 34 *Barb.* 454. Said in 41 *N. Y.* 619 to have been aff'd in *Ct. of App.* in June, 1869.
- Geraty v. Reid**, 13 *Hun*, 313. Rev'd in 78 *N. Y.* 64. Opinion of GILBERT, J., in 13 *Hun* is said by counsel to have been a dissenting one, and the judgment of the county court to have been rev'd instead of aff'd. Decision in 78 *N. Y.* disting'd with *People ex rel. White v. Common Council of Rochester*, 11 *Hun*, 241; *Wenzler v. People*, 58 *N. Y.* 516 (Justices of the peace) in *People ex rel. Lumbard v. Warden of Auburn St. Prison*, 1 *N. Y. Crim. R.* 345. Followed in *People ex rel. Smith v. Schielein*, 95 *N. Y.* 124.
- Geraud v. Stagg**. See *Farrel v. Calkins*.
- Gere v. Clarke**, 6 *Hill*, 350. Applied (What will sustain action by judgment creditor against heirs at law) in *Blossom v. Hatfield*, 24 *Hun*, 276.
- **v. Gundlach**, 57 *Barb.* 13. Disting'd (Limitation of right to attachment) in *Blossom v. Estes*, 84 *N. Y.* 614, 618.
- **v. Supervisors of Cayuga**, 7 *How. Pr.* 255. Explained (Effect of judgment against overseers of poor) in *People v. Supervisors of Delaware*, 12 *Id.* 50, 54.
- German v. Machin**, 6 *Prige*, 288. See *Phillips v. Thompson*. Overruled (Equitable title to real property cannot be arbitrated) in *Olcott v. Wood*, 14 *N. Y.* 32.
- German-American B'k v. Morris Run Coal Co.**, 68 *N. Y.* 585. Rev'g *Same v. Pittston, &c. Coal Co.*, 9 *Hun*, 205. Different proceeding in 74 *N. Y.* 58, where statement that it is "reported below in 9 *Hun*, 205" is incorrect. See vols. 397, 436 of *Case in Ct. of App. Law. Inst. Libr. N. Y. city*. See *Hildreth v. Ellice*. Decision in 63 *N.*

- Y.** applied (Right of sheriff to poundage) to case of assignee for creditors) in *Matter of Hulbert*, 10 *Abb. N. C.* 284, 288. Disting'd in *Woodruff v. Imperial Fire Ins. Co.*, 90 *N. Y.* 521. See *Code Civ. Pro.* 1881, § 3307, *n.*
- **v. Pittston, &c. Coal Co.** See *Same v. Morris Run Coal Co.*
- German B'k v. Edwards**, 53 *N. Y.* 541. Disting'd (Fiduciary capacity of factor) in *Kelly v. Scripture*, 9 *Hun.* 283.
- German Sav'gs B'k v. Habel**, 45 *Super. Ct. (J. & S.)* 615. Rev'd, it seems, in 80 *N. Y.* 273; *s. c.*, 58 *How. Pr.* 336.
- Germania B'k v. Distler**, 67 *Barb.* 333; *mem. s. c.*, 4 *Hun.* 633. Aff'd it seems, in 64 *N. Y.* 642, but without opinion.
- Germania Fire Ins. Co. v. Memphis, &c. R. R. Co.**, 7 *Hun.* 233. Aff'd in 72 *N. Y.* 90; *s. c.*, 28 *Am. R.* 113. Decision in *Id.* followed (Receipt or bill of lading, regarded, as contract) in *Hill v. Syracuse, Bing. & N. Y. R. R. Co.*, 73 *N. Y.* 352.
- Germond v. Germond**, 6 *Johns. Ch.* 347; *s. c.*, 10 *Am. Dec.* 335. Other proceedings in 1 *Paige*, 83; 4 *Id.* 643. Decision in 1 *Id.* followed (Alimony) in *Freeman v. Freeman*, 8 *Abb. N. C.* 175. Decision in 4 *Paige* explained and qualified in *Leslie v. Leslie*, 6 *Abb. Pr. N. S.* 193. Decision in 6 *Johns. Ch.* disting'd (Pleading in actions for divorce) in *Mitchell v. Mitchell*, 61 *N. Y.* 398, 403, 413. Applied in *Adams v. Adams*, 20 *N. H.* 299; *s. c.*, 51 *Am. Dec.* 219, 221, with note.
- **v. Home Ins. Co.**, 2 *Hun.* 540; *s. c.*, 5 *Sup'm. Ct. (T. & C.)* 120. Explained (Forfeiture of policy as created by change of title) in *Browning v. Home Ins. Co. of Columbus*, 6 *Daly*, 522, 524.
- **v. Jones**, 2 *Hill*, 569. Followed (Trust to sell land to pay legacies, when giving trustee no estate) in *Permoyer v. Sheldon*, 4 *Blatchf. C. Ct.* 316, 319. Disting'd in *Moncrief v. Ross*, 50 *N. Y.* 431.
- **v. People.** See *Thompson v. Lockwood.*
- Gernon v. Hoyt**, 23 *Hun.* 662. Aff'd in 90 *N. Y.* 631. Motion for re-argument denied in 24 *Hun.* 381.
- Gerould v. Wilson**, 16 *Hun.* 530. Aff'd in 81 *N. Y.* 573. Decision in *Id.* followed (Bonds when taken by color of office and contrary to law) in *Titus v. Fairchild*, 49 *Super. Ct. (J. & S.)* 211.
- Gerregani v. Wheelwright**, 3 *Abb. Pr. N. S.* 264. See (Receiver in supplementary proceedings) *Code Civ. Pro.* 1881, § 2469, *n.*
- Gerwig v. Shetterly**, 64 *Barb.* 620. Confirmed as to the law, though partly rev'd on formal grounds, in *Gerwig v. Sitterly*, 56 *N. Y.* 214.
- **v. Sitterly.** See *Gerwig v. Shetterly.*
- Getman v. Second Nat. B'k of Oswego**, 25 *Hun.* 61. Abridgt. *s. c.*, 12 *Weekly Dig.* 557.
- Getty v. Binsse**, 49 *N. Y.* 385. See further proceeding arising out of transactions here involved, in *Matter of Foster*, 15 *Hun.* 387. Decision in 49 *N. Y.* disting'd (Effect of death of joint obligor) in *Wood v. Fisk*, 4 *Hun.* 526, which was rev'd in 63 *N. Y.* 248, which see; *First Nat. B'k v. Morgan*, 6 *Hun.* 348, which was aff'd in 73 *N. Y.* 593, which see. Applied in *Helmer v. St. John*, 8 *Hun.* 169; *Bentz v. Thurber*, 1 *Sup'm. Ct. (T. & C.)* 646. Cited as settled law, in *Risley v. Brown*, 67 *N. Y.* 161. Collated with *First Nat. B'k of Chittenango v. Morgan*, 73 *Id.* 593, and other cases, in 30 *Am. R.* 56, *n.*
- **v. Devlin**, 54 *N. Y.* 403. Subsequent decision as *Getty v. Spaulding*, 3 *Sup'm. Ct. (T. & C.)* 174; *mem. s. c.*, 1 *Hun.* 115; and that aff'd, in effect, in 58 *N. Y.* 636. Further decision as *Getty v. Donnelly*, in 9 *Hun.* 603, and that aff'd as *Getty v. Devlin*, 70 *N. Y.* 504. Decision in *Id.* disting'd (Partnership in purchase of property) in *Brewster v. Hatch*, 13 *Abb. N. C.* 460. Decision in 9 *Hun.* explained (Liability for deceit in sale) in *Moak's Underhill's Torts*, 1 *Am. ed.* 535.
- **v. Donnelly.** See *Getty v. Devlin.*
- **v. Hudson River R. R. Co.**, 8 *How. Pr.* 177. See *Radeliff v. Mayor, &c. of Brooklyn*. Overruled with *Van Namee v. People*, 9 *How. Pr.* 198; *Durkee v. Saratoga, &c. R. R. Co.*, 4 *Id.* 226, 228; *Pike v. Van Wormer*, 5 *Id.* 171; *Accome v. American Mineral Co.*, 11 *Id.* 24 (Commingle statement is misjoinder) in *Bass v. Comstock*, 38 *N. Y.* 21. See *Code Civ. Pro.* 1881, § 490, *n.*
- **v. Spaulding.** See *Getty v. Devlin.*
- Gibbes v. Jenkins**, 3 *Sandf. Ch.* 131. Approved (Right to benefit of renewal of lease) in *Mitchell v. Reed*, 61 *N. Y.* 123, 130.
- Gibbons v. Bernhard**, 2 *Esow.* 635. Approved (Effect of undertaking on appeal) in *Hill v. Burke*, 62 *N. Y.* 111. Disting'd with *Hill v. Burke*, *Knapp v. Anderson*, 7 *Hun.* 215; 71 *N. Y.* 466; and *McSpedon v. Bouton*, 5 *Daly*, 30, criticised in *Manning v. Gould*, 90 *N. Y.* 476.
- **v. Dayton**, 4 *Hun.* 451. Explained (Notice to quit) in *Geiger v. Braun*, 6 *Daly*, 506, 510.
- **v. Ogden**, 13 *Johns.* 488. Rev'd on constitutional grounds, in 9 *Wheat.* 1. Explained at length (Constitutionality of State laws regulating navigation) in *North River Steamboat Co. v. Livingston*, 3 *Cow.* 713, 726. See also citations of decisions arising under acts in question, in *North River Steamboat Co. v. Livingston*, *Hopk.* 151. The argument of Mr. Wirt is in *Snyder's Great Sp.* 47.
- Gibbs v. Continental Ins. Co.**, 13 *Hun.* 611. Examined, with other cases (Meaning of "unoccupied" in fire policy) in *Herrman v. Adriatic Fire Ins. Co.*, 45 *Super. Ct. (J. & S.)* 398.
- **v. Dewey**, 5 *Cow.* 503. Disting'd with *Demarest v. Haring*, 6 *Id.* 76; *Goodrich v. Woolcott*, 3 *Id.* 239; *Brooker v. Coffin*, 5 *Johns.* 188 (Slander) in *Montgomery v. Daley*, 3 *Wisc.* 712.



- **v. Mermaid**, 2 *Edw.* 482. Aff'd in 6 *Paige*, 258. Decision in *Id.* criticised (Surety may institute suit to compel debtor to pay) in *Slauson v. Watkins*, 86 *N. Y.* 597, 602.
- **v. Queen Ins. Co.**, 63 *N. Y.* 114. Cited at length and applied (Jurisdiction over foreign corporations) in *Atl. & Pac. Tel. Co. v. Balt. & Ohio R. R. Co.*, 46 *Super. Ct. (J. & S.)* 377, 401. Approved in *McNichol v. U. S. Mercantile Agency*, 74 *Mo.* 457, 472. See also (Waiver of jurisdictional defect) *Wheelock v. Lee*, 5 *Abb. N. C.* 72, 83.
- Gibert v. Colt**, *Hopk.* 496; s. c., 14 *Am. Dec.* 557, with note. (*Ne exeat.*)
- **v. Peteler**, 38 *Barb.* 488. Subsequent decision in 33 *N. Y.* 165. Decision in *Id.* applied (Equitable lien of purchaser in contract for sale of land) in *Price v. Palmer*, 23 *Hun.* 504, 507.
- Gibney v. Marchay**, 34 *N. Y.* 301. See *Cook v. Harris*. Cited with *Lanergan v. People*, 39 *Id.* 39; *Wright v. Maseras*, 56 *Barb.* 521 (When statements made in presence of party have effect of admissions made by him) in 2 *Whart. Com. on Ev.* §§ 1136–1138.
- Gibson v. Colt**, 7 *Johns.* 390. See *Nixon v. Hyserott*. Disting'd and *Nixon v. Hyserott*, 5 *Johns.* 57 questioned (Power of warranty when included in power to sell) in *Vanada v. Hopkins*, 1 *J. J. Marsh. (Ky.)* 285; s. c., 19 *Am. Dec.* 92, 98. Opposed in *Nelson v. Cowing*, 6 *Hill*, 336, as shaken, if not overthrown, by *Sandford v. Handy*, 23 *Wend.* 260. Explained in 1 *Story on Contr.* 5 ed., § 213. Followed (Admissibility of commercial usage to explain policy) in *Allegre v. Maryland Ins. Co.*, 6 *Harr. & J. (Md.)* 408; s. c., 14 *Am. Dec.* 289, with note.
- **v. Culver**, 17 *Wend.* 305; s. c., 18 *N. Y. Com. L. Law. ed.* 145, with brief note; 31 *Am. Dec.* 297, with note. See *Ostrander v. Brown*. Approved (Usage and custom as affecting duties of common carriers) in *Henshaw v. Rowland*, 54 *N. Y.* 243; *Richmond v. Union St'b't. Co.*, 8 *Abb. N. C.* 66, 68. Disting'd in *Rawson v. Holland*, 59 *N. Y.* 611, 618. Said in *Farmers' & M. B'k v. Champlain Transp. Co.*; 16 *Verm.* 52; s. c., 42 *Am. Dec.* 491, 495, with note, not to have been overruled by *Hollister v. Nowlen*, 19 *Wend.* 234; *Cole v. Goodwin*, *Id.* 251, while *St. John v. Van Santvoord*, 25 *Id.* 680; *Gould v. Hill*, 2 *Hill*, 623, are followed in the Vermont Case. Followed with *Van Santvoord v. St. John*, 6 *Hill*, 157, in *McMasters v. Penn. R. R. Co.*, 69 *Penn. St.* 374; s. c., 8 *Am. R.* 264. Explained in 1 *Chitty on Contr.* 708, n. p, 11 *Am. ed.*; 2 *Fars. on Contr.* 187, n. g. Commented on in 2 *Redf. Am. Railw. Cas.* 61. Applied and *Wood v. Hickok*, 2 *Wend.* 504, explained (Sufficiency of proof of custom) in *Farnsworth v. Chase*, 19 *N. H.* 534; s. c., 51 *Am. Dec.* 206, 208, with note.
- **v. Erie R'y Co.**, 5 *Hun.* 51. Rev'd in 63 *N. Y.* 449; s. c., 20 *Am. R.* 206. See *Wright v. N. Y. Central R. R. Co.* Decision in 63 *N. Y.* disting'd (Effect of contributory negligence in servant on his right to recover for injury) in *McMahon v. Port Henry Iron Ore Co.*, 24 *Hun.* 48. Followed and *Plank v. N. Y. Central, &c. R. R. Co.*, 60 *N. Y.* 607 explained in *De Forest v. Jewett*, 88 *Id.* 264. Applied in *Kelley v. Silver Spring Co.*, 12 *R. I.* 112; s. c., 34 *Am. R.* 615, with note, collating cases. See in accord therewith, *Lovejoy v. Boston & Lowell R. R. Co.*, 125 *Mass.* 79; s. c., 28 *Am. R.* 206. See also 29 *Id.* 210, n. Followed in *Clark v. St. Paul & Sioux City R. R. Co.*, 28 *Minn.* 128, 131.
- **v. Haggerty**, 15 *Abb. Pr.* 406; s. c., 23 *Hov. Pr.* 260. Rev'd in 37 *N. Y.* 555. With decision in *Id.* see (Proceedings for payment by debtor of judgment debtor in supplementary proceedings) *Code Civ. Pro.* 1881, §§ 2441, n., 2450, n.
- **v. Kenne**, 19 *Wend.* 389. Followed (Effect of discharge of legal obligation, as consideration) in *Parmelee v. Thompson*, 45 *N. Y.* 58.
- **v. Stone**, 43 *Barb.* 285. See *Richardson v. Hughitt*. Cited with *Richardson v. Hughitt*, 76 *N. Y.* 55, and other cases (Participation in profits as creating partnership liability) in *Story on Partn.* 7 ed., § 68, n., where *Leggett v. Hyde*, 58 *N. Y.* 272; *Eager v. Crawford*, 76 *Id.* 97; *Haas v. Roat*, 16 *Hun.* 526, were cited as maintaining a contrary doctrine. Explained in 1 *Collyer on Partn.* § 47, n. 1, *Wood's Am. ed.*
- **v. Toby**, 53 *Barb.* 191. Subsequent decision in 46 *N. Y.* 637. Decision in *Id.* cited as authority (Effect of note as payment) in 34 *Am. R.* 256, n. Decision in 53 *Barb.* collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed., 301.
- **v. Van Derzee**, 47 *Hov. Pr.* 231; s. c., more fully, 14 *Abb. Pr. N. S.* 111.
- **v. Williams**. See *Van Vechten v. Hopkins*.
- Giddings v. Eastman**, 5 *Paige*, 561. Followed (Attorney's purchase inure to his client's benefit) in *Shanklin v. Meyler*, *Ky. Super. Ct.*, 1880, 5 *Ky. L. Rep. & J.* 296, 300.
- Gifford v. Livingston**. See *Warner v. Beers*.
- **v. Waters**, 6 *Daly*, 302. Aff'd in 67 *N. Y.* 80.
- Gihon v. Stanton**, 9 *N. Y.* 476. See *Hoy v. Reade*. Examined (Duty of factor to exhaust lien) in *Hoy v. Reade*, 1 *Sweeny*, 626. Disting'd in *Whitman v. Horton*, 46 *Super. Ct. (J. & S.)* 631, 534.
- Gilbert v. Beach**, 16 *N. Y.* 606. Rev'd 4 *Duer*, 423. Further decision in 5 *Bosn.* 445, 454. See *Gourdiere v. Cormack*. Decision in 16 *N. Y.* disting'd (Verdict subject to opinion of court) in *City B'k of Brooklyn v. McChesney*, 20 *Id.* 240, 243. Explained (Liability of owner for negligence

- of contractor) in *Hefferman v. Benkard*, 1 *Robt.* 432, 436.
- *v. Bulkley*, 1 *Duer*, 668. Approved (Time for exoneration of bail) in *Bank of Geneva v. Reynolds*, 12 *Abb. Pr.* 81, 84.
- *v. Columbia Turnpike Co.*, 3 *Johns. Cas.* 107. Disting'd with *Jenkins v. Wild*, 14 *Wend.* 539 (Construction of statute requiring notice) in *N. Y. Pharrnical Ass'n v. Tilden*, *U. S. Cir. Ct. S. D. N. Y.* 1882, 14 *Fed. Rep.* 741.
- *v. Crawford*, 46 *How. Pr.* 222. Rev'd in effect in *Gilbert v. Priest*, 14 *Abb. Pr. N. S.* 165; s. c., 65 *Barb.* 444, which rev'd 63 *Id.* 339. Decision in *Id.* followed as according with the weight of authority (Jurisdiction of State courts, over action by assignee in bankruptcy to recover for fraudulent disposal of assets by bankrupt) in *Dambmann v. White*, 48 *Cal.* 439, 452. But denied as contrary to weight of authority in *Markson v. Haney*, 47 *Ind.* 31, 37.
- *v. Dickerson*, 7 *Wend.* 449; s. c., 22 *Am. Dec.* 592. See *Mersereau v. Norton*. Followed (Trover, when not maintainable by tenant in common against co-tenant's vendee) in *Dain v. Cowing*, 22 *Me.* 347; s. c., 39 *Am. Dec.* 585, with note.
- *v. Gilbert*. 1 *Keyes*, 159; s. c., 34 *How. Pr.* 142. This case is misreported, the opinion being a dissenting opinion. See correct report in 2 *Abb. Ct. App. Dec.* 256. See *Shotwell v. Murray*. See statements in *Cipperly v. Cipperly*, 4 *Sup'm. Ct. (T. & C.)* 342; *Foot v. Bryant*, 47 *N. Y.* 544, 551, in latter of which, report in 2 *Keyes*, is assumed to be incorrect, as inconsistent with *Simson v. Schenck*, 29 *N. Y.* 598.
- *v. Judges of Niagara C. P.* See *People ex rel. Wilson v. Supervisors of Albany*.
- *v. Knox*, 52 *N. Y.* 125. See *Baskin v. Baskin*; *Brinckerhoof v. Remsen*; *Jackson v. Jackson*. Explained (Publication of will) in *Neugent v. Neugent*, 2 *Redf.* 369, 374. Applied in *Von Hoffman v. Ward*, 4 *Id.* 244, 261. Disting'd in *Heath v. Cole*, 15 *Hun.* 100, 104. Cited as a well considered case in 10 *Am. Dec.* 518, n.
- *v. Manchester Iron M'fg Co.*, 11 *Wend.* 628. See *Bank of Utica v. Smalley*; *Matter of Barker*; *Stebbins v. Phoenix Fire Ins. Co.* Disting'd (Restraints on transfer of stock) in *Driscoll v. West, &c. M'fg Co.*, 59 *N. Y.* 96, 108.
- *v. N. A. Fire Ins. Co.*, 23 *Wend.* 43. Explained and limited (Effect of delivery of deed to grantee to be held in escrow) in *Braman v. Bingham*, 26 *N. Y.* 783. Explained and applied in *People v. Bostwick*, 32 *Id.* 445. Cited in *Dawson v. Hall*, 2 *Mich.* 392.
- *v. Priest*. See *Gilbert v. Crawford*.
- *v. Rounds*, 14 *How. Pr.* 46. Explained (Practice on assessment of damages) in *Thompson v. Lumley*, 7 *Daly*, 74, 79.
- *v. Sage*, 5 *Lans.* 287. Aff'd in 57 *N. Y.* 639, but apparently without passing on questions as to license.
- *v. Sharp*, 2 *Lans.* 412. Cited with other cases (Effect of transference of note without indorsement) in *Clark v. Whitaker*, 50 *N. H.* 474; s. c., 9 *Am. R.* 236.
- *v. Sheldon*, 13 *Barb.* 623. Criticised (Limit of inquiry, on impeachment of witness) in *Wright v. Paige*, 36 *Barb.* 438, 446. Cited with *People v. Rector*, 19 *Wend.* 569; *Jackson v. Lewis*, 13 *Johns.* 504, in *Fletcher v. State*, 49 *Ind.* 124; s. c., 19 *Am. R.* 673, 676, as showing common law rule.
- *v. Wiman*, 1 *N. Y.* 550; s. c., 49 *Am. Dec.* 359, with note, wherein are collected citations. See *Chace v. Hinman*. Applied (Effect of contract to indemnify) in *McGee v. Roen*, 4 *Abb. Pr.* 10; *Wright v. Whiting*, 40 *Barb.* 239; *Jarvis v. Sewall*, *Id.* 454; *Farnsworth v. Clark*, 44 *Id.* 603; *Johnson v. Gilbert*, 9 *Hun.* 469; *Rector, &c. of Trinity Church v. Higgins*, 48 *N. Y.* 536, which overruled 4 *Robt.* 375, which see. Disting'd in *McGay v. Keilback*, 14 *Abb. Pr.* 144; *Martin v. Campbell*, 29 *Barb.* 191. *Westervelt v. Smith*, 2 *Duer*, 462. Commented on in *Nat. B'k of Newburgh v. Bigler*, 83 *N. Y.* 51, 61. Examined with *Thomas v. Allen*, 1 *Hill*, 145; *Churchill v. Hunt*, 3 *Den.* 321; *Chace v. Hinman*, 8 *Wend.* 452; *Rodman v. Hedden*, 10 *Id.* 498; *Rockefeller v. Donnelly*, 3 *Cow.* 623, in *Commonwealth of Pennsylvania v. Robert Morrow*, 14 *Pitts. L. J. N. S.* 359, 360. Cited with *Aberdeen v. Blackmar*, 6 *Hill*, 324; *Webb v. Pond*, 19 *Wend.* 423 (Damages in actions on contracts of indemnity) are cited in *Valentine v. Wheeler*, 122 *Mass.* 566; s. c., 23 *Am. R.* 404. Decision of *Pratt, J.*, in *Sup'm. Ct.* approved in *Hawkins v. Mosher*, 13 *Hun.* 566.
- Gilbert Elevated R'y Co., Matter of**, 9 *Hun.* 303. Aff'd in 70 *N. Y.* 361 as *Gilbert Elevated R. R. Co. v. Kobbe*; s. c., more fully, as *Gilbert Elevated R'y Co. v. Anderson*, 3 *Abb. N. C.* 434. See *Matter of N. Y. Elevated R'y Co.* Decision in 70 *N. Y.* applied (Constitutional amendments of 1875 do not operate upon previously granted charter) in *Moran v. Lydecker*, 27 *Hun.* 582. Examined with other cases (Damages to owners abutting on street railway) in *Caro v. Metrop. Elev. R'y Co.*, 46 *Super. Ct. (J. & S.)* 138, 160. See case cited in note on *ultra vires*, 4 *Abb. N. C.* 59.
- Gilbert Elevated R'y Co. v. Anderson.** See *Matter of Gilbert Elevated R'y Co.*
- *v. Kobbe*. See *Matter of Gilbert Elevated R'y Co.*
- Gilchrist v. Brooklyn Grocers' Manuf. Assoc.**, 66 *Barb.* 390. Aff'd in 59 *N. Y.* 495. Decision in *Id.* disting'd (Admissibility of memoranda in evidence) in *Jonsson v. Thompson*, 15 *Weekly Dig.* 475.
- *v. Comfort*, 34 *N. Y.* 235. Followed (Place for redemption of lands sold on execution) in *Morss v. Purvis*, 68 *Id.* 225, which aff'd 2 *Hun.* 542, which see. See *Code Civ. Pro.* 1881, § 1455, n. Cited as authority (Rights of holder of certificate of

- sale not to be prejudiced by acts of sheriff) in *Schroeder v. Lahrman*, 28 *Minn.* 75.
- *v. Cunningham*, 8 *Wend.* 641. Compare (Admissibility of parol evidence) *Webb v. Rice*, 6 *Hill*, 219.
- Gildersleeve v. People**, 10 *Barb.* 35. Followed (Jurisdiction of N. Y. Common Pleas over judgments on forfeited recognizances) in *People v. Hickey*, 5 *Daly*, 365, 375. Cited as authority (Sufficiency of description of offense in recognizance) in *People v. Dennis*, 4 *Mich.* 616.
- Gile v. Libby**, 36 *Barb.* 70. Approved (Innkeepers' liability) in *Krohn v. Sweeney*, 2 *Daly*, 200. Followed in *Ramaley v. Leland*, 6 *Robt.* 358. Disapproved in *Hyatt v. Taylor*, 51 *Barb.* 632. Disapproved and *Hyatt v. Taylor* followed in *Rosenplaenter v. Roessle*, 54 *N. Y.* 262. Disapproved in *Stewart v. Parsons*, 24 *Wisc.* 241. Discussed in 1 *Add. on Torts*, 756, n. 1, Wood's ed.
- Giles v. Austin**, 34 *Super. Ct. (J. & S.)* 171. Further decision in 38 *Id.* 215, which was aff'd in 62 *N. Y.* 436. Another in 46 *How. Pr.* 269.
- *v. Barmore*, 5 *Johns. Ch.* 545. See *Central Bank of Troy v. Heydorn*; *Jackson v. Willard*. Followed (Pleading presumption of payment) in *Malloy v. Vanderbilt*, 4 *Abb. N. C.* 127, 133. Applied (Presumption of payment of mortgage) in *Pangburn v. Miles*, 10 *Id.* 42, 46. Followed in *Wanmaker v. Van Buskirk*, 1 *Saxton Ch. (N. J.)* 685; s. c., 23 *Am. Dec.* 748, 754, with note. Explained in *Ang. on Limit.* § 454, 6 ed.
- *v. Gaines*, 3 *Cal.* 107. Overruled (Effect of failure to file plea) in *Smith v. Wells*, 6 *Johns.* 286.
- *v. Comstock*, 4 *N. Y.* 270. See *Pechner v. Phoenix Ins. Co.* Followed (Liability for rent in case of eviction) in *Hunter v. Reiley*, 14 *Vroom (N. J.)* 480.
- *v. Dugro*, 1 *Duer*, 331. Applied (Effect of existence of easement as breach of covenant against incumbrances, &c.) in *Lamb v. Danforth*, 59 *Me.* 322; s. c., 8 *Am. R.* 426; *Burk v. Hill*, 48 *Ind.* 52; s. c., 17 *Am. R.* 731, 734.
- *v. Halbert*, 5 *How. Pr.* 319. Aff'd in 12 *N. Y.* 32. Decision in *Id.* explained (Appellability of order made on application to enforce liability for costs, under 2 R. S. 619, § 44) in *Marvin v. Marvin*, 78 *Id.* 541. Explained (Liability for non-payment of costs) in *Morrison v. Lester*, 15 *Hun*, 538, 540.
- *v. Lyon*, 4 *N. Y.* 600. Limited (Distinction between law and equity) in *Marsh v. Benson*, 11 *Abb. Pr.* 241, 247.
- Gilfert v. Hallett**, 2 *Johns. Cas.* 296; s. c., 1 *N. Y. C. L. L. ed.* 521, with brief note. (Deviation, and its excuses.)
- Gilhooley v. Washington**, 3 *Sandf.* 330. Aff'd in 4 *N. Y.* 217. See *Dyett v. Pendleton*. Decision in 3 *Sandf.* collated with other cases (Eviction of leasee) in *McAdam on Landl. & T.* 2 ed. § 212.
- Gill v. American Express Co.**, 25 *Hun*, 61. Abridgt. s. c., 12 *Weekly Dig.* 431.
- *v. Brouwer*, 37 *N. Y.* 549. Aff'g 31 *How. Pr.* 28. See opinions of *Mason, J.*, and *Bacon, J.*, in 5 *Transc. App.* 86. Decision in 37 *N. Y.* followed with *Thurber v. Chambers*, 66 *Id.* 42 (Use of words "and his heirs" in will) in *Rhodes v. June*, 15 *Weekly Dig.* 326.
- *v. Brown*. See *Sheffield v. Watson*.
- *v. Lyon*, 1 *Johns. Ch.* 447. Said in 16 *Am. Dec.* 143, n. to have the almost unbroken current of American authority in its favor (Inverse order of liability of conveyed portions of mortgaged premises.)
- *v. McNamee*, 42 *N. Y.* 44. Disting'd (Evidence of subsequent disposition of converted property, to show its value) in *Flanagan v. Maddin*, 81 *Id.* 623.
- *v. People*, 3 *Hun.* 187; s. c., 5 *Sup'm. Ct. (T. & C.)* 308. Aff'd, it seems, in 60 *N. Y.* 643, but without opinion. Decision in 5 *Sup'm. Ct.* and other cases reviewed (Cross-examination of prisoner testifying in his own behalf) in *State v. Wentworth*, 65 *Me.* 234; s. c., 20 *Am. R.* 688, 692.
- Gillespie v. Broas**. See *Brady v. Supervisors of N. Y.*
- *v. Brooks*, 2 *Redf.* 349. Explained (Commissions of negligent executors) in *Ward v. Ford*, 4 *Id.* 34, 39. Compare (Vouchers on executor's accounting) *Code Civ. Pro.* § 2734.
- *v. Moon*, 2 *Johns. Ch.* 585; s. c., 7 *Am. Dec.* 559, with note, where it is said to have been approved by the courts of many States. See *Boyd v. McLean*; *Mann v. Mann's Ex'rs*; *Wiser v. Blachly*; *Wiswall v. Hall*. Applied (Relief against written contract for fraud) in *Hutcheon v. Johnson*, 33 *Barb.* 398; *Botsford v. McLean*, 45 *Id.* 481; *Fishell v. Bell, Clarke*, 38; *Rosevelt v. Fulton*, 2 *Cinc.* 133; *Funch v. Abenheim*, 20 *Hun.* 6; *Lyman v. United Ins. Co.*, 17 *Johns.* 376, which aff'd 2 *Johns. Ch.* 632, which see; *De Peyster v. Hasbrouck*, 11 *N. Y.* 591; *Andrews v. Gillespie*, 47 *Id.* 490; *Beardsley v. Duntley*, 69 *Id.* 584. Disting'd in *Troy Iron & Nail Factory v. Corning*, 45 *Barb.* 255. Cited as settled law by *Dwight*, Referee in *Marie v. Garrison (MS.)*. Relied on in *Stone v. Hale*, 17 *Ala.* 557; s. c., 52 *Am. Dec.* 185; *Hunter v. Bilyeu*, 30 *Ill.* 228, 241. Followed in *McCurdy v. Breathitt*, 5 *T. B. Min. (Ky.)* 232; s. c., 17 *Am. Dec.* 65, with note; *Cohen v. Dubose*, 1 *Harp. Kq. (So. Car.)* 102; s. c., 14 *Am. Dec.* 709. Disting'd in *Osborn v. Phelps*, 19 *Conn.* 63; s. c., 48 *Am. Dec.* 133, 135, with note. Explained in *Glass v. Hulbert*, 103 *Mass.* 24, 41. Criticised as extreme in *Elder v. Elder*, 10 *Me.* 80; s. c., 25 *Am. Dec.* 205, with note. See as criticising the distinction sought to be made in *Elder v. Elder*. — *Ruhling v. Hackett*, 1 *Nen.* 365; *Tilton v. Tilton*, 9 *N. H.* 385, 392. Explained in 3 *Greenl. on Ev.* 14 ed. § 363, n. 1.

- **v. Thomas**, 15 *Wend.* 464. Disapproved and opposed (Rule of apportioning rent) in *Post v. Logan*, 1 *N. Y. Leg. Obs.* 59. Reconciled (Effect of legal proceedings as eviction of tenant) in *Foot v. Cincinnati*, 11 *Ohio*, 408; s. c., 38 *Am. Dec.* 737, with note.
- **v. Torrance**, 4 *Bosw.* 36; s. c., 7 *Abb. Pr.* 462. Aff'd in 25 *N. Y.* 306. Decision in *Id.* compared with others (Right of guarantor to set up defenses that would be valid in favor of principal) in *Putnam v. Schuyler*, 4 *Hun.* 170. Followed in *Delano v. Rawson*, 10 *Bosw.* 286, 292; *Emery v. Baltz*, 22 *Hun.* 434; *Lasher v. Williamson*, 55 *N. Y.* 620. Disting'd in *Bookstaver v. Jayne*, 60 *Id.* 150. Approved and followed in *Hiner v. Newton*, 30 *Wis.* 640. Approved in *Pomeroy on Rem.* § 750, n. 3. Cited as authority (Warranty on sale of personal property) in *Parks v. Morris Ax & Tool Co.*, 54 *N. Y.* 591. Applied (Rescission of sale, for breach of warranty as to quality) in *Nichols v. Townsend*, 7 *Hun.* 378.
- **v. Walker**, 56 *Barb.* 185. Collated with other cases (Admissions by husband against his interest) in 2 *Whart. Com. on Ev.* § 1215.
- Gillet v. Fairchild**, 4 *Den.* 80. See *Beach v. King*. Disting'd with *White v. Joy*, 13 *N. Y.* 83; *Currie v. Henry*, 2 *Johns.* 433 (Indefiniteness in pleading) in *Williamson v. Nat. Electric Light, & Co.*, 48 *Super. Ct. (J. & S.)* 541. Disting'd (Pleading authority to sue, in action by receiver) as inapplicable to assignee for creditors, in *Butterfield v. Macomber*, 22 *How. Pr.* 150, 154. Quoted and discussed (Definition of chose in action) in 1 *Pars. on Contr.* 223, n. a. Quoted in 2 *Chitty on Contr.* 1358, n. f, 11 *Am. ed.*
- **v. Maynard**, 5 *Johns.* 85; s. c., 4 *Am. Dec.* 329. See *Battle v. Rochester City B'k.* Cited with *Pease v. Barber*, 3 *Cal.* 266; *People v. Gasherie*, 9 *Johns.* 71 (Allowing interest in action for money had and received) in *Wood v. Robbins*, 11 *Mass.* 504; s. c., 6 *Am. Dec.* 182. For the general subject, see *Selleck v. French*, 1 *Conn.* 32; s. c., 6 *Am. Dec.* 185, with lengthy note collating many cases. Disting'd (Vendee's right to recover back payments on rescission of contract of sale) in *Tice v. Zinsser*, 76 *N. Y.* 549, 553.
- **v. Mead**, 7 *Wend.* 193; s. c., 22 *Am. Dec.* 579, with note, where the cases are reviewed, the distinctions in *Brownell v. McEwen*, 5 *Den.* 367, being criticised as unsound: and *Whitney v. Elmer*, 60 *Barb.* 250, referred to as an elaborately argued case laying down principles which harmonize the law in *N. Y.* See *Foster v. Scofield*. Followed (Evidence of breach of promise of marriage, in action for seduction) in *Whitney v. Elmer*, 60 *Barb.* 250.
- **v. Moody**, 3 *N. Y.* 479. Rev'g 5 *Barb.* 185. Decision in 3 *N. Y.* disting'd (Individual bankers as affected by prohibitions against moneyed corporations) in *Cuyler v. Sanford*, 13 *Barb.* 346. Applied (Banking associations as moneyed corporations) in *Curtis v. Leavitt*, 17 *Id.* 375, which was modified in 15 *N. Y.* 9, 47, which see, and where *Talmage v. Pell*, 7 *Id.* 328; *Gillet v. Phillips*, 13 *Id.* 114 are also questioned. Followed in *Talmage v. Pell*, 7 *Id.* 341. Cited as authority in *Ferry v. B'k of Central N. Y.*, 15 *How. Pr.* 449. Overruled in part with *Talmage v. Pell*; *Gillet v. Phillips*, in *Leavitt v. Blatchford*, 17 *N. Y.* 542. Quoted in *Burrill on Assign.* § 66, n. 3, 4 ed. Explained (Receiver of corporation as representative of creditors) in *McHarg v. Donnelly*, 27 *Barb.* 103. Disting'd (Right of receiver of corporation to impeach its acts) in *Hyde v. Lynde*, 4 *N. Y.* 392. Disting'd (Liability of corporation trustee for fraudulent breach of trust) in *Van Dyck v. McQuade*, 86 *Id.* 38, 46.
- **v. Phillips**, 13 *N. Y.* 114. See *Gillet v. Moody*. Cited (Power of cashier to transfer securities of bank) in *Whart. Com. on Ag.* § 685. Followed (No action in implied assumpsit for money loaned on illegal contract) in *Re Jaycox*, 12 *Blatchf. C. Ct.* 209, 216. Quoted in *Burrill on Assign.* § 173, 4 ed.
- **v. Stanley**, 1 *Hill*, 121. See *Harrison v. Stevens*; *Ryers v. Wheeler*. Cited (Effect of deed of married woman) in *Duway v. Campan*, 4 *Mich.* 567.
- Gillet v. Campbell**, 1 *Den.* 520. Cited (Powers of bank president) in *Whart. Com. on Ag.* § 683.
- Gillette v. Bate**, 86 *N. Y.* 87; s. c., 10 *Abb. N. C.* 88. Applied (Power to reach patent-right) in *Ager v. Murray*, 105 *U. S.* 131. Explained (Identifying the fund in creditor's suits) in *Wait on Fraud. Conv.* § 44.
- Gillig v. Maass**, 28 *N. Y.* 191. Disting'd (Rights of assignee of mortgage) in *Trustees of Union College v. Wheeler*, 61 *Id.* 111. Disting'd (Defect in registry of deed) in *Mut. Life Ins. Co. v. Duke*, 1 *Abb. N. C.* 381, 391.
- Gillilan v. Spratt**, 8 *Abb. Pr. N. S.* 13. Rev'd (Effect of discontinuance of proceedings to dispossess tenant) in 41 *How. Pr.* 27.
- **v. Sun Mut. Ins. Co.** See *Gates v. Beecher*.
- **v. Swift**, 14 *Hun.* 574. See (Deed to bar dower) 22 *Abb. L. J.* 319.
- Gillis v. Space**, 63 *Barb.* 177. Approved (Power of school trustee to employ teacher) in *Wait v. Ray*, 5 *Hun.* 649, which was aff'd in 67 *N. Y.* 36, which see. Followed in *Blandon v. Moses*, 29 *Hun.* 606.
- Gillott v. Esterbrook**, 47 *Barb.* 455. Aff'd in 48 *N. Y.* 374. See *Matsell v. Flanagan*. Decision in 48 *N. Y.* applied (Use of arbitrary symbol as trade-mark) in *Hier v. Abrahams*, 82 *Id.* 519, 524. Cited as authority in dissenting opinion of *CLIFFORD, J.*, in *Manuf. Co. v. Trainer*, 101 *U. S.* 51, 62. Explained in 2 *Pars. on Contr.* 257, *be n. g, Id.* 257, *be n. z.*

- **v. Kettle**, 3 *Duer*, 624. Decision here aff'd will be found in 2 *Liv. Law. Mag.* 371, reported as *Gillott v. Thettle*. Collated with other cases (Injunction to restrain violation of trade-mark) in *Thomps. on Prov. Rem.* 259.
- Gilman v. Gilman**, 35 *Barb.* 591. Determination of appeal on the merits reported in 1 *Redf.* 354. Further proceeding affecting estate here involved, in 2 *Lans.* 1; also in 5 *Sup'm. Ct. (T. & C.)* 675; s. c., fully reported, 3 *Hun.* 22; also in 4 *Id.* 68, which was rev'd in 66 *N. Y.* 631; also in 4 *Hun.* 69; s. c., fully reported, 6 *Sup'm. Ct. (T. & C.)* 211, which was aff'd in 63 *N. Y.* 41. Decision in 2 *Lans.* followed (Investment of trust funds) in *Bohde v. Bruner*, 2 *Redf.* 333, 337. Criticised (Trustees, when chargeable with compound interest) in 2 *Pomeroy on Eq. Jur.* 650, n.
- **v. Lowell**, 8 *Wend.* 573; s. c., 24 *Am. Dec.* 96, with note containing citations; 11 *N. Y. Com. L. Law. ed.* 473, with brief note of cases. See *Mapes v. Weeks*. Examined (Mitigating circumstances in action for slander) in *Viele v. Gray*, 10 *Abb. Pr.* 1, 6. Included with notes in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 223.
- **v. Reddington**, 1 *Hill.* 492. Aff'd in 24 *N. Y.* 9. Decision in *Id.* disting'd (Validity of accumulations of income) in *Gilman v. Healy*, 1 *Dem.* 404.
- **v. —**, 4 *Hun.* 640. Reported fully, in 67 *Barb.* 321. Compare (Costs on appeal from surrogate) *Code Civ. Pro.* § 2589.
- Gilmartin v. Mayor, &c. of N. Y.**, 55 *Barb.* 239. Explained and collated with numerous cases (Liability of master for injuries done by servant) in 1 *Add. on Torts*, 588, n., *Wood's ed.*
- **v. Smith**, 4 *Sandf.* 684. Approved (Entry of judgment) in *Mitchell v. Hall*, 7 *How. Pr.* 490.
- Gilmore v. Crowell**, 67 *Barb.* 62. See (Forfeiture of undertaking given to vacate attachment) *Code Civ. Pro.* 1881, § 689, n.
- **v. Jacobs**, 48 *Barb.* 336. Disapproved (Amendment in justices' and district courts) in *Lowe v. Rummell*, 5 *Daly*, 17.
- **v. Ontario Iron Co.**, 22 *Hun.* 391. Aff'd in 86 *N. Y.* 455.
- **v. Spies**, 1 *Barb.* 158. Aff'd in 1 *N. Y.* 321.
- Giinna v. Second Ave. R. R. Co.**, 8 *Hun.* 494. Aff'd in 67 *N. Y.* 596. Both decisions collated and approved with *Sauter v. N. Y. Central, &c. R. R. Co.*, 66 *Id.* 50; *Williams v. Vanderbilt*, 28 *Id.* 217 (Remote and proximate causes) in *Terre Haute & Indianapolis R. R. Co. v. Buck*, 96 *Ind.* 346, 351. Decision in 67 *N. Y.* followed (Liability for injury to passenger riding on platform of street car) in *Lax v. Forty-second, &c. R. R. Co.*, 46 *Super. Ct. (J. & S.)* 448, 452.
- Ginochio v. Figari**. See *Brush v. Lee*.
- **v. Porcella**, 3 *Bradf.* 277. Commented on (Wife's contracts) in *Schouler on Dom. Rel.* 3 ed., § 212, n. 1.
- Ginther v. Richmond**, 18 *Hun.* 232. Compare brief mem. in 21 *Id.* 109, and *Id.* 408.
- Girvin v. Hickman**, 58 *How. Pr.* 244. Aff'd in 21 *Hun.* 316.
- Glaciux v. Black**, 4 *Hun.* 91. Rev'd in 67 *N. Y.* 563. Prior decision in 50 *Id.* 145; s. c., 10 *Am. R.* 449. See *Champlin v. Rowley*; *Phillip v. Gallant*. Decision in 50 *N. Y.* followed (Personal judgment in proceedings to enforce mechanics' lien) in *Burroughs v. Fosteran*, 2 *Abb. N. C.* 340, which was rev'd in 75 *N. Y.* 573, which see. Disting'd in *Weyer v. Beach*, 79 *Id.* 412. Applied (Effect of substantial compliance with provisions of building contract) in *Phillip v. Gallant*, 62 *Id.* 264. Applied (Effect of acceptance by architect, &c. of work or materials contracted for) in *Bigler v. Mayor, &c. of N. Y.*, 9 *Hun.* 259. Disting'd in *Weeks v. Little*, 47 *Super. Ct. (J. & S.)* 1, 13. Decision in 67 *N. Y.* disting'd (Continuance of mechanics' lien) in *Fox v. Kidd*, 77 *Id.* 489, 492.
- Glackin v. Zeller**, 52 *Barb.* 147. Followed with *Knapp v. Brown*, 45 *N. Y.* 209; *Bennett v. Van Syckel*, 18 *Id.* 481; *Dambmann v. Schulting*, 6 *Hun.* 29 (Right to appeal as affected by acceptance of full satisfaction of judgment) in *Paine v. Woolley*, 80 *Ky.* 571.
- Gladke v. Bernstein**, 60 *How. Pr.* 145. Compare brief statement in 23 *Hun.* 148.
- Glaseo v. N. Y. Central, &c. R. R. Co.**, 36 *Barb.* 557. Explained (Proof of undertaking of common carrier to carry passenger and baggage) in 2 *Greenl. on Ev.* 14 ed., § 222, n. b.
- Gleadell v. Thomson**, 35 *Super. Ct. (J. & S.)* 232. Aff'd in 56 *N. Y.* 194.
- Gleason's Case**. So called in *Benedict, &c. Man'g Co. v. Thayer*, 21 *Hun.* 614, 616. Reported as *People ex rel. Roberts v. Bowe*, in 8 *Abb. N. C.* 234; also as *N. Y. Guaranty & Ind. Co. v. Gleason*, 7 *Id.* 334.
- Gleason v. Clark**, 1 *Wend.* 303. Overruled (Executor's liability for costs in error) in *Judah v. Stagg*, 22 *Id.* 641.
- **v. Gage**, 7 *Paige*, 121. Applied (Right of assignee to maintain creditor's action) to right of personal representatives to maintain summary proceedings, in *Walker v. Donovan*, 6 *Daly*, 552, 556.
- **v. Moen**, 2 *Duer*, 639. Examined and followed (Counter-claim, when not to be set up in action by assignee) in *Wiltzie v. Northam*, 3 *Bosw.* 162, 164.
- **v. Pinney**, 5 *Cow.* 152. Report corrected in 5 *Id.* 411. Rev'd in *Pinney v. Gleason*, 5 *Wend.* 393. See *Clark v. Pinney*. Decisions in 5 *Cow.* and 5 *Wend.* reviewed with *Clark v. Pinney*, 7 *Cow.* 681, and that in 5 *Wend.* followed (Damages for breach of agreement to pay in chattels) in *Fletcher v. Derriekson*, 3 *Bosw.* 181, 188. Compare *McDonald v. Hodge*, 5 *Hayw. (N. C.)* 85. Decision in 5 *Cow.* followed (Distinction between penalty and liquidated damages) in *Curry v. Larer*, 7 *Penn. St.* 470; s. c., 49 *Am. Dec.* 486, 488, with note.

- **v. Youmans**, 9 *Abb. N. C.* 107. Aff'd in 13 *Weekly Dig.* 25.
- Glen v. Fisher**, 6 *Johns. Ch.* 33; s. c., 10 *Am. Dec.* 310. Applied (Duty of one who accepts benefit under will) in *Thomas v. Kelly*, 3 *So. Car.* 214; s. c., 16 *Am. R.* 716.
- **v. Hope Mut. Life Ins. Co.**, 1 *Sup'm. Ct. (T. & C.)* 463. Aff'd in 56 *N. Y.* 379. Decision in *Id.* followed (Liability of reinsuring company) in *Fischer v. Hope, &c. Ins. Co.*, 40 *Super. Ct. (J. & S.)* 291, 298, which was aff'd in 69 *N. Y.* 161, which see.
- Glen & Hall M'fg Co. v. Hall**, 6 *Lans.* 158. Rev'd in 61 *N. Y.* 226; s. c., 19 *Am. R.* 278. See *Congress & Empire Spring Co. v. High Rock Congress Spring Co.* Decision in 61 *N. Y.* cited as authority (Good will of business as property) in *Smock v. Pierson*, 68 *Ind.* 405; s. c., 34 *Am. R.* 269.
- Glendening v. Canary**, 5 *Daly*, 489. Aff'd, it seems, in 64 *N. Y.* 636, but without opinion.
- Glenny v. Stedwell**, 1 *Abb. N. C.* 327, with note; s. c., less fully, 51 *How. Pr.* 329; 64 *N. Y.* 120. Aff'g *Glenny v. World Mut. Life Ins. Co.*, 40 *Super. Ct. (J. & S.)* 92. Followed (Examination before trial) in *Tenney v. Mautner*, 1 *Civ. Pro. R.* 64, 71; *Levy v. Loeb*, 5 *Abb. N. C.* 157, 161; *Hutchinson v. Lawrence*, 29 *Hun*, 450. Compare *Schepmore v. Bousson*, 1 *Abb. N. C.* 481.
- **v. World Mut. Life Ins. Co.** See *Glenny v. Stedwell*.
- Glen's Falls Paper Co. v. White**, 58 *How. Pr.* 172. Aff'd by General Term, and appeal therefrom dismissed, it seems, in 81 *N. Y.* 649, but without opinion. Previous proceeding in 18 *Hun*, 214.
- Globe Mut. Life Ins. Co. v. Reals**, 48 *How. Pr.* 502. Aff'd in 50 *Id.* 237. Further proceeding in 79 *N. Y.* 202. See *People v. Globe Mut. Life Ins. Co.*
- Glover v. Haws**, 19 *Abb. Pr.* 161. Disting'd (Appointment of guardian *ad litem* without service of summons) in *Gotendorf v. Goldschmidt*, 83 *N. Y.* 110, 114.
- **v. Payn**, 19 *Wend.* 518. Followed as cited (Effect of provision in conveyance that the premises conveyed may be reconveyed at election of grantor) in *Stratton v. Sabin*, 9 *Ohio*, 28; s. c., 34 *Am. Dec.* 418.
- **v. Tack**, 24 *Wend.* 153. Followed (action at law between partners) in *Madge v. Puig*, 12 *Hun*, 15. Explained in 1 *Collyer on Partn.* § 197, n. 2, p. 2, Wood's *Am. ed.* Discussed (Partnership, when formed) in *Id.* § 509, n. 1.
- **v. Thomas**, 4 *Sup'm. Ct. (T. & C.)* 415; mem. s. c., 2 *Hun*, 158. Rev'd in 63 *N. Y.* 642.
- Goddard v. Mallory**. See *Cronkite v. Wells*.
- **v. Merchants' Bank**, 2 *Sandf.* 247. Aff'd in 4 *N. Y.* 230. See *Bank of Commerce v. Union B'k.* Decision in 2 *Sandf.* approved (Recovery of money paid on forged paper) in *Nat. Park B'k v. Ninth Nat. B'k*, 46 *N. Y.* 77, 82, which rev'd 7 *Abb. Pr. N. S.* 138, which see. Decision in 4 *N. Y.* followed, in *Allen v. Fourth Nat. B'k of N. Y.*, 37 *Super. Ct. (J. & S.)* 137, 149. Followed and approved in *First Nat. B'k of Quincy v. Ricker*, 71 *Ill.* 439; s. c., 22 *Am. R.* 104, 111.
- **v. Pomeroy**, 36 *Barb.* 546. See *Reynolds v. Reynolds*. Disting'd (Charging legacies on realty) in *Bevan v. Cooper*, 72 *N. Y.* 317, 323. Followed in *Hoyt v. Hoyt*, 85 *Id.* 142, 147. Quoted (Gift to charitable uses) in 1 *Jarm. on Wills*, Rand. & T. ed. 410, n. Collated with other cases, in *Gerard on Titles to Real Est.* 2 ed. 301.
- Godfrey v. Godfrey**, 75 *N. Y.* 434. See (Vacation, &c. of attachment) *Code Civ. Pro.* 1881, § 683, n.
- **v. Moser**, 3 *Hun*, 218; s. c., 5 *Sup'm. Ct. (T. & C.)* 677. Aff'd in 66 *N. Y.* 250. Decision in *Id.* applied (Duty of court on appeal) in *Robertson v. Stillings*, 8 *Daly*, 153, 155.
- **v. People**, 5 *Hun*, 369. Statement in 20 *Hun*, xliii. that this was aff'd in 66 *N. Y.* 250, is an error. Decision was rev'd in 63 *Id.* 207.
- Godillot v. Harris**. See *Same v. Hazard*; *Messerole v. Tynberg*.
- **v. Hazard**, 49 *How. Pr.* 5. Aff'd in 44 *Super. Ct. (J. & S.)* 427, where opinion at Special Term, is also given, and this aff'd as *Godillot v. Harris* in 81 *N. Y.* 263.
- Goelet v. Gori**, 31 *Barb.* 314. See *Beach v. Hollister*. Disapproved (Effect of married women's acts on tenancy by entirety) by *DANFORTH, RAPALLO and MILLER, JJ.*, in *Meeker v. Wright*, 76 *N. Y.* 262, 269. Referred to with *Farmers', &c. Bk. v. Gregory*, 49 *Barb.* 155; *Miller v. Miller*, 9 *Abb. Pr. N. S.* 448; *Freeman v. Barber*, 3 *Sup'm. Ct. (T. & C.)* 575; *Beach v. Hollister*, 3 *Hun*, 519, in 18 *Am. Dec.* 382, n., as holding the better opinion. *Meeker v. Wright*, 7 *Abb. N. C.* 299, being however referred to as likely to abolish estates by entirety in *N. Y.* But see later and contrary view, in *Abb. N. Y. Dig. Supp.* p. 602, n. 3; *Abb. Annual Dig.* 1882-3, p. 132, § 28, collecting authorities; *Id.* p. 242, § 16, n. Followed with *Farmers', &c. Bk. v. Gregory*; *Miller v. Miller*; *Freeman v. Barber*; *Beach v. Hollister*; *Ward v. Kruman*, 54 *How. Pr.* 95; *Forsyth v. McCall*, 27 *Abb. L. J.* 199; *Meeker v. Wright*, 7 *Abb. N. Y. Dig.* 602, n. 3, and *Meeker v. Wright*, 76 *N. Y.* 262; *Feely v. Buckley*, 28 *Hun*, 451; *Zornlein v. Bram*, 16 *Weekly Dig.* 458; overruled in *Bertles v. Nunan*, 92 *N. Y.* 152. Followed (Liability of wife on lease by herself and husband) in *Eustaphie v. Ketchum*, 6 *Hun*, 621, 623. Sustained (Joint demurrer) in *Hoffman v. Wheelock*, 62 *Wis.* 434, 441.
- **v. McManus**, 1 *Hun*, 306. Aff'd in 59 *N. Y.* 634, on opinion of *DAVIS, P. J.*, below

- **v. Sprofford**, 35 *Super. Ct. (J. & S.)* 564. Aff'd in 55 *N. Y.* 647. See (Invalidity of unsigned judgment role) *McNaughton v. Chave*, 5 *Abb. N. C.* 229.
- Gotcheus v. Matthewson**, 5 *Lans.* 214. Rev'd in 61 *N. Y.* 420. Previous decision as *Gotcheus v. Matheson*, 58 *Barb.* 152; s. c., 40 *How. Pr.* 97.
- Goit v. Nat. Protection Ins. Co.**, 25 *Barb.* 189. See *Boehen v. Williamsburg Ins. Co.* Approved (Repugnancy of condition) in *Courtney v. N. Y. City Ins. Co.*, 28 *N. Y.* 119. Disting'd with *Sheldon v. Atlantic Ins. Co.*, 26 *N. Y.* 460 (Waiver of prepayment of premium) in *Heiman v. Phoenix Mut. Life Ins. Co.*, 17 *Minn.* 153; s. c., 10 *Am. R.* 154.
- Goix v. Knox**, 1 *Johns. Cas.* 337. Rev'd in *Goix v. Low*, 2 *Id.* 480. Decision in 1 *Johns. Cas.* dissented from with *Vos v. United Ins. Co.*, 2 *Id.* 187; *Grin v. Phoenix Ins. Co.*, 13 *Johns.* 457 (Exoneration of insurers from losses arising from negligence of master and mariners) in *Perrin v. Protection Ins. Co.*, 11 *Ohio*, 147; s. c., 38 *Am. Dec.* 728, with note.
- **v. Low**, 1 *Johns. Cas.* 341. Rev'd in 2 *Id.* 480.
- Gold v. Bissell**, 1 *Wend.* 210. See *Vosburgh v. Welch*. Limited (Liability of those acting under warrant issued without oath) to such as have notice of the defect, in *Savacool v. Boughton*, 5 *Id.* 179. Disting'd with *Toof v. Bentley*, 5 *Wend.* 276; *Pierce v. Hubbard*, 10 *Johns.* 405 (Delegation of ministerial act) in *Kyle v. Evans*, 3 *Ala.* 481; s. c., 37 *Am. Dec.* 705, with note.
- **v. Phillips**, 10 *Johns.* 412. See *Schmerhorn v. Vanderheyden*. Discussed (Statute of frauds as affecting guaranties) in *Browne on Stat. of Fraud.* § 171, 4 ed.
- Goldenburgh v. Hoffman**, 7 *Hun.* 324. Aff'd in 69 *N. Y.* 322.
- Goldsmith v. Brown**, 35 *Barb.* 484. Disting'd and doubted (Guaranty to pay deficiency on foreclosure of mortgage) in *McMurray v. Noyes*, 72 *N. Y.* 523.
- **v. Jones**. See *Dygart v. Schenck*.
- **v. Osborne**, 1 *Edw.* 560. Doubted (Setting aside mortgage sale) in 2 *Am. L. Reg. N. S.* 831. Approved in *Schwarz v. Sears*, *Walk. Ch. (Mich.)* 172; examining *Denning v. Smith*, 3 *Johns. Ch.* 332; *Sherman v. Dodge*, 6 *Id.* 107.
- Goll v. Hinton**, 8 *Abb. Pr.* 120. See *Sears v. Gearn*. Approved and followed (Attachment of partnership property) in *Smith v. Orser*, 42 *N. Y.* 132, 139; which aff'd 43 *Barb.* 187, which see. Disting'd and explained, in *Barry v. Fisher*, 8 *Abb. Pr. N. S.* 369, 379. Collated with other cases, in *Thomps. on Prov. Rem.* 371. See *Code Civ. Pro.* 1881, § 693, n.
- Gombault v. Public Adm.**, 4 *Bradf.* 226. Cited (Who may contest probate of will) in *Merrill v. Rolston*, 5 *Redf.* 220, 258. See *Code Civ. Pro.* 1881, § 2616, n. Quoted (Personal disabilities of testators) in 1 *Jarm. on Wills*, Rand. & T. ed. 74, n. Included with notes, in *Redf. Lead. Cas. on Wills*, 360. Commented on in *Willard on Executors*, 69.
- Gomez v. Garr**, 6 *Wend.* 583. Rev'd in 9 *Id.* 649.
- Gonzales v. N. Y. & Harlem R. R. Co.**, 6 *Robt.* 93, 297. Rev'd in 38 *N. Y.* 440. Further decision in 39 *How. Pr.* 407, which rev'd 1 *Sweeny*, 506. Still further decision in 33 *Super. Ct. (J. & S.)* 57. See *Hart v. Central R. R. Co. of N. J.*; *Nichols v. Sixth Ave. R. R. Co.* Decision in 38 *N. Y.* explained and disting'd (Contributory negligence in passenger alighting from train) in *Armstrong v. N. Y. Central, &c. R. R. Co.*, 66 *Barb.* 441. Disting'd (Duty of one crossing railroad track) in *Gillespie v. City of Newburgh*, 54 *N. Y.* 468. Criticised (Negligence as question of law) in *Barker v. Savage*, 1 *Sweeny*, 292.
- Goodale v. Brockner**, 61 *How. Pr.* 451. Aff'd in 25 *Hun.* 621, and this rev'd as *Goodale v. Lawrence*, 88 *N. Y.* 513.
- **v. Finn**, 2 *Hun.* 151; s. c. reported in 4 *Sup'm. Ct. (T. & C.)* 432. Compare (Right of arrest as affected by foreign judgment) *Code Civ. Pro.* § 552.
- **v. Holridge**, 2 *Johns.* 193. Followed (Validity of agreement with levying officer to delay sale) in *Perkins v. Proud*, 62 *Barb.* 420, 428.
- **v. Tuttle**, 29 *N. Y.* 459. See *Byrnes v. City of Cohoes*; *Ellis v. Duncan*. Examined with numerous other cases (Diversion of surface waters) in *Trustees of Village of Delhi v. Youmans*, 50 *Barb.* 319, 325, which was aff'd in 45 *N. Y.* 363, which see; *Pixley v. Clark*, 35 *Id.* 528. Applied in *Waffle v. N. Y. Central R. R. Co.*, 58 *Barb.* 423, which was aff'd in 53 *N. Y.* 13, which see; *Vanderwiele v. Taylor*, 65 *Id.* 346. Approved and applied in *Barkley v. Wilcox*, 86 *Id.* 140, 144, which aff'd 19 *Hun.* 320, which see. Disapproved in *Shane v. Kansas City, &c. R. R. Co.*, 71 *Mo.* 237; s. c., 36 *Am. R.* 480, 489. Disting'd with *Ellis v. Duncan*, 21 *Barb.* 230, in *Pettigrew v. Village of Evansville*, 25 *Wis.* 222; s. c., 3 *Am. R.* 50. Cited with other cases in 11 *Am. L. Reg. N. S.* 22. Quoted in *Wood on Nuis.* 2 ed., § 382. Approved with *Conchoction Stone Road Co. v. Buffalo, N. Y. & Erie R. R. Co.*, 3 *Hun.* 523 (Discrimination between rules applying to water-courses and surface waters) in *Taylor v. Fickas*, 64 *Ind.* 167; s. c., 31 *Am. R.* 114.
- **v. Walsh**, 2 *Sup'm. Ct. (T. & C.)* 311. Disting'd (Time for filing notice of lien) in *Chase v. James*, 10 *Hun.* 506, 508.
- Goodell v. Jackson**, 20 *Johns.* 693; s. c., 11 *Am. Dec.* 351. For the same rule in other States and U. S. courts (Criminal jurisdiction of States over Indians) see *State v. Dextater*, 47 *Wis.* 278, 294, citing also *Murray v. Wooden*, 17 *Wend.* 531; *Peters' Case*, 2 *Johns. Cas.* 344.

- Goodhue, Matter of.** See *Matter of Washburn*.
- Goodhue v. Berrien, 2 Sandf. Ch.** 630. See *Union Nat. B'k v. Warner*. Disting'd (Effect of non-production of bond referred to in mortgage) in *Bergen v. Urbahn*, 83 *N. Y.* 49. Limited (Mortgage to secure future liabilities) in *Ackerman v. Hunsicker*, 85 *N. Y.* 43, 51, which rev'd 21 *Hun*, 53, which see.
- **v. Churchman**, 1 *Barb. Ch.* 590. Relied on with *Webb v. Pell*, 3 *Paige*, 371. (Examination of record of former suit, on review of errors at law) in *McDougald v. Dougherty*, 39 *Ala.* 409.
- Goodman v. Stroheim**, 36 *Super. Ct. (J. & S.)* 216. Followed (Malice must be combined with want of probable cause) in *Kingsbury v. Garden*, 45 *Id.* 224, 232.
- Goodrich v. Downs**, 6 *Hill*, 438; s. c., 16 *N. Y. Com. L. Law. ed.* 415, with brief analytic list of cases commenting on it. See *Grover v. Wakeman*. Overruled (Effect of reservation for assignor's benefit, in assignment for creditors) in *Curtis v. Leavitt*, 15 *N. Y.* 9, 114, 146, 176. Disapproved with *Barney v. Griffin*, 2 *Id.* 365, in *Morgan v. Bogue*, 7 *Neb.* 429. Disting'd in *Kneeland v. Cowles*, 4 *Chand. (Wis.)* 49. Collated with other cases in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 82. Explained in *Burrill on Assign.* § 200, 4 ed.; *Id.* § 243. Quoted and collated with other cases in *Bishop on Assign.* § 167. Collated with other cases in *Id.* § 201. Quoted (Preferences) in *Burrill on Assign.* 4 ed., §§ 166, 169. Commented on (Terms of sale) in *Id.* § 221, n. 5. Explained (Fraudulent intent) in *Id.* §§ 338, 339, 349, 350, 352.
- **v. Dunbar**, 17 *Barb.* 644. Approved (Arrest in action on judgment) in *Mallory v. Leach*, 14 *Abb. Pr.* 449, 451, n. Compared with other cases, in *Baxter v. Drake*, 85 *N. Y.* 502. Collated with other cases, in *Thomps. on Prov. Rem.* 34. See *Code Civ. Pro.* 1881, § 552, n.
- **v. Jones**, 2 *Hill*, 142. Disting'd (Manure as part of realty) in *Haslem v. Lockwood*, 37 *Conn.* 500; s. c., 9 *Am. R.* 350. Collated with *Main v. Schwarzwaelder*, 4 *E. D. Smith*, 275; *Bishop v. Bishop*, 11 *N. Y.* 125; *Walker v. Sherman*, 20 *Wend.* 655, and many other cases (Fixtures), in 17 *Am. Dec.* 686, n.
- **v. Pendleton**, 3 *Johns. Ch.* 384. Cited (Invalidity of plea containing two distinct points) in *Albany City Bank v. Dorr*, *Walk. Ch. (Mich.)* 322. Commented on (Application of statute of limitations to trusts) in *Ang. on Trusts*, § 167, 6 ed.
- **v. People**, 19 *N. Y.* 574. Included with notes (Selling diseased meat) in *Lawson Lead. Cas. (Crim. L.) Simplified*, 151.
- **v. Russell**, 42 *N. Y.* 177. Followed (Capacity of alien to hold land) in *Dusenberry v. Dawson*, 9 *Hun*, 511.
- **v. Stevens**. See *Walrath v. Thompson*.
- **v. Thompson**, 4 *Robt.* 75. Aff'd in 44 *N. Y.* 324.
- **v. Woolcott**, 3 *Cow.* 231. Aff'd in 5 *Id.* 714. See *Gibbs v. Dewey*. Decision in 3 *Cow.* commented on (Pleadings in libel) in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 163.
- Goodsell v. Myers**, 3 *Wend.* 479. See *Swasey v. Vanderheyden*. Approved ("New promise," to whom to be made) in *Chandler v. Glover*, 32 *Penn.* 509. Approved and applied (Validity of note of infant) in *Conn. v. Coburn*, 7 *N. H.* 368; s. c., 26 *Am. Dec.* 746, with note. Compare *Dubose v. Wheldon*, 4 *McCord (So. Car.)* 221. Collated with other cases in *Ewell Lead. Cas. on Inf., &c.* 175, n.
- **v. Phillips**, 49 *Barb.* 353. Explained and followed (Entry of judgment on arbitrator's award) in *Ocean House Corporation v. Chippu*, 5 *Hun*, 419.
- Goodwin's Case**, 5 *City Hall Rec.* 11. See account by a "gentleman of the bar" published in *N. Y.* in 1820. Also published with continuation by *W. Sampson*, *N. Y.* 1820-1.
- Goodwin v. Baltimore & O. R. R. Co.**, 58 *Barb.* 195. Rev'd in 50 *N. Y.* 154; s. c., 10 *Am. R.* 457.
- **v. Conklin**, 6 *Weekly Dig.* 131. Modified in 85 *N. Y.* 21.
- Goodwin v. Hirsch**, 37 *Super. Ct. (J. & S.)* 5. Compare (Effect of verdict where evidence has been erroneously admitted) *Brague v. Lord*, 2 *Abb. N. C.* 1.
- **v. Holbrook**, 4 *Wend.* 377. Followed with *Lobdell v. Hopkins*, 5 *Cow.* 516 (Duty of vendor of portable articles in respect to delivery) in *Burr v. Myers*, 3 *Watts & S. (Pa.)* 299. Discussed in 2 *Chitty on Contr.* 1210, n. 4, 11 *Am. ed.*
- **v. Mass. Mut. Life Ins. Co.**, 73 *N. Y.* 480. Followed as settled law (Waiver need not be based on new agreement or estoppel) in *Titus v. Glen's Falls Ins. Co.*, 8 *Abb. N. C.* 315, 328. Cited in 36 *Am. R.* 624, n. Disting'd (Indebtedness and deduction of it from net value of policy), and *Mass.* cases followed in preference in *Vancreeen v. Mass. Mut. Life Ins. Co.*, 35 *La. Ann.* 226, 230.
- **v. Simonson**, 74 *N. Y.* 133. See *Miller v. Collyer*. Disting'd (Discharge of surety by failure to enforce payment of principal) in *Converse v. Cook*, 25 *Hun*, 44, 48; *Marsh v. Duncel*, *Id.* 167, 169.
- Goodyear v. Brooks**, 4 *Robt.* 682; s. c., 2 *Abb. Pr. N. S.* 296. Explained (Ordering reference) in *Batchelor v. Albany City Ins. Co.*, 6 *Id.* 240.
- **v. Ogden**. See *Van Ostrand v. Reed*.
- **v. Vosburgh**, 57 *Barb.* 243. Cited (Validity of unacknowledged deed against subsequent grantee) in *Chamberlain v. Spargure*, 86 *N. Y.* 603, 605, which aff'd 22 *Hun*, 437, which see.
- **v. —**, 63 *Barb.* 154. Compare (Comparison of hands) cases cited in *Abb. Tr. Ev.* 397, n. 1.



- **v. Watson**, 14 *Barb.* 481. Applied (Subrogation of surety who has paid judgment, to position of principal creditor) in *Townsend v. Whitney*, 75 *N. Y.* 432.
- Goodyear Dental Vulcanite Co. v. Frisselle**, 57 *How. Pr.* 255. Rev'd in 22 *Hun.* 174.
- Goold v. Chapin**, 10 *Barb.* 612. Rev'd in 20 *N. Y.* 259. See *McDonald v. Western R. R. Co.* Decision in 10 *Barb.* followed (Storage that relieves carrier from liability as such) in *Miller v. Steam Navigation Co.*, 13 *Id.* 361. Decision in 20 *N. Y.* limited with *McDonald v. Western R. R. Co.*, 34 *Id.* 497, in accordance with decision in *Northrop v. Syracuse, & C. R. R. Co.*, 2 *Transc. App.* 183 (Liability of connecting carriers) in *Fenner v. Buffalo, & C. R. R. Co.*, 44 *N. Y.* 505, which rev'd 46 *Barb.* 103, which see.
- **v. Shaw**, 1 *Johns. Cas.* 293. Aff'd in 2 *Id.* 442.
- Gordon v. Boppe**, 7 *Alb. L. J.* 44. Rev'd in 55 *N. Y.* 665.
- **v. Bowne**, 2 *Johns.* 150. Disting'd with *Brown v. Cumming*, 2 *Cai.* 33 (Adjustment of unliquidated claims) in *Knox v. Protection Ins. Co.*, 9 *Conn.* 430; s. c., 25 *Am. Dec.* 33.
- **v. Cornes**, 47 *N. Y.* 608. Commented on (Municipal powers as to levying taxes) in *Cooley on Const. Limit.* 5 ed., 285, n.
- **v. Gaffey**, 11 *Abb. Pr.* 1. Approved (Attachment in actions for wrongs under the Code) in *Barry v. Fisher*, 8 *Abb. Pr. N. S.* 369. See *Code Civ. Pro.* 1881, ch. vii. tit. iii., art. 1., n.
- **v. Grand St. & Newtown R. R. Co.**, 40 *Barb.* 546. Followed with *Ernst v. Hudson River R. R. Co.*, 35 *N. Y.* 28 (Wrongdoer, when not allowed to set up want of negligence in injured party) in *Eaton v. Winnie*, 20 *Mich.* 126; s. c., 4 *Am. R.* 377.
- **v. Hartman**, 79 *N. Y.* 221. Applied (Appeal without stipulation) in *People ex rel. Salke v. Talcott*, 21 *Hun.* 591.
- **v. Hostetter**, 37 *N. Y.* 104. Followed (Plaintiff when not barred from right to judgment where sufficient facts are alleged) in *Ladd v. Arkell*; 37 *Super. Ct. (J. & S.)* 36, 41. Followed (Action for conversion for taking of money of employer) in *Id.* 395, 404.
- **v. People**, 33 *N. Y.* 501. Followed (Effect of failure of plaintiff to testify) in *Brooks v. Steen*, 6 *Hun.* 516.
- Gore v. Norwich & N. Y. Transportation Co.** See *Macklin v. N. J. Steamboat Co.*; *Weeks v. N. Y., New Haven & H. R. R. Co.*
- Gorham v. Gale**, 7 *Cow.* 739; s. c., 17 *Am. Dec.* 549, with note. Prior decision in 6 *Cow.* 467. See *Jackson v. Bush*. Decision in 7 *Cow.* disting'd (Sheriff when not liable by reason of special instructions to deputy) in *Ross v. Campbell*, 19 *Hun.* 615. Decision in 6 *Cow.* explained and disting'd in *McKinley v. Tucker*, 59 *Barb.* 93.
- Gorham M'fg Co. v. Fargo**, 45 *How. Pr.* 90; s. c., more fully, 35 *Super. Ct. (J. & S.)* 434.
- Gori v. Smith**, 6 *Robt.* 563. Followed (Order granting extra allowance reviewable) in *Hayner v. Am. Pop. Life Ins. Co.*, 36 *Super. Ct. (J. & S.)* 211, 215.
- Gornly v. McIntosh**, 22 *Barb.* 271. Explained (Costs on dismissal of complaint for want of jurisdiction) in *King v. Poole*, 36 *Id.* 242, 248; *Harriott v. N. J. R. R. Co.*, 1 *Daly*, 377, which rev'd 8 *Abb. Pr.* 284, which see.
- Gorsline's Case**, 10 *Abb. Pr.* 282. Disting'd (Letting to bail in county other than that where warrant of arrest issued) in *People v. Clews*, 77 *N. Y.* 39, 44.
- Gorton v. Keeler**, 51 *Barb.* 475. Rev'd as *Spooner v. Keeler* in 51 *N. Y.* 527.
- Goshen Turnpike Co. v. Hurtin**, 9 *Johns.* 217; s. c., 6 *Am. Dec.* 273. See *Jenkins v. Union Turnpike Co.*; *Union Turnpike Co. v. Jenkins*. Followed and approved (Necessity of demand of payment of note given to make up capital stock) in *Howland v. Edmunds*, 24 *N. Y.* 307, 315; *White v. Smith*, 77 *Ill.* 351; s. c., 20 *Am. R.* 251, 253. Discussed in *Ang. & A. on Corp.* § 518, 11 ed. Followed (Presumption of consideration of note) in *Paine v. Noelke*, 43 *Super. Ct. (J. & S.)* 176, 184. Commented on with other cases (Effect of omission to pay percentage on stock subscription as required by statute) in *Excelsior Grain Binding Co. v. Stayner*, 61 *How. Pr.* 456, 461.
- Gosling v. Acker**, 2 *Hill*, 392. Followed (Effect of appearance by infant without attorney) in *Fairweather v. Satterly*, 7 *Robt.* 546.
- Gosman v. Cruger**, 7 *Hun.* 60. Aff'd in 69 *N. Y.* 87; s. c., 25 *Am. R.* 141.
- Goss v. Mather**, 2 *Lans.* 283. Aff'd in 46 *N. Y.* 689, but without opinion.
- Gotheus v. Matheson**, 58 *Barb.* 152; s. c., 40 *How. Pr.* 97. Further decision in 5 *Lans.* 214, which was rev'd in 61 *N. Y.* 420. See *Goetheus v. Matthewson*.
- Gotendorf v. Goldschmidt**, 83 *N. Y.* 110. Limited (Dispensing with personal service on infant in partition) as not applicable in foreclosure or actions generally, in *Ingersoll v. Mangam*, 84 *Id.* 622, 627.
- Gott v. Cook**, 7 *Paige*, 521. Aff'd in *Kane v. Gott*, 24 *Wend.* 641; but one of its positions questioned. See *Hone v. Van Schaick*. Decision in 7 *Paige* relied on with *Everitt v. Everitt*, 29 *N. Y.* 71, in construing the terms "power of alienation" in reference to real estate and "unqualified ownership" in reference to personal property, in the statutes of *N. Y.*, as synonymous terms,—in *Ladd v. Mills*, *U. S. Cir. Ct., S. D. N. Y.*, 20 *Fed. Rep.* 792. Commented on (Trusts to receive rents and profits or income for use of another) in 4 *Kent Com.* 310, n. c.
- Gottsberger v. Smith**, 5 *Duer*, 566. Aff'd as *Gottsberger v. Taylor*, 19 *N. Y.* 150. Decision in 19 *N. Y.* followed (Money held in representative capacity) in *People v. Hascall*, 22 *Id.* 188, 190. See (Liability of sureties) *Code Civ. Pro.* 1881, § 2596, n.

- **v. Taylor.** See *Gottsberger v. Smith*.  
**Gouge v. Roberts**, 53 *N. Y.* 619. Cited (Things of different species not to be taken into account in determining value) in 2 *Whart. Com. on Ev.* § 1290.
- Gough v. St. John**, 16 *Wend.* 646. See *Fowler v. Aetna Ins. Co.* Commented on (Evidence of general character) in 1 *Greenl. on Ev.* 14 ed., § 54, n. 3.
- **v. Staats**, 13 *Wend.* 549. Disapproved (Diligence required in presenting check) in *Smith v. James*, 20 *Id.* 192. Cited with *Mohawk B'k v. Broderick*, 13 *Id.* 133, in *Himmelmann v. Hotaling*, 40 *Cal.* 111; s. c., 6 *Am. R.* 600.
- Gould v. Armstrong.** See *Elting v. Vanderlyn*.
- **v. Banks**, 8 *Wend.* 562; s. c., 24 *Am. Dec.* 90. Limited (Effect of offer to fulfill contract, after time appointed) in *Friess v. Rider*, 24 *N. Y.* 367, 370.
- **v. Cayuga County Nat. B'k**, 21 *Hun.* 293. Aff'd in 86 *N. Y.* 75. Prior decision in 56 *How. Pr.* 505. See *Reubens v. Joel*. Decision in 86 *N. Y.* disting'd (Limitation of actions) in *People v. White*, 28 *Hun.* 289. Followed (Rescission for fraud) in *Metropolitan Elev. R'y Co. v. Manhattan R'y Co.*, 14 *Abb. N. C.* 103, 224.
- **v. Chase**, 16 *Johns.* 226. Followed (Waiver of right to enforce offset existing against assignor of chose in action) in *Merrill v. Merrill*, 3 *Greenl. (Me.)* 463; s. c., 14 *Am. Dec.* 247.
- **v. Conway**, 59 *Barb.* 355. Disting'd (Entries as evidence) in *Payne v. Hodge*, 7 *Hun.* 612, 615.
- **v. Gager**, 24 *How. Pr.* 440; s. c., more fully, 18 *Abb. Pr.* 32.
- **v. Glass**, 19 *Barb.* 179. See *Bloodgood v. Mohawk & Hudson River R. R. Co.* Cited as authority (Proof of official character of commissioner of highways) in *Albro v. Rood*, 24 *Hun.* 72, 74.
- **v. Gould**, 36 *Barb.* 270. Further decision on the merits, in 41 *Id.* 654.
- **v. —**, 8 *Cow.* 168. Aff'd in 6 *Wend.* 263. Compare to the contrary (Joint action by sureties) *Fletcher v. Jackson*, 23 *Vt.* 593; *Osborne v. Harper*, 5 *East.* 225; *Boggs v. Curtin*, 10 *Serg. & R. (Pa.)* 211; *Pearson v. Parker*, 3 *N. H.* 366; *Jewett v. Cornforth*, 3 *Greenl. (Me.)* 107. Decision in 6 *Wend.* partners with other cases (Presumption that collated share equally in profits and losses of partnership) in *Story on Partn.* 7 ed., § 24, n. Cited in 1 *Taylor on Ev.* 186 to show that the law as best interpreted in England and America agrees with the civil law.
- **v. —**, 29 *How. Pr.* 441. See *Minier v. Minier*. Approved with *Longendyke v. Longendyke*, 44 *Barb.* 366 (Suits between husband and wife) in *Perkins v. Perkins*, 62 *Id.* 531, 537. Questioned in *Adams v. Curtis*, 4 *Lans.* 164.
- **v. Hill**, 2 *Hill*, 623; s. c., 15 *N. Y. Com. L. Law. ed.* 475, with brief note.
- See *Cole v. Goodwin*; *Gibson v. Culver*; *Hollister v. Nowlen*; *Welles v. N. Y. Central R. R. Co.* Overruled (Limitation of liability of carrier by contract) in *Dorr v. N. J. Steam Nav. Co.*, 11 *N. Y.* 485; *Parsons v. Monteath*, 13 *Barb.* 358; *Moore v. Evans*, 14 *Id.* 524. See *Mercantile Mut. Ins. Co. v. Calebs*, 20 *N. Y.* 173; *Blossom v. Dodd*, 43 *Id.* 264. Referred to as denied in *N. J. Steam Nav. Co. v. Merchants' Bk.*, 6 *How. (U. S.)* 844, and as overruled in *N. Y.*, — in *Kirby v. Adams Express Co.*, 2 *Mo. App.* 369. Referred to in *Welsh v. Pittsburgh, Fort Wayne, & C. R. R. Co.*, 10 *Ohio St.* 65, 70, as having been overruled, and in *Indianapolis & Cincinnati R. R. Co. v. Cox*, 29 *Ind.* 360, as having been modified. Doubtful in *Moses v. Boston & Maine R. R.*, 24 *N. H.* 71; s. c., 55 *Am. Dec.* 222, 232. Compared in 5 *Am. L. Reg. N. S.* 5. Discussed in *Ang. on Carr.* § 221, 5 ed., *Id.* § 239. Quoted and explained in 2 *Parr. on Contr.* 234, n. 3, where it is stated that this case received the approbation of *Nisbet, J.*, in *Fish v. Chapman*, 2 *Ga.* 349. Quoted with decisions to the contrary and commented on in 2 *Story on Contr.* 5 ed., § 947, n. 1. Cited approvingly with other authorities in 2 *Kent Com.* 608, n. b. Reviewed and collated with *Parsons v. Monteath*, 13 *Barb.* 353; *Wells v. N. Y. Central R. R. Co.*, 24 *N. Y.* 181; *Perkins v. Same*, 24 *Id.* 196; *Mynard v. Syracuse, & C. R. R. Co.*, 71 *Id.* 180, with conflicting cases in other jurisdictions (Rights of gratuitous passengers) in 20 *Cent. L. J.* 485.
- **v. Hudson River R. R. Co.**, 12 *Barb.* 616. Aff'd in 6 *N. Y.* 522. See *Bellinger v. N. Y. Central R. R. Co.*; *Hooker v. Cummings*; *Lansing v. Smith*; *Marshall v. Guion*; *Radcliff v. Mayor, & C. of Brooklyn*. Decision in 6 *N. Y.* disting'd with *People v. Tibbetts*, 19 *Id.* 527, and dissenting opinion of *Edmonds, J.*, in 6 *Id.* approved (Legislative power over fresh water streams and lakes) in *Smith v. City of Rochester*, 92 *Id.* 463. Followed in *Stevens v. Paterson & Newark R. R. Co.*, 34 *N. J.* 532; s. c., 3 *Am. R.* 269, 283, where views of *Edmonds, J.*, were criticised. Decision in 12 *Barb.* reviewed and relied on with *People v. Tibbetts*, 19 *N. Y.* 523; *People v. Canal Appraisers*, 23 *Id.* 461 (Rights of owners of land on navigable rivers) in *Ravenswood v. Flemings*, 22 *W. Va.* 52; s. c., 46 *Am. R.* 485. Decision in 6 *N. Y.* disapproved in *Providence Steam Engine Co. v. Providence, & C. Steamship Co.*, 12 *R. I.* 384; s. c., 34 *Am. R.* 660. Followed in *Tomlin v. Dubuque, Bellevue, & C. R. R. Co.*, 32 *Iowa*, 106; s. c., 7 *Am. R.* 176, 178. Said, however, in 7 *Am. R.* 179, n., to be distinguishable from *Tomlin v. Dubuque, & C. R. R. Co.* Collated with other cases in *Mills Thompson on Highw.* 3 ed., 410. Compared in 11 *Ab. L. J.* 19. Referred to in 34 *Am. R.* 394, n., as a leading case. Quoted in *Wood on Nuis.* 2 ed., § 468, n.

- **v. James**, 6 *Cow*. 369. Followed with *Rogers v. Jones*, 1 *Wend*. 237 (Rights of fishery) in *Trustees of Brookhaven v. Strong*, 1 *Sup'm. Ct. (T. & C.)* 415, which was aff'd in 60 *N. Y.* 56, 65, which see. Discussed in 3 *Kent Com.* 417.
- **v. McCarty**, 11 *N. Y.* 575. Examined (Discovery and inspection) in *Pegram v. Carson*, 10 *Abb. Pr.* 340, 344. Cited in *Babbitt v. Crampton*, 1 *Civ. Pro. R.* 169, 175, with note.
- **v. Moore**, 40 *Super. Ct. (J. & S.)* 387. Further proceeding in 51 *How. Pr.* 188.
- **v. Moring**, 28 *Barb.* 444. Disapproved (Joining security and lessee in one action) in *Decker v. Gaylord*, 8 *Hun*, 110.
- **v. Mortimer**, 16 *Abb. Pr.* 448; s. c., 26 *How. Pr.* 167. Approved (Right to move against judgment) in *Kellogg v. Howell*, 62 *Barb.* 280. Collected with other cases (Application to intervene) in 6 *Abb. N. C.* 306, n.
- **v. Root**, 4 *Hill*, 554. Explained (Disregarding irregular order) in *Spencer v. Barber*, 5 *Id.* 569.
- **v. Segree**, 5 *Duer*, 260. Disting'd (Liability on note not put in circulation) in *Benson v. Huntington*, 21 *Mich.* 415; s. c., 4 *Am. R.* 502. Cited as authority in *Kinyon v. Wohlford*, 17 *Minn.* 239; s. c., 10 *Am. R.* 165. Reviewed and relied on with *Griggs v. Howe*, 31 *Barb.* 100; *Kitchen v. Place*, 41 *Id.* 465; *Redlich v. Doll*, 54 *N. Y.* 234 (Rights of bona fide holder of negotiable instrument when not impaired by fraud, &c., in making or execution thereof) in *First Nat. B'k of Parkersburg v. Johns*, 22 *W. Va.* 520; s. c., 46 *Am. R.* 506.
- **v. Town of Oneonta**, 3 *Hun*, 401; s. c., less fully, 6 *Sup'm. Ct. (T. & C.)* 43. Aff'd in 71 *N. Y.* 298. Decision in *Id.* disting'd (Town bonds) in *Scipio v. Wright*, 101 *U. S.* 665, 676.
- **v. Town of Sterling**, 23 *N. Y.* 456; s. c., 1 *Am. L. Reg. N. S.* 290, with note. See *Allen v. Brown*; *Starin v. Town of Genoa*. Examined and approved with *Starin v. Town of Genoa*, 23 *N. Y.* 439; *Barto v. Himrod*, 8 *Id.* 433; *Bank of Rome v. Village of Rome*, 18 *Id.* 38; *Same v. Same*, 19 *Id.* 20 (Legislative power when not to be delegated) in *Clark v. City of Rochester*, 28 *Id.* 605, 633. Followed (Town bonding) in *Horton v. Town of Thompson*, 71 *Id.* 513, 523; *Town of Venice v. Breed*, 65 *Barb.* 601. Disapproved in *Town of Venice v. Murdock*, 92 *U. S.* 494, 499. Disting'd in *Scipio v. Wright*, 10 *Id.* 665, 674, 676. Approved in *State v. School Dist. No. 4*, 16 *Neb.* 188. Commented on in 7 *South. L. Rev. N. S.* 229.
- **v. Town of Venice**, 29 *Barb.* 442. Subsequent decision as *Starin v. Town of Genoa*, 23 *N. Y.* 439. See *People v. Mitchell*; *Starin v. Town of Genoa*.
- Goulding v. Davidson**, 28 *Barb.* 438. Rev'd in 25 *How. Pr.* 483; s. c., more fully, 26 *N. Y.* 604; also in 6 *Am. L. Reg. N. S.* 34, with note by Prof. DWIGHT. See *Nash v. Russell*. Decision in 26 *N. Y.* disting'd (Liability of married woman on note, as affected by promise to pay made after coverture) in *Smith v. Allen*, 1 *Lans.* 101, 107. Included in *Ewell Lead. Cas. on Inf., &c.* 333, n. 2. Doctrine criticised in 3 *Am. L. Reg. N. S.* 44. Quoted in 2 *Greenl. on Ev.* 14 ed., § 107, n. a.
- Goulet v. Asseler**, 23 *N. Y.* 225. Conclusions herein not approved as a whole (Differences between forms of action under the Code) in *Pomeroy on Rem.* § 108, n. 1.
- Goupil v. Simonson**. See *Carpenter v. Spooner*.
- Gouraud v. Trust**, 3 *Hun*, 627. See opinion of court below in 6 *Sup'm. Ct. (T. & C.)* 134.
- Gourdiere v. Cormack**, 2 *E. D. Smith*, 254. Cited as authority with *Gilbert v. Beach*, 4 *Duer*, 423; *Young v. N. Y. Central R. R. Co.*, 30 *Barb.* 229 (Liability for negligence of independent contractor) in *Myer v. Hobbs*, 57 *Ala.* 175; s. c., 29 *Am. R.* 719.
- Gourley v. Campbell**, 6 *Hun*, 218. Rev'd in 66 *N. Y.* 169. See *Power v. Cassidy*.
- **v. Shoemaker**, 1 *Johns. Cas.* 392; s. c., 1 *N. Y. Com. L. Lav. ed.* 364, with brief note, citing other cases (Convenience of witnesses).
- Gouverneur v. Lynch**, 2 *Paige*, 300. With *Grimstone v. Carter*, 3 *Id.* 436, referred to as holding a doctrine the contrary of which is not held in any State in the Union (Adverse possession as evidence of notice) in *Landes v. Brandt*, 10 *How. (U. S.)* 348. Criticised in *Young v. Guy*, 87 *N. Y.* 457, as overruled (Purchaser of land when affected by prior mortgage) by *Trustees of Union College v. Wheeler*, 61 *Id.* 88.
- **v. Titus**, 1 *Edw.* 477. Aff'd in 6 *Paige*, 347. See *Wiswall v. Hall*.
- Governors of Almshouse v. Am. Art Union**, 7 *N. Y.* 228. Collated with *Grover v. Morris*, 73 *Id.* 473, and other cases (What is a lottery) in 28 *Am. R.* 441, n. Commented on in 2 *Add. on Contr.* 1158, n., *Abb. ed.*
- Gowan v. Jackson**, 20 *Johns.* 176. See *Whitney v. Sterling*. Followed (Presumption that indorser, &c. had notice of dishonor) in *West Branch B'k v. Fulmer*, 3 *Pa. St.* 399; s. c., 45 *Am. Dec.* 651. Relied on in *N. Y. & Ala. Contracting Co. v. Selma Savings B'k*, 51 *Ala.* 305; s. c., 23 *Am. R.* 552.
- Gowdy v. Poullain**, 2 *Hun*, 218. Disting'd (Amendment of pleading) in *Hauck v. Craighead*, 4 *Id.* 561.
- Grace v. Wilber**, 10 *Johns.* 453. Rev'd in 12 *Id.* 68.
- Gracie v. Freeland**, 3 *Den.* 609; s. c., more fully, 1 *N. Y.* 228; also as *Gracie v. Freeland*, 3 *How. Pr.* 218. Disting'd (Appealability of order denying rehearing) in *Marvin v. Seymour*, 1 *N. Y.* 535.
- **v. N. Y. Ins. Co.**, 8 *Johns.* 237. Applied

- (Assured deemed trustee of amount received) in *Conn. Fire Ins. Co. v. Erie Ry. Co.*, 10 *Hun.* 59, 61.
- **v. Pierson.** See *Gracie v. Freeland*.
- Graduates, Matter of the**, 31 *Barb.* 353; s. c., more fully, 10 *Abb. Pr.* 348; 19 *How. Pr.* 97, 136. Rev'd in 22 *N. Y.* 67; s. c., 11 *Abb. Pr.* 301; 20 *How. Pr.* 1. Decision in *Id.* disting'd (Review of proceedings on application for admission to practice) in *Matter of Beggs*, 67 *N. Y.* 121.
- Grady v. Crook**, 2 *Abb. N. C.* 53. Aff'd, it seems, in 72 *N. Y.* 612, but without opinion.
- Graff v. Bonnett**, 25 *How. Pr.* 470. Subsequent decision in 2 *Robt.* 54, which was aff'd in 31 *N. Y.* 9. Decision in *Id.* approved and followed (Right of creditor to reach trust fund for support of debtor) in *Locke v. Mabbett*, 2 *Keyes*, 457. Disting'd in *Williams v. Thorn*, 70 *N. Y.* 270, 275. Explained and applied (Pleading in proceedings to reach such fund) in *Miller v. Miller*, 1 *Abb. N. C.* 30, 37. Applied (Inalienability of trust estate in personalty) in *Roosevelt v. Roosevelt*, 6 *Hun.* 31, 44. Commented on in 2 *Abb. L. J.* 261, 288. With decision in 25 *How. Pr.* see (Relation back of receiver's title in supplementary proceedings) *Code Civ. Pro.* 1881, § 2469, n.
- **v. Kip.** See *Little v. Harvey*.
- Graham v. Cammann**, 2 *Cal.* 168. Followed (Adverse possession, as question for jury) in *Beverly v. Burke*, 9 *Ga.* 440; s. c., 54 *Am. Dec.* 351, with note.
- **v. Chrystal**, 32 *How. Pr.* 287; s. c., more fully, 1 *Abb. Pr. N. S.* 121. Aff'd in 2 *Abb. Ct. App. Dec.* 263; s. c., 2 *Keyes*, 21; 37 *How. Pr.* 279. Decision in *Id.* applied (Limit of time on inquiry as to general reputation) in *Stevens v. Rodger*, 25 *Hun.* 54, 56.
- **v. Dickinson**, 3 *Barb. Ch.* 169. Explained and limited (Surplus fund when to be regarded as personalty) in *Sweezy v. Thayer*, 1 *Duer*, 286, 307. Commented on (Husband's rights in wife's real estate) in *Schouler on Dom. Rel.* 3 ed., § 92. See (Restitution for assets subsequently discovered) *Code Civ. Pro.* 1881, § 2801, n.
- **v. Firemen's Ins. Co.** See mem. of decision under *Graham v. Sterling Fire Ins. Co.*, 77 *N. Y.* 611. Further decision, as it seems, in 8 *Daly*, 421. Also in 9 *Id.* 341, which was aff'd in 87 *N. Y.* 69.
- **v. First Nat. B'k of Norfolk**, 20 *Hun.* 326. Aff'd in 84 *N. Y.* 393; s. c., 38 *Am. R.* 528. See *People v. Gardner*.
- **v. People**, 6 *Lans.* 149. Subsequent decision in 63 *Barb.* 468. These decisions reviewed with other cases (Writs of error in criminal cases) in *Manke v. People*, 74 *N. Y.* 415, 421.
- **v. Phoenix Ins. Co.**, 12 *Hun.* 446. Aff'd in 77 *N. Y.* 171. See also decision in subsequent action in 17 *Hun.* 156.
- **v. Pinckney**, 7 *Robt.* 147. Criticised (Pleading infancy of defendant after default) in *Phillips v. Dusenberry*, 8 *Hun.* 348.
- **v. Public Administrator**, 4 *Bradf.* 127. Applied (Domicil for purposes of succession) in *Matter of Stover*, 4 *Redf.* 82, 85; *Von Hoffman v. Ward*, *Id.* 244, 257. Explained in *Willard on Executors*, 405.
- **v. Selover**, 59 *Barb.* 313. Aff'd in 46 *How. Pr.* 107. See *Hackley v. Patrick*.
- **v. Stone**, 6 *How. Pr.* 15. Overruled with *Brown v. Orvis*, *Id.* 376 (Proof of mitigating circumstances in action for libel, &c.) in *Bush v. Prosser*, 11 *N. Y.* 347. These two cases with *Newman v. Otto*, 4 *Sandf.* 669, approved (Motion to make more definite, mitigating circumstances set up in libel, &c.) in *Bush v. Prosser*, but doubted in *Maretzek v. Cauldwell*, 2 *Robt.* 715.
- **v. Van Wyck**, 14 *Barb.* 531. Disapproved (Validity of conveyance by wife to husband) in *Winans v. Peebles*, 31 *L.* 371.
- Gran v. Cadwell**, 5 *Cow.* 489; s. c., 8 *N. Y. Com. L. Law. ed.* 729, with brief note of supporting cases. See *Everngim v. Ensworth*; *Smith v. Miller*. Disting'd from *Napier v. McLeod*, 9 *Wend.* 120 (Power of partner after dissolution) in *Huntington v. Potter*, 32 *Barb.* 300, 304. Applied in *Hilton v. Vanderbilt*, 82 *N. Y.* 590, 596. Disting'd (Assignment of part of debt) in *First Nat. B'k of Milwaukee v. Smith*, 26 *Hun.* 224.
- **v. Prussia, &c. German Society.** See *Robertson v. Bullions*.
- **v. Seton**, 1 *Hall*, 262. See *Ludlow v. Simond*. Criticised (Power of partner to bind copartner by instrument under seal) in *Turbeville v. Ryan*, 1 *Humph. (Tenn.)* 113; s. c., 34 *Am. Dec.* 622, 624, with note. Followed and approved in *Bond v. Aitken*, 6 *Watts & S. (Pa.)* 165; s. c., 40 *Am. Dec.* 550, with note; *Drumright v. Philpot*, 16 *Geo.* 424; s. c., 60 *Am. Dec.* 738, with note. Cited in *Story on Partn.* 7 ed., § 122, n. Discussed in 3 *Kent Com.* 48, n. b.
- **v. Stebbins**, 6 *Paige*, 124. Explained (Recovery of money, &c. paid in pursuance of wager contract) in *Staples v. Gould*, 9 *N. Y.* 520.
- Grandin v. Le Roy**, 2 *Paige*, 509. See *De Zeng v. Fyfe*. Criticised (*Dona fide* holder of accommodation paper) in *Bowman v. Van Kuren*, 29 *Wis.* 209; s. c., 9 *Am. R.* 557. Followed with *Bank of Rutland v. Buck*, 5 *Wend.* 66; *Bank of Chenango v. Hyde*, 4 *Cow.* 566, in *Kimbro v. Lytle*, 10 *Yerg. (Tenn.)* 417; s. c., 31 *Am. Dec.* 585, with note; *Bay v. Coddington*, 20 *Johns.* 637, and other cases being disting'd as cases of equities arising from fraud, &c.
- Grand Rapids & Indiana R. R. Co. v. Sanders**, 54 *How. Pr.* 214. Rev'd in 17 *Hun.* 552.
- Granger v. City of Buffalo**, 6 *Abb. N. C.* 238. Compare (What is included in right to be heard) *Matter of Nichols*, *Id.* 474.

- **v. Crouch**, 22 *Hun*, 464. Aff'd in 86 *N. Y.* 494.
- Grangiac v. Arden**, 10 *Johns*, 293. Applied (Evidence of gift *inter vivos*) in *Trow v. Shannon*, 8 *Daly*, 239, 242. Relied on (Gift *causa mortis* when valid without actual delivery) in *Ellis v. Secor*, 31 *Mich.* 185; s. c., 18 *Am. R.* 178, 183. Relied on with *Gardner v. Gardner*, 22 *Wend.* 525, in *Darland v. Taylor*, 52 *Iowa*, 503; s. c., 35 *Am. R.* 285, 287.
- Grannis v. Clark**, 8 *Cow.* 36. Followed (Meaning of term "demise" in lease) in *Crouch v. Fowle*, 9 *N. H.* 219; s. c., 32 *Am. Dec.* 350, with note. See 2 *R. S.* 738, § 140. Explained in 4 *Kent Com.* 475, n. c.
- Grant v. Button**. See *Beecker v. Vrooman*.
- **v. Chester**, 17 *How. Pr.* 260. Disting'd (Liability of attorney for money received in professional capacity) in *Matter of Husson*, 62 *How. Pr.* 358, 362.
- **v. Courter**, 24 *Barb.* 232. Reviewed with *People ex rel. Griffing v. Mayor, &c. of Brooklyn*, 4 *N. Y.* 419; *Town of Guilford v. Cornell*, 18 *Barb.* 615; 13 *N. Y.* 143 (Right of legislature to compel city to create debt or levy tax for particular city purposes) in *People v. Lynch*, 51 *Cal.* 15; s. c., 21 *Am. R.* 677, 695. Applied (What is not delegation of legislative power) in *Currier v. West Side Elev. Pat. R'y Co. of N. Y.*, 6 *Blatchf. C. Ct.* 487, 494.
- **v. Ellicott**, 7 *Wend.* 227. Explained (Liability of accommodation signer) in *Chester v. Dorr*, 41 *N. Y.* 279. Included in *Bigel. on B. & N.* 2 ed., 448, with note. Also in *Redf. & B. Lead. Cas. on B. of Exch.* 263.
- **v. Griswold**, 21 *Hun*, 509. Appeal dismissed in 82 *N. Y.* 569.
- **v. Johnson**, 6 *Barb.* 337. Rev'd in 5 *N. Y.* 247. Prior decision in 5 *Barb.* 161. See *Considerant v. Brisbane*. Decision in 5 *N. Y.* included (Conditions precedent in contracts) in 2 *Langdell's Cas. on Contr.* 2 ed. 603. Quoted in 2 *Benj. on Sales*, § 855, n. 2 (Corbin's 4 *Am. ed.*). Discussed in 2 *Pars. on Contr.* 528, n. q.
- **v. McCaughin**. See *Allen v. Mapes*.
- **v. Morse**, 22 *N. Y.* 323. Dictum corrected (Granting new trial for referee's refusal to find facts) in *Manley v. Ins. Co. of N. A.*, 1 *Lans.* 20. Disting'd in *Meyer v. Amidon*, 45 *N. Y.* 269; and see *Van Slyke v. Hyatt*, 46 *Id.* 259; *Leffler v. Field*, 47 *Id.* 407; 42 *How. Pr.* 420.
- **v. People**, 4 *Park.* 527. Disting'd (Conferring jurisdiction by consent in criminal cases) in *People v. Dohring*, 59 *N. Y.* 374, 380.
- **v. Quick**, 5 *Sandf.* 612. Disting'd (Effect of suit pending before court competent to give full relief) in *Moser v. Polhamus*, 4 *Abb. Pr. N. S.* 442.
- **v. Shurter**, 1 *Wend.* 148. Disting'd (Right to sue personal representatives of deceased partner) in *Haines v. Hollister*, 64 *N. Y.* 1, 4.
- **v. Smith**, 46 *N. Y.* 93. Disting'd (Liability of sureties) in *Western N. Y. Life Ins. Co. v. Clinton*, 66 *Id.* 333.
- **v. Tallman**, 20 *N. Y.* 191. Included, with note (Damages for breach of covenant against incumbrances) in *Sedgw. Cas. on Dam.* 36.
- **v. Taylor**, 31 *Super. Ct.* (1 *J. & S.*) 338. Aff'd, it seems, in 52 *N. Y.* 627, but without opinion. Decision in 35 *Super. Ct.* relied on (Lien of banker) in *Whart. Com. on Ag.* § 688, n.
- **v. U. S. Bank**, 1 *Cui. Cas.* 112. Explained (Tacking as between registered mortgages) in 4 *Kent Com.* 178, n. b.
- **v. Vandercreek**, 8 *Abb. Pr. N. S.* 455. Approved (Expiration of mechanics' lien) in *Huxford v. Bogardus*, 40 *How. Pr.* 94. But see to contrary, *Donnelly v. Libby*, 1 *Sweeney*, 259.
- **v. Van Schoonhoven**, 9 *Paige*, 255. See *People v. Hoffman*. Approved as authority under the Code with *Bowers v. Smith*, 10 *Id.* 193; *Alston v. Jones*, 3 *Barb. Ch.* 397; *Sherman v. Burnham*, 6 *Barb.* 403 (In actions for her separate property, wife must sue alone) in *Ackley v. Tarbox*, 29 *Id.* 512. Applied (Appointment of guardian *ad litem* for infant defendant) in *Ingersoll v. Mangam*, 84 *N. Y.* 622, 626.
- Grantman v. Thrall**, 31 *How. Pr.* 464. Followed (Attachment for costs) in *Wice v. Commercial Fire Ins. Co.*, 8 *Daly*, 70. Disapproved in *Morrison v. Lester*, 15 *Hun*, 538, 540.
- Graser v. Stellwagen**. See *Havens v. Hussey*.
- Grattan v. Metropolitan Life Ins. Co.**, 80 *N. Y.* 281. Decision in 24 *Hun*, 43 was in action on another policy. See *Edington v. Mut. Life Ins. Co.*; *Whiting v. Barney*. Decision in 80 *N. Y.* applied (Information of physician when privileged) in *Pearshall v. Elmer*, 5 *Redf.* 181, 189. See in accord therewith (Sufficiency of proof of loss) *Home Ins. Co. v. Davis*, 98 *Penn. St.* 280, and see comments in 24 *Alb. L. J.* 243.
- **v. Nat. Life Ins. Co.**, 15 *Hun*, 74. Cited with other authorities in 57 *Am. Dec.* 95, n., as showing a tendency to depart from what is now the doctrine in England and America (Interest in another's life that will support life policy).
- Graves v. American Exchange B'k**, 17 *N. Y.* 205. Disting'd (Effect of forged indorsement) in *Susquehanna Val. Nat. B'k v. Loomis*, 85 *Id.* 207, 212. Applied with *Morgan v. B'k of State of N. Y.*, 11 *Id.* 404; *Talbot v. B'k of Rochester*, 1 *Hill*, 295, in *Dodge v. Nat. Exchange B'k*, 20 *Ohio St.* 234; s. c., 5 *Am. R.* 648. Explained (Liability for conversion of negotiable paper) in *Thompson v. B'k of British N. A.*, 45 *Super. Ct. (J. & S.)* 15.
- **v. Berdan**, 29 *Barb.* 100. Aff'd in 26 *N. Y.* 498. Decision in *Id.* limited and disting'd (Effect of destruction of leased premises) in *Doupe v. Genin*, 45 *Id.* 119.

- Opinion of EMOTT, J., in 29 *Barb.* and of WRIGHT, J., dissenting, in 26 *N. Y.* approved in Austin v. Field, 7 *Abb. Pr. N. S.* 29. Both decisions examined with other cases in Aspinwall v. Balch, 7 *Daly*, 200, 203. Reviewed, at length, with Gates v. Green, 4 *Paige*, 355; Hallett v. Wylie, 3 *Johns.* 44; Willard v. Tillman, 19 *Wend.* 358, in Coogan v. Parker, 2 *So. Car.* 255; s. c., 16 *Am. R.* 659, 669, 675, 677.
- v. Brinkerhoff, 4 *Hun.* 305; s. c., 6 *Sup'm. Ct. (T. & C.)* 630. Compare (Mistake in deed) Paine v. Upton, 21 *Hun.* 306.
- v. Gouge. See Greaves v. Gouge.
- v. Graves, 2 *Paige*, 62. Quoted and discussed (Requisites of decree of divorce) in 2 *Bish. on Mar. & D.* § 745, 6 ed.
- v. McKeon, 2 *Den.* 639. Aff'd in *How. App. Cas.* 345. Decision in 2 *Den.* applied (Jurisdiction of person in justice's court) in Lapham v. Rice, 55 *N. Y.* 472, 477.
- v. Marine Ins. Co., 2 *Cal.* 339; s. c., 2 *N. Y. Com. L. Law. ed.* 453, with brief note.
- v. Merry, 6 *Cow.* 701; s. c., 16 *Am. Dec.* 471, with note, wherein it is said to have been frequently followed (What is notice of dissolution of partnership).
- v. Otis, 2 *Hill*, 466. Explained (Space over which commissioners of highways have control) in Hines v. City of Lockport, 60 *Barb.* 378.
- v. Spier, 58 *Barb.* 349. Aff'd in 49 *N. Y.* 657, but without opinion. Decision in 58 *Barb.* approved (Repudiating agent's acts) in Estes v. World Mut. Life Ins. Co., 6 *Hun.* 349. See (What claims may be assigned) *Code Civ. Pro.* 1881, § 1910, n.
- v. Waite, 1 *Sup'm. Ct. (T. & C.) Add.* 16. Aff'd in 59 *N. Y.* 156. Decision in *Id.* disting'd (Effect of allegations of fraud to fix action as one in tort) in Barnes v. Quigley, *Id.* 268; Matthews v. Cady, 61 *Id.* 651, 652. Cited as authority in Sparman v. Keim, 9 *Abb. N. C.* 1, 6, with note.
- v. Waterman, 4 *Hun.* 687. Rev'd in 63 *N. Y.* 657. See Davoue v. Fanning.
- Gray v. Barton**, 55 *N. Y.* 68. Mem. of decision below, in 1 *Alb. L. J.* 122. Decision in 55 *N. Y.* approved (What constitutes executed gift) in Ferry v. Stephens, 5 *Hun.* 109; Taylor v. Kelly, *Id.* 115; Johnson v. Spies, *Id.* 468. Applied in Turner v. Brown, 6 *Id.* 331, 334. Disting'd in Mayer v. Townsend, 1 *City Ct.* 358. Cited as authority with Ferry v. Stephens, 66 *N. Y.* 325; Carpenter v. Soule, 88 *Id.* 251 (Effect of promissory gift, evidenced by sealed instrument) in Lamprey v. Lamprey, 29 *Minn.* 151, 155. Compared with other cases in 15 *Alb. L. J.* 40.
- v. Bensel, 38 *Super. Ct. (J. & S.)* 447. Overruled in effect in subsequent decisions as Bensel v. Gray, 62 *N. Y.* 632.
- v. City of Brooklyn, 50 *Barb.* 365. Aff'd in 10 *Abb. Pr. N. S.* 186; s. c., 2 *Abb. Ct. App. Dec.* 267. Decision in *Id.* followed (Constitutionality of act limiting liability of municipal corporation) in Van Vranken v. City of Schenectady, 31 *Hun.* 516. Decision in 50 *Barb.* explained (Liability of city of Brooklyn for negligence) and Fitzpatrick v. Slocum, 89 *N. Y.* 358; Hardy v. City of Brooklyn, 90 *Id.* 435, followed in Vincent v. City of Brooklyn, 31 *Hun.* 122. Decision in 2 *Abb. Ct. App. Dec.* disting'd in Fitzpatrick v. Slocum, 89 *N. Y.* 358; Hardy v. City of Brooklyn, 90 *Id.* 435.
- v. Cook, 24 *How. Pr.* 432. See (Enforcing judgment) *Code Civ. Pro.* 1881, § 1241, n.
- v. Crosby, 18 *Johns.* 219. Applied (Payment of liquidated damages as discharge) in Higbie v. Farr, 28 *Minn.* 442. Quoted in 3 *Par. on Contr.* 159, n. g.
- v. Davis, 10 *N. Y.* 235. Quoted and explained (Acceptance in case of sale of goods over fifty dollars in value) in 1 *Benj. on Sales*, § 144, n. 4 (Corbin's 4 *Am. ed.*).
- v. Durland, 50 *Barb.* 100. See dissenting opinion of HOGEBOOM, J., *Id.* 211. Aff'd in 51 *N. Y.* 424. Decision in *Id.* applied (Right of action for seduction) in Certwell v. Hoyt, 6 *Hun.* 575, 577. Decision in 50 *Barb.* approved in Furman v. Van Sise, 56 *N. Y.* 435, 438. Reviewed with Simpson v. Buck, 5 *Lans.* 337, in Hollingsworth v. Swedenborg, 49 *Ind.* 378; s. c., 19 *Am. R.* 687, 690. Approved in 4 *Am. Dec.* 405, n.
- v. Fisk, 33 *Super. Ct. (J. & S.)* 484; s. c., 12 *Abb. Pr. N. S.* 213; 42 *How. Pr.* 135. Aff'd in 53 *N. Y.* 630, but without opinion. Decision in *Id.* disting'd (Review by General Term of order of Special Term) in Livermore v. Bainbridge, 56 *Id.* 73. Followed in Gowdy v. Poullain, 2 *Hun.* 220; Jeffras v. McKillop & Spague Co., *Id.* 353. Decision in 42 *How. Pr.* followed (Setting aside referee's report for his misconduct) and Meyer v. Bernheimer, *N. Y. Sup'm. Ct., Jan.* 30, 1882; Stebbins v. Brown, 65 *Barb.* 292; Livermore v. Bainbridge, 14 *Abb. Pr. N. S.* 242, disting'd in Gilbert v. Hotchkiss, *N. Y. Daily Reg., Jan.* 2, 1883.
- v. Gray, 2 *Lans.* 173. Rev'd in 47 *N. Y.* 552. See Grey v. Grey.
- v. Green, 4 *Hun.* 77. Appeal dismissed in 66 *N. Y.* 636.
- v. —, 12 *Hun.* 598. Rev'd in 77 *N. Y.* 615. Previous decision in 9 *Hun.* 334. Further proceeding in 14 *Id.* 18.
- v. Hannah, 30 *How. Pr.* 156. See Forsyth v. Ferguson. Disapproved (Notice of appeal from justices' judgment) in Putnam v. Heath, 41 *How. Pr.* 262; Younghouse v. Fingar, 63 *Barb.* 299, 308. See *Code Civ. Pro.* 1881, § 3070, n.
- v. Hook, 4 *N. Y.* 449. See Smith v. Ware; Stanton v. Allen. Approved, but disting'd (Contracts against public policy) in Shearman v. Niagara Fire Ins. Co., 46 *N. Y.* 520, 529. Applied in Woodworth v. Bennett, 43 *Id.* 273. Followed in Pease v. Walsh, 39 *Super. Ct. (J. & S.)* 514, 517.

- Disting'd in *Bremsen v. Engler*, 49 *Id.* 172. Cited in 2 *Benj. on Sales*, § 580, n. 39 (Corbin's 4 Am. ed.).
- *v. Palmer*, 2 *Robt.* 500. Said in 41 *N. Y.* 620 to have been aff'd in Ct. of App., Dec. 1869. See statement in 41 *N. Y.* corrected in *Ellis v. Andrews*, 56 *Id.* 83, 85.
- *v. Second Ave. R. R. Co.*, 34 *Super. Ct. (J. & S.)* 519. Aff'd in 65 *N. Y.* 561. Decision in *Id.* disting'd (Contributory negligence in owner of horse injured on railroad track) in *Wasmer v. Delaware, L. & W. R. R. Co.*, 80 *Id.* 212, 219.
- *v. Thompson*, 1 *Johns. Ch.* 82. Explained (Recovery of interest from assignee for creditors) in *Burrill on Assign.* § 499, 4 ed.
- Grzebrook v. McCreddie**, 9 *Wend.* 437. See *Green v. Beals*. Approved with *Blodgett v. Conklin*, 9 *How. Pr.* 442 (Proceedings after judgment obtained against defendant for whom attorney has appeared without authority) in *Ellsworth v. Campbell*, 31 *Barb.* 134.
- Greason v. Keteltas**, 17 *N. Y.* 491. Explained (Compelling performance of covenant of renewal) in *Johnson v. Conger*, 14 *Abb. Pr.* 195, 199. Compare Reformed Dutch Church of *N. Y. v. Parkhurst*, 4 *Bosw.* 491, 496, 500. Limited on same point and also (Power of court to assess damages) in *Dunnell v. Keteltas*, 16 *Abb. Pr.* 205. Explained and limited (Waiver of trial by jury) in *Crouse v. Walrath*, 41 *How. Pr.* 86. Disting'd in *People v. Albany & Susquehanna R. R. Co.*, 57 *N. Y.* 175. Applied to waiver of referee's oath, in *Nason v. Ludington*, 8 *Daly*, 152, which aff'd 55 *How. Pr.* 343, which see. Explained (Directing trial by jury, &c. in equity action) in *Genet v. Howland*, 45 *Barb.* 573; *Bradley v. Aldrich*, 40 *N. Y.* 509.
- Greaton v. Morgan**, 8 *Abb. Pr.* 64. Collated with other cases (Attachment as affected by law of domicile) in *Thomps. on Prov. Rem.* 358.
- Great Western Turnpike Co. v. Loomis**, 32 *N. Y.* 127. Applied (Extent of discretion of judge to allow questions to be put tending to discredit witness) in *Hinds v. Page*, 6 *Abb. Pr. N. S.* 62. Reconciled in *Real v. People*, 8 *Id.* 322. Re-aff'd in *La Beau v. People*, 34 *N. Y.* 230, which aff'd 33 *How. Pr.* 76, which see; *Brandon v. People*, 42 *N. Y.* 267. Disting'd in *Hannah v. McKelip*, 49 *Barb.* 344. Approved in *Nation v. People*, 6 *Park.* 262. Followed in *Canaday v. Krum*, 83 *N. Y.* 67, 74.
- Greaves v. Gouge**, 16 *Abb. Pr. N. S.* 377; s. c., 49 *How. Pr.* 79. Aff'd in 52 *Id.* 58; which was aff'd in 69 *N. Y.* 154; s. c., 54 *How. Pr.* 272. Decision in *Id.* followed (Complaint in action by stockholder for wrongful acts of officers of corporation) in *Leslie v. Lorillard*, 31 *Hun.* 305. Collated with *Butts v. Wood*, 37 *N. Y.* 317, and other cases, in 21 *Am. L. Reg. N. S.* 449. Ap-
- proved in *Thomps. on Liab. of Officers, &c. of Corp.* 385.
- Greele v. Parker**, 5 *Wend.* 414; s. c., 10 *N. Y. Com. L. Lav. ed.* 897, with brief note. Approved and adopted (Promise to accept bill) in *Ulster County B'k v. McFarlan*, 5 *Hill*, 432. Collated with other cases in *Redf. & B. Lead. Cas. on B. of Exch.* 50. Quoted in *Bigel. on B. & N.* 2 ed. 51. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 330.
- Green v. Armstrong**, 1 *Den.* 550. See Bank of *Lansingburgh v. Crary*. Approved (Effect of parol contract for sale of growing trees) in *McGregor v. Brown*, 10 *N. Y.* 114. Disting'd in *Boyce v. Washburn*, 4 *Hun.* 792. Cited as settled law in *Lacustrine, &c. Co. v. Lake Guano, &c. Co.*, 82 *N. Y.* 476, 484. Followed and approved in *Slocum v. Seymour*, 26 *N. J. (Vroom)* 138; s. c., 13 *Am. R.* 434; *Harrell v. Miller*, 35 *Miss.* 700. Collated with *Vorebeck v. Roe*, 50 *Barb.* 305; *Whipple v. Foot*, 2 *Johns.* 418; *Stewart v. Doughty*, 9 *Id.* 108; *Austin v. Sawyer*, 9 *Cow.* 40, 42, and other cases, in 13 *Alb. L. J.* 70; s. c., 17 *Am. R.* 595, n. Discussed and cited as the leading American case in 1 *Benj. on Sales*, § 117, n. 5 (Corbin's 4 Am. ed.); *Id.* § 120, n. c.
- *v. Beals*, 2 *Cai.* 254. See *Holbrook v. Murray*. Relied on with *Crane v. French*, 1 *Wend.* 311; *McBride v. Hagan*, *Id.* 327, and *Denton v. Noyes*, 6 *Johns.* 298, disting'd (Power of partner to confess judgment for copartner) in *Morgan v. Richardson*, 16 *Mo.* 409; s. c., 57 *Am. Dec.* 235. Said in *Smith v. Tupper*, 4 *Smodes & M. (Miss.)* 261; s. c., 43 *Am. Dec.* 483, to be a leading case, and with *Crane v. French*, 1 *Wend.* 311; *Grzebrook v. McCreddie*, 9 *Id.* 437, followed.
- *v. Bliss*. See *Dana v. Tucker*.
- *v. Bullard*, 3 *How. Pr.* 313. See (Service of affidavit in supplementary proceedings) *Code Civ. Pro.* 1881, § 2452, n.
- *v. Burke*, 23 *Wend.* 490. See *People v. Hopson*; *Shepard v. Rowe*. Explained with *Wood v. Torrey*, 6 *Wend.* 562; *Hoyt v. Hudson*, 12 *Johns.* 207; *Ex parte Lawrence*, 4 *Cow.* 417; *Jackson v. Bowen*, 7 *Id.* 13, 21; *Ostrander v. Walter*, 2 *Hill*, 329; *People v. Hopson*, 1 *Den.* 574 (Effect of abandoning levy) in *Voorhees v. Gros*, 3 *How. Pr.* 262. Explained (Costs on setting aside verdict as against evidence) in *Goodyear v. Ogden*, 4 *Hill*, 104. Cited (Rights of officer *de facto*) in *People ex rel. Steinert v. Anthony*, 6 *Hun.* 142, 146. Followed with *Taylor v. Ranney*, 4 *Hill*, 619 (Levy, when not effectual to satisfy judgment) in *Mace v. Dutton*, 2 *Ind.* 309; s. c., 52 *Am. Dec.* 510, 512, with note. Reviewed with *People v. Hopson*, 1 *Den.* 578; *Taylor v. Ranney*, 4 *Hill*, 621, in *Fry v. Manlove*, 1 *Bart. (Tenn.)* 256; s. c., 25 *Am. R.* 775, 777.
- *v. Clark*, 5 *Den.* 497. Subsequent decision in 13 *Barb.* 57, which was aff'd in 12 *N. Y.* 343, where decision in 5 *Den.* was

- said to have also been aff'd. Decision in 5 *Den.* disapproved (Parol evidence as to former recovery) in *Vanlandingham v. Ryan*, 17 *Ill.* 29; citing *Wood v. Jackson*, 5 *Wend.* 35; *Lawrence v. Hunt*, 10 *Id.* 80. These three decisions criticised with *Krulder v. Ellison*, 47 *N. Y.* 86 (Questions involved in right of action against carrier) in *Finn v. Western R. R. Co.*, 112 *Mass.* 524; s. c., 17 *Am. R.* 128, 134.
- *v. Collins*, 20 *Hun.* 474. Rev'd in 86 *N. Y.* 246; s. c., 40 *Am. R.* 531, with note, where it is criticised as apparently *sui generis* and in conflict with *Adams v. Conover*. See *Adams v. Conover*. Decision in 86 *N. Y.* disting'd with *Burke v. Nichols*, 2 *Keyes*, 670 (Eviction of grantee) in *Adams v. Conover*, 87 *N. Y.* 422. Disting'd with *Adams v. Conover*, *McMullin v. Wooley*, 2 *Lans.* 394; *Whitbeck v. Cook*, 15 *Johns.* 483 (Breach of covenant of warranty) in *Scriven v. Smith*, 30 *Hun.* 129.
- *v. Disbrow*, 7 *Lans.* 381. Rev'd in 56 *N. Y.* 334. Further decision in 79 *Id.* 1; s. c., 35 *Am. R.* 496. Decision in 7 *Lans.* disting'd (Bar of statute of limitations, when removed) in *Boyce v. Stowers*, 16 *Weekly Dig.* 279. Decision in 56 *N. Y.* disting'd with *Nicholson v. Wafel*, 70 *Id.* 604 (Evidence as to giving of credit, &c.) in *Bradner v. Gile*, 16 *Weekly Dig.* 60. Followed in *Denman v. Campbell*, 7 *Hun.* 88. See to the contrary cases cited in *Abb. Tr. Ev.* 303, n. 5. Disting'd (Evidence admissible on part of defendant in explanation of plaintiff's evidence) in *Wallis v. Randall*, 81 *N. Y.* 164, 168. Decision in 79 *Id.* cited approvingly (Statute of limitations as affecting accounts between merchants) in 3 *Pars. on Contr.* 87, n. 1, *Keiler's* ed.
- *v. Edick*, 66 *Barb.* 564. Rev'd on point not discussed below, in 56 *N. Y.* 613. Decision in *Id.* applied (Protection of witness against testifying as to conversations with deceased partner) in *Farley v. Norton*, 67 *How. Pr.* 438.
- *v. Eldred*, 4 *Hun.* 276. Aff'd in 66 *N. Y.* 611, but without opinion.
- *v. Green*, 7 *Hun.* 492. Aff'd in 69 *N. Y.* 553; s. c., 25 *Am. R.* 233. See *Catlin v. Catlin*. Decision in 69 *N. Y.* followed; and *Roof v. Stafford*, 7 *Conn.* 179; *Hillyer v. Bennett*, 3 *Edw.* 222; *Bartholomew v. Finmore*, 17 *Barb.* 423 disting'd (When contracts of infant may be avoided without tendering back what he has received thereunder) in *Eureka Co. v. Edwards*, 71 *Ala.* 248; s. c., 46 *Am. R.* 314. Relied on in *Brantley v. Wolf*, 60 *Miss.* 420; s. c., 46 *Am. R.* 317, n.
- *v. Hart*, 1 *Johns.* 580; s. c., 3 *N. Y. Com. L. Law. ed.* 255, with brief note. See *Dunham v. Jackson*. Examined with other cases (Nature of mortgage as security) in *Campbell v. Parker*, 9 *Bosw.* 329. Explained (Matter in answer, responsive to bill) in *Dunham v. Jackson*, 6 *Wend.* 31. Explained (Transfer of title to mortgage) in *Trustees of Union College v. Wheeler*, 61 *N. Y.* 118. Followed (Mortgage as carried by transfer of debt) in *Jackson v. Blodget*, 5 *Conn.* 206. Examined with other cases in *Slee v. Manhattan Co.*, 1 *Paige*, 71. Explained and applied in *Pattison v. Hull*, 9 *Conn.* 752. Followed with *Pattison v. Hull*, in *Cooper v. Ullman*, *Walk. Ch. (Mich.)* 253. Applied with *Runyan v. Mersereau*, 11 *Johns.* 534, to case of vendor's lien, in *Graham v. McCampbell*, *Meigs (Tenn.)* 52; s. c., 38 *Am. Dec.* 126, with note. Cited in *Crain v. Paine*, 4 *Cush. (Mass.)* 483; s. c., 50 *Am. Dec.* 807, 809, with note. Quoted in 2 *Washb. on Real Prop.* 4 ed. 99. Disapproved with *Runyan v. Mersereau*, 11 *Johns.* 534 (Assignment of mortgage by parol) in *Vose v. Handy*, 2 *Greenl. (Me.)* 322; s. c., 11 *Am. Dec.* 101, 109, where *Prescott v. Hull*, 17 *Johns.* 284, was cited as an instance of such assignment upon full and valuable consideration.
- *v. Homestead Ins. Co.*, 17 *Hun.* 467. Aff'd in 82 *N. Y.* 517.
- *v. Hudson River R. R. Co.*, 28 *Barb.* 9; s. c., 16 *How. Pr.* 230. Said to have been aff'd, in 28 *Barb.* 22, n., and decision there referred to was aff'd in 2 *Abb. Ct. App. Dec.*; s. c., 2 *Keyes*, 294. Subsequent decision in action by husband as administrator in 16 *How. Pr.* 263, which was aff'd in 31 *Barb.* 260, which was aff'd on appeal. Other decisions in 32 *Id.* 25; 16 *How. Pr.* 263. See *Vandever v. N. Y. & New Haven R. R. Co.* Decision in 28 *Barb.* approved (Action for causing death) in *Whitford v. Panama R. R. Co.*, 23 *N. Y.* 465. Decision in 2 *Abb. Ct. App. Dec.* disting'd in *Philippi v. Wolff*, 14 *Abb. Pr. N. S.* 196, 199. Explained in 8 *South. L. Rev.* 68, 70.
- *v. Kennedy*, 43 *Barb.* 16. Aff'd in 48 *N. Y.* 653, but without opinion.
- *v. Long*. See *Dexter v. Taber*.
- *v. Mayor, &c. of N. Y.*, 1 *Hun.* 24. Rev'd in 60 *N. Y.* 303.
- *v. Milbank*, 3 *Abb. N. C.* 138. Further decision in 56 *How. Pr.* 382. Decision in 3 *Abb. N. C.* applied (Subrogation to benefits of securities) in *Snelling v. McIntyre*, 6 *Id.* 469, 473. Cited as authority in *Gould v. Central Trust Co.*, *Id.* 381, 387. See also (Waiver of trial by jury) *Wheelock v. Lee*, 5 *Id.* 72.
- *v. Miller*, 6 *Johns.* 39; s. c., 5 *Am. Dec.* 184; 4 *N. Y. Com. L. Law. ed.* 45, with brief note. Applied (Necessity that all of arbitrators unite in award) in *Lorenzo v. Deery*, 29 *Hun.* 447. Followed in *Patterson v. Leavitt*, 4 *Conn.* 50; s. c., 10 *Am. Dec.* 98. See *Co. Lit.* 181, b. Quoted and explained in *Ang. & A. on Corp.* § 502, n. 1, 11 ed.
- *v. Morse*, 4 *Barb.* 332. See *Murray v. Judson*. Discussed (Payment of doubtful claims under assignment for benefit of creditors) in *Burrill on Assign.* § 428, 4 ed.
- *v. Ovington*. See *Adams v. Gilbert*.
- *v. Patchen*, 13 *Wend.* 293. Explained



- (Pleading submission to arbitration) in *Smith v. Barse*, 2 *Hill*, 387.
- *v. Putnam*, 1 *Barb.* 500. Compare (Equitable lien recognized in partition, for improvements) *Scott v. Guernsey*, 48 *N. Y.* 123.
- *v. Reynolds*, 2 *Johns.* 207. See *West v. Emmons*. Followed with *Parker v. Parmele*, 20 *Johns.* 130 (Duty of vendor to make tender of deed) in *Smith v. Henry*, 2 *Eng. (Ark.)* 207; s. c., 44 *Am. Dec.* 540, 544, with note.
- *v. Seymour*, 3 *Sandf. Ch.* 285. Disting'd (Validity of conveyance made to corporation *ultra vires*) in *Hough v. Cook County Land Co.*, 73 *Ill.* 223; s. c., 24 *Am. R.* 230, 233. Explained (Corporations, how created) in *Ang. & A. on Corp.* § 82, 11 ed.
- *v. Shumway*, 36 *How. Pr.* 5. Statement on p. 14, that all the judges concurred except three named, not borne out by fuller report in 39 *N. Y.* 418. See *Hartung v. People*.
- *v. Slayter*, 4 *Johns. Ch.* 38. See *Griffith v. Griffith*. Approvingly reviewed (Constructive notice to purchaser) in dissenting opinion of *Gibson, J.*, in *Lodge v. Simonton*, 2 *Penr. & W. (Pa.)* 439; s. c., 23 *Am. Dec.* 42, with note.
- *v. Telfair*, 11 *How. Pr.* 260. Followed (Illegal constraint upon jury) in *Slater v. Mead*, 53 *How. Pr.* 57. Disapproved in *Erwin v. Hamilton*, 50 *Id.* 32. See *Code Civ. Pro.* § 1181. Disapproved and *Erwin v. Hamilton*; *Slater v. Mead*; *White v. Colder*, 35 *How. Pr.* 183, applied in *Wiggins v. Downer*, 67 *Id.* 183.
- *v. Willis*, 1 *Wend.* 78. Referred to as overruled by *Hartness v. Boyd*, 5 *Wend.* 563 (Practice on inquest) in *Kirker v. Carter*, 1 *Hill*, 101. Cited as authority (Evidence on assessment of damages) in *Thompson v. Lumley*, 7 *Daly*, 74, 78.
- *v. Winter*, 1 *Johns. Ch.* 27; s. c., 7 *Am. Dec.* 475. Approved and followed (Trustee who is a lawyer, not to charge counsel fees) in *Binse v. Paige*, 1 *Abb. Ct. App. Dec.* 138, 145. Followed (Trustee's liability for loss of or injury to trust estate) in *McLean v. Hosea*, 14 *Ala.* 194; s. c., 48 *Am. Dec.* 94, with note. Relied on with *Davoue v. Fanning*, 2 *Johns. Ch.* 261; *Evertson v. Tappen*, 5 *Id.* 497 (Trustee when not to purchase trust estate) in *Brackenridge v. Holland*, 2 *Blackf. (Ind.)* 377; s. c., 20 *Am. Dec.* 123, with note. Considered and illustrated with *Bellinger v. Shafer*, 2 *Sandf. Ch.* 293 (Power of trustees to charge estate with expenditure) in *Dickinson v. Conniff*, 65 *Ala.* 581, 584. Commented on (Compensation to trustees) in 2 *Perry on Trusts*, 3 ed., § 916. Referred to with *Manning v. Manning*, 1 *Johns. Ch.* 534, in 17 *Am. Dec.* 266, *n.* as having led to the enactment of the *N. Y.* statute of 1817. See expression of what is said to be the prevailing opinion in this country, in 2 *Story on Eq. Jur.* § 1263, *n.*
- *v. Wood*, 6 *Abb. Pr.* 277; s. c., 15 *How. Pr.* 338. Approved (Examination of adverse party before trial a matter of right) in *Cook v. Bidwell*, 17 *Abb. Pr.* 300.
- *Greenby v. Cheevers*, 9 *Johns.* 126. Disting'd (Purchaser in contract for sale) of land when justified in refusing to complete on ground of existence of incumbrance in *Sibley v. Spring*, 12 *Me.* 469; s. c., 28 *Am. Dec.* 191.
- *v. Wilcocks*, 2 *Johns.* 1; s. c., 3 *Am. Dec.* 379; 3 *N. Y. Com. L. Law. ed.* 277, with brief note. Dissented from (Right of action on covenant of seisin) in *Martin v. Barker*, 5 *Blackf. (Ind.)* 233. But see *Withy v. Mumford*, 5 *Cov.* 137. Disting'd and criticised with *Folliard v. Wallace*, 2 *Johns.* 393; *Kent v. Welch*, 7 *Id.* 258; *Sedgwick v. Hallenback, Id.* 375 (Necessity of legal eviction to support breach of warranty) in *Cummins v. Kennedy*, 3 *Litt. (Ky.)* 118; s. c., 14 *Am. Dec.* 45, 51, with note. Cited with *Waldron v. McCarty*, 3 *Johns.* 473; *Kent v. Welch*, 7 *Id.* 258; *Vanderkarr v. Vanderkarr*, 11 *Johns.* 122, as maintaining a well settled rule,—in *Williams v. Shaw, N. C. Term. R.* 197; s. c., 7 *Am. Dec.* 706. Disting'd with *Hamilton v. Wilson*, 4 *Johns.* 72 (Passing of right of action derived from existence of incumbrance) in *McCrary v. Brisbane*, 1 *Nott. & McC. (So. Car.)* 104; s. c., 9 *Am. Dec.* 676. See *Co. Lit.* 384, § 738, *n. u.* Considered, and dissenting opinion disapproved (Covenants running with the land) in 2 *Am. L. Reg. N. S.* 198. Questioned in *Id.* 269.
- *Greene v. Bates*, 7 *How. Pr.* 296. See (Extension of time) *Code Civ. Pro.* 1881, § 784, *n.*
- *v. Breck*, 10 *Abb. Pr.* 42. Aff'd in 32 *Barb.* 73.
- *v. Deal*, 4 *Hun.* 703. Rev'd as *Greene v. Warnick*, 64 *N. Y.* 220.
- *v. Germania Fire Ins. Co.*, 51 *How. Pr.* 73. Further decision in 6 *Hun.* 128.
- *v. Herder*, 30 *How. Pr.* 210; s. c., 7 *Robt.* 455. Followed (Examination before trial) in *Central Nat. B'k of City of N. Y. v. Arthur*, 2 *Sweeny*, 194. Explained in *Phoenix v. Dupuy*, 7 *Daly*, 238, 242.
- *v. Martine*, 21 *Hun.* 136. Aff'd in 84 *N. Y.* 648. Decision in *Id.* followed as conclusive (Continuance of action where both plaintiff and defendant are dead) in *Holsman v. St. John*, 90 *Id.* 461.
- *v. Mayor, &c. of N. Y.*, 3 *Sup'm. Ct. (T. & C.)* 753; s. c., 1 *Hun.* 24. Rev'd in 60 *N. Y.* 303. Decision in *Id.* applied and disting'd (Municipal contracts) in *Nelson v. Mayor, &c. of N. Y.*, 63 *Id.* 538, which rev'd 5 *Hun.* 190, which see. Disting'd in *Matter of Robbins*, 82 *N. Y.* 131, 135, 141. Collated with other cases in 5 *Abt. N. C.* 42, *n.*
- *v. Niagara Fire Ins. Co.*, 6 *Hun.* 128. As to effect of judgment herein compare to the contrary *Greene v. Republic Fire Ins. Co.*, 23 *Abb. L. J.* 313.

- **v. Republic Fire Ins. Co.** See *Greene v. Niagara Fire Ins. Co.*
- **v. Thomas, 4 Hun, 809.** Aff'd in 68 *N. Y.* 610, but without opinion.
- **v. Warnick, 64 N. Y. 220.** Disting'd (Priority of mortgages) in *Heilbrun v. Hammond, 13 Hun, 474, 481.* Disting'd and limited in *Decker v. Boice, 83 N. Y. 215, 221.* Explained in *Bank for Savings v. Frank, 45 Super. Ct. (J. & S.) 408.* Cited in *Thomas on Mort. 107, 147.*
- Greenfield v. People, 13 Hun, 242.** Rev'd on last point in 74 *N. Y. 277*; s. c., 6 *Abb. N. C. 1.* Further decision in 23 *Hun, 454.* See vol. 557, *Ct. App. Cas. Law. Inst. Libr. N. Y. city.* See *People v. Eastwood.* Decision in 74 *N. Y.* disting'd (Competency of juror) in *People ex rel Phelps v. Oyer & Term. of N. Y., 83 Id. 436, 458*; *Abbott v. People, 86 Id. 460, 468*; *Cox v. People, 19 Hun, 430.* Explained in *Balbo v. People, 80 N. Y. 484, 496*, which aff'd 19 *Hun, 424*, which see. Examined with other cases in 20 *Am. L. Reg. N. S. 117, n.* Reviewed and other cases collected in *Points of Law in Guiteau's Case, 63, 84* (Boston); *Little, Brown & Co., 1881*). Decision in 13 *Hun* explained (Contradicting witness) in *People v. Cox, 21 Id. 47.*
- Greenleaf v. Mumford, 19 Abb. Pr. 469.** See *Lawrence v. Bank of the Republic.* Overruled (Sufficiency of general notice in attachment suits) in *Clarke v. Goodridge, 41 N. Y. 210*, which rev'd 54 *Barb. 78*, which see. Approved in *O'Brien v. Merchants' and Trad. Fire Ins. Co., 56 N. Y. 55, 59.*
- Greenpoint Sugar Co. v. Kings Co. M'fg Co., 7 Hun, 44.** Aff'd in 69 *N. Y. 328*, as Same *v. Whitin.* Decision in *Id.* cited as authority (Validity of mortgage given by manufacturing corporation) in *Coman v. Lakey, 80 Id. 345, 351.*
- **v. Whitin.** See Same *v. Kings Co. M'fg Co.*
- Greentree v. Rosenstock, 34 Super. Ct. (J. & S.) 505.** Aff'd in 61 *N. Y. 583.* Decision in *Id.* cited as authority (Effect of allegations in complaint, to fix action in tort) in *Sparman v. Keim, 9 Abb. N. C. 1, 6.*
- Greenvault v. Davis, 4 Hill, 643.** See *St. John v. Palmer.* Approved with *St. John v. Palmer, 5 Hill, 591*, as settled law (Necessity of eviction to sustain action for breach of warranty of title) in *Bordwell v. Collie, 45 N. Y. 494.* Followed with *Fowler v. Poling, 6 Barb. 165* (both said to conflict with *Waldron v. McCarty, 3 Johns. 471*) in *McGary v. Hastings, 39 Cal. 360*; s. c., 2 *Am. R. 456.*
- Greenwich Bank v. De Groot.** See *Mechanics' & Trad. Bank of N. Y. v. Crow.*
- Greenwood v. Brink.** See *Manhattan Brass Manuf. Co. v. Sears.*
- **v. Brodhead, 8 Barb. 593.** Approved (Equitable remedy of creditor against partnership property) in *Crippen v. Hudson, 13 N. Y. 161.*
- **v. Schumacker, 4 Weekly Dig. 397.** Further decision to same effect see 82 *N. Y. 614.*
- Greer v. Allen, 15 Hun, 432.** Cited as authority (Examination before trial) in *Tenney v. Mautner, 1 Civ. Pro. R. 64, 71.*
- **v. Mayor, &c. of N. Y., 1 Abb. Pr. N. S. 206; s. c., 4 *Robt. 675.* Previous decision in 3 *Id. 406.***
- **v. Tweed, 13 Abb. Pr. N. S. 427.** See *Bagley v. Peddie.* Cited with *Osgood v. Franklin, 2 Johns. Ch. 23*; *Seymour v. Delancey, 3 Cow. 444*; *Foshay v. Ferguson, 5 Hill, 154* (Unconscionable contracts when not to be enforced) in 33 *Am. R. 1 n.*
- Gregg v. Howe, 37 Super. Ct. (J. & S.) 420.** Followed (Exception to decision denying motion to postpone trial when available) in *Tribune Assoc. v. Smith, 40 Id. 251.*
- **v. Pierce.** See *Hatch v. Mann.*
- Gregory v. Cryder, 10 Abb. Pr. N. S. 289.** Disting'd (Extension of time for referee's report) in *Ballou v. Parsons, 67 Barb. 19, 23*, which was aff'd in 55 *N. Y. 673*, which see. See *Code. Civ. Pro. 1881, § 1019, n.*
- **v. Dodge, 4 Paige, 557.** Aff'd in 14 *Wend. 593.*
- **v. McDowell, 8 Wend. 435; s. c., 11 *N. Y. Com. L. Law. ed. 423*, with brief note of other cases.**
- **v. Mack, 3 Hill, 380.** Applied (Agreement for employing particular thing as medium of payment) in *Larrabee v. Talbot, 5 Gill (Md.) 426*; s. c., 46 *Am. Dec. 637, 644*, with note. Collated with other cases (Liability of agent when acting without authority from principal) in 1 *Hare & W. Am. Lead. Cas. 5 ed. 770.*
- **v. Mayor, &c. of N. Y., 40 N. Y. 273.** Decision below reported as *McLaren v. Mayor, &c. of N. Y., 1 Daly, 243.*
- **v. Stryker, 2 Den. 628.** Quoted and explained (Purchase and sale as distinguished from bailment) in 2 *Pars. on Contr. 132, n. u.*
- **v. Thomas, 20 Wend. 17; s. c., 13 *N. Y. Com. L. Law. ed. 762*, with brief note. See *Meech v. Patchin.* Dictum explained (Second mortgagee of chattels when affected with notice of prior mortgage) in *Meech v. Patchin, 14 N. Y. 71.* Approved and followed with *Hill v. Beebe, 12 Id. 556*, in *Ransom v. Schmela, 13 Neb. 73.***
- Grey v. Grey, 47 N. Y. 552.** Rev'g *Gray v. Gray, 2 Lans. 173.* See *Rawson v. Adams.* Decision in 47 *N. Y.* cited (Possession of note by maker as evidence of payment) in 2 *Whart. Com. on Ev. § 1362.*
- Gridley v. Dole, 4 N. Y. 486.** See *Pechner v. Phoenix Ins. Co.* Followed (Liability of partner at law) in *Crater v. Bininger, 54 Barb. 155*, which was aff'd in 45 *N. Y. 545*, which see.
- **v. Garrison, 4 Paige, 647.** Overruled (Attorney's lien for costs, as bar to set-off) in *Nicoll v. Nicoll, 16 Wend. 446*; and see *Cowell v. Snow, 10 Bing. 432.*
- **v. Gridley, 33 Barb. 250.** Rev'd in 24 *N. Y. 130.*

- Grierson v. Mason**, 3 *Sup'm. Ct. (T. & C.)* 185; mem. s. c., 1 *Hun.* 113. Aff'd in 60 *N. Y.* 394. Decision in *Id.* followed (Parol evidence as to condition on which instrument was given) in *Nichol v. Nelson*, *N. Y. Daily Reg.*, Jan. 9, 1884. Explained in *Willse v. Whitaker*, 22 *Hun.* 242, 244.
- Griffen v. House**, 18 *Johns.* 397. Questioned (Discretion conferred by use of word "near" in giving authority respecting high-ways) in *People v. Collins*, 19 *Wend.* 56. Disting'd (Power to alter line of road) in *Mississippi & Tenn. R. R. Co. v. Devaney*, 42 *Miss.* 555; s. c., 2 *Am. R.* 608, 617.
- Griffin v. Banks**, 24 *How. Pr.* 213. Rev'd in 37 *N. Y.* 621.
- **v. Chase**, 23 *Barb.* 278. Aff'd in *People v. Rathbun*, 15 *N. Y.* 528.
- **v. Colver**, 22 *Barb.* 587. Aff'd in 16 *N. Y.* 489. See *Bagley v. Smith*; *Baldwin v. U. S. Tel. Co.*; *Davis v. Talcott*; *Staats v. Ten Eyck*. Decision in 16 *N. Y.* applied (Damages for loss of profits) in *Landsberger v. Magnetic Tel. Co.*, 32 *Barb.* 532; *Pas-senger v. Thorburn*, 35 *Id.* 23, which was aff'd in 34 *N. Y.* 635, which see; *Rogers v. Beard*, 36 *Barb.* 37; 20 *How. Pr.* 102; *Albert v. Bleecker St. & Co. R. R. Co.*, 2 *Daly*, 394; *Sterafels v. Clark*, 1 *Hun.* 122; *Heine-man v. Heard*, *Id.* 332; *Schutt v. Baker*, 9 *Id.* 557; *Baldwin v. U. S. Tel. Co.*, 1 *Lans.* 137; *Van Ness v. Fisher*, 5 *Id.* 239; *Myers v. Burns*, 35 *N. Y.* 273; *Milton v. Hudson River Steamboat Co.*, 37 *Id.* 214; *Booth v. Spuyten Duyvil Rolling Mill Co.*, 60 *Id.* 497, which aff'd 3 *Sup'm. Ct. (T. & C.)* 372, which see. Compared with other cases in *Cassidy v. Le Fevre*, 45 *N. Y.* 567. Explained in *Kemp v. Knickerbocker Ice Co.*, 51 *How. Pr.* 41. Applied in *Brock v. Gale*, 14 *Fla.* 523; s. c., 14 *Am. R.* 356. Disting'd in *Eridges v. Lanham*, 14 *Neb.* 369; s. c., 45 *Am. R.* 121. Followed with *Blanchard v. Ely*, 21 *Wend.* 342, and *Master-ton v. Mayor*, &c. of Brooklyn, 7 *Hill*, 68, disting'd in *Deming v. Grand Trunk R'y Co.*, 48 *N. H.* 455; s. c., 2 *Am. R.* 267. Reviewed with *Blanchard v. Ely*, 21 *Wend.* 342; *Master-ton v. Mayor*, &c. of Brooklyn, 7 *Hill*, 61, in *Howe Machine Co. v. Bryson*, 44 *Iowa*, 159; s. c., 24 *Am. R.* 735, 739. Cited with approval in *Manville v. Western Union Tel. Co.*, 37 *Iowa*, 214; s. c., 18 *Am. R.* 8, 12. Cited on the tendency of the *N. Y.* cases in *Thomas v. Dingley*, 70 *Me.* 100; s. c., 35 *Am. R.* 310. Collated with *Leonard v. N. Y.*, &c. Tel. Co., 41 *N. Y.* 544; *Sprague v. W. U. Tel. Co.*, 6 *Daly*, 200; *Lowery v. W. U. Tel. Co.*, 60 *N. Y.* 198; *Baldwin v. U. S. Tel. Co.*, 45 *Id.* 744; *Landsberger v. Magnetic Tel. Co.*, 32 *Barb.* 530, and cases from other jurisdictions in 18 *Cent. L. J.* 331, n. Included in *Sedgw. Cas. on Dama.* 299. Explained in *Benj. on Sales*, § 894, n. t (Bennett's 4 *Am. ed.*). Quoted in 2 *Chitty on Contr.* 1325, n. h, 11 *Am. ed.* Cited as a leading case in 2 *Thomps on Negl.* 849. Compared with Eng-lish cases by *Lond. Law Times*, quoted in 1 *Abb. L. J.* 120.
- **v. Cranston**, 1 *Bosw.* 281. Re-aff'd in 10 *Bosw.* 1.
- **v. Goff**. See *Duryee v. Dennison*.
- **v. Griffin**, 21 *How. Pr.* 364. Aff'd in 23 *Id.* 189. Decision in 23 *Id.* op-posed (Right of appeal from order affecting right to alimony) in *Leslie v. Leslie*, 6 *Abb. Pr. N. S.* 193. See (Counter-claim in matrimonial action) *Code Civ. Pro.* 1881, § 1770, n.
- **v. —**, 47 *N. Y.* 134. Followed (Alimony restricted to cases where wife ad-mits existence of valid marriage) in *Blood-good v. Bloodgood*, 59 *How. Pr.* 42. Approved (Alimony in absence of statute) in *Brinkley v. Brinkley*, 50 *N. Y.* 184, 200. Explained and discussed in 2 *Bish. on Mar. & D.* § 398, n. 5, 6 ed.
- **v. Griffith**, 6 *How. Pr.* 428. Overruled in effect (Power of recorder at Troy to act as judge at chambers) in *Hayner v. James*, 17 *N. Y.* 316; and see *Cashman v. Johnson*, 4 *Abb. Pr.* 256.
- **v. Marquardt**, 17 *N. Y.* 28. Subse-quent decision in 21 *Id.* 121. Decision in 17 *Id.* disting'd (Giving final judgment on appeal) in *Hone v. Julien*, 9 *Abb. Pr.* 193, 195. Decision in 21 *N. Y.* collated with other cases (Directions as to time of sale in assignment for benefit of creditors) in *Bishop on Assign.* § 209. Collated with other cases (Acts showing intention to delay creditors) in *Id.* § 222.
- **v. Martin**, 7 *Barb.* 297. See *Babcock v. Lamb*; *Bush v. Holladay*; *Story v. N. Y. Elevated R. R. Co.* Followed and approved (Constitutionality of statute regulating the running at large of cattle, &c. on highways) in *Hardeburgh v. Lockwood*, 25 *Id.* 9. Disapproved in *Williams v. Michigan Cen-tral R. R. Co.*, 2 *Gibbs (Mich.)* 265.
- **v. Mayor, &c. of N. Y.**, 9 *N. Y.* 456. See *Kelly v. Mayor, &c. of N. Y.*; *Pack v. Mayor, &c. of N. Y.* Disting'd (Liability of municipal corporation for injury caused by defect in way) in *Requa v. City of Rochester*, 45 *N. Y.* 129. Pronounced un-sound in 2 *Thomps. on Negl.* 763, 764. Quoted and discussed in *Cooley on Const. Limit.* 5 ed., 254, n. 1.
- **v. Winne**, 10 *Hun.* 571. Aff'd, it seems, in 79 *N. Y.* 637, on opinion below.
- Griffing v. Slate**, 5 *How. Pr.* 205. See (Action on undertaking given on granting of injunction) *Code Civ. Pro.* 1881, § 625, n.
- Griffith v. Beecher**, 10 *Barb.* 432. Approved (What are assets) in *Moore v. Burrows*, 34 *Id.* 173, 182, 185.
- **v. Griffith**, *Hoffm.* 153. Rev'd in 9 *Paige*, 315. Decision in *Hoffm.* cited as authority with *Green v. Slayer*, 4 *Johns. Ch.* 38 (When *lis pendens* affects purchaser) in *Jones v. McNarrin*, 68 *Me.* 334; s. c., 28 *Am. R.* 66. Cited in 4 *Kent Com.* 179, n.

- c, as containing a full examination of the doctrine of constructive notice.
- **v. McCullum**, 46 *Barb.* 561. Quoted and explained (Abatement of public nuisance) in *Wood on Nuis.* 2 ed. § 740.
- **v. Mangam**, 42 *Super. Ct. (J. & S.)* 369. Aff'd in 73 *N. Y.* 611.
- **v. Reed**, 21 *Wend.* 502; s. c., 34 *Am. Dec.* 267, with note, wherein are collected citations. See *Suydam v. Westfall*. Approved (Liability of surety to acceptor) in *Wright v. Garlinghouse*, 26 *N. Y.* 539; and held not overruled by *Suydam v. Westfall*, 2 *Den.* 205.
- **v. Wells**, 3 *Den.* 226. See *Best v. Bauder*; *Pennington v. Townsend*; *Swords v. Owen*. Repudiated (Distinction between license for revenue only, and others) in *Swords v. Owen*, 43 *How. Pr.* 176, 186.
- Griffiths v. Hardenbergh**, 41 *N. Y.* 464. Explained (Bond of indemnity as covering prior levy) in *Reilly v. Coleman*, 62 *How. Pr.* 289.
- Griggs v. Griggs**, 66 *Barb.* 287. Aff'd in 56 *N. Y.* 504.
- **v. Howe**, 31 *Barb.* 100. Aff'd in 3 *Keyes*, 166; s. c., 2 *Id.* 574; 2 *Abb. Ct. App. Dec.* 291. See *Gould v. Segee*.
- Grim v. Phoenix Ins. Co.**, 13 *Johns.* 451. See *Gardere v. Columbian Ins. Co.*; *Goix v. Low*. Overruled (Inquiry into remote cause of loss covered by policy) but cited as still an authority (Liability of insurer for loss resulting from misconduct of master and crew) in *Mathews v. Howard Ins. Co.*, 11 *N. Y.* 1, 14, 16, 21; and see *Patapasco Ins. Co. v. Coulton*, 3 *Pet.* 222; 3 *Kent Com.* 304, n. a. Disapproved in *St. Louis Ins. Co. v. Glasgow*, 8 *Mo.* 713; s. c., 41 *Am. Dec.* 661, 670, with note. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed., 779. Followed and approved with *Duncan v. Sun Fire Ins. Co.*, 6 *Wend.* 488; *City Fire Ins. Co. v. Corlies*, 21 *Id.* 367 (Fire policy covers loss by explosion of gunpowder) in *Scripture v. Lowell Mut. Ins. Co.*, 10 *Cush. (Mass.)* 357; s. c., 57 *Am. Dec.* 111; *Babcock v. Montgomery County Ins. Co.*, 6 *Barb.* 637, being disting'd as a case of damage by lightning.
- Grimstone v. Carter**, 3 *Paige*, 421; s. c., 24 *Am. Dec.* 230, with note. See *Fost. v. Beekman*; *Gouverneur v. Lynch*. Approved (Possession as constructive notice) in *Newton v. McLean*, 41 *Barb.* 285. Followed in *Rood v. Chapin*, *Walk. Ch. (Mich.)* 84. Approved and applied (Prior of two equal equities is to prevail) in *Wing v. McDowell*, *Id.* 183; *Norris v. Sherman*, *Id.* 213.
- Grinnell, Matter of**, 18 *Alb. L. J.* 75. See (Adverse possession under written instrument, &c.) *Code Civ. Pro.* 1881, § 369, n. See also *Grinnell v. Kirtland*.
- Grinnell v. Buchanan**, 1 *Daly*, 538. Approved (Abolition of distinction between causes of action legal or equitable) in *Pomeroy on Rem.* § 70, n. 1.
- **v. Cook**, 3 *Hill*, 485; s. c., 38 *Am. Dec.* 663, with note; 15 *N. Y. Com. L. Law. ed.* 658, with brief note, and analysis of cases citing this case. See *Cromwell v. Stephens*; *Mowers v. Fethers*. Followed (Liability of innkeeper) in *Ingalsbee v. Wood*, 36 *Barb.* 452. Followed in *Matter v. Brown*, 1 *Cal.* 221; s. c., 52 *Am. Dec.* 303, 310, with note, as placing liability of innkeepers and carriers on same ground. Explained in 2 *Parsons on Contr.* 153, n. m. Referred to in *Lord v. Jones*, 24 *Me.* 439; s. c., 41 *Am. Dec.* 391, as at variance with *Mason v. Thompson*, 9 *Pick. (Mass.)* 280; s. c., 20 *Am. Dec.* 471 (Lien of innkeepers, &c.). Followed in *Miller v. Marston*, 35 *Me.* 153; s. c., 56 *Am. Dec.* 694; *Hickman v. Thomas*, 16 *Ala.* 666. Referred to in 7 *Am. Dec.* 451, n., as at variance with *Mason v. Thompson*; *McDaniels v. Robinson*, 26 *Vt.* 316; *Story on Bailm.* § 477, the case of *Peet v. McGraw*, 25 *Wend.* 653, which holds a like doctrine, being said not to be followed by late *N. Y.* cases.
- **v. Kirtland**, 48 *How. Pr.* 17. Aff'd in 6 *Daly*, 356; s. c., 2 *Abb. N. C.* 386; and that aff'd, it seems, in 68 *N. Y.* 629, but without opinion. See also *Matter of Grinnell*.
- Grippen v. N. Y. Central, & C. R. R. Co.**, 40 *N. Y.* 34. Explained (Duty of railroad company to protect persons who cross the track) in *McGrath v. Same*, 63 *Id.* 522, 526. Followed with *Beiseigel v. N. Y. Central R. R. Co.*, 40 *Id.* 9, and *McGrath v. N. Y. Central R. R. Co.*, 63 *Id.* 529, disting'd in *Semel v. N. Y., New Haven, & C. R. R. Co.*, 9 *Daly*, 321. Followed in *Callaghan v. Rome, W. & O. R. R. Co.*, 13 *Weekly Dig.* 395.
- Grissler v. Powers**, 53 *How. Pr.* 194. Aff'd in effect in 81 *N. Y.* 57; s. c., 37 *Am. R.* 475. Compare (Rights of transferee of mortgage having no legal inception) *Real Estate Trust Co. v. Rader*, 53 *How. Pr.* 236.
- **v. Stuyvesant**, 67 *Barb.* 77. Other proceedings in *Id.* 81; 1 *Hun*, 116; s. c., 3 *Sup'm. Ct. (T. & C.)* 756.
- Griswold v. Atlantic Dock Co.**, 21 *Barb.* 225. Collated with *Clarke v. City of Rochester*, 24 *Id.* 446; *Gamble v. Beattie*, 4 *How. Pr.* 40; *Fairchild v. Gwynne*, 14 *Abb. Pr.* 121, and other cases (When statutes take effect) in 23 *Am. L. Reg.* 254, n.
- **v. Fowler**, 24 *Barb.* 135. See *Lamerson v. Marvin*. Explained (Sale of property in parcels on foreclosure sale) in *Wolcott v. Schenck*, 23 *How. Pr.* 385, 390.
- **v. Griswold**, 7 *Lans.* 72. Aff'd, it seems, in 62 *N. Y.* 631, but without opinion.
- **v. —**, 4 *Bradf.* 216. Applied (Duty of executor to pay taxes on real estate) in *Mitchell v. Bowne*, 63 *How. Pr.* 1. Followed (Payment of annuity) in *Ferrigan v. Ferrigan*, 2 *Redf.* 517, 519.
- **v. Haven**, 25 *N. Y.* 595. Disting'd (Right of assignee of warehouse receipt) in

- Second Nat. B'k v. Walbridge, 19 *Ohio St.* 419; s. c., 2 *Am. R.* 408, 411. Discussed (Fraud by copartners) in 1 *Collyer on Partn.* § 445, n. 10, 717, Wood's *Am. ed.*
- **v. N. Y. Ins. Co.**, 3 *Johns.* 321; s. c., 3 *Am. Dec.* 490. Explained (Performance of contract) in 2 *Chitty on Contr.* 1094, n. c, 11 *Am. ed.* Commented on (When right to freight is absolute) in *Ang. on Carr.* § 414, 5 ed. Commented on (Freight on deteriorated goods) in 3 *Kent Com.* 225.
- **v. Sheldon**, 4 *N. Y.* 581. Disapproved (Chattel mortgage void, which allows mortgagor to go on selling) in Brett v. Carter, 2 *Lowell*, 458, reviewing many cases. Quoted in *Wait on Fraud. Conv.* § 349. Disting'd (Effect of leaving mortgagor, &c. in possession) in *Powell v. Preston*, 1 *Hun.* 513. Discussed and compared with *Wood v. Lowry*, 17 *Wend.* 492; *Southard v. Benper*, 72 *N. Y.* 424 (Effect of agreement outside of chattel mortgage) in 17 *Am. L. Rev.* 362.
- **v. Slooem**, 10 *Barb.* 402. See *Moore v. Cross*. Followed (Liability of indorser of non-negotiable note) in *Richards v. Warring*, 4 *Abb. Ct. App. Dec.* 47, 52.
- **v. Stewart**, 4 *Cow.* 457. Denied (Right of terre-tenant to show death of defendant by plea, and thereby avoid judgment) in *Warden v. Tainter*, 4 *Watts (Pa.)* 279.
- **v. Waddington**, 15 *Johns.* 57. Aff'd in 16 *Id.* 438. See *Clarke v. Morey*. One or both of these decisions limited (Invalidity of contracts during war) in *Kershaw v. Kelsey*, 10 *Mass.* 561; s. c., 1 *Am. R.* 142, 149. Followed and approved in *Taylor v. Hutchison*, 25 *Gratt. (Va.)* 536; s. c., 18 *Am. R.* 699, 705. Decision in 16 *Johns.* cited from in *Carson v. Hunter*, 46 *Mo.* 467; s. c., 2 *Am. R.* 529. Commented on at length and disting'd, and *Buchanan v. Curry*, 19 *Johns.* 137; *Clarke v. Morey*, 10 *Id.* 70, cited in *Manhattan Life Ins. Co. v. Warwick*, 20 *Gratt. (Va.)* 614; s. c., 3 *Am. R.* 219, 229. Cited with approval in *Hill v. Baker*, 32 *Iowa*, 302; s. c., 7 *Am. R.* 193. Cited in *Worthington v. Charter Oak Life Ins. Co.*, 41 *Conn.* 372; s. c., 19 *Am. R.* 495, 508, 511, where *Cohen v. N. Y. Mut. Life Ins. Co.*, 50 *N. Y.* 610; *Sands v. N. Y. Life Ins. Co.*, *Id.* 626; *Martine v. International Life Ins. Co.*, 53 *Id.* 339, were disapproved. Relied on in *Waples on Proc. in Rem.* § 331. Referred to in *Story on Partn.* 7 ed., § 9, n., as exhaustive and learned. Cited with *Van Ness v. Fisher*, 5 *Lans.* 236, in *Story on Partn.* 7 ed., § 280, n. Cited also in *Id.* §§ 290, n., 316, n. Cited in 1 *Kent Com.* 68, as a case in which all the authorities were accurately examined. Cited to same effect in 1 *Para. on Contr.* 200, n. c. Also cited in 3 *Kent Com.* 257. Compared in 10 *Am. L. Reg. N. S.* 228. Collated with other cases in note on voluntary associations, in 4 *Abb. N. C.* 306, n.
- Groat v. Gile**, 51 *N. Y.* 431. Applied (When title to personal property passes) in *O'Brien v. Jones*, 47 *Super. Ct. (J. & S.)* 67, 74. Compare *Graff v. Fitch*, 58 *Ill.* 373; *Gibbs v. Benjamin*, 45 *Vt.* 124. Quoted and explained in *Benj. on Sales*, § 346, n. a (Bennett's 4 *Am. ed.*); 1 *Id.*, §§ 395, 424 (Corbin's 4 *Am. ed.*). See other cases collected (Usage - to vary contract) in 1 *Abb. N. C.* 472, n.
- **v. Phillips**, 3 *Hun.* 412; s. c., more fully, 6 *Sup'm. Ct. (T. & C.)* 42.
- Grocer's Bank v. Penfield**, 7 *Hun.* 279; s. c., less fully, 2 *Abb. N. C.* 305. Qualified in 69 *N. Y.* 502; s. c., 2 *Abb. N. C.* 305; 25 *Am. R.* 231. Decision in *Id.* disting'd (Consideration for indorsement) in *Produce B'k v. Penfield*, 30 *Hun.* 351. Followed (Rights of indorsee taking note as collateral security for antecedent debt) in *Continental Nat. B'k v. Townsend*, 87 *N. Y.* 8; *Pitts v. Fogleson*, 37 *Ohio*, 676; s. c., 41 *Am. R.* 540. Compare *Wheeler v. Allen*, 59 *How. Pr.* 118. Included, with notes, in 2 *Ames Cas. on B. & N.* 685.
- Grocers' Bank of N. Y. v. Fitch**, 1 *Sup'm. Ct. (T. & C.)* 651. Aff'd on opinion of *BRADY, J.*, in 58 *N. Y.* 623, without further opinion.
- Groesbeck v. Brown**, 2 *How. Pr.* 21. Explained (Confession of judgment by partner for firm) in *Everson v. Gehrman*, 1 *Abb. Pr.* 167.
- Groff v. Griswold**, 1 *Den.* 432. Criticised as extreme (Application of rule of intentment and construction) in *Manning v. Johnson*, 7 *Barb.* 457.
- **v. Jones**, 6 *Wend.* 522; s. c., 22 *Am. Dec.* 545. See *Tiernan v. Wilson*. Explained (Avoiding sheriff's sale) in *O'Donnell v. Lindsay*, 39 *Super. Ct. (J. & S.)* 523, 539. Followed and approved in *Rector v. Hart*, 8 *Mo.* 448; s. c., 41 *Am. Dec.* 650, 653, with note; *Tiernan v. Wilson*, 6 *Johns. Ch.* 414, being disting'd. Thought with *Tiernan v. Wilson*, in 18 *Am. Dec.* 212, n., to maintain what is the prevailing doctrine, though contrary to that of *Patterson v. Carneal*, 3 *A. K. Marsh. (Ky.)* 618; s. c., 13 *Am. Dec.* 203, with note, and other *Ky.* decisions.
- Grogan v. Mayor, &c. of N. Y.**, 2 *E. D. Smith*, 693. Explained (Personal judgment in case of failure of mechanics' lien) in *Barton v. Herman*, 8 *Abb. Pr. N. S.* 399. Compare *Grant v. Van Dercok*, *Id.* 455; *Donnelly v. Libby*, 1 *Sweeny*, 259.
- Groshon v. Lyon**, 2 *Edm. Sel. Cas.* 321; s. c., 1 *Code R. N. S.* 348. Aff'd in 16 *Barb.* 461. Decision in *Id.* disting'd (Parties appearing in action brought for their benefit bound by judgment) in *Schuehle v. Geiman*, 86 *N. Y.* 270, 273.
- Gross v. Clark**, 1 *Civ. Pro. R.* 17; mem. s. c., 24 *Hun.* 343. Aff'd in 1 *Civ. Pro. R.* 464.
- Grosvenor v. Atlantic Fire Ins. Co.**, 5 *Duer*, 517. Rev'd in 17 *N. Y.* 391. See *Traders' Ins. Co. v. Robert*. Decision in 17 *N. Y.* disting'd (Mortgagee's interest in insurance

- policy) in *Matter of Moore*, 6 *Daly*, 545. Applied in *Ennis v. Harmony Fire Ins. Co.*, 3 *Bosw.* 519. Cited in *Brunswick Sav'gs Inst. v. Commercial Union Ins. Co.*, 68 *Me.* 313; s. c., 28 *Am. R.* 56. Approved in *Thomas on Mort.* 177. Disting'd (Clause in policy directing payment to other than insurer) in *Pacific Mail S. S. Co. v. Great Western Ins. Co.*, 65 *Barb.* 334, 337. Followed in *Martin v. Franklin Fire Ins. Co.*, 9 *Vroom (N. J.)* 40; s. c., 20 *Am. R.* 372, 374. Explained with *Freeman v. Fulton Fire Ins. Co.*, 14 *Abb. Pr.* 398; *Fowler v. N. Y. Indemnity Ins. Co.*, 26 *N. Y.* 425; *Frink v. Hampden Ins. Co.*, 1 *Abb. Pr. N. S.* 343 (Necessity of pleading insurable interest) in *State Mut. Ins. Co. v. Robert*, 31 *Penn.* 438. Approved (Assent of insurer to assignment of policy is collateral undertaking to original policy) in *Id.* Disting'd (Evidence extrinsic to insurance policy) in *Pitney v. Glens Falls Ins. Co.*, 65 *N. Y.* 14.
- *v. Hunt.* See *Larkin v. Robbins*.
- *v. N. Y. Central R. R. Co.*, 39 *N. Y.* 34. Disting'd (Delivery by common carriers) in *Rogers v. Long Island R. R. Co.*, 3 *Lans.* 269.
- *v. Phillips*, 2 *Hill*, 147. See *Bank of Rochester v. Jones*. Disting'd (Effect of specific appropriation of goods as security) in *Cayuga Co. Nat. B'k v. Daniels*, 47 *N. Y.* 636. Followed in *Desha v. Pope*, 6 *Ala.* 690; s. c., 41 *Am. Dec.* 76.
- Grout v. Cooper**, 5 *Hun*, 423. Further proceeding in 9 *Id.* 326.
- *v. Townsend*, 2 *Hill*, 554. Aff'd in 2 *Den.* 336. Decision in 2 *Hill*, explained (Acknowledgment of consideration in deed, when creating an estoppel) in 3 *Washb. on Real Prop.* 4 ed. 377.
- *v. Van Schoonhoven*, 1 *Sandf. Ch.* 336. See *Kane v. Gott*. Opposed with *Kane v. Gott*, 24 *Wend.* 641 (Construction of statutes relating to inalienability of real or personal property) in *Graff v. Bonnett*, 31 *N. Y.* 9. Explained (Marriage settlement not corresponding to decree of court) in 1 *Perry on Trusts*, 3 ed., § 365.
- Grove, Matter of**, 64 *Barb.* 526. Aff'd in 53 *N. Y.* 645, but without further opinion.
- Grover v. Morris.** See *Governors of Almshouse v. Am. Art Union*.
- *v. Wakeman.* See *Wakeman v. Grover*.
- Grube, Matter of**, 20 *Hun*, 303. Rev'd in 81 *N. Y.* 139.
- Grube v. Schultheiss**, 4 *Daly*, 207. Aff'd in 57 *N. Y.* 669.
- Gruman v. Smith**, 44 *Super. Ct. (J. & S.)* 389. Rev'd in 81 *N. Y.* 25. See *Cortelyou v. Lansing*; *Kingsbury v. Kirwan*; *Markham v. Jaudon*. Decision in 81 *N. Y.*, followed (Right of stockbroker to sell without notice stock carried on margin) in *Capron v. Thompson*, 86 *Id.* 418, 420. Decision in 44 *Super. Ct.* commented on in 1 *Add. on Contr.* 60, n., *Abb. ed.* Decision in 81 *N. Y.* disting'd in *Levy v. Loeb*, 89 *Id.* 389. Applied (Effect of conversion of securities by broker) in *Levy v. Loeb*, 47 *Super. Ct. (J. & S.)* 61, 65. Disting'd (Effect of sale by pledgee, as conversion) in *Hopper v. Smith*, 63 *How. Pr.* 34, 37.
- Grussy v. Schneider**, 50 *How. Pr.* 134. Aff'd in 55 *Id.* 188.
- Grymes v. Hone**, 49 *N. Y.* 17. See *Contant v. Schuyler*; *Taylor v. Taylor*. Cited (Effect of stock transfer producing union of legal and equitable title in same person) in *Beckwith v. Burroughs*, 13 *R. I.* 298.
- Guardian Mut. Life Ins. Co., Matter of**, 13 *Hun*, 115. Aff'd, it seems, in 74 *N. Y.* 617, but without opinion.
- Guardian Mut. Life Ins. Co. v. Kashaw**, 3 *Hun*, 616. Rev'd in 66 *N. Y.* 544. See *Van Wyck v. Walters*.
- Guardian Savings Inst., Matter of**, 9 *Hun*, 267. Another proceeding in 78 *N. Y.* 408.
- Guckenheimer v. Angevine**, 16 *Hun*, 453. Another proceeding in 81 *N. Y.* 894. Decision in *Id.* disting'd (Return of property received under contract as prerequisite to action for rescission) as inapplicable to action for deceit in *Krumm v. Beach*, 25 *Hun*, 293, 295. Explained in 1 *Benj. on Sales*, § 649, n. 14 (Corbin's 4 *Am. ed.*).
- Guenther v. People**, 24 *N. Y.* 100. Relied on (Operation of implied acquittal had on former trial, as defense to indictment) in *Johnson v. State*, 29 *Ark.* 31; s. c., 21 *Am. R.* 154, 161. Explained in 3 *Greenl. on Ev.* 14 ed., § 36, n. a. Followed (Proceedings upon part of counts in indictment, as bar to proceedings upon rest) in *Commonwealth v. Foster*, 122 *Mass.* 317; s. c., 23 *Am. R.* 326; *People v. Merrill*, 14 *N. Y.* 74, being also cited in this connection.
- Guerlain v. Columbia Ins. Co.**, 7 *Johns.* 527. Discussed (Total loss under marine policy) in 3 *Kent Com.* 299.
- Guernsey v. Carver**, 8 *Wend.* 402; s. c., 24 *Am. Dec.* 60, with note, where it is shown to have been frequently approved in *N. Y.* Questioned with *Stevens v. Lockwood*, 13 *Wend.* 644 (Indivisibility of demand) in *Secor v. Sturgis*, 16 *N. Y.* 548. Disapproved with *Stevens v. Lockwood*; *Colvin v. Corwin*, 15 *Wend.* 557; *Bendernagle v. Cocks*, 19 *Id.* 207, in *McIntosh v. Lown*, 49 *Barb.* 550. Disting'd in *Perry v. Dickerson*, 85 *N. Y.* 345, 348. Disapproved in *Badger v. Titcomb*, 15 *Pick. (Mass.)* 400; s. c., 26 *Am. Dec.* 611, 614, with note. Followed with *Bendernagle v. Cocks*, in *Oliver v. Holt*, 11 *Ala.* 574; s. c., 46 *Am. Dec.* 229; *Zorngeisser v. Harrison*, 12 *Wis.* 548. Collated with *Bendernagle v. Cocks*, 19 *Wend.* 207; *Secor v. Sturgis*, 16 *N. Y.* 548; *Colvin v. Corwin*, 16 *Wend.* 557; *Coggins v. Bulwinkle*, 1 *E. D. Smith*, 434; *Reformed Protestant Dutch Church v. Brown*, 54 *Barb.* 191, in *Burritt v. Belfy*, 47 *Conn.* 323; s. c., 37 *Am. E.* 82.
- *v. Powers*, 9 *Hun*, 78. Followed with *Thompson v. Sherrard*, 35 *Barb.* 593 (Appointment of receiver in action for trial of

- title) notwithstanding *Ireland v. Nichols*, 37 *How. Pr.* 222; in *Burdell v. Burdell*, 54 *Id.* 91. Explained in *Sedgw. & W. on Tr. of Tit. to Land*, § 615.
- Guest v. City of Brooklyn**, 8 *Hun.* 97. Aff'd in 69 *N. Y.* 506. Further decision in 9 *Hun.* 198 rev'd, it seems, in 73 *N. Y.* 611. Also further decision in 79 *Id.* 624. Decision in 69 *Id.* followed (Assessment proceedings) in a case involving many of the same points,—in *Townsend v. City of Brooklyn*, 73 *Id.* 589. Approved in *State v. Dist. Ct. of Ramsey Co.*, 33 *Minn.* 295, 309.
- Guidet v. Mayor, &c. of N. Y.**, 36 *Super. Ct. (J. & S.)* 557. Further decision, denying reargument, in 37 *Id.* 124.
- Guillander v. Howell**, 35 *N. Y.* 657; s. c., as *Guillaudet v. Howell*, 6 *Am. L. Reg. N. S.* 522, with note. See *Whitman v. Conner*. Disting'd (Transfer of property, as affected by law of place) in *Ockerman v. Cross*, 54 *N. Y.* 29, 34. Followed in *Hallgarten v. Oldham*, 135 *Mass.* 1; s. c., 46 *Am. R.* 433. Approved in *Fuller v. Steiglitz*, 27 *Ohio St.* 355; s. c., 22 *Am. R.* 312, 319, as according with reason and authority. Quoted and collated with other cases in *Bishop on Assign.* § 261. Discussed in *Burrill on Assign.* § 307, 4 ed.
- Guille v. Swan**, 19 *Johns.* 381; s. c., 10 *Am. Dec.* 234, with note, where it is referred to as a "land-mark" case. See *Dunckle v. Kocker*; *McAllister v. Hammond*; *Partenheimer v. Van Order*; *Ryan v. N. Y. Central R. R. Co.* Applied (Liability for consequences of illegal act) in *Munger v. Baker*, 1 *Sup'm. Ct. (T. & C.)* 122. Cited with *Vandenburgh v. Truax*, 4 *Den.* 464, in *St. Johnsbury & Lake Champlain R. R. Co. v. Hunt*, 55 *Vt.* 570; s. c., 45 *Am. R.* 639. Cited with approval in *Hobart v. Haggett*, 12 *Me.* 67; s. c., 28 *Am. Dec.* 159.
- Guillotel v. Mayor, &c. of N. Y.**, 55 *How. Pr.* 114. Rev'd in 10 *Abb. N. C.* 318; s. c., as *Goillotel v. Mayor, &c. of N. Y.*, 87 *N. Y.* 441. Decision in 55 *How. Pr.*, not followed (Limitation of time to bring action for personal injury) in *Carpenter v. Shimer*, 24 *Hun.* 464.
- Guion v. Knapp**, 6 *Paige*, 35; s. c., 29 *Am. Dec.* 741, with note, wherein are collected citations. See *Patty v. Pease*.
- Guiteman v. Davis**, 3 *Daly*, 120. Disapproved (Recovery of rate of exchange) in *Ladd v. Arkell*, 40 *Super. Ct. (J. & S.)* 150, 158.
- Guterman v. Liverpool, &c. S. S. Co.**, 83 *N. Y.* 358. Rev'g 9 *Daly*, 119. See *Cowley v. People*. Decision in 83 *N. Y.* followed (Hypothetical questions) in *Cowley v. People*, *Id.* 464, 470.
- Gundlach v. Germania Mechanics' Ass'n**, 4 *Hun.* 339. See *Kent v. Quicksilver Mining Co.* Followed (Right to benefits as affected by by-law of voluntary association) in *Poultney v. Bachman*, 10 *Abb. N. C.* 252, 258.
- Gunn v. Cantine**, 10 *Johns.* 387. Relied on (Necessity that party suing have legal interest in subject of suit) in *Bissell v. Spencer*, 9 *Conn.* 267; s. c., 23 *Am. Dec.* 336.
- Guntz, Matter of**, 11 *Weekly Dig.* 437; s. c. as *Matter of Gantz*, 23 *Hun.* 354. Rev'd in 85 *N. Y.* 536.
- Gurney v. Atlantic & G. W. R'y Co.**, 2 *Sup'm. Ct. (T. & C.)* 446. Rev'd in 58 *N. Y.* 358. See *Hargous v. Stone*; *Reed v. Randall*. Decision in 58 *N. Y.* disting'd (Meaning of terms "laborer," &c.) in *Krauser v. Ruckel*, 17 *Hun.* 463, 465. Approved (Warranty on sales by sample is express rather than implied) in 7 *Am. Dec.* 126, n., for reasons there stated at length, other cases being collated. See another review of the authorities in 6 *Am. Dec.* 113, n. Quoted and explained in 2 *Benj. on Sales*, § 977, n. 29 (Corbin's 4 *Am. ed.*).
- **v. Sharp**, 17 *Abb. Pr.* 410. Said in 41 *N. Y.* 619 to have been aff'd in *Ct. of App.* Sept. 1869.
- **v. Smithson**, 7 *Bosw.* 396. Overruled (New trial not to be granted after judgment) in *Tracey v. Altmeyer*, 46 *N. Y.* 598.
- Gutchess v. Daniels**, 58 *Barb.* 401. Rev'd in 49 *N. Y.* 605.
- Guy v. Mead**, 22 *N. Y.* 462. See *Merrill v. Ithaca & Owego R. R. Co.*; *Russell v. Hudson River R. R. Co.* Disting'd (Memoranda in evidence) in *Haack v. Fearing*, 4 *Abb. Pr. N. S.* 301; *Downs v. N. Y. Central R. R. Co.*, 47 *N. Y.* 87; *Reed v. U. S. Express Co.*, 48 *Id.* 468; *Squires v. Abbott*, 61 *Id.* 535; *Driggs v. Smith*, 39 *Super. Ct. (J. & S.)* 288. Explained in *Kennedy v. Oswego & Syracuse R. R. Co.*, 67 *Barb.* 182. Examined with other cases in *Meacham v. Pell*, 51 *Id.* 67. Applied in *Wilcox Silver Plate Co. v. Green*, 9 *Hun.* 348; *Kennedy v. Crandell*, 3 *Lans.* 5; *Osborn v. Merwin*, 12 *Hun.* 334; *Morrow v. Ostrander*, 13 *Id.* 222.
- **v. Oakley**, 13 *Johns.* 332. Followed (Liability of factor for loss from disobeying principal's instructions) in *Kelly v. Smith*, 1 *Blatchf. C. Ct.* 290, 295.
- Guynet v. Mantel**, 4 *Duer*, 86. Disting'd (Right to specific performance of contract for sale of land) in *Hinckley v. Smith*, 51 *N. Y.* 21, 25. Applied in *Beyer v. Marks*, 2 *Sweeny*, 715.

## H.

- Haack v. Fearing**. See *Higgins v. Watervliet Turnpike Co.*
- Haas v. O'Brien**, 40 *Super. Ct. (J. & S.)* 543. Rev'd in 66 *N. Y.* 597; s. c., 52 *How. Pr.* 27; mem., s. c., 1 *Abb. N. C.* 173. Decision in *Id.* followed (Validity of assignment for benefit of creditors under bank-

- rupt law) in *Van Hein v. Elkus*, 8 *Hun*, 516, 519.
- *v. Roat*. See *Gibson v. Stone*; *Leggett v. Hyde*.
- Haase v. N. Y. Central R. R. Co.**, 14 *How. Pr.* 430. Approved (Allowing appeal after statute time has passed) in *Toll v. Thomas*, 18 *Id.* 324. But see *Sherman v. Wells*, 14 *Id.* 522. Overruled by *Sherwood v. Pratt*, 11 *Abb. Pr. N. S.* 115. See *Code Civ. Pro.* 1881, § 784, *n.*
- Hacker v. Ferrill**, 3 *Sup'm. Ct. (T. & C.)* 780. Another proceeding in 66 *Barb.* 559. *Green v. Disbrow*, which was relied on in decision in 3 *Sup'm. Ct. (T. & C.)* (Manner of charging accounts) was rev'd in 56 *N. Y.* 334. Rule stated in 66 *Barb.* said to be changed by *Code Civ. Pro.* (Appeal from judgment entered in referee's report in action in county court) in *Kilmer v. O'Brien*, 13 *Hun*, 224.
- Hackett v. Badeau**, 63 *N. Y.* 476. Followed (Foreclosure of mechanics' lien) in *Wilson v. Doran*, 64 *Id.* 648.
- *v. Belden*, 10 *Abb. Pr. N. S.* 123; *s. c.*, 40 *How. Pr.* 289. Aff'd in 47 *N. Y.* 624.
- *v. Connett*. See *Coster v. Griswold*.
- *v. People*, 54 *Barb.* 370. See *People v. Davis*. Reviewed with other cases (Admissibility of dying declarations in evidence) in *State v. Draper*, 65 *Mo.* 335; *s. c.*, 27 *Am. E.* 287, 290.
- *v. Richards*, 11 *N. Y. Leg. Obs.* 315. Rev'd in 3 *E. D. Smith*, 13, and that rev'd in 13 *N. Y.* 138; *s. c.*, 3 *E. D. Smith*, 15, *n.*
- Hackettstown Nat. Bank v. Rea**, 6 *Lans.* 455; *s. c.*, more fully, 64 *Barb.* 175.
- Hackford v. N. Y. Central, &c. R. R. Co.**, 6 *Lans.* 381; *s. c.*, 13 *Abb. Pr. N. S.* 18; 43 *How. Pr.* 222. Aff'd in 53 *N. Y.* 654. Decision in *Id.* collated with other cases (Negligence as question for court or for jury) in *Bigel. Cas. on Torts*, 593.
- Hackley, Matter of**, 21 *How. Pr.* 103. This is probably a dissenting opinion. Compare contrary decision, reported as *People ex rel. Hackley v. Kelly*, in 12 *Abb. Pr.* 150; *s. c.*, 21 *How. Pr.* 54, which was aff'd in 24 *N. Y.* 74.
- Hackley v. Draper**, 4 *Sup'm. Ct. (T. & C.)* 614; *mem. s. c.*, 2 *Hun*, 523. Aff'd in 60 *N. Y.* 88.
- *v. Johnson*. See *Smith v. Ludlow*.
- *v. Patrick*, 3 *Johns.* 536; *s. c.*, 3 *N. Y. Com. L. Law. ed.* 695, with brief note. See *Baker v. Stackpole*; *Sanford v. Mickles*. Applied (Acknowledgment by one partner after dissolution) in *Hart v. Woodruff*, 24 *Hun*, 510, 512. Doctrine of this case and *Walden v. Sherburne*, 15 *Johns.* 409, 425, denied in *Parker v. Merrill*, 6 *Greenl. (Me.)* 41; *Martin v. Root*, 17 *Mass.* 227; *Phil. Ev.* 400. Followed with *Lansing v. Gaine*, 2 *Johns.* 300; *Walden v. Sherburne*, 15 *Id.* 409, in *Brady v. Hill*, 1 *Mo.* 315; *s. c.*, 13 *Am. Dec.* 503, with note. Collated with *Smith v. Ludlow*, 6 *Johns.* 267; *Roosevelt v. Mark*, 6 *Johns. Ch.* 266, 291; *Graham v. Selover*, 59 *Barb.* 313; *Van Keuren v. Parmelee*, 2 *N. Y.* 523; *Walden v. Sherburne*, 15 *Johns.* 409, 424, and other cases in *Story on Partn.* 7 ed. § 324, *n.* Quoted in 1 *Collyer on Partn.* § 107, *n.* 1, *Wood's Am. ed.* Quoted and explained in 1 *Greenl. on Ev.* 14 ed., § 112, *n. c.* 155. Commented on in *Ang. on Limit.* § 260, 6 ed.
- Hadden v. Dimick**, 31 *How. Pr.* 196. Rev'd in 13 *Abb. Pr. N. S.* 135.
- *v. People*, 25 *N. Y.* 373. Included, with notes (What constitutes kidnapping) in *Lawson Lead. Cas. (Crim. L.) Simplified*, 186.
- *v. Spader*, 20 *Johns.* 554. See *Donovan v. Finn*. Confirmed (Non-leviable assets can be reached by creditor's bill) in *Ager v. Murray*, 105 *U. S.* 126; *Pendleton v. Perkins*, 49 *Mo.* 565; *Marsh v. Burroughs*, 1 *Woods*, 463; *s. c.*, 10 *Am. L. Reg. N. S.* 718; *Artzbacker v. Mayer*, 53 *Wisc.* 380; *s. c.*, 10 *Northw. Rep.* 440, 445, and in 2 *R. S.* 173, § 38; *Code Civ. Pro.* § 1871; *Tolles v. Wood*, 16 *Abb. N. C.* 1, with note. See to the contrary *Hardenburgh v. Blair*, 30 *N. J. Eq.* 446, which rev'd *Id.* 42.
- Haddon v. Lundy**. See *Haddow v. Haddow*.
- Haddow v. Haddow**, 3 *Sup'm. Ct. (T. & C.)* 777. Aff'd as *Haddow v. Lundy*, 59 *N. Y.* 320.
- Haden v. Buddensiek**, 4 *Hun*, 649; *s. c.*, more fully, 67 *Barb.* 188. Litigation of mechanics' lien is reported in 6 *Daly*, 3.
- *v. Coleman*, 42 *Super. Ct. (J. & S.)* 256. Rev'd in 73 *N. Y.* 567.
- Hadley v. Barton**, 47 *How. Pr.* 481. Aff'd in 58 *N. Y.* 675 on opinion of *Talcott, J.*, without further opinion.
- *v. Mayor, &c. of Albany*, 33 *N. Y.* 603. Commented on with other cases (Basis of claim to official emolument) in *McVeany v. Mayor, &c. of N. Y.*, 80 *N. Y.* 185, 191. Included, with notes (Canvassing election returns) in *Brightly Cas. on Elect.* 307.
- Haff v. Marine Ins. Co.**, 8 *Johns.* 163; *s. c.*, 5 *Am. Dec.* 331. Trial at *nisi prius* reported in *Anth. N. P.* 22. Subsequent decision in 8 *Johns.* 165. Decision in 4 *Id.* disting'd (Presumption as to possession of proofs of loss under policy) in *Foster v. Jackson Mar. Ins. Co.*, 1 *Edm.* 290.
- *v. Spicer*. See *Jackson v. Virgil*.
- Hagadorn v. Connecticut Mut. Ins. Co.**, 22 *Hun*, 249. Compare (Disqualification of juror) *Points of Law in Guiteau's Case*, 75 (Boston; Little, Brown & Co., 1881), where other cases are cited.
- *v. Raux*, 72 *N. Y.* 583. Disting'd ("May," when equivalent to "must," in statute) in *Talmage v. Third Nat. B'k*, 91 *Id.* 531. Disting'd (Action by town supervisor against predecessor) in *Gleason v. Youmans*, 13 *Weekly Dig.* 25, which aff'd 9 *Abb. N. C.* 107, 111, which see. Disting'd



- in *Victory v. Blood* 25 *Hun.* 515, 519, 523.
- Hagaman v. Jackson.** See *Jackson v. Willard*.
- Hagar v. Clark**, 12 *Hun.* 524. Rev'd in 78 *N. Y.* 45.
- Hagen v. Bowery Nat. Bank**, 64 *Barb.* 197; s. c., more fully, 6 *Lans.* 490.
- Hager v. Danforth**, 8 *How. Pr.* 435. Rev'd in 20 *Barb.* 16. Decision in *Id.* cited as authority (Right of officer to use force to overcome resistance to service of process) in *Hull v. Bartlett*, 49 *Conn.* 64.
- **v. Hager**, 38 *Barb.* 92. Cited with other cases (Misconduct of juror) in 14 *Am. L. Reg. N. S.* 546.
- Haggart v. Morgan**, 5 *N. Y.* 422; s. c., 55 *Am. Dec.* 350, with note, containing citations. Disting'd (Effect of agreement to submit to arbitration) in *Delaware & Hudson Canal Co. v. Penn. Coal Co.*, 50 *N. Y.* 250. Followed as conclusive (What constitutes non-residence) in *Burrill v. Jewett*, 2 *Robt.* 701.
- Haggerty v. Palmer**, 6 *Johns. Ch.* 437. See *Steelyards v. Singer*; *Strong v. Taylor*. Denied (Effect of delivery of goods sold, without payment, to pass property) in *Chapman v. Lathrop*, 6 *Cov.* 115, n. a, where marginal note to *Palmer v. Hand*, 13 *Johns.* 434, was criticised as erroneous. See authorities collected (Validity of conditional sales as to third persons) in *Lewis v. McCabe*, 49 *Conn.* 141, 148; s. c., 21 *Am. L. Reg. N. S.* 217, with note. Applied in *Knowles v. Lord*, 4 *Whart. (Pa.)* 500; s. c., 34 *Am. Dec.* 525, 529, to case of fraudulent purchaser making assignment for creditors.
- **v. People** (No. 1), 6 *Lans.* 332. Rev'd in 53 *N. Y.* 476.
- **v.** (No. 2), 6 *Lans.* 347. Aff'd, it seems, in 53 *N. Y.* 642, but without opinion.
- **v. Wilber**, 16 *Johns.* 286; s. c., 8 *Am. Dec.* 321. Followed with *Cresson v. Stout*, 17 *Johns.* 116; *Lambert v. Paulding*, 18 *Id.* 311; *Beals v. Allen*, *Id.* 363 (Lien of execution) in *People v. Bradley*, 17 *Ill.* 487.
- Hague v. Porter**, 3 *Hill*, 141. Quoted and explained (Failure to accept goods sold) in 1 *Benj. on Sales*, § 527 (Corbin's 4 *Am. ed.*).
- Hahn v. Hull**, 4 *E. D. Smith*, 664. Disting'd (Sufficiency of complaint in action against indorser) in *Schwarzansky v. Averill*, 7 *Daly*, 254, 256.
- Haight, Matter of**, 14 *Hun.* 176. See (Sale of infant's real estate) *Code Civ. Pro.* 1881, § 2348, n.
- Haight v. Badgely**, 15 *Barb.* 499. Explained (Enticing away servant) in *Johnston Harvester Co. v. Meinhardt*, 9 *Abb. N. C.* 393, 399.
- **v. Childs**, 34 *Barb.* 186. Applied (Defendant in action for specific performance not obliged to set up statute of frauds) in *Morrill v. Cooper*, 65 *Id.* 512, 516.
- **v. Day**, 1 *Johns. Ch.* 18. See *Hartwell v. Armstrong*; *Slee v. Bloom*. Explained and reconciled (Reviewing exercise of discretionary powers) in *English v. Smock*, 34 *Ind.* 115, 120. Explained (Equitable regulation of corporate elections) in 3 *South. L. Rev. N. S.* 212. Commented on in 2 *High on Inf.* 2 ed., § 1230, n. 1.
- **v. Hayt**, 19 *N. Y.* 464. See *Tallman v. Green*. Followed and approved (Survival of cause of action) in *Johnson v. Bennett*, 5 *Abb. Pr. N. S.* 331. Applied in *Cregin v. Brooklyn Crosstown R. R. Co.*, 75 *N. Y.* 194; *Holcomb v. Daggett*, 24 *Hun.* 204, 206.
- **v. Holcomb**, 7 *Abb. Pr.* 210; s. c., 16 *How. Pr.* 173. See *McGregor v. Comstock*. Disapproved (Limit of attorney's lien) in *Ackerman v. Ackerman*, 14 *Abb. Pr.* 229, 233; *Hall v. Ayer*, 9 *Id.* 221; and see *Roberts v. Carter*, *Id.* 366, n. In part overruled in *Rooney v. Second Av. R. R. Co.*, 18 *N. Y.* 368. See *Pulver v. Harris*, 62 *Barb.* 500. Explained (Trial of question of fact arising between attorney and client) in *Porter v. Parmly*, 39 *Super. Ct. (J. & S.)* 219, 239.
- **v. Holley**, 3 *Wend.* 258. Cited (Implications in pleading) in *Daniels v. Tearney*, 102 *U. S.* 415, 418.
- **v. N. Y. Central R. R. Co.**, 7 *Lans.* 11. Applied (Contributory negligence in crossing railroad track) in *Slater v. Utica & Black R. R. Co.*, 75 *N. Y.* 279.
- **v. Sahler**, 30 *Barb.* 218. See *Ex parte Kerwin*; *Randall v. Van Vechten*. Applied (Officers or agents when not bound by contract executed for corporation) in *Bellinger v. Bentley*, 4 *Sup'm. Ct. (T. & C.)* 71, 74. Disting'd (Liability on sealed contract executed by agent) in *Schaefer v. Henkel*, 75 *N. Y.* 378, 387.
- **v. Turner**, 2 *Johns.* 371. Approved (Entitling papers) in *People v. Tioga C. P.*, 1 *Wend.* 291; *Maher v. Comstock*, 1 *How. Pr.* 175. Examined with *Humphrey v. Cande*, 2 *Cov.* 509, in *Kearney v. Andrews*, 5 *Wis.* 25.
- **v. Wright**, 20 *How. Pr.* 91. See to the contrary (Proof of legitimacy, in action for child's services) *Armstrong v. McDonald*, 10 *Barb.* 300. See *Abb. Tr. Ev.* 382.
- Haile v. Lillie**, 3 *Hill*, 149. Approved (Infant's privilege) in *Ackerman v. Runyon*, 3 *Abb. Pr.* 111. Cited in *Tyler on Inf. & Cov.* § 128.
- Haines v. Backus**, 4 *Wend.* 213. Examined and followed (Effect of certiorari) in *Devlin v. Platt*, 11 *Abb. Pr.* 398, 401.
- **v. Hollister**, 64 *N. Y.* 1. Explained (Parties defendant in creditor's action) in *Wait on Fraud. Conv.* § 128. Quoted in *Id.* § 133.
- Haire v. Baker**, 5 *N. Y.* 357. Approved but explained as modified by the Code (Right of defendant to affirmative relief) in *Auburn City B'k v. Leonard*, 20 *How. Pr.* 193, 195. See (Contents of demurrer) *Code Civ. Pro.* 1881, § 490, n.
- Halden v. Crafts**, 4 *E. D. Smith*, 490. Col-

- lated with other cases (Limitation of action on deposit of money or property to be returned on special demand) in *Throop Justice's Man.* 2 ed. 189. See *Code Civ. Pro.* 1881, § 410, n.
- Hale v. Angell**, 20 *Johns.* 342. Cited as authority with *Smith v. Mumford*, 9 *Cow.* 26 (Action on domestic judgment) in *Hummer v. Lamphear*, 32 *Kan.* 439.
- **v. Clauson**. See *Frost v. Yonkers Savings Bank*.
- **v. Hays**, 54 *N. Y.* 389. See also (Duty of vendor as to discharge of incumbrances) *Rinaldo v. Housmann*, 1 *Abb. N. C.* 312.
- **v. James**, 6 *Johns. Ch.* 258; s. c., 10 *Am. Dec.* 328. See *Swaine v. Perine*. Collocated with other cases (Valuation of land for dower) in *Sharsv. & B. Cas. on Real Prop.* 399 Discussed in 4 *Kent Com.* 69, n. d.
- **v. Omaha Nat. B'k**, 33 *Super. Ct. (J. & S.)* 40. Rev'd in 49 *N. Y.* 626. Further decision on the merits, in 47 *How. Pr.* 201 aff'd in 39 *Super. Ct. (J. & S.)* 207, and that aff'd in 64 *N. Y.* 550. Decision in *Id.* applied (What necessary to sustain action for deprivation of equitable lien) in *Husted v. Ingraham*, 75 *Id.* 258. With decision in 49 *Id.* see (Demurrer) *Code Civ. Pro.* 1881, § 488, n.
- **v. Patton**, 60 *N. Y.* 233. Explained (Excuse for non-payment) in *Asendorf v. Meyer*, 8 *Daly*, 278, 281.
- **v. Smith**, 78 *N. Y.* 480. Followed (Burden of proof as to contributory negligence) in *Hart v. Hudson River Bridge Co.*, 84 *Id.* 57, 62; *Urquhart v. City of Ogdensburgh*, 23 *Hun*, 75, 77. Applied in *Probst v. Delamater*, 17 *Weekly Dig.* 355.
- **v. Sweet**, 40 *N. Y.* 97. Applied (Change of possession under chattel mortgage) in *Steele v. Benham*, 84 *Id.* 634, 638. Explained (Chattel mortgage when void as against creditors) in *Fraser v. Gilbert*, 11 *Hun*, 634, 637. Applied in *Field v. Baker*, 12 *Blatchf. C. Ct.* 438, 443. Disting'd (Affidavit for discharge of imprisoned debtor) in *Richmond v. Praim*, 24 *Hun*, 578.
- Hall v. Barton**, 24 *Barb.* 274. Qualified with *McCleary v. Edwards*, 27 *Id.* 240; *Hurd v. Pendrigh*, 2 *Hill*, 502 (Proper return of commissioner) in *Pendell v. Coon*, 20 *N. Y.* 134, 136. Followed in *Goodyear v. Vasburgh*, 41 *How. Pr.* 421.
- **v. Bishop**, 3 *Daly*, 109. See to the contrary (Recovery by unlicensed lawyer) *Woodward v. Stearns*, 10 *Abb. Pr. N. S.* 395, a case of a broker.
- **v. City of Buffalo**, 1 *Keyes*, 193. See *Hutter v. Aellwanger*. Disting'd (Order on particular fund) in *Attorney Gen'l v. Continental Life Ins. Co.*, 71 *N. Y.* 325, 328.
- **v. Crouse**, 13 *Hun*, 557. See *Townsend v. Masterton Stone Dressing Co.* Disting'd (Mortgage for future advances) in *Ackerman v. Hunsicker*, 21 *Hun*, 53.
- **v. Dean**. See *Delavergne v. Norris*.
- **v. Erwin**, 60 *Barb.* 349. Modified in 57 *N. Y.* 643. Further decision in 66 *Id.* 649.
- **v. Farmer**, 5 *Den.* 484. Aff'd in 2 *N. Y.* 553. Decision in *Id.* referred to as not authoritative (Liability on guaranty) in *Draper v. Snow*, 20 *Id.* 381, 387.
- **v. Fisher**, 9 *Barb.* 17. Other decisions in 1 *Barb. Ch.* 53; 3 *Id.* 637. See decision in subsequent action brought to recover mesne profits and damages caused by the injunction, in 20 *Barb.* 441. Decision in 9 *Id.* applied (Disregarding trifling error in amount) in *Colman v. Shattuck*, 2 *Hun*, 497, 508. Quoted (Estoppel as created by silence) in 2 *Best on Ev.* § 543, n. a, Wood's ed.
- **v. Gird**, 7 *Hill*, 588. Doubted (Statute prohibiting attorneys, &c. from buying choses in action, &c. not applicable in chancery) in *Baldwin v. Latson*, 2 *Barb. Ch.* 306; *Hall v. Bartlett*, 9 *Barb.* 299.
- **v. Hall**, 13 *Hun*, 306. Aff'd in 81 *N. Y.* 130.
- **v. —**, 18 *Hun*, 358. Aff'd in 78 *N. Y.* 535. See *Valentine v. Valentine*; *Westerfield v. Westerfield*. Decision in 78 *N. Y.* disting'd (Double commissions as executor and trustee) in *Blake v. Blake*, 30 *Hun*, 469. Explained in *Matter of Roosevelt*, 5 *Redf.* 601, 620. Compare *Code Civ. Pro.* § 2738.
- **v. —**, 38 *How. Pr.* 97. Criticised as opposed to the weight of authority (Action between tenants in common for specific performance) in *Pomeroy on Rem.* § 460, n. 6.
- **v. Hodskins**, 30 *How. Pr.* 15. Disting'd (Costs in justice's court when title to realty is in question) in *Learn v. Currier*, 15 *Hun*, 185, 187.
- **v. Ins. Co. of North America**, 58 *N. Y.* 292. See *Harper v. Alb. Mut. Ins. Co.*; *Steinbach v. La Fayette Fire Ins. Co.* Approved as a well considered case (Implied right to use hazardous articles) in 15 *Am. L. Rev.* 767, where other cases are collected.
- **v. James**, 25 *Hun*, 61. Abridgt. in 12 *Weekly Dig.* 510.
- **v. Kellogg**, 12 *N. Y.* 325. Rev'g 13 *Barb.* 603. Decision in 12 *N. Y.* re-aff'd (Right of pursuing creditor to priority) in *People ex rel. Latorre v. O'Brien*, 6 *Abb. Pr. N. S.* 63.
- **v. McMahon**, 10 *Abb. Pr.* 103. Modified in *Id.* 319.
- **v. Merrill**, 5 *Bosw.* 266. Followed (Composition deeds) in *Horstman v. Miller*, 35 *Super. Ct. (J. & S.)* 29, 34. Disting'd (Consideration for agreement to compromise claim) in *Chemical Nat. B'k v. Kohner*, 8 *Daly*, 530, 535.
- **v. Naylor**, 6 *Duer*, 71. Rev'd in 18 *N. Y.* 588.
- **v. Nelson**, 23 *Barb.* 88. Not followed (Power of county court to foreclose mortgage) in *Benson v. Cronwell*, 26 *Id.* 218. See *Arnold v. Rees*, 18 *N. Y.* 57, and cases cited.

- **v. Newcomb**, 3 *Hill*, 238. Aff'd in 7 *Id.* 416; s. c., 42 *Am. Dec.* 82, with note, wherein are collected citations. See *Bank of Albion v. Smith*; *Dean v. Hall*; *Herrick v. Carman*. Decision in 7 *Hill* approved and followed (Liability of irregular indorser) in *Spies v. Gilmore*, 1 *N. Y.* 321; *Cottrell v. Conklin*, 4 *Duer*, 45; see also, *Cromwell v. Hewitt*, 40 *N. Y.* 491. Explained in *Richards v. Warring*, 4 *Abb. Ct. App. Dec.* 47, 52; *Leggett v. Cochrane*, 10 *Daly*, 270. Disapproved in *Burton v. Hansford*, 10 *W. Va.* 470; s. c., 27 *Am. R.* 576. Dissented from in *Carroll v. Weld*, 13 *Ill.* 682; s. c., 56 *Am. Dec.* 481. Reviewed with *Phelps v. Vischer*, 50 *N. Y.* 66; *Oakley v. Boorman*, 21 *Wend.* 588, in *Rivers v. Thomas*, 1 *Lea (Tenn.)* 649; s. c., 27 *Am. R.* 784, 787. Disapproved with *Spies v. Gilmore*, 1 *N. Y.* 321; *Richards v. Warring*, 1 *Keyes*, 576; *Cromwell v. Hewitt*, 40 *N. Y.* 491, in *Chaddock v. Vanness*, 35 *N. J.* 517; s. c., 10 *Am. R.* 256, 262. Disapproved with *Tillman v. Wheeler*, 17 *Johns.* 328; *Herrick v. Carman*, 12 *Id.* 160, in *Lewis v. Harvey*, 18 *Miss.* 74; s. c., 59 *Am. Dec.* 286. Collated with *Spies v. Gilmore*, 1 *N. Y.* 320; *Ellis v. Brown*, 6 *Barb.* 282; *Waterbury v. Sinclair*, 26 *Id.* 455, and other cases, in 2 *Am. R.* 475, n. Included, with notes, in *Redf. & B. Lead. Cas. on B. of Elec.* 131. Included in 1 *Ames Cas. on B. & N.* 256. Collated and discussed with *Bruce v. Wright*, 3 *Hun.* 548; *Dean v. Hall*, 17 *Wend.* 214; *Bank of Albion v. Smith*, 27 *Barb.* 589; *Herrick v. Carman*, 12 *Johns.* 159; 10 *Id.* 224 (Parol evidence to explain or vary contract of indorsement) in 18 *Cent. L. J.* 382.
- **v. Phelps**, 2 *Johns.* 451. Limited to unsealed instrument (Proof of written instrument by admissions of party executing) in *Fox v. Riel*, 3 *Id.* 477; *Henry v. Bishop*, 2 *Wend.* 575. Disting'd and doubted, and *Fox v. Riel*, 3 *Johns.* 477, cited as in point, in *Berly v. Wilson*, 3 *Ohio*, 42; s. c., 17 *Am. Dec.* 577.
- **v. Prentice**, 3 *How. Pr.* 328; s. c., differently reported, 1 *Code R.* 81.
- **v. Reed**, 2 *Barb. Ch.* 500. See *Lyon v. Richmond*. Explained (Mistake of law) in 1 *Story on Contr.* 5 ed., § 526, and n. 1.
- **v. Robbins**, 61 *Barb.* 33; s. c., 4 *Lans.* 463. See to the contrary (Promise to third person to pay plaintiff) *Exchange B'k of St. Louis v. Rice*, 107 *Mass.* 37; s. c., 9 *Am. R.* 1. But see *Abb. Tr. Ev.* 386.
- **v. Robinson**, 2 *N. Y.* 293. See *Gardner v. Adams*. Discussed (Assignment of right of action arising out of tort) in 1 *Pars. on Contr.* 226, n. 1.
- **v. Rochester**, 3 *Cow.* 374. Followed (Effect of release of one of two joint obligors) in *Benjamin v. McConnell*, 4 *Gilm. (Ill.)* 536; s. c., 46 *Am. Dec.* 474, with note.
- **v. Samson**, 19 *How. Pr.* 481. Further decision in 23 *Id.* 84, which was rev'd in 35 *N. Y.* 274. Decision in *Id.* cited, and *Ford v. Ransom*, 8 *Abb. Pr. N. S.* 416, disting'd (Restraining mortgagee by injunction from taking possession under clause in chattel mortgage) in *Cline v. Libby*, 46 *Wis.* 123; s. c., 32 *Am. R.* 700.
- **v. Sawyer**, 47 *Barb.* 116. Disting'd (Notice of appeal from justice's decision) in *Bishop v. Van Vechten*, 10 *Abb. N. C.* 220, 224.
- **v. Schultz**, 4 *Johns.* 240; s. c., 3 *N. Y. Com. L. Law. ed.* 809, with brief note; 4 *Am. Dec.* 270. See *Dykens v. Townsend*. Explained (When payment is deemed voluntary) in *Tutt v. Ide*, 3 *Blatchf. C. Ct.* 250, 253. Reviewed with *Ripley v. Gelston*, 9 *Johns.* 201; *Clinton v. Strong*, *Id.* 370, in *Chase v. Divinal*, 7 *Greenl. (Me.)* 134; s. c., 20 *Am. Dec.* 352, 354.
- **v. Siegel**, 7 *Lans.* 206; s. c., 13 *Abb. Pr. N. S.* 178. Aff'd, it seems, in 53 *N. Y.* 607, but without opinion. *Miller v. White*, 59 *Barb.* 434, here relied on (Effect of judgment against corporation as evidence of stockholder's liability) was rev'd in 50 *N. Y.* 137.
- **v. Stryker**, 29 *Barb.* 105; s. c., more fully, 9 *Abb. Pr.* 342. Rev'd in 27 *N. Y.* 596. Decision in 29 *Barb.* disting'd (Right of attaching creditor to assail fraudulent assignment) in *Schlüssel v. Willett*, 34 *Id.* 615, 619; *Jacobs v. Remsen*, 35 *Id.* 388. Disapproved in *Thayer v. Willet*, 5 *Bow.* 344, 361.
- **v. Suydam**, 6 *Barb.* 83. Followed and approved (What is probable cause in actions for malicious prosecution) in *Shafer v. Loucks*, 58 *Id.* 426, 432.
- **v. Tuttle**, 6 *Hill*, 38; s. c., 40 *Am. Dec.* 382, with note, as to entry of judgments, and kindred points.
- **v. —**, 2 *Wend.* 475. Disting'd (Replevying property in custody of law) in *Lynch v. St. John*, 8 *Daly*, 142, 146.
- **v. Waterbury**, 5 *Abb. N. C.* 356. Another proceeding in *Id.* 374; s. c., 57 *How. Pr.* 131.
- **v. Wilson**, 16 *Barb.* 548. See *Powell v. Waters*. Disting'd (Necessity that defense of usury be pleaded) in *Haywood v. Jones*, 10 *Hun.* 501. Approved (Note, when usurious as having had no legal inception) in *Eastman v. Shaw*, 65 *N. Y.* 528. Cited with *Magie v. Baker*, 30 *Barb.* 246 (Rights of bona fide holder of negotiable paper) in *Phelan v. Moss*, 67 *Penn.* 59; s. c., 5 *Am. R.* 402, 406.
- Hallahau v. Herbert**, 4 *Daly*, 209; s. c., 11 *Abb. Pr. N. S.* 326. Aff'd on somewhat different grounds, in 57 *N. Y.* 409. Decision in *Id.* applied (Personal judgment in proceeding to enforce mechanics' lien) in *Burroughs v. Fosteran*, 2 *Abb. N. C.* 333, 341. Disting'd (Remedy, when action and not special proceeding) in *Gallagher v. Karns*, 27 *Hun.* 375.
- Hallenbeck v. De Witt**, 2 *Johns.* 404; s. c., 3 *N. Y. Com. L. Law. ed.* 429, with brief note.

- **v. Garner**, 20 *Wend.* 22. Applied (Who liable in summary proceedings) in *People ex rel. Higgins v. McAdam*, 84 *N. Y.* 287, 293. Disting'd in *Terrett v. Cowenhoven*, 11 *Hun.* 320, 324.
- Haller, Matter of**, 3 *Abb. N. C.* 65. Applied (Words less significant than acts) in *People v. O'Reilly*, 9 *Abb. N. C.* 77, 98.
- Hallet, Matter of**, 8 *Paige*, 375. Compare (Meaning of terms "child," "grandchild," &c. as used in wills) *Cutter v. Doughty*, 7 *Hill*, 305.
- Hallet v. Columbian Ins. Co.**, 8 *Johns.* 272; s. c., 4 *N. Y. Com. L. Law. ed.* 538, with brief note. Examined with other cases (Liability of owner of vessel for master's acts) in *Stedman v. Feidler*, 20 *N. Y.* 437; *Clarkson v. Edes*, 4 *Cow.* 470, 481.
- Hallett v. Carter**, 19 *Hun.* 629. See brief mem. denying re-argument in 21 *Id.* 108.
- **v. Hallett**, 2 *Paige*, 15. Compare (Parties to proceedings to enforce claims of residuary legatee) in *Cromer v. Pinkney*, 3 *Barb. Ch.* 466. Commented on and applied to proceeding to enforce stockholder's liability in *Thompson v. Reno Sav'gs B'k* (*Sup'm. Ct., Nev.*, 1885), 7 *Pac. Rep.* 68, 78.
- **v. Harrower**, 33 *Barb.* 537. Followed (Effect of description of plaintiff in complaint) in *Cordier v. Thompson*, 8 *Daly*, 172, 175. Examined and reviewed (Corporate creation and existence) in 8 *South. L. Rev. N. S.* 530.
- **v. Novion**, 14 *Johns.* 273. Rev'd in 16 *Id.* 327. See *Swords v. Owen*.
- **v. Peyton**, 1 *Cal. Cas.* 28. Collated with other cases (Abandonment of vessel dependent on actual state of affairs) in 2 *Hare & W. Am. Lead. Cas.* 678.
- **v. Righters**, 13 *How. Pr.* 43. Disting'd but approved (Jurisdiction and amendment) in *Talcott v. Rosenberg*, 8 *Abb. Pr. N. S.* 287.
- **v. Thompson**, 5 *Paige*, 583. Reviewed with other cases (Extent to which equitable interests are subject to the payment of debts) in *Heath v. Bishop*, 4 *Rich. (So. Car.) Eq.* 46; s. c., 55 *Am. Dec.* 654. Discussed in 4 *Kent Com.* 311, n. b. Cited with other cases (Restrictions on estates) in 9 *Am. L. Reg. N. S.* 400.
- **v. Wylie**, 3 *Johns.* 44; s. c., 3 *Am. Dec.* 457; 3 *N. Y. Com. L. Law. ed.* 522, with brief note. See *Graves v. Berdan*. Included (Rent in case of premises destroyed) in *Lawson's Lead. Com. L. Cas. Simplified*, 185.
- Hallgarten v. Eckert**, 67 *Barb.* 59. Further decision in 3 *Sup'm. Ct. (T. & C.)* 102; mem. s. c., 1 *Hun.* 117. Also mem. of decision in 5 *Sup'm. Ct. (T. & C.)* 681; s. c., 3 *Hun.* 219.
- Halliday v. Hart**, 30 *N. Y.* 474. See *Gahn v. Niemcewicz*. Disting'd (Consideration for extension of payment) in *Hubbard v. Garney*, 64 *N. Y.* 457, 468.
- **v. McDougall**, 20 *Wend.* 81. Rev'd in 22 *Id.* 264. See *Chanoine v. Fowler*; *Whiting v. Sterling*. Decision in 20 *Wend.* approved in *Bowen v. Rutherford*, 60 *Ill.* 41; s. c., 14 *Am. R.* 25, as questioning *Whitney v. Sterling*, 14 *Johns.* 214; *McPherson v. Rathbone*, 11 *Wend.* 97 (Proving partnership by general reputation), the latter two cases being thought to go farther than any other authorities, either English or American, on this point.
- **v. Martinet**, 20 *Johns.* 168; s. c., 11 *Am. Dec.* 262; 6 *N. Y. Com. L. Law. ed.* 972, with note of approval. See *Butler v. Wright*.
- **v. Noble**, 1 *Barb.* 137. Rev'd in 1 *N. Y.* 330.
- Hallock v. De Munn**, 2 *Sup'm. Ct. (T. & C.)* 350. Disting'd (Pleading in action against married woman) in *Stevens v. Bostwick*, 2 *Hun.* 423.
- **v. Dominy**, 7 *Hun.* 52. Rev'd in 69 *N. Y.* 238. Decision in *Id.* followed (False imprisonment) in *Horton v. Dominy*, 85 *Id.* 642.
- **v. Miller**, 2 *Barb.* 630. See *Shipman v. Burrows*. Applied (Allegation of special damage, in action for slander) in *Havemeyer v. Fuller*, 10 *Abb. N. C.* 9, 13.
- **v. Smith**. See *White v. Williams*.
- Halloran v. N. Y. & Harlem R. R. Co.**, 2 *E. D. Smith*, 257. Followed with *Bowman v. Troy & Boston R. R. Co.*, 37 *Barb.* 516 (Liability for injury to cattle straying on track) in *Van Horn v. Burlington, C. R. & N. R. R. Co.*, 59 *Iowa*, 33. Collated with other cases in 1 *Thomps. on Negl.* 529.
- Halpin v. Third Ave. R. R. Co.** See *Carnes v. Platt*; *Rowe v. Stevens*.
- Halsey v. McCormick**. See *Ex parte Jennings*.
- **v. Reed**, 9 *Paige*, 446. Applied (Right to compel assignment of mortgage) in *Pardee v. Van Anken*, 3 *Barb.* 539. Explained and applied (Right of mortgage creditor to resort to personal estate of decedent) in *Rice v. Harbeson*, 2 *Sup'm. Ct. (T. & C.)* 7. Disting'd (Division of entire demand) in *Bancroft v. Winspear*, 44 *Barb.* 217. Explained (Rights of creditor having security) in *Jervis v. Smith*, 7 *Abb. Pr. N. S.* 217. Explained (Liability of grantee of mortgaged premises) in *Stebbins v. Hall*, 29 *Barb.* 530. Applied in *Marsh v. Pike*, 1 *Sandf. Ch.* 213. Reviewed with other cases in *Garnsey v. Rogers*, 47 *N. Y.* 236. Disting'd in *Vrooman v. Turner*, 69 *Id.* 285; *King v. Whitely*, 10 *Paige*, 467; *Dunning v. Leavitt*, 85 *N. Y.* 30, 34.
- **v. Sinsebaugh**, 15 *N. Y.* 485. See *Lawrence v. Barker*. Applied (Memoranda in evidence) in *Philbin v. Patrick*, 3 *Abb. Ct. App. Dec.* 606; *Stuart v. Binsse*, 7 *Bosw.* 197; *Wilcox Silver Plate Co. v. Green*, 9 *Hun.* 348; *Morrow v. Ostrander*, 13 *Id.* 221. Cited with *Russell v. Hudson River R. R. Co.*, 17 *N. Y.* 134, as settling the rule,—in *Driggs v. Smith*, 36 *Super. Ct. (J. & S.)* 283. Disting'd in *Russell v. Hudson River R. R.*

- Co., 17 *N. Y.* 139; *Downs v. N. Y. Central R. R. Co.*, 47 *Id.* 87; *Flood v. Mitchell*, 68 *Id.* 511. Examined with other cases in *Meacham v. Pell*, 51 *Barb.* 66; *Guy v. Mead*, 22 *N. Y.* 465.
- *v. Village of Douglas*. Reported as *Weismer v. Village of Douglas*.
- *v. Watson*, 1 *Cal.* 24; s. c., 2 *N. Y. Com. L. Law. ed.* 48, with brief note on evidence to cause new trial.
- Halstead v. Cockroft**, 49 *How. Pr.* 342. Rev'd in 40 *Super. Ct. (J. & S.)* 519. See other cases collected (Applications to intervene) in 6 *Abb. N. C.* 305, n.
- *Keyes*, 92; s. c., 2 *Abb. Ct. App. Dec.* 316.
- *v. Mayor, &c. of N. Y.*, 5 *Barb.* 218. Aff'd in 3 *N. Y.* 430. Decision in *Id.* discussed (Municipal powers) in *Cooley on Const. Limit.* 5 ed. 262.
- *v. Seaman*, 52 *How. Pr.* 415. Rev'd in effect in 82 *N. Y.* 27; s. c., 37 *Am. R.* 536.
- *v. Swartz*, 46 *How. Pr.* 289; s. c., with points of counsel, 1 *Sup'm. Ct. (T. & C.)* 559.
- Halsted v. Halsted**, 55 *N. Y.* 442. Followed (Attacking fraudulent conveyance on reference as to title) in *Bergen v. Snedeker*, 8 *Abb. N. C.* 50, 56. See (Powers and duties of referee in partition) *Code Civ. Pro.* 1881, § 1562, n.
- *v. Schmelzel*. See *Casey v. Brush*.
- *v. Spencer*. See *Spencer v. Halstead*.
- Halterline v. Rice**, 62 *Barb.* 593. Explained (Sales of specific chattels conditionally) in 1 *Benj. on Sales*, § 408 (Corbin's 4 *Am. ed.*). Quoted in *Id.* § 334, n. t (Bennett's 4 *Am. ed.*).
- Ham v. Mayor, &c. of N. Y.**, 37 *Super. Ct. (J. & S.)* 458. Aff'd in 70 *N. Y.* 459. See *McKay v. City of Buffalo*; *Weet v. Trustees of Brockport*. Disting'd (Liability of city of N. Y. for contracts of department) in *Schreyer v. Mayor, &c. of N. Y.*, 39 *Super. Ct. (J. & S.)* 1; *Swift v. Mayor, &c. of N. Y.*, 83 *N. Y.* 528, 534.
- *v. Van Orden*, 4 *Hun.* 709. Re-aff'd on rehearing in 5 *Id.* 654, but without further opinion.
- Hamblin v. Dinneford**, 2 *Edw.* 529. Disting'd (Remedy in equity to compel performance of services) in *Daly v. Smith*, 38 *Super. Ct. (J. & S.)* 158, 167. Applied with *De Revafinoli v. Corsetti*, 4 *Paige*, 264; *Sanquirio v. Benedetti*, 1 *Barb.* 315, in *Blanchard v. Detroit, Lansing, &c. R. R. Co.*, 31 *Mich.* 43; s. c., 18 *Am. R.* 142, 153.
- Hamersley v. Lambert**, 2 *Johns. Ch.* 509. Disting'd (Remedy against estate of deceased joint debtor) in *Stahl v. Stahl*, 2 *Lans.* 60. Denied in *Executors of Fisher v. Executors of Tucker*, 1 *McCord Ch. (So. Car.)* 173. Followed (In equity partnership debt is several as well as joint) in *Camp v. Grant*, 21 *Conn.* 41; s. c., 54 *Am. Dec.* 321, 326, with note.
- *v. Mayor, &c. of N. Y.*, 67 *Barb.* 35. Aff'd in 56 *N. Y.* 533.
- Hamill v. Gillespie**, 48 *N. Y.* 556. Collated with *Calvo v. Davies*, 8 *Hun.* 222; 73 *N. Y.* 215; *Lawrence v. Fox*, 20 *Id.* 268; *King v. Whitely*, 10 *Paige*, 465; *Trotter v. Hughes*, 12 *N. Y.* 74; *Burr v. Beers*, 24 *Id.* 178; *Ætna Nat. B'k v. Fourth Nat. B'k*, 46 *Id.* 82; *Garnsey v. Rogers*, 47 *Id.* 233; *Thorp v. Keokuk Coal Co.*, 48 *Id.* 253; *Campbell v. Smith*, 71 *Id.* 26; *Vrooman v. Turner*, 69 *Id.* 280; *Comstock v. Drohan*, 71 *Id.* 9 (Liabilities created on conveyance subject to mortgage) in 26 *Am. R.* 660, n.
- Hamilton v. Accessory Transit Co.**, 26 *Barb.* 46. Decision on motion for receiver in 13 *How. Pr.* 108; s. c., more fully, 3 *Abb. Pr.* 255. Decision in 26 *Barb.* explained (Dissolution and revival of corporation) in *Ang. & A. on Corp.* 779 a, 11 ed.
- *v. Butler*, 4 *Robt.* 654; s. c., 19 *Abb. Pr.* 446; 30 *How. Pr.* 36. See (Costs of proceedings for new trial) *Code Civ. Pro.* 1881, § 3251, n.
- *v. Cummings*, 1 *Johns. Ch.* 517. Followed (Jurisdiction of equity to order cancellation of obligations) in *McHenry v. Hazard*, 45 *N. Y.* 580. Dicta disapproved in *Hotchkiss v. Elting*, 36 *Barb.* 38, 47. Followed in *Jones v. Perry*, 10 *Yerg. (Tenn.)* 59; s. c., 30 *Am. Dec.* 430, 444, with note. Applied in *Conn. Mut. Life Ins. Co. v. Home Ins. Co.*, 17 *Blatchf. C. Ct.* 142, 145. Followed with *Pettit v. Shepherd*, 5 *Paige*, 501; *Downing v. Wherrin*, 19 *N. H.* 9; s. c., 49 *Am. Dec.* 139, 146. Criticised as going beyond the length of the more modern cases,—in *Coulson v. Portland, Deady*, 481, 491. See cases collected in 13 *Am. L. Reg. N. S.* 39.
- *v. Douglas*, 46 *N. Y.* 218. See *Zimmerman v. Erhard*. Applied (Right of married woman to become member of partnership) in *Zimmerman v. Erhard*, 8 *Daly*, 311, 313.
- *v. Eno*, 16 *Hun.* 599. Aff'd in 81 *N. Y.* 116.
- *v. Ganyard*, 34 *Barb.* 204. Aff'd in 3 *Keyes*, 45; s. c., 2 *Abb. Ct. App. Dec.* 314.
- *v. Gridley*, 54 *Barb.* 542. See mem. of decision in *Ct. of App.*, 2 *Alb. L. J.* 458.
- *v. Lomax*, 26 *Barb.* 615. Followed (Promise of marriage by infant not binding) in *Leichtweiss v. Treskow*, 21 *Hun.* 487.
- *v. McPherson*, 28 *N. Y.* 72. See *Costigan v. Mohawk & Hudson R. R. Co.* Applied (Duty of injured party to alleviate damages) in *Gillis v. Space*, 63 *Barb.* 181; *Bixby v. Bennett*, 3 *Daly*, 232; *Polk v. Daly*, 4 *Id.* 415; *Milton v. Hudson River Steamboat Co.*, 37 *N. Y.* 215; *Leonard v. N. Y., &c. Tel. Co.*, 41 *Id.* 580; *Northrop v. Hill*, 57 *Id.* 356. Compared with other cases in *City of Brooklyn v. Brooklyn City R. R. Co.*, 47 *Id.* 484. Relied on with *Milton v. Hudson River Steamboat Co.*, 37 *Id.* 210; *Baldwin v. U. S. Tel. Co.*, 45 *Id.* 744, 753, in *Grindle v. Eastern Ex-*

- press Co., 67 *Me.* 317; s. c., 24 *Am. R.* 31, 38. Approved with *Milton v. Hudson River Steamboat Co.*; *Draper v. Sweet*, 66 *Barb.* 145, in *Jones v. George*, 61 *Tex.* 345; s. c., 48 *Am. R.* 280, 294. See also cases in the several States collected in 23 *Moak Eng.* 100. Included in *Sedgw. Cas. on Dam.* 165. Quoted and explained in 2 *Benj. on Sales*, § 1327, n. 7 (Corbin's 4 *Am. ed.*).
- *v. N. Y. Central R. R. Co.*, 51 *N. Y.* 100. See *Hamilton v. Third Ave. R. R. Co.*; *Luby v. Hudson River R. R. Co.* Overruled in effect (Instructing jury to disregard incompetent evidence) in *Ganson v. Tift*, 71 *N. Y.* 56. Qualified with conflicting cases, in *Abb. Tr. Brief.* xvii., 15. Cited as authority with *Beebe v. Ayres*, 28 *Barb.* 275 (Railroad ticket does not entitle holder to stop over without consent) in *Stone v. C. & N. W. R. Co.*, 47 *Iowa*, 82; s. c., 29 *Am. R.* 458.
- *v. N. Y. & Harlem R. R. Co.*, 9 *Paige*, 171. Explained (Right of abutting property holders to compensation for railway) in 1 *Am. L. Reg. N. S.* 198.
- *v. Third Ave. R. R. Co.*, 35 *Super. Ct. (J. & S.)* 118; s. c., 13 *Abb. Pr. N. S.* 318; 44 *How. Pr.* 294. Rev'd in 53 *N. Y.* 25. Further decisions in 48 *How. Pr.* 50; 40 *Super. Ct. (J. & S.)* 376; 41 *Id.* 588. Decision in 53 *N. Y.* explained (Ejection of passenger for nonpayment of fare) in *Townsend v. N. Y. Central, & C. R. R. Co.*, 56 *Id.* 295, 299. Disting'd, and *Hamilton v. N. Y. Central R. R. Co.*, 51 *Id.* 100; *Townsend v. N. Y. Central, & C. R. Co.*, 56 *Id.* 295, relied on in *Jerome v. Smith*, 48 *Vt.* 230; s. c., 21 *Am. R.* 125. Followed, and *Townsend v. N. Y. Central, & C. R. R. Co.*, 56 *N. Y.* 295, disting'd in *Lake Erie & Western R'y Co. v. Fix*, 88 *Ind.* 381; s. c., 45 *Am. R.* 464. See to the contrary (Damages for mental suffering) *Covington St. R'y Co. v. Packer*, 9 *Bush (Ky.)* 455; s. c., 15 *Am. R.* 725. See also *Abb. Tr. Ev.* 599. Distinguished (Liability for acts of conductor) in *Parker v. Erie R'y Co.*, 5 *Hun.* 59.
- *v. Van Rensselaer*, 43 *Barb.* 117; s. c., 28 *How. Pr.* 192. Aff'd, in part, and rev'd, in part, in 43 *N. Y.* 244. Decision in *Id.* disting'd (Interest when included in guaranty of payment) in *Ilurd v. Callahan*, 5 *Redf.* 393. Disting'd (Interest accruing after maturity) in *Melick v. Knox*, 44 *N. Y.* 676. Cited in *O'Brien v. Young*, 95 *Id.* 428; s. c., 47 *Am. R.* 64, with note, where the doctrine is discussed.
- *v. White*, 4 *Barb.* 60. Aff'd in 5 *N. Y.* 9. Decision in *Id.* quoted (Easement of way, how abandoned) in 2 *Washb. on Real Prop.* 4 ed. 341, n.
- *v. Wilson*, 4 *Johns.* 72; s. c., 4 *Am. Dec.* 253. See *Greenby v. Wilcocks*. Followed (Covenants of seisin do not run with the land) in *Moore v. Merrill*, 17 *N. H.* 75; s. c., 43 *Am. Dec.* 593, 595, with note.
- *v. Wright*, 37 *N. Y.* 502. See additional opinion by CLERKE, J., in 5 *Transc.* App. 1. Discussed (Authority of attorney in ejectment) in *Sedgw. & W. on Tr. of Tit. to Land*, § 421. See (Ejectment for land held adversely) *Code Civ. Pro.* 1881, § 1501, n.
- Hamilton & Deansville Plank-road Co. v. Rice**, 7 *Barb.* 157. See *Mills v. Stewart*. Applied (Subscription to stock as condition precedent to corporate existence—Liability on subscription) in *Schenectady & Saratoga Plank-road Co. v. Thatcher*, 11 *N. Y.* 102. Disting'd (Liability on subscription) in *Bray v. Farwell*, 81 *Id.* 600, 614.
- Hamilton College v. Stewart**. See Trustees of Hamilton College v. Stewart.
- Hamlin v. Dingman**, 41 *How. Pr.* 142. Rev'd in 5 *Lans.* 61. Decision in *Id.* collated with *Wilcox v. Smith*, 5 *Wend.* 231; *Nelson v. People*, 23 *N. Y.* 293; *People v. Cook*, 8 *Id.* 67; *Woolsey v. Village of Rondout*, 4 *Abb. Ct. App. Dec.* 639, and cases from other jurisdictions (Proof of official character in 29 *Abb. L. J.* 86. See to the contrary *Cummings v. Clark*, 15 *Vt.* 653. But see *Abb. Tr. Ev.* 198.
- Hammersley v. Barker**, 2 *Paige*, 373. Approved and followed (Costs on dismissal of complaint) under the Code, in *Pennell v. Wilson*, 2 *Abb. Pr. N. S.* 466, 477.
- Hammett v. Barnard**, 1 *Hun.* 198. Aff'd, it seems, in 62 *N. Y.* 615, but without opinion.
- *v. Linneman*, 48 *N. Y.* 399. See *Kein v. Tupper*. Applied (Effect of sale for cash on delivery) in *O'Brien v. Jones*, 47 *Super. Ct. (J. & S.)* 67, 72. Explained in *Benj. on Sales*, § 358 (Corbin's 4 *Am. ed.*).
- Hammon v. Huntley**, 4 *Cow.* 493. See *Johnson v. Beardslee*. Criticised as *obiter* (Effect of admission by one executor to take case out of statute of limitations) in *Cayuga Co. B'k v. Bennett*, 5 *Hill*, 236.
- Hammond v. Baker**, 3 *Sandf.* 704. Applied (Staying proceedings in another court) in *Liftchild v. Smith*, 7 *Robt.* 306.
- *v. Dean*, 4 *Hun.* 181; s. c. reported in 6 *Sup'm. Ct. (T. & C.)* 337.
- *v. Earle*, 5 *Abb. N. C.* 105. Further proceeding in 58 *How. Pr.* 426.
- *v. Hazard*, 1 *E. D. Smith*, 314. Aff'g 10 *N. Y. Leg. Obs.* 56.
- *v. Hudson River Iron & Machine Co.*, 11 *How. Pr.* 29. Decision on demurrer reported in 20 *Barb.* 378.
- *v. Pennock*, 5 *Lans.* 358. Aff'd in 61 *N. Y.* 145.
- *v. Terry*, 3 *Lans.* 186. Cited as authority (Waiver of objection to counterclaim) in *Walker v. Johnson*, 28 *Minn.* 149.
- *v. Tillotson*, 18 *Barb.* 332. See *Crane v. Sawyer*. Dictum disapproved (Proceedings to determine claims to real property) in *Burnham v. Onderdonk*, 41 *N. Y.* 425.
- *v. Varian*, 54 *N. Y.* 398. Cited (Recognition of agent's unauthorized signature) in 1 *Whart. Com. on Ev.* § 705. See *Weed v. Carpenter*, 4 *Wend.* 219; *Morris v. Bethel*,

- L. R. 5 C. P. 47; 4 Id. 765. See also Abb. Tr. Ev. 392.*
- *v. Zehner*, 23 *Barb.* 473. *Aff'd in 21 N. Y. 118.*
- Hance v. Cayuga & Susquehanna R. R. Co.**, 26 *N. Y.* 428. Collated with other cases (Liability for injury to cattle, injured while straying on railroad track) in 1 *Thomps. on Negl.* 530.
- Hancock v. Bliss**, 7 *Wend.* 267. Quoted (New promises and acknowledgments) in *Ang. on Limit.* § 214, 6 ed.
- *v. Gomez*, 58 *Barb.* 490. *Aff'd in 50 N. Y. 668.*
- *v. Hancock*. See *Lynes v. Townsend*.
- *v. Rand*, 17 *Hun.* 279. *Aff'd in 94 N. Y. 1.* Decision in 17 *Hun* commented on (Who are guests at hotels, &c.) in 14 *Am. Dec.* 258, n. See criticism in 20 *Alb. L. J.* 64. See other cases cited in 21 *Moak Eng.* 565.
- Hand v. Ballou**, 12 *N. Y.* 541. See (Power of legislature to establish rules of evidence) *Wynehamer v. People*, 13 *N. Y.* 378. Followed in *Howard v. Moot*, 2 *Hun.* 475, 478. Disting'd, and *Wynehamer v. People*, 3 *N. Y.* 444, followed in *People v. Lyon*, 27 *Hun.* 180. Cited as authority with *Howard v. Moot*, 64 *N. Y.* 262, 268, in *Holmes v. Hunt*, 22 *Mass.* 505; s. c., 23 *Am. R.* 381, 388. Disting'd in *Francis v. Baker*, 11 *R. I.* 103; s. c., 23 *Am. R.* 424.
- *v. Kennedy*, 45 *Super. Ct. (J. & S.)* 385. *Aff'd in 83 N. Y. 149.*
- *v. Williamsburgh-City Ins. Co.*, 57 *N. Y.* 41. Collated with *Bigler v. N. Y. Central Ins. Co.*, 22 *Id.* 402; *Vose v. Hamilton Mut. Ins. Co.*, 39 *Barb.* 302; *Ogden v. East River Ins. Co.*, 50 *N. Y.* 388, and other cases (Subsequent insurance that voids prior policy) collated in 20 *Am. R.* 319, n.
- Handy v. Dobbin**, 12 *Johns.* 220. See *Williams v. Rogers*. Followed (Levying on money) in *Spencer v. Blaisdell*, 4 *N. H.* 198; s. c., 17 *Am. Dec.* 412. Included, with notes, in 2 *Ames Cas. on B. & N.* 704.
- Hanford v. Artcher**, 1 *Hill.* 347. *Rev'd in 4 Id.* 271; s. c., 6 *Am. Dec.* 288, n. See *Smith v. Acker*. Decision in 4 *Hill* cited as authority (Effect of leaving vendor or mortgagor of chattels in possession) in *Stewart v. Slater*, 6 *Duer.* 96. Explained in *Randall v. Parker*, 3 *Sandf.* 69. Applied in *Mead v. Phillips*, 1 *Sandf. Ch.* 89; *Hollacher v. O'Brien*, 5 *Hun.* 279; *Thompson v. Blanchard*, 4 *N. Y.* 306; *Mitchell v. West*, 55 *Id.* 107. Explained in 1 *Benj. on Sales*, § 738, n. 58 (Corbin's 4 *Am. ed.*). Cited as authority (Conclusiveness of findings as to fraudulent intent) in *Ruhl v. Phillips*, 2 *Daly*, 46. Explained (Rights of subsequent purchaser, &c. on account of existing debt) in *Tiffany v. Warren*, 37 *Barb.* 475. Examined with other cases in dissenting opinion of *HOFFMAN, J.*, in *Thompson v. Van Vechten*, 6 *Bow.* 373, 416. Disting'd (Question of fraudulent intent, when one of fact) in *Judson v. Gardner*, 4 *N. Y. Leg. Obs.* 427.
- Commented upon in 1 *Story on Contr.* 5 ed., § 666, n. 1. Explained (Transfer to pay honest debt, whether fraudulent) in *Auburn Exchange B'k v. Fitch*, 48 *Barb.* 353. Criticised (Sale of interest of mortgagor of chattels on execution) in *Dane v. Mallory*, 16 *Barb.* 49. Examined with other cases in *Hall v. Samson*, 19 *How. Pr.* 484. Opinion of lieutenant-governor corrected and explained in *Vance v. Phillips*, 6 *Hill.* 433. Both decisions referred to as overruled by *Seymour v. Wilson*, 14 *N. Y.* 567 (Evidence as to fraudulent intent of witness) in *Pope v. Hart*, 35 *Barb.* 635.
- *v. Hanford*. See *Johnson v. Johnson*.
- *v. McNair*, 2 *Wend.* 286. Approved (Inadmissibility of affidavits in opposition to affidavit of merits) in *Lathrop v. Hicks*, 2 *Doug. (Mich.)* 227, distinguishing *Quin v. Riley*, 3 *Johns.* 249. Cited as still law, in *Security B'k v. B'k of Commonwealth*, 2 *Hun.* 287, 291.
- *v.* —, 9 *Wend.* 54. See *Blood v. Goodrich*; *Ex parte Kerwin*. Explained (Ratification of execution of sealed instrument) in *Blood v. Goodrich*, 12 *Wend.* 524. Criticised at length with *Blood v. Goodrich*, 9 *Wend.* 68; 12 *Id.* 525, in *Paine v. Tucker*, 21 *Me.* 138; s. c., 38 *Am. Dec.* 255, with note, *Blood v. Goodrich*, though disapproved in the prevailing opinion, being approved in the opinion of *SHEPLEY, J.*
- Hankins v. Baker**, 46 *N. Y.* 666. Approved but disting'd with *Moss v. Rossie Lead Co.*, 5 *Hill.* 137 (Ratification as relating back) in *Shuenfeldt v. Junkerman*, *U. S. Cir. Ct., N. D., Iowa*, 20 *Fed. Rep.* 357, 359.
- Hanks v. Drake**, 49 *Barb.* 186. See *Cairnes v. Bleeker*. Overruled with *Sterling v. Jaudon*, 48 *Id.* 459 (Right of broker to sell stocks held on margin, without notice to principal) in *Markham v. Jaudon*, 41 *N. Y.* 235.
- *v. Hanks*, 3 *Edw.* 469. Quoted (Evidence to justify divorce from bonds of matrimony) in 2 *Bish. on Mar. & Div.* § 90, n. 1, 6 ed.
- Hankinson v. Giles**, 29 *How. Pr.* 478; s. c., more fully, 17 *Abb. Pr.* 25.
- Hanlon v. Supervisors of Westchester**, 57 *Barb.* 383. Questioned (Municipal assessments) in *Matter of Ford*, 6 *Lans.* 92.
- Hammer v. Wilsey**, 17 *Wend.* 91. See *Retan v. Drew*. Applied (Right of one illegally taking property to show subsequent application of it) in *Wehle v. Butler*, 12 *Abb. Pr. N. S.* 146; *Wehle v. Haviland*, 42 *How. Pr.* 406; *Price v. Keyes*, 1 *Hun.* 190; *Tiffany v. Lord*, 65 *N. Y.* 313; *Otis v. Jones*, 21 *Wend.* 394, 397; *Green v. Burke*, 23 *Id.* 495. Approved with *Otis v. Jones*, 21 *Wend.* 394, in *Cotton v. Reed*, 2 *Wisc.* 484, comparing *Higgins v. Whitney*, 22 *Wend.* 379; *Sherry v. Schuyler*, 2 *Hill.* 204. Disting'd in *Ball v. Liney*, 44 *Barb.* 516, which was *rev'd in 48 N. Y. 14*, which see. Explained in 2 *Greenl. on Ev.* 14 ed., § 635, a, n. 3. Cited as authority (Mere tender will

- not bar action for tort) in *McCormick v. Penn. Cent. R. R. Co.*, 49 *N. Y.* 303, 314. Approved and explained in *Savage v. Perkins*, 11 *How. Pr.* 19. Explained (Commencement of suit) in *Johnson v. Comstock*, 6 *Hill*, 11. So referred to in *Defendorf v. Elwood*, 3 *How. Pr.* 285. Disting'd (Necessity of including costs in tender) in *Hull v. Peters*, 7 *Barb.* 332.
- Hann v. Van Voorhis**, 15 *Abb. Pr. N. S.* 79. Subsequent decision in 5 *Hun*, 425. Decision in *Id.* disting'd (Right of creditor to reach surplus income of trust) in *Miller v. Miller*, 1 *Abb. N. C.* 30, 37. Decision in 15 *Abb. Pr. N. S.* overruled in *Williams v. Thorn*, 70 *N. Y.* 270, 278.
- Hanna v. Mills**, 21 *Wend.* 90; s. c., 34 *Am. Dec.* 216. Relied on (Failure to execute note, when ground of action) in *O'Connor v. Dargley*, 26 *Cal.* 22, as well as in *N. Y.* See also *Gibson v. Stevens*, 3 *McLean*, 554.
- Hannah v. McKellip**, 49 *Barb.* 342. Followed (Impeachment of witness) in *Berner v. Mettnacht*, 2 *Sweeny*, 582; *Burpee v. People*, 1 *Sup'm. Ct. (T. & C.)* 289.
- Hannahs v. Hannahs**, 5 *Hun*, 644. Further decision in 68 *N. Y.* 610. See (Additional allowance by surrogate) *Code Civ. Pro.* 1881, § 2562, n.
- Hanover Company v. Sheldon**, 9 *Abb. Pr.* 240. Criticised (Arrest of copartner in action against firm for fraud of another partner) in *Sherman v. Smith*, 42 *How. Pr.* 198, as shaken by fact that same judge had previously delivered contrary opinion in anonymous case, in 6 *Abb. Pr.* 319, n.
- Hanover Fire Ins. Co. v. Tomlinson**, 2 *Sup'm. Ct. (T. & C.)* 657. Rev'd in 58 *N. Y.* 215. Further decision in 3 *Hun*, 630; s. c., 6 *Sup'm. Ct. (T. & C.)* 127. See *Bache v. Doscher*.
- *v.* —, 37 *Super. Ct. (J. & S.)* 221. Appeal dismissed, it seems, in 58 *N. Y.* 651, but without opinion.
- Hanse v. Cowing**, 1 *Lans.* 288. See *Mayor, &c. of Albany v. Cunliff*. Disting'd (Liability of one who has parted with possession of or property in land for nuisance thereon) in *Helwig v. Jordan*, 53 *Ind.* 21; s. c., 21 *Am. R.* 189, 191.
- Hanvey v. City of Rochester**, 35 *Barb.* 177. Quoted and collated with other cases (Municipal liability for torts committed *ultra vires*) in *Field on Ultra Vires*, 538.
- Happy v. Mosher**, 47 *Barb.* 501. Rev'd in 48 *N. Y.* 313. Decision in *Id.* applied (Lien upon vessel, when not affected) in *King v. Greenway*, 71 *Id.* 413, 416. Explained (What is maritime contract) in *Wilson v. Lawrence*, 82 *Id.* 409. Shown (Constitutionality of statute providing for enforcement of liens on vessels) in 48 *Am. Dec.* 275, n., to be contrary to *Parsons v. Russell*, 11 *Mich.* 113.
- Harbeck v. Sylvester**, 13 *Wend.* 608. Compare (Action by grantee on guaranty for payment of rent) in *Allen v. Culver*, 3 *Den.* 284.
- *v. Vanderbilt*, 20 *N. Y.* 395. Applied (Effect of payment of obligation, to extinguish it) in *Kellogg v. Ames*, 41 *Barb.* 223; *Booth v. Farmers' & Mech. Nat. B'k*, 74 *N. Y.* 232, which aff'd 11 *Hun*, 264, which see. Disting'd in *Champney v. Coope*, 32 *N. Y.* 550, which rev'd 34 *Barb.* 544, which see; *Hubbell v. Blakeslee*, 71 *N. Y.* 63, 71; *Townsend v. Whitney*, 75 *Id.* 429. Disting'd and criticised in *Marsh v. Benedict*, 14 *Hun*, 319.
- Hard v. Nearing**, 44 *Barb.* 472. Rev'd as *Rockwell v. Nearing*, 35 *N. Y.* 302.
- *v. Seeley*. See *Van Marter v. Babcock*.
- *v. Shipman*, 6 *Barb.* 621. See *Ferguson v. Crawford*. Followed (Effect of want of jurisdiction) in *Bolton v. Jacks*, 6 *Robt.* 166.
- Harden v. Corbett**, 6 *Hun*, 522. Disting'd (Action founded in tort, not referable) in *Wood v. Hope*, 2 *Abb. N. C.* 186, 189.
- Hardenbergh v. Van Keuren**, 4 *Abb. N. C.* 43. Rev'd in 16 *Hun*, 17.
- Harder v. Harder**, 2 *Sandf. Ch.* 17. Followed (Agreement to leave lands by will as affected by statute of frauds) in *Gould v. Mansfield*, 103 *Mass.* 408; s. c., 4 *Am. R.* 573.
- Hardmann v. Bowen**, 39 *N. Y.* 196. Disting'd (Validity of acts of officer, &c., who has not complied with requirements of authorizing statute) in *Board of Education v. Fonda*, 77 *Id.* 350, 357. Explained and disting'd (Acknowledgment of assignment for creditors) in *Lowenstein v. Flauraud*, 82 *Id.* 494, 496. Applied in *Rennie v. Bean*, 24 *Hun*, 124. Explained (Effect of subsequent illegal acts to invalidate assignment) in *Shultz v. Hoagland*, 85 *N. Y.* 464, 468. Quoted in *Burrill on Assign.* § 351, n. 2, 4 ed.
- Hardt v. Schulting**, 21 *Hun*, 618; s. c., fully reported, 59 *How. Pr.* 353. Previous proceeding in 13 *Hun*, 537. Subsequent decision in 24 *Id.* 345, which was aff'd in 85 *N. Y.* 624; s. c., more fully, 12 *Weekly Dig.* 514.
- Hardy v. Jandon**, 1 *Robt.* 261. Said in 41 *N. Y.* 619 to have been rev'd on condition in *Ct. of App.*, Sept., 1869.
- Hare v. Van Deusen**, 32 *Barb.* 92. Disting'd (Waiver of vendor's lien) in *Mills v. Bliss*, 55 *N. Y.* 139, 145.
- Harger v. Edmonds**, 4 *Barb.* 256. Criticised as weakened by qualifications at close of opinion (Opinions of witness as evidence) in *Clark v. Baird*, 9 *N. Y.* 183.
- *v. McCullough*, 2 *Den.* 119. See *Corning v. McCullough*. Reviewed with *Bird v. Hayden*, 1 *Robt.* 383; *Woodruff & Beach Iron Works v. Chittenden*, 4 *Bosw.* 417; *Eaton v. Aspinwall*, 19 *N. Y.* 119; *Weeks v. Love*, 50 *Id.* 568; *Merchant's B'k v. Bliss*, 1 *Robt.* 391; *Corning v. McCullough*, 1 *N. Y.* 47; *Jones v. Barlow*, 62 *Id.* 202; *Ex parte Van Riper*, 20 *Wend.* 614, and other cases (Nature of personal liability of stockholder or trustee of corporation) in



- Flash v. Conn.*, 16 *Fla.* 428; s. c., 26 *Am. R.* 721, 723-726, 729.
- *v. Wilson*, 63 *Barb.* 237. Applied (Evidence as to *bona fide* character of holder of note) in *Bailey v. Griswold*, 36 *Super. Ct. (J. & S.)* 68, 74.
- Hargous v. Ablon**, 5 *Hill*, 472. Aff'd in 3 *Den.* 406. Decision in 5 *Hill* quoted and explained (Proximate damages) in 3 *Pars. on Contr.* 180, n. v.
- *v. Stone*, 5 *N. Y.* 73. See *Dike v. Reitlinger*. Said with *Reed v. Randall*, 29 *Id.* 358; *Dutchess Co. v. Harding*, 49 *Id.* 321, to be modified by later cases (Remedies for failure of quality in sales of personality), —in *Bagley v. Cleveland Rolling Mill Co.*, *U. S. Cir. Ct. N. D. N. Y.*, 21 *Fed. Rep.* 159, where *Gaylord Manuf. Co. v. Allen*, 53 *N. Y.* 519; *Gurney v. Atlantic & G. W. R. Co.*, 58 *Id.* 358; *Day v. Pool*, 52 *Id.* 416; *Park v. Morris Axe & Tool Co.*, 54 *Id.* 587, were also cited and commented on. Explained in 1 *Pars. on Contr.* 585, n. t. Quoted in 2 *Benj. on Sales*, § 970, n. f (Corbin's 4 *Am. ed.*); *Id.* § 977, n. 29.
- Harker v. Anderson**, 21 *Wend.* 372. Followed (Necessity of presentment of check for payment) in *Judd v. Smith*, 5 *Sup'm. Ct. (T. & C.)* 255. Discussed and questioned in 3 *Kent Com.* 104, n., a.
- Harman v. Brotherson**, 1 *Den.* 537. Applied (Affidavit of information and belief) in *Miller v. Adams*, 52 *N. Y.* 409, 415.
- Harmou v. N. Y. & Erie R. Co.**, 28 *Barb.* 323. Explained (Parol evidence as to goods covered by general terms in bill of lading) in *Ang. on Carr.* § 229, n. a, 5 ed.
- Harlem Gas Light Co. v. Mayor, &c. of N. Y.**, 3 *Robt.* 100. Aff'd in 33 *N. Y.* 309.
- Harley v. Eleventh Ward Bank**, 7 *Daly*, 476. Aff'd in 76 *N. Y.* 618.
- *v. Ritter*, 18 *How. Pr.* 147; s. c., more fully, 9 *Abb. Pr.* 400.
- Harmony v. Bingham**, 1 *Duer*, 209. Aff'd in 12 *N. Y.* 99. Decision in *Id.* disting'd (Effect of unconditional agreement to perform) in *Bonsteel v. Vanderbilt*, 21 *Barb.* 32; *Hyland v. Paul*, 33 *Id.* 245; *Worth v. Edmonds*, 52 *Id.* 44. Applied in *Niblo v. Binsse*, 44 *Id.* 62; in dissenting opinion of *CLERKE, J.*, in *Dexter v. Norton*, 55 *Id.* 287; *Kein v. Tupper*, 42 *How. Pr.* 451; *Wheeler v. Conn. Mut. Life Ins. Co.*, 16 *Hun.* 321; *Tompkins v. Dudley*, 25 *N. Y.* 275; *Price v. Hartshorn*, 44 *Id.* 102. Cited as settled law with *Beebe v. Johnson*, 19 *Wend.* 500; *People v. Bartlett*, 3 *Hill*, 571, in *Cobb v. Harmon*, 23 *N. Y.* 148, 150, 154. Examined with other cases in *Baldwin v. N. Y. Life Ins. & Trust Co.*, 3 *Bosw.* 545; *Jenkins v. Wheeler*, 37 *How. Pr.* 470. Quoted in *Benj. on Sales*, § 570, n. a (Bennett's 4 *Am. ed.*). Quoted and explained in 2 *Id.* § 864, n. 14 (Corbin's 4 *Am. ed.*). Quoted in 2 *Chitty on Contr.* 1078, n. k, 11 *Am. ed.* Applied (Duress) in *Commercial B'k of Rochester v. City of Rochester*, 41 *Barb.* 341; *Stenton v. Jerome*, 54 *N. Y.* 485; *Scholey v. Mumford*, 60 *Id.* 501; *Peyser v. Mayor, &c. of N. Y.*, 70 *Id.* 501; *McPherson v. Cox*, 86 *Id.* 472, 479; *Gould v. Farmers' Loan & Trust Co.*, 23 *Hun.* 325. Approved in dissenting opinion of *E. D. SMITH, J.*, in *Commercial B'k of Rochester v. City of Rochester*, 42 *Barb.* 504. Recognized and illustrated with *Scholey v. Mumford*, 60 *N. Y.* 498, in *Hackley v. Headley*, 45 *Mich.* 569, 575. Applied in *Carew v. Rutherford*, 106 *Mass.* 1; s. c., 8 *Am. R.* 287, 293. Quoted in *Wait on Fraud. Conv.* § 479. Collated with *Wolfe v. Howes*, 20 *N. Y.* 197; *Dexter v. Norton*, 47 *Id.* 62; *Jones v. Judd*, 4 *Id.* 411; *Lantry v. Parks*, 8 *Cow.* 63, and other cases (Recovery for services rendered, on *quantum meruit*) in 31 *Am. R.* 100, n.
- Harmony Ins. Co., Matter of**, 9 *Abb. Pr. N. S.* 347. Aff'd in 45 *N. Y.* 310. Decision in *Id.* explained (Power of court to extend time) in *People ex rel. Att. Gen'l v. Security Life Ins., &c. Co.*, 79 *Id.* 272. Decision in 9 *Abb. Pr. N. S.* followed (Proof of claim against insolvent corporation) in *Smith v. Manhattan Ins. Co.*, 4 *Hun.* 127.
- Harp v. Osgood**, 2 *Hill*, 216. See *Hatch v. Mann*. Quoted (Contracts with agent) in 1 *Chitty on Contr.* 11 *Am. ed.* 316, n. o.
- Harpending v. Shoemaker**, 37 *Barb.* 270. Followed (Amendment at trial) in *Knapp v. Roche*, 37 *Super. Ct. (J. & S.)* 395, 407.
- Harper's Case**. See *Hayward v. Liverpool, &c. Ins. Co.*
- Harper v. Albany Mut. Ins. Co.**, 17 *N. Y.* 194. Disting'd with *Bryant v. Poughkeepsie Mut. Ins. Co.*, *Id.* 200 (Construction of insurance policy) in *Hayward v. Liverpool & London Ins. Co.*, 3 *Keyes*, 456. Followed in *Harper v. N. Y. City Ins. Co.*, 22 *N. Y.* 441, 442, 445. Cited as authority in *Franklin Fire Ins. Co. v. Chicago Ice Co.*, 36 *Id.* 102; s. c., 11 *Am. R.* 469, 478. Applied with *Bryant v. Poughkeepsie Mut. Ins. Co.*, 17 *N. Y.* 200; *Williams v. Firemen's Fund Ins. Co.*, 54 *Id.* 569, in *Carlin v. Western Assurance Co. of Toronto*, 57 *Id.* 515; s. c., 40 *Am. R.* 440. Collated with *Bryant v. Poughkeepsie Ins. Co.*; *Harper v. N. Y. City Ins. Co.*, 22 *N. Y.* 441; *Hall v. Ins. Co. of N. A.*, 58 *Id.* 292; *Steinbach v. La Fayette Fire Ins. Co.*, 54 *Id.* 90; *Langdon v. Equitable Ins. Co.*, 1 *Hall*, 225; 6 *Wend.* 623; *Williams v. Firemen's Fund Ins. Co.*, 54 *N. Y.* 569; *Williams v. People's Fire Ins. Co.*, 57 *Id.* 274; *Westfall v. Hudson River Ins. Co.*, 14 *Id.* 289; *Meads v. Northwestern Ins. Co.*, 7 *Id.* 530; *Wood v. Northwestern Ins. Co.*, 46 *Id.* 421; *Buchanan v. Exchange Fire Ins. Co.*, 61 *Id.* 26; *Watson v. Farm Building Ins. Co.*, 9 *Hun.* 415, and other cases (Use of hazardous materials that will avoid fire policy) in 24 *Am. R.* 150, n.
- *v. Fairley*, 53 *N. Y.* 442. See *Winchell v. Hicks*. Disting'd (Payment that removes bar of statute of limitations) in *Smith v. Ryan*, 39 *Super. Ct. (J. & S.)* 489,

- 499, which was aff'd in 66 *N. Y.* 352, 355, which see. Disting'd in Nat. B'k of Delaware v. Cotton, 53 *Wis.* 31, 35.
- **v. Harper**, 1 *Sup'm. Ct. (T. & C.)* 351.
- See Pollock v. Pollock. See (Duty of proponent of will to give evidence of testator's sanity) 24 *Alb. L. J.* 59.
- **v. Leal**, 10 *How. Pr.* 276. See Kneettle v. Newcomb. Followed with Kneettle v. Newcomb, 31 *Barb.* 169; 22 *N. Y.* 249; Crawford v. Lockwood, 9 *How. Pr.* 54 (Invalidity of agreements to waive benefit of exemption laws) in Moxley v. Ragan, 10 *Bush (Ky.)* 156; s. c., 19 *Am. R.* 61. See *Code Civ. Pro.* 1881, § 1404, n.
- **v. N. Y. City Ins. Co.**, 1 *Bosw.* 520. Aff'd in 23 *N. Y.* 441. See Harper v. Albany Mut. Ins. Co.; St. John v. Am. Mut. Fire & Marine Ins. Co. Decision in 22 *N. Y.* disting'd (Condition in fire policy against use of dangerous article) in United Life, Fire, &c. Ins. Co. v. Foote, 22 *Ohio St.* 340; s. c., 10 *Am. R.* 735. Both decisions included in *Lawson's Lead. Com. L. Cas. Simplified*, 187; *Lawson on Usages and Customs*, 148, with note.
- Harrington v. Dorr**, 3 *Robt.* 275. Explained (Liability on accommodation paper taken after maturity) in First Nat. B'k of Salem v. Grant, 71 *Me.* 374; s. c., 36 *Am. R.* 334.
- **v. Higham**, 13 *Barb.* 660. Further decision in 15 *Id.* 524. Decision in *Id.* followed (Judgment against defendants jointly liable) in Quigley v. Walter, 2 *Sweeny*, 175.
- **v. Mayor, &c. of N. Y.**, 10 *Hun.* 248. Aff'd, it seems, in 70 *N. Y.* 604, but without opinion. Decision in *Id.* followed (Municipal contracts) in Callmeyer v. Mayor, &c. of N. Y., 83 *Id.* 116, 120. Decision in 10 *Hun* collated with other cases in 5 *Abb. N. C.* 46, n.
- **v. People**, 6 *Barb.* 607. See Jackson v. Roberts. Disapproved (Inquiry into jurisdiction) in Reed v. Vaughan, 15 *Mo.* 137; s. c., 55 *Am. Dec.* 133.
- Harriott v. N. J. R. R. Co.**, 8 *Abb. Pr.* 284. See Humiston v. Ballard. General Term decision also reported in 2 *Hilt.* 262. Special Term decision rev'd in 1 *Daly*, 377, and disting'd (Costs on dismissing complaint for want of jurisdiction) in King v. Poole, 36 *Barb.* 248. Decision in 2 *Hilt.* disting'd and criticised with McCormick v. Penn. Cent. R. R. Co., 49 *N. Y.* 308 (Jurisdiction over foreign corporation) in Pease v. Delaware, &c. R. R. Co., 10 *Daly*, 459. Disting'd in McCormick v. Penn. Cent. R. R. Co., 49 *N. Y.* 303, 308. Compare *Code Civ. Pro.* §§ 263, 264, 1780.
- Harris v. American Bible Soc'y**, 46 *Barb.* 470. Rev'd, in part, in 2 *Abb. Ct. App. Dec.* 316; s. c., 4 *Abb. Pr. N. S.* 421. Decision in *Id.* applied (Limitations on bequests, &c. to charitable, &c. corporations) in Curran v. Sears, 2 *Redf.* 526, 540. See also Betts v. Betts, 4 *Abb. N. C.* 317.
- **v. Burdett**, 43 *Super. Ct. (J. & S.)* 57. Aff'd in 76 *N. Y.* 583. Motion to dismiss appeal denied in 73 *Id.* 136. See Wright v. Hunter.
- **v. Clark**, 2 *Barb.* 94. Aff'd in 3 *N. Y.* 93; s. c., 51 *Am. Dec.* 352, with note, collecting citations. See Hutter v. Ellwanger; Winter v. Drury; Wright v. Wright. Decision in 3 *N. Y.* approved and followed with Cowperthwaite v. Sheffield, *Id.* 243 (Operation of check or draft as assignment of fund) in Lunt v. Bank of North America, 49 *Barb.* 221. Disting'd in Munger v. Shannon, 61 *N. Y.* 251, 258. Limited with Attorney-Gen'l v. Continental Life Ins. Co., 71 *Id.* 325, in Coates v. First Nat. Bank of Emporia, 91 *Id.* 20. Approved and followed in preference to Wright v. Wright, 1 *Cov.* 598 (Gifts causa mortis) in Basket v. Hassell, 107 *U. S.* 602, 611. Collated with Martin v. Funk, 75 *N. Y.* 134, and other cases (Assignment or appropriation of fund that constitutes gift) in 26 *Am. R.* 684, n.
- **v. —**, 7 *N. Y.* 242. Explained (Equitable conversion) in Gourley v. Campbell, 6 *Hun.* 218, 222, which was, however, rev'd in 66 *N. Y.* 169.
- **v. Cone**, 10 *How. Pr.* 259. Denied as in conflict with Corwin v. Freeland, 6 *N. Y.* 760 (Right to arrest as affected by allegations in complaint) in Sellar v. Sage, 13 *How. Pr.* 234.
- **v. Eagle Fire Co. of N. Y.**, 5 *Johns.* 368; s. c., 3 *N. Y. Com. L. Law. ed.* 1048, with brief note, on valuation.
- **v. Ely**, 25 *N. Y.* 138. See Tucker v. Tucker. Doubted (Surrogate's jurisdiction to decide validity of release) in Bevan v. Cooper, 72 *N. Y.* 317, 329.
- **v. Equitable Life Assur. Soc'y**, 6 *Sup'm. Ct. (T. & C.)* 108; s. c., more fully, 3 *Hun.* 724. Aff'd in 64 *N. Y.* 196. Decision in 3 *Hun* disting'd (Duty of party seeking relief against contract to restore what he has received) in Anthony v. Day, 52 *How. Pr.* 35. Approved in 3 *Abb. N. C.* 93, n.
- **v. Fly**, 7 *Paige*, 421. See Reynolds v. Reynolds. Approved and followed (Charging legacy on real estate) in Myers v. Eddy, 47 *Barb.* 263, 271. Reviewed with Bevan v. Cooper, 72 *N. Y.* 317, and other cases, in Thayer v. Finnegan, 134 *Mass.* 62; s. c., 45 *Am. R.* 285. Reviewed at length and followed with Towner v. Tooley, 38 *Barb.* 598; Brown v. Knapp, 79 *N. Y.* 136; Dodge v. Manning, 11 *Paige*, 334; 1 *N. Y.* 298; Elwood v. Diefendorf, 5 *Barb.* 398, in Porter v. Jackson, 95 *Ind.* 210; s. c., 48 *Am. R.* 704.
- **v. Frink**, 2 *Lans.* 35. Rev'd in 49 *N. Y.* 24; s. c., 10 *Am. R.* 318. Decision in *Id.* followed (Right to crops) in Reeder v. Sayre, 6 *Hun.* 562, 564. Explained (What are goods, wares, and merchandise) in 1 *Benj. on Sales*, § 120, n. c. (Corbin's 4 *Am. ed.*).
- **v. Harris**, 36 *Barb.* 88, 574. Rev'd in

- 26 *N. Y.* 433. See (Proof of lost will) *Code Civ. Pro.* 1881, § 1865, *n.*
- *v. Hart.* See *Harris v. Pratt.*
- *v. Jex*, 66 *Barb.* 232. Aff'd in 55 *N. Y.* 421; *s. c.*, 14 *Am. R.* 285, with note. Decision in *Id.* compared (Right of party to rely on former decision of court) in *Chenango Bridge Co. v. Paige*, 8 *Hun.* 292, 295. Relied on in *Crain v. McGoon*, 86 *Ill.* 431; *s. c.*, 29 *Am. R.* 37. Cited as authority (Tender, when insufficient to discharge mortgage lien) in *Thomas on Mort.* 120.
- *v. Knickerbacker*, 1 *Paige*, 209. Rev'd in 5 *Wend.* 638. Decision in *Id.* followed (Delivery of possession as part performance of parol agreement for sale of land) in *Weed v. Terry*, 2 *Doug. (Mich.)* 344; *s. c.*, 45 *Am. Dec.* 257, 260, with note.
- *v. Moody*, 4 *Bosw.* 210. Aff'd in 30 *N. Y.* 266.
- *v. Murray*, 28 *N. Y.* 574. See (Attachment of property) *Code Civ. Pro.* 1881, Ch. vii., Tit. iii., Art. 1, *n.*
- *v. Northern Indiana R. R. Co.*, 20 *N. Y.* 232. See *Poucher v. N. Y. Central R. R. Co.* Included, with note (Common carrier's responsibility when transporting live stock) in 2 *Redf. Am. Railw. Cas.* 368.
- *v. Norvell*, 1 *Abb. N. C.* 127; *s. c.*, as *Herries v. Norvell*, 17 *Am. L. Reg. N. S.* 97, with note.
- *v. Palmer*, 5 *Barb.* 105. Applied (Set-off of costs) in *Hardt v. Schulting*, 24 *Hun.* 345.
- *v. Panama R. R. Co.*, 3 *Bosw.* 7. Subsequent decisions in 5 *Id.* 312; 36 *Super. Ct. (J. & S.)* 373, which latter was aff'd in 58 *N. Y.* 660. See *Wager v. Schuyler*. Decision in 3 *Bosw.* cited and approved (Medical works not admissible in evidence) in *Boyle v. State*, 57 *Wis.* 472; *s. c.*, 46 *Am. R.* 41. Compare (Evidence of value) *Blanchard v. N. J. Steamboat Co.*, 59 *N. Y.* 292, 300.
- *v. People*, 4 *Hun.* 1; *s. c.*, 6 *Sup'm. Ct. (T. & C.)* 206. Aff'd in 64 *N. Y.* 148. See *Matter of Volkening*. See also (Sufficiency of proof on trial for perjury) *Case v. People*, 6 *Abb. N. C.* 151.
- *v. Perry*, 23 *Hun.* 244. See dissenting opinion by GILBERT, J., in 11 *Weekly Dig.* 225.
- *v. Pratt*, 17 *N. Y.* 249. Aff'g *Harris v. Hart*, 6 *Duer.* 249. See *Mottram v. Hoyer*. Decision in 17 *N. Y.* disting'd (Right of stoppage *in transitu*) in *Becker v. Hallgarten*, 86 *Id.* 167, 174. Approved in *Loeb v. Peters*, 63 *Ala.* 243; *s. c.*, 35 *Am. R.* 17.
- *v. Roof*, 10 *Barb.* 489. Limited (Validity of lobbying contract) to case of personal and private solicitation, in *Sedgwick v. Stanton*, 14 *N. Y.* 289, 293. Applied in *Pease v. Walsh*, 39 *Super. Ct. (J. & S.)* 514, 517. Cited as authority with *Sedgwick v. Stanton*, 14 *N. Y.* 289, in *Buck v. First Nat. B'k of Paw-Paw*, 27 *Mich.* 293; *s. c.*, 15 *Am. R.* 189.
- *v. Schultz*, 40 *Baro.* 315. Disting'd (Trover for property intrusted to agent) in *Grand Trunk R'y Co. v. Edwards*, 56 *Barb.* 408.
- *v. Slaght*, 46 *Barb.* 470. Modified in *Harris v. Am. Bible Soc.*, 2 *Abb. Ct. App. Dec.* 316; *s. c.*, 4 *Abb. Pr. N. S.* 421. Decision in 46 *Barb.* disting'd with *Lefevre v. Lefevre*, 59 *N. Y.* 434 (Objections to charitable devises and bequests) in *Jones v. Habersham*, 107 *U. S.* 174, 177.
- *v. Thompson*, 15 *Barb.* 62. Applied (Assignments by corporations) in *Cheever v. Gilbert Elev. R'y Co.*, 43 *Super. Ct. (J. & S.)* 478, 487. Disting'd in *Excelsior Petroleum Co. v. Embury*, 67 *Barb.* 261, 266. Discussed in *Burrill on Assign.* § 65, 4 ed.
- *v. Tumbridge*, 8 *Abb. N. C.* 291. Aff'd in 83 *N. Y.* 92; *s. c.*, 38 *Am. R.* 398. See *Bigelow v. Benedict*. Decision in 83 *N. Y.* collated with *Cassard v. Hinman*, 1 *Bosw.* 210; 6 *Id.* 13; *Yerkes v. Salomon*, 11 *Hun.* 473 (Execution of option contracts) in 22 *Am. L. Reg. N. S.* 615, 618, *n.* Discussed in 1 *Add. on Contr.* 60, *n.*, *Abb. ed.* Decision in 8 *Abb. N. C.* followed (Broker when not allowed to interpose defense of custom) in *Lawson on Usages and Customs*, 49.
- *v. Uebelhoer*, 75 *N. Y.* 169. Disting'd (Negligence in parties engaged in joint enterprise) in *Platz v. City of Cohoes*, 24 *Hun.* 101, 103.
- *v. Warner*, 13 *Wend.* 400. Cited (Liability to contribution of one who signs as surety after others) in *Pitkin v. Flanagan*, 23 *Vt.* 160; *s. c.*, 56 *Am. Dec.* 60, as showing tendency of *N. Y.* cases. Explained in 1 *Pars. on Contr.* 36, *n. x.*
- *v. White*, 81 *N. Y.* 532. Disting'd (Violation of statute against betting and gaming) in *Costello v. Curtis*, 13 *Weekly Dig.* 20.
- *v. Wilson*, 7 *Wend.* 57; *s. c.*, 11 *N. Y. Com. L. Law. ed.*, with brief note of other cases on cross-examination as to collateral facts. See *Whitney v. Ferris*.
- *v. Youman*, *Hoffm.* 178. See *Mills v. Dennis*. Quoted (Decree against infant) in *Ellwell Lead. Cas. on Inf. &c.*, 237.
- Harrison v. Bockee**, 66 *Barb.* 549. Aff'd, it seems, in 56 *N. Y.* 668, but without opinion.
- *v. Clark*, 4 *Hun.* 685. Explained (Justice when liable for false imprisonment) in *Moak's Underhill's Torts*, 1 *Am. ed.* 191.
- *v. Close*, 2 *Johns.* 448; *s. c.*, 3 *Am. Dec.* 444. See *Rowley v. Stoddard*; *Seymour v. Minturn*. Disting'd (Effect of part payment by one of joint debtors) in *Luddington v. Bell*, 77 *N. Y.* 138. Collated with *Blum v. Hartmann*, 3 *Daly*, 47; *Keeler v. Salisbury*, 33 *N. Y.* 648, and other cases from *N. Y.* and most of the other States (Compositions with creditors when void for want of consideration) in 17 *Cent. L. J.* 302.

- **v. Glover**, 9 *Hun*, 196. Reversed in 72 *N. Y.* 451. Previous decision in 4 *Hun*, 121.
- **v. Harrison**, 42 *Barb.* 162. Aff'd in 36 *N. Y.* 543. See *Savage v. Burnham*. Decision in 42 *Barb.* commented on (Suspending power of alienation) in *Gerard Titles to Real Est.* 2 ed. 234.
- **v. McMahon**, 1 *Bradf.* 283. Rev'd in 10 *Barb.* 659; and that aff'd in 6 *N. Y.* 443.
- **v. Newton**, 9 *N. Y. Leg. Obs.* 311. Another decision in action between same parties in *Id.* 347.
- **v. People**, 50 *N. Y.* 518; s. c., 10 *Am. R.* 517. Followed (Sufficient carrying away to constitute offense of larceny) in *State v. Chambers*, 22 *W. Va.* 779; s. c., 46 *Am. R.* 550, 559.
- **v. Ross**, 44 *Super. Ct. (J. & S.)* 230. Aff'd it seems, in 80 *N. Y.* 646, but without opinion.
- **v. Sawtel**, 10 *Johns.* 242; s. c., 6 *Am. Dec.* 337. See *Johnson v. Gilbert*. Compared (Parol contracts of indemnity) in 4 *Am. L. Reg. N. S.* 476.
- **v. Simons**, 3 *Edw.* 394. Approved (Effect of death of party in foreclosure proceedings) in *Hays v. Thomas*, 56 *N. Y.* 522. Applied in *Grant v. Griswold*, 21 *Hun*, 509, 512.
- **v. Stevens**, 12 *Wend.* 170. Reviewed with *Holmes v. Seely*, 17 *Id.* 75; *Hinman v. Booth*, 21 *Id.* 267; *Gillett v. Stanley*, 1 *Hill*, 121; *Cole v. Irvine*, 6 *Id.* 634; *Truax v. Thorn*, 2 *Barb.* 156 (Complaint in ejectment) in *Ballance v. Rankin*, 12 *Ill.* 420; s. c., 54 *Am. Dec.* 412, with note, as indicating a fluctuating condition in the opinions of the *N. Y.* courts. See, however, collated with these and other cases, in 54 *Am. Dec.* 415, *n.*, *Underwood v. Jackson*, 1 *Wend.* 95; *Van Alstyne v. Spraker*, 13 *Id.* 578; *Vrooman v. Ward*, 2 *Barb.* 330; *Van Rensselaer v. Jones*, *Id.* 643; *Neilson v. Neilson*, 5 *Id.* 573; which are said to establish the law in *N. Y.* that under a claim for the whole the plaintiff in ejectment may recover any part to which he proves title. Discussed in *Sedgw. & W. on Tr. of Tit. to Land*, § 438.
- **v. Wilkin**, 69 *N. Y.* 412. Further decision in 78 *Id.* 390. With decision in 69 *Id.* see (Undertaking in replevin) *Code Civ. Pro.* 1881, § 1699, *n.*
- **v. Williamson**. See *Cowperthwait v. Sheffield*.
- **v. Wood**, 2 *Duer*, 50. See (Judgment dismissing complaint) *Code Civ. Pro.* 1881, § 1209, *n.*
- Harrod v. Barretto**, 1 *Hall*, 156. Further decision in 2 *Id.* 302. Decision in 1 *Id.* followed (Courts of Common Pleas in other States to be regarded as courts of record) in *McCulloch v. Norwood*, 36 *Super. Ct. (J. & S.)* 180, 186. Applied with *Shumway v. Stillman*, 4 *Cow.* 292; (Requisites of plea denying jurisdiction of court) in *Welch v. Sykes*, 3 *Gilm. (Ill.)* 197; s. c., 44 *Am. Dec.* 689, with note.
- Harrold v. N. Y. Elevated R. R. Co.**, 21 *Hun*, 268. See *Walsh v. Sayre*. Applied (Examination before trial) in *Shaw v. Van Rensselaer*, 60 *How. Pr.* 144. Compare *Tenney v. Mautner*, 1 *Civ. Pro. R.* 64, 71.
- Harrower v. Heath**. See *Putnam v. Wise*.
- **v. Ritson**, 37 *Barb.* 301. Cited as authority (Right of individual to abate obstruction in highway) in *Phifer v. Cox*, 21 *Ohio St.* 248; s. c., 8 *Am. R.* 58, 61. Quoted and commented on in *Wood on Nuis.* 2 ed., §§ 252, 740.
- Hart v. City of Brooklyn**, 36 *Barb.* 226. Held to conflict with *Howell v. City of Buffalo*, 15 *N. Y.* 512, and to be therefore overruled (Application of *L.* 1859, c. 262, § 2, respecting recovery of costs against municipal corporations) in *McClure v. Supervisors of Niagara*, 4 *Abb. Pr. N. S.* 202, which dismissed appeal from 50 *Barb.* 594, 600, which see. Explained and qualified (Liability of corporation for negligence) in *Grant v. City of Brooklyn*, 41 *Id.* 331.
- **v. Cleis**, 8 *Johns.* 41. Relied on with *Fleming v. People*, 27 *N. Y.* 329 (Negating exception in statute) in *Commonwealth v. Jennings*, 121 *Mass.* 47; s. c., 23 *Am. R.* 249, 253. Followed in *State v. Miller*, 24 *Conn.* 528.
- **v. Direct U. S. Cable Co.** See *Young v. Western Union Tel. Co.*
- **v. Erie R'y Co.**, 3 *Abb. L. J.* 312. Discussed with numerous authorities (Effect of omission of railroad company to give customary signals) in 1 *Add. on Torts*, 582, *n.* *Wood's ed.*
- **v. Hart**, 14 *How. Pr.* 418. Overruled by further decision in 22 *Barb.* 606. Decision in *Id.* applied (Right to withdraw from contract on ground of dissatisfaction) in *Spring v. Ansonia Clock Co.*, 24 *Hun*, 175. Followed with *Tyler v. Ames*, 6 *Lans.* 280, in *Wood Reaping & Mowing Co. v. Smith*, 50 *Mich.* 565; s. c., 45 *Am. R.* 57.
- **v. —**, 2 *Edw.* 207. Commented on (Evidence to prove adultery) in 2 *Greenl. on Ev.* 14 ed., § 41, *n. a.*
- **v. Hoffman**, 44 *How. Pr.* 168. See *Cook v. Kroemeke*. Followed (Presumption as to solvency of purchaser of real estate) in *Goss v. Broom*, 31 *Minn.* 484.
- **v. Hudson**, 6 *Duer*, 294. Applied (Effect of taking note to discharge surety) in *Maier v. Canavan*, 8 *Daly*, 272, 276.
- **v. Hudson River Bridge Co.**, 80 *N. Y.* 622. Followed (Negligence as question of fact) in *Jones v. N. Y. Central, & C. R. Co.*, 28 *Hun*, 364, which aff'd 10 *Abb. N. C.* 200, 203, which see. Followed in *Conway v. City of Albany*, 14 *Weekly Dig.* 62; *Urquhart v. City of Ogdenburgh*, 13 *Id.* 108; *Morrell v. Peck*, 24 *Hun*, 37.
- **v. Kennedy**, 14 *Abb. Pr.* 432; s. c., 23

- How. Pr.* 417. Rev'd in 39 *Barb.* 186; s. c., 15 *Abb. Pr.* 290; 24 *How. Pr.* 425.
- *v. Lauman*, 29 *Barb.* 410. Collated with other cases (Change of plan in municipal contracts) in 5 *Abb. N. C.* 48, n.
- *v. Mayor, &c. of Albany*, 9 *Wend.* 571; s. c., 24 *Am. Dec.* 165, with note, containing citations. Previous decisions in 3 *Paige*, 213; *Id.* 381. See *Irvin v. Wood*; *Livingston v. Livingston*; *Rockwell v. Nearing*; *Storrs v. City of Utica*. Decision in 9 *Wend.* disting'd (Restraining permanent encroachment on highway) in *People v. Horton*, 64 *N. Y.* 620. Followed in *People v. City of St. Louis*, 5 *Gilm. (Ill.)* 351; s. c., 48 *Am. Dec.* 339, 344, with note. Cited as authority (Forfeiture of property by municipal corporation) in *Kneedler v. Borough of Norristown*, 100 *Pa. St.* 368; s. c., 45 *Am. R.* 383. Examined with *Matter of Long Island R. R. Co.*, 19 *Wend.* 37 (Enforcing forfeiture of property of corporator for violation of by-law) in *Cahill v. Kalamazoo Mut. Ins. Co.*, 2 *Doug. (Mich.)* 138. Applied (Municipal authority to require summary removal of nuisance) in *King v. Davenport*, 93 *Ill.* 305; s. c., 38 *Am. R.* 89. Commented on in *Wood on Nuis.* 2 ed., § 739. Decision in 3 *Paige*, 213 followed in *Mayor, &c. of Monroe v. Gerspach*, 33 *La. Ann.* 1011. Disting'd (Injunction pending appeal) in *Fellows v. Heermans*, 13 *Abb. Pr. N. S.* 11. Applied in *Doughty v. S. & E. R. R. Co.*, 3 *Halst. Ch. (N. J.)* 629; s. c., 51 *Am. Dec.* 267, 270, with note. Examined (Doctrine of nuisance) in *People v. Carpenter*, 1 *Mich.* 289; citing *Pierce v. Dart*, 7 *Cov.* 609.
- *v. Messenger*, 2 *Lans.* 446. Rev'd (Liability on bond of indemnity against claims on banking business) in 46 *N. Y.* 253.
- *v. Palmer*. See *Rosa v. Brotherson*.
- *v. Rensselaer & Saratoga R. R. Co.*, 8 *N. Y.* 37; s. c., 59 *Am. Dec.* 447, with note. See *Bostwick v. Champion*; *Milnor v. N. Y. & New Haven R. R. Co.*; *Van Santvoord v. St. John*; *Weed v. Saratoga & Schenectady R. R. Co.*. Followed (Liability of carrier beyond its own line) in *Schroeder v. Hudson River R. R. Co.*, 5 *Duer.* 55. See also *Babcock v. Lake Shore, &c. R. R. Co.*, 43 *How. Pr.* 317. Disting'd in *Milnor v. N. Y. & New Haven R. R. Co.*, 53 *N. Y.* 363, 370. Followed in *Texas & Pacific R. R. Co. v. Ferguson*, 1 *Tex. Ct. App. (Civ. Cas.)* 726. Collated with other cases in *Field on Ultra Vires*, 116.
- *v. Reynolds*, 3 *Cov.* 42, n. See *Mechanic's B'k v. Minthorne*. Disting'd (Amendment of judgment) in *Grant v. Griswold*, 21 *Hun.* 509, 511.
- *v. Seixas*. See *Foot v. Stevens*.
- *v. Taylor*, 5 *Hun.* 288. Subsequent decision in 82 *N. Y.* 373.
- *v. Ten Eyck*, 2 *Johns. Ch.* 62. Said in 1 *Cov.* 744, n. a, to have been rev'd in Ct. of Errors. Case by respondent in Ct. of Errors published at Albany in 1815. See *Dunham v. Jackson*. Followed and approved as settling the doctrine (Answer as evidence of disbursements, on bill to account) in *Ringgold v. Ringgold*, 1 *Harr. & G. (Md.)* 11; s. c., 18 *Am. Dec.* 250, 266. Followed (Rule of damages in case of confounding of property) in *Hall v. Page*, 4 *Ga.* 428; s. c., 48 *Am. Dec.* 235, 238, with note. Shown in 1 *Am. D. C.* 518, n., citing *Tyler on Usury*, 648, to be contrary to the No. Carolina decisions (Remedy by pledgor by bill in equity, to redeem pledge).
- *v. Wright*, 17 *Wend.* 267. Aff'd in 18 *Id.* 449. See *Holden v. Dakin*; *Howard v. Hoey*; *Moses v. Mead*. Decision in 17 *Wend.* followed with *Moses v. Mead*, 1 *Den.* 378 (Warranty on sale of provisions) in *Howard v. Emerson*, 110 *Mass.* 320; s. c., 14 *Am. R.* 608. Reviewed and collated with other cases in 22 *Am. L. Reg. N. S.* 232. Opinion of Cowen, J., cited and favorably commented on in 2 *Kent Com.* 479.
- Harteau v. Deer Park Blue Stone Co.**, 1 *Hun.* 493. Fuller mem. in 3 *Sup'm. Ct. (T. & C.)* 763.
- Hartfield v. Roper**, 21 *Wend.* 615; s. c., 13 *N. Y. Com. L. Law. ed.* 1209 with brief note of conflicting cases, also s. c., 34 *Am. Dec.* 273, with note, wherein it is shown to be a leading authority. Applied (Imputing negligence of infant to parent) in *Mangam v. Brooklyn R. R. Co.*, 38 *N. Y.* 457, which aff'd 36 *Barb.* 238, which see. Followed as the law of this State in *Mowrey v. Central City R'y*, 66 *Barb.* 51, 53. Disting'd in *Thurber v. Harlem, &c. R. R. Co.*, 60 *N. Y.* 326, 333. Criticised in *G. H. & H. Ry. Co. v. Moore*, 59 *Tex.* 64; s. c., 46 *Am. R.* 265; also in article in 1 *Am. L. J.* 153, where it is compared with authorities in other States. Disting'd and doubted in *Robinson v. Cone*, 22 *Vt.* 213; s. c., 54 *Am. Dec.* 67, with note. Approved with *Mangam v. Brooklyn R. R. Co.*, 38 *N. Y.* 455 in *Fitzgerald v. St. Paul, M. & M. R. R.*, 29 *Minn.* 336; s. c., 43 *Am. R.* 212, with note. Cited in 5 *Am. R.* 148, n., as the leading American case on the point. Doctrine of this case followed in *Holly v. Boston Gas Light Co.*, 8 *Gray (Mass.)* 123; *Callahan v. Bean*, 9 *Allen (Mass.)* 401, but opposed in many States. See *Daley v. Norwich & W. R. R. Co.*, 26 *Conn.* 598; *Robinson v. Coe*, 22 *Penn.* 226; *Ranch v. Lloyd*, 31 *Id.* 358, 370; *Penn. R. R. Co. v. Kelly*, *Id.* 372; *Phil. R. R. Co. v. Spearen*, 47 *Id.* 305; *Smith v. O'Connor*, 48 *Id.* 218; *City of Chicago v. Mayor, &c.*, 18 *Ill.* 360, 42 *Id.* 356; *City v. Kirby*, 8 *Minn.* 169; *Boland v. Missouri*, 36 *Mo.* 490; *Whirley v. Whittemore*, 1 *Head (Tenn.)* 620; *B. & I. R. R. Co. v. Snyder*, 18 *Ohio St.* 399. Included with note in *Lawson's Lead. Com. L. Cas. Simplified*, 239; 2 *Thomps on Negl.* 1121. Commented on in *Id.* 1180, 1184, 1187. Applied (Contributory negligence in one injured on highway) in *Barker v. Sav-*

- age, 45 *N. Y.* 191. Followed in *Kenard v. Burton*, 25 *Me.* 39; s. c., 43 *Am. Dec.* 249, 254, with note. Relied on with *Brown v. Maxwell*, 6 *Hill*, 592 (Contributory negligence as bar) in *New Orleans, Jackson & Northern R. R. Co. v. Harrison*, 48 *Miss.* 112; s. c., 12 *Am. R.* 356, 366.
- Hartford v. Palmer**, 16 *Johns.* 143. Cited as authority (Competency of witness as affected by want of understanding) in *Coleman v. Commonwealth*, 25 *Gratt. (Va.)* 865; s. c., 18 *Am. R.* 711.
- Hartford & New Haven R. R. Co. v. Crosswell**, 5 *Hill*, 383; s. c., 40 *Am. Dec.* 355, with note. See *Spear v. Crawford*, 5 *Hill*, 383. Commented on, as an extreme case, (Effect of change, on liability of subscribers for stock) in *Schenectady & Saratoga Plank-road Co. v. Thatcher*, 11 *N. Y.* 102, 109, 114. Doubted in *Buffalo & N. Y. City R. R. Co. v. Dudley*, 14 *Id.* 336, 355. See other authorities collected in 16 *Am. L. Rev.* 101, 106. Approved (Power to incur new liabilities without consent of stockholders) in *McCullough v. Moss*, 5 *Den.* 580.
- **v. N. Y. & New Haven R. R. Co.**, 3 *Robt.* 411. Relied on with *Stauton v. Allen*, 5 *Den.* 434; *Hooker v. Vandewater*, 4 *Id.* 349 (Invalidity of contracts in restraint of trade) in *Denver, &c. R. R. Co. v. Atchison, &c. R. Co.*, *U. S. Cir. Ct. D. Col.*, 16 *Cent. L. J.* 211. Collated with *Hooker v. Vandewater*, 4 *Den.* 349, and other cases in note by FRANCIS WHARTON, to *Sharp v. Whiteside*, 19 *Fed. Rep.* 169. Quoted in *Morawetz on Corp.* § 495.
- Hartford & N. Y. Steamboat Co. v. Mayor, &c. of N. Y.**, 12 *Hun.* 550. Aff'd in 78 *N. Y.* 1.
- Hartley v. Harrison**, 24 *N. Y.* 170. See *Chamberlain v. Dempsey*. Disting'd (Right to set up usury in mortgage) in *Knickerbocker Life Ins. Co. v. Nelson*, 78 *N. Y.* 137, 153; *Chapin v. Thompson*, 23 *Hun.* 12, 17. Compared (Right of grantor of mortgaged premises to release grantee from personal liability) in *Thomas on Mort.* 194.
- **v. James**, 18 *Abb. Pr.* 299. Further decision on the merits in 50 *N. Y.* 38.
- **v. Tatham**, 24 *How. Pr.* 505. Fully reported in 10 *Bosw.* 273. Subsequent decision in 1 *Robt.* 246; s. c., 26 *How. Pr.* 158, which was modified in 2 *Abb. Ct. App. Dec.* 333; s. c., mis-reported in 1 *Keyes*, 222. Decision in 26 *How. Pr.* criticised as *obiter dictum* (Right of grantee of mortgaged premises to question amount due on mortgage) in *Thomas on Mort.* 209.
- Hartman, Matter of**, 9 *Abb. Pr. N. S.* 124. Superseded (Proceedings to compel change of route) by *L.* 1871, c. 560.
- Hartness v. Boyd**, 5 *Wend.* 563. Approved (Practice on inquest) in *Kerker v. Carter*, 1 *Hill*, 101.
- **v. Thompson**, 5 *Johns.* 160. See *Van Bramer v. Cooper*. Followed (Plea of infancy by one in assumpsit against two or more) in *Cutts v. Gordon*, 13 *Me.* 474; s. c., 29 *Am. Dec.* 520.
- Hartnett v. Wandell**, 2 *Hun.* 552; s. c., 5 *Sup'm. Ct. (T. & C.)* 98. Rev'g Matter of *Alexander's Will*, 16 *Abb. Pr. N. S.* 9; but itself rev'd and the latter aff'd in 60 *N. Y.* 346; s. c., 19 *Am. R.* 194; 16 *Abb. Pr. N. S.* 383. See (Posthumous designation of executor) *Code Civ. Pro.* 1881, § 2640, n.
- Hartshorne v. Union Mut. Ins. Co.**, 5 *Bosw.* 538. Aff'd in 36 *N. Y.* 172.
- Hart v. Harvey**, 10 *Abb. Pr.* 321; s. c., 32 *Barb.* 55. Approved (*Quo warranto* as remedy for trying title to office) in subsequent decision in 13 *Abb. Pr.* 332, 334. Applied (Effect of judgment in *quo warranto* proceeding) in *People ex rel. Gilchrist v. Murray*, 8 *Daly*, 347, 355. Collated with other cases (Canvassing election returns) in *Brightly's Cas. on Elect.* 313.
- Hartung v. People**, 22 *N. Y.* 95. Subsequent decision in 28 *Id.* 400; s. c., 25 *How. Pr.* 221, which is a repetition of the same case, previously better reported in 26 *N. Y.* 167, where opinion of EMORY, J., at full length, and an opinion by BALCOM, J., are given. Decision here rev'd reported in 23 *How. Pr.* 314. Decision in 22 *N. Y.* commented on (*Ex post facto* laws) in *Mongeon v. People*, 55 *Id.* 613, 618. Followed with *Shepherd v. People*, 25 *Id.* 406; *Green v. Shumway*, 39 *Id.* 418, in *Kring v. State of Missouri*, 107 *U. S.* 221, 230. Collated with *Shepherd v. People*; *Green v. Shumway*, and many other cases, in 18 *Cent. L. J.* 277. Cited in 1 *Kent Com.* 409, n. 1, Holmes, ed. Quoted and discussed in *Coolcy on Const. Limit.* 5 ed. 327. Decision in 26 *N. Y.* followed in *Moore v. State*, 14 *Vroom (N. J.)* 203; s. c., 39 *Am. R.* 558, 573. Decision in 22 *N. Y.* cited as authority (Effect of repeal, &c. of law on proceedings under indictment) in *Commonwealth v. Penn. Canal Co.*, 66 *Pa.* 41; s. c., 5 *Am. R.* 329, 337. Followed (Judgment reviewed, by what law controlled) in *Cole v. Mahoney*, 67 *How. Pr.* 226.
- Hartwell v. Armstrong**, 19 *Barb.* 166. Cited with *Lawton v. Comm'rs of Cambridge*, 2 *Cai.* 279; *Belknap v. Belknap*, 2 *Johns. Ch.* 463, and *Haight v. Day*, 1 *Id.* 18; *Moore v. Smedley*, 6 *Id.* 28; *Magee v. Cutler*, 43 *Barb.* 239; *Wiggin v. Mayor of N. Y.*, 9 *Paige*, 16; *Van Doren v. Mayor, &c.*, *Id.* 388; *Heywood v. City of Buffalo*, 14 *N. Y.* 534; *Susquehanna Bank v. Supervisors of Broome*, 25 *Id.* 312, disting'd on the ground of peculiarities of statute and practice (Remedy for exceeding statutory power conferred on court of inferior and limited jurisdiction) in *English v. Smock*, 35 *Ind.* 115; s. c., 7 *Am. R.* 215, 219. Collated with *Matter of Ryers*, 72 *N. Y.* 8; *Beekman v. Saratoga, &c. R. R. Co.*, 3 *Paige*, 73, and cases from other States (Legislature as proper authority, to determine public necessity to uphold *emi-*

- ment domain*) in *Smeaton v. Martin*, 57 *Wis.* 364, 369, 373. Commented on (Draining swamplands) in *Wood on Nuis.* 2 ed., § 118.
- *v. Root*, 19 *Johns.* 345; s. c., 10 *Am. Dec.* 232. See *Schermerhorn v. Talman*. Applied (Presumption that every man does his duty) in *Doe v. Henderson*, 4 *Ga.* 148; s. c., 48 *Am. Dec.* 216, 220, with note.
- Harty v. Central R. R. of N. J.**, 42 *N. Y.* 468. See *Johnson v. Hudson River R. R. Co.* Collated with *Kenyon v. N. Y., & C. R. R. Co.*, 5 *Hun.* 449; *Willeys v. Buffalo, & C. R. Co.*, 14 *Barb.* 505; *Holbrook v. Utica, & C. R. Co.*, 12 *N. Y.* 236; *Morrison v. Erie R. Co.*, 56 *Id.* 302; *Burroughs v. Erie R. Co.*, 63 *Id.* 506; *Gonzales v. N. Y., & C. R. Co.*, 50 *How. Pr.* 126, and numerous other cases (Acts connected with railroads which are negligent *per se*) in 19 *Cent. L. J.* 95, *n.*
- Harvey v. Cherry**, 12 *Hun.* 354. Aff'd in 76 *N. Y.* 436.
- *v. Dunlop*. See *Conklin v. Thompson*.
- *v. Large*, 51 *Barb.* 222. See (Costs in justice's courts) *Code. Civ. Pro.* 1881, § 3075, *n.*
- *v. Olmsted*, 1 *N. Y.* 483. Aff'g 1 *Barb.* 102. Decision in 1 *N. Y.* reasserted in *Olmstead v. Olmstead*, 4 *Id.* 56, a case involving construction of same will.
- *v. Rickett*. See *Dana v. Tucker*.
- *v. Skillman*, 22 *Wend.* 571. Overruled (Right to costs, as affected by omission of personal representative to publish notice to present claims) in *Bullock v. Bogardus*, 1 *Den.* 276.
- Harway v. Lott**, 5 *Weekly Dig.* 440. Aff'd in 80 *N. Y.* 645.
- Harwood v. Kirby**. See *Wotton v. Cope-land*.
- Hasbrook v. Paddock**, 1 *Barb.* 637. Followed (Executed and executory contracts) in *Springsteen v. Samson*, 32 *N. Y.* 703.
- Hasbrouck v. Bunce**, 3 *Sup'm. Ct. (T. & C.)* 309. Rev'd in 62 *N. Y.* 475. Decision in *Id.* explained (Ejectment by tenant in common, &c.) in *Sedgw. & W. on Tr. of Tit. to Land*, § 299. See *Code Civ. Pro.* 1881, § 1500, *n.*
- *v. Hasbrouck*, 37 *Barb.* 579; s. c., 24 *How. Pr.* 24. Rev'd in 27 *N. Y.* 182.
- *v. Tappen*. See *Bagley v. Peddie*; *Keating v. Price*.
- *v. Vaudervoort*, 4 *Sandf.* 596. Aff'd in 9 *N. Y.* 153. Decision in *Id.* cited as authority (Policy of rule forbidding husband and wife to testify one for the other) in *Gee v. Scott*, 48 *Tex.* 510; s. c., 26 *Am. R.* 331.
- *v. Weaver*, 10 *Johns.* 247. See Commissioners of Excise of *Wayne v. Keller*. Quoted (Liability of husband for acts of wife) in Commissioners of Excise of *Wayne v. Keller*, 20 *How. Pr.* 280, and the latter approved, in Commissioners of Excise of *Orange v. Dougherty*, 55 *Barb.* 332. Quoted and collated with other cases in 1 *Ben-net & H. Cas. on Crim. L.* 86.
- Hascall v. Life Assoc. of America**, 5 *Hun.* 151. Aff'd, it seems, in 66 *N. Y.* 616, on opinion below.
- Haskell v. Village of Penn Yan**, 5 *Lans.* 43. Limited (Indemnity to village) in *Village of Fulton v. Tucker*, 3 *Hun.* 529.
- Haskin v. N. Y. Central, & C. R. Co.**, 65 *Barb.* 129. Aff'd, it seems, in 56 *N. Y.* 608, on opinion below.
- Haskins, Matter of**. See *matter of Dakin*.
- Haskins v. Kelly**, 1 *Robt.* 160; s. c., 1 *Abb. Pr. N. S.* 63. Deemed overruled (Officers' liability in replevin) in *Manning v. Keenan*, 9 *Hun.* 686, 689. Explained (Effect of chattel mortgage assigned as security for debt) in *Thomas on Mort.* 432.
- *v. People*, 16 *N. Y.* 344. Cited as authority (Place for trial of criminal offense) in *Pentlargo v. Kirby*, *U. S. Dist. Ct., S. D. N. Y.*, 19 *Fed. Rep.* 505.
- Haslam v. Adams Express Co.**, 6 *Bosw.* 235. Followed (Delivery by carrier) in *Mierson v. Hope*, 2 *Sweeny*, 561, 569. Discussed in *Ang. on Carr.* § 319, *n. a*, 5 ed.
- Hassan v. City of Rochester**, 6 *Lans.* 185. Rev'd in 65 *N. Y.* 516. Further decision in 67 *Id.* 528. Decision in *Id.* followed (Exemption from taxation, when not exemption from assessment) in *Roosevelt Hospital v. Mayor, &c. of N. Y.*, 84 *Id.* 108, 113. Disting'd (Liability of State property to assessment for local improvements) in *State v. City of Hartford*, 50 *Conn.* 89; s. c., 47 *Am. R.* 622.
- Hassard v. Rowe**, 11 *Barb.* 22. See *Eckford v. DeKay*. Explained (Improving infants' property with money belonging to their trustees) in 2 *Perry on Trusts*, 3 ed. § 606.
- Hastie v. De Peyster**, 3 *Cal.* 190. Approved (Liability of re-insurer) in *Stroug v. Phoenix Ins. Co.*, 62 *Mo.* 289; s. c., 21 *Am. R.* 424; *N. Y. State Marine Ins. Co. v. Protection Ins. Co.*, 1 *Story C. Ct.* 458.
- Hastings v. Belknap**, 1 *Den.* 190. See *Frisbey v. Thayer*; *Martin v. Black*. Criticised and limited with *Frisbey v. Thayer*, 25 *Wend.* 396 (Who can attack sale as made in fraud of creditors), in *Rinchey v. Stryker*, 28 *N. Y.* 45. Collated with other cases (Effect of provision in assignment for benefit of creditors, for exacting releases) in *Bishop on Assign.* § 199.
- *v. Drew*, 50 *How. Pr.* 254. Aff'd, in effect, in 76 *N. Y.* 9. Decision in *Id.* applied (Judgment against corporation as evidence of stockholders' liability) in *Stephens v. Fox*, 83 *Id.* 313, 317. See *Lewis v. Armstrong*, 8 *Abb. N. C.* 385, 389. Cited with *Tinkham v. Borst*, 31 *Barb.* 407, and other cases in 12 *Am. Dec.* 239, 243, *n.*, as establishing the jurisdiction of equity to take charge of the assets of a dissolved corporation.
- *v. Ellis*, 3 *Barb.* 492. Rev'd in 1 *N. Y.* 293.
- *v. Farmer*, 4 *N. Y.* 293. Applied (Act forbidden by statute) in *Farish v. Austin*, 25 *Hun.* 430, 432.

- **v. Lusk**, 22 *Wend.* 410; s. c., 34 *Am. Dec.* 330. See *Perkins v. Mitchell*. Referred to in 34 *Am. Dec.* 340, n., as having been approved and followed in *N. Y.* (Privilege as to words spoken in judicial proceedings) Included in *Bigel. Cas. on Torts*, 121.
- **v. McKinley**, 1 *E. D. Smith*, 273. Aff'd in *Seld. Notes*, No. 4, 19. Former decision in 3 *Code R.* 10. Decision in 1 *E. D. Smith* disting'd (Defect of parties) in *Tiffany v. Williams*, 10 *Abb. Pr.* 205. Decision in 3 *Code R.* approved and followed (Nature of motion for new trial) in *Molony v. Dows*, 9 *Abb. Pr.* 86, 88.
- **v. Westchester Fire Ins. Co.**, 12 *Hun.* 416. Aff'd in 73 *N. Y.* 141. Reargument said in 13 *Hun.* v. to have been denied Apr. 26, 1878. Decision in 73 *N. Y.* disting'd (Rights of mortgagee under fire policy) in *Heilman v. Westchester Fire Ins. Co.*, 75 *Id.* 7, 12. Applied in *Graham v. Firemen's Ins. Co.*, 8 *Daly*, 421. Followed in *Hartford Fire Ins. Co. v. Olcott*, 97 *Ill.* 455, 459.
- Haswell v. Bussing**, 10 *Johns.* 128. Limited (New trial for receiving improper evidence) in *Meyer v. Clark*, 2 *Daly*, 498, 520.
- **v. Goodchild**, 12 *Wend.* 373. Explained (Burden of proof of payment for work done under contract) in *Rudd v. Davis*, 1 *Hill*, 277.
- Hatch v. Bowes**, 54 *How Pr.* 439; s. c., more fully, 43 *Super. Ct. (J. & S.)* 426.
- **v. Central Nat. B'k**, 78 *N. Y.* 487. See *Deane v. O'Brien*. Followed (Power to set aside judgment) in *Underwood v. Sutcliffe*, 21 *Hun.* 357.
- **v. Cobb**, 4 *Johns. Ch.* 559. See *Ellis v. Hoskins*; *Wright v. Moore*. Disting'd with *Benedict v. Lynch*, 1 *Johns. Ch.* 371 (Acts or omissions of purchaser in contract for sale of land such as justify vendor in rescinding) in *Falls v. Carpenter*, 1 *Dev. & B. (N. C.)* 237; s. c., 28 *Am. Dec.* 592, 613, with note.
- **v. Coleman**, 29 *Barb.* 201. Disting'd (Necessity that contract, to afford foundation for mechanics' lien, be in writing) in *Neilson v. Iowa Eastern R. R. Co.*, 51 *Iowa*, 184; s. c., 33 *Am. R.* 124.
- **v. Mann**, 15 *Wend.* 44. Rev'g 9 *Id.* 262. See *City Bank v. Bangs*. Decision in 15 *Wend.* disting'd with *Parker v. Newland*, 1 *Hill*, 87; *Harp v. Osgood*, 2 *Id.* 216 (Right of public officer to extra compensation) in *Gregg v. Pierce*, 53 *Barb.* 387. Applied in *Croft v. Brandt*, 5 *Daly*, 124, 127. Collated with *City B'k v. Bangs*, 2 *Edw.* 95; *Gregg v. Pierce*, 53 *Barb.* 387; *Fitch v. Snedaker*, 38 *N. Y.* 248; *Howland v. Lounds*, 51 *Id.* 654; *Brennan v. Haff*, 1 *Hill*, 151; *Jones v. Phoenix L'k*, 8 *N. Y.* 228, and other cases (Nature and effect of offer of reward for arrest) in 26 *Am. R.* 5, n.
- **v. Mayor, &c. of N. Y.**, 45 *Super. Ct. J. & S.* 599. Rev'd in 82 *N. Y.* 486. See *Astor v. Hoyt*.
- **v. Peugnet**, 64 *Barb.* 189. Collated with *Hobart v. Hobart*, 62 *N. Y.* 80; *Mattoon v. Young*, 45 *Id.* 696; *Cary v. White*, 59 *Id.* 386; *Hier v. Grant*, 47 *Id.* 280, and numerous other cases (Effect of *Code Pro.* § 399 [*Code Civ. Pro.* § 829] and similar statutes) in 1 *Whart. Com. on Ev.* §§ 467, n., 468, n.
- Hatcher v. Rocheleau**, 18 *N. Y.* 86. See to the contrary (Proof of executor's official character) 3 *Williams on Executors*, 6 *Am. ed.* 2060. See also *Abb. Tr. Ev.* 56.
- Hatfield v. Lasher**, 17 *Hun.* 23; s. c., 57 *How. Pr.* 258. Aff'd in 81 *N. Y.* 246.
- **v. Reynolds**, 34 *Barb.* 612. Disting'd (Authority of attorney) in *Wardrop v. Dunlop*, 1 *Hun.* 325, 330.
- **v. Sneden**, 42 *Barb.* 615. Rev'd in 54 *N. Y.* 280. Decision in *Id.* disting'd (Provision in will, when for life, with remainder to issue as purchasers) in *Cromwell v. Kirk*, 1 *Dem.* 383. Collated with other cases (Executory devise as divesting dower) in *Sharsw. & B. Cas. on Real Prop.* 350. Collated with other cases (Estate by curtesy how affected by statute) in *Id.* 289. Decision in 42 *Barb.* explained in 1 *Washb. on Real Prop.* 4 ed. 171, 265.
- Hathaway, Matter of**, 9 *Hun.* 79. Aff'd in 71 *N. Y.* 238.
- Hathaway v. Howell**, 6 *Sup'm. Ct. (T. & C.)* 453; mem. s. c., 4 *Hun.* 270. Aff'd, it seems, in 70 *N. Y.* 610, but without opinion. Previous decision in 54 *Id.* 97. Decision in *Id.* followed (Necessity of levy during life of execution) in *Smith v. Smith*, 60 *Id.* 161, 164. Disting'd in *Stewart v. Beale*, 7 *Hun.* 405, 413, 421.
- **v. Johnson**, 55 *N. Y.* 93. Applied (Arrest for fraud of agent) to case of attachment for absconding of copartner, in *Bogert v. Dart*, 13 *Weekly Dig.* 190.
- **v. Payne**, 34 *N. Y.* 92. Applied (Nature of interest of purchaser in contract for sale of real estate) in *Germond v. Home Ins. Co.*, 2 *Hun.* 540. Cited as authority (Effect of deed delivered to third person for grantee) in *Prutsman v. Baker*, 30 *Wis.* 644; s. c., 11 *Am. R.* 592. Explained in 3 *Washb. on Real Prop.* 4 ed. 301.
- **v. Quimby**, 1 *Sup'm. Ct. (T. & C.)* 386. Criticised as technical and as hardly in accordance with the Code (Sufficiency of allegations in complaint in trover) in *Pomeroy on Rem.* § 535.
- **v. Russell**, 45 *Super. Ct. (J. & S.)* 538; s. c., 7 *Abb. N. C.* 138. Aff'd in 46 *Super. Ct. (J. & S.)* 103.
- **v. Town of Cincinnati**, 62 *N. Y.* 434. Applied (Action in name of supervisor of town) in *Sutherland v. Carr*, 85 *Id.* 105, 113. Examined with other cases in *Gleason v. Youmans*, 9 *Abb. N. C.* 107, 110.
- **v. Town of Homer**, 5 *Lans.* 267. Rev'd in 54 *N. Y.* 655. See *Patrick v. Metcalf*. Decision in 54 *N. Y.* applied (Right of action for moneys, title to which is claimed by two persons) in *Decker v. Saltzman*, 59



- Id.* 275, 279. Both decisions examined with other cases (Actions by supervisor in favor of town) in *Gleason v. Youmans*, 9 *Abb. N. C.* 107, 110. Decision in 54 *N. Y.* commented on in *Hathaway v. Town of Cincinnati*, 62 *Id.* 434, 447. Decision in 5 *Lans.* applied (Extent of capacity of public officer to sue) in *Victory v. Blood*, 25 *Hun.* 515, 517.
- Hathorn v. Germania Ins. Co.**, 55 *Barb.* 28. Cited (Effect of provision in policy, enabling company to cancel it) in *Hollingsworth v. Germania Ins. Co.*, 45 *Ga.* 294; s. c., 12 *Am. R.* 579.
- Hatter's Bank v. Phillips**, 38 *N. Y.* 128. See opinion of MILLER, J., in 6 *Transc. App.* 302.
- Hauck v. Craighead**, 4 *Hun.* 551. Further decision in 8 *Id.* 237, which was rev'd in 67 *N. Y.* 432. See *Risley v. Brown*.
- **v. Hund**, 1 *Boru.* 431. Referred to as overruled by *Moore v. Cross*, 19 *N. Y.* 227 (Evidence to vary liability of indorser) in *Lewis v. Jones*, 7 *Boru.* 366, 371.
- Haughwout v. Garrison**, 40 *Super. Ct. (J. & S.)* 550. Aff'd in 69 *N. Y.* 339.
- Haulenbeck v. Gillies**, 2 *Hills.* 238. Disting'd (Conclusiveness of justice's judgment) in *Blum v. Hartman*, 3 *Daly.* 117.
- Hauptman v. Catlin**, 3 *E. D. Smith*, 636; s. c., 4 *Abb. Pr.* 472. Aff'd in 20 *N. Y.* 247. Prior decision in 1 *E. D. Smith*, 729. Decision in 20 *N. Y.* disting'd (Liability of estate of married woman) in *Jones v. Walker*, 63 *Id.* 613. Decision in 1 *E. D. Smith* limited (Competency of employer to prove correctness of books of account) in *McGoldrick v. Traphagen*, 88 *N. Y.* 334.
- Hauselt v. Vilmar**, 2 *Abb. N. C.* 222. Aff'd in 43 *Super. Ct. (J. & S.)* 574; and that aff'd in 76 *N. Y.* 630. Decision in *Id.* cited as authority (Costs when in discretion of court) in *Black v. O'Brien*, 23 *Hun.* 82, 85.
- Hauseman v. Sterling**, 61 *Barb.* 347. Approved (Inspection of books, &c.) in *De Bary v. Stanley*, 5 *Daly.* 412.
- Havemeyer v. Havemeyer**, 43 *Super. Ct. (J. & S.)* 506. Aff'd in 86 *N. Y.* 618. Other proceedings in 44 *Super. Ct. (J. & S.)* 170; 45 *Id.* 464.
- Havens v. Bush**, 2 *Johns.* 387. See *Cunningham v. Morrell*; *Seers v. Fowler*. Overruled (Dependent and independent covenants) in *Cunningham v. Morrell*, 10 *Johns.* 203. See *Evans v. Harris*, 19 *Barb.* 416. Denied in *Leopold v. Salkey*, 89 *Ill.* 412; s. c., 31 *Am. R.* 96.
- **v. Erie R'y Co.**, 53 *Barb.* 328. Rev'd in 41 *N. Y.* 296. See *Dascomb v. Buffalo & State Line R. R. Co.* Grounds of dissent of LORR, Ch. C., explained (Negligence in one approaching railroad crossing) in *Eaton v. Erie R'y Co.*, 51 *N. Y.* 548.
- **v. Huntington**, 1 *Cow.* 387; s. c., 7 *N. Y. Com. L. Law. ed.* 554, with brief note of cases on effect of payment.
- **v. Hussey**, 5 *Paige*, 30. See *Deming v. Colt*; *Egberts v. Wood*. Cited with *Egberts v. Wood*, 3 *Paige*, 517; *Hitchcock v. St. John*, *Hoffm.* 511 (Assignment for creditors made by one partner) in *Story on Partn.* 7 ed., § 101, n. See also *Welles v. March*, 30 *N. Y.* 344; *Palmer v. Myers*, 43 *Barb.* 509; *Kemp v. Carnley*, 3 *Duer*, 1; *Mabbett v. White*, 12 *N. Y.* 442; *Graser v. Stellanwagen*, 25 *Id.* 315, and other cases, cited in *Story on Partn.* § 102, p. 172, n. Explained and quoted in 1 *Pars. on Contr.* 178, n. z. Discussed in *Burrill on Assign.* § 73, 4 ed. Quoted and collated with other cases in *Holcombe Lead. Cas. on Com. Law*, 76.
- **v. Klein**, 49 *How. Pr.* 95. Head-note corrected in *Id.* 538. Further proceeding in 51 *Id.* 82. Decision in *Id.* explained and compared with other cases (Ancient lights) in *Wood on Nuis.* 2 ed., § 151, n. 1.
- **v. Nat. City B'k of Brooklyn**, 4 *Hun.* 131; s. c. reported in 6 *Sup'm. Ct. (T. & C.)* 346.
- **v. Patterson**, 43 *N. Y.* 218. Followed (Contracting party refusing to perform cannot recover money paid) in *Lawrence v. Miller*, 86 *Id.* 131, 139.
- **v. Sackett**, 15 *N. Y.* 365. Approved as accurately setting forth the question (Demise of entire property and simply an interest) in 1 *Pomeroy on Eq. Jur.* § 488, n. 1.
- **v. Sherman**, 42 *Barb.* 636. Applied (Statutory proceedings to divest title to real estate must be strictly pursued) in *Stilwell v. Swarthout*, 81 *N. Y.* 109, 114.
- **v. Van Den Burgh**, 1 *Den.* 27. Explained (Revocation of will by subsequent marriage and birth of child) in 4 *Kent Com.* 527, n. c.
- Haviland v. Bloom**, 6 *Johns. Ch.* 178. See *Kenny v. Udall*; *Swaine v. Perine*. Cited and discussed (Wife's maintenance in equity out of her property on husband's application to dispose of same) in 2 *Kent Com.* 141.
- **v. Halstead**, 34 *N. Y.* 643. Approved, but disting'd (Marriage contract governed by *lex loci*) in *Van Voorhis v. Brinnaill*, 86 *Id.* 18, 26. Examined with other cases in *Marshall v. Marshall*, 2 *Hun.* 238, 240.
- **v. Johnson**, 7 *Daly.* 297. Explained (Sale of specific chattels conditionally) in 1 *Benj. on Sales*, § 430 (Corbin's 4 *Am. ed.*).
- **v. Myers**. See *Kenny v. Udall*.
- **v. White**, 7 *How. Pr.* 154. Approved (What is special proceeding) in *People v. Heath*, 20 *How. Pr.* 304, 307.
- Hawes v. Lawrence**, 3 *Sandf.* 193. Aff'd in 4 *N. Y.* 345. Decision in *Id.* quoted and explained (Statement in contract of sale of goods to arrive) in 1 *Pars. on Contr.* 559, n. y.
- Hawkins v. Appleby**, 2 *Sandf.* 421. Quoted

- (Partnership liability for torts of individual partner) in 1 *Pars. on Contr.* 185, n. u.
- **v. Avery**, 32 *Barb.* 551. Collated with other cases (Civil salvage on *quantum meruit*) in *Waples on Proc. in Rem.*, § 510.
- **v. Dutchess & Orange Steamboat Co.**, 2 *Wend.* 452. Quoted and discussed (Liability of carrier by water for injury caused by collision) in *Ang. on Carr.* § 663, 5 ed.
- **v. Hoffman**, 6 *Hill*, 586; s. c., 41 *Am. Dec.* 767, with note, wherein are collected citations. See *Anderson v. Nicholas*; *Orange County B'k v. Brown*; *Pardee v. Drew*. Disapproved, and *Orange Co. B'k v. Brown*, 9 *Wend.* 85; *Weed v. Saratoga & Schenectady R. R. Co.*, 19 *Id.* 534, approved (Liability for baggage) in *Taylor v. Monnot*, 1 *Abb. Pr.* 325, 329. Explained and criticised in *Merrill v. Ginnell*, 30 *N. Y.* 610. Disting'd in *Needles v. Howard*, 1 *E. D. Smith*, 60. Limited in *Butler v. Hudson River R. R. Co.*, 3 *Id.* 573. Applied in *Chamberlain v. Western Transp. Co.*, 45 *Barb.* 223; *Nevins v. Bay State Steamboat Co.*, 4 *Bosw.* 284; *Cohen v. Frost*, 2 *Duer*, 385, 341; *Grant v. Newton*, 1 *E. D. Smith*, 99; *Davis v. Cayuga & Susquehanna R. R. Co.*, 10 *How. Pr.* 332; *Hopkins v. Westcott*, 6 *Blatchf. C. Ct.* 64, 69. Cited as containing what has been generally regarded as a correct exposition,—in *Gleason v. Goodrich Transp. Co.*, 32 *Wis.* 85; s. c., 14 *Am. R.* 716, 723; *Torpey v. Williams*, 3 *Daly*, 162, being also cited as authority. Cited with *Orange County B'k v. Brown*, 9 *Wend.* 85, and the latter approved in *Bomar v. Maxwell*, 9 *Humph. (Tenn.)* 620; s. c., 51 *Am. Dec.* 682, with note. Quoted in 2 *Greenl. on Ev.* 14 ed., § 221, n. 7; 1 *Chitty on Contr.* 698, n. h., 11 *Am. ed.* Explained in 2 *Pars. on Contr.* 254, n. d. Quoted and discussed in *Id.* 255, n. e. Included, with note, in 2 *Redf. Am. Railw. Cas.* 96. Commented on (Action on case against common carrier, containing count in trover) in *Ang. on Carr.* § 433, 5 ed.
- **v. Pemberton**, 6 *Robt.* 42; s. c., 35 *How. Pr.* 376. Rev'd in 51 *N. Y.* 198; s. c., 44 *How. Pr.* 102; 10 *Am. R.* 595. See *Hoe v. Sanborn*; *Seixas v. Woods*. Decision in 51 *N. Y.* followed (Warranty on sale of chattels) in *White v. Miller*, 71 *Id.* 118, 129. Approved with *White v. Miller*, and *Seixas v. Woods*, 2 *Cai.* 48; *Swett v. Colgate*, 20 *Johns.* 196, disapproved and said to be overruled in *N. Y.* and other States, in *Fogg's Adm'r v. Rogers*, *Ky. Super. Ct., Jan.* 1884. 8 *Ky. L. Rep. & J.* 584; note in 29 *Alb. L. J.* 163. Relied on in *Wolcott v. Mount*, 36 *N. J.* (7 *Vroom*) 262; s. c., 13 *Am. R.* 438, 440. Followed in *Wolcott v. Mount*, 9 *Vroom*, 496; s. c., 20 *Am. R.* 425, 426, and said to repudiate the ground on which *Seixas v. Woods*, 2 *Cai.* 48, rests. Referred to in 6 *Am. Dec.* 115, n. as a well considered case, and as asserting a very important doctrine. Approved and other cases collected in 15 *Am. L. Rev.* 667.
- Hawks v. Winans**, 42 *Super. Ct. (J. & S.)* 451. Aff'd, it seems, in 74 *N. Y.* 609, but without opinion.
- Hawley v. Bradford**, 9 *Paige*, 200; s. c., 37 *Am. Dec.* 391. See *Swaine v. Perine*. Explained (Dower in mortgaged premises) in *Kling v. Ballentine*, 11 *Weekly L. Bul.* 9, *Suppl.* Dictum approved (Rights as surety, of wife mortgaging separate estate to secure husband's debt) in *Savage v. Winchester*, 15 *Gray (Mass.)* 456.
- **v. Butler**, 48 *Barb.* 101. Further decision in 54 *Id.* 490.
- **v. Clowes**, 2 *Johns. Ch.* 122. Criticised as extreme (Injunction as between tenants in common) in *Johnson v. Johnson*, 2 *Hill Ch. (So. Car.)* 277; s. c., 29 *Am. Dec.* 72, 86, with note.
- **v. Cramer**, 4 *Cow.* 717. See *Jones v. Caswell*. Applied (Trustee not to purchase trust property) in *Terwilliger v. Brown*, 59 *Barb.* 13; *Star Fire Ins. Co. v. Palmer*, 41 *Super. Ct. (J. & S.)* 269. Commented on in *O'Donnell v. Lindsay*, 39 *Id.* 533. Disting'd in *Faulds v. Yates*, 57 *Ill.* 416; s. c., 11 *Am. R.* 24. Applied (Allowance to trustee who is made to account for proceeds of fraudulent sale) in *Currie v. Cowles*, 6 *Bosw.* 462. Applied (Time within which *cestui que trust* may avoid sale) in *Holman v. Holman*, 66 *Barb.* 224. Applied (When too late to object that complainant has remedy at law) in *Ramsey v. Harris*, *Clarke*, 331; *Heyer v. Burger*, *Hoffm.* 15; *Pumpelly v. Village of Owego*, 45 *How. Pr.* 240; *Ketchum v. Hawks*, 2 *N. Y. Leg. Obs.* 384.
- **v. Foote**, 19 *Wend.* 516. See *Russell v. Lytle*. Explained (Accord and satisfaction) in *Nevins v. Depierries*, 1 *Edm. Sel. Cas.* 196. Applied, and *Coit v. Houston*, 3 *Johns. Cas.* 247 explained in *Young v. Jones*, 64 *Me.* 563; s. c., 18 *Am. R.* 279. Explained in 2 *Chitty on Contr.* 1126, n. a, 1127, 11 *Am. ed.*
- **v. James**, 5 *Paige*, 318. Rev'd in 16 *Wend.* 61. Subsequent decision in 7 *Paige*, 213. See *Coster v. Lorillard*; *Hone v. Van Schaick*. See case published at Albany in 1836 and report upon accounts of executor, 1832-1837. See (Validity of trust estates) *Bowers v. Smith*, 10 *Paige*, 193; *Craig v. Craig*, 3 *Barb. Ch.* 76. Decision in 16 *Wend.* applied (Equitable conversion) in *Fellows v. Heermans*, 4 *Lans.* 230, 240. Disting'd (Trust, when void as inactive) in *Scofield v. St. John*, 65 *How. Pr.* 292. Said to be an authority of great weight (Court will endeavor to carry out intention of testator, even if form fail) in *Everitt v. Everitt*, 29 *N. Y.* 39, 80. Applied in *Colton v. Fox*, 6 *Hun.* 49. Collated with other cases (Suspending power of alienation) in *Gerard's Titles to Real Est.* 2 ed. 231, 273. Decision in 5 *Paige* explained (Consistency of trust estate with power of sale) in

**Fellows v. Heermans**, 4 *Lans.* 252. Approved (Power to call in and reinvest does not relieve trust from imputation of illegal perpetuity) in *Williams v. Williams*, 8 *N. Y.* 525, 531. Discussed (Suspension of power of alienation) in 4 *Kent Com.* 271, *n. g.* Applied (Resulting trust in favor of heirs, in case of provision in will failing in part) in *Betts v. Betts*, 4 *Abb. N. C.* 317, 420. Followed in *Mahorner v. Hooe*, 9 *Smedes & M. (Miss.)* 247; *s. c.*, 48 *Am. Dec.* 706, 714, with note. Explained (Implied trust in case of legacy for maintenance) in 1 *Perry on Trusts*, 3 ed., § 117. Explained (Conveyance by assignee for creditors) in *Burrill on Assign.* § 415, 4 ed. See (Dower in lands under contract) *Code Civ. Pro.* 1881, § 2794, *n.* Explained (Trust to pay annuities out of rents and profits of estate) in 4 *Kent Com.* 311, *n. b.*

— **v. Keeler**, 62 *Barb.* 231. Aff'd in 53 *N. Y.* 114. See *Howard v. Daly*. Decision in 53 *N. Y.* cited with *Bank of U. S. v. Davis*, 2 *Hill*, 451 (When one of several joint agents may act singly) in *Whart. Com. on Ag.* § 141. Explained (Law does not compel performance of idle acts) in 2 *Benj. on Sales*, § 859, *n. 7* (Corbin's 4 *Am. ed.*).

— **v. Northern Central Ry. Co.**, 17 *Hun.* 115. Aff'd in 82 *N. Y.* 370. See *Wright v. N. Y. Central R. R. Co.* Decision in 17 *Hun.* explained and applied (Contributory negligence a question of fact) in *McMahon v. Port Henry Iron Ore Co.*, 24 *Hun.* 49. Explained (Master's liability for servant's torts) in *Moak's Underhill's Torts*, 1 *Am. ed.* 63.

— **v. Ross**, 7 *Paige*, 103. Not followed (Vesting of trusts on death of trustees of personality) in *Matter of Howell*, 61 *How. Pr.* 179. Followed in *Wells v. Wallace*, 2 *Redf.* 58, 63. Collated with other cases in *Bishop on Assign.* § 348. Explained (Parties to proceedings for appointment of new trustee) in 1 *Perry on Trusts*, 3 ed. § 282.

— **v. Sackett**, 3 *Hun.* 605; *s. c.*, reported fully, 6 *Sup'm. Ct. (T. & C.)* 322.

— **v. Smith**, 25 *Wend.* 642; *s. c.*, 14 *N. Y. Com. L. Law. ed.*, 973, with brief note. Quoted and explained (Innkeeper's liability) in 2 *Pars. on Contr.* 155, *n. r.*

**Hawn v. Banks**, 4 *Edw.* 664. Explained and applied (Lapse of legacy given to one and his heirs) in *Williams v. Seaman*, 3 *Redf.* 151.

**Haxton v. Bishop**, 3 *Wend.* 13. See *Bank of Niagara v. McCracken*; *Wolcott v. Van Santvoord*. Examined and disting'd (Assignment in view of insolvency) in *Robinson v. Bank of Attica*, 21 *N. Y.* 406, 411; and see *Eastern Bank v. Capron*, 22 *Conn.* 644. Criticised as unsatisfactory in *Paulding v. Chrome Steel Co.*, 94 *N. Y.* 338. Quoted and explained in *Burrill on Assign.* § 65, 4 ed. Applied (When bills of bank cannot be set off in action by indorsee of note) in *Baxter v. Little*, 6 *Metc. (Mass.)* 7; *s. c.* 89 *Am. Dec.* 707, 710, with note.

— **v. Corse**, 4 *Edw.* 585. Aff'd in 2 *Barb. Ch.* 506. See *Kilpatrick v. Johnson*. Decision in 2 *Barb. Ch.* explained (Effect of proof of debt in bankruptcy proceedings as bar) in *Hoyt v. Freel*, 8 *Abb. Pr. N. S.* 220, 223. Cited as authority in *Brandon Manufacturing Co. v. Frazer*, 47 *Vt.* 88; *s. c.*, 19 *Am. R.* 118; in *Ansonia Brass, & Co. v. New Lamp Chimney Co.*, 53 *N. Y.* 123, being also cited in this connection. Followed in *Bennett v. Goldthwait*, 109 *Mass.* 494; *s. c.*, 12 *Am. R.* 742. Followed with *Frereton v. Hull*, 1 *Den.* 75, in *Wales v. Lyon*, 2 *Mich.* 284. Explained (Validity of provision for accumulation) in *McGrath v. Van Stavoren*, 8 *Daly*, 454, 457. Applied with *Craig v. Craig*, 3 *Barb. Ch.* 76; *Kilpatrick v. Johnson*, 15 *N. Y.* 322; *Manice v. Manice*, 43 *Id.* 384; *Pray v. Hegeman*, 92 *Id.* 502; *Barbour v. De Forest*, 95 *Id.* 13, in *Cook v. Lowry*, 95 *Id.* 103.

**Hay v. Cohoes Co.**, 5 *Barb.* 42. Aff'd in 2 *N. Y.* 159; *s. c.*, 51 *Am. Dec.* 279, with note, wherein it is said to have been extensively recognized as authority in the cases there cited. *Tremain v. Cohoes Co.*, 2 *N. Y.* 163, is frequently cited as a companion case to it. See *Bailey v. Mayor, &c. of N. Y.*; *McAllister v. Hammond*; *Panton v. Holland*; *Radcliff v. Mayor, &c. of Brooklyn*. Decision in 2 *N. Y.* limited (Liability for injury resulting from lawful use of one's land) in *Losee v. Buchanan*, 51 *Id.* 476, 479. Disting'd in *Marvin v. Brewster Iron Mining Co.*, 55 *Id.* 538, 558. Examined with other cases in *Heeg v. Licht*, 80 *Id.* 579, 583. Followed in *St. Peter v. Denison*, 58 *Id.* 416, 421, 423. Applied in *Caro v. Metrop. Elev. Ry. Co.*, 46 *Super. Ct. (J. & S.)* 138, 169; *McAndrews v. Colliard*, 13 *Vroom (N. J.)* 189; *s. c.*, 36 *Am. R.* 508, 510; *Washburn v. Gilman*, 64 *Me.* 163; *s. c.*, 18 *Am. R.* 246. Cited with approval with *Tremain v. Cohoes Co.*, 2 *N. Y.* 163 in *City of Tiffin v. McCormack*, 34 *Ohio St.* 638; *s. c.*, 32 *Am. R.* 408, 412. Cited and *Panton v. Holland*, 17 *Johns.* 92; *La Sala v. Holbrook*, 4 *Paige*, 169; *Clark v. Foot*, 8 *Johns.* 421; *Livingston v. Adams*, 8 *Cow.* 175; disting'd *Bailey v. Mayor, &c. of N. Y.*, 3 *Hill*, 531; 2 *Den.* 433, also being cited, and *Radcliff's Ex'rs v. Mayor, &c. of Brooklyn*, 4 *N. Y.* 195, disapproved, in *Cahill v. Eastman*, 18 *Minn.* 324; *s. c.*, 10 *Am. R.* 184, 187, 194, 198. With this case and *St. Peter v. Denison*, 58 *N. Y.* 416, compare *Beauchamp v. Saginaw Mining Co.*, 50 *Mich.* 163; *s. c.*, 45 *Am. R.* 30. Collated with other cases in *Bigel. Cas. on Torts*, 499. Explained in *Wood on Nuis.* 2 ed. § 130. Included in 1 *Thomps. on Negl.* 72. Collated with other cases in *Id.* 105. Limited with *Schile v. Brockhaus*, 80 *N. Y.* 614; *Manhattan Real Estate Ass'n*, 89 *Id.* 498; *St. John v. Mayor, &c.*, 6 *Duer*, 315 (Liability of trespasser) in *Taylor v. Metropolitan Elev. Ry. Co.*, 50 *Super. Ct. (J. & S.)* 311, 329. Disting'd (Liability for negligent

- blasting done by agent) in *McCafferty v. Spuyten Duyvil, &c. R. R. Co.*, 61 *N. Y.* 178, 185.
- *v. Star Fire Ins. Co.*, 13 *Hun.* 496. Aff'd in 77 *N. Y.* 235; s. c., 33 *Am. R.* 607. See *Attorney-General v. North Am. Life Ins. Co.*; *Mayor, etc. of N. Y. v. Hamilton Fire Ins.* Decision in 77 *N. Y.* applied (Limitation of action by clause in policy) in *Steen v. Niagara Fire Ins. Co.*, 61 *How. Pr.* 144, 146. Decision in 13 *Hun.* disting'd in *Arthur v. Homestead Fire Ins. Co.*, 78 *N. Y.* 462, 470.
- Haycroft v. Lake Shore & M. S. R'y Co.**, 2 *Hun.* 489; s. c., 5 *Sup'm. Ct. (T. & C.)* 49. Aff'd in 64 *N. Y.* 636. With decision in 2 *Hun.*, see other cases collected (Contributory negligence of child) in 6 *Abb. N. C.* 112, *n.*
- Hayden v. Agent of Auburn Prison**, 1 *Sandf. Ch.* 195. Disting'd (Discharge of surety by acts or omissions of creditor) in *Board of Supervisors v. Otis*, 62 *N. Y.* 94.
- *v. Brooklyn Savings Bank*, 15 *Abb. Pr. N. S.* 297. Disting'd (Negligence in payment by savings bank) in *Allen v. Williamsburgh Sav'g B'k*, 69 *N. Y.* 320.
- *v. Demets*, 34 *Super. Ct. (J. & S.)* 344. Aff'd in 53 *N. Y.* 426. See *Dustan v. McAndrew*. Decision 53 *N. Y.* followed (Sufficiency of tender) in *Stokes v. Recknagel*, 38 *Super. Ct. (J. & S.)* 368, 389. Explained in 2 *Benj. on Sales*, § 1125, *n.* 6 (Corbin's 4 *Am. ed.*). Applied with *Dustan v. McAndrew*, 44 *N. Y.* 72 (Vendor's right to recover contract price of article manufactured) in *Smith v. Wheeler*, 7 *Oreg.* 49; s. c., 33 *Am. R.* 698, with note.
- *v. Palmer*, 2 *Hill*, 205. Aff'd in 7 *Id.* 385.
- Haydock v. Stow**, 40 *N. Y.* 363. Disting'd (Duty of agent to make contract on most favorable terms) in *Argus Co. v. Mayor, etc. of Albany*, 55 *Id.* 495, 502.
- Haye v. Robertson**, 38 *Super. Ct. (J. & S.)* 59. Opposed (Clerk's power to award costs) in *Williams v. Cassidy*, 22 *Hun.* 180.
- Hayes v. Adams**, 2 *Sup'm Ct. (T. & C.)* 593. Collated with other cases (Evidence of handwriting) in 35 *Am. R.* 635, *n.*
- *v. Bement*, 3 *Sandf. Ch.* 394. Approved (Claim of special partner) in *Hayes v. Heyer*, 35 *N. Y.* 326.
- *v. Carrington*, 12 *Abb. Pr.* 179. See (Exoneration of bail) *Code Civ. Pro.* 1881, § 601, *n.*
- *v. Heyer*, 4 *Sandf. Ch.* 485. See *Deming v. Colt*. Discussed (Power of partner to make assignment for benefit of creditors) in *Burrill on Assign.* §§ 78, 79, 4 *ed.*
- *v. Huffstater*, 1 *Sup'm Ct. (T. & C.)* Add. 6; s. c., more fully, 65 *Barb.* 530.
- *v. Kershow*, 1 *Sandf. Ch.* 258. Disapproved (Enforcing agreement void at law) in *Duvoll v. Wilson*, 9 *Barb.* 487. Cited in 1 *Add. on Contr.* 4, *n.*, *Abb. ed.* Reviewed with *Bunn v. Winthrop*, 1 *Johns. Ch.* 329; *Shepard v. Shepard*, 7 *Id.* 63, and other cases in *Marling v. Marling*, 9 *W. Va.* 79; s. c., 27 *Am. R.* 535, 543, 545, 547.
- *v. People*, 15 *Abb. Pr.* 163; s. c., 5 *Park.* 325. Aff'd, in 25 *N. Y.* 390. Opinion of *WRIGHT, J.*, in *Ct. of App.* reported in 24 *How. Pr.* 452. Decision in 25 *N. Y.* applied (What will support indictment for bigamy) in *People v. Brown*, 34 *Mich.* 339; s. c., 22 *Am. R.* 531, 533. Discussed (Formalities of marriage contract) in 2 *Add. on Contr.* 848, *n.*, *Abb. ed.*
- *v. Phelan*, 4 *Hun.* 733. See dissenting opinion in 5 *Id.* 335, *n.* See *Aldrich v. Sager*; *Dubois v. Miller*. Decision in 4 *Hun.*, in effect overruled (Right of action under Civil Damage Act) in *Jackson v. Brookins*, 5 *Hun.* 530; *Smith v. Reynolds*, 8 *Id.* 128. Explained in *Dubois v. Miller*, 5 *Id.* 333; *Quain v. Russell*, 8 *Id.* 319. Reviewed with *Brookmire v. Monaghan*, 15 *Id.* 16; *Jackson v. Brookins*, 5 *Id.* 530; *Smith v. Reynolds*, 8 *Id.* 123; *Quain v. Russell*, *Id.* 319, in *Mead v. Stratton*, 87 *N. Y.* 493. Cited as authority in *Kirchner v. Meyers*, 35 *Ohio St.* 85; s. c., 35 *Am. R.* 598. Referred to in 48 *Am. Dec.* 630, *n.*, as overruled in *N. Y.*
- *v. Symonds*, 9 *Barb.* 260. Cited (Repeal by implication) in *Peck v. Peck*, 8 *Abb. N. C.* 400, 402.
- *v. Thompson*, 15 *Abb. Pr. N. S.* 220. Said in *Id.* 221, *n.* to have been aff'd by General Term. Another proceeding in 2 *Hun.* 518; s. c., 5 *Sup'm Ct. (T. & C.)* 713.
- *v. Ward*, 4 *Johns. Ch.* 123; s. c., 8 *Am. Dec.* 554; with note, wherein it is said to have been extensively followed. See *Schroepell v. Shaw*. Followed with *King v. Baldwin*, 2 *Johns. Ch.* 562 (Right of surety to compel principal to discharge debt) in *Pride v. Boyce*, *Rice Eq. (So. Car.)* 275; s. c., 33 *Am. Dec.* 78. Thought in *Abercrombie v. Knox*, 3 *Ala.* 728; s. c., 37 *Am. Dec.* 721, 723, with note, not to conflict with the general rule. Applied (Duty of creditor having lien on two funds) in *Ingalls v. Morgan*, 10 *N. Y.* 188. Followed and approved (Liability of creditor to surety for property taken as security) in *Baker v. Briggs*, 8 *Pick. (Mass.)* 121; s. c., 9 *Am. Dec.* 311, 316, with note. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 *ed.* 397, 399. Referred to in *Bank of Manchester v. Bartlett*, 13 *Verm.* 315; s. c., 37 *Am. Dec.* 594, as lucidly discussing provisions of civil law in favor of sureties. Commented on (Restraining suits in other States) in 1 *High on Inf.* 2 *ed.*, § 105, *n.* 1. Approved (Sureties' rights and remedies) in *Story on Eq. Jur.* §§ 324, 327.
- *v. Willio*, 11 *Abb. Pr. N. S.* 167. Rev'd in 4 *Daly*, 259. Dictum of *DALY, J.*, in 11 *Abb. Pr. N. S.* approved (Injunction as remedy against violation of contract for theatrical services) in *Daly v. Smith*, 38 *Super. Ct. (J. & S.)* 158, 170.
- Hayner v. American Popular Life Ins. Co.**,

- 35 *Super. Ct. (J. & S.)* 266. Modified on further argument in 36 *Id.* 211, which was aff'd, it seems, in 62 *N. Y.* 620, but without opinion. Further proceeding in 69 *Id.* 485. See *Cohen v. N. Y. Mut. Life Ins. Co.* Decision in 36 *Super. Ct. (J. & S.)* disting'd (Ground for reargument) in *Butterfield v. Radde*, 40 *Id.* 169. Decision in 69 *N. Y.* reviewed with *Cohen v. N. Y. Mut. Life Ins. Co.*, 50 *Id.* 610 (Remedy in case of refusal by insurance company to receive premiums) in *Day v. Conn. Gen. Life Ins. Co.*, 45 *Conn.* 480; s. c., 29 *Am. R.* 693, 702.
- Haynes, Ex parte**, 18 *Wend.* 611. Applied (Proof by swearing to belief) in *Noble v. Halliday*, 1 *N. Y.* 330, 336. Disting'd in *Miller v. Adams*, 52 *Id.* 409, 414.
- Haynes v. Rudd**, 17 *Hun.* 477. Rev'd in 83 *N. Y.* 251.
- Hays v. Berryman**, 6 *Bosw.* 679. Examined with other cases (Practice on assessment of damages) in *Thompson v. Lumley*, 7 *Daly*, 74, 80.
- **v. Gourley**, 1 *Hun.* 38; s. c., 3 *Sup'm. Ct. (T. & C.)* 115. Another decision arising under provisions in same will in *Gourley v. Campbell*, 66 *N. Y.* 169, which rev'd 6 *Hun.* 218, which see.
- **v. Hathorn**. See *Hays v. Southgate*.
- **v. Miller**, 6 *Hun.* 320. Aff'd in 70 *N. Y.* 112.
- **v. People**, 1 *Hill.* 351. Explained and reconciled with English cases (Rape on child) in *People v. Bransby*, 32 *N. Y.* 525, a case of an adult. Followed in *Singer v. People*, 13 *Hun.* 418, 420. Dissented from in *State v. Pickett*, 11 *Nev.* 255; s. c., 21 *Am. R.* 754.
- **v. Southgate**, 10 *Hun.* 511. Rev'd as *Hays v. Hathorn* in 74 *N. Y.* 485. Decision in *Id.* applied (Necessity that action be in name of real party in interest) and *Wetmore v. Hegeman*, 88 *Id.* 69 disting'd in *Iselin v. Rowlands*, 30 *Hun.* 488. Disting'd (Plaintiff's title to note, &c. in suit) in *Freeman v. Falconer*, 45 *Super. Ct. (J. & S.)* 383. Decision in 10 *Hun.* disting'd in *Bell v. Tilden*, 16 *Id.* 346.
- **v. Stone**, 7 *Hill.* 123. Aff'd in 3 *Den.* 575.
- **v. Thomae**, 56 *N. Y.* 521. Cited as authority (Effect of death of mortgagor pending foreclosure action) in *Grant v. Griswold*, 21 *Hun.* 509.
- Hayward v. Liverpool, &c. Ins. Co.**, 7 *Bosw.* 385. Aff'd in 2 *Abb. Ct. App. Dec.* 349; s. c., 5 *Abb. Pr. N. S.* 142. See *St. John v. Am. Fire & Marine Ins. Co.* Decision in 7 *Bosw.* opposed (Contradictory clauses in insurance policy) in *Hayward v. Northwestern Ins. Co.*, 19 *Abb. Pr.* 116, where it is considered as overruled by *Harper's Case*, 22 *N. Y.* 44.
- **v. Northwestern Ins. Co.**, 19 *Abb. Pr.* 116. Overruled (Liability under policy, for loss happening by explosion) in *Hayward v. Liverpool & London Ins. Co.*, 5 *Abb. Pr. N. S.* 142.
- Hazard v. Fiske**, 18 *Hun.* 277. Aff'd in 83 *N. Y.* 287.
- **v. Hefford**, 2 *Hun.* 445. Questioned (Undue influence over testator) in *McCoy v. McCoy*, 4 *Redf.* 54, 58; *Van Kleeck v. Phipps*, *Id.* 99, 127.
- **v. Spears**, 2 *Abb. Ct. App. Dec.* 353. Cited (Effect of words and acts of principal as ratification) in *Whart. Com. on Ag.* § 84.
- Hazewell v. Coursen**, 45 *Super. Ct. (J. & S.)* 22. Rev'd in 81 *N. Y.* 630. Previous decision in 36 *Super. Ct. (J. & S.)* 459.
- Hazleton v. Wakeman**, 3 *Hov. Pr.* 357. Followed with *Wakeman v. Price*, 3 *N. Y.* 334 (Order not appealable) in *Buffalo Savings Bank v. Newton*, 23 *Id.* 160, 162.
- Hazman v. Hoboken Land and Improvement Co.**, 2 *Daly*, 130. Confirmed on further decision in 50 *N. Y.* 53.
- Heacock v. Saratoga Mut. Fire Ins. Co.** *Unreported* (Ct. of App. Sept. 27, 1856). Followed (Severability of contract of insurance) in *Merrill v. Agricultural Ins. Co.*, 73 *N. Y.* 452, 462, which aff'd 10 *Hun.* 428, which see.
- Head v. Stevens**, 19 *Wend.* 411. See *Cross v. Huntley*. Approved (Uselessness of patent as defense) in *McDougal v. Fogg*, 2 *Bosw.* 391. Followed (Jurisdiction of State court to inquire collaterally into validity of patent) in *Merserole v. Union Paper Collar Co.*, 6 *Blatchf. Ct. Ct.* 356, 361.
- Heady's Will**, 15 *Abb. Pr. N. S.* 211. Rev'd as *Hitchcock v. Thompson*, 6 *Hun.* 279. See *Sisters of Charity v. Kelly*. Decision in 15 *Abb. Pr. N. S.* explained and disting'd (Effect of leaving blank in body of will) in *Matter of Collins*, 5 *Redf.* 20, 26.
- Healey v. Dry Dock, &c. R. R. Co.**, 11 *Weekly Dig.* 441. Reported in full as *Healey v. Same*, 46 *Super. Ct. (J. & S.)* 473.
- **v. Dudley**, 5 *Lans.* 115. Approved and followed (Surrogate's salary) in *Spring v. Wait*, 22 *Hun.* 441.
- Health Department of N. Y. v. Police Department of N. Y.**, 51 *Hov. Pr.* 481. Aff'd, in 41 *Super. Ct. (J. & S.)* 323.
- Healy v. Mayor, &c. of N. Y.**, 3 *Hun.* 708. See other cases collected (Contributory negligence of disabled, &c. person) in 6 *Abb. N. C.* 117, n.
- Heaney v. Heeney**, 2 *Den.* 625. Explained (Use of piers) in *Dutton v. Strong*, 1 *Black.* 23.
- Heard v. City of Brooklyn**, 60 *N. Y.* 242. Further decisions as *Strong v. City of Brooklyn*, 68 *Id.* 1; 12 *Hun.* 453. These decisions disting'd (Title to land taken for railroad purposes) in *Terry v. N. Y. Central, &c. R. R. Co.*, 67 *Hov. Pr.* 439.
- **v. Horton**, 1 *Den.* 165. Disting'd (Meaning of term "heirs") in *Cushman v. Horton*, 59 *N. Y.* 149, 152.
- Hearsey v. Pruyn**, 7 *Johns.* 179; s. c., 4 *N. Y. Com. L. Law. ed.* 289, with brief note. See *Sims v. Brown*. Cited (What is notice to agent not to pay over) in *Whart. Com. on Ag.* § 516; *Ripley v. Gelston*, 9 *Johns.* 201; *Frye v. Lockwood*, 4 *Cow.* 456, be-

- ing also cited in § 519, as to the necessity of such notice.
- Heartt v. Livingston**, 53 *How. Pr.* 487. Aff'd in 14 *Hun.* 245.
- Heath, Ex parte**, 3 *Hill*, 42; s. c., 15 *N. Y. Com. L. Law*, ed. 508, with brief analysis of subsequent citations of this case. Applied (Necessity of clearness in act which is to divest jurisdiction already vested) in *Crane v. Reeder*, 28 *Mich.* 527; s. c., 15 *Am. R.* 223, 227. Quoted and collated with other cases (Canvassing election returns) in *Brightly's Cas. on Elections*, 305.
- Heath v. Barmour**, 49 *Barb.* 496. Aff'd in 50 *N. Y.* 302, but overruled as to the *reverter*.
- **v. Hubbell**, 6 *Daly*, 183. Followed (Transfer of cause to N. Y. Marine Court) in *Farrington v. O'Conner*, 6 *Daly*, 209.
- **v. Ross**. See *Jackson v. Ramsay*; *Jackson v. Raymond*.
- Hebbard v. Haughian**, 70 *N. Y.* 54. See *Whiting v. Barney*. Compared with other cases (Communications to attorney, when not privileged) in *Pearsall v. Elmer*, 5 *Redf.* 181, 183. See *Code Civ. Pro.* 1881, § 835, n.
- Hebrew Benevolent Orphan Asylum, Matter of**, 10 *Hun.* 112. Aff'd in part and rev'd in part in 70 *N. Y.* 476. Decision in *Id.* applied (Omission of dollar mark in tax proceedings) in *American Tool Co. v. Smith*, 14 *Abb. N. C.* 378.
- Heckmann v. Pinkney**, 8 *Daly*, 466; s. c., 6 *Abb. N. C.* 371. Aff'd in 81 *N. Y.* 211. Decision in 6 *Abb. N. C.* cited (Repeal by implication) in *Peck v. Peck*, 8 *Id.* 400, 402.
- Heckscher v. McCrea**, 24 *Wend.* 304. See *Clark v. Marsiglia*. Applied (Effect of contract for freight, entered into irrespective of charter-party) in 406 *Hogsheads of Molasses*, 4 *Blatchf. C. Ct.* 319, 322.
- Hedges v. Bungay**, 3 *Hun.* 594; s. c., 6 *Sup'm. Ct. (T. & C.)* 304; more fully, 16 *Abb. Pr. N. S.* 313.
- **v. Hudson River R. R. Co.**, 6 *Robt.* 119. Rev'd in 49 *N. Y.* 223.
- **v. Sealy**, 9 *Barb.* 214. Approved (Holder of unindorsed note, not a *bona fide* holder) in *Haydon v. Nicoletti*, 18 *Nev.* 290, 300.
- Heeg v. Licht**, 16 *Hun.* 257. Rev'd in 80 *N. Y.* 579; s. c., 8 *Abb. N. C.* 355; 36 *Am. R.* 654, with note.
- Heeney, Matter of**, 2 *Barb. Ch.* 326. Disting'd (Trustees' accounting) in *Stephens v. Marshall*, 23 *Hun.* 641.
- Heeney v. Brooklyn Benev. Society**, 33 *Barb.* 360. Aff'd in 39 *N. Y.* 333.
- Heermance v. Taylor**, 14 *Hun.* 149. Explained (Acceptance required by statute of frauds) in *Benj. on Sales*, § 155, n. o (Bennett's 4 *Am. ed.*). Discussed in *Id.* § 158, n. (Corbin's 4 *Am. ed.*).
- **v. Vernoy**, 6 *Johns.* 5. Relied on with *Holmes v. Tremper*, 20 *Id.* 29; *Cresson v. Stout*, 17 *Id.* 121 (Machines, &c. as fixtures) in dissenting opinion of *Tou, J.*, in *Gray v. Holdship*, 17 *Serg. & R. (Penn.)* 413; s. c., 17 *Am. Dec.* 680, 685, with lengthy note, collating cases. Applied (Sale of personal property annexed to realty implies warranty of title, to sale of patent rights) in *Faulks v. Kamp*, 17 *Blatchf. C. Ct.* 432, 434. Quoted in 2 *Story on Contr.* 5 ed., § 1062, n. 3. Collated with other cases (Essentials of trespass upon property) in *Bigel. Cas. on Torts*, 379. Discussed in 1 *Add. on Torts*, 459, n., *Wood's ed.*
- **v. Yeomans (Unreported)**. Cited with approval with *Sands v. Taylor*, 5 *Johns.* 395 (Vendor's right to resell goods on buyer's refusal to take them away) in *Gilly v. Henry*, 8 *Mart. (La.)* 402; s. c., 13 *Am. Dec.* 291.
- Heermans v. Ellsworth**, 3 *Hun.* 473; s. c., 5 *Sup'm. Ct. (T. & C.)* 605. Aff'd in 64 *N. Y.* 159.
- **v. Robertson**, 3 *Hun.* 464; s. c., more fully, 5 *Sup'm. Ct. (T. & C.)* 596. Aff'd in 64 *N. Y.* 332. Further decisions affecting construction of deed here involved, in *Heermans v. Burt*, 78 *N. Y.* 259; *Heermance v. Schmaltz*, *U. S. Cir. Ct., E. D. Wis.*, 7 *Fed. Rep.* 566, 569.
- Hegeman v. Cantrell**, 50 *How. Pr.* 188. Aff'd in 43 *Super. Ct. (J. & S.)* 550. Another proceeding in 40 *Id.* 381. Decision in 50 *How. Pr.* cited as authority (Practice on trial of special issues) in *Carroll v. Deimel*, 13 *Weekly Dig.* 401. Questioned in *Chapin v. Thompson*, 53 *How. Pr.* 46.
- **v. Fox**, 1 *Redf.* 297. Aff'd in 31 *Barb.* 475. Doctrine of decision in *Id.* discussed and limited (Domicile) in *Am. L. Reg. N. S.* 739. Collated with other cases in *Thomps. on Prov. Rem.* 360.
- **v. Hegeman**, 8 *Daly*, 1. Applied (Assignment of trade-mark) in *Matter of Swezey*, 62 *How. Pr.* 215, 218.
- **v. Western R. R. Corporation**, 16 *Barb.* 353. Aff'd in 13 *N. Y.* 9; s. c., 64 *Am. Dec.* 517, with note. See *Benson v. Mayor, &c. of N. Y.*; *Camden & Amboy R. R. & Transp. Co. v. Burke*; *Teall v. Barton*. Decision in 13 *N. Y.* criticised, but applied (Duty of railroad company to furnish roadworthy vehicles) in *Alden v. N. Y. Central R. R. Co.*, 26 *Id.* 103. Compare *Tinney v. Boston & Albany R. R. Co.*, 62 *Barb.* 218, and cases cited. Quoted in *Ang. on Carr. of Pass.* 160. Collated with other cases in 2 *Redf. Am. Railw. Cas.* 415. Cited as authority (Risk assumed by passenger) in *The City of Panama*, 101 *U. S.* 453, 462. Decision in 16 *Barb.* explained as not shaking rule in *Collins v. Albany & Schenectady R. R. Co.*, 12 *Id.* 492; *Clapp v. Hudson River R. R. Co.*, 19 *Id.* 461 (Damage for personal injury, when not excessive) in *Murray v. Hudson River R. R. Co.*, 47 *Id.* 196, 203.
- Heidenbach v. Schland**, 10 *How. Pr.* 447.

- Applied (Domicil and residence) in *Ryall v. Kennedy*, 40 *Super. Ct. (J. & S.)* 347, 361, which was aff'd in 67 *N. Y.* 379, 386, which see. Applied with Matter of *Wrigley*, 4 *Wend.* 602, in *Swaney v. Hutchins*, 13 *Neb.* 268. Collated with other cases in *Thomps. on Prov. Rem.* 359.
- Heidenheimer v. Mayer**, 42 *Super. Ct. (J. & S.)* 506. Aff'd, it seems, in 74 *N. Y.* 607, but without opinion. Decision in 42 *Super. Ct. (J. & S.)* explained (Negotiable paper, by what law governed) in 2 *Greenl. on Ev.* 14 ed., § 153 a, n. a.
- Heim v. Wolf**, 1 *E. D. Smith*, 70. Approved (Remedy of discharged employee) in *Moody v. Leverich*, 14 *Abb. Pr. N. S.* 145, 150.
- Heimstreet v. Howland**, 5 *Den.* 68. See *Burckle v. Eckhart*. Applied (Liability of third person as partner) in *Burnett v. Snyder*, 43 *Super. Ct. (J. & S.)* 238, 246. Explained in 1 *Collyer on Partn.* § 47, n. 1, *Wood's Am. ed.*
- Heinemann v. Heard**, 50 *N. Y.* 27. Rev'g 58 *Barb.* 524. Further decision in 62 *N. Y.* 448, which rev'd 2 *Hun.* 324; s. c., 4 *Sup'm. Ct. (T. & C.)* 666. Decision in 50 *N. Y.* applied (Agent when liable without fraud) in *Hoffman v. Livingston*, 46 *Super. Ct. (J. & S.)* 552, 557. Disting'd in *Weston v. Ward*, 4 *Redf.* 415, 437. Decision in 62 *N. Y.* reviewed and approved in preference to *Stephen's Dig. Ev.* art. 95 (Burden of proof of insanity) in 16 *Am. L. Rev.* 118.
- Heinmuller v. Abbott**, 34 *Super. Ct. (J. & S.)* 229. Further proceedings, it seems, in *Heinmuller v. Gray*, which see.
- **v. Gray**, 35 *Super. Ct. (J. & S.)* 196; s. c., 13 *Abb. Pr. N. S.* 299; 46 *How. Pr.* 260. Compare (Abatement of replevin, &c.) *Burnham v. Brennan*, 60 *How. Pr.* 310.
- Heinrick v. Kom**. See *Knapp v. Wallace*.
- Heins v. Peine**, 35 *Super. Ct. (J. & S.)* 568. Aff'd 56 *N. Y.* 610.
- **v. —**, 6 *Robt.* 420; Cited with *Enoch v. Wehrkamp*, 3 *Bosw.* 398 (What is covered by factor's lien) in *Whart. Com. on Ag.* § 767.
- Heishon v. Knickerbocker Life Ins. Co.**, 45 *Super. Ct. (J. & S.)* 34. Rev'd in 77 *N. Y.* 278. Decision in *Id.* applied (Examination before trial) in *Kelly v. Chicago & N. W. Ry. Co.*, 60 *Wis.* 480, 490.
- Helmer v. Shoemaker**, 22 *Wend.* 137; s. c., 14 *N. Y. Com. L. Law. ed.* 86, with brief note. See *Jackson v. Bull*.
- Helms v. Goodwill**, 4 *Sup'm. Ct. (T. & C.)* 645; s. c., more fully, 2 *Hun.* 410. Rev'd in 64 *N. Y.* 642.
- Hemenway v. Wilson**, 1 *Hun.* 721. Fuller mem. in 5 *Sup'm. Ct. (T. & C.)* 669. Aff'd, it seems, in 59 *N. Y.* 633, but without opinion.
- Hemiup, Matter of**, 3 *Paige*, 305. Disapproved (Review of surrogate's jurisdiction to order sale) in *Bostwick v. Atkins*, 3 *N. Y.* 53.
- Hempstead v. N. Y. Central R. R. Co.** See *Bostwick v. Champion*.
- **v. Weed**, 20 *Johns.* 64; s. c., 11 *Am. Dec.* 244. Applied (Powers of outgoing sheriff as to prisoners in custody) in *Feerick v. Conner*, 60 *How. Pr.* 506, 508.
- Henderson v. Brown**, 1 *Cai.* 92; s. c., 2 *Am. Dec.* 164; 2 *N. Y. Com. L. Law. ed.*, 78, with brief note on officers' liability.
- **v. Cairns**, 14 *Barb.* 15. Disting'd as concerning judgment recovered before R. S. (Presumption as to payment of judgment) in *Malloy v. Vanderbilt*, 4 *Abb. N. C.* 127, 132. See *Code Civ. Pro.* 1881, § 377, n.
- **v. Henderson**, 3 *Den.* 314. Followed (Presumption of payment of assessment) in *Fisher v. Mayor, &c. of N. Y.*, 6 *Hun.* 64, 66, which was rev'd in 67 *N. Y.* 73, 80, which see.
- **v. Jackson**, 9 *Abb. Pr. N. S.* 293. Disapproved (Misjoinder) in *Barton v. Speis*, 5 *Hun.* 60. But see *Harris v. Eldridge*, 5 *Abb. N. C.* 278.
- **v. Marvin**, 31 *Barb.* 297; s. c., more fully, 11 *Abb. Pr.* 142. Disting'd (Liability of guarantor) in *Western N. Y. Life Ins. Co. v. Clinton*, 66 *N. Y.* 332; *Stewart v. Ranney*, 23 *How. Pr.* 205, 207.
- **v. N. Y. Central R. R. Co.**, 13 *Barb.* 222. Rev'd in 16 *N. Y.* 97. Further decision in 17 *Hun.* 344; and that aff'd in 78 *N. Y.* 423. See *Williams v. N. Y. Central R. R. Co.* Decision in 78 *N. Y.* disting'd (Ejectment to recover possession of street) in *Troy & Boston R. R. Co. v. Boston, &c. Ry. Co.*, 86 *Id.* 127.
- **v. Scott**, 25 *Hun.* 59. Abridgt. s. c., in 12 *Weekly Dig.* 363.
- **v. Spofford**, 10 *Abb. Pr. N. S.* 140; s. c., 3 *Daly*, 361. Aff'd in 59 *N. Y.* 131.
- **v. Sturgis**, 1 *Daly*, 336. Followed (Mechanic's lien in case of assumption of contract) in *Murry v. Hutcheson*, 8 *Abb. N. C.* 423, 426.
- Hendricks v. Bloodgood**, 18 *Wend.* 670. Explained (Necessity of giving notice of signing of referee's report) in *Anonymous*, 2 *Hill*, 389.
- **v. Bonck**, 4 *E. D. Smith*, 461; s. c., more fully, 2 *Abb. Pr.* 360.
- **v. Carpenter**, 2 *Robt.* 625; s. c., 1 *Abb. Pr. N. S.* 213. Aff'd in 4 *Robt.* 665.
- **v. Franklin**, 4 *Johns.* 119. Overruled (Rate of exchange recoverable in action on bill) in *Graves v. Dash*, 12 *Id.* 17.
- **v. Judah**, 2 *Cai.* 25; s. c., 2 *Am. Dec.* 213, with note. Followed (Title of assignees in bankruptcy to lease or term) in *Re Washburn*, 11 *Bankr. Reg.* 66.
- **v. —**, 1 *Johns.* 319. See *Bank of Orleans v. Barry*. Compare (Set off as defense to action on note) *Bridge v. Johnson*, 5 *Wend.* 342; *Burrough v. Moss*, 10 *Barn. & C.* 558. Criticised and questioned with *O'Callaghan v. Sawyer*, 5 *Johns.* 118; *Bank of Niagara v. McCracken*, 18 *Id.* 493; *Ford v. Stuart*, 19 *Id.* 342, in *Robinson v. Lyman*, 10 *Conn.* 30; s. c., 25 *Am. Dec.* 52,

- with note. See to the contrary *Holland v. Makepeace*, 8 *Mass.* 418.
- **v. Robinson**, 2 *Johns. Ch.* 283. Aff'd as *Hendricks v. Walden*, 17 *Johns.* 438, but without opinion. Decision in 2 *Johns. Ch.* disting'd with *Brinkerhoff v. Brown*, 4 *Id.* 677 (Judgment at law as condition precedent to granting creditor relief in equity), as inapplicable to proceedings against personal representative, in *Birely's Ex'rs v. Staley*, 5 *Gill & J. (Md.)* 432; s. c., 25 *Am. Dec.* 303, 309, with note. Cited as settled law with *Nicoll v. Mumford*, 4 *Johns. Ch.* 522 (Debtor's right to prefer creditors) in *Deaver v. Savage*, 3 *Mo.* 252; s. c., 25 *Am. Dec.* 437. Followed (Validity of contract made to secure future debt) in *Calkins v. Lockwood*, 16 *Conn.* 276; s. c., 41 *Am. Dec.* 143, 147. Explained (Assignment for benefit of creditors as distinguished from mortgage) in *Burrill on Assign.* § 8, n. 1, 4 ed.
- **v. Stark**, 37 *N. Y.* 106. Explained (Party-wall as incumbrance) in *Brooks v. Curtis*, 50 *Id.* 639, 644.
- Hendrickson v. People**, 10 *N. Y.* 13; s. c., 9 *How. Pr.* 155; 1 *Park.* 416, n. Aff'd *Id.* 406; s. c., 8 *How. Pr.* 404. Dissenting opinion of *SELDEN, J.*, in Ct. of App. is in 1 *How. Pr.* 155. Opinion of *WRIGHT, J.*, on granting writ of error, &c., is in 1 *Park.* 396. Decision in 10 *N. Y.* followed and disting'd from *McMahon v. People*, 15 *Id.* 384 (Admissibility of statements of prisoner) in *Teachout v. People*, 41 *Id.* 7. Explained in *McMahon v. People*, 15 *Id.* 384, 392. But see *People v. Montgomery*, 13 *Abb. Pr. N. S.* 207, 251, and criticism in 5 *Moak. Eng.* 168, n. Disting'd in *Murphy v. People*, 63 *N. Y.* 590. Decision in 1 *Park.* explained (Stay of judgment) in *People v. O'Reilly*, 9 *Abb. N. C.* 77, 91.
- Henn v. Walsh**, 2 *Edw.* 129. Quoted and commented on (Receiver of partnership property) in *High on Receiv.* § 474, n. 2.
- Hennequin v. Butterfield**, 43 *Super. Ct. (J. & S.)* 411. Aff'd, it seems, in 76 *N. Y.* 598, but without opinion.
- **v. Clews**, 45 *Super. Ct. (J. & S.)* 108. Rev'd in 77 *N. Y.* 427; s. c., 33 *Am. R.* 641, with note. Prior decision in 43 *Super. Ct. (J. & S.)*, 411, and that aff'd in 76 *N. Y.* 598, but without opinion. Another decision in 46 *Super. Ct. (J. & S.)* 330, and that aff'd in 84 *N. Y.* 676, which was aff'd in 111 *U. S.* 676. See *Palmer v. Hussey*. Decision in 77 *N. Y.* followed (Debts not affected by discharge in bankruptcy) in *Bergen v. Patterson*, 24 *Hun.* 250, 252; *Stratford v. Jones*, 48 *Super. Ct. (J. & S.)* 427. Disting'd in *Bradner v. Strang*, 89 *N. Y.* 299, which aff'd 23 *Hun.* 445, which see; *Hardenbrook v. Colson*, 24 *Id.* 475. Followed with *Rowe v. Guillaume*, 18 *Id.* 556, in *Guilfoyle v. Anderson*, 9 *Daly*, 64. Relied on in *Maxwell v. Evans*, 90 *Ind.* 596; s. c., 46 *Am. R.* 234.
- Hennessey v. People**. See *People v. Allen*.
- Hennessy v. Patterson**, 85 *N. Y.* 91. Decision here aff'd (but construction overruled) is reported as *Foley v. Foley*, 17 *Hun.* 235.
- **v. Wheeler**, 51 *How. Pr.* 457. Rev'd in 69 *N. Y.* 271; s. c., 25 *Am. R.* 188, with note as to infringement of trade-mark.
- Henriques v. Hone**, 2 *Edw.* 120. Disting'd with *Osborne v. Moss*, 7 *Johns.* 161 (Conveyance in fraud of creditors) in *Fox v. Clarke*, *Walk. Ch. (Mich.)* 538. Compare *Hyslop v. Clark*, 14 *Johns.* 458; *Austin v. Bell*, 20 *Id.* 442; *Jackson v. Roberts*, 11 *Wend.* 422; *Drinkwater v. Drinkwater*, 4 *Mass.* 354; *Reiker v. Hare*, 14 *Id.* 137.
- Henry v. Bank of Salina**, 5 *Hill*, 523. Rev'd *Bank of Salina v. Henry*, 1 *Id.* 555. Decision in 5 *Id.* followed (Witness, when obliged to give testimony criminating himself, if protected by statute) in *People v. Hackley*, 24 *N. Y.* 74, 85.
- **v. Bishop**. See *Fox v. Reil*.
- **v. Brown**, 19 *Johns.* 49. Examined (Variance) in 1 *Greenl. on Ev.* 14 ed., § 69, n. 1.
- **v. Cuyler**. See *Gelston v. Hoyt*; *Tenny v. Filer*.
- **v. Davis**, 7 *Johns. Ch.* 40. Aff'd as *Clark v. Henry*, 2 *Cow.* 324. See *Dey v. Dunham*. Decision in 7 *Johns. Ch.* disting'd (Effect of conveyance absolute on face, on mortgage) in *Morrison v. Brand*, 5 *Daly*, 40, 42. Explained in *Thomas on Mort.* 433. Followed (Invalidity of agreement tending to alter nature of mortgage) in *Youle v. Richards*, 1 *Saxton Ch. (N. J.)* 534; s. c., 23 *Am. Dec.* 722, with note. Cited with other cases in 11 *Am. L. Reg. N. S.* 690.
- **v. Henry**, 3 *Robt.* 614; s. c., more fully, 17 *Abb. Pr.* 411; 27 *How. Pr.* 5. Questioned as overlooking 2 *R. S.* 147, § 53 (Right of adulterous wife to limited divorce) in *Doe v. Roe*, 23 *Hun.* 19, 22. Superseded (Counter-claim in matrimonial action) by *Code Civ. Pro.* § 1770, as am'd by *L.* 1881, c. 702.
- **v. Root**, 33 *N. Y.* 526. See *Robinson v. Dauchy*. Collated with other cases (Ratification, by infant, of contract) in 25 *Am. R.* 30, n. Quoted in *Schouler on Dom. Rel.* 3 ed., § 434. Reviewed at length in *Tyler on Inf. & Cov.* 2 ed., § 55. Discussed in *Wait on Fraud. Conv.* §§ 493, 494.
- **v. Wilkes**, 37 *N. Y.* 562. Disting'd (Effect of unauthorized payment of incumbrance) in *Fitzhugh v. Sackett*, 50 *Id.* 699.
- Henschel v. Mahler**, 3 *Hill*, 132. Aff'd in 3 *Den.* 428. Decision in 3 *Hill* collated with other cases (General requisite of negotiable paper) in 1 *Hare & W. Am. Lead. Cas.* 5 ed., 390.
- Hentz v. Long Island R. R. Co.**, 13 *Barb.* 646. See *First Baptist Church v. Utica & Schenectady R. R. Co.* Explained (Right of abutting property holders to compensation for railway) in 1 *Am. L. Reg. N. S.* 198.
- Hepburn v. Hoag**, 6 *Cow.* 614. Followed (Claim for uncertain damages not to be



- used as set-off) in *Drew v. Towle*, 27 *N. H.* 412; s. c., 59 *Am. Dec.* 380.
- Herbeck, Matter of**, 16 *Abb. Pr. N. S.* 214. Approved (Power of surrogate's court to appoint guardian of person or estate) in *Matter of Hosford*, 2 *Redf.* 168. See *Code Civ. Pro.* § 2821.
- Herbert v. Smith**, 6 *Lans.* 493. See also (What is compliance with obligation to discharge incumbrances on property contracted to be sold) *Rinaldo v. Housmann*, 1 *Abb. N. C.* 312.
- Herforth v. Herforth**, 2 *Abb. Pr. N. S.* 489. Disapproved (What will warrant order granting temporary alimony) in *York v. York*, 34 *Iowa*, 530.
- Herkimer v. Rice**, 27 *N. Y.* 163. See *Rohrbach v. Aetna Ins. Co.*; *Springfield Fire & Marine Ins. Co. v. Allen*. Explained (Insurable interest of administrators, &c.) in *Clinton v. Hope Ins. Co.*, 45 *N. Y.* 454. Followed in *Sheppard v. Peabody Ins. Co.*, 21 *W. Va.* 368, 386, as sustained by *Phelps v. Gebhard*, 9 *Bow.* 404; *Clinton v. Hope Ins. Co.*, 45 *N. Y.* 454; *Beach v. Bowers Ins. Co.*, 8 *Abb. Pr.* 261. Cited as containing an elaborate argument,—in 20 *Am. Dec.* 515, *n.* Approved and followed (Insurable interest of creditor) in *Rohrbach v. Germania Fire Ins. Co.*, 62 *N. Y.* 47, 57. (Reviewed with other cases (What is insurable interest) in *Trade Ins. Co. v. Barraciff*, 16 *Vroom (N. J.)* 543; s. c., 46 *Am. R.* 792.
- Herkimer County Bank v. Brown**, 6 *Hill*, 232. Applied (Preference of prior execution, when not lost by delay) in *Ohlson v. Pierce*, 55 *Wis.* 205, 214.
- Herkimer Man'f Co. v. Small**, 21 *Wend.* 273. Further decision in 2 *Hill*, 127, and that rev'd in 2 *N. Y.* 330. Decision in 21 *Wend.* followed (Effect of provision authorizing corporation to sell stock for non-payment of subscription) in *Selma & Tennessee R. R. Co. v. Tipton*, 5 *Ala.* 787; s. c., 39 *Am. Dec.* 344, 349, with note. Explained in *Ang. & A. on Corp.* § 551, 11 ed.
- Herkimer County Mut. Ins. Co. v. Fuller**. See *Thomas v. Whallon*.
- Herman v. Lyons**, 2 *Abb. N. C.* 90; s. c. reported in 10 *Hun.* 111.
- Hernance v. Supervisors of Ulster**, 71 *N. Y.* 481. Disting'd and limited (Tax illegally imposed) in *Matter of N. Y. Catholic Protectory*, 77 *Id.* 342, 345.
- Hermann v. Aaronson**, 8 *Abb. Pr. N. S.* 155. See (Deposit in lieu of bail) *Code Civ. Pro.* 1881, § 586, *n.*
- Hernandez v. Carnobeli**, 4 *Duer*, 642. See *Corwin v. Freeland*. Disapproved with *Bank of Mexico v. Arangois*, 11 *Hon. Pr.* 1 (Vacating order of arrest) in *Barret v. Gracie*, 34 *Barb.* 20, 25. Explained (Right of parent as to correcting child) in 3 *Greenl. on Ev.* 14 ed., § 63, *n. a.*
- Hernstein v. Matthewson**, 5 *Hon. Pr.* 196. Opposed with *Floyd v. Blake*, 11 *Abb. Pr.* 349 (Attachment in case of tort) in *Gordon v. Gaffey*, 11 *Abb. Pr.* 1, 3. See *Barnes v. Buck*, 1 *Lans.* 268. Also *Code Civ. Pro.* 1881, Ch. vii., Tit. iii., Art. 1, *n.*
- Heroy v. Kerr**, 8 *Bow.* 194; s. c., with points of counsel, 21 *Hon. Pr.* 409. Aff'd, on the merits, in 2 *Keyes*, 582; s. c., 2 *Abb. Ct. App. Dec.* 359.
- Herrick v. Ames**, 1 *Keyes*, 190. It does not appear that a majority of the court were agreed upon the grounds in which the judgment in this case was aff'd. The decision has no value as a precedent.
- **v. Bennett**, 8 *Johns.* 374. Applied (When facts may be specially set forth in pleading without stating legal effect) in *Okie v. Spencer*, 2 *Whart. (Pa.)* 253; s. c., 30 *Am. Dec.* 251, 256, with note. Included (Note when payable, when time of payment is not fixed) in 1 *Ames Cas. on B. & N.* 93.
- **v. Blair**, 1 *Johns. Ch.* 101. Applied (Effect of error by arbitrator) in *Frederick v. Guardian Mut. Life Ins. Co.*, 37 *Super. Ct. (J. & S.)* 358, 378.
- **v. Borst**, 4 *Hill*, 650. See *Pain v. Packard*. Applied (Release of surety by neglect to sue principal) in *Maier v. Canavan*, 8 *Duly*, 272, 274. Followed in *Marsh v. Dunckel*, 25 *Hun.* 167, as not shaken by later decisions. Quoted and explained in 2 *Pars. on Contr.* 24, *n. u.*
- **v. Carman**, 10 *Johns.* 224. Subsequent decision in action on same note in 12 *Id.* 159. See *Hall v. Newcomb*; *Tillman v. Wheeler*. Decision in 12 *Johns.* explained with *Tillman v. Wheeler*, 17 *Id.* 326, and dicta disapproved (Liability of irregular indorser) in *Hall v. Newcomb*, 7 *Hill*, 416, which aff'd 3 *Id.* 233, which see. Cited with approval in *Phelps v. Vischer*, 50 *N. Y.* 69. Disapproved in *Burton v. Hansford*, 10 *W. Va.* 470; s. c., 27 *Am. R.* 573. With *Nelson v. Dubois*, 13 *Johns.* 175; *Campbell v. Butler*, *Id.* 349, shown in 3 *Am. Dec.* 571, *n.*, to have been overruled in *Dean v. Hall*, 17 *Wend.* 214; *Hall v. Newcomb*, 7 *Hill*, 416; *Spies v. Gilmore*, 1 *N. Y.* 321. See also in same note *Waterbury v. Sinclair*, 7 *Abb. Pr.* 404; *Moore v. Cross*, 19 *N. Y.* 227; *Meyer v. Hibsher*, 47 *Id.* 279; *Phelps v. Vischer*, 50 *Id.* 69, cited as showing liability of such a person to payee, *Ellis v. Brown*, 6 *Barb.* 282, being classed with cases inapplicable or overruled, and *Brown v. Curtiss*, 2 *N. Y.* 225, disting'd as a case of express contract of guaranty. Applied in *Arnott's Adm'r v. Seymonds*, 85 *Penn. St.* 99; s. c., 27 *Am. R.* 630. Examined at length with *Tillman v. Wheeler*, 17 *Johns.* 326; *Nelson v. Dubois*, 13 *Id.* 175; *Campbell v. Butler*, 14 *Id.* 349, in *Nash v. Skinner*, 12 *Verm.* 219; s. c., 36 *Am. Dec.* 338, with note. Explained with *Nelson v. Dubois*, 13 *Johns.* 175; *Campbell v. Butler*, 14 *Id.* 349; *Labron v. Woram*, 1 *Hill*, 93, and their effect compared with that of later *N. Y.* cases in *Rothschild v. Grix*, 31 *Mich.* 150; s. c., 18 *Am. R.* 171, 174. Reviewed at length with *Tillman v. Wheeler*, 17

- Johns.* 326; *Nelson v. Dubois*, 13 *Id.* 175, in *Stoney v. Beaubien*, 2 *McMull.* (So. Car.) 313; s. c., 39 *Am. Dec.* 128, 130, with note. Critically examined with *Nelson v. Dubois*, 13 *Johns.* 175; *Campbell v. Butler*, 14 *Id.* 349; *Dean v. Hall*, 17 *Wend.* 214, in *Camden v. McCoy*, 3 *Scam. (Ill.)* 437; s. c., 38 *Am. Dec.* 91, 93 with note. Decision in 10 *Johns.* compared with other cases (Evidence to explain, &c. contract of indorsement) in *Phelps v. Vischer*, 50 *N. Y.* 69. Followed with *Woodhull v. Holmes*, 10 *Johns.* 224, 231; *Skelding v. Haight*, 15 *Id.* 274, in *Hill v. Ely*, 5 *Serg. & R. (Pa.)* 363; s. c., 9 *Am. Dec.* 376. Disting'd in *Chaddock v. Vanness*, 35 *N. J.* 517; s. c., 10 *Am. R.* 256, 259. Reviewed and applied in *Johnson v. Martinus*, 4 *Halst. (N. J.)* 144; s. c., 17 *Am. Dec.* 464. Relied on in *Smith v. Morrill*, 54 *Me.* 49. Applied in *Perkins v. Catlin*, 11 *Conn.* 213; s. c., 29 *Am. Dec.* 282, 294, with note.
- *v. Catley*. See *Joslin v. Cowee*.
- *v. Lapham*, 10 *Johns.* 281. Followed (Opinions as evidence) in *Donnell v. Jones*, 13 *Ala.* 490; s. c., 43 *Am. Dec.* 59, 70, with note.
- *v. Manly*, 1 *Cai.* 253. Overruled (Liability of one causing arrest) in *Coats v. Darby*, 2 *N. Y.* 517.
- *v. Stover*, 5 *Wend.* 580. See *Cady v. Fairchild* Disting'd with *Tucker v. Rankin*, 15 *Barb.* 471 (Sufficiency of notice of proposed route of road) in *N. Y. & Albany R. R. Co. v. N. Y., West Shore, &c. R. R. Co.*, 11 *Abb. N. C.* 386.
- *v. Whitney*, 15 *Johns.* 240; s. c., 5 *N. Y. Com. L. Law. ed.*, 1076, with brief note.
- *v. Woolverton*, 41 *N. Y.* 531. Rev'g 42 *Barb.* 50. Decision in *Id.* disapproved with *Scovil v. Scovil*, 45 *Id.* 517; *Payne v. Slate*, 39 *Id.* 634 (Running of statute of limitations against demand note) in *Hirst v. Brooks*, 50 *Id.* 334.
- Herries v. Norvell**, 17 *Am. L. Reg. N. S.* 97, with note; s. c., *Harris v. Norvell*, 1 *Abb. N. C.* 127.
- Herring v. Hoppock**, 15 *N. Y.* 409. Aff'g 3 *Duer*, 20. See *Ballard v. Burgett*, *Smith v. Lynes*; *Steelyards v. Singer*. Decision in 15 *N. Y.* disting'd (Effect of conditional sales) in *Bonesteel v. Flack*, 41 *Barb.* 438; *Lees v. Richardson*, 2 *Hilt.* 175; *Comer v. Cunningham*, 77 *N. Y.* 391, 399. Followed in *Hasbrouck v. Lounsbury*, 26 *Id.* 599; *Ballard v. Burgett*, 40 *Id.* 319. Applied in *Osborn v. Gantz*, 38 *Super. Ct. (J. & S.)* 148, 152. Cited and approved with *Cole v. Mann*, 3 *Sup'm. Ct. (T. & C.)* 380; *Ballard v. Burgett*, 40 *N. Y.* 315; in *Cole v. Berry*, 13 *Vroom (N. J.)*, 308; s. c., 36 *Am. R.* 511. See authorities collected in *Lewis v. McCabe*, 49 *Conn.* 141, 148; s. c., 21 *Am. L. Reg. N. S.* 217, with note. Quoted in *Benj. on Sales*, § 452 (Corbin's 4 *Am. ed.*). Disting'd (Liability for acts of sheriff in seizing goods) in *Chapman v. Douglas*, 5 *Daly.* 252. Applied (rights of transferee of personal property) in *McNeil v. Tenth Nat. Bk.*, 55 *Barb.* 69.
- Herrington v. Robertson**, 7 *Hun.* 368. Aff'd in 71 *N. Y.* 280.
- Herrman v. Adriatic Fire Ins. Co.**, 45 *Super. Ct. (J. & S.)*, 394. Rev'd in 85 *N. Y.* 162; s. c., 39 *Am. R.* 644. See *Livingston v. Sticksles*.
- *v. Merchants' Ins. Co.*, 44 *Super. Ct. (J. & S.)* 444. Aff'd in 81 *N. Y.* 184. Decision in *Id.* disting'd ("Vacant" or "unoccupied" premises within meaning of policy) in *Herrman v. Adriatic Fire Ins. Co.*, 85 *Id.* 162, 168, which rev'd 45 *Super. Ct. (J. & S.)* 395, which see. Decision in 44 *Id.* collated with other cases, in 35 *Am. R.* 443, n.
- Hersey v. Benedict**, 15 *Hun.* 282. Quoted (Action for deceit in sale) in *Benj. on Sales*, § 694, n. 40 (Corbin's 4 *Am. ed.*).
- Hersfield v. Adams**, 19 *Barb.* 577. Disapproved (Express companies as common carriers) in *Read v. Spaulding*, 5 *Bosw.* 395, 405; *Place v. Union Express Co.*, 2 *Hilt.* 19, 25. See *Blossom v. Dodd*, 43 *N. Y.* 264. Criticised in *Hutchinson on Carr.* § 70, n. as inconsistent with *Russell v. Livingston*, 19 *Barb.* 346, and as denied in *Place v. Union Express Co.*
- Hertell v. Bogert**. See *Hertell v. Van Buren*.
- *v. Van Buren*, 3 *Edw.* 20. Aff'd in *Hertell v. Bogert*, 9 *Paige*, 52; but latter rev'd, as *Bogert v. Hertell*, in 4 *Hilt.* 492.
- Hesdra, Estate of**, 2 *Month. L. Bul.* 8. Modified in 12 *Weekly Dig.* 87; mem. s. c., 24 *Hun.* 341.
- Hess v. Beekman**, 11 *Johns.* 457. See *Felter v. Mulliner*; *Watson v. Davis*. Reviewed and explained with *Elwell v. McQueen*, 10 *Wend.* 521; *Peters v. Diossy*, 3 *E. D. Smith*, 115; *White v. Coatsworth*, 6 *N. Y.* 137; *Demarest v. Darg*, 32 *Id.* 284 (Effect of decision in justice's court as bar to new proceeding) in *Gillilan v. Spratt*, 41 *How. Pr.* 27, 30, 33.
- *v. Fox*, 10 *Wend.* 436. Explained and disting'd with *Malins v. Brown*, 4 *N. Y.* 403; *Murray v. Smith*, 1 *Duer*, 412; *Dodge v. Crandall*, 30 *N. Y.* 294; *Dodge v. Wellman*, 43 *How. Pr.* 427; *Ryan v. Dox*, 34 *N. Y.* 307; *Levy v. Brush*, 45 *Id.* 589; *Freeman v. Freeman*, 43 *Id.* 34; *Miller v. Ball*, 64 *Id.* 286; *Getman v. Getman*, 1 *Barb. Ch.* 499 (What will authorize specific performance) in *Wood v. Mulock*, 48 *Super. Ct. (J. & S.)* 70. Followed (Effect of payment of purchase money under parol agreement for sale of land) in *Sinscott v. McIntire*, 15 *Me.* 201; s. c., 33 *Am. Dec.* 602, with note.
- Hetzell v. Tannehill Silver Mining Co.**, 4 *Abb. N. C.* 40. Compare (Proceedings against corporation, after the exercise of its powers has been suspended) *Whitner v. Universal Life Ins. Co.*, *Id.* 23.
- Hetzell v. Barber**, 6 *Hun.* 534. Aff'd in part

- and rev'd in part in 69 *N. Y.* 1. Decision in 6 *Hun* disting'd (Removal of testamentary trustee) in Clapp v. Brown, 4 *Redf.* 200, 205.
- Heubach v. Rother.** See Leverick v. Meigs.
- Heurstel v. Tilman.** *McAdam's Marine Ct. Pr. Appdx.* 61. Overruled (Right to examination before trial) in Kanter v. Brophy, 1 *Civ. Pro. R.* 83, n.
- Hewit v. Mason.** See Williams v. Holdredge.
- **v. Prime,** 21 *Wend.* 79. See Johnson v. Johnson. Disting'd (Physician, when privileged from testifying) in Edington v. Mut. Life Ins. Co., 67 *N. Y.* 195. Explained with Bartley v. Richtmyer, 4 *Id.* 39; White v. Nellis, 31 *Id.* 405; Briggs v. Evans, 5 *Id.* 16 (Maintenance of action for seduction) in Blagge v. Ilsley, 127 *Mass.* 191; s. c., 34 *Am. R.* 361, with note. See also, 4 *Am. Dec.* 403, n.; 44 *Id.* 162, n. Approved, in Lee v. Hodges, 13 *Gratt. (Va.)* 726.
- Hewitt v. Hewitt,** 3 *Bradf.* 265. See (Postponed execution of decree for sale of real estate) *Code Civ. Pro.* 1881, § 2762, n.
- **v. Howell,** 8 *How. Pr.* 346. Opposed (Effect of variance between summons and complaint) in City of Fond du Lac v. Bonesteel, 22 *Wisc.* 251.
- **v. Northrup,** 9 *Hun,* 543. Aff'd in 75 *N. Y.* 506.
- Hewlett v. Brown,** 7 *Abb. Pr.* 74; s. c., 1 *Bosw.* 655. See (Right of party to witness fees) *Code Civ. Pro.* 1881, § 3288, n.
- **v. Cock,** 7 *Wend.* 371. See Ridgely v. Johnson. Followed with Jackson v. Luquere, 5 *Cow.* 225; Jackson v. Laroway, 3 *Johns. Cas.* 283 (Ancient documents in evidence) in Gibson v. Poor, 21 *N. H.* 440; s. c., 53 *Am. Dec.* 216, 220, with note. Followed with Jackson v. Lamb, 7 *Cow.* 431; Jackson v. Welden, 3 *Johns.* 283; Willson v. Betts, 4 *Den.* 201, in Harlan v. Howard, 79 *Ky.* 376.
- **v. Wood,** 55 *N. Y.* 634. Further proceeding in 3 *Sup'm. Ct. (T. & C.)* 453; s. c., less fully, 1 *Hun,* 478. Still further proceeding in 3 *Id.* 736, appeal from which was dismissed in 62 *N. Y.* 75. Also further proceedings in 7 *Hun,* 227; 67 *N. Y.* 394. Decision in 55 *Id.* followed (Opinions of witnesses as to mental condition of another) in Spence v. Brown, 17 *Weekly Dig.* 518. Approved and collated with other cases in 6 *Am. Dec.* 61, n.
- Hews v. Hollister,** 7 *N. Y. Leg. Obs.* 11. Overruled (Right of action to recover money lost by betting) in Ruckman v. Pitcher, 20 *N. Y.* 9.
- Hexter v. Knox,** 39 *Super. Ct. (J. & S.)* 109. Aff'd in 63 *N. Y.* 561. See Knox v. Hexter. With decision in 63 *N. Y.* see (Measure of damages for non-repair) Arnold v. Clark, 45 *Super. Ct. (J. & S.)* 252, 256. Discussed in *Sedgw. Cas. on Dama.* 86.
- Heyde v. Heyde,** 4 *Sandf. Ch.* 692. Disting'd (Pleading in actions for divorce) in Mitchell v. Mitchell, 61 *N. Y.* 398, 408. Quoted in 2 *Bish. on Mar. & D.* § 604, 6 ed.
- Heyer v. Deaves,** 2 *Johns. Ch.* 154. Followed (Sale under decree, to be by person authorized, in person) in Sebastian v. Johnson, 72 *Ill.* 282; s. c., 22 *Am. R.* 144, with note, collating cases.
- **v. Pruyn,** 7 *Paige,* 465; s. c., 34 *Am. Dec.* 355, with note, wherein are collected citations. See Borst v. Corey; Jackson v. Wood. Approved and followed (Presumption of payment of mortgage from lapse of time) in *N. Y. Life Ins. & Trust Co. v. Covert,* 6 *Abb. Pr. N. S.* 154, which rev'd 29 *Barb.* 435, which see. Compare Belknap v. Gleason, 11 *Conn.* 160, 166; Jackson v. Sackett, 7 *Wend.* 94. Examined in Almy v. Wilbur, 2 *Woodb. & M.* 404. Commented on in *Ang. on Limit.* § 73, 6 ed.
- Heyliger v. N. Y. Fireman's Ins. Co.,** 11 *Johns.* 85. See Bradhurst v. Columbian Ins. Co. Disting'd (Freight, &c., when an expense to be contributed for in general average) in Hugg v. Baltimore & Cuba S. & M. Co., 35 *Md.* 414; s. c., 6 *Am. R.* 425, 431.
- Heyman v. Beringer,** 1 *Abb. N. C.* 315. Compare (Authority of attorney to accept payment of incumbrance) Josephthal v. Heyman, 2 *Abb. N. C.* 22.
- Heyne v. Blair,** 3 *Sup'm. Ct. (T. & C.)* 263. Rev'd in 62 *N. Y.* 19.
- Heyward, Matter of,** 1 *Sandf.* 701. Collated with Matter of Leland, 7 *Abb. Pr. N. S.* 64, and other cases (State legislation with reference to fugitive criminals) in 32 *Am. R.* 355, n.
- Heyward v. Mayor, &c. of N. Y.,** 8 *Barb.* 486; s. c., 8 *N. Y. Leg. Obs.* 244. Aff'd in 7 *N. Y.* 314. Decision in *Id.* applied (Power of legislature to determine time and occasion of exercise of right of eminent domain) in Morris Canal & Banking Co. v. Townsend, 24 *Barb.* 665. Explained in Matter of Townsend, 39 *N. Y.* 174. Disting'd (Evidence that use is public one) in Matter of Deansville Cemetery Assoc., 66 *Id.* 572. Examined with other cases (Extent of interest in land taken by corporation by right of eminent domain) in Bartow v. Draper, 5 *Duer.* 148. Applied in Sweet v. Buffalo, N. Y., &c. R'y Co., 79 *N. Y.* 300. Decision in 8 *Barb.* collated with other cases in *Mills Thomps. on Highw.* 3 ed. 37.
- Heywood v. City of Buffalo,** 14 *N. Y.* 534. See Hartwell v. Armstrong. Applied (Equitable relief against assessment) in Howell v. City of Buffalo, 2 *Abb. Ct. App. Dec.* 415; Mutual Benefit Life Assur. Co. v. Sup'rs of N. Y., 3 *Abb. Ct. App. Dec.* 346, which aff'd 33 *Barb.* 322, which see; Haulon v. Sup'rs of Westchester, 8 *Abb. Pr. N. S.* 268; Crevier v. Mayor, &c. of N. Y., 12 *Id.* 348; Baldwin v. City of Buffalo, 29 *Barb.* 399; Magee v. Cutler, 43 *Id.* 247; Hebrew Free School Assoc. v. Mayor,

- &c. of N. Y., 4 *Hun.* 446, 451; *Hassan v. City of Rochester*, 67 *N. Y.* 536; *Leavis v. City of Buffalo*, 1 *Sheld.* 84; *Longley v. City of Hudson*, 4 *Sup'm. Ct. (T. & C.)* 354. Commented on and applied in *Mann v. Board of Education*, 53 *Hov. 1<sup>st</sup>* 297. Applied to lease by dock department, in *Mayor, &c. of N. Y. v. North Shore Staten Island Ferry Co.*, 9 *Hun.* 620, 622. Applied to application of proceeds of tax, in *Kilbourne v. St. John*, 59 *N. Y.* 26, which aff'd 7 *Lans.* 356, which see. Cited as authority with *Susquehanna B'k v. Supervisors of Broome*, 25 *N. Y.* 312, in *Douglass v. Town of Harrisville*, 9 *W. Va.* 162; s. c., 27 *Am. R.* 549. Commented on and cases cited to the contrary in 1 *High on Inj.* 2 ed., § 485, n. 2. Disting'd (Jurisdiction to sustain acts of municipal corporation) in *Matthews v. Mayor, &c. of N. Y.*, 14 *Abb. Pr.* 212. Applied in *Kilbourne v. Allyn*, 7 *Lans.* 357. Explained (Relief to be had on *certiorari*) in *People v. Board of Police*, 39 *N. Y.* 513. Applied (Ground of equitable relief) in *Marsh v. Benson*, 11 *Abb. Pr.* 247; *Hyatt v. Bates*, 35 *Barb.* 317; *Smith v. Gage*, 41 *Id.* 75.
- Hibbard v. N. Y. & Erie, R. R. Co.**, 15 *N. Y.* 455. See *O'Brien v. N. Y. Central, &c. R. R. Co.*; *Townsend v. N. Y. Central, &c. R. R. Co.* Criticised and disting'd (Liability for expulsion of passengers from railroad car) in *Isaacs v. Third Ave. R. R. Co.*, 47 *N. Y.* 126. Disting'd in *Higgins v. Water-vliet Turnpike Co.*, 46 *Id.* 29. Applied in *Townsend v. N. Y. Central, &c. R. R. Co.*, 56 *Id.* 295, 300; *Downs v. N. Y. & New Haven R. R. Co.*, 36 *Conn.* 287; s. c., 4 *Am. R.* 77. Included with note in 1 *Redf. Am. Rail. Cas.* 96; 2 *Id.* 447.
- Hibernia Nat. B'k v. Lacombe**, 21 *Hun.* 166. Aff'd in 84 *N. Y.* 367; s. c., 38 *Am. R.* 518. Decision in 21 *Hun.* applied (Authority of foreign assignees in bankruptcy) in *Lee v. Pfeffer*, 25 *Id.* 97, 99. With decision in 21 *Id.* compare *Kilmer v. Hobart*, 8 *Abb. N. C.* 426; a case of a receiver appointed in another State. Compare *Mercantile Ins. Co. v. Jaynes*, 87 *Ill.* 199; *Bagly v. Atlantic, &c. R. R. Co.*, 86 *Penn. St.* 291, the latter being, however, a case of a receiver appointed in the same jurisdiction.
- Hickock v. Scribner**, 3 *Johns. Cas.* 311; s. c., 1 *N. Y. Com. L. Law. ed.* 708, with brief note of cases on necessity of joining all affected by the demand.
- Hickok v. Hickok**, 13 *Barb.* 632. See *Stafford v. Richardson*. Collated with other cases (Limitation of action as affected by demand) in *Throop's Justice's Mun.* 2 ed., 188; *Code Civ. Pro.* 1881, § 410, n.
- **v. Trustees of Plattsburgh**, 15 *Barb.* 427. Said in note to *Conrad v. Trustees of Ithaca*, 16 *N. Y.* 161, to have been rev'd in Ct. of App. on Sup'm. Ct. opinion by *SELDEN, J.*, in *Weet v. Trustees of Brockport*. Other decision in 41 *Barb.* 130. See *Bailey v. Mayor, &c., of N. Y.*; *Conrad v. Trustees of Ithaca*; *Morey v. Town of Newfane*; *Rochester White Lead Co. v. City of Rochester*. Followed but disapproved (Liability of municipal corporation for injury caused by defect in highway) in *Clark v. City of Lockport*, 49 *Barb.* 582. Applied in *Hines v. City of Lockport*, 41 *Hov. Pr.* 450. Disapproved in *Detroit v. Blakeby*, 21 *Mich.* 84; s. c., 4 *Am. R.* 455; *City of Navasota v. Pearce*, 46 *Tex.* 525; s. c., 26 *Am. R.* 283. Followed and applied (Liability of officers charged with care of public roads, &c.) in *Garlinghouse v. Jacobs*, 29 *N. Y.* 297, 311. Collated with other cases in *Cook's High. L.* 4 ed. 49. Cited as authority (Private action for violation of duty imposed by statute or ordinance) *Ilceney v. Sprague*, 11 *R. I.* 456; s. c., 23 *Am. R.* 502, 507, where *Jones v. Fireman's Fund Ins. Co.*, 2 *Daly*, 307; *Bell v. Quinn*, 2 *Sandf.* 146, were disting'd.
- Hickox v. Fay**, 36 *Barb.* 9. Disapproved as overruled (Exemption from execution) in *Snyder v. Davis*, 1 *Hun.* 350. See *Code Civ. Pro.* 1881, § 1391, n.
- Hicks v. Brown**, 12 *Johns.* 142; s. c., 5 *N. Y. Com. L. Law. ed.* 334, with brief note. Followed (*Lex loci* as governing liability of drawer and indorser) in *Freese v. Brownell*, 35 *N. J.* 285; s. c., 10 *Am. R.* 239.
- **v. Cleveland**, 39 *Barb.* 573. Further decision in 48 *N. Y.* 84. Decision in *Id.* quoted and explained (Parol evidence to supply omission of memorandum required by statute of frauds) in 1 *Benj. on Sales*, § 212, n. 12 (Corbin's 4 *Am. ed.*). Explained in *Browne on Stat. of Frauds*, § 188f, 4 ed.
- **v. Dorn**, 1 *Lans.* 81. Aff'd in 42 *N. Y.* 47; s. c., 9 *Abb. Pr. N. S.* 47.
- **v. Foster**. See *Lincoln v. Saratoga & Schenectady R. R. Co.*
- **v. Hinde**, 9 *Barb.* 528. Included (Negotiable paper made by agent) in 2 *Ames Cas. on B. & N.* 221; also in *Thomps. Liab. of Off. & A.* 39, with notes.
- **v. Hotchkiss**, 7 *Johns. Ch.* 297; s. c., 11 *Am. Dec.* 472. See *Mather v. Bush*. Discussed (State law impairing obligation of contract) in 1 *Kent Com.* 421.
- **v. McGrorty**, 2 *Duer.* 295. Disapproved (Assignee for benefit of creditors, entitled to protection as assignee for value) in *Schieffelin v. Hawkins*, 17 *Abb. Pr.* 112, 117. Cited as authority (Set-off against assignees of insolvent) in dissenting opinion of *BOCKES, J.*, in *Seymour v. Dunham*, 24 *Hun.* 93, 98.
- **v. Minturn**, 19 *Wend.* 550. Cited with *Bush v. Cole*, 28 *N. Y.* 261; *Hoffman v. Carow*, 20 *Wend.* 21; 22 *Id.* 285; *Chambers v. McCornick*, 4 *N. Y. Leg. Obs.* 342 (Liabilities of auctioneers) in *Whart. Com. on Ag.* §§ 648-652.
- **v. Sheppard**, 4 *Lans.* 335. Cited as antagonistic to several judgments of Ct. of App. (Availability of equitable defense) in *Pomeroy on Rem.* § 91, n. 1.

- **v. Smith.** See *Stewart v. Saratoga & Whitehall R. R. Co.*
- **v. Whitmore,** 12 *Wend.* 548. Disting'd, but point not clearly indicated, in *Adams v. Ives*, 63 *N. Y.* 651. Followed (Auction sales, as affected by statute of frauds) in *Craig v. Godfrey*, 1 *Cal.* 415; s. c., 54 *Am. Dec.* 299, with note. Explained in 1 *Benj. on Sales*, § 270, n. 70 (Corbin's 4 *Am. ed.*). Collated with other cases in support of what is said to be the established rule in this country and in England, in 22 *Am. L. Reg. N. S.* 8.
- Hicksville, &c. R. R. Co. v. Long Island R. R. Co.,** 48 *Barb.* 355. See statement of facts explained in 49 *Id.* 668, n.
- Hidden v. Waldo,** 7 *Alb. L. J.* 79. Rev'd in 55 *N. Y.* 294.
- Hier v. Abrahams,** 82 *N. Y.* 519. See *Messerole v. Tynberg.* Applied (Trade-marks) in *American Grocer v. Grocer Pub. Co.*, 25 *Hun.* 398, 402. Disting'd, and *Amoskeag M'fg Co. v. Spear*, 2 *Sandf.* 599, applied, in *Royal Baking Powder Co. v. Sherrell*, 93 *N. Y.* 331.
- **v. Grant,** 47 *N. Y.* 278. See *Hatch v. Peugnet.* Disting'd (Evidence as to personal transaction with deceased person) in *Maverick v. Marvel*, 90 *N. Y.* 656.
- Higbe v. Leonard,** 1 *Den.* 187. Reviewed with *Edwards v. Russell*, 21 *Wend.* 63; *Cain v. Ingram*, 7 *Cow.* 478; *Foot v. Morgan*, 1 *Hill.* 654, and other cases (What is relation by affinity) in *Kelly v. Neely*, 12 *Ark.* 657; s. c., 56 *Am. Dec.* 288, with note, collating cases.
- Higbie v. Guardian Mt. Life Ins. Co.,** 66 *Barb.* 462. Aff'd in 53 *N. Y.* 603. Decision in *Id.* explained and disting'd (Opinions of witnesses) in *Harrington v. Chambers*, 3 *Utah.* 94, 113. Thought in 19 *Am. R.* 410, n., to contain in head-note a statement not justified by case.
- Higby v. N. Y. & Harlem R. R. Co.,** 3 *Bosw.* 487. Collated with other cases (Note or bill taken for debt) in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 270.
- Higgins v. Allen,** 6 *How. Pr.* 30. See (Action on undertaking given on injunction) *Code Civ. Pro.* 1881, § 625, n.
- **v. Delaware, L. & Western R. R. Co.,** 60 *N. Y.* 553. Explained (Sale of chattel not specific) in 1 *Benj. on Sales*, § 479 (Corbin's 4 *Am. ed.*).
- **v. Freeman,** 2 *Duer.* 650. Approved (Voluntary appearance) in *Wellington v. Classon*, 9 *Abb. Pr.* 175, 177. See (Dismissal of complaint) *Code Civ. Pro.* 1881, § 821, n.
- **v. Moore,** 6 *Bosw.* 344. Rev'd in 34 *N. Y.* 417. See *Knapp v. Wallace.* Decision in 34 *N. Y.* disting'd (Authority of broker to receive purchase price) in *Talmage v. Nevins*, 2 *Sweeny*, 38. Cited as authority in *Butler v. Dorman*, 68 *Mo.* 298; s. c., 30 *Am. R.* 795. Applied in *Crosby v. Hill*, 39 *Ohio St.* 104. Reviewed at length with other cases (Proof of knowledge of custom) in *Walls v. Bailey*, 49 *N. Y.* 464, 474.
- **v. Murray,** 4 *Hun.* 565. Aff'd, in effect, in 73 *N. Y.* 272. Decision in *Id.* quoted and explained (Effect of contract of sale in passing property) in *Benj. on Sales*, § 399, n. 1 (Bennett's 4 *Am. ed.*). Explained in 2 *Id.* § 587 (Corbin's 4 *Am. ed.*).
- **v. Newtown & Flushing R. R. Co.,** 3 *Hun.* 611. Aff'd in 66 *N. Y.* 604.
- **v. People,** 1 *Hun.* 307. Aff'd in 58 *N. Y.* 377.
- **v. Phoenix Mut. Life Ins. Co.,** 10 *Hun.* 459. Aff'd in 74 *N. Y.* 6.
- **v. Watervliet Turnpike, &c. Co.,** 46 *N. Y.* 23; s. c., 7 *Am. R.* 293. See *Isaacs v. Third Ave. R. R. Co.* Applied (Master's liability for servant's wrongful act) in *Peck v. N. Y. Central, &c. R. R. Co.*, 8 *Hun.* 287, which was aff'd in 70 *N. Y.* 591, which see. Approved and explained in *Isaacs v. Third Ave. R. R. Co.*, 47 *Id.* 125. Applied in *Jackson v. Second Ave. R. R. Co.*, *Id.* 277; *Rounds v. Delaware, Lackawanna, &c. R. R. Co.*, 64 *Id.* 133. Disting'd in *Gillett v. Mo. Valley R. R. Co.*, 55 *Mo.* 315; s. c., 17 *Am. R.* 656. Followed in *Bass v. Chicago & Northwestern R'y Co.*, 36 *Wis.* 450; s. c., 17 *Am. R.* 495, 502. Collated with *Ilack v. Fearing*, 4 *Abb. Pr. N. S.* 297; *Shea v. Sixth Ave. R. R. Co.*, 62 *N. Y.* 180; *Rounds v. Delaware, &c. R. R. Co.*, 64 *Id.* 120 (the contrary doctrine of *Isaacs v. Third Ave. R. R. Co.*, 47 *Id.* 122, said to have been substantially overruled); *Drew v. Sixth Ave. R. R. Co.*, 26 *Id.* 49; *Mott v. Consumer's Ice Co.*, 73 *Id.* 543; *Cosgrove v. Ogden*, 49 *Id.* 255; *King v. N. Y. Central, &c. R. R. Co.*, 66 *Id.* 181, in 40 *Am. R.* 226, n. Collated with *Garvey v. Dung*, 30 *How. Pr.* 315; *Haack v. Fearing*; 4 *Abb. Pr. N. S.* 297; *Shea v. Sixth Ave. R. R. Co.*, 62 *N. Y.* 180; *Isaacs v. Third Ave. R. R. Co.*, 47 *Id.* 122; *Cosgrove v. Ogden*, 49 *Id.* 255; *King v. N. Y. Central, &c. R. R. Co.*, 66 *Id.* 181, and other cases, in 26 *Alb. L. J.* 64.
- **v. Whitney,** 24 *Wend.* 379. See *Hanmer v. Wilsey.* Disting'd (Mitigation of damages in action for trespass, &c.) in *Sprague v. McKinzie*, 63 *Barb.* 60, 62. Questioned in *Curtis v. Ward*, 20 *Conn.* 208. See, also, *Hanmer v. Wilsey*, 17 *Wend.* 91. Approved with *Sherry v. Schuyler*, 2 *Hill.* 204; *Ball v. Liney*, 48 *N. Y.* 6, in *Howard v. Manderfield*, 31 *Minn.* 337, 339. Explained in 2 *Greenl. on Ev.* 14 ed., § 635 a, n. 3.
- Higham v. Dillon,** 5 *Weekly Dig.* 179. Aff'd in 75 *N. Y.* 598.
- Highland Turnpike Co. v. McKeon,** 10 *Johns.* 154; s. c., 6 *Am. Dec.* 324. See *Jenkins v. Union Turnpike Co.* Cited as authority (Necessity of payment on stock subscription) in *Excelsior Grain Binding Co. v. Stayner*, 61 *How. Pr.* 456, 461. Discussed in *Ang. & A. on Corp.* § 528, 11 ed.

- Followed (Corporate books as evidence) in *North River Meadow Co. v. Shrewsbury*, 2 *Zabr. (N. J.)* 424; s. c., 53 *Am. Dec.* 258, with note. See to the contrary, *Union Gold M. Co. v. Rocky M. Nat. Bk.* 2 *Col.* 565. See also *Abb. Tr. Ev.* 49.
- Highlands Chemical & Mining Co. v. Matthews**, 43 *Super. Ct. (J. & S.)* 39. Modified and aff'd in 76 *N. Y.* 145. Decision in *Id.* explained (Effect of acceptance by purchaser of less than is required) in 2 *Benj. on Sales*, § 1032, n. 19 (Corbin's 4 *Am. ed.*).
- Higinbotham v. Stoddard**, 9 *Hun*, 1. Aff'd in 72 *N. Y.* 94.
- Hilderbrand v. People**, 1 *Hun*, 10; s. c., 3 *Sup'm. Ct. (T. & C.)* 82. Aff'd in 56 *N. Y.* 394; s. c., 15 *Am. R.* 435. See *Smith v. People*. Decision in 56 *N. Y.* applied with *Loomis v. People*, 67 *Id.* 326; *People v. McDonald*, 43 *Id.* 61; *Smith v. People*, 53 *Id.* 111 (Property intrusted for specific purpose, when subject of larceny) in *Justices of Special Sessions, People ex rel. v. Henderson*, 90 *Id.* 12. Disting'd in *Zink v. People*, 77 *Id.* 127. Cited in 33 *Am. R.* 458, n., as supported by *Reg. v. McKale*, 11 *Cox C. C.* 32. See also *Reg. v. Hollis*, 49 *L. T. Rep.* 572; mem. s. c., 29 *Alb. L. J.* 177. Decision in 1 *Hun*; examined with other cases (Judgment record in criminal cases) in *Manke v. People*, 74 *N. Y.* 415, 422. Followed in *Woodin v. People*, 6 *Hun*, 654.
- Hildebrandt v. Crawford**, 6 *Lans.* 502. Aff'd in 65 *N. Y.* 107. Decision in 6 *Lans.* explained (Evidence as to conversation between deceased and third person) in *Brague v. Lord*, 41 *Super. Ct. (J. & S.)* 193, 196. Limited (Costs where two actions are tried together) in *Koch v. Koch*, 1 *City Ct.* 255. Cited (Liability of principal for agent's act performed incidentally in the discharge of his office) in *Whart. Com. on Ag.* § 130.
- Hildreth v. Ellice**, 1 *Cal.* 192. See *Jackson v. Anderson*. Followed (Attorney's liability for sheriff's fees) in *Van Kirk v. Sedgwick*, 23 *Hun*, 37, 39. Explained with *Parsons v. Bowdoin*, 17 *Wend.* 14; *Adams v. Hopkins*, 5 *Johns.* 252; *Scott v. Shaw*, 13 *Id.* 378; *German-American B'k v. Morris Run Coal Co.*, 68 *N. Y.* 590 (Sheriff's right to poundage), in *Peck v. City Nat. B'k of Grand Rapids*, 51 *Mich.* 353; s. c., 47 *Am. R.* 577.
- **v. Sands**, 2 *Johns. Ch.* 35. Aff'd as *Sands v. Hildreth*, 14 *Johns.* 493. See *Bank of U. S. v. Housman*; *Schemerhorn v. Vanderhayden*. Decision in 2 *Johns. Ch.* followed with *White v. Williams*, 1 *Paige*, 508 (Right of parties claiming under judgment, to benefit of position of judgment creditor) in *Byers v. Fowler*, 12 *Ark.* 218; s. c., 54 *Am. Dec.* 271, 291, with note. Applied with *Bank of U. S. v. Housman*, 6 *Paige*, 526 (Deed concealed or not pursued, when fraudulent as to creditors) in *Blennerhassett v. Sherman*, 105 *U. S.* 100, 117. Explained (Effect of fraudulent intent on part of grantor) in *Brooks v. Marbury*, 11 *Wheat.* 90. See *Waterbury v. Sturtevant*, 18 *Wend.* 365.
- **v. Shepard**, 65 *Barb.* 265. Cited as authority (Usury as determined by law of place) in *Wayne Co. Sav'gs B'k v. Low*, 6 *Abb. N. C.* 76, 89. Cited (When party already examined may be called on re-examination to contradict testimony offered in his own behalf) in 1 *Whart. Com. on Ev.* § 485, 556.
- Hill v. Beebe**, 13 *N. Y.* 556. Applied (Effect of failure to refile chattel mortgage) in *Bissell v. Pearse*, 21 *How. Pr.* 137.
- **v. Draper**, 10 *Barb.* 454. See to the contrary (Possession as evidence) *Delancy v. McKee*, 1 *Wash. C. Ct.* 354. And see *Abb. Tr. Ev.* 692.
- **v. Gibbs**, 5 *Hill*, 56. See *Austin v. Hall*; *Sherman v. Ballou*.
- **v. Heermans**, 17 *Hun*, 470. Subsequent decision in 22 *Id.* 455, which was aff'd as *Wadsworth v. Heermans* in 85 *N. Y.* 639. Other decisions in 6 *Hun*, 661; 59 *N. Y.* 396, in actions arising out of same general contest. Decisions in 22 *Hun*, and 85 *N. Y.* disting'd (Evidence as to transaction with deceased person) in *Pease v. Barnett*, 30 *Hun*, 525.
- **v. Hill**, 4 *Barb.* 419. Disting'd (Validity of remainder after bequest) in *Smith v. Van Ostrand*, 64 *N. Y.* 278, 284. Approved, and cases in support cited (*Estoppel in deed*) in 3 *Am. L. Reg. N. S.* 151.
- **v. McKenzie**, 1 *Hun*, 110. Fully reported in 3 *Sup'm. Ct. (T. & C.)* 122.
- **v. Mohawk & Hudson River R. R. Co.**, 5 *Den.* 206. Aff'd in 7 *N. Y.* 152.
- **v. Newichawanick Co.**, 48 *How. Pr.* 427. Aff'd in 8 *Hun*, 459, and that aff'd, it seems, in 71 *N. Y.* 593, but without opinion. Decision in 8 *Hun*, disting'd (Who entitled to dividends) in *Boardman v. Lake Shore & M. S. R'y Co.*, 84 *N. Y.* 157, 159. Decision in 48 *How. Pr.* disting'd in *Herrman v. Maxwell*, 47 *Super. Ct. (J. & S.)* 347, 352.
- **v. Northrup**, 1 *Hun*, 612. Fully reported in 4 *Sup'm. Ct. (T. & C.)* 120.
- **v. People**, 20 *N. Y.* 363. Points of counsel in 18 *How. Pr.* 289. Disting'd (Trial before magistrate without jury) in *People v. Burleigh*, 1 *N. Y. Crim. R.* 522. Compare *People ex rel. Comaford v. Dutcher*, 83 *N. Y.* 240, 242.
- **v. Ressegien**. See *Gazley v. Price*.
- **v. Spencer**, 34 *Super. Ct. (J. & S.)* 304. Rev'd in 61 *N. Y.* 274.
- **v. Syracuse B. & N. Y. R. R. Co.**, 8 *Hun*, 296. Rev'd in 73 *N. Y.* 351; s. c., 29 *Am. R.* 163, with note. Previous decision in 2 *Hun*, 114; s. c., 4 *Sup'm. Ct. (T. & C.)* 695. Statement in 5 *Hun*, v, that decision in 2 *Id.* was aff'd, seems to be an error; as decision in 63 *N. Y.* 101 appears to be in an entirely different proceeding. See *Elmore v. Sands*. Decision in 63 *N. Y.* applied (Effect of refusal of passenger to pay fare) in *Nelson v. Long Island R. R. Co.*, 7 *Hun*, 140, 144.

- **v. Thacter**, 3 *How. Pr.* 407. See (What complaint must contain) *Code Civ. Pro.* 1881, § 481, *n.*
- Hills v. Bannister**, 8 *Cow.* 31. See Barker *v. Mechanics' Fire Ins. Co.*; Stanton *v. Camp*. Opposed (Liability on contract executed as agent) in *Brockway v. Allen*, 17 *Wend.* 41. See *Hicks v. Hinde*, 6 *How. Pr.* 1. Reviewed with *Barker v. Mechanic's Ins. Co.*, 3 *Wend.* 94; *Mott v. Hicks*, 1 *Cow.* 513, in *Kean v. Davis*, 1 *Zab. (N. J.)* 683; *s. c.*, 47 *Am. Dec.* 182, 183, 186, 188, where *Brockway v. Allen*, 17 *Wend.* 40; *Palmer v. Stephens*, 1 *Den.* 471; *Pentz v. Stanton*, 10 *Wend.* 271, were reviewed (Parol evidence to determine true character of such contract), *Pentz v. Stanton* being reconciled with *Mechanics' Bank v. Bank of Columbia*, 5 *Wheat.* 326. Followed in *Burlingame v. Brewster*, 79 *Ill.* 515; *s. c.*, 22 *Am. R.* 177. Said in 2 *Am. R.* 332, *n.* not to be in harmony with the other cases cited, and not to have been followed. Said in 2 *Am. Dec.* 517, *u.*, to be of questionable authority and opposed to *Brockway v. Allen*, 17 *Wend.* 40. Cited in *Whart. Com. on Ag.* § 523. Applied (Warranty on sale by agent) in *Horner v. Fellows*, 1 *Doug. (Mich.)* 55. Explained (Warranty of fitness) in 1 *Par. on Contr.* 592, *n. k.*
- **v. Miller**, 3 *Paige*, 254; *s. c.*, 24 *Am. Dec.* 218, with note containing citations. See *Corning v. Lowerre*. Reconciled with *Trustees of Watertown v. Cowen*, 4 *Paige*, 510; *Barrow v. Richards*, 8 *Id.* 350 (Charging land with burden of covenant) and *Brouwer v. Jones*, 23 *Barb.* 153, apparently doubted in *West Va. Transp. Co. v. Ohio River Pipe Line Co.*, 22 *W. Va.* 600; *s. c.*, 46 *Am. R.* 527, 545. Quoted and explained (Ancient lights) in *Wood on Nuis.* 2 ed. § 152.
- Hillyer v. Bennett**, 3 *Edw.* 222. Explained and reconciled (Right to repudiate contract, made when infant, without returning consideration) in *Tyler on Inf. & Cov.* 2 ed. § 38. See cases cited in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 320.
- **v. Larzelere**, 9 *Johns.* 160. Followed (Effect of appearance by infant without guardian) in *McMurray v. McMurray*, 60 *Barb.* 117.
- **v. Rosenberg**, 11 *Abb. Pr. N. S.* 402. Examined with other cases (Time of making affidavit on petition for discharge of debtor) in *Richmond v. Praim*, 24 *Hun*, 578, 580.
- Hilton v. Bender**, 2 *Hun*, 1; *s. c.*, 4 *Sup'm. Ct. (T. & C.)* 270. Rev'd in 69 *N. Y.* 75.
- **v. Fonda**, 86 *N. Y.* 339. Prior proceeding as *Stewart v. Fonda*, in 19 *Hun*, 191.
- Hilts v. Colvin**, 14 *Johns.* 182. Disting'd (Parol evidence of conviction of witness, incompetent against objection) in *Perry v. People*, 86 *N. Y.* 353, 358. Cited as authority with *Jackson v. Frier*, 16 *Johns.* 193 (Admissibility of parol testimony where better evidence is unattainable) in *Jackson v. Cullum*, 2 *Blackf. (Ind.)* 228; *s. c.*, 18 *Am. Dec.* 158.
- Hincken v. Mut. Benefit Life Ins. Co.**, 6 *Lans.* 21. Aff'd in 51 *N. Y.* 657, but without further opinion.
- Hineckley v. Emerson**, 4 *Cow.* 351; *s. c.*, 15 *Am. Dec.* 383. See *Putnam v. Payne*. Applied (When killing of dog is unjustifiable), in *Brent v. Kimball*, 60 *Ill.* 211; *s. c.*, 14 *Am. R.* 35. Followed (Dog is property), *People v. Maloney*, 1 *Park.* 593, being further cited (Dog as subject of larceny),— in *Harrington v. Miles*, 11 *Kans.* 480; *s. c.*, 15 *Am. R.* 355, with note collating cases.
- **v. Kreitz**, 36 *Super. Ct. (J. & S.)* 413. Rev'd in 58 *N. Y.* 583. Decision in *Id.* Disting'd (Limit of liability on undertaking on appeal) in *Church v. Simmons*, 33 *Id.* 261, 265, which rev'd 19 *Hun*, 220, which see; *Lowry v. Tew*, 25 *Id.* 257, 259. Applied in *Babbitt v. Finn*, 101 *U. S.* 7, 14. Applied (Form of such undertaking) in *Moses v. Hasbrouck*, 65 *How. Pr.* 84, 88. See *Code Civ. Pro.* 1881, § 1332, *n.* Disting'd (Primary liability as between two sets of sureties) in *Higgins v. Healey*, 47 *Super. Ct. (J. & S.)* 207, 209; *Smith v. Falconer*, 11 *Hun*, 481, 483.
- **v. Smith**, 51 *N. Y.* 21. See *Morange v. Morris*. Followed (Incumbrance as barring specific performance) *Reeder v. Schneider*, 3 *Sup'm. Ct. (T. & C.)* 104, 106. Explained and applied in *Rinaldo v. Housmann*, 1 *Abb. N. C.* 312, 314.
- Hinde v. Smith**, 6 *Lans.* 464. Cited (Damages recoverable from factor who sells at price less than specified) in *Whart. Com. on Ag.* § 759.
- Hinds v. Barton**, 25 *N. Y.* 544. See *Sheldon v. Hudson River R. R. Co.* Applied (Evidence in actions for negligence) in *Quinlan v. City of Utica*, 11 *Hun*, 217, 220.
- **v. Doubleday**, 21 *Wend.* 223. Applied (Powers of outgoing sheriff in relation to prisoners in his custody) in *Feerick v. Conner*, 60 *How. Pr.* 506, 509.
- **v. Myers**, 4 *How. Pr.* 356. Applied (Right to costs, as affected by distinction between legal and equitable actions) in *Black v. O'Brien*, 23 *Hun*, 82, 85.
- Hine v. Haudy**. See *Pattison v. Hull*.
- **v. Hine**, 39 *Barb.* 507. Followed (Evidence of intention of testator) in *Stevens v. Stevens*, 2 *Redf.* 265, 285.
- Hines v. City of Lockport**, 5 *Lans.* 16; *s. c.*, 60 *Barb.* 378; *s. c.*, more fully, 41 *How. Pr.* 435. Aff'd in 50 *N. Y.* 236. See *Lloyd v. Mayor, &c. of N. Y.*
- **v. Strong**, 46 *How. Pr.* 97; *mem. s. c.*, 1 *Sup'm. Ct. (T. & C.)*, Add. 19. Aff'd, it seems, in 56 *N. Y.* 670, but without opinion.
- Hinkley v. N. Y. Central, &c. R. R. Co.**, 3 *Sup'm. Ct. (T. & C.)* 281. Aff'd in 60 *N. Y.* 644.
- Hinman v. Booth**, 21 *Wend.* 267. See *Harrison v. Stevens*. See to the contrary (Allegations as to interest of plaintiff in ejectment) *Gillet v. Stanley*, 1 *Hill*, 121; *Cole*

- v. Irvine, 6 *Id.* 634. See also *Abb. Tr. Ev.* 692.
- v. Judson, 13 *Barb.* 629. Explained (Redemption of mortgaged chattels after condition broken before sale) in 1 *Para. on Contr.* 570, n. p.
- Hinneman v. Rosenback. See Reynolds v. Commerce Fire Ins. Co.
- Hinsdale v. Bank of Orange, 6 *Wend.* 378. See Rowley v. Ball. Followed (Recovery on half of divided note) in State Bank of Illinois v. Aersten, 3 *Scam. (Ill.)* 135; s. c., 36 *Am. Dec.* 536. Cited in 13 *Am. Dec.* 47, n., as to the right to such recovery being settled in this country. Quoted and collated with other cases in *Redf. & B. Lead. Cas. on B. of Exch.* 706.
- Hinsdell v. Weed, 5 *Den.* 172. See Batterman v. Pierce. Opinion of McKissock, J., approved (Right to freight as affected by loss of part of goods carried) in Davis v. Pattison, 24 *N. Y.* 317, 324.
- Hintermister v. First Nat. Bank of Chittenango, 3 *Hun.* 345; s. c., 5 *Sup'm. Ct. (T. & C.)* 484. Modified and aff'd in 64 *N. Y.* 212. Decision in *Id.* applied (Forfeiture for usurious exaction by national bank) in Nat. B'k of Auburn v. Lewis, 75 *Id.* 521. Disapproved in Lebanon Nat. B'k v. Karmany, 98 *Pa. St.* 65, 76. See, also, Crocker v. First Nat. B'k of Chetopa, 4 *Dill.* 358. Followed (Limitation of time within which to bring action against national bank for usury) in Lynch v. Merchant's Nat. B'k, 22 *W. Va.* 554; s. c., 46 *Am. R.* 520. Compare Nat. State B'k of Newark v. Boylan, 2 *Abb. N. C.* 216. Criticised as opposed to weight of authority,—in 6 *South. L. Rev. (N. S.)* 525.
- Hinton v. Locke, 5 *Hill.* 437. See Coit v. Commercial Ins. Co. Approved (Evidence of usage to explain contract) in Walls v. Bailey, 49 *N. Y.* 464, 468. Discussed in 2 *Para. on Contr.* 539, n. h. See cases cited in 4 *Am. L. Reg. N. S.* 350.
- Hiscock v. Harris, 74 *N. Y.* 108. Further proceeding in 80 *Id.* 402. Decision in *Id.* disting'd (What judgment may be entered, after affirmance by Court of Appeals) in People v. Denison, 8 *Abb. N. C.* 128, 145.
- v. Phelps, 2 *Lans.* 106. Further decision on the merits in 49 *N. Y.* 97. Statement in latter report that it is "reported below, 2 *Lans.* 106," is incorrect. See vol. 218 Cases in Ct. of App, Law Inst. Libr. N. Y. City. Decision in 2 *Lans.* explained (Who to be served with notice in case of appeal) in Morrison v. Morrison, 19 *Hun.* 509. Decision in 49 *N. Y.* explained (Execution against partnership) in 2 *Collyer on Partn.* § 793, n. 1, Wood's Am. ed.
- Hitchcock v. Aicken, 1 *Cal.* 460; s. c., 2 *N. Y. Com. L. Law. ed.* 225, with brief note. See Hubbell v. Coudrey. Overruled (Conclusiveness of judgment of sister State) in Andrews v. Montgomery, 19 *Johns.* 162. Compare to the contrary Bissel v. Briggs, 9 *Mass.* 462. Disapproved in Wixcox v. Kossick, 2 *Mich.* 168. Said with Taylor v. Bryden, 8 *Johns.* 173; Hubbell v. Coudrey, *Id.* 132, to have been overruled in the U. S. Sup'm. Ct. and to be opposed to the decisions of other States,—in Williams v. Preston, 3 *J. J. Marsh. (Ky.)* 600; s. c., 20 *Am. Dec.* 179, 184, with note. Said to be decided by a highly respectable court, and with Borden v. Fitch, 15 *Johns.* 144; Andrews v. Montgomery, 19 *Id.* 169, followed in Evans v. Tatem, 9 *Serg. & R. (Pa.)* 252; s. c., 11 *Am. Dec.* 717. See, also, 2 *Am. Dec.* 42, n.; 7 *Id.* 206, n. Also Aldrich v. Kinney, 4 *Conn.* 380; s. c., 10 *Am. Dec.* 151. Referred to with Hubbell v. Coudrey, 5 *Johns.* 132, and other cases in Napier v. Gidiere, 1 *Spear's Eq. (So. Car.)* 215; s. c., 40 *Am. Dec.* 618, with note, as contrary to later decisions. Reviewed with Borden v. Fitch, 15 *Johns.* 121; Shumway v. Stillman, 4 *Conn.* 292, in Hall v. Williams, 6 *Pick. (Mass.)* 232; s. c., 17 *Am. Dec.* 356, with note. Explained in 2 *Para. on Contr.* 609, n. y.
- v. Cadmus, 2 *Barb.* 381. Discussed (Clause to continue business in assignment for benefit of creditors) in *Burrill on Assign.* § 212, 4 ed.
- v. Carpenter, 9 *Johns.* 344. Deemed overruled by Sparrow v. Kingman, 1 *N. Y.* 242 (Estoppel of grantee of husband as against widow claiming dower) in Finn v. Sleight, 8 *Barb.* 401.
- v. Covill, 20 *Wend.* 167. Aff'd, in 23 *Id.* 611. See Mowrey v. Walsh.
- v. Harrington, 6 *Johns.* 290; s. c., 4 *N. Y. Com. L. Law. ed.* 129, with brief note; 5 *Am. Dec.* 229, with note. See Jackson v. DeWitt; Jackson v. Willard. Cited as authority with Collins v. Torry, 7 *Johns.* 278; and the latter said to be a leading case (Dower in equity of redemption) in Mills v. Van Voorhies, 20 *N. Y.* 412, 416, 420. Approved (Mortgagor as legal owner) in Orr v. Hadley, 36 *N. H.* 575. Shown in note in 5 *Am. Dec.* to have been frequently cited but not to have been uniformly followed in N. Y. as an authority (Right of dower, when mortgage is paid off by one deriving title from mortgagor) Popkins v. Bumstead, 8 *Mass.* 491; s. c., 5 *Am. Dec.* 113, being contrary thereto as appears from comparison in 1 *Scribner on Dower*, 498. Cited, however, as an authority in Carter v. Goodin, 3 *Ohio St.* 75, 79.
- v. Linsly, 17 *Hun.* 556. Applied (Separate suits by distributees) in Haucenstein v. Kull, 59 *How. Pr.* 24.
- v. Northwestern Ins. Co., 26 *N. Y.* 68. Limited (Transfer of interest covered by policy) in Savage v. Howard Ins. Co., 52 *N. Y.* 502, 506, which rev'd 43 *How. Pr.* 462, which see. Disting'd in Gernweid v. Home Ins. Co., 2 *Hun.* 510.
- v. St. John, *Hoffm.* 511. See Egberts v. Wood; Havens v. Hussey; Robin-on v. McIntosh. Disting'd and limited (Power of



- one partner to transfer firm assets), in *Paton v. Wright*, 15 *How. Pr.* 481. Discussed in *Burrill on Assign.* § 76, 4 *ed.* Quoted and collated with other cases in *Holcombe Lead. Cas. on Com. L.* 78; 1 *Hare & W. Am. Lead. Cas.* 5 *ed.* 548. Explained in 1 *Par. on Contr.* 178, *n. t.* Quoted and discussed (Delivery of possession) in *Burrill on Assign.* § 280, 4 *ed.*
- Hoag v. Lamont**, 16 *Abb. Pr. N. S.* 91. Aff'd as against defendant Walbridge, and rev'd as to others, in 60 *N. Y.* 96; *s. c.*, 16 *Abb. Pr. N. S.* 369. Decision in *Id.* explained (Jurisdiction of local court) in *Whitehead v. Kennedy*, 6 *Daly*, 548. Disting'd in *Gemp v. Pratt*, 7 *Id.* 197, 199. Applied in *Wheelock v. Lee*, 74 *N. Y.* 499. See *Code Civ. Pro.* 1881, pp. 98, 99; *n.*
- **v. McGinnis**, 22 *Wend.* 163. Cited as strongly declaring preference of the law (Sum mentioned in contract, when regarded as penalty), on 2 *Sedgw. on Meas. of Dama.* 7 *ed.* 239, 240.
- **v. Owen**, 60 *Barb.* 34. Aff'd in 57 *N. Y.* 644.
- Hongland v. Bell**. See *Matter of Barker*.
- **v. Miller**, 16 *Abb. Pr.* 103. Overruled (Directing exception to be heard at General Term, in case of nonsuit) in *Huntingdon v. Claffin*, 38 *N. Y.* 182. Criticised in *Brown v. Conger*, 8 *Hun.* 625, 628. Superseded by *Code Civ. Pro.* § 1000, as amended in 1882.
- **v. Stodolla**, 1 *Code R. N. S.* 210. Compare (Certificate of interest in attachment proceedings) *Code Civ. Pro.* 1881, § 651, *n.*
- Hoard v. Garner**, 3 *Sandf.* 179. Aff'd in 10 *N. Y.* 261. Decision in *Id.* disting'd with *Remsen v. Beekman*, 25 *Id.* 552 (Duty of creditor to enforce collateral securities) in *Corning v. Pond*, 29 *Hun.* 129. Discussed in 1 *Am. L. Rev. N. S.* 713.
- Hobart v. Frost**. See *Viburt v. Same*.
- **v. Hobart**, 23 *Hun.* 484. Rev'd in 86 *N. Y.* 636.
- **v. —**, 62 *N. Y.* 80. See *Hatch v. Peugnet*. Disting'd (Party "interested in event" under *Code Civ. Pro.* § 829) in *Church v. Howard*, 79 *Id.* 420.
- Hobbs v. Francais**. See *Fetridge v. Wells*.
- **v. Wetherwax**, 33 *How. Pr.* 385. Applied (Enforcing parol agreement respecting real estate) in *Moyer v. Moyer*, 21 *Hun.* 67, 73.
- Hochstetter v. Isaacs**. See *Woodruff v. Dickie*.
- Hodge v. City of Buffalo**, 1 *Abb. N. C.* 356. See also (Testimony of parties) *Miller v. Ins. Co. of No. Amer.*, 1 *Abb. N. C.* 470.
- **v. Denny**, 6 *Alb. L. J.* 192. Followed (New trial for newly discovered evidence) in *May v. Strauss*, 8 *Abb. N. C.* 274, 276.
- Hodges v. City of Buffalo**, 2 *Den.* 110. See *Donovan v. Mayor, &c. of N. Y.*; *Weismer v. Village of Douglas*. Disting'd (Authority of common council) in *People ex rel. Smith v. Flagg*, 5 *Abb. Pr.* 234; *Reynolds v. Mayor, &c. of Albany*, 8 *Barb.* 601; *Ketchum v. City of Buffalo*, 21 *Id.* 304. Applied in *Boom v. City of Utica*, 2 *Id.* 108; *Halstead v. Mayor, &c. of N. Y.*, 3 *N. Y.* 433; *Boylan v. City of N. Y.*, 1 *Sandf.* 30; *Smith v. City of Buffalo*, 1 *Sheld.* 498. Discussed in *Cooley on Const. Lim.* 5 *ed.* 261. Followed (Power of municipal corporation to contract debt for celebration) in *New London v. Brainard*, 22 *Conn.* 556. Compare *Argenti v. San Francisco*, 16 *Cal.* 255. Approved and applied (Ratification by corporation, when ineffectual) in *McCullough v. Moss*, 5 *Den.* 582. Applied (Want of authority to bind corporation) in *Jellinghaus v. N. Y. Ins. Co.*, 6 *Duer*, 5. Disting'd (Rights of party to contract made by corporation in excess of its powers) by *Bosworth, J.*, in *Mechanics' B'k v. N. Y. & New Haven R. R. Co.*, 4 *Duer*, 557; *Harlem Gas Light Co. v. Mayor, &c. of N. Y.*, 3 *Robt.* 124. Applied in *McDonald v. Mayor, &c. of N. Y.*, 4 *Sup'm. Ct. (T. & C.)* 176.
- **v. Shuler**, 24 *Barb.* 68. Aff'd in 22 *N. Y.* 114. Decision in *Id.* followed (Requisites of negotiable instrument) in *Hosstatter v. Wilson*, 36 *Barb.* 307. Applied in *Hotchkiss v. National Banks*, 21 *Wall.* 354, 357. Relied on in *Zimmerman v. Anderson*, 67 *Penn. St.* 421; *s. c.*, 5 *Am. R.* 447. Included in 1 *Ames Cas. on B. & N.* 65. Decision in 24 *Barb.* collated with other cases in *Redf. & B. Lead. Cas. on B. of Ech.* 10; *Bigel. on B. & N.* 2 *ed.* 17.
- **v. Tennessee Marine & Fire Ins. Co.**, 8 *N. Y.* 416. Followed (Effect of instrument absolute in terms, as a mortgage) in *Van Dusen v. Worrell*, 4 *Abb. Ct. App. Dec.* 474; *Tyler v. Strang*, 21 *Barb.* 201; *McBurney v. Wellman*, 42 *Id.* 402; *Smith v. Beattie*, 31 *N. Y.* 544; *Mason v. Lord*, 40 *Id.* 487; *Horn v. Keteltas*, 46 *Id.* 610. Applied in action at law, in *Despard v. Walbridge*, 15 *N. Y.* 378. Disting'd as inapplicable to official conveyances.—in *Ryan v. Dox*, 25 *Barb.* 447; as not authority for proving trust for grantor,—in *Sturtevant v. Sturtevant*, 20 *N. Y.* 39. Followed in *Manufacturer's B'k v. Rugee*, 18 *Northw. Rep.* 251. Applied (Admissibility of parol proof of agreement respecting land, to prevent fraud) in *Ryan v. Dox*, 34 *N. Y.* 313. Examined with other cases (Effect of transfer of interest of party to policy) in *Shotwell v. Jefferson Ins. Co.*, 5 *Bosw.* 258.
- Hodgkin v. Atlantic & Pacific R. R. Co.**, 5 *Abb. Pr. N. S.* 73. Approved and followed (Party to action not compellable to make affidavit for motion) in *Cockey v. Hurd*, 12 *Abb. Pr. N. S.* 307.
- Hodgkins v. Montgomery Co. Mut. Ins. Co.**, 34 *Barb.* 213. Said in 41 *N. Y.* 620 to have been rev'd by *Ct. of App.*, Dec. 1869. Decision in 34 *Barb.* denied as standing alone (Sufficiency of service of notice and proof of loss) in *Dean v. Aetna Life Ins. Co.*, 2 *Hun.* 358, 371.
- Hodgman v. People**, 4 *Den.* 235. Disting'd

- and limited (Several counts in indictment) in *People ex rel. Tweed v. Liscomb*, 60 *N. Y.* 559, 578.
- *v. Smith*, 13 *Barb.* 302. Disting'd (When participation in profits constitutes partnership) in *Burnett v. Snyder*, 76 *N. Y.* 344, 351.
- *v. Western R. R. Corporation*, 7 *How. Pr.* 492. Confirmed (Assignability of right of action for tort) in *McKee v. Judd*, 12 *N. Y.* 622. Followed in *Hyde v. Tufts*, 45 *Super. Ct. (J. & S.)* 56, 58.
- Hoe v. Sanborn**, 21 *N. Y.* 552. Subsequent decision in 24 *How. Pr.* 26 which was aff'd in 36 *N. Y.* 93; s. c., 3 *Abb. Pr. N. S.* 189; 35 *How. Pr.* 200. Decisions in 24 *Id.* and 36 *N. Y.* explained (Costs on offer of judgment) in *Scoville v. Kent*, 8 *Abb. Pr. N. S.* 17. Decision in 21 *N. Y.* approved as a leading case (Implied warranty on sale of personal property) in *Kellogg Bridge Co. v. Hamilton*, 110 *U. S.* 114. Collated with *Dounce v. Dow*, 64 *N. Y.* 411; *Hawkins v. Pemberton*, 51 *Id.* 198; *White v. Miller*, 7 *Hun.* 427; 71 *N. Y.* 118; and other cases in 24 *Am. R.* 102, 105, 106, 113, n. Collated with other cases in 17 *Am. L. Rev.* 423. See also cases collated in note by JOHN D. LAWSON, to *Reynolds v. Palmer*, 21 *Fed. Rep.* 441. Quoted and explained in 2 *Benj. on Sales*, § 986, n. 33 (Corbin's 4 *Am. ed.*).
- Hoes v. Van Hoesen**, 1 *Barb. Ch.* 379. Aff'd, in 1 *N. Y.* 120.
- Hoey v. Kinney**, 10 *Abb. Pr.* 400. See (Sale of decedent's real estate) *Code Civ. Pro.* 1881, § 2797, n.
- Hoffman v. Etna Fire Ins. Co.**, 1 *Robt.* 501; s. c., 19 *Abb. Pr.* 325. Aff'd in 32 *N. Y.* 405. See *Livingston v. Stickles*; *Wilson v. Genesee Mut. Ins. Co.* Decision in 32 *N. Y.* applied (Construction of insurance policy) in *Wright v. Williams*, 20 *Hun.* 323. Applied (Effect of condition against transfer of insured partnership property) in *Keeney v. Home Ins. Co.*, 71 *N. Y.* 402, which rev'd 3 *Sup'm. Ct. (T. & C.)* 482, which see. Followed and fully approved in *Texas Banking & Ins. Co. v. Cohen*, 47 *Tex.* 406; s. c., 26 *Am. R.* 298, 301; *Wyman v. Wyman*, 26 *N. Y.* 254, being also cited as authority. Followed and approved in *West v. Citizens Ins. Co.*, 27 *Ohio St.* 1; s. c., 22 *Am. R.* 294, 298, 300. Cited as authority with *Wilson v. Genesee Mut. Ins. Co.*, 16 *Barb.* 511, — in *Burnett v. Eufaula Home Ins. Co.*, 46 *Ala.* 11; s. c., 7 *Am. R.* 580. Cited as probably the leading case, but disting'd in *Hathaway v. State Ins. Co.*, 64 *Iowa*, 229. Cited as sustained by the weight of authority, in *Powers v. Guardian Fire and Life Assur. Co.*, 136 *Mass.* 108. Decision in 1 *Robt.* examined and reconciled with other cases in 28 *Am. Dec.* 287, n.
- *v. Armstrong*, 46 *Barb.* 337. Aff'd in 48 *N. Y.* 201.
- *v. Barry*, 2 *Hun.* 52; s. c., 4 *Sup'm. Ct. (T. & C.)* 253. Limited (Costs on appeal from decision on demurrer) in *Van Gelder v. Van Gelder*, 10 *Hun.* 118, 120. Applied in *Scott v. McMillan*, 8 *Daly*, 320, 327.
- *v. Carow*, 22 *Wend.* 285. Aff'g 20 *Id.* 21. See trial reported in *Anth. N. P.* 323. See *Hicks v. Minturn*; *Van Buskirk v. Purinton*; *Williams v. Merle*. Decision in 22 *Wend.* examined with *Saltus v. Everett*, 20 *Id.* 267; *Mowrey v. Walsh*, 8 *Cow.* 239 (Right of innocent purchaser of stolen property) in *Newkirk v. Dalton*, 17 *Ill.* 415. Followed (Liability of auctioneer selling stolen goods) in *Rogers v. Hine*, 1 *Cal.* 429; s. c., 54 *Am. Dec.* 300, with note; but criticised and disapproved in *Rogers v. Hine*, 2 *Cal.* 571; s. c., 56 *Am. Dec.* 363. Collated with other cases in 22 *Am. L. Reg. N. S.* 21. Followed and *Marshall v. Davis*, 1 *Wend.* 109; *Barrett v. Warren*, 3 *Hill*, 348; *Pierce v. Van Dyke*, 6 *Id.* 613; *Nash v. Mosher*, 19 *Wend.* 431 disapproved (Remedies for wrongful taking of goods, as against bona fide purchaser, mortgagee, &c.) in *Stanley v. Gaylord*, 1 *Cush. (Mass.)* 536; s. c., 48 *Am. Dec.* 643, 647, 650, with extended note. Followed (Presumption as to laws of another State) in *McCulloch v. Norwood*, 36 *Super. Ct. (J. & S.)* 180, 188.
- *v. Conner*, 13 *Hun.* 541. Further decision on appeal from judgment on second trial in 76 *N. Y.* 121. Statement in latter report that it is "reported below, 13 *Hun.* 541," is incorrect. See Vol. 480, of Cases in Ct. of App. in *Law Inst. Libr. N. Y. City*. Decision in 76 *N. Y.* disting'd (Evidence of value of property) in *Flannagan v. Mad-din*, 81 *Id.* 623.
- *v. Delihanty*, 13 *Abb. Pr.* 388. Approved (Liability for use and occupation) in *Hall v. Western Transportation Co.*, 34 *N. Y.* 284.
- *v. Dunlop*, 1 *Barb.* 185. See (Composition by joint debtors) *Code Civ. Pro.* 1881, § 1942, n.
- *v. Hoffman*, 55 *Barb.* 269. Aff'd in 46 *N. Y.* 30; s. c., 7 *Am. R.* 299. See *Shumway v. Stillman*. Decision in 46 *N. Y.* disting'd (Effect of judgment of divorce rendered in another jurisdiction) in *Hunt v. Hunt*, 72 *Id.* 217, 240. Followed in *Sewall v. Sewall*, 122 *Mass.* 156; s. c., 23 *Am. R.* 299. Cited as authority with *Kerr v. Kerr*, 41 *N. Y.* 272; *Borden v. Fitch*, 15 *Johns.* 121, 141, in *Litowich v. Litowich*, 19 *Kans.* 451; s. c., 27 *Am. R.* 145. Followed with *Kerr v. Kerr*, 41 *N. Y.* 272, in *Van Fossen v. State*, 37 *Ohio St.* 317; s. c., 41 *Am. R.* 507. Cited with numerous authorities (Jurisdictional recitals in judgments of another State) in 1 *Kent Com.* Holmes' ed., n. 1, 262.
- *v. Lachman*, 1 *Civ. Pro. R.* 278, n.; s. c., 62 *How. Pr.* 335. Followed (Husband's liability for torts of wife) in *Fitzsimons v. Harrington*, 1 *Civ. Pro. R.* 360, 362. See *Code Civ. Pro.* 1881, § 450, n.

- **v. N. Y. Central, &c. R. R. Co.**, 13 *Hun.* 589. Aff'd in 76 *N. Y.* 605. See *Nicholson v. Erie R'y Co.*
- **v. Seaton**, 35 *Super. Ct. (J. & S.)* 566. Aff'd in 65 *N. Y.* 568.
- **v. Treadwell**, 2 *Sup'm. Ct. (T. & C.)* 57. Followed (Presumption of authority derived from possession by husband of instrument made by wife to person other than him) in *Smith v. Fellows*, 41 *Super. Ct. (J. & S.)* 36, 47.
- **v. Tredwell**, 6 *Paige*, 308. See (Bringing in new parties, on death or transfer of interest of party) *Code Civ. Pro.* 1881, § 760, *n.*
- **v. Union Ferry Co.**, 4 *Hun.* 274. Aff'd in 68 *N. Y.* 385. Previous decision in 47 *Id.* 176. See *McGrath v. N. Y. Central, &c. R. R. Co.*
- **v. Van Nostrand**, 42 *Barb.* 174. See (When demand is necessary to set statute of limitations in operation) *Code Civ. Pro.* 1881, § 410, *n.*
- Hoffmire v. Hoffmire**, 3 *Edw.* 173. Aff'd in 7 *Paige*, 60. Decision in *Id.* quoted (Subsequent cohabitation as constituting condonation of adultery) in 2 *Bish. on Mar. & D.* § 43, *n.* 5, 6 ed.
- Hofheimer v. Campbell**, 7 *Lans.* 157. Aff'd in 59 *N. Y.* 269.
- Hoffnagle v. N. Y. Central, &c. R. R. Co.**, 1 *Sup'm. Ct. (T. & C.)* 346. Rev'd (Liability of master to servant for injuries attributable to negligence of co-servant) in 55 *N. Y.* 608.
- Hogan v. City of Brooklyn**, 52 *N. Y.* 282. Explained (Trespass and dispossession) in *Moak's Underhill's Torts*, 1 *Am. ed.* 373.
- **v. Cregan**, 6 *Robt.* 138. See *People v. Abbott*; *People v. Jackson*. Criticised and disting'd (Action for seduction, when maintainable) in *Lawrence v. Spence*, 29 *Hun.* 169. Disapproved in *Damon v. Moore*, 5 *Lans.* 454. Cited (Right to contradict witness on cross-examination) in 1 *Whart. Com. on Ev.* § 552.
- **v. Mayor, &c. of N. Y.**, 68 *N. Y.* 17. See (Limit of cost of public work) *People ex rel. Murphy v. Kelly*, 5 *Abb. N. C.* 383, 468.
- **v. Shorb**, 24 *Wend.* 458. Approved, but disting'd (Set-off in case of factor) in *Bliss v. Bliss*, 7 *Bow.* 339, 345, 351. Relied on in *Bernshouse v. Abbott*, 16 *Vroom (N. J.)* 531; *s. c.*, 46 *Am. R.* 789. Cited in *Whart. Com. on Ag.* § 789. Explained (Waiver of right of set-off) in *Gutchess v. Daniels*, 49 *N. Y.* 605, 611.
- Hoghtaling v. Osborn**. See *Butler v. Kelsey*; *Story v. Elliot*; *Van Vechten v. Paddock*.
- Hogle v. Guardian Life Ins. Co.**, 4 *Abb. Pr. N. S.* 346; *s. c.*, 6 *Robt.* 567. Collated with *Ruppert v. Union Mut. Life Ins. Co.*, 7 *Id.* 155, and other cases (Who may maintain action on life policy) in 19 *Am. R.* 331, *n.*
- **v. Stewart**, 8 *Johns.* 104. Examined (Limitation of action for dower) in *May v. Rumney*, 1 *Mich.* 10.
- Holbrook v. Receivers of American Fire Ins. Co.**, 6 *Paige*, 220. Discussed and approved (Set-off in case of insolvent corporation) in *Osgood v. De Groot*, 36 *N. Y.* 348. Explained and applied in *New Amsterdam Sav'gs B'k v. Tarter*, 4 *Abb. N. C.* 215, 218.
- **v. Orgler**, 40 *Super. Ct. (J. & S.)* 33; *s. c.*, 49 *How. Pr.* 289. Followed (Supplementary proceedings—appointment of receiver in proceedings for examination of third party) in *Morgan v. Kohnstamm*, 60 *How. Pr.* 161.
- **v. Henderson**, 4 *Sandf.* 619. Cited approvingly (Ambassador's privilege) in 1 *Kent Com.* 39, *n. c.*
- **v. Murray**, 5 *Wend.* 161. Said (Effect of judgment void as to one defendant) in 32 *Am. Dec.* 604, *n.*, not to be supported by *Richards v. Walton*, 12 *Johns.* 434. Shown in same note to be inconsistent with *St. John v. Holmes*, 20 *Wend.* 609; *Green v. Beals*, 2 *Cal.* 254; *Crane v. French*, 1 *Wend.* 311; *Brittin v. Wilder*, 6 *Hill*, 242, and thought to be supported neither by principle nor by authority. Cited in *Newburg v. Munshower*, 29 *Ohio St.* 617; *s. c.*, 23 *Am. R.* 769, where such a judgment was held not void as to other defendant.
- **v. N. J. Zinc Co.**, 57 *N. Y.* 616. See *N. Y. & New Haven R. R. Co. v. Schuyler*. Applied (Right of purchaser of instrument to claim benefit of estoppel) in *Weyh v. Boylan*, 85 *N. Y.* 394, 399. Disting'd (Right of corporation to dispute title of holder of stock) in *Chapman v. Phoenix Nat. B'k of N. Y.*, 5 *Abb. N. C.* 118, 130.
- **v. Utica & Schenectady R. R. Co.**, 16 *Barb.* 113. Aff'd in 12 *N. Y.* 236; *s. c.*, 64 *Am. Dec.* 502, with note. See *Harty v. Central R. R. Co. of N. J.* Decision in 12 *N. Y.* followed (Negligence for passenger to have his arm out of car window) in *Pittsburg & Connellsville R. R. Co. v. Andrews*, 29 *Md.* 329; *s. c.*, 17 *Am. R.* 568, 571. Quoted in 2 *Story on Contr.* 5 ed., § 963, *u. 5.*
- **v. Waters**. See *Chappel v. Brockway*.
- **v. Wight**, 24 *Wend.* 169; *s. c.*, 35 *Am. Dec.* 607, with note wherein are collected citations. See *Bank of Rochester v. Jones*; *Leverick v. Meigs*. Applied (Effect of failure to raise objection at trial) in *Jencks v. Smith*, 1 *N. Y.* 90, 94. Disting'd (Effect of delivery to carrier, to pass title) in *Cayuga Co. Nat. B'k v. Daniels*, 47 *Id.* 635.
- Holcomb v. Holcomb**, 2 *Barb.* 20. See *Eagle Fire Ins. Co. v. Lent*. Cited as authority (Prior lienor as party to foreclosure of subsequent lien) in *Emigrant Industrial Sav. B'k v. Goldman*, 75 *N. Y.* 132.
- Holdane v. Butterworth**, 5 *Bow.* 1. Explained (Liability of retiring partner) in 2 *Collyer on Partn.* § 536, *n.* 1, *Wood's Am. ed.*

- **v. Trustees of Cold Spring**, 23 *Barb.* 103. Aff'd in 21 *N. Y.* 474. See Wiggins v. Tallmadge. Decision in 23 *Barb.* followed (*Cul de sac* as highway) in *People v. Van Alstyne*, 32 *Barb.* 131, 136. Overruled, however, in *People v. Kingman*, 24 *N. Y.* 559, 565. Cited as authority (Right to maintain action to restrain use of land as highway) in *Carpenter v. Gwynn*, 35 *Barb.* 395, 405. Decision in 21 *N. Y.* cited with *Bissell v. N. Y. Central R. R. Co.*, 26 *Barb.* 430, as according with the weight of authority (Necessity of acceptance to make dedication of highway effectual) in *Manderschid v. City of Dubuque*, 29 *Iowa*, 73; s. c., 4 *Am. R.* 196, 200. Doubted in *Methodist Episcopal Church v. Hoboken*, 33 *N. J. L.* (7 *Vroom*) 21. Quoted and collated with other cases in *Mills Thomps. on Highw.* 3 ed. 65.
- Holden v. Burnham**, 5 *Sup'm. Ct. (T. & C.)* 195; mem., s. c., 2 *Hun.* 678. Aff'd in 63 *N. Y.* 74. Decision in *Id.* disting'd (Effect of voluntary conveyance by husband to wife, as against creditors) in *Smart v. Haring*, 52 *How. Pr.* 505.
- **v. Dakin**, 4 *Johns.* 421. See *Dorlan v. Sammis*; *Seixas v. Woods*. Reviewed with *Seixas v. Woods*, 2 *Cai.* 48; *Sands v. Taylor*, 5 *Johns.* 404 (Implied warranties on sale of chattels) in *Hastings v. Lovering*, 2 *Pick. (Mass.)* 214; s. c., 13 *Am. Dec.* 420, with note. Reviewed with *Sands v. Taylor*, 5 *Johns.* 395; *Seixas v. Woods*, 2 *Cai.* 48; *Sweet v. Colgate*, 20 *Johns.* 196, in *Borrekins v. Bevan*, 3 *Rauhe (Pa.)* 23; s. c., 23 *Am. Dec.* 85, 95, with note; *Seixas v. Wood*, and *Swett v. Colgate*, being denied as contrary to authority. See *Chapman v. Murch*, 19 *Johns.* 290; *Oneida Man'f'g Society v. Lawrence*, 4 *Cow.* 440, and other *N. Y.* cases reviewed in dissenting opinion of *Gibson, C. J.* Cited with *Thompson v. Ashton*, 14 *Johns.* 316; *Hart v. Wright*, 17 *Wend.* 267; *Salisbury v. Stainer*, 19 *Id.* 159 (Doctrine of *caveat emptor* in sale of goods in cases, barrels, &c.), in note by *JOHN D. LAWSON*, to *Reynolds v. Palmer*, 21 *Fed. Rep.* 441.
- **v. Gilbert**, 7 *Paige*, 208. Cited as authority (Effect of default in payment of interest on mortgage) in *Chicago & Vincennes R. R. Co. v. Fosdick*, 106 *U. S.* 47, 75.
- **v. N. Y. & Erie Bank**, 72 *N. Y.* 286. See *Bundy v. Bundy*. Disting'd with *Bennett v. Buchan*, 76 *N. Y.* 386 (Imputing knowledge of agent to principal) in dissenting opinion of *RUSSELL, J.*, in *Macullar v. McKinley*, 49 *Super. Ct. (J. & S.)* 5. Applied in *Fishkill Savgs. Inst. v. Nat. B'k of Fishkill*, 80 *N. Y.* 162, 170. Explained in 2 *Pomeroy on Eq. Jur.* 125, n.
- **v. Sackett**. See *Lansing v. Goelet*.
- Holdredge v. Webb**, 64 *Barb.* 72. Referred to by *Jacobs v. Morange*, 47 *N. Y.* 61, in 31 *Am. Dec.* 396, n., as not sustaining the views of *PAIGE*, Senator, in *Champion v. Laytin*, 18 *Wend.* 407 (Distinction between mistake and ignorance of law).
- Holdridge v. Gillespie**. See *Van Horne v. Fonda*.
- Holford v. Adams**, 2 *Duer*, 471. Explained (Action against common carrier for money had and received, to recover excessive compensation) in *Ang. on Car.* § 356, n. a., 5 ed.
- **v. Blatchford**. See *Aeby v. Rapelye*; *Powell v. Waters*.
- Hollach v. O'Brien**. See *Smith v. Acker*.
- Holladay v. Marsh**, 3 *Wend.* 142; s. c., 20 *Am. Dec.* 678. See *Bush v. Brainard*. Approved (Duty to fence against cattle) in *Lawrence v. Combs*, 37 *N. H.* 331.
- Holland v. Hayman**, 45 *How. Pr.* 16. Aff'd, it seems, in 54 *N. Y.* 660, but without opinion.
- Holly v. Johnson**, 25 *Hun.* 118. Abridgt. s. c., in 12 *Weekly Dig.* 461.
- **v. Mayor, etc.**, of *N. Y.*, 59 *N. Y.* 166. Explained (Who are "officers" of the court) in *Wines v. Mayor, &c.* of *N. Y.*, 9 *Hun.* 659. Compared in *Moser v. Mayor, &c.* of *N. Y.*, 21 *Id.* 163. Disting'd and limited in *Rowland v. Mayor, &c.* of *N. Y.*, 83 *N. Y.* 372, 377.
- **v. Mix**, 3 *Wend.* 350; s. c., 20 *Am. Dec.* 702. Relied on (Arrest without warrant) in *Doering v. State*, 49 *Ind.* 56; s. c., 19 *Am. R.* 669, 671. Quoted and collated with other cases in 1 *Bennett & H. Cas. on Crim. L.* 153. Disting'd with *Gurnsey v. Lovell*, 9 *Wend.* 319; *Farnham v. Hildreth*, 32 *Barb.* 277; *Agreda v. Faulberg*, 3 *E. D. Smith*, 178 (Arresting person by wrong name), in *Stuber v. Schuartz*, 1 *City Ct.* 110.
- Hollingsworth v. Napier**, 3 *Cai.* 182; s. c., 2 *Am. Dec.* 268; 2 *N. Y. Com. L. Law. ed.* 594, with brief note. Followed (Negotiability of bill of lading) in *Rawls v. Deshler*, 4 *Abb. Ct. App. Dec.* 12, 17. Criticised (Delivery required by statute of frauds) in *Shindler v. Houston*, 1 *N. Y.* 261, 270.
- **v. Spaulding**, 54 *N. Y.* 636. See (Right of personal representative of mortgagee to purchase at foreclosure sale) *Code Civ. Pro.* 1881, § 2394, n.
- Hollister v. Hollister**, 10 *How. Pr.* 532. Cited as authority (Jurisdiction of court in another State to be pleaded) in *Gebhard v. Garnier*, 12 *Bush (Ky.)* 321; s. c., 23 *Am. R.* 721. See (Surrogate's jurisdiction) *Code Civ. Pro.* 1881, § 2476, n.
- **v. Livingston**, 9 *How. Pr.* 140. Said not to be an authority under the Code (Limitation on right to amend pleading) in *Macqueen v. Babcock*, 13 *Abb. Pr.* 269. Referred to as overruled,—in *Robertson v. Bennett*, 1 *Abb. N. C.* 476.
- **v. Nowlen**, 19 *Wend.* 234; s. c., 32 *Am. Dec.* 455; 13 *N. Y. Com. L. Law. ed.* 592, with brief note. See *Camden & Amboy R. R. & Trans. Co. v. Burke*; *Clark v. Faxon*; *Gibson v. Culver*; *Gould v. Hill*; *Place v.*

- Union Express Co; *Roberts v. Turner*. Examined with *Cole v. Goodwin*, 19 *Wend.* 251 (Power of common carriers to limit their liability) in *Sultana v. Chapman*, 5 *Wisc.* 465; citing *N. J. Steam Nav. Co. v. Merchants' B'k*, 6 *How. (U. S.)* 344; *Parsons v. Monteath*, 13 *Barb.* 353; *Dorr v. N. J. Steam Nav. Co.*, 11 *N. Y.* 485; 4 *Sandf.* 136. Commented on in *Mercantile Mut. Ins. Co. v. Chase*, 1 *E. D. Smith*, 115, 134. Followed with *Cole v. Goodwin*, in *Moses v. Boston & Maine R. R.*, 24 *N. H.* 71; s. c., 55 *Am. Dec.* 222, 230. Disapproved with *Cole v. Goodwin*, in *Swindler v. Hilliard*, 2 *Rich. (So. Car.)* 286; s. c., 45 *Am. Dec.* 732. Followed with *Camden & Amboy, &c. Co. v. Belknap*, 21 *Wend.* 355; *Cole v. Goodwin*; *Gould v. Hill*, 2 *Hill*, 623; *Alexander v. Greene*, 3 *Id.* 9, 20, in *Fish v. Chapman*, 2 *Ga.* 349; s. c., 46 *Am. Dec.* 393, 401, *et seq.* with note, as sustaining a sound principle of the common law. Denied in *Michigan Central R. R. Co. v. Hale*, 6 *Mich.* 243, 260. See to the contrary *Batson v. Donovan*, 4 *Barn. & Ald.* 21. Shown with *Cole v. Goodwin*, in 32 *Am. Dec.* 468, *n.*, to have been extensively cited both in *N. Y.* and elsewhere. These cases are also referred to on p. 495 of same note as clearly and fully stating the law on this subject, and admirably giving the history of the decisions and of the legislative enactments on the subject up to the time when they were rendered, their doctrine as to a common carrier not being able to restrict or limit his common law liability by general notices, being shown by cases cited on p. 502, to be the settled American rule on this subject. Commented on in *Ang. on Carr.* § 234, 5 ed., *Id.* §§ 237, 238, 250, 255, 321. Commented on in 2 *Redf. Am. Railw. Cas.* 54. Included in *Thomps. on Carrs. of Pass.* 489; *Lawson Lead. Com. L. Cas. Simplified*, 205. Quoted and explained in 2 *Pars. on Contr.* 238, *n. n.* Cited approvingly with other authorities in 2 *Kent Com.* 608, *n. b.* Quoted with decisions to the contrary in 2 *Story on Contr.* 5 ed. §§ 947, 951, and *n. 4.* Collated with *Cole v. Goodwin*, and cases from other States (Price for services rendered by carrier, in absence of contract) in 22 *Am. L. Reg. N. S.* 47. Quoted (Responsibility of common carrier) in *Ang. on Carr.* § 153, 5 ed.
- Hollister Bank of Buffalo v. Vail**, 15 *N. Y.* 593. Disting'd (Appeal in case of judgment on demurrer as frivolous) in *Manuf'rs & Builders B'k v. Kiersted*, 6 *Daly*, 160.
- Holloway v. Stephens**, 2 *Sup'm. Ct. (T. & C.)* 658; s. c., more fully, 46 *How. Pr.* 363. Motion for reargument denied in 2 *Sup'm. Ct. (T. & C.)* 652. Further proceeding in 1 *Hun*, 308, in which reargument was denied in 2 *Id.* 384; s. c., 4 *Sup'm. Ct. (T. & C.)* 674; s. c., with opinion, 48 *How. Pr.* 129. Appeal from decision in 1 *Hun* dismissed in 58 *N. Y.* 670, but without opinion.
- **v. Stevens**. See *Holloway v. Stephens*.
- Hollywood v. People**, 2 *Abb. Ct. App. Dec.* 376; s. c., 3 *Keyes*, 55. Collated with other cases (Effect of firing or striking at one, and hitting another) in 19 *Am. R. 2, n.*
- Holman v. Holman**. See *Thomas v. Crofut*; *Webster v. Bond*.
- Holmes, Ex parte**, 5 *Cow.* 426. Explained (Voting on corporate stock held by corporation itself) in *Matter of Barker*, 6 *Wend.* 509. Followed in *Brewster v. Hartley*, 37 *Cal.* 15, as not questioned by *Matter of Barker*. Quoted and discussed in *Ang. & A. on Corp.* § 131, 11 ed.
- Holmes, Matter of**. See *People v. Mercein*.
- Holmes v. Anderson**, 18 *Barb.* 420. Qualified (Contradictory expressions of opinion not admissible) by doctrine of *Schell v. Plumb*, 16 *Abb. Pr. N. S.* 19, which was aff'd in 55 *N. Y.* 592, which see.
- **v. Broughton**, 10 *Wend.* 75; s. c., 25 *Am. Dec.* 536. See *Mills v. Martin*; *Thompson v. Ketcham*.
- **v. Carley**, 32 *Barb.* 440. Aff'd in 31 *N. Y.* 289. Decision in *Id.* cited as authority (What is contiguous territory) in *People v. Shepard*, 36 *Id.* 285. Cited (Statutory construction) in *Hudler v. Golden*, *Id.* 446. Cited with approval in *U. S. v. Falkenhainer*, *U. S. Cir. Ct. E. D. Mo.*, 21 *Fed. Rep.* 624.
- **v. Clark**, 48 *Barb.* 237. See *Savage v. Murphy*. See cases cited (Voluntary conveyances) in 16 *Alb. L. J.* 196.
- **v. Cock**, 2 *Barb. Ch.* 426. See (Revocation of letters) *Code Civ. Pro.* 1881, § 2685, *n.*
- **v. Davis**, 21 *Barb.* 265. Rev'd in 19 *N. Y.* 488. Decision in *Id.* explained (Measure of recovery for *mesne profits*) in *Sedgw. & W. on Tr. of Tit. to Land*, § 666.
- **v. Grant**, 8 *Paige*, 243. Examined (Conveyance, when to be treated a mortgage) in *Swetland v. Swetland*, 3 *Mich.* 488. Approved in *Thomas on Mort.* 22. Discussed in 8 *Am. L. Reg. N. S.* 603.
- **v. Holmes**, 3 *Paige*, 363. See *Swaine v. Perine*.
- **v. —**, 12 *Barb.* 137. Aff'd in 9 *N. Y.* 525. Decision in *Id.* disting'd (Evidence of waiver, under plea of performance) in *Edminster v. Cochrane*, 8 *Daly*, 138. Applied (Waiver of tender) in *Hartley v. James*, 50 *N. Y.* 38.
- **v. —**, 8 *Abb. Pr.* 1; s. c., 57 *Barb.* 305. Rev'd in 4 *Lans.* 388. Decision in *Id.* followed (Foreign divorce, when invalid) in *Moe v. Moe*, 2 *Sup'm. Ct. (T. & C.)* 647. Applied (Service of process must be within jurisdiction of court) in *Shepard v. Wright*, 59 *How. Pr.* 512, 514. Applied (Inapplicability of doctrine of estoppel to actions affecting status of husband and wife) in *Finn v. Finn*, 62 *How. Pr.* 83, 88.
- **v. Lansing**, 3 *Johns. Cas.* 73. Approved (What "impairs obligation of contract") in *Morse v. Gould*, 11 *N. Y.* 281, 287. Disting'd (Jail liberties) in *Wemple v. Glavin*, 5 *Abb. N. C.* 360, 367.

- *v. McDowell*, 15 *Hun.* 535. Aff'd, it seems, in 76 *N. Y.* 596, but without opinion.
- *v. Mead*, 52 *N. Y.* 332. Followed (Statutory abolition of charitable uses) in *Little v. Willford*, 81 *Minn.* 176.
- *v. Nuncaster*, 12 *Johns.* 395. See *Williams v. Rogers*. See to the contrary (Justification by officer executing process) *Underhill v. Reinor*, 2 *Hilt.* 319. But see *Abb. Tr. Ev.* 632.
- *v. Pettingill*, 1 *Hun.* 316. Aff'd, it seems, in 60 *N. Y.* 646. With decision in 1 *Hun* see other cases collected (Usage to vary contract) 1 *Abb. N. C.* 472, *n.*
- *v. Remsen*, 4 *Johns. Ch.* 460; *s. c.*, 8 *Am. Dec.* 581, with note. Subsequent decision in 20 *Johns.* 229; *s. c.*, 11 *Am. Dec.* 269, with note. See *Embree v. Hanna*; *Mather v. Bush*; *Plestoro v. Abraham*. Decision in 4 *Johns. Ch.* criticised (Territorial effect of statutory assignment) in *Ackerman v. Cross*, 40 *Barb.* 485. Disapproved in *Blake v. Williams*, 6 *Pick. (Mass.)* 286; *s. c.*, 17 *Am. Dec.* 372, with note; *Paine v. Lester*, 44 *Conn.* 196; *s. c.*, 26 *Am. R.* 443. Cited in 4 *Kent Com.* 405 in connection with decision in 20 *Johns.* Collated with other cases in 1 *Holcombe's Lead. Cas. on Com. L.* 417. Compared with the English rule in 7 *South. L. Rev. N. S.* 258. Opinion of PLATT, J., in 20 *Johns.* approved in *Ackerman v. Cross*, 40 *Barb.* 485; *Hoyt v. Thompson*, 5 *N. Y.* 343, which rev'd 3 *Sandf.* 424, which see; *Kelly v. Crapo*, 45 *N. Y.* 96. Approved and decision in 4 *Johns. Ch.* disapproved in *Plestoro v. Abraham*, 1 *Paige*, 237, which was rev'd in 3 *Wend.* 538, 548, 562, which see. Decision in 20 *Johns.* approved in 3 *Am. Dec.* 486, *n.* Cited with approval in *Robinson v. Crowder*, 4 *McC. (So. Car.)* 519; *s. c.*, 17 *Am. Dec.* 762, with note. Quoted in 3 *Pars. on Contr.* 453, *n. v.* Discussed in *Id.* 454, *n. y.* Cited with other cases in *Story on Conf. of L.* § 416, *n.* Shown by recent cases cited in 8 *Am. Dec.* 597, *n.*, to have been followed in *N. Y.* in preference to decision in 4 *Johns. Ch.*, which is however thought to contain a sound principle as to the law governing the distribution of personal property. See in accord with decision in 20 *Johns.*, *Milne v. Moreton*, 6 *Binn. (Pa.)* 353; *s. c.*, 6 *Am. Dec.* 466, with note. Both decisions examined with others in *Willitts v. Waite*, 25 *N. Y.* 577. Approved in *Hibernia Nat. B'k v. Lacombe*, 84 *Id.* 367, 385. Reviewed in *Varnum v. Camp*, 1 *Green L. (N. J.)* 326; *s. c.*, 25 *Am. Dec.* 476, 480, with note. Decision in 20 *Johns.* applied (Right to collect debt as affected by garnishment proceedings in another jurisdiction) in *Simon v. Huot*, 8 *Hun.* 382; *Duggan v. Lake Shore, &c. R. R. Co.*, 1 *Sheld.* 401. Decision in 4 *Johns. Ch.* cited as authority (Validity of transfer of personal property as affected by law of domicile) in *Rue High, Appellant*, 2 *Doug. (Mich.)* 522.
- *v. Seely*, 17 *Wend.* 75. See *Harrison v. Stevens*. Overruled (Recovery of undivided part under claim of whole in ejectment) in *Vrooman v. Weed*, 2 *Barb.* 330; *Van Rensselaer v. Jones*, 2 *Id.* 643, 655. Quoted (Ejectment by guardian in socage and general guardian) in *Sedgw. & W. on Tr. of Tit. to Land*, § 199.
- *v. —*, 19 *Wend.* 507. Followed with *Williams v. Safford*, 7 *Barb.* 309; *Newkirk v. Sabler*, 9 *Id.* 652 (Traveler going from highway upon adjoining land when not a trespasser) in *Campbell v. Race*, 7 *Cush. (Mass.)* 408; *s. c.*, 54 *Am. Dec.* 728, with note.
- *v. Smith*, 3 *Hun.* 413. Reported in 6 *Sup'm. Ct. (T. & C.)* 57.
- *v. Tremper*, 20 *Johns.* 29; *s. c.*, 11 *Am. Dec.* 238, with note. See *Heermance v. Vernoy*. Followed (Tenant's right to fixtures and improvements) in *McCullough v. Irvine*, 13 *Pa. St.* 438, 441, which was followed in *Cannon v. Hare*, 1 *Tenn. Ch.* 22, 27. Cited in 2 *Kent Com.* 347, as containing a just and enlarged view of the subject. Discussed in 1 *Add. on Torts*, 459, *n.*, Wood's ed. Criticised with *Loughran v. Ross*, 45 *N. Y.* 792, in 11 *Am. Dec.* 241, *n.*
- *v. United Ins. Co.* See *Mumford v. Nicoll*.
- *v. Weed*, 19 *Barb.* 128. Disting'd (Liability to indemnify, as affected by assignment of contract) in *Clark v. Dickinson*, 74 *N. Y.* 47, 51.
- *v. Williams*, 10 *Paige*, 326; *s. c.*, 40 *Am. Dec.* 250, with note. See *Aeby v. Rapelye*; *Powell v. Waters*. Said in 40 *Am. Dec.* 256, *n.*, to have been frequently referred to as authority (Sale of negotiable paper when not usurious). Included in *Redf. & B. Lead. Cas. on B. of Exch.* 280.
- Holridge v. Gillespie**, 2 *Johns. Ch.* 30. Approved (Right of trustee, &c. to take renewal of lease) in *Mitchell v. Reed*, 61 *N. Y.* 123, 129. Applied to case of vendee buying in incumbance, in *Champlin v. Dotson*, 13 *Smedes & M. (Miss.)* 553; *s. c.*, 53 *Am. Dec.* 102, with note.
- Holsapple v. Rome, Watertown, &c. R. R. Co.**, 86 *N. Y.* 275. Previous decision in 3 *Weekly Dig.* 244. See *Poucher v. N. Y. Central R. R. Co.*
- Holsman v. De Gray**, 6 *Abb. Pr.* 79. Disting'd (Liability of assignee of lease for rent) in *Tate v. McCormick*, 23 *Hun.* 218, 221.
- Holt v. Ross**, 59 *Barb.* 554. Aff'd in 54 *N. Y.* 472; *s. c.*, 13 *Am. R.* 615. Decision in *Id.* cited in illustration (Duty of agent to disclose his agency) in *Whart. Com. on Ag.* § 497.
- Holtz v. Schmidt**, 36 *Super. Ct. (J. & S.)* 575. Rev'd, it seems, in 59 *N. Y.* 253. Former proceeding in 34 *Super. Ct. (J. & S.)* 28. Further proceeding in 44 *Id.* 327. Decision in 59 *N. Y.* quoted and explained (Mistake unknown to one party to sale) in 1 *Benj. on Sales*, § 610, *n.* 5 (Corbin's 4 *Am. ed.*).

**Holyoke v. Adams**, 2 *Sup'm. Ct. (T. & C.)* 1; s. c., with further decision in 1 *Hun.* 223. Confirmed and appeal dismissed in 59 *N. Y.* 233. Decision in *Id.* followed (Leave to file supplemental answer setting up discharge in bankruptcy) in *Harding v. Minear*, 54 *Cal.* 506. Disting'd (Effect of discharge in bankruptcy on attachment proceedings) in *Goodhue v. King*, 55 *Id.* 377, 379.

— **v. Union Mut. Life Ins. Co.**, 22 *Hun.* 75. Aff'd in 84 *N. Y.* 648, with opinion below.

**Homan v. Brinckerhoff**, 1 *Den.* 184. See *Kelly v. Archer*. Explained and limited (Duty of showing jurisdiction of justice to issue attachment) in *Whiley v. Sherman*, 3 *Den.* 185. Disting'd in *Northrup v. Garrett*, 17 *Hun.* 497, 499.

— **v. Earle**, 13 *Abb. Pr. N. S.* 402. Aff'd in 53 *N. Y.* 267. Decision in *Id.* explained and approved (Evidence in action for breach of promise) in 7 *South. L. J. N. S.* 61.

**Home Ins. Co. v. Green**, 19 *N. Y.* 518. Approved (Notice of protest) in *Fank of Cooperstown v. Woods*, 28 *Id.* 545, 559.

— **v. Watson**, 1 *Hun.* 643; s. c., 4 *Sup'm. Ct. (T. & C.)* 226. Rev'd in 59 *N. Y.* 390.

— **v. Western Transp. Co.**, 4 *Robt.* 257; s. c., 33 *How Pr.* 102. Aff'd in 51 *N. Y.* 93.

**Home Life Ins. Co. v. Sherman**, 46 *N. Y.* 370. Disting'd (Dispossession, as defense to action for rent) in *Mattoon v. Monroe*, 21 *Hun.* 74, 82.

**Homer v. Guardian Mut. Life Ins. Co.**, 67 *N. Y.* 478. Disting'd (Extension of time of payment of insurance premium) in *Marvin v. Guardian Mut. Life Ins. Co.*, 16 *Hun.* 494.

**Hone v. Boyd**, 1 *Sandf.* 481. Approved (Insolvency of insurance company no defense to action on premium note) in *Sterling v. Mercantile Ins. Co.*, 32 *Pena.* 75.

— **v. Henriquez**, 13 *Wend.* 240; s. c., 27 *Am. Dec.* 204, with note containing citations. Disting'd (Right of one assenting to signment for creditors, to assail the same) in *McConnell v. Sherwood*, 84 *N. Y.* 522, 530.

— **v. Kent**, 11 *Barb.* 315. Rev'd in 6 *N. Y.* 390. See case and points in No 14 of Charles O'Connor's "My Own Cases," in *Law Inst. Libr. N. Y. City.*

— **v. Mutual Safety Ins. Co.**, 1 *Sandf.* 187. Aff'd in 2 *N. Y.* 235. Decision in 1 *Sandf.* followed (Liability under contract of re-insurance) in *Blackstone v. Alemannia Fire Ins. Co.*, 56 *N. Y.* 104, 106. Dissented from in *Illinois Mut. Ins. Co. v. Andes Ins. Co.*, 67 *Ill.* 362; s. c., 16 *Am. R.* 620, 622.

— **v. Van Schaick**, 7 *Paige*, 221. Aff'd in 20 *Wend.* 564. See further proceeding arising under same will in 3 *Edw.* 474, which was rev'd in 3 *Barb. Ch.* 488, and that rev'd in 3 *N. Y.* 538. See *Marsellis v. Thalhimer*. With decision in 7 *Paige* compare (Validity of trusts in personal property) *Kane v. Gott*, 24 *Wend.* 641; *Arnold v. Gilbert*, 5 *Barb.*

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190; *Cruger v. Cruger*, *Id.* 265. Decision in 7 *Paige*, applied (Annuity to widow when not affected by void provisions in will) in *McCormack v. McCormack*, 60 *How. Pr.* 196, 198. Decision in 20 *Wend.* relied on with *Coster v. Lorillard*, 14 *Id.* 265; *Hawley v. James*, 16 *Id.* 61; *Boynton v. Hoyt*, 1 *Den.* 53; *Tucker v. Tucker*, 5 *N. Y.* 408; *Jennings v. Jennings*, 7 *Id.* 547; *Irving v. De Kay*, 9 *Paige*, 521; *Converse v. Kellogg*, 1 *Barb.* 590; *Burrill v. Boardman*, 43 *N. Y.* 254; *Rose v. Rose*, 4 *Abb. Ct. App. Dec.* 108 (Suspension of power of alienation) in *De Wolf v. Lawson*, 61 *Wis.* 469, 475. Quoted in 1 *Jarm. on Wills*, *Rand & T. ed.* 511, n. Discussed in 4 *Kent Com.* 271, n. g.

— **v. Woolsey**, 2 *Edw.* 289. Disting'd (Revocation of assignment for creditors) in *Whitcomb v. Fowle*, 7 *Abb. N. C.* 295. Discussed in *Burrill on Assign.* § 362, n. 4, 4 ed. Collated with other cases in *Bishop on Assign.* § 251.

**Honegsberger v. Second Ave. R. R. Co.**, 1 *Daly*, 89. Rev'd, in 33 *How. Pr.* 193; s. c., 1 *Keyes*, 570; 2 *Abb. Ct. App. Dec.* 378. Decision in *Id.* not followed (Negligence in child) in *Caley v. N. Y. Central, &c. R. R. Co.*, 8 *Daly*, 220. Overruled in *Thurber v. Harlem, &c. R. R. Co.*, 60 *N. Y.* 326, 334.

**Honsee v. Hammond**, 39 *Barb.* 89. Followed (Evidence of rental, &c. value, &c. to show damages) in *Schroeder v. DeGraff*, 28 *Minn.* 299. Quoted and discussed (Polluting water) in *Wood on Nuis.* 2 ed. § 450, n.

**Hood v. Hallenbeck**, 7 *Hun.* 362. Disting'd (Individual liability of those contracting for association) in *Whitford v. Laidler*, 25 *Id.* 136, 139. Followed in *Stearns v. Allen*, *Id.* 559. See to the contrary, cases cited in *Abb. Tr. Ev.* 402, n. 9.

— **v. Hood**, 19 *Hun.* 300. Motion to dismiss appeal denied, it seems, in 81 *N. Y.* 640, but without opinion. Rev'd in 85 *Id.* 561. Other proceedings affecting same estate in *Matter of Hood*, 27 *Hun.* 579, which was rev'd in 90 *N. Y.* 512. Also in 1 *Dem.* 392. See *Dodge v. Pond*; *Stilwell v. Mills*. Decision in 85 *N. Y.* followed (Power in trust, when given to executor as such) in *Mott v. Ackerman*, 92 *Id.* 539.

— **v. Manhattan Fire Ins. Co.**, 2 *Duer*, 191. Rev'd in 11 *N. Y.* 532.

**Hoodless v. Brundage**, 8 *How. Pr.* 263. Explained (Jurisdiction of justice, as determined by amount in dispute) in *Lund v. Brodhead*, 41 *How. Pr.* 146.

**Hoogland v. Hudson**, 8 *How. Pr.* 343. See (Contents of demurrer) *Code Civ. Pro.* 1881, § 490, n.

— **v. Watt**, 2 *Sandf. Ch.* 148. Followed (Dower when barred by wife joining in deed) in *Elmendorf v. Lockwood*, 57 *N. Y.* 322, 327. Explained in 1 *Washb. on Real Prop.* 4 ed. 253.

**Hook v. Gray**, 6 *Barb.* 398. Rev'd in 4 *N. Y.* 449.

- **v. Pratt**, 14 *Hun*, 396. Aff'd in 78 *N. Y.* 371.
- Hooker v. Cummings**, 20 *Johns.* 90; s. c., 11 *Am. Dec.* 249. See *Palmer v. Mulligan*, Overruled (Right of fisheries) in *People v. Canal Appraisers*, 33 *N. Y.* 461. Followed with *Commissioners v. Kempshall*, 26 *Wend.* 404; *Ex parte Jennings*, 6 *Cow.* 518; *Gould v. Hudson River R. R. Co.*, 6 *N. Y.* 522; *People v. Platt*, 17 *Johns.* 195; *Rogers v. Jones*, 5 *Wend.* 237; *Trustees of Brookhaven v. Strong*, 60 *N. Y.* 56; *Chenango Bridge Co. v. Paige*, 83 *Id.* 178 (Application in this State of common law rule respecting navigable rivers) in *Smith v. City of Rochester*, 92 *Id.* 463, 481. Collated with other cases in *Mills Thomps. on Highw.* 3 ed. 47.
- **v. Eagle B'k of Rochester**. See *Myers v. Davis*.
- **v. Utica & Minden Turnpike Co.**, 12 *Wend.* 371. Approved (Reverter of land taken for public use) in *Dunham v. Williams*, 36 *Barb.* 136, 162.
- **v. Vandewater**, 4 *Den.* 349. See *Chappel v. Brockway*; *Hartford & New Haven R. R. Co. v. N. Y. & N. H. R. R. Co.* Disting'd (Agreement to prevent competition) in *Marsh v. Russell*, 66 *N. Y.* 293. Disting'd (Conspiracy against trade or commerce) in *Hatch v. Amer. Union Tel. Co.*, 9 *Abb. N. C.* 223, 233.
- Hooley v. Gieve**, 7 *Abb. N. C.* 271. Aff'd, it seems in 73 *N. Y.* 599, but without opinion.
- **v. —**, 82 *N. Y.* 625. Reported in 9 *Abb. N. C.* 8. See *Barlow v. Yeomans*. Compare (Tracing trust funds) *Ex parte Hardcastle*, 44 *L. T. R. N. S.* 523. Compare (Creditor's action) *Hardenburgh v. Blair*, 30 *N. J. Eq.* 646.
- Hooper v. Hudson River Fire Ins. Co.**, 15 *Barb.* 413. Aff'd in 17 *N. Y.* 424. Decision in *Id.* applied (Effect of assent to assignment of policy) in *Steen v. Niagara F. Ins. Co.*, 61 *How. Pr.* 144, 148.
- **v. Tuckerman**, 3 *Sandf.* 311. Questioned (Power of assignees in insolvency or bankruptcy) in *Betton v. Valentine*, 1 *Curt. C. Ct.* 168. Discussed (Avoidance of assignment for benefit of creditors) in *Burrill on Assign.* § 503, 4 ed. Explained (No disposition of surplus) in *Id.* § 208, n. 3.
- Hoover v. Greenbaum**, 62 *Barb.* 188. Aff'd in 61 *N. Y.* 305, and that aff'd as *Hoover v. Wise*, in 91 *U. S.* 308. See *Sims v. Brown*. Decision in 61 *N. Y.* explained and disting'd (Client not liable for attorney's fraud) in *Poucher v. Blanchard*, 86 *Id.* 256, 262. Decision in 91 *U. S.* disting'd as inapplicable to case of agent employed by collecting bank,—in *Guelich v. Nat. State B'k of Burlington*, 56 *Iowa*, 534; s. c., 41 *Am. R.* 110. Disting'd in *First Nat. Bk. v. Reno Co. Bk.*, *U. S. Cir. Ct. D. Minn.* 10 *Reporter*, 797.
- Hope v. Balen**, 58 *N. Y.* 380. Aff'g *Hope v. Smith*, 35 *Super. Ct. (J. & S.)* 458. See *Barker v. Bradley*; *Pechner v. Phoenix Ins. Co.* Decision in 58 *N. Y.* disting'd (Parol evidence to explain contract) in *Parsons v. Reby*, 14 *Weekly Dig.* 500. Compare *Van Brunt v. Day*, 8 *Abb. N. C.* 336, 341.
- **v. Smith**. See *Hope v. Balen*.
- Hope Fire Ins. Co. v. Cambrelling**, 1 *Hun.* 493. Fully reported in 3 *Sup'm. Ct. (T. & C.)* 495.
- Hope Mut. Ins. Co. v. Perkins**, 4 *Robt.* 182. Aff'd in 2 *Abb. Ct. App. Dec.* 383; s. c., 38 *N. Y.* 404. Statement in 38 *N. Y.*, that case came up on appeal from Supreme Court, is erroneous.
- Hope Mut. Life Ins. Co. v. Taylor**, 2 *Robt.* 278. Explained (Power of receiver to sue) in 7 *South. L. Rev. N. S.* 239.
- Hopf v. Myers**, 42 *Barb.* 270. Applied (Former judgment as bar) in *Burritt v. Belfy*, 47 *Conn.* 323; s. c., 36 *Am. R.* 79.
- Hopkins v. Adams**, 5 *Abb. Pr.* 351. Applied under the Code (Abatement by death of defendant before verdict) in *Mosely v. Mosely*, 11 *Id.* 105, 107.
- **v. Cabrey**, 24 *Wend.* 264. See (Transfer of action in justice's court) *Code Civ. Pro.* 1881, § 3152, n.
- **v. Coburn**, 1 *Wend.* 292. Reviewed with *Seaver v. Robinson*, 3 *Duer*, 622; *Merrill v. George*, 23 *How. Pr.* 331; *Person v. Grier*, 66 *N. Y.* 126 (Immunity from service of process) in *Massey v. Colville*, 16 *Vroom (N. J.)* 119; s. c., 36 *Am. R.* 754.
- **v. Everett**, 6 *How. Pr.* 159. Disapproved (Sustaining demurrer to mere denial) in *Loomis v. Dorshimer*, 8 *Id.* 9.
- **v. Grinnell**. See *McCoy v. Artcher*.
- **v. Hopkins**. See *Brizsee v. Maybee*.
- **v. People**, 12 *Wend.* 76. Quoted (Allegation that consideration passed between thief and receiver of stolen goods) in 2 *Bennett & H. Cas. on Crim. L.* 132.
- **v. Smith**, 3 *Barb.* 599. See *Woodbeck v. Keller*. Disting'd (Quantum of evidence in civil cases) in *Johnson v. Agricultural Ins. Co.*, 25 *Hun*, 251, 253. Examined with other cases in 15 *Abb. L. J.* 444.
- **v. Van Valkenburgh**, 16 *Hun*, 3. Followed (Jurisdiction of surrogate over disputed claims) in *People ex rel. Adams v. Westbrook*, 61 *How. Pr.* 138, 141.
- Hopping v. Quin**, 12 *Wend.* 517. Followed (Liability of attorney to client for negligence) in *Von Wallhoffen v. Newcombe*, 10 *Hun*, 236.
- Hoppock v. Donaldson**. See *Stebbins v. East Society of M. E. Church*.
- **v. Tucker**, 1 *Hun*, 132; s. c., 3 *Sup'm. Ct. (T. & C.)* 653. Aff'd in 59 *N. Y.* 202. Decision in *Id.* explained (Legatees, when taking as a class) in *Betts v. Betts*, 4 *Abb. N. C.* 317, 424.
- Hoppough v. Struble**, 2 *Sup'm. Ct. (T. & C.)* 664. Rev'd in 60 *N. Y.* 430, unless modified by consent. Decision in *Id.* discussed (Answer in ejectment) in *Sedgw. & W. on Tr. of Tit. to Land*, § 488.
- Horgan v. Krumwiede**, 25 *Hun*, 116. Fuller abridgt. in 12 *Weekly Dig.* 549.



- Horn v. Keteltas**, 46 *N. Y.* 605. Disting'd (Absolute conveyance, when to be deemed mortgage) in *Morrison v. Brand*, 5 *Daly*, 42; *Fullerton v. McCurdy*, 55 *N. Y.* 639; *Randall v. Sanders*, 23 *Hun*, 614. Applied to transfer of policy,—in *Matthews v. Sheehan*, 69 *N. Y.* 532. Collected with numerous other cases in 15 *Am. Dec.* 47, *n.*, as to the current of modern decisions being in favor of the doctrine maintained therein.
- **v. Pullman**, 10 *Hun*, 471. Aff'd in 72 *N. Y.* 269. See *Children's Aid Society v. Loveridge*; *Jackson v. Kniffen*. Compare (Admissibility of declarations of those taking under will) *Matter of Ames*, 51 *Iowa*, 596.
- Hornbeck v. American Bible Soc'y**, 2 *Sandf. Ch.* 133. Applied (Bequest to treasurer of society, in legal effect a bequest to the society) in *Effroy v. Foundling Asylum*, 5 *Redf.* 557, 560. Compared with other cases in 4 *Am. L. Reg. N. S.* 274.
- **v. Westbrook**. See *Jackson v. Cory*.
- Hornby, Matter of**, 2 *Bradf.* 420. Followed (Declarations of testator) in *Stevens v. Stevens*, 2 *Redf.* 265, 284.
- Horne v. Barney**. See *Fish v. Weatherwax*.
- Hornfager v. Hornfager**, 6 *How. Pr.* 13. Cited with *Beck v. Stephani*, 9 *Id.* 193 (Proper mode of bringing in new parties) in *Lee v. O'Shaughnessy*, 20 *Minn.* 173.
- Horsfall, Matter of**, 59 *How. Pr.* 265; *s. c.*, more fully, 8 *Daly*, 190; 5 *Abb. N. C.* 289. Appeal dismissed in 77 *N. Y.* 514.
- Horton v. Hendershot**, 1 *Hill*, 118. Disting'd (Sheriff's liability for attachment) in *Deutsch v. Reilly*, 8 *Daly*, 132. Disting'd (Rights of sheriff under levy) in *Hill v. Haynes*, 54 *N. Y.* 153, 157.
- **v. Horton**, 2 *Cow.* 589. Approved with *People v. Douglass*, 4 *Id.* 26; *Oliver v. Trustees of First Presb. Ch. of Springfield*, 5 *Id.* 284; *People v. Ransom*, 7 *Wend.* 423 (Irregularities when not ground for setting aside verdict) in *Roberts v. State*, 14 *Ga.* 8; *s. c.*, 58 *Am. Dec.* 535.
- **v. —**, 2 *Bradf.* 200. See (Sale of decedent's real property) *Code Civ. Pro.* 1881, § 2773, *n.*
- **v. Morgan**, 6 *Duer*, 56. Aff'd in 19 *N. Y.* 170. See *Nourse v. Princ.* Decision in 19 *N. Y.* disting'd (Liability of broker for sale of stock belonging to customer) in *Clark v. Meigs*, 13 *Abb. Pr.* 468. Explained in *Markham v. Jaudon*, 41 *N. Y.* 243. Applied (One dealing with brokers is bound by their custom of dealing in their own names) in *Peckham v. Ketchum*, 5 *Bosw.* 512.
- **v. Shepherd**, 24 *Hun*, 343. Reported in 1 *Civ. Pro. R.* 26; abridgt. *s. c.*, 12 *Weekly Dig.* 89.
- **v. Town of Thompson**, 7 *Hun*, 452. Rev'd in 71 *N. Y.* 513. Decision in *Id.* approved (Power of legislature to validate defective action in issuing of town bonds) in *Rogers v. Stephens*, 86 *Id.* 623, 625.
- Applied in *Rogers v. Rochester, & C. R. R. Co.*, 21 *Hun*, 44, 46. Applied (Limit of legislative power over municipal action for private purposes) in *People ex rel. Manhattan Savgs Inst. v. Otis*, 24 *Hun*, 523. Followed (Invalidity of town bonds issued for railroad stock) in *Scipio v. Wright*, 101 *U. S.* 665, 676. Not followed (Unconstitutionality of act validating town bonds) in *Town of Thompson v. Perrine*, 103 *Id.* 806, 816; *Perrine v. Town of Thompson*, 17 *Blatchf. C. Ct.* 19. Disapproved in *Gray v. Town of York*, 15 *Id.* 335, 342.
- Hosack v. Rogers**, 6 *Paige*, 415. Rev'd in 18 *Wend.* 319. Further decision in 8 *Paige*, 229, and that aff'd in 25 *Wend.* 813.
- Hosford v. Ballard**, 39 *How. Pr.* 162. Aff'd in 39 *N. Y.* 147. Decision in *Id.* approved with *Van Rensselaer v. Dennison*, 35 *Id.* 393 (Right of action of ejectment for breach of condition contained in lease in fee for payment of rent) in *Cruger v. McLaury*, 41 *Id.* 219, which aff'd 51 *Barb.* 642, which see. See *Code Civ. Pro.* 1881, § 1504, *n.*
- **v. Merwin**, 5 *Barb.* 51. Disting'd (What may be determined in action for partition) in *Jordan v. Van Epps*, 85 *N. Y.* 427, 434.
- **v. Nichols**, 1 *Paige*, 220. Examined with other cases (Presumption as to foreign laws) in *Wright v. Delafield*, 23 *Barb.* 515. Disting'd (Usury as determined by law of place) in *Dickinson v. Edwards*, 77 *N. Y.* 585. Reviewed with *Fanning v. Consequa*, 17 *Johas.* 511; in *Peck v. Mayo*, 14 *Verm.* 33; *s. c.*, 39 *Am. Dec.* 205, 207. Quoted and explained in 2 *Pars. on Contr.* 584, *n. h.*
- Hosley v. Black**, 28 *N. Y.* 438. Cited and approved with *Purchase v. Mattison*, 6 *Duer*, 587; *Belknap v. Sealey*, 14 *N. Y.* 143; *Catlin v. Gunter*, 11 *Id.* 368; *Place v. Minster*, 65 *Id.* 89 (Variance and waiver thereof by failure to object to evidence) in *Owens v. Traveler's Ins. Co.*, *Sup'm. Ct. Ind.* 13 *Ins. L. J.* 651.
- Hossack v. Heyerdahl**, 38 *Super. Ct. (J. & S.)* 391. Appeal dismissed, it seems, in 60 *N. Y.* 634, but without opinion. Decision in 38 *Super. Ct. (J. & S.)* followed (What is long account) in *Camp v. Ingersoll*, 47 *Id.* 535.
- Hosstatter v. Wilson**, 36 *Barb.* 307. Included (Note payable in money or goods) in 1 *Ames Cqs. on B. & N.* 67.
- Hotaling v. Marsh**, 13 *Abb. Pr.* 297, *n.* Rev'd in 14 *Id.* 161. See *Eastburn v. Kirke*.
- Hotchkiss v. Hodge**, 33 *Barb.* 117. Cited with other cases (Promise to marry when implied) in 11 *Am. L. Reg. N. S.* 68.
- Hotchkiss v. Artisans' Bank**, 42 *Barb.* 517. Aff'd in 2 *Keyes*, 564; *s. c.*, 2 *Abb. Ct. App. Dec.* 403.
- **v. Banks**, 36 *How. Pr.* 61. Followed (Notice of appeal from justices' judgment) in *Putnam v. Heath*, 41 *Id.* 262. See *Code Civ. Pro.* 1881, § 3070, *n.*

- **v. Clifton Air Cure**, 4 *Keyes*, 170. Commented on (Duty of referee on sale of mortgaged premises) in *Koch v. Purcell*, 45 *Super. Ct. (J. & S.)* 162, 172.
- **v. Commercial Ins. Co.**, 1 *Robt.* 489. Rev'd, it seems, in 48 *N. Y.* 656 but without opinion.
- **v. Crocker**, 15 *How. Pr.* 407. See (What complaint must contain) *Code Civ. Pro.* 1881, § 481, *n.*
- **v. Germania Fire Ins. Co.** See *People v. Vane*.
- **v. Lothrop**, 1 *Johns.* 286; *s. c.*, 3 *N. Y. Com. L. Law. ed.* 144, with brief note. Applied (Admissibility of libelous matter other than that directly involved in action) in *Morehead v. Jones*, 2 *B. Mon. (Ky.)* 210; 36 *Am. Dec.* 600.
- **v. McVickar**, 12 *Johns.* 403. See *Earl v. Camp*; *Marsh v. Lawrence*; *Savacool v. Boughton*. Limited (Lien of levy of execution) in *Roth v. Wells*, 29 *N. Y.* 471, 490, citing *Lambert v. Paulding*, 19 *Johns.* 311.
- **v. Mosher**, 48 *N. Y.* 478. See *Ryan v. Ward*. Disting'd (Certificate of deposit) in *Pardee v. Fish*, 60 *N. Y.* 265, 269.
- **v. Oliphant**, 2 *Hill*, 510. Quoted (Action for libel against publisher of newspaper) in *Cooley on Const. Limit.* 5 ed.
- **v. Platt**, 7 *Hun*, 56. Aff'd, it seems, in 66 *N. Y.* 620, but without opinion. Another proceeding in 8 *Hun*, 46.
- Houck v. Lasher**, 17 *How. Pr.* 520. Disting'd (Appealability of order changing place of trial for convenience of witnesses) in *Fisk v. Albany & Susquehanna R. R. Co.*, 41 *How. Pr.* 365.
- Hough v. Gray**, 19 *Wenl.* 202. Examined at length with *Luqueer v. Prosser*, 1 *Hill*, 256; *Prosser v. Luqueer*, 4 *Id.* 420; *Manrow v. Durham*, 3 *Id.* 584; *Leggett v. Raymond*, 6 *Id.* 639 (Guaranty of note, as affected by statute of frauds) in *Hall v. Farmer*, 5 *Den.* 584, and see *De Ridder v. Schermerhorn*, 10 *Barb.* 638.
- Houghtaling v. Houghtaling**, 5 *Barb.* 379. Commented on (License creating interest in land) in *Browne on Stat. of Frauds*, § 29, 4 ed.
- **v. Kelderhouse**, 2 *Barb.* 149. Aff'd, in 1 *N. Y.* 530. These decisions disting'd (Evidence of good reputation of plaintiff when admissible) in *Sheehey v. Cokley*, 13 *Iowa*, 183; *s. c.*, 22 *Am. R.* 236, 238.
- **v. Lewis**, 10 *Johns.* 297. See *Howes v. Barker*; *Witbeck v. Waine*. Disting'd (Recovery by purchaser for deficiency in quantity of land conveyed by deed) in *Murdock v. Gilchrist*, 52 *N. Y.* 242, 247.
- Houghton v. Ault**, 16 *How. Pr.* 77. Collated with other cases (Attachment as affected by law of domicile) in *Thomps. on Prov. Rem.* 359.
- **v. McAuliffe**, 2 *Abb. Ct. App. Dec.* 409, *s. c.*, 26 *How. Pr.* 270. Disting'd (Power of insurance company to transfer negotiable paper) in *Wood v. Wellington*, 30 *N. Y.* 218; *Brookman v. Metcalf*, 32 *Id.* 591, which aff'd 5 *Bosw.* 429, which see. See to the contrary (*Burden of proof on assignee*) *Caryl v. McElrath*, 3 *Sandf.* 176. See also *Abb. Tr. Ev.* 7.
- Houk v. Bishop**, 4 *Weekly Dig.* 437; *s. c.*, as *Houk v. Bishop*, 10 *Hun*, 509.
- House Avenue, Matter of**, 3 *Sup'm. Ct. (T. & C.)* 770; *s. c.*, more fully, 67 *Barb.* 350.
- House v. Agate**, 3 *Redf.* 307. Disting'd (Proceedings to obtain payment of legacy, when barred) in *Drake v. Wilkie*, 30 *Hun*, 537. Followed in *Cole v. Terpenning*, 25 *Id.* 482, 484.
- **v. Burr**, 24 *Barb.* 525. Disting'd (*Lessee*, when entitled to renewal or extension of lease) in *Western Transp. Co. of Buffalo v. Lansing*, 49 *N. Y.* 499, 506.
- **v. Grant**. See *Coutant v. Schuyler*.
- **v. House**, 10 *Paige*, 158. Questioned with *Murdock v. Gifford*, 18 *N. Y.* 28, and the latter disting'd (*Fixtures*) in *Ford v. Cobb*, 20 *N. Y.* 344. Commented on in *Willard on Executors*, 260. Followed (*Contribution by life tenant*) in *Moseley v. Marshall*, 22 *N. Y.* 200, 202, 206.
- **v. Jackson**, 50 *N. Y.* 161. Followed (*Dower*) in *Powers v. Jackson*, 57 *Id.* 654, a case involving substantially the same facts. Commented on (*Distinction between vested and contingent reminders*) in 2 *Washb. on Real Prop.* 4 ed. 550, *n.*
- **v. Low**. See *Ensign v. Webster*.
- **v. McCormick**, 57 *N. Y.* 310. Disting'd and limited (*Adverse possession by grantor with covenant of warranty*) in *Sherman v. Kane*, 86 *Id.* 57, 68, which aff'd 46 *Super. Ct. (J. & S.)* 310, 325, which see.
- Houston v. Shindler**. See *Shindler v. Houston*.
- Hover v. Barkhoof**, 44 *N. Y.* 113. Disting'd (*Liability of commissioners of highways for injuries resulting from defect in bridge*) in *Day v. Crossman*, 1 *Hun*, 572. Collated with other cases in *Cook's Highw. L.* 4 ed. 50. Cited as settled law (*Liability for ministerial officer for omission of duty*) in *Clark v. Miller*, 54 *N. Y.* 534. Disting'd (*Public officer, to whom liable*) in *Day v. Reynolds*, 23 *Hun*, 133. Disting'd (*Liability of officer in action against him personally*) in *Donavan v. McAlpin*, 46 *Super. Ct. (J. & S.)* 111, 116.
- Hovey v. Hill**, 3 *Lans.* 167. Disting'd (Effect of filing *lis pendens*) in *Lamont v. Cheshire*, 65 *N. Y.* 39.
- **v. Rubber Tip Pencil Co.**, 33 *Super. Ct. (J. & S.)* 522. Aff'd in 57 *N. Y.* 119; *s. c.*, 15 *Am. R.* 470. Other proceeding in 12 *Abb. Pr. N. S.* 360; *s. c.*, less fully, 25 *Super. Ct. (J. & S.)* 81, which was aff'd in 50 *N. Y.* 335. Also other proceedings in 14 *Abb. Pr. N. S.* 66; 47 *How. Pr.* 289; 38 *Super. Ct. (J. & S.)* 428. Decision in 50 *N. Y.* followed (*Damages on injunction*) in *McDonald v. James*, 38 *Super. Ct. (J. & S.)* 76, 79; *Troxell v. Haynes*, 5 *Daly*, 389, 391. Explained in *Newton v. Russell*, 24 *Hun*, 40, 43. Decision in 57 *N. Y.* followed (*Action to restrain publication of*

- notices injurious to one's business, when maintainable as for slander of title) in *Celluloid Manuf. Co. v. Goodyear Dental Vulcanite Co.*, 13 *Blatchf. Ct. Ct.* 375. Explained in *Moak's Underhill's Torts*, 1 Am. ed. 131.
- **v. Ten Broeck**, 3 *Robt.* 316. Approved and followed, and held not to be overruled by *Coffin v. Reynolds*, 37 *N. Y.* 642 ("Laborers," &c. for whose services stockholders are liable),—in *Vincent v. Bamford*, 12 *Abb. Pr. N. S.* 252. Criticised in *Kincaid v. Dwinel'e*, 59 *N. Y.* 548. Disting'd in *Wakefield v. Fargo*, 90 *Id.* 213.
- Howard v. Albany Ins. Co.**, 3 *Den.* 301. Disting'd (Transfer of policy between partners) in *Hoffman v. Aetna Ins. Co.*, 32 *N. Y.* 405.
- **v. City Fire Ins. Co.**, 4 *Den.* 502. Followed (Allowing questions irrelevant to issue but tending to discredit witness) in *Great Western Turnpike Co. v. Loomis*, 32 *N. Y.* 127, 137. See to the contrary (Preliminary proofs) *Jones v. Mechanics' Fire Ins. Co.*, 36 *N. Y. (7 Vroom)*, 29; s. c., 13 *Am. R.* 405. See *Abb. Tr. Ev.* 490.
- **v. Daly**, 61 *N. Y.* 261. Commented on (Waiver of conditions precedent) by DWIGHT, Referee, in *Marie v. Garrison*, citing also *Hawley v. Keeler*, 53 *N. Y.* 114; *Woolner v. Hill*, 93 *Id.* 576, and other authorities. Cited with *Moody v. Leverich*, 14 *Abb. Pr. N. S.* 145; *Shaw v. Republic Ins. Co.*, 69 *N. Y.* 286, and many other cases from *N. Y.* and elsewhere (Damages for breach of contract for services for specified period) in 19 *Cent. L. J.* 342. Referred to in 43 *Am. Dec.* 206, n., as a leading case, and as repudiating the doctrine of constructive service in case of a discharged employee suing for wages, what is said in *Thompson v. Wood*, 1 *Hill.* 93, in support of that doctrine being criticised as a dictum. See *Moody v. Leverich*, 4 *Daly*, 402. Colated with other cases (Breach of contract before time of performance by declaration of intention not to perform) in *Pappenheimer Hardware Co. v. Harrison Wire Co.*, 9 *Week. Cin. L. Bul.* 132. See *Daniels v. Newton*, 114 *Mass.* 530; s. c., 19 *Am. R.* 385, with note.
- **v. Doolittle**, 3 *Duer*, 464. See *Dyett v. Pendleton*; *Witty v. Matthews*. Approved (Landlord not bound to protect against excavation by adjoining owner) in *Sherwood v. Seaman*, 2 *Bosw.* 127, 130.
- **v. Duncan**, 3 *Lans.* 174. Denied (Ratification of forgery) in *Workman v. Wright*, 33 *Ohio St.* 405; s. c., 31 *Am. R.* 548, with note. Criticised in 5 *Id.* 447, n., as poorly considered and not sustained by the authorities.
- **v. Easton**, 7 *Johns.* 205. Relied on (Effect of taking possession of land, in case of action for purchase price) in *Johnson v. Hanson*, 6 *Ala.* 351; s. c., 41 *Am. Dec.* 54, with note. Quoted in *Browne on Stat. of Frauds*, § 231, 4 ed.
- **v. Farley**, 18 *Abb. Pr.* 367; s. c., 29 *How. Pr.* 4. Aff'd in 3 *Robt.* 599. Another decision in 19 *Abb. Pr.* 126; s. c., 3 *Robt.* 308.
- **v. Freeman**, 6 *Robt.* 511. Further decision in 7 *Id.* 25; s. c., more fully, in 3 *Abb. Pr. N. S.* 292. Decision in *Id.* examined and criticised (Remedy of defendant defeated on motion for postponement of trial) in *Gregg v. Howe*, 37 *Super. Ct. (J. & S.)* 420, 425.
- **v. Hatch**, 29 *Barb.* 297. Re-aff'd (Necessity of recording affidavits, to pass title to purchaser of mortgaged premises) in *Frink v. Thompson*, 4 *Lans.* 487, 491. See *Code Civ. Pro.* 1881, § 2490, n.
- **v. Henriques**, 3 *Sandf.* 725. See *Mattell v. Flanagan*. Followed (Retaining use of name of hotel on coach) in *Deiz v. Lamb*, 6 *Robt.* 537. Applied to name of newspaper in *American Grocer v. Grocer Pub. Co.*, 25 *Hun.* 398, 403. Explained in 2 *Pars. on Contr.* 257, b, n. l. Explained in *Moak's Underhill's Torts*, 1 Am. ed. 621.
- **v. Hoey**, 23 *Wend.* 350; s. c., 35 *Am. Dec.* 572, with note. Followed with *Gallagher v. Waring*, 9 *Wend.* 28 (Implied warranty of fitness on contract to furnish article for specific purpose) in *Getty v. Rountree*, 2 *Pinn. (Wisc.)* 379; s. c., 2 *Chand.* 28; 54 *Am. Dec.* 138, with note, *Hart v. Wright*, 17 *Wend.* 267, being disting'd, and *Sands v. Taylor*, 5 *Johns.* 395; *Oneida Man'g Society v. Lawrence*, 4 *Conn.* 440, also reviewed. Quoted in 2 *Story on Contr.* 5 ed., § 1074, n. 4.
- **v. Ives**, 1 *Hill.* 263. See *Mead v. Engs.* Explained and followed (Time of mailing notice of dishonor) in *Farmer's Bank of Bridgeport v. Vail*, 21 *N. Y.* 485. Followed in *Chick v. Pillsbury*, 24 *Me.* 458; s. c., 41 *Am. Dec.* 394, 397, with note. Included in 2 *Ames Cas. on B. & N.* 390; 1 *Hare & W. Am. Lead. Cas.* 5 ed. 488.
- **v. Lee**, 3 *Sandf.* 281. Quoted and discussed (Bone boileries as nuisances) in *Wood on Nuis.* 2 ed. § 590.
- **v. McDonough**, 8 *Daly*, 365. Aff'd in 77 *N. Y.* 592. Decision in *Id.* compared with other cases (Memoranda as evidence) 35 *Am. R.* 56, n.
- **v. Moot**, 2 *Hun.* 475; s. c., 5 *Sup'm. Ct. (T. & C.)* 427. Aff'd in 64 *N. Y.* 262. See *Hand v. Ballou*.
- **v. Norton**, 65 *Barb.* 161. Cited (Authority to sign instrument in writing, when question for jury) in *Whart. Com. on Ag.* § 46, n.
- **v. Robbins**, 1 *Lans.* 63. Applied (Power of village trustees to determine what is nuisance) in *Marvin v. Pardee*, 64 *Barb.* 353, 361.
- **v. Sexton**, 1 *Den.* 440; subsequent decision in 4 *N. Y.* 157. See *Vincent v. Germond*. Decision in 4 *N. Y.* approved (Proof of repetition of slander) in *Johnson v. Brown*, 57 *Barb.* 118. Followed in

- Whitney v. Elmer, 60 *Id.* 250. Explained, in Titus v. Sumner, 44 *N. Y.* 266. Both decisions followed (Waiver of arbitrator's oath) in Day v. Hammond, 57 *Id.* 479, 483. Followed with Browning v. Wheeler, 24 *Wend.* 258; Kelsey v. Darrow, 22 *Hun.* 125, in Pross v. Bradstreet, 9 *Cin. L. Bul.* 244. Followed in Hill v. Taylor, 15 *Wisc.* 190; Tucker v. Allen, 47 *Mo.* 488. Disapproved in Inslee v. Flagg, 26 *N. J. L.* 368, 371. Compare Hepburn v. Jones, 4 *Col.* 98. Decision in 1 *Den.* examined with other cases (Perjury) in Lambert v. People, 6 *Abb. N. C.* 181, 195. Decision in 4 *N. Y.* commented on in *Browne on Stat. of Frauds*, § 135, b, 4 ed.
- **v. Sheldon**, 11 *Paige*, 558. Followed (Necessity of execution against all of joint debtors, in order to maintain creditor's action) in Field v. Chapman, 13 *Abb. Pr.* 320, 327.
- **v. Smith**, 33 *Super. Ct. (J. & S.)* 124; s. c., 42 *How. Pr.* 300. Further decision in 35 *Super. Ct. (J. & S.)* 131.
- **v. Thompson**, 21 *Wend.* 342; s. c., 34 *Am. Dec.* 238, with note, wherein are collected citations. Followed (Proof of want of probable cause required in slander) in Viele v. Gray, 10 *Alb. Pr.* 1, 11. Disting'd with O'Donohue v. McGovern, 23 *Wend.* 26 (Communications to those in authority when privileged) in Worthington v. Scribner, 109 *Mass.* 487; s. c., 12 *Am. R.* 736. Included with notes in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 175.
- Howard Ins. Co. v. Halsey**, 4 *Sandf.* 535. Aff'd in 8 *N. Y.* 271; s. c., 59 *Am. Dec.* 478, with note. See Williamson v. Brown. Decision in 8 *N. Y.* collated with *N. Y. Central Ins. Co. v. Nat. Protection Ins. Co.*, 20 *Barb.* 468, and other cases (Notice to agent when deemed notice to principal), and limited to case of agent who is attorney or legal adviser,—in 13 *Weekly L. Bul.* 182. Criticised as extreme (Constructive notice to purchaser, &c.) in 2 *Pomeroy on Eq. Jur.* 68, n.
- **v. Scribner**, 5 *Hill*, 298. Overruled (Effect of subsequent insurance) in Ogden v. East, 50 *N. Y.* 388. So referred to in Pitney v. Glens Falls Ins. Co., 65 *Id.* 20. Followed and approved in Sloat v. Royal Ins. Co., 49 *Pa. St.* 14, 18. Compare 28 *Am. Dec.* 123, n.
- Howe, Matter of**, 1 *Paige*, 124; s. c., 19 *Am. Dec.* 695, with note containing citations. Criticised and doubted (Claim of judgment creditor when postponed to prior equitable claim) in Hulett v. Whipple, 58 *Barb.* 224. Followed, in Cook v. Kraft, 60 *Id.* 409.
- , —, 1 *Paige*, 214. Followed (Validity of bequest to corporation, partially subject to trust) in Curran v. Sears, 2 *Redf.* 526, 534. Quoted and explained in *Ang. & A. on Corpor.* § 168, 11 ed.
- Howe v. Buffalo, N. Y. & Erie R. R. Co.**, 38 *Barb.* 124. Aff'd in 37 *N. Y.* 297.
- Decision in *Id.* disting'd (Implied promise to indemnify) in Bennett v. Cook, 45 *Id.* 268. Disting'd in People, *ex rel.* Van Keuren v. Auditors of Esopus, 10 *Hun.* 551. Both decisions cited as authority in Turner v. Jones, 1 *Lans.* 147, notwithstanding St. John v. St. John's Church, 15 *Barb.* 346.
- **v. Carpenter**. See Beebe v. Hutton.
- **v. Deuel**, 43 *Barb.* 504. Followed as a controlling authority (Receiver of corporation cannot be appointed in action by stockholder) in People v. Erie R'y Co., 36 *How. Pr.* 129. Followed also in Gilman v. Green Point Sugar Co., 4 *Lans.* 493.
- **v. Hasbrouck**, 1 *How. Pr.* 67. Applied (Affidavit of merits) in State Bk. of Syracuse v. Gill, 23 *Hun.* 407.
- **v. Howe**, 5 *Weekly Dig.* 460. Followed (Attachment for non-payment of counsel fees, &c. in divorce) in Pritchard v. Pritchard, 4 *Abb. N. C.* 298, 300.
- **v. Peckham**, 10 *Barb.* 656. Thought to be doubtful (Cause of action for driving against and injuring plaintiff and his horse and carriage, is a single one) in *Pomeroy on Rem.* § 460, n. 11.
- **v. Potter**, 61 *Barb.* 356. Disting'd (Usury on sale of note) in Eastman v. Shaw, 65 *N. Y.* 530.
- **v. Savory**, 49 *Barb.* 403. Aff'd in effect in 51 *N. Y.* 631.
- **v. Searing**, 10 *Abb. Pr.* 264; s. c., 19 *How. Pr.* 14; 6 *Bosw.* 354. Collated with other cases (Right to use of name, as included in good will of business) in 35 *Am. R.* 550, n. Explained in 2 *Para. on Contr.* 257, *bs. n. u.*
- Howe Machine Co. v. Farrington**, 16 *Hun.* 591. Aff'd in 82 *N. Y.* 121. Decision in *Id.* followed (Exoneraton of surety by delay to proceed against principal) in Thayer v. King, 31 *Hun.* 437.
- **v. Pettibone**, 12 *Hun.* 657. Appeal dismissed in 74 *N. Y.* 68. Decision in *Id.* disting'd (Service by publication) in Carleton v. Carleton, 85 *Id.* 313, 316.
- Howell v. Adams**, 1 *Sup'm. Ct. (T. & C.)* 425. Aff'd in 68 *N. Y.* 314.
- **v. Baker**, 4 *Johns. Ch.* 120. Followed (Attorney purchasing at execution sale, when deemed trustee) in O'Donnell v. Lindsay, 39 *Super. Ct. (J. & S.)* 523, 533. Commented on in Blight's Heirs v. Tobin, 7 *T. B. Monr. (Ky.)* 612; s. c., 18 *Am. Dec.* 219, 223, with note. Explained in 1 *Perry on Trusts*, 3 ed. § 135, n. 2. Relied on with Troup v. Wood, 4 *Johns. Ch.* 228; Tiernan v. Wood, 6 *Id.* 411; Woods v. Monell, 1 *Id.* 502 (Power of court of equity to revise execution sales) in Blight's Heirs v. Tobin, *above*.
- **v. Blodgett**, 1 *Redf.* 323. Disapproved (Power of surrogate to authorize compounding of debts) in Berrien's Estate, 16 *Abb. Pr. N. S.* 23; Shepard v. Saltus, 4 *Redf.* 232.
- **v. Chicago & North Western R. R.**

- Co., 51 *Barb.* 378. Opposed (Jurisdiction over foreign corporations, as affected by Code provisions) in *De Beemer v. Drew*, 57 *Barb.* 438; *Prouty v. Mich. S. & N. Ind. R. R. Co.*, 1 *Hun*, 658. Explained (Stock dividends) in *Williams v. Western Union Tel. Co.*, 9 *Abb. N. C.* 419, 425.
- *v. City of Buffalo*, 15 *N. Y.* 512. See *Barney v. City of Buffalo*; *Hart v. City of Brooklyn*. Explained (Necessity of presentation of claim against principal corporation, arising out of tort) in *Childs v. Village of West Troy*, 23 *Hun*, 68, 70. Explained ("Demands or claims" as including cause of action for tort) in *Kelley v. City of Madison*, 43 *Wis.* 538; s. c., 28 *Am. R.* 576.
- *v. —*, 37 *N. Y.* 267. See cases collected (Taxes imposed on particular property) in *Am. L. Reg. N. S.* 164.
- *v. —*, 2 *Abb. Ct. App. Dec.* 412. Commented on (Relief against assessment proceedings) in *Astor v. Mayor, &c. of N. Y.*, 37 *Super. Ct. (J. & S.)* 539, 580.
- *v. Denniston*, 3 *Cai.* 96. Cited with *Thomas v. Douglass*, 2 *Johns. Cas.* 226; *Depeyster v. Warne*, 2 *Cai.* 45; *Stewart v. Atkins*, 3 *Cow.* 67; *Olney v. Bacon*, 3 *Cai.* 132, in *Browning v. Roane*, 9 *Ark.* 354; s. c., 50 *Am. Dec.* 218, as showing the extent to which the N. Y. courts have gone in admitting exceptions to the rule requiring merits to be shown in order to relieve a party against a default.
- *v. Knickerbocker Life Ins. Co.*, 19 *Abb. Pr.* 217; s. c., 3 *Robt.* 232. Rev'd in 44 *N. Y.* 276. See *Roehner v. Same*. Decision in 44 *N. Y.* disting'd (What excuses non-payment of premiums) in note to *Sands v. N. Y. Life Ins. Co.*, 50 *Id.* 626. Applied (Payment of premium by other than insured) in *Warden v. Guardian Mut. Life Ins. Co.*, 39 *Super. Ct. (J. & S.)* 317, 329. Decision in 19 *Abb. Pr.* applied (Inadmissibility of oral evidence to control written agreement between insurer and insured) in *Pohalski v. Mut. Life Ins. Co.*, 36 *Super. Ct. (J. & S.)* 234, 250.
- *v. Mills*, 7 *Lans.* 193. Aff'd in 56 *N. Y.* 226. See *Sullivan v. Sullivan*. Decision in 56 *N. Y.* disting'd (Who may bring partition) in *Sullivan v. Sullivan*, 66 *Id.* 40; *Harris v. Larkins*, 22 *Hun*, 488, 490. Applied with *Alling v. Fahy*, 70 *N. Y.* 571 (Review of discretionary orders) in *Walsh v. Schulz*, 6 *Civ. Pro. R. (Broune)* 126. Explained in *Livermore v. Bainbridge*, 56 *N. Y.* 72, 74.
- *v. People*, 3 *Hun*, 620. Aff'd as *People v. Howell*, on opinion of LEARNED J., in 63 *N. Y.* 607, but without further opinion.
- *v. Ransom*, 1 *N. Y. Leg. Obs.* 10. Aff'd in 11 *Puig*, 538. Decision in *Id.* followed (Dealings between attorney and client) in *Wise v. Hardin*, 5 *So. Car.* 325; *Shanklin v. Meyler*, *Ky. Super. Ct. Oct.* 1880, 5 *Ky. L. Rep. & J.* 296, 301.
- *v. Ripley*, 10 *Puig*, 43. Applied (Right of subsequent incumbrancer to income of receivership in foreclosure) in *Washington Life Ins. Co. v. Fleischauer*, 10 *Hun*, 117, 119. Cited as authority in *Miltenerberger v. Logansport R'y Co.*, 106 *U. S.* 286.
- *v. Ruggles*, 5 *N. Y.* 444. Cited (Character of city as evidence) in 1 *Whart. Com. on Ev.* § 638.
- *v. Van Siclen*, 8 *Hun*, 524. Aff'd in 4 *Abb. N. C.* 1; s. c., 54 *How. Pr.* 264; also, it seems, in 70 *N. Y.* 595, but without opinion. Previous proceeding in 6 *Hun*, 115. See *Union Trust Co. v. Whiton*. Decision in 8 *Hun* disting'd with *Matter of Protestant Episcopal School*, 86 *N. Y.* 396; *Union Trust Co. v. Whiton*, 78 *Id.* 491; *First Nat. Bk. of Meadville v. Fourth Nat. Bk.*, 84 *Id.* 469 (Costs on appeal) in *Revere Copper Co. v. Dimmock*, 29 *Hun*, 299. Followed in *Isaacs v. N. Y. Plaster Works*, 4 *Abb. N. C.* 4, 9; *First Nat. Bk. of Meadville v. Fourth Nat. Bk. of N. Y.*, 22 *Hun*, 564, which was, however, rev'd in 84 *N. Y.* 469, which compare. Followed in *Donovan v. Board of Education, &c.*, 1 *Civ. Pro. R.* 312, n.; *Havemeyer v. Havemeyer*, 62 *How. Pr.* 477. Examined with other cases in *Lotti v. Krakauer*, 1 *Civ. Pro. R.* 312, 315, n. Decision in 6 *Hun* examined with other cases (Evidence as to personal transaction with deceased) in *Marsh v. Gilbert*, 2 *Redf.* 465, 475.
- Howes *v. Barker*, 3 *Johns.* 506; s. c., 3 *Am. Dec.* 526. See *Schemerhorn v. Vanderheyden*; *Witbeck v. Waive*. Explained with *Houghtaling v. Lewis*, 10 *Johns.* 297 (Merger of preliminary contract in deed of land) in *Morris v. Whitcher*, 20 *N. Y.* 41, 47. Disting'd (Recovery for deficiency in amount of land sold) *Murdock v. Gilchrist*, 52 *Id.* 242, 247.
- *v. Davis*, 4 *Abb. Pr.* 71. Followed (Executor's commissions) in *Betts v. Betts*, 4 *Abb. N. C.* 317, 442.
- Howk *v. Bishop*. See *Houk v. Same*.
- *v. Eckert*, 2 *Hun*, 113. Reported in 4 *Sup'm. Ct. (T. & C.)* 300.
- Howland *v. Edmonds*, 33 *Barb.* 433. Rev'd in 24 *N. Y.* 307. See *Downes v. Phoenix Bank*; *Wenman v. Mohawk Ins. Co.* Applied (Limitation of action on note payable on demand) in *Hirst v. Brooks*, 50 *Barb.* 336. Commented on in *Herrick v. Woolverton*, 41 *N. Y.* 581, 596, 602. Followed in *Wheeler v. Warner*, 47 *Id.* 519. Applied in *Palmer v. Palmer*, 36 *Mich.* 487; s. c., 24 *Am. R.* 605, 607. Disting'd (Necessity of demand before suit) in *Payne v. Slate*, 39 *Barb.* 641, which was aff'd in 29 *N. Y.* 146, 175, which see. Applied in *Miller v. City of Buffalo*, 1 *Sheld.* 491. Approved in *Brown v. Brown*, 28 *Minn.* 501. Followed with *Bell v. Yates*, 33 *Barb.* 627 (Limitation of action on original stock note) in *Sands v. St. John*, 36 *Barb.* 638; *Colgate v. Buckingham*, 39 *Id.* 178. Applied in *Sands v. Campbell*, 31 *N. Y.* 346; *Csgood v. Strauss*, 55 *Id.* 672.

- **v. Eldredge**, 43 *N. Y.* 457. See *People ex rel. Francis v. Common Council of Troy*. Applied (Power of assessors to determine question of assent of majority of taxpayers to subscription to railroad stock) *People ex rel. Yawger v. Allen*, 52 *N. Y.* 538, 540. Approved (Mandamus to officer having discretion to act) in *Territory v. Nowlin*, *Sup'm Ct. Dak.* 1884, 20 *Northw. Rep.* 432.
- **v. Lounds**. See *Hatch v. Mann*.
- **v. Myer**, 3 *N. Y.* 290. Aff'd 2 *Sandf.* 180. Decision in 3 *N. Y.* followed (Transfer of note by insurance company) in *Brookman v. Metcalf*, 5 *Bosw.* 429, 440, 442. Dictum questioned in *Smith v. Hall*, *Id.* 319, 325.
- **v. Union Theological Sem.**, 3 *Sandf.* 82. Rev'd in 5 *N. Y.* 193. Decision in *Id.* relied on (Effect of omissions in operative part of will) in *Graham v. Graham*, 23 *W. Va.* 36; s. c., 48 *Am. R.* 364, 373.
- **v. Willetts**, 5 *Sandf.* 219. Aff'd in 9 *N. Y.* 170. Previous decision in 3 *Sandf.* 607. Decision in 9 *N. Y.* disting'd (Competency of indemnitor as witness) in *Jessop v. Miller*, 2 *Abb. Ct. App. Dec.* 453. Decision in 3 *Sandf.* commented on in connection with later decisions (Right of action of mortgagee of chattels for levy thereon under execution against mortgagor) in *Wisser v. O'Brien*, 35 *Super. Ct. (J. & S.)* 151.
- Hoxie v. Allen**, 38 *N. Y.* 175. Disting'd (Opinions as evidence) in *Haggerty v. Brooklyn City, &c. R. R. Co.*, 6 *Abb. N. C.* 104, 132, *n.*
- **v. Green**, 37 *How. Pr.* 97. Disting'd (Affirmative of the issue) in *Penhryn Slate v. Meyer*, 8 *Daly*, 61.
- Hoy v. Reade**, 1 *Sweeny*, 626. Cited with *Gibson v. Stanton*, 9 *N. Y.* 476 (Agent's lien not exclusive of his other rights) in *Whart. Com. on Ag.* § 821; *Muller v. Pondir*, 55 *N. Y.* 326, being also cited in this connection in a note.
- Hoyle v. Plattsburgh & Montreal R. R. Co.**, 51 *Barb.* 45. Aff'd *Bement v. Same*, 47 *Barb.* 107. Rev'd in 54 *N. Y.* 314; s. c., 13 *Am. R.* 505. See *Randall v. Elwell*; *Voorhees v. McGinnis*. Decision in 54 *N. Y.* applied with *Cumberland Coal Co. v. Sherman*, 30 *Barb.* 553; *Barnes v. Brown*, 80 *N. Y.* 527, 535 (Power of directors of corporation to contract in matters affecting corporate interests) in *Metropolitan Elevated R'y Co. v. Manhattan R'y Co.*, 14 *Abb. N. C.* 103, 255. Quoted in *Morawetz on Corp.* § 243, *n.* 2, 245. See to the contrary (Rolling stock as real property) *Farmer's Loan & Trust Co. v. Hendrickson*, 35 *Barb.* 484. Approved in *Thomas on Mort.* 50.
- Hoyt v. Adea**, 3 *Lans.* 173. Cited (Inquisition of lunacy as *prima facie* evidence of incompetency as witness) in 1 *Whart. Com. on Ev.* § 403.
- **v. Alien**, 2 *Hill*, 322. Disting'd (Collateral transaction by partnership on fictitious names) in *Lunt v. Lunt*, 8 *Abb. N. C.* 76, 81.
- **v. American Exchange Bank**, 1 *Duer*, 652; s. c., 8 *How. Pr.* 89. Cited as a leading case (Discovery and inspection) in *Pegram v. Carson*, 10 *Abb. Pr.* 340, 342.
- **v. Bonnett**, 58 *Barb.* 529. Aff'd *Whitlock's Case*, *Tuck.* 491. Rev'd in 50 *N. Y.* 538. See *Jenkins v. De Groot*; *Matter of Whitlock*. Compare (Limitations of suits against estate of decedent) *Orendorff v. Utz*, 48 *Md.* 298.
- **v. Dillon**. See *Jackson v. Roberts*.
- **v. Gelston**, 13 *Johns.* 139. Aff'd in *Id.* 561. Applied (Effect of title of one in possession as against wrongdoer) in *Barron v. Cobleigh*, 11 *N. H.* 557; s. c., 35 *Am. Dec.* 505, 509, with note. Quoted (Appeal from order dissolving injunction) in 2 *High on Inj.* 2 ed., § 1709, *n.* 1.
- **v. Hoyt**, 8 *Bosw.* 511. Disting'd (Recording assignments of mortgages) in *Belden v. Meeker*, 2 *Lans.* 470.
- **v. —**, 17 *Hun.* 192. Aff'd in 85 *N. Y.* 142. See *Lupton v. Lupton*. Decision in 17 *Hun.* applied (Legacy, when charged on real estate) in *Finch v. Hull*, 24 *Id.* 226. Followed in *Manson v. Manson*, 8 *Abb. N. C.* 123, 127.
- **v. Hudson**, 12 *Johns.* 207. See *Green v. Burke*. Qualified (Effect of levy as satisfaction) in *Denvrey v. Fox*, 22 *Barb.* 522. Disting'd in *Thurber v. Jewett*, 3 *Mich.* 302. Collated with other cases in 58 *Am. Dec.* 356, *n.*
- **v. Mackenzie**, 3 *Barb. Ch.* 320; s. c., 6 *N. Y. Leg. Obs.* 346; 49 *Am. Dec.* 178. See *Wetmore v. Scovell*. Questioned (Letters as literary compositions entitled to protection) in *Woolsey v. Judd*, 11 *How. Pr.* 49. Compare *Eyre v. Higbee*, 35 *Barb.* 502. Thought in 49 *Am. Dec.* 181, *n.*, to be contrary to view supported by reason and weight of authority.
- **v. Martense**, 8 *How. Pr.* 196. Rev'd in 16 *N. Y.* 231. See *Slee v. Manhattan Co.* Decision in 16 *N. Y.* disting'd and limited with *Slee v. Manhattan Co.*, 1 *Paige*, 48 (Rights unaffected by decree of foreclosure) in *Bloomer v. Sturges*, 58 *Id.* 168, 176. Cited as authority in *Thomas on Mort.* 371.
- **v. Quicksilver Mining Co.**, 17 *Hun.* 169. Aff'd as *Kent v. Same*, 78 *N. Y.* 159, which also aff'd in part 12 *Hun.* 53. Another proceeding in 23 *Id.* 199.
- **v. Thompson**, 3 *Sandf.* 416. Rev'd in 5 *N. Y.* 320. Subsequent decision in 19 *Id.* 207. Other proceedings as *Hoyt v. Sheldon*, in 4 *Abb. Pr.* 59; 3 *Bosw.* 267. See *McCullough v. Mooss*. Decision in 3 *Bosw.* explained (By-laws of private corporation) in *Ang. & A. on Corp.* § 343, *n.* 1, 11 ed. Remarks of *Woodruff, J.*, on p. 302 applied with those of *Duer, J.*, in 3 *Sandf.* 421 (Effect of construction placed on statutes of another State by courts of that State) in *Jessup v. Carnegie*, 80 *N. Y.* 441, 449. Decision in 5 *Id.* explained in con-

- nection with *Abraham v. Plestoro*, 3 *Wend.* 540 (Validity of claim or title under foreign statutory bankrupt proceedings) in *Matter of Bristol*, 16 *Abb. Pr.* 187. Compared with other cases in *Hibernia B'k v. Mechanics*, &c. B'k, 21 *Hun.* 175. Followed in *Hunt v. Jackson*, 5 *Blatchf. Ct. Ct.* 349, 351. Applied (Use of corporate seal when not binding on corporation) in *Luse v. Isthmus Transit R'way Co.*, 6 *Oreg.* 125; s. c., 25 *Am. R.* 506. Reconciled (Jurisdiction in matters affecting receivers appointed in another jurisdiction) in *Taylor v. Atlantic & Gt. Western R. Co.*, 57 *How. Pr.* 15. Quoted in *High on Receiv.* § 47, n. 2. Opinion of *PAIGE, J.*, approved (Assignability as test of survival of right of action) in *Purple v. Hudson River R. R. Co.*, 4 *Duer*, 78; *Hyde v. Tufts*, 45 *Super. Ct. (J. & S.)* 58. Criticised as *obiter dictum* in *Hyslop v. Randall*, 4 *Duer*, 78, 661. Cited (Limit of authority of bank officer) in *Whart. Com. on Ag* § 677. Applied to superintendent of railroad, in *Mahone v. Manchester, &c. R. R. Co.*, 111 *Mass.* 72; s. c., 15 *Am. R.* 9, 12. Applied (Transfer of personal property, as affected by law of place) in *Ackerman v. Cross*, 40 *Barb.* 484. Decision in 19 *N. Y.* applied in *Nichols v. Mase*, 25 *Hun.* 640, 642. Examined with other cases (Rights of creditors, purchasers, &c., as against mortgagee) in dissenting opinion of *HOFFMAN, J.*, in *Thompson v. Van Vechten*, 6 *Bosw.* 411. Cited as authority with *Willits v. Waite*, 25 *N. Y.* 587; *Kelly v. Crapo*, 45 *Id.* 86 (Effect to be given to insolvent laws of another jurisdiction) in *Paine v. Lester*, 44 *Conn.* 196; s. c., 26 *Am. R.* 442. Followed with *Peterson v. Mayor of N. Y.*, 17 *N. Y.* 449 (Ratification by corporation of unauthorized act of agent) in *Rich v. State Nat. B'k of Lincoln*, 7 *Neb.* 201; s. c., 29 *Am. R.* 382. Cited (Proof that satisfies averment that act was done with authority) in *Hubbard v. Town of Williamstown*, 61 *Wis.* 397. Applied (Only errors of law to be corrected by Court of Appeals) in *Davis v. Spencer*, 24 *N. Y.* 390; *Wright v. Hunter*, 46 *Id.* 412. Disting'd in *Peterson v. Rawson*, 34 *Id.* 371. Cited as authority (Authority of directors of corporation) in *Flagg v. Manhattan R'y Co.*, *U. S. Cir. Ct. S. D. N. Y.*, 21 *Am. L. Reg. N. S.* 781, with note. Decisions in 5 *N. Y.* and 19 *Id.* reviewed with *Moore v. Rector, &c. of St. Thomas*, 4 *Abb. N. C.* 51; *Murray v. Vanderbilt*, 39 *Barb.* 140 (Corporation when estopped to assert invalidity of contract made by it or its agents) in *Seeley v. Morgan*, 49 *Super. Ct. (J. & S.)* 346. Followed (Effect to be given to foreign statutory bankruptcy proceedings) in *Willits v. Waite*, 25 *N. Y.* 583, 587.
- *v. Van Alstyne*, 15 *Barb.* 568. Approved (Evidence of exemption from execution) in *Wilcox v. Hawley*, 31 *N. Y.* 648. Reviewed with *Cantrell v. Conner*, 51 *How. Pr.* 45; *Frost v. Mott*, 34 *N. Y.* 253; *Wilcox v. Hawley*, 31 *Id.* 648; *Seaman v. Luce*, 23 *Barb.* 240; *Smith v. Slade*, 57 *Id.* 637; *Lockwood v. Younglove*, 27 *Id.* 506 (Exemption from execution, when waived) in *Russell v. Dean*, 30 *Hun.* 242.
- *v. Wildfire*, 3 *Johns.* 518. Discussed (Seaman's wages) in 3 *Kent Com.* 188, n. c.
- Hubbard v. Briggs**, 31 *N. Y.* 518. Followed (Contradicting witness by proof of inconsistent statements) in *Romertz v. East River Nat. B'k*, 2 *Sweeny*, 82, which was rev'd in 49 *N. Y.* 577, 580, which see.
- *v. Gurney*, 64 *N. Y.* 457. See *Campbell v. Tate*; *Sisson v. Barrett*. Approved (Parol evidence to show suretyship) in *Irvine v. Adams*, 48 *Nis.* 468; s. c., 33 *Am. R.* 817. Cited from at length (the portion cited including citations of *Campbell v. Tate*, 7 *Lans.* 370; *People v. Jansen*, 7 *Johns.* 331; *King v. Baldwin*, 17 *Id.* 384; *Artcher v. Douglass*, 5 *Den.* 509; *Neimeciewicz v. Gahn*, 3 *Paige*, 614; *Barry v. Ransom*, 12 *N. Y.* 465) in 17 *Am. Dec.* 416, n. See other cases collected in 17 *Moak's Eng.* 183; 23 *Id.* 155. Approved in *Preston v. Gould*, 64 *Iowa*, 44. Disting'd (Release of surety by extension of time for payment) in *Scott v. Stockwell*, 65 *How. Pr.* 249. Examined with other cases in *Maier v. Canavan*, 8 *Daly*, 272, 275. Limited in *Converse v. Cook*, 25 *Hun.* 44, 47.
- *v. Guild*, 1 *Duer*, 662. Cited (Right of solvent partner to administer firm assets) in *Story on Partn.* 7 ed., § 341, n.
- *v. Hubbard*, 12 *Barb.* 148. Aff'd in 8 *N. Y.* 196. See *Ex parte Thompson*. Both decisions discussed (Nuncupative will) in *Willard on Executors*, 116.
- *v. Matthews*. See *Gates v. Beecher*.
- *v. National Protection Ins. Co.*, 11 *How. Pr.* 149. Applied (Right to have trial in proper county, irrespective of convenience of witnesses) in *Gifford v. Town of Gravesend*, 8 *Abb. N. C.* 246, 248.
- *v. N. Y. & Harlem R. R. Co.* See *Brainerd v. N. Y. & Harlem R. R. Co.*
- *v. Russell*, 24 *Barb.* 404. Compared with other cases (Liability for continuance of nuisance) in *Conhocton Stone Road v. Buffalo, &c. R. R. Co.*, 51 *N. Y.* 573, 578. Cited with *Foster v. Newbrough*, 58 *Id.* 481 (Necessity of notice to produce documents in hands of opposite side) in 1 *Whart. Com. on Ev.* § 152.
- Hubbell v. Alden**, 4 *Lans.* 214. Rev'd in 50 *N. Y.* 480 as *Hubbell v. Meigs*.
- *v. Ames*, 15 *Wend.* 372. Explained, and reporter's abstract corrected (Appointment of trustees as evidence of jurisdiction to issue attachment against absconding or concealed debtor) in *Matter of Faulkner*, 4 *Hill*, 598.
- *v. Blakeslee*, 8 *Hun.* 603. Rev'd in 71 *N. Y.* 63. See *Kellogg v. Ames*.
- *v. Carpenter*, 2 *Barb.* 484. Rev'd in 5 *Id.* 520, and that rev'd in 5 *N. Y.* 171.

- But see decision in 5 *Barb.* approved in *Lafarge v. Herter*, 9 *N. Y.* 245, as aff'd in 5 *Id.*
- *v. Coudrey*, 5 *Johns.* 132. See *Hitchcock v. Aicken*. Overruled with *Hitchcock v. Aicken*, 1 *Cal.* 460; *Bissell v. Hall*, 11 *Johns.* 168 (Effect of judgment of sister State) in *Andrews v. Montgomery*, 19 *Id.* 162; *Gulick v. Loder*, 1 *Green.* 68.
- *v. Denison*, 20 *Wend.* 181. Examined and disting'd (Lien on vessel) in *Low v. Austin*, 20 *N. Y.* 181, 183; citing also *Andrews v. Durant*, 11 *Id.* 35. Disting'd in *King v. Greenway*, 71 *Id.* 413, 416.
- *v. Great Western Ins. Co.*, 10 *Hun.* 167. Rev'd in 74 *N. Y.* 246.
- *v. Lerch*, 62 *Barb.* 295. Aff'd in 58 *N. Y.* 237. Decision in *Id.* discussed (Parties in action to recover real property) in *Sedgw. & W. on Tr. of Tit. to Land*, § 450. See *Code Civ. Pro.* 1881, § 1503, *n.*
- *v. McCulloch*, 47 *Barb.* 287. Applied (Establishing boundary line by practical location) in *Jones v. Smith*, 5 *Supm. Ct. (T. & C.)* 490, 492.
- *v. Meigs*, 50 *N. Y.* 480. Rev'g *Hubbel v. Alden*, 4 *Lans.* 214. Decision in 50 *N. Y.* Explained (Reversal as to one or more defendants) in *Johnson v. Albany & Susquehanna R. R. Co.*, 54 *Id.* 429.
- *v. Moulson*, 53 *N. Y.* 225. Examined with other cases (Respective rights of mortgagor and mortgagee) in dissenting opinion of GRAY, C., in *Trimm v. Marsh*, 54 *Id.* 599, 628. Approved in *Everett v. Buchanan*, 2 *Dak.* 249, 263 citing many cases. Cited as authority (Liability to account for rents and profits of mortgaged premises) in *Ross v. Boardman*, 22 *Hun.* 531. Disting'd in *Morris v. Budlong*, 78 *N. Y.* 543, 559.
- *v. Schreyer*, 4 *Daly*, 362; *s. c.*, 14 *Abb. Pr. N. S.* 284. Rev'd in 15 *Abb. Pr. N. S.* 300; *s. c.*, 56 *N. Y.* 604. See *Beals v. Congregation Bnai Jeshurun*. Decision in 4 *Daly* disting'd (Mechanic's lien for materials furnished) in *Haden v. Buddensiek*, 6 *Daly*, 3, 6.
- *v. Sibley*, 5 *Lans.* 51. Aff'd in 50 *N. Y.* 468, without passing on any other question than that of the statute of limitations. Decision in *Id.* disting'd (Rights of mortgagee in possession) in *Trimm v. Marsh*, 54 *Id.* 599, 609. Followed (Limitation of action to compel accounting for proceeds of mortgaged premises) in *Hubbel v. Medbury*, 53 *Id.* 98, 101. See *Code Civ. Pro.* 1881, §§ 365, *n.*, 379, *n.* See (Service of notice of foreclosure by advertisement) *Id.* § 2388, sub'd 4.
- *v.*, 4 *Abb. Pr. N. S.* 403. See (Place of trial) *Code Civ. Pro.* 1881, § 982, *n.*
- *v. Von Schoening*, 58 *Barb.* 498. Rev'd in 49 *N. Y.* 326, further decision in 2 *Hun.* 376; *s. c.*, 4 *Sup'm. Ct. (T. & C.)* 649. Decision in 49 *N. Y.* explained (Purchaser in contract for sale of land, when excused for neglect to perform) in *Davison v. Associates of Jersey Co.*, 6 *Hun.* 470, 472. Decision in 58 *Barb.* referred to in 54 *Am. Dec.* 133, *n.*, as laying down a "rather strict rule." Decision in 49 *N. Y.* Colated with *Mechanics' B'k. v. Thomson*, 55 *Id.* 12; *Edgerton v. Peckham*, 11 *Puige*, 352; *Davison v. Associates*, 71 *N. Y.* 338 (Time, when of essence of contract for sale of land) in *Austin v. Wacks*, 30 *Minn.* 335.
- Hubbly v. Brown**, 16 *Johns.* 70. See *Skilling v. Warren*. Examined (Release of surety) in *Robinson v. Godfrey*, 2 *Mich.* 411.
- Huber v. People**, 49 *N. Y.* 132; *s. c.*, 44 *How. Pr.* 375. Rev'g *People v. Davis*, 61 *Barb.* 456. Decision in 49 *N. Y.* Applied (Constitutionality of provisions of L. 1870, c. 383) in *Matter of Metropolitan Gaslight Co.*, 85 *Id.* 526, 529. Disting'd (What may be included in statute for municipal purposes) in *Leverich v. Mayor, &c. of N. Y.*, 66 *Barb.* 626.
- Hubert v. Williams**. See *Couch v. Ash*; *Scouton v. Eislord*.
- Hudler v. Golden**, 36 *N. Y.* 446. See (Replevin for property held under tax warrant) *Code Civ. Pro.* 1881, § 1695, *n.*
- Hudson v. Caryl**, 44 *N. Y.* 553. Error in head note corrected (Right to jury trial in action to abate nuisance) in *Parker v. Laney*, 1 *Sup'm. Ct. (T. & C.)* 590.
- *v. Smith*, 39 *Super. Ct. (J. & S.)* 452. Confirmed with *Cooper v. Smith*, 43 *Id.* 9 (Former judgment as estoppel) in subsequent decision involving same judgment,—in *Cooper v. Platt*, 45 *Id.* 242.
- *v. Swan*, 7 *Abb. N. C.* 324. Rev'd in 83 *N. Y.* 552.
- *v. Swift*, 20 *Johns.* 24. See *Ellis v. Hoskins*. Disting'd (Right of purchaser of real estate to rescind without tendering unpaid purchase-money) in *Wilhelm v. Fimple*, 31 *Iowa*, 131; *s. c.*, 7 *Am. R.* 117.
- Hudson Avenue, Matter of**, 2 *Hun.* 580. Appeal dismissed, it seems, in 62 *N. Y.* 611, but without opinion. Further proceeding in 6 *Hun.* 356.
- Hudson City Savings Inst., Matter of**, 5 *Hun.* 612. Followed (When county court may order tax refunded) in *People ex rel. Hermance v. Supervisors of Ulster*, 10 *Hun.* 545, which was aff'd in *Hermance v. Same*, 71 *N. Y.* 481, which see. Overruled in *Matter of N. Y. Catholic Protectory*, 77 *Id.* 342, 344, which aff'd 8 *Hun.* 91, 96, which see.
- Hudson River Bridge Co. v. Patterson**, 11 *Hun.* 525. Aff'd in 74 *N. Y.* 365. Decision in *Id.* applied (What is taxable as real estate) in *People ex rel. N. Y. Elev. R. R. Co. v. Comm'rs. of Taxes of N. Y.*, 82 *Id.* 459, 463.
- Hudson River R. R. Co. v. Outwater**, 3 *Sandf.* 689. Disting'd (Title, when vested in railroad company, on proceedings to take land) in *Matter of Rhinebeck & Conn. R. R. Co.*, 8 *Hun.* 34, 36.



- Huebner v. Roosevelt**, 6 *Daly*, 337. Subsequent proceeding in 7 *Id.* 111.
- Huelin v. Ridner**, 6 *Abb. Pr.* 19. Followed (Examination of party) in *Watson v. Gage*, 12 *Id.* 215.
- Huff v. Bennett**, 4 *Sandf.* 120. Aff'd in 6 *N. Y.* 337. Decision in *Id.* followed (Memoranda as evidence) in *Sturm v. Atlantic Mut. Ins. Co.*, 38 *Super. Ct. (J. & S.)* 281, 318. Limited in *Thurman v. Mosher*, 1 *Hun.* 344, 348.
- **v. Kuapp**, 5 *N. Y.* 65. See (Mandamus to compel county treasurer to pay on order of supervisor) *People v. Lawrence*, 6 *Hill*, 244.
- Huffman v. Hulbert**, 13 *Wend.* 375. Another action involving a similar state of facts in *Id.* 377. Decision on p. 377. Applied (Surety when not discharged by neglect of creditor to sue principal) in *Maier v. Canavan*, 8 *Daly*, 272; *Converse v. Cook*, 25 *Hun.* 44.
- Huggins v. King**, 3 *Barb.* 616. Examined with *Dunn v. Dunn*, 4 *Paige*, 425; *Borden v. Fitch*, 15 *Johns.* 121; *Kerr v. Kerr*, 41 *N. Y.* 272 (Avoiding judgment obtained by fraud) in *Adams v. Adams*, 51 *N. H.* 388; s. c., 12 *Am. R.* 134, 136.
- Hughes v. Bywater**, 4 *Hill*, 551. Explained (Entering judgments on warrants of attorney) in *Goodsell v. Phillips*, 49 *Barb.* 353.
- **v. Griffith**, 25 *Hun.* 68. Abridgt. s. c., 12 *Weekly Dig.* 501.
- **v. Mercantile Mut. Ins. Co.**, 44 *How.* *Pr.* 351. Rev'd in 55 *N. Y.* 265; s. c., 14 *Am. R.* 254.
- **v. N. Y. & New Haven R. R. Co.**, 36 *Super. Ct. (J. & S.)* 222. Compared and doubted (Liability for acts of servant) in *Hoffman v. N. Y. Cent. R. R. Co.*, 44 *Id.* 1, 5.
- **v. Smith**, 5 *Johns.* 168. Doubted (Length of time of liability of surety on official bond) in *S. Carolina Society v. Johnson*, 1 *McC. (So. Car.)* 41; s. c., 10 *Am. Dec.* 644. Followed (Assigning breach of official bond) in *The Governor v. White*, 4 *Stew. & P. (Ala.)* 441; s. c., 24 *Am. Dec.* 763.
- **v. Vermont Copper Mining Co.**, 7 *Hun.* 677; aff'd in 72 *N. Y.* 607.
- **v. Wheeler**, 8 *Cow.* 77. See *Burdick v. Green*; *Markle v. Hatfield*. Collated with other cases (Note or bill taken for debt) in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 294. Commented on (Accord and satisfaction) in 2 *Chitty on Contr.* 1128, n. f, 11 *Am. ed.*
- Huguenot Nat. Bank of New Paltz v. Studwell**, 6 *Daly*, 13. Mem. of further decision, in 74 *N. Y.* 621. Decision in 6 *Daly*, followed (Liability of trustees of corporation for failure to file report) in *Gildersleeve v. Dixon*, *Id.* 76, 73. Decision in 74 *N. Y.* Examined with other cases in *Bruce v. Platt*, 80 *Id.* 379, 388. Disting'd with *Iosee v. Bullard*, 79 *Id.* 404; *Bruce v. Platt*, 80 *Id.* 379; *Kirkland v. Kille*, 16 *Weekly Dig.* 227.
- Hulbert, Matter of**, 9 *Abb. N. C.* 132. Rev'd in 10 *Id.* 284, which was modified in *Id.* 452; s. c., as *Matter of Hulburt*, 89 *N. Y.* 259. Decision in *Id.* applied (Compensation of assignee for creditors) in *Matter of Fulton*, 30 *Hun.* 258.
- Hulbert v. Carver**, 37 *Barb.* 62. Further decision in 40 *Id.* 245. Decision in *Id.* compared with others (Evidence of custom), in 4 *Am. L. Reg. N. S.* 346.
- **v. Hope Mut. Ins. Co.**, 4 *How. Pr.* 275. Aff'd in *Id.* 415. Decision on p. 275 disapproved (Jurisdiction over foreign corporations) in *Cumberland Coal & Iron Co. v. Hoffman Steam Coal Co.*, 30 *Barb.* 159, 163. Approved in *Bates v. New Orleans, &c. R. R. Co.*, 4 *Abb. Pr.* 72. Disting'd in *Gibbs v. Queen Ins. Co.*, 63 *N. Y.* 131. Reviewed with *Brewster v. Michigan Central R. R. Co.*, 5 *How. Pr.* 187; *President, &c. of Bank of Commerce v. Rutland & Washington R. R. Co.*, 10 *Id.* 1; *Bates v. New Orleans, Jackson, &c. R. R. Co.*, 13 *Id.* 519; *Whitehead v. Buffalo & Lake Huron R'y Co.*, 18 *Id.* 232; *Ogdensburg & Champlain R. R. Co. v. Vansant*, 16 *Abb. Pr.* 249; *McCormick v. Penn. Cent. R. R. Co.*, 49 *N. Y.* 303; in *Gilchrist v. W. Va. Oil & Oil Land Co.*, 21 *W. Va.* 115; s. c., 45 *Am. R.* 555, as conclusively showing that in *N. Y.* a judgment *in personam* cannot be rendered against a foreign corporation unless it has voluntarily appeared in the action.
- **v. McKay**, 8 *Paige*, 651. Collated with other cases (Proceedings before referee respecting surplus moneys on foreclosure of mortgage) in *Colby on Forecl.* 18.
- **v. N. Y. Central R. R. Co.**, 40 *N. Y.* 145. Collated with other cases (Injury to railroad passenger while leaving train) in *Thomps. on Carr. of Pass.* 108.
- **v. Nichol**, 20 *Hun.* 454. Mem. of further decision in 22 *Id.* 317.
- **v. Young**, 13 *How. Pr.* 413. See (Contents of demurrer) *Code Civ. Pro.* 1881, § 490, n.
- Hulett v. Swift**, 42 *Barb.* 230. Aff'd in 33 *N. Y.* 571. Decision in *Id.* approved (Innkeepers' liability) in *Classen v. Leopold*, 2 *Sweeny*, 705. Applied to boarding-house keeper in *Smith v. Reed*, 6 *Daly*, 33, 36. Disapproved in *Cutley v. Bonney*, 30 *Mich.* 259; s. c., 18 *Am. R.* 130.
- **v. Whipple**, 58 *Barb.* 224. See (Lien of judgment and mortgage) *Code Civ. Pro.* 1881, § 1254, n.
- Hull v. Adams**, 1 *Hill*, 601. Rev'd in 2 *Den.* 306.
- **v. Carnley**, 2 *Duer.* 99. Rev'd in 11 *N. Y.* 501; s. c., 1 *Abb. Pr.* 158. Subsequent decision in 17 *N. Y.* 502. Decision in 11 *Id.* cited as settled law (Leviable interest of mortgagor of chattels) in *Manning v. Monaghan*, 28 *Id.* 585. Cited at length and compared with other cases in *Jones on Chat. Mort.* § 560, where *Brown v. Cook*, 3 *E. D. Smith*, is referred to as overruled. See *Hamill v. Gillespie*, 48 *N. Y.* 556. Collated with *Carpenter v. Simmons*, 28 *How.*

- Pr. 12*, and other cases (Sheriff's duty at execution sale, to inform purchasers of existence of prior incumbrances) in 43 *Am. Dec.* 143, *n.* Decision in 17 *N. Y.* followed (Effect of sale on execution in distinct parcels) in *Gault v. Asseler*, 22 *Id.* 225.
- *v. Hull*, 1 *Hill*, 671. Approved (Residence of witnesses is to be regarded on application for change of venue) in *People v. Wright*, 5 *How. Pr.* 23.
- *v. —*, 24 *N. Y.* 647. See *Kilpatrick v. Johnson*; *Vail v. Vail*. Disting'd (Who entitled to accumulations of rents and profits) in *Grant v. Grant*, 3 *Relf.* 207, 299; *Robison v. Robison*, 5 *Lans.* 165.
- *v. L'Eplattenier*, 49 *How. Pr.* 500. Modified and, as modified, aff'd in 5 *Daly*, 534. See *Bergh's Case*.
- *v. Marvin*, 2 *Sup'm. Ct. (T. & C.)* 420. Aff'd, it seems, in 59 *N. Y.* 652, but without opinion.
- *v. Peters*, 7 *Barb.* 331. Disting'd, and in part approved (Tender when effectual to bar recovery, without payment of costs) in *Knight v. Beach*, 7 *Abb. Pr. N. S.* 241. Followed in *Randall v. Bacon*, 49 *Vt.* 20; *s. c.*, 24 *Am. R.* 100.
- *v. Ruggles*, 1 *Sup'm. Ct. (T. & C.)* 18; *s. c.*, 65 *Barb.* 432. Aff'd in 5 *N. Y.* 424. Decision in *Id.* disting'd with *Arnott v. Pittston & Elmira Coal Co.*, 68 *Id.* 558 (Sales for illegal purpose) in *Lewin v. Johnson*, 32 *Hun.* 408. Followed (Definition of lottery) in *Kohn v. Koehler*, 96 *N. Y.* 362. Relied on in *Hudelson v. State*, 94 *Ind.* 426; *s. c.*, 48 *Am. R.* 171.
- *v. Stevenson*, 13 *Abb. Pr. N. S.* 196. Said in 58 *How. Pr.* 135, *n.*, to have been rev'd.
- *v. Supervisors of Oneida*, 19 *Johns.* 259; *s. c.*, 10 *Am. Dec.* 223; 6 *N. Y. Com. L. Law ed.* 793, with brief note. Approved with *People ex rel. Wilson v. Supervisors of Albany*, 12 *Johns.* 414; *People v. Superior Court of N. Y.*, 5 *Wend.* 114 (Mandamus to control discretion) in *People v. Board of Supervisors of La Salle County*, 84 *Ill.* 303; *s. c.*, 25 *Am. R.* 461, 464. Cited as authority in *Arberry v. Beavers*, 6 *Tex.* 457; *s. c.*, 55 *Am. Dec.* 791.
- *v. Thomas*, 3 *Edw.* 236. Applied (When injunction becomes binding) in *Cape May & S. L. R. R. Co. v. Johnson*, 8 *Stew. (N. J.)* 422, as having been approved in *Endicott v. Mathis*, 1 *Stock.* 110, 114. Referred to in 55 *Am. Dec.* 722, *n.*, as the leading case.
- *v. Wheeler*, 7 *Abb. Pr.* 411. Followed (Indorser's liability, as affected by law of place) in *Weil v. Lange*, 6 *Daly*, 549.
- Humbert v. St. Stephen's Church**, 1 *Edw.* 308. Approved (Authority to fix salary of Episcopal clergyman) in *Youngs v. Ransom*, 31 *Barb.* 49, 53.
- *v. Trinity Church*, 7 *Paige*, 195. Aff'd in 24 *Wend.* 587; *s. c.*, 14 *N. Y. Com. L. Law ed.* 716, with brief note. See *Allen v. Mille*; *Troup v. Smith*. Decision in 24 *Wend.* compared with *Livingston v. Peru Iron Co.*, 9 *Id.* 511 (What constitutes adverse possession, as affected by distinction between statute of limitations and that against champerty) in *Crary v. Goodman*, 22 *N. Y.* 170, 177. Examined and followed (Adverse possession as bar) in *Ovinger v. Russell*, 32 *Barb.* 263. Quoted in *Sedgw. & W. on Tr. of Tit. to Lands*, §§ 726, 761. Discussed in *Id.* §§ 757, *n.* 1, 765, 769, 770, 777. Both decisions cited with *Van Hook v. Whitlock*, 7 *Paige*, 375; *Muir v. Trustees, &c.*, 3 *Barb. Ch.* 477, and other cases in *Perkins v. Rogers*, 35 *Ind.* 124; *s. c.*, 9 *Am. R.* 639, 652, as showing a decided tendency in later decisions to hold that defense of statute of limitations may be raised by demurrer, the law being thought, however, to be settled otherwise in Indiana and many other States. Decision in 7 *Paige* commented on in *Ang. on Limit.* § 294, 6 ed.
- Hume v. Mayor, &c. of N. Y.**, 9 *Hun.* 674. Rev'd in 74 *N. Y.* 264; *s. c.*, 57 *How. Pr.* 359. Previous decision in 47 *N. Y.* 635. See *Kelly v. Mayor, &c. of N. Y.*; *Mayor, &c. of N. Y. v. Furze*.
- Humerton v. Hay**, 65 *N. Y.* 380. See (Liability on undertaking given on appeal from justice's decision) *Code Civ. Pro.* 1881, § 3050, *n.*
- Humiston v. Ballard**, 39 *How. Pr.* 93. Modified on further decision in 40 *Id.* 40. Subsequent decision in 63 *Barb.* 9. With decision in 39 *How. Pr.* see (Offer to compromise, on appeal in justice's court) *Code Civ. Pro.* 1881, § 3070, *n.* Decision in 40 *How. Pr.* followed (Costs where case is certified to Supreme Court, on appeal from justice's decision) in *McLaughlin v. Smith*, 5 *Sup'm. Ct. (T. & C.)* 522. Decision in 63 *Barb.* explained with *King v. Poole*, 36 *Id.* 247; *McMahon v. Mut. Benefit Life Ins. Co.*, 3 *Bosw.* 645; *Harriot v. N. J. R. R. Co.*, 1 *Daly*, 377; *Cumberland Coal & Iron Co. v. Hoffman Steam Coal Co.*, 39 *Barb.* 16 (Costs in proceedings where court has no jurisdiction) in *Bunuel v. Ranney*, 2 *Dem.* 327.
- Humphrey v. Chamberlain**, 11 *N. Y.* 274. Disapproved as a dictum (Court cannot enlarge time to appeal) in *Haase v. N. Y. Central R. R. Co.*, 14 *How. Pr.* 430.
- *v. Persons*, 23 *Barb.* 313. Qualified (Necessity of appearance) in *Turner v. Van Riper*, 43 *How. Pr.* 33, 38.
- *v. Phinney*, 2 *Johns.* 484. See *Shaw v. White*. Followed (Valuation of aliened land for dower. Pleading in action for dower) in *Allan v. Smith*, 1 *Cow.* 180, 188. Collated with other cases in *Sharw. & B. Cas. on Real Prop.* 399, 400. Discussed in 4 *Kent. Com.* 69 *n. d.* Disting'd with *Dorchester v. Coventry*, 11 *Johns.* 510; *Shaw v. White*, 13 *Id.* 179; as resting on a statutory provision, in *Thompson v. Morrow*, 5 *Serg. & R. (Pa.)* 289; *s. c.*, 9 *Am. Dec.* 358, with note.

- Humphreys v. Hurtt**, 50 *How. Pr.* 291. Aff'd, in 20 *Hun.* 398. Previous proceeding in 5 *Sup'm. Ct. (T. & C.)* 433; mem. s. c., in 3 *Hun.* 216.
- Hun v. Cary**, 59 *How. Pr.* 426. Aff'd in 82 *N. Y.* 65; s. c., 59 *How. Pr.* 439. Decision in *Id.* disting'd (Liability of trustee of savings bank) in *Van Dyck v. McQuade*, 86 *N. Y.* 38, 45. Doctrine discussed in 15 *Am. L. Rev.* 160. Decision in 59 *How. Pr.* (p. 426) disapproved (Effect of record of vote in minutes of board) in *Metropolitan R'y Co. v. Manhattan R'y Co.*, 14 *Abb. N. C.* 102, 298.
- Hungerford's Bank v. Dodge**. See Same v. *Potsdam & Watertown R. R. Co.*
- **v. Potsdam & Watertown R. R. Co.**, 9 *Abb. Pr.* 124. Rev'd in 10 *Id.* 24; 19 *How. Pr.* 39; s. c., as *Hungerford's Bank v. Dodge*, in 30 *Barb.* 626. Decision in *Id.* approved (Right of accommodation indorser for corporation to set up usury) in *Belmont Branch Bank v. Hoge*, 7 *Bosc.* 543, 552, 558. Questioned but followed in *Smith v. Alvord*, 63 *Barb.* 415; *Strong v. N. Y. Laundry M'fg. Co.*, 37 *Super. Ct. (J. & S.)* 279, 283.
- Hunn v. Hunn**, 1 *Sup'm. Ct. (T. & C.)* 499. See (Privileged communications) *Code Civ. Pro.* 1881, § 836, n.
- Hunniar v. Rogers**, 55 *Barb.* 85. Aff'd as *Kinnier v. Rogers*, in 42 *N. Y.* 531.
- Hunt v. Amidon**, 1 *Hill*, 147. Rev'd in 4 *Id.* 345; s. c., 15 *N. Y. Com. L. Law ed.* 842, with brief note. Decision in *Id.* cited as authority (Liability of vendor of incumbered property, to purchaser, as for money paid) in *Sargent v. Currier*, 49 *N. H.* 310; s. c., 6 *Am. R.* 524. Commented on as extreme in *Reasoner v. Edmundson*, 5 *Ind.* 393.
- **v. Bennett**, 4 *E. D. Smith*, 647. Aff'd in 19 *N. Y.* 173. See *Snyder v. Andrews*. Decision in 19 *N. Y.* explained (Damages in actions for libel) in 2 *Greenl. on Ev.* 14 ed. § 254, n. a.
- **v. Bloomer**, 13 *N. Y.* 341. See *Pechner v. Phoenix Ins. Co.* Followed (Time for service of case) in *French v. Powers*, 80 *N. Y.* 146, 149. See *Code Civ. Pro.* 1881, § 994, n. See (When case must be made) *Id.* § 998, n. See (Motion for new trial) *Id.* § 1002, n.
- **v. Chapin**, 6 *Lans.* 139. Followed (ability of member of non-trading firm to bind it by note) in *Smith v. Sloan*, 37 *Wis.* 285; s. c., 19 *Am. R.* 757; *Levi v. Latham*, 15 *Neb.* 509; s. c., 48 *Am. R.* 361. Followed, and *Doty v. Bates*, 11 *Johns.* 544, disapproved as unsupported by authority, in *Deardorf v. Thacher*, 78 *Mo.* 128; s. c., 47 *Am. R.* 95. Cited (Authority implied from appointment to continuous service) in *Whart. Com. on Ag.* § 40.
- **v. Chapman**, 51 *N. Y.* 555. Further proceeding in 62 *Id.* 333; s. c., 49 *How. Pr.* 377. See *Bockes v. Hathorn*. Decision in 51 *N. Y.* explained (Costs on foreclosure) in *Lossee v. Ellis*, 13 *Hun.* 655, 657. Compared with other cases in *Bathgate v. Haskin*, 63 *N. Y.* 265. Decision in 62 *Id.* 333, explained in connection with *L.* 1876, c. 431 (Amount of allowance in foreclosure) in *Bockes v. Hathorn*, 17 *Hun.* 85.
- **v. City of Utica**, 23 *Barb.* 390. Aff'd in 18 *N. Y.* 442.
- **v. Hunt**, 9 *Hun.* 622. Aff'd in 72 *N. Y.* 217; s. c., 28 *Am. R.* 129. See *People v. Baker*. Decision in 72 *N. Y.* 236, followed (Binding effect of construction given to statutes of another State by the courts of that State) in *Jessup v. Carnegie*, 80 *Id.* 441, 450. Disting'd (Validity of foreign divorce) in *Collins v. Collins*, *Id.* 7; *People v. Baker*, 76 *Id.* 78, 83. Commented on in *Bish. on Mar. & D.* § 692, a. n. 6, 6th ed. Followed (Conclusiveness of decree of court of competent jurisdiction) in *Chapman v. Phoenix Nat. Bk. of N. Y.*, 5 *Abb. N. C.* 118, 127. Collated with *People v. Baker*, 76 *N. Y.* 78; *Ferguson v. Crawford*, 70 *Id.* 257; *Murray v. Starbuck*, 5 *Wend.* 148, and other cases in 26 *Am. R.* 27, n. *FOLGER, J.'s*, definition of jurisdiction approved in 1 *Pomeroy on Eq. Jur.* § 129, n. 1.
- **v. —**, 65 *Barb.* 577; mem. s. c., in 1 *Sup'm. Ct. (T. & C.)* add. 6. Rev'd in 58 *N. Y.* 666, for error in construction of contract.
- **v. Johnson**, 44 *N. Y.* 27; s. c., 4 *Am. R.* 631. See *Minier v. Minier*. Applied (Effect of deed as between husband and wife) in *Townshend v. Townshend*, 1 *Abb. N. C.* 83. Disting'd as to promissory note, by husband to wife, in *Whitaker v. Whitaker*, 52 *N. Y.* 373. Approved as exhaustive in 11 *Am. Dec.* 400, n. Followed (Distinction between power of wife and of husband) in *Perkins v. Perkins*, 62 *Barb.* 531, 541. Followed (Statutes of other States not to be read for first time on appeal) in *Prouty v. Michigan S. & N. Ind. R. R. Co.*, 1 *Hun.* 669. Approved in *Lawson v. Pinckney*, 40 *Super. Ct. (J. & S.)* 201. Cited at length in 1 *Whart. Com. on Ev.* § 312.
- **v. —**, 19 *N. Y.* 293. Disting'd (Sufficiency of certificate of acknowledgment of deed) in *Fryer v. Rockefeller*, 63 *Id.* 273. Criticised and disapproved in *McIntyre v. Kanim*, 7 *Pac. Rep.* 27, 29. Followed, as the prevailing doctrine (Conveyance of equitable interest in land is within recording acts) in *Edwards v. McKernan*, 22 *Northw. Rep.* 20, 22.
- **v. Knickerbacker**, 5 *Johns.* 327. Followed (Recovery founded on illegal contract, not allowable) in *Seidendender v. Charles*, 4 *Serg. & R. (Pa.)* 151; s. c., 8 *Am. Dec.* 682, with note; *Bank of Michigan v. Niles*, 1 *Doug. (Mich.)* 401; s. c., 41 *Am. Dec.* 575, 583. Approved in 17 *Am. Dec.* 426, n., as settling a rule founded in good sense and sound reason.
- **v. Mitchell**, 1 *Hun.* 621. Fully reported in 4 *Sup'm. Ct. (T. & C.)* 57.

- **v. Mootrie**, 3 *Bradf.* 323. Aff'd as *Moultrie v. Hunt*, 26 *Barb.* 252. See *Brinck-erhoof v. Remsen*.
- **v. N. Y. & Erie R. R. Co.** See *Bost-wick v. Champion*.
- **v. Peake**, 5 *Cow.* 475; s. c., 15 *Am. Dec.* 475. Followed (Invalidity of infant's contract to marry) in *Leichtweiss v. Tres-kow*, 21 *Hun.* 487. Cited as authority with *Willard v. Stone*, 7 *Cow.* 22; in *Rush v. Wick*, 31 *Ohio St.* 521; s. c., 27 *Am. R.* 523. Included in *Lawson's Lead. Com. L. Cas. Simplified*, 13.
- **v. People**, 76 *N. Y.* 89. Followed (What writ of certiorari in criminal case brings up) in cases of *Lynch and Burns*, 9 *Abb. N. C.* 69, 74.
- **v. Purdy**, 82 *N. Y.* 486. See *Pain v. Packard*. Disting'd (Duty of holder of guaranty of payment or collection) in *Tif-fany v. Willis*, 30 *Hun.* 266.
- **v. Roberts**, 45 *N. Y.* 691. See *Atlantic & Pacific Tel. Co. v. Barnes*. Followed (Right of surety to revoke obligation given by him) in *McKecknie v. Ward*, 58 *N. Y.* 541, 551.
- **v. Singer**, 1 *Daly*, 209. Said in 41 *N. Y.* 620 to have been aff'd by Ct. of App. in Dec. 1869.
- **v. Smith**. See *Trevor v. Wood*.
- **v. Wallis**, 6 *Paige*, 371. Followed (Judgment in foreclosure not opened on affidavit simply excusing default) in *Powers v. Trenor*, 5 *Sup'm. Ct. (T. & C.)* 231, 233.
- **v. Westervelt**, 4 *E. D. Smith*, 225. See (New trial in justices' court) *Code Civ. Pro.* 1881, § 3064, n.
- Hunter, Matter of.** See *Van Eps v. Mayor of Schenectady*.
- Hunter v. American Pop. Life Ins. Co.**, 4 *Hun.* 794. See statement of decision on appeal from judgment on second trial, in 71 *N. Y.* 604. See vol. 440 of Cases in Ct. of App. in Law Inst. Lib. of N. Y. City.
- **v. Burtis**, 10 *Wend.* 358. Held to be inapplicable (Actions by non-residents in justices' courts) since enactment of *Code Civ. Pro.* §§ 2869, 2876,—in *Bird v. Crane*, 26 *Hun.* 531. See *Code Civ. Pro.* 1881, § 2369, n.
- **v. Hatfield**, 12 *Hun.* 381. Appeal dis-mitted, it seems, in 73 *N. Y.* 600, but without opinion.
- **v. Hunter**, 19 *Barb.* 631. Disting'd (Delivery of gift *inter vivos*) in *Montgomery v. Miller*, 3 *Redf.* 162.
- **v. Trustees of Sandy Hill**, 6 *Hill*, 411. Cited as authority with *Talmage v. East River Bank*, 26 *N. Y.* 108 (Right retained by owner in land dedicated to the public) in *Stevenson v. City of Chattanooga, U. S. Cir. Ct. E. D. Tenn.* 20 *Fed. Rep.* 590. Cited with other cases (Cemeteries) in 18 *Am. L. Reg. N. S.* 80.
- **v. Wetsell**, 57 *N. Y.* 375; s. c., 15 *Am. R.* 508. Subsequent decision in 64 *N. Y.* 632. Also another decision in 17 *Hun.* 135, which was aff'd in 84 *N. Y.* 549; s. c., 58 *Am. R.* 544. Decisions in 57 *N. Y.* and 84 *Id.* quoted and explained (Effect of pay-ment subsequent to parol sale within stat-ute of frauds) in 1 *Benj. on Sales*, § 192, n. 2 (Corbin's 4 *Am. ed.*). Decision in 84 *N. Y.* quoted and explained (Delivery) in 2 *Benj. on Sales*, § 1018, n. 7. Explained (Action against buyer for refusal to accept) in *Id.* § 1125, n. 6.
- Huntington v. Ballou**, 2 *Lans.* 120. Ap-proved (Payment by joint debtor) in *Nat. Bank of Delavan v. Cotton*, 53 *Wis.* 34.
- **v. Brinkerhoff**, 10 *Wend.* 278. Quoted (Judicial process as affecting operation of statute of limitations) in *Ang. on Limit.* § 325, 6 ed.
- **v. Claffin**, 10 *Dow.* 262. Aff'd in 38 *N. Y.* 182.
- **v. Conkey**, 33 *Barb.* 218. Disting'd (Affirmative of issue, when on defendant) in *Penrhyn Slate Co. v. Meyer*, 8 *Daly*, 61, 65.
- **v. Dinsmore**, 4 *Hun.* 66. Reported in 6 *Sup'm. Ct. (T. & C.)* 195. Disting'd (Limitation of carrier's liability) in *Wood-ruff v. Sherrard*, 9 *Hun.* 322.
- **v. Forkson**, 7 *Hill*, 195. See (Writ of possession) *Code Civ. Pro.* 1881, § 1529, n.
- **v. Gilmore**, 14 *Barb.* 243. Followed (Gifts *causa mortis* require delivery) in *Case v. Dennison*, 9 *E. I.* 88; s. c., 11 *Am. R.* 222.
- **v. Mather**, 2 *Barb.* 538; s. c., 6 *N. Y. Leg. Obs.* 206. Overruled (Distinction be-tween mortgage and pledge of stocks) in *Wilson v. Little*, 2 *N. Y.* 443.
- **v. Ogdensburgh, & C. R. R. Co.**, 33 *How. Pr.* 416. Examined (Recovery by servant discharged before expiration of term) in *Moody v. Leverich*, 14 *Abb. Pr. N. S.* 145, 151. Disapproved in *Howard v. Daily*, 61 *N. Y.* 362, 373.
- Huntley v. Merrill.** See *Hyde v. Goodnow*.
- Hurd, Matter of**, 9 *Wend.* 465. Disting'd (Attachment against absconding debtor) in *Noble v. Halliday*, 1 *N. Y.* 330, 333.
- **v. Beeman**, 8 *How. Pr.* 254. Approved (Mode of bringing errors of fact before the court) in *Cook v. Swift*, 10 *Abb. Pr.* 212, 215.
- **v. Cass**, 9 *Barb.* 366. Followed (Cur-tesy, as affected by statute) in *Clark v. Clark*, 24 *Id.* 581. Opposed, in *Billings v. Baker*, 28 *Id.* 343, 355. Re-asserted in *Matter of Winne*, 2 *Lans.* 21, which rev'd 1 *Id.* 508, which see. Collated with other cases in *Sharsw. & B. Cas. on Real Prop.* 289.
- **v. Cook**, 75 *N. Y.* 454. Quoted and explained (Effect of contract of sale to pass property) in 1 *Benj. on Sales*, § 311, n. 5 (Corbin's 4 *Am. ed.*).
- **v. Green**, 17 *Hun.* 327. For decision involving questions mainly identical, see *Hurd v. Kelly*. Followed with *Hurd v. Kelly*, 17 *Hun.* 327, n.; 78 *N. Y.* 588 (Liability of trustees of savings bank) in *Hun v. Salter*, 14 *Weekly Dig.* 419.

- **v. Kelly**, 17 *Hun*, 327, *n.* Aff'd in 78 *N. Y.* 588; *s. c.*, 34 *Am. R.* 537. See *Hurd v. Green*.
- **v. West**, 7 *Cow.* 752. See *Marsh v. Wickham*; *Phoenix v. Dey*. Followed, and error in marginal note to *Austin v. Sawyer*, 9 *Cow.* 39, corrected (Inadmissibility of declarations of vendor of personal property as against vendee) in *Whitaker v. Brown*, 8 *Wend.* 490. Doubted with *Whitaker v. Brown*; *Kent v. Walton*, 7 *Wend.* 256, but followed on principle of *stare decisis*,—in *Beach v. Wise*, 1 *Hill*, 613. Denied in *Gibblehouse v. Strong*, 3 *Rawle (Pa.)* 450. Applied with *Sprague v. Kneeland*, 12 *Wend.* 161, in *Donaldson v. Johnson*, 2 *Chand. (Wisc.)* 167, to mortgage. Followed (Passing of title to property delivered with an alternative) in *Dearborn v. Turner*, 16 *Me.* 17; *s. c.*, 33 *Am.* Dec. 630; *Buswell v. Bicknell*, 17 *Me.* 344; *s. c.*, 35 *Am. Dec.* 262; *Seymour v. Brown*, 19 *Johns.* 47, being doubted. Quoted and explained in 2 *Pars. on Contr.* 133, *n. v.*
- Hulbert v. Dean**, 2 *Abb. Ct. App. Dec.* 428; *s. c.*, 2 *Keyes*, 97. Collated with other cases (Right of firm and individual creditors in case of assignment for benefit of creditors) in *Bishop on Assign.* § 188. Explained in *Burrill on Assign.* § 211, *n.* 4, 4 ed.
- Hurlbut v. Banks**, 1 *Abb. N. C.* 157; *s. c.*, less fully, 52 *How. Pr.* 196. Aff'd as *People ex rel. Comm'rs. of Washington Park v. Banks*, 67 *N. Y.* 368. Decision in 52 *How. Pr.* applied (Constitutionality of law authorizing improvement of highway) to law authorizing use of steam as motive power on railroad tracks,—in *People v. Long Island R. R. Co.*, 9 *Abb. N. C.* 181, 203.
- Hurlbut v. Carter**, 21 *Barb.* 221. See (Powers of assignees of insurance companies) *L.* 1854, c. 224. Explained in *Burrill on Assign.* § 299, 4 ed.
- **v. Post**, 1 *Boss.* 28. Followed (Liability of lessee who occupies part of demised premises) in *Knox v. Hexter*, 42 *Super. Ct. (J. & S.)* 8, 11.
- **v. Root**, 12 *How. Pr.* 511. Said in *Williams v. Lakey*, 15 *Id.* 206, 208, to have been aff'd at General Term in 1856.
- **v. Seeley**, 11 *How. Pr.* 507. Collated with other cases (Attachment as affected by law of domicile) in *Thomps. on Prov. Rem.* 360.
- Hurley v. Van Wagner**, 28 *Barb.* 109. See *Jackson v. Walker*. Views of Brown, J., approved (Construction of statute forbidding contributions for political purposes) in *Sizer v. Daniels*, 66 *Barb.* 426, 431.
- Hurst, Matter of**, 7 *Wend.* 239. Followed (Amendment in insolvency proceedings) in *Small v. Wheaton*, 2 *Abb. Pr.* 175, 182, where, however, it is thought that the power should not be carried further. Collated with other cases in *Bishop on Assign.* § 43.
- Hurst v. Harper**, 14 *Hun*, 280. Disting'd (Enforcing parol agreement respecting land) in *Moyer v. Moyer*, 21 *Id.* 67, 70.
- **v. Litchfield**, 39 *N. Y.* 377. Not followed (Effect of agreement to arbitrate) in *Weeks v. Little*, 47 *Super. Ct. (J. & S.)* 1, 10, where it is thought to be practically overruled by *Delaware & Hud. Canal Co. v. Pa. Coal Co.*, 50 *N. Y.* 250. Criticised and explained in *Id.* 250, 265.
- Huson v. Young**, 3 *Lans.* 63. Followed with *Bakeman v. Talbot*, 31 *N. Y.* 370 (Extent of privilege created by grant of private right of way) in *Baker v. Frick*, 45 *Md.* 337; *s. c.*, 24 *Am. R.* 506, 511.
- Husted v. Dakin**, 17 *Abb. Pr.* 137. See *Mutual Life Ins. Co. v. Bowen*. Disapproved as contrary to principle and authority, and as based on a misapprehension of *Shepard v. O'Neil*, 4 *Barb.* 125 (Right of judgment debtor to redeem lands sold on execution) in *Elsworth v. Muldoon*, 46 *How. Pr.* 250. Overruled (Inquiry as to right to surplus on foreclosure) in *Bergen v. Snedeker*, 8 *Abb. N. C.* 50, 54, 58. Collated with other cases in *Colby on Forecl.* 25, 39, 42. Compare *Thomas on Mort.* 380.
- **v. Ingraham**, 75 *N. Y.* 251. Quoted and explained (Sales of specific chattels unconditionally) in 1 *Benj. on Sales*, § 352 (Corbin's 4 Am. ed.).
- **v. Mathes**, 77 *N. Y.* 388. Disting'd (Liability of married woman for materials used on her premises) in *Gurner v. Scott*, 17 *Weekly Dig.* 13. Applied (Mechanics' lien in case of contract made with consent of owner of land) in *Otis v. Dodd*, 24 *Hun*, 538.
- **v. Weber**, 1 *Hun*, 120. Fully reported in 3 *Sup'm. Ct. (T. & C.)* 147.
- Hutcheson v. Peck**, 5 *Johns.* 196. Quoted (Abandonment of husband by wife) in *Schouler on Dom. Rel.* 3 ed. § 41; *Bigel. Cus. on Torts*, 335, 336.
- Hutchings v. Miner**, 46 *N. Y.* 456. See *Garnsey v. Rogers*. Cited with other cases as showing a tendency to limit application of doctrine of *Lawrence v. Fox* (Right under contract in favor of one not party thereto) in *Pardee v. Treat*, 82 *N. Y.* 385, 393. See to the contrary, *Exchange Bk. of St. Louis v. Rice*, 107 *Mass. 37*; *s. c.*, 9 *Am. R.* 1. But see *Abb. Tr. Ev.* 386.
- **v. Munger**, 41 *Barb.* 396. Aff'd, but deduction disapproved, in 41 *N. Y.* 155. Decision in *Id.* explained (Presumption of authority derived from possession of note) in *Wardrop v. Dunlop*, 1 *Hun*, 325, 329.
- Hutchins v. Hebbard**, 54 *N. Y.* 24. See *Pechner v. Phoenix Ins. Co.* Cited (Parol proof of purpose for which written contract was executed) in 2 *Whart. Com. on Ev.* § 1026, *n.*
- **v. Hutchins**, 7 *Hill*, 104. Relied on (Action for conspiracy, when maintainable) in *Kimball v. Harman*, 34 *Md.* 407; *s. c.*, 6 *Am. R.* 340. Included with notes in *Bigel. Cus. on Torts*, 207. Explained in 2 *Add. on Torts*, 61, *n.* 1, Wood's ed. Discussed in *Wait on Fraud. Conv.* § 62. Applied

(Action for being deprived of expected advantage, when not maintainable) in *Heywood v. Tillson*, 75 *Me.* 225; s. c., 46 *Am. R.* 373.

— *v. Merrill*, 4 *Sup'm. Ct. (T. & C.)* 677. Fully reported in 1 *Hun.* 476.

— *v. Smith*, 63 *Barb.* 251. Discussed (Nuisance as created by smoke) in *Wood on Nuis.* 2 ed. § 508.

**Hutchinson v. Brand**, 6 *How. Pr.* 73. Aff'd in 9 *N. Y.* 208. Decision in 6 *How. Pr.* applied (Amount of recovery in action against sheriff for escape) in *Renick v. Orser*, 4 *Bosw.* 384, 390. Decision in 9 *N. Y.* applied in *McCreery v. Willett*, 4 *Bosw.* 643, 645, which was aff'd in 23 *How. Pr.* 129, 132, which see. Limited (Execution of void process) in *Josuez v. Conner*, 7 *Daly*, 448, 453.

— *v. Market B'k of Troy*, 48 *Barb.* 302. See other cases collected (Testimony of parties) in 1 *Abb. N. C.* 364, n. Cited as a weighty authority (Account stated, when conclusive) in *Wharton v. Anderson*, 28 *Minn.* 305.

**Hutson v. Mayor, &c. of N. Y.**, 5 *Sandf.* 289. Aff'd in 9 *N. Y.* 163; s. c., 59 *Am. Dec.* 526, with note. See *Bailey v. Mayor, &c. of N. Y.*; *Bartlett v. Crozier*; *Mayor, &c. of N. Y. v. Furze*; *Rochester White Lead Co. v. City of Rochester*. Decision in 5 *N. Y.* applied (Negligence of corporate authorities as ground of action) in *Wolfe v. Supervisors of Richmond*, 11 *Abb. Pr.* 272; *Davenport v. Ruckman*, 16 *Id.* 345, which was aff'd in 37 *N. Y.* 572, which see; *Hines v. City of Lockport*, 60 *Barb.* 384, which was aff'd in 50 *N. Y.* 239, which see. Approved in *Baldwin v. City of Oswego*, 1 *Abb. Ct. App. Dec.* 74. Disting'd in *Hickok v. Trustees of Plattsburgh*, 15 *Barb.* 443; *Norton v. Wiswall*, 26 *Id.* 627; *Griffin v. Mayor, &c. of N. Y.*, 9 *N. Y.* 457; *Mills v. City of Brooklyn*, 32 *Id.* 500. Cited as settled law, in *Conrad v. Trustees of Ithaca*, 16 *Id.* 173. Explained in *Requa v. City of Rochester*, 45 *Id.* 135. Relied on with *Weet v. Trustees of Brockport*, 16 *Id.* 161, n.; *Conrad v. Trustees of Ithaca*, *Id.* 158; *Storrs v. City of Utica*, 17 *Id.* 104; *Mills v. City of Brooklyn*, 32 *Id.* 489; *Lee v. Trustees of Sandy Hill*, 40 *Id.* 442, and numerous other cases in the dissenting opinion of COOLEY, J., in *Detroit v. Blakeby*, 21 *Mich.* 84; s. c., 4 *Am. R.* 450, 463. Decision in 5 *Sandf.* commented on at length in *Weet v. Trustees of Brockport*, 16 *N. Y.* 167, n. Compare *Young v. Comm'rs of Roads*, 2 *Nott. & McC.* (So. Car.) 537. Collated with other cases in *Cook's Highw. L.* 49.

**Huttemeier v. Albro**, 2 *Bosw.* 546. Aff'd in 18 *N. Y.* 48. See *Marshall v. Guion*; *Parsons v. Johnson*. Decision in 18 *N. Y.* applied (Effect of conveyance to pass appurtenances) in *Green v. Collins*, 20 *Hun.* 476. Disting'd in *Simmons v. Cloonan*, 47 *N. Y.* 3, 15; *Parsons v. Johnson*, 68 *Id.* 69. Relied on in dissenting opinion of CURTIS, J., in

*Doyle v. Lord*, 39 *Super. Ct. (J. & S.)* 433. Limited in *Outerbridge v. Phelps*, 13 *Abb. N. C.* 117, 139. Both decisions reviewed with other cases (Grant of right of way, when implied) in *O'Rourke v. Smith*, 11 *R. I.* 259; s. c., 23 *Am. R.* 440. Disting'd with *Wyman v. Mayor, &c. of N. Y.*, 11 *Wend.* 487; in *Dawson v. St. Paul Fire Ins. Co.*, 15 *Minn.* 136; s. c., 2 *Am. R.* 109, 113, 115.

**Hutter v. Ellwanger**, 4 *Lans.* 8. See *Winter v. Drury*. Cited as authority with *Marine & Fire Ins. Bank v. Jauncey*, 3 *Sandf.* 258; *Cowperthwaite v. Sheffield*, 1 *Id.* 450; *McMenomy v. Ferrers*, 3 *Johns.* 72; *Harris v. Clark*, 3 *N. Y.* 115; *Chapman v. White*, 6 *Id.* 416; *Winter v. Drury*, 5 *Id.* 525; *Luff v. Pope*, 5 *Hill*, 415 (Order, when not creating lien on fund) in *Jones v. Pacific Wood, Lumber & Flume Co.*, 13 *Nev.* 359; s. c., 29 *Am. R.* 308, 310, where *Hall v. City of Buffalo*, 1 *Keyes*, 193; *Risley v. Smith*, 39 *Super. Ct. (J. & S.)* 137; *Lewis v. Berry*, 64 *Barb.* 593, were disting'd.

**Huy v. Brown**, 12 *Wend.* 591. Cited as authority with *Elmendorf v. Harris*, 23 *Id.* 630; *Butler v. Mayor, &c. of N. Y.*, 6 *Hill*, 489 (Award) in *Haywood v. Harmon*, 17 *Ill.* 481.

**Hyatt v. Esmond**, 37 *Barb.* 601. Overruled in effect (Assessment on premium note for expenses) in *Sands v. Boutwell*, 26 *N. Y.* 233.

— *v. Pugsley*, 23 *Barb.* 285. Explained (Recitals in wills) in 2 *Jarm. on Wills*, Rand. and T. ed. 104, n.

— *v. Taylor*, 51 *Barb.* 632. Aff'd in 42 *N. Y.* 258. Statement in 41 *Id.* 619, as to its reversal is erroneous. See *Gile v. Libby*. Both decisions followed (Landlord's liability under innkeepers' act) in *Rosenplaenter v. Roessle*, 54 *N. Y.* 262, 266.

— *v. Trustees of Rondout*, 44 *Barb.* 385. Said in 41 *N. Y.* 619 to have been aff'd by Ct. of App. in Sept. 1869. See *Wilson v. Mayor, &c. of N. Y.*

— *v. Wait*. See *Neely v. Onondaga County, Mut. Ins. Co.*

— *v. Wood*, 4 *Johns.* 150; s. c., 4 *Am. Dec.* 258. See *Wilde v. Cantillon*. Questioned with *Ives v. Ives*, 13 *Johns.* 235 (Entry on land by force) in *Draper v. Stouvenel*, 35 *N. Y.* 507. Relied on with *Ives v. Ives*, *Willard v. Warren*, 17 *Wend.* 257, in *Stearns v. Sampson*, 59 *Me.* 568; s. c., 8 *Am. R.* 442, 449. Cited with *Jackson v. Farmer*, 9 *Wend.* 201; *People v. Fields*, 1 *Lans.* 242; 52 *Barb.* 198; and many other cases in *Sterling v. Warden*, 51 *N. H.* 217; s. c., 12 *Am. L.* 80, 96, 97, as maintaining an established doctrine.

**Hyde, Matter of**, 15 *Hun.* 477. Rev'd (Vacating assessment) on authority of *Matter of Burmeister*, 76 *N. Y.* 174, in *Id.* 629, but without opinion.

**Hyde v. Cookson**, 21 *Barb.* 92. See *Silsbury v. McCoon*. Examined at length with *Silsbury v. McCoon*, 6 *Hill*, 425; 4 *Den.* 332; 3 *N. Y.* 381, and other authorities (Dam-

- ages recoverable in case of property enhanced in value) in *Railway Co. v. Hutchins*, 32 *Ohio St.* 571; s. c., 30 *Am. R.* 629. Commented on in 24 *Am. Dec.* 84, n.
- *v. Goodnow*, 3 *N. Y.* 266. Examined with other cases (Law of place governing commercial paper) in *Hibernia Nat. Bank v. Lacombe* 84 *N. Y.* 367, 378. Approved in *Tilden v. Blair*, 21 *Wall.* 241, 247. Disting'd with *Western v. Genesee Mut. Ins. Co.*, 12 *N. Y.* 258; *Huntley v. Merrill*, 32 *Barb.* 656 (Locality of contract made with foreign insurance company) in *Cromwell v. Royal Canadian Ins. Co.*, 49 *Md.* 366; s. c., 33 *Am. R.* 262.
- *v. Lathrop*, 3 *Keyes*, 596; s. c., 2 *Abb. Ct. App. Dec.* 436. Explained (Sale of specific chattels conditionally) in *Benj. on Sales*, § 319, n. c. *Bennett's* 4 *Am. ed.*
- *v. Lynde*, 4 *N. Y.* 387. Quoted (Receiver of corporation) in *High on Receiv.* § 39, n. 1.
- *v. Paige*, 9 *Barb.* 150. Cited as a strong case (Personal liability of agents) in *Snelling v. Howard*, 7 *Robt.* 400.
- *v. Stoue*, 9 *Cow.* 230; s. c., 18 *Am. Dec.* 501. See *Mersereau v. Norton*; *Wilson v. Reed*. Commented on (Evidence in action of trover) in 2 *Greenl. on Ev.* 14 ed. § 646, n. 1, 637.
- *v. Tanner*, 1 *Barb.* 75. See *Ferguson v. Broome*. Explained (Effect of power to sell decedent's lands for debts, as a lien) in *Fonda v. Chapman*, 23 *Hun.* 119, 122. See *Code Civ. Pro.* 1881, § 2750, n.
- Hyland v. Stafford**, 10 *Barb.* 558. Disting'd (Sale of premises in parcels, on mortgage sale) in *Wolcott v. Schenck*, 23 *How. Pr.* 385, 390.
- Hynds v. Schenectady County Mut. Ins. Co.**, 16 *Barb.* 119. Aff'd, in 11 *N. Y.* 554. See *St. John v. American Mut. Fire & Marine Ins. Co.* Decision in 16 *Barb.* relied on with *Gates v. Madison County Fire Ins. Co.*, 5 *N. Y.* 469; *Matthews v. Howard Ins. Co.*, 11 *Id.* 9; 1 *Duer.* 371 (Negligence of insurer when not a defense) in *Gove v. Farmers' Mutual Fire Ins. Co.*, 48 *N. H.* 41; s. c., 2 *Am. R.* 168.
- Hynes v. McDermott**, 7 *Abb. N. C.* 98. Aff'd in 82 *N. Y.* 41; s. c., 37 *Am. R.* 538. Previous proceeding in 7 *Daly*, 513; s. c., less fully, 55 *How. Pr.* 259. See *Robinson v. Dauchy*. Decision in 7 *Abb. N. C.* included with note (Validity of foreign marriage) in 19 *Am. L. Reg. N. S.* 219. Decisions in 82 *N. Y.* and 7 *Daly* discussed in 2 *Add. on Contr.* 948, n. *Abb. ed.* Decision in 82 *N. Y.* discussed (Mesne profits in ejectment) in *Sedgw. & W. on Tr. of Tit. to Land*, § 659. Disting'd (Photographs as evidence) in *Cowley v. People*, 83 *N. Y.* 464, 479. See other cases collected (Expert comparison of handwriting) in 35 *Am. R.* 635, n. Decision in 7 *Daly* disting'd (Affidavit to obtain order for examination of party before trial) in *Neurath v. Schmitz*, 2 *Civ. Pro. R. (Browne)* 400, as superseded by *Sup'm. Ct. Rule* 83.

- Hyslop v. Clarke**, 14 *Johns.* 458. See *De Caters v. De Chaumont*; *Grover v. Wakeman*. Examined and disting'd with *Grover v. Wakeman*, 11 *Wend.* 187 (Assignment for creditors, when invalidated by reservation therein) in *Spaulding v. Strang*, 38 *N. Y.* 9. Followed in *Arthur v. Commercial B'k*, 9 *Smedes & M. (Miss)*. 394; s. c., 48 *Am. Dec.* 719, with note. Followed with *Grover v. Wakeman*, 11 *Wend.* 187; in *Pettibone v. Stevens*, 15 *Conn.* 19; s. c., 38 *Am. Dec.* 57, with note. Disting'd with *Austin v. Bell*, 20 *Johns.* 442, in *Skipwith v. Cunningham*, 8 *Leigh (Va.)* 271; s. c., 31 *Am. Dec.* 642, 655, with note. Examined with *Searing v. Brinckerhoff*, 5 *Johns. Ch.* 332; *Austin v. Bell*, 20 *Johns.* 442; *Murray v. Riggs*, 2 *Johns. Ch.* 577; 15 *Johns.* 571, in *Niolon v. Douglass*, 2 *Hill (S. C.)* 443; s. c., 30 *Am. Dec.* 368, 375. Discussed in *Burrill on Assign.* § 192, 4 ed. Quoted in *Wait on Fraud. Conv.* § 328.

## I.

- Iddings v. Bruen**, 4 *Sandf. Ch.* 223. Discussed (Partner's interest in stock) in 1 *Collyer on Partn.* § 109, n. 2, *Wood's Am. ed.* Quoted (Receiver in judgment creditor's suit) in *High on Receiv.* § 399, n. 2
- Idley v. Bowen**, 11 *Wend.* 227. See *Smith v. Wait*. Applied (Capacity requisite for revocation of will) in *Apperson v. Cottrell*, 3 *Port. (Ala.)* 51; s. c., 29 *Am. Dec.* 239, 247.
- Ihl v. Forty-second street, etc. R. R. Co.**, 47 *N. Y.* 317. See *Oldfield v. N. Y. & Harlem R. R. Co.* Followed (Recovery for killing of child) in *Gorham v. N. Y. Central, &c. R. R. Co.*, 23 *Hun.* 449, 451. Followed (Contributory negligence) in *Farley v. McConnell*, 52 *N. Y.* 630. See other cases collected (Negligence of children) in 6 *Abb. N. C.* 106, n., 113, n.
- Ileh v. Karker**, 11 *Weekly Dig.* 193. Superseded (Appeal to Supreme Court, in action brought in justice's court) by *Code Civ. Pro.* § 1342, as am'd in 1881.
- Illius v. N. Y. & New Haven R. R. Co.**, 13 *N. Y.* 597. Limited (Appealability of order transferring cause to another court) in *De Hart v. Hatch*, 3 *Hun.* 375, 379. Followed in *Alexander v. Bennett*, 38 *Super. Ct. (J. & S.)* 492, 497, which was rev'd in 60 *N. Y.* 204.
- Importers & Traders' Ins. Co. v. Christie**, 5 *Robt.* 169. Disting'd (Effect of payment of rent, as waiver of forfeiture) in *Ireland v. Nichols*, 2 *Sweeny*, 289.
- Indianapolis, Peru & Chicago R. R. Co. v. Tyng**, 2 *Hun.* 311; s. c., 4 *Sup'm. Ct. (T. & C.)* 524; 48 *How. Pr.* 193. Aff'd in 63 *N. Y.* 653.
- Indig v. Nat. City Bk. of Brooklyn**, 16 *Hun.* 200. Rev'd in 80 *N. Y.* 160. Decision in *Id.* disting'd (Liability of bank receiving check or draft for collection) in

- Briggs v. Central Nat. Bank, 89 *Id.* 182. Compare Guelick v. Nat. State Bank of Burlington, 56 *Iowa*, 434; s. c., 41 *Am. R.* 110, citing many cases and to which note is appended. Criticised as contrary to the weight of authority (Discharge of maker of note payable at bank, &c.) in 37 *Am. R.* 736, n.; 24 *Alb. L. J.* 82.
- Ingalls v. Morgan**, 12 *Barb.* 578. Aff'd in 10 *N. Y.* 178. See *Welsh v. German American Bank*.
- Ingallsbee v. Wood**, 36 *Barb.* 452. Aff'd in 33 *N. Y.* 577. See *Cromwell v. Stephens*; *Mowers v. Fethers*. Decision in 36 *Barb.* applied (Innkeeper's liability) to boarding-house keeper, in *Smith v. Read*, 6 *Daly*, 33, 35, 37. Commented on (Innkeeper's lien) in 1 *Add. on Torts*, 754, n., Wood's ed. See (Exceptions to findings on facts) *Code Civ. Pro.* 1881, § 992, n.
- Ingersoll v. Bostwick**, 22 *N. Y.* 425. Criticised (Necessity of case) as omitting to notice amendments made in 1860,—in *Ferguson v. Hamilton*, 35 *Barb.* 427, 434. Followed (Mode of correcting error in judgment in replevin) in *Young v. Atwood*, 5 *Hun*, 234.
- **v. Jones**, 5 *Barb.* 661. Explained (Who may maintain action for seduction) in *Bartley v. Richtmyer*, 4 *N. Y.* 38, 47. Approved (Exemplary damages for seduction) in *Lee v. Hodges*, 13 *Gratt. (Va.)* 726. Followed with *Knight v. Wilcox*, 18 *Barb.* 212; *Badgley v. Decker*, 44 *Barb.* 577; *Damon v. Moore*, 5 *Lans.* 454; *Liye v. Eisenlerd* 32 *N. Y.* 229, in *Lavery v. Crooke*, 52 *Wis.* 612; s. c., 38 *Am. R.* 768. Cited as authority (Inadmissibility of evidence of offer of marriage, in such action) in *White v. Murland*, 71 *Ill.* 250; s. c., 22 *Am. R.* 100.
- **v. Mangam**, 24 *Hun*, 202. Aff'd in 84 *N. Y.* 622; s. c., 61 *How. Pr.* 149. Decision in *Id.* followed (Personal service in proceedings against infants) in *Bellamy v. Guhl*, 62 *How. Pr.* 460.
- **v. N. Y. Central, &c. R. R. Co.**, 6 *Sup'm. Ct. (T. & C.)* 416; mem. s. c., in 4 *Hun*, 277. Aff'd it seems in 66 *N. Y.* 612, but without opinion.
- **v. Van Bokkelin**. See *Van Bokkelin v. Ingersoll*.
- Ingraham, Matter of**, 4 *Hun*, 495. Aff'd in 64 *N. Y.* 311. Decision in *Id.* disting'd (Liabilities in case of sewer laid on private property) in *McCaffrey v. City of Albany*, 11 *Hun*, 613, 615.
- Ingraham v. Baldwin**, 12 *Barb.* 9. Aff'd in 9 *N. Y.* 45. See *Jackson v. Gumaer*. Dictum in 12 *Barb.* disapproved (Joinder of husband in wife's action) in *Ackley v. Turbox*, 29 *Barb.* 512. Decision in 9 *N. Y.* collated with other cases, in article on presumption of payment, in 30 *Alb. L. J.* 104.
- **v. Disbrough**, 47 *N. Y.* 421. Applied (Assignee of mortgage, as subject to equities) in *Scamoni v. Ruck*, 53 *How. Pr.* 318. Applied to judgment, in *Cutts v. Guild*, 57 *N. Y.* 223. Applied to non-negotiable certificate, in *Cowdrey v. Vandemburgh*, 101 *U. S.* 572.
- **v. Gilbert**, 20 *Barb.* 151. See *Geer v. Archer*; *Nash v. Russell*. Disapproved with *Geer v. Archer*, 2 *Barb.* 420; *Nash v. Russell*, 5 *Id.* 556 (Moral obligation, as consideration for promise) in *Goulding v. Davidson*, 26 *N. Y.* 605, citing *Doty v. Wilson*, 14 *Johns.* 378.
- **v. Hammond**, 1 *Hill*, 353. Doubtled (Answer of title in third person) in *Stowell v. Otis*, 71 *N. Y.* 36, 38. See *Code Civ. Pro.* 1881, § 1723, n.
- Ingram v. Young**, 1 *Hun*, 487. Fully reported in 3 *Super. Ct. (J. & S.)* 491.
- Inman v. Foster**, 8 *Wend.* 602. See *Matson v. Buck*; *Root v. King*; *Thomas v. Crosswell*. Explained and applied (Admissibility, in action for slander, of evidence of slanderous words, an action for which would be barred by statute of limitations), in *Titus v. Sumner*, 44 *N. Y.* 266. Disting'd *Frazier v. McCloskey*, 60 *Id.* 337. Applied to slanderous words for which action had been brought but discontinued, in *Flanders v. Groff*, 25 *Hun*, 553. Relied on (Plaintiff's character when in issue, in such action) in *Rhodes v. Ijames*, 7 *Ala.* 574; s. c., 42 *Am. Dec.* 604. Explained (Damages in such action) in 3 *Pars. on Cont.* 168, n. w.
- **v. Western Fire Ins. Co.**, 12 *Wend.* 452. See *Fowler v. Aetna Fire Ins. Co.*; *Oakley v. Morton*. Examined and approved with *McMasters v. Westchester Ins. Co.*, 25 *Wend.* 379 (What is due diligence in giving notice of loss) in *St. Louis Ins. Co. v. Kyle*, 11 *Mo.* 278; s. c., 49 *Am. Dec.* 74, with note. Followed with *Aetna Ins. Co. v. Tyler*, 16 *Wend.* 385, 391, 401; *Turley v. No. American Ins. Co.*, 25 *Id.* 374 (Production of certificate from magistrate, as condition precedent to action on policy) in *Johnson v. Phoenix Ins. Co.*, 112 *Mass.* 49; s. c., 17 *Am. R.* 65.
- Innes v. Lausing**, 7 *Paige*, 683. Explained (Remedy in case of insolvency of special partnership) in *La Chaise v. Lord*, 1 *Abb. Pr.* 216; *Artisans' B'k v. Treadwell*, 34 *Barb.* 564; *Van Alstyne v. Cook*, 25 *N. Y.* 492; *Robinson v. McIntosh*, 3 *E. D. Smith*, 230. Applied in *Levy v. Levy*, 6 *Abb. Pr.* 91; *Jackson v. Sheldon*, 9 *Id.* 133; *Greene v. Breck*, 10 *Id.* 43, which was rev'd in 32 *Barb.* 74, which see. Applied to insolvent corporation in dissenting opinion of *MULLIN, J.*, in *Galwey v. U. S. Steam Sugar Refining Co.*, 36 *Id.* 263. Disting'd (Maintaining creditor's action without issuing of execution) as inapplicable to case of ordinary partnership, in dissenting opinion of *CLERKE, J.*, in *Fassett v. Tallmadge*, 18 *Abb. Pr.* 63; in *Robb v. Stevens, Clarke*, 198. Applied in *Dillon v. Horn*, 5 *How. Pr.* 36, but see it disting'd from *Dillon v. Horn* in *Crippen v. Hudson*, 13 *N. Y.* 161, 167. See *Nicholson v. Leavitt*, 4 *Sandf.*



301. Applied to proceeding to set aside fraudulent transfer by administrator, in *Everingham v. Vanderbilt*, 51 *How. Pr.* 186. Doctrine herein said not to have been disturbed,—in *Whitcomb v. Fowle*, 7 *Abb. N. C.* 295; s. c., 1 *Am. Insolv. R.* 100. Applied (Equitable relief against violation of rights created by statute) in *People v. Tweed*, 13 *Abb. Pr. N. S.* 82. Applied (Stay of proceedings brought for same cause of action) in *Grosbón v. Lyon*, 16 *Barb.* 466. Applied (Parties in creditors' proceedings against limited partnership) to proceeding against corporation, in *Conro v. Port Henry Iron Co.*, 12 *Barb.* 60. Applied (Discontinuance by creditor suing for himself and others) in *Tremain v. Guardian Mut. Life Ins. Co.*, 11 *Hun*, 288. Applied (*Status* of such other creditors) in *Derby v. Yale*, 13 *Hun*, 279.

— *v. Purcell*, 1 *Hun*, 318. Aff'd in 58 *N. Y.* 388. Another proceeding in 2 *Sup'm. Ct. (T. & C.)* 538. With decision in *Id.* compare (Referee's fees in foreclosure) *Code Civ. Pro.* § 3297; *Thomas on Mort.* 326. See to same effect with decision in 58 *N. Y.* (Appeal from default forbidden) *Code Civ. Pro.* § 1294.

**Inslee v. Hampton**, 8 *Hun*, 230. Further decision in 11 *Id.* 156. See *Schwinger v. Raymond*.

**International Bank v. Bradley**, 19 *N. Y.* 245. See *Curtis v. Leavitt*. Disting'd (Jurisdiction of superior city courts) in *Gemp v. Pratt* 7 *Daly*, 197, 199. Criticised in *Landers v. Staten Island R. R. Co.*, 53 *N. Y.* 450, 459.

**Ireland v. Ireland**, 18 *Hun*, 362. Rev'd in 84 *N. Y.* 321.

— *v. Kip*, 10 *Johns.* 490. Further decision in 11 *Id.* 231. Trial reported in *Anth. N. P.* 195. See *Chapman v. Lipscombe*. Reviewed with *Reid v. Payne*, 16 *Johns.* 218, and other cases (Notice of dishonor sent by mail) in *Patrick v. Beazley*, 6 *How. (Miss.)* 609; s. c., 38 *Am. Dec.* 456, with note: *Reid v. Payne* being thought not to be authority for position for which it is relied on in *Bank of Columbia v. Lawrence*, 1 *Pet.* 584. Disting'd in *Fish v. Jackman*, 19 *Me.* 467; s. c., 36 *Am. Dec.* 769, with note. Approved with *Babcock v. Buraham*, 4 *Hill*, 129; *Ransom v. Mack*, 2 *Id.* 587, in *Forbes v. Nat. B'k of Omaha*, 10 *Neb.* 338; s. c., 35 *Am. L.* 480, with note.

— *v. Litchfield*, 8 *Bosw.* 634. See (Execution after creditor's death) *Code Civ. Pro.* 1881, § 1376, n.

— *v. Nichols*, 2 *Sweeny*, 289. Aff'd in 46 *N. Y.* 413. Another decision in 1 *Sweeny*, 208; s. c., 87 *How. Pr.* 222; also in 9 *Abb. Pr. N. S.* 71; s. c., 40 *How. Pr.* 85. See *Guernsey v. Powers*. Rule in decision in 9 *Abb. Pr. N. S.* as to injunction being vacated notwithstanding appeal pending, said in *Williams v. Western Union Tel. Co.*, 65 *How. Pr.* 326, not to have been charged by *Code Civ. Pro.* Decision in 37 *How. Pr.*

doubted (*Receiver pendente lite*) in *Guernsey v. Powers*, 9 *Hun*, 78. Commented on in *Sedgw. & W. on Tr. of Tit. to Land*, § 614.

— *v. Oswego, Hannibal & Sterling Plank Road Co.*, 3 *N. Y.* 526. Approved with *Keller v. N. Y. Central R. R. Co.*, 24 *How. Pr.* 177 (Negligence as a question of law or of fact) in *Gonzales v. N. Y. & Harlem R. R. Co.*, 39 *How. Pr.* 407. Applied in *Ochsenbein v. Shapley*, 85 *N. Y.* 214, 224. Relied on in *Townley v. Chicago, &c. R'y Co.*, 53 *Wis.* 632. Disting'd (Duty of fencing highways) in *Chapman v. Cook*, 10 *R. I.* 304; s. c., 14 *Am. R.* 686, 689. Relied on in *Munson v. Town of Derby*, 37 *Conn.* 298; s. c., 9 *Am. R.* 332, 337. Quoted and explained in *Wood on Nuis.* 2 ed. § 327, n. 1.

**Irish v. Nutting**, 47 *Barb.* 370. See *Dexheimer v. Gautier*. Followed (Gift *inter vivos*) in *Matter of Ward*, 2 *Redf.* 251.

**Irvin v. Fowler**. See *Irvine v. Wood*.

— *v. Wood*. See *Irvine v. Wood*.

**Irvine v. Cook**, 15 *Johns.* 239. Limited (Error in admitting improper evidence, when cured) in *Meyer v. Clark*, 2 *Daly*, 498, 520.

— *v. Forbes*, 11 *Barb.* 587. Cited (Liabilities of members of joint-stock companies to third persons) in *Story on Partn.* 7 ed. § 164, n.

— *v. Millbank*, 36 *Super. Ct. (J. & S.)* 264; s. c., 14 *Abb. Pr. N. S.* 408. Aff'd 15 *Id.* 378; mem. s. c., 56 *N. Y.* 635. Decision in *Id.* disting'd (Effect of agreement with one joint debtor, as discharge of the others) in *Mitchell v. Allen*, 25 *Hun*, 543, 545. See *Code Civ. Pro.* § 1943.

— *v. Wood*, 51 *N. Y.* 224; s. c., 10 *Am. R.* 603. Aff'g *Irvin v. Fowler*, 5 *Robt.* 482. Previous decision as *Irvin v. Wood*, in 4 *Id.* 133. See *Brown v. Cayuga & Susquehanna R. R. Co.*; *Chenango Bridge Co. v. Lewis*; *Creed v. Hartman*; *Storrs v. City of Utica*. Decision in 51 *N. Y.* applied (Liability of city arising from unsafe condition of streets, irrespective of negligence) in *Dickinson v. Mayor, &c. of N. Y.*, 61 *How. Pr.* 255, 257. Quoted and discussed in *Wood on Nuis.* 2 ed. § 266. Disting'd (Liability of abutting owner arising from unsafe condition of sidewalk) in *Wenzlick v. McCotter*, 87 *N. Y.* 122, 123. Decision in 4 *Robt.* cited with *Congreve v. Morgan*, 18 *N. Y.* 84; *Hart v. Mayor, &c. of Albany*, 9 *Wend.* 607; *Dygart v. Schenck*, 23 *Id.* 446 (Inability of city to exempt itself from liability, resulting from unsafe condition of streets) in *City of Lincoln v. Walker, Sup'm. Ct. Neb. July*, 1884, 20 *Northw. Rep.* 115.

**Irving v. De Kay**, 9 *Paige*, 521. Aff'd, in 5 *Den.* 646. See *Hone v. Van Schaick*.

— *v. Excelsior Fire Ins. Co.*, 1 *Bosw.* 507. Limited and disting'd (Estoppel of insurer to show error in statements in proof of loss) in *McMaster v. Ins. Co. of North. Am.*, 55 *N. Y.* 222, 229. Compared and doubted in

- Neill v. American Pop. Life Ins. Co., 42 *Super. Ct. (J. & S.)* 259, 261. Opposed in Waldeck v. Springfield F. & M. Ins. Co., 53 *Wis.* 133.
- v. Rankine, 13 *Hun.* 147. Aff'd, it seems, in 79 *N. Y.* 636, but without opinion.
- Irving Bank v. Wetherald**, 34 *Barb.* 323. Aff'd in 36 *N. Y.* 335. Decision in *Id.* applied (Liability of bank certifying note to be good) in Second Nat. B'k of Baltimore v. Western Nat. B'k of Baltimore, 51 *Md.* 128; s. c., 34 *Am. R.* 300, 302.
- Irwin v. N. Y. Central, &c. R. R. Co.**, 1 *Sup'm Ct. (T. & C.)* 473. Aff'd in 59 *N. Y.* 653.
- Isaacs v. Beth Hamedrash Soc.**, 19 *N. Y.* 584. Followed (Judgment on award, to be reviewed by writ of error) in Freeman v. Kendall, 41 *Id.* 518. Both these decisions followed, as settled law, in Turnbull v. Martin, 45 *Id.* 600. See *Code Civ. Pro.* 1881, § 1293, n.
- v. N. Y. Plaster Works, 40 *Super. Ct. (J. & S.)* 277. Rev'd in 67 *N. Y.* 124. Further proceeding in 4 *Abb. N. C.* 4; s. c., 43 *Super. Ct. (J. & S.)* 397. See Union Trust Co. v. Whiton. Decision in 67 *N. Y.* explained (Conditions precedent) in 2 *Benj. on Sales*, § 855, n. 2 (Corbin's 4 *Am. ed.*); *Id.* § 1024, n. 15. Decision in 43 *Super. Ct.* applied (Costs on appeal) in Havemeyer v. Havemeyer, 62 *How. Pr.* 476; Donovan v. Board of Education, &c., 1 *Civ. Pro. R.* 312, n. Compare First Nat. B'k of Meadville v. Fourth Nat. B'k of N. Y., 84 *N. Y.* 469.
- v. Third Ave. R. R. Co., 47 *N. Y.* 122; s. c., 7 *Am. R.* 418. See Higgins v. Watervliet Turnpike Co. Disting'd (Master's liability for wilful acts of servant) in Shea v. Sixth Ave. R. R. Co., 62 *N. Y.* 180, 184, which aff'd 5 *Daly*, 224, which see; Cohen v. Dry Dock, &c. R. R. Co., 40 *Super. Ct. (J. & S.)* 368, 374. Followed in Hughes v. N. Y. & New Haven R. Co., 36 *Id.* 222, 227. Compared and doubted in Hoffman v. N. Y. Central, &c. R. R. Co., 44 *Id.* 1, 6. Approved in Mott v. Consumers' Ice Co., 73 *N. Y.* 543, 548. Relied on in McKinley v. Chicago & North Western R. R. Co., 44 *Iowa*, 314; s. c., 24 *Am. R.* 748. Said in 40 *Am. R.* 227, n., to have been substantially overruled by Rounds v. Delaware, &c. R. R. Co., 64 *N. Y.* 120; Mott v. Consumers' Ice Co., 73 *Id.* 543, and other cases. Compared and doubted in 17 *Moak Eng.* 300. Discussed in *Moak's Underhill's Torts*, 1 *Am. ed.* 31. Collated with Mott v. Consumers' Ice Co., 73 *N. Y.* 543; Higgins v. Watervliet Turnpike, &c. Co., 46 *Id.* 23, in 23 *Am. L. Reg. N. S.* 243. Collated with Drew v. Sixth Ave. R. R. Co., 3 *Keyes*, 429, and other cases, in 8 *Am. R.* 316, n. Doctrine discussed in 14 *Alb. L. J.* 240.
- Isehart v. Brown**, 2 *Edw.* 341. Limited and explained (Evidence to deny consideration) in Anthony v. Harrison, 14 *Hun.* 198, 214. Followed (Right of legatee to interest on value of unproductive property) in Platt v. Moore, 1 *Dem.* 191. Disting'd (Preference to legacy given in lien of dower) in Tickle v. Quinn, 1 *Dem.* 425, 429.
- Isham v. Davidson**, 52 *N. Y.* 237. Further decision in 3 *Sup'm Ct. (T. & C.)* 745; mem. s. c., in 1 *Hun.* 114. Decision in *Id.* disting'd (Proof of transfer of interest in cause of action) in Smith v. Zalinski, 26 *Hun.* 225.
- v. Gibbons, 1 *Bradf.* 69. Approved (Residence and domicile) in Stowe v. Stowe, 1 *Redf.* 305. Applied in Matter of Stover, 4 *Id.* 82, 85. Collated with other cases in *Thomps. on Pro. Rem.* 357. Approved and applied (Jurisdiction of surrogate to take proof of foreign will) in Russell v. Hartt, 87 *N. Y.* 19, 24. See *Code Civ. Pro.* 1881, § 2695, n.
- v. Ketchum, 46 *Barb.* 43. Aff'g Ketchum v. Ketchum, 1 *Abb. Pr. N. S.* 157. See Tracy v. First Nat. Bank of Selma. Decision in 46 *Barb.* disting'd (Right to move to set aside attachment) in Jacobs v. Hogan, 85 *N. Y.* 243.
- v. Schafer, 60 *Barb.* 317. Quoted (Creditor reaching improvements) in *Wait on Fraud. Conv.* § 26.
- Ives v. Holden**, 14 *Hun.* 402. Disting'd (Additional papers on motion to vacate attachment) in Trow's Printing, &c. Co. v. Hart, 60 *How. Pr.* 190, 193; Hirsch v. Hutchison, 64 *How. Pr.* 366.
- v. Ives. See Hyatt v. Wood; Wilde v. Cantillon.
- v. Miller, 19 *Barb.* 196. Followed (Counter-claim between partners) in Hammond v. Terry, 3 *Lans.* 186. Disapproved in Waddell v. Darling, 51 *N. Y.* 327, 332.
- v. Van Epps. See Batterman v. Pierce.

## J.

- Jack v. Martin**, 12 *Wend.* 311. Aff'd in 14 *Wend.* 507.
- Jackett v. Judd**, 18 *How. Pr.* 385. Opposed (Taxation of term-fees) in Malam v. Simpson, 12 *Abb. Pr.* 225.
- Jacks v. Nichols**, 3 *Sandf. Ch.* 313. Rev'd in 5 *Barb.* 38, and that rev'd in 5 *N. Y.* 178. Decision in *Id.* explained (Usury, as determined by law of place) in Wayne Co. Savings Bk. v. Low, 6 *Abb. N. C.* 76, 87. Followed in Bowman v. Miller, 25 *Gratt. (Va.)* 331; s. c., 18 *Am. R.* 686, 691. Decision in 5 *Barb.* followed in Sheldon v. Haxtun, 91 *N. Y.* 124.
- Jackson, Matter of**, 6 *Hun.* 513. Aff'd as Matter of Price, in 67 *N. Y.* 231.
- Jackson v. Adams**, 7 *Wend.* 307. See Mooers v. White. Approved (Descent of land held by alien) in Duke of Cumberland v. Graves, 7 *N. Y.* 305. Approved (Distinction between a citizen and an alien dying without heirs) in Bradley v. Dwight, 62 *How. Pr.* 300, 302. Criticised (Necessity

- of inquest of office, to perfect title of State to escheated lands) in 29 *Am. Dec.* 234, *n.*, and there referred to as disregarded, in *McCaughal v. Ryan*, 27 *Barb.* 376; *Ettenheimer v. Heffernan*, 66 *Id.* 374; see in same note *People v. Cutting*, 3 *Johns.* 1, referred to (Right of one who traverses inquisition of office and shows that the people have no title) as not in accord with *French v. Commonwealth*, 5 *Leigh (Va.)* 518.
- *v. Allen*, 3 *Cow.* 220. Applied (Effect of acceptance of rent, as waiver of forfeiture) in *Conger v. Duryec*, 24 *Hun.* 617, 619. Opinion of SUTHERLAND, J., referred to in 2 *Washb. on Real Prop.* 4 ed. 19, *n.* 5.
- *v. Ambler*, 14 *Johns.* 96; *s. c.*, 5 *N. Y. Com. L. Law.* ed. 788, with brief note as to awards.
- *v. Anderson*, 4 *Wend.* 474. See *Woodcock v. Bennett*. Followed with *Jackson v. Cadwell*, 1 *Cow.* 622 (Effect of proceedings taken under satisfied judgment) in *Reed v. Austin's Heirs*, 9 *Mo.* 722; *s. c.*, 45 *Am. Dec.* 336, 341, with note. Applied with *Swan v. Saddlemire*, 8 *Wend.* 681; *Wood v. Colvin*, 2 *Hill*, 566; *Deyo v. Van Valkenburgh*, 5 *Id.* 242, in *Breck v. Blanchard*, 20 *N. H.* 323; *s. c.*, 51 *Am. Dec.* 222, 227, with note. Applied, and *Hildreth v. Ellice*, 1 *Cai.* 192; *Bolton v. Lawrence*, 9 *Wend.* 437, disting'd (Right of sheriff to fees, in case of satisfaction of judgment) in *Gordons v. Maupin*, 10 *Mo.* 352; *s. c.*, 47 *Am. Dec.* 118.
- *v. Andrew*, 18 *Johns.* 431. Disting'd (Ejectment for waste) in *Patrick v. Sherwood*, 4 *Blatchf. C. Ct.* 112, 114. Quoted (Effect of laches in bringing action for waste) in 1 *Add. on Torts*, 382, *n.* 1, *Wood's* ed.
- *v. Andrews*, 59 *N. Y.* 244. Disting'd (Reformation of contract) in *Kilmer v. Smith*, 77 *Id.* 226, 231. Followed in *Heelas v. Slevin*, 53 *How. Pr.* 356; *Moran McLarty*, 11 *Hun.* 66, 68.
- *v. Ayers*, 14 *Johns.* 224. Criticised and disapproved (Estoppel between landlord and tenant) in *Franklin v. Merida*, 35 *Cal.* 558.
- *v. Babcock*, 12 *Johns.* 389. Collated with other cases (Enlarging devise into fee) in *Sharsw. & B. Cas. on Real Prop.* 64.
- *v. —*, 4 *Johns.* 418. Applied (Effect of parol license to perform act on land) in *Prince v. Case*, 10 *Conn.* 375; *s. c.*, 27 *Am. Dec.* 675, 680, with note. Collated with other cases and discussed in 28 *Alb. L. J.* 144. Collated with other cases (Transfer of license to third person) in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 550.
- *v. Bailey*. See *Wilbur v. Selden*.
- *v. Bard*, 4 *Johns.* 230; *s. c.*, 4 *Am. R.* 267. See *Brandt v. Ogden*; *Waring v. Warren*. Applied (Possession, when not adverse) in *Jackson v. Camp*, 1 *Cow.* 610; *Jackson v. Johnson*, 5 *Id.* 91; *Jackson v. Walker*, 7 *Id.* 643. Applied (Admissibility of declaration of one in possession of lands) in *Jackson v. Cole*, 4 *Cow.* 534; *Jackson v. Myers*, 11 *Wend.* 536. Disting'd in *Vrooman v. King*, 36 *N. Y.* 483; *Whitaker v. Brown*, 8 *Wend.* 491. Disting'd with *Jackson v. Vredenburg*, 1 *Johns.* 160; *Jackson v. McCall*, 10 *Id.* 377; in *Carpenter v. Hollister*, 13 *Verm.* 552; *s. c.*, 37 *Am. Dec.* 612, 614. Disting'd with *Jackson v. Van Dusen*, 5 *Johns.* 147 (Dower right, as affecting competency of witness) in *Snyder v. Snyder*, 3 *Binn. (Pa.)* 453; *s. c.*, 6 *Am. Dec.* 493.
- *v. Barringer*, 15 *Johns.* 471. Followed with *Jackson v. Hubble*, 1 *Cow.* 617; *Jackson v. Moore*, 6 *Id.* 717; *Mann v. Pearson*, 2 *Johns.* 40; *Jackson v. Wilkinson*, 17 *Id.* 147 (Construction of description in deed) in *Doe v. Porter*, 3 *Ark.* 18; *s. c.*, 36 *Am. Dec.* 448, 451. Followed in *Rutherford v. Tracy*, 48 *Mo.* 325; *s. c.*, 8 *Am. R.* 104, 106; *Melvin v. Proprietors*, 5 *Metc. (Mass.)* 15; *s. c.*, 38 *Am. Dec.* 384, 388, with note.
- *v. Bartlett*, 8 *Johns.* 361. See *Crary v. Turner*; *McElroy v. Mancius*; *Reynolds v. Corp.* Disting'd (Effect of action by creditor for escape, upon his other remedies) in *Ex parte Voltz*, 37 *Ind.* 175, as not in conflict with *McElroy v. Mancius*, 13 *Johns.* 121; *Littlefield v. Brown*, 1 *Wend.* 398; *Rawson v. Turner*, 4 *Johns.* 469. Followed (Erroneous process is merely voidable and not void) in *Day v. Sharp*, 4 *Whart. (Pa.)* 339; *s. c.*, 34 *Am. Dec.* 509, 511. Followed with *Jackson v. Delancey*, 13 *Johns.* 538; *Ingraham v. Belk*, 2 *Strob. (So. Car.)* 207; *s. c.*, 47 *Am. Dec.* 591, 595.
- *v. Bateman*. See *Foote v. Colvin*.
- *v. Beach*, 1 *Johns. Cas.* 399; *s. c.*, 11 *N. Y. Com. L. Law.* ed. 367, with brief note on rights of aliens as to real property. See *Moers v. White*.
- *v. Beil*, 19 *Johns.* 168. Explained (Right of lessor in ejectment to release the action) in *Jackson v. McClaskey*, 2 *Wend.* 541.
- *v. Betts*, 9 *Cow.* 208. Rev'd in 6 *Wend.* 173. Prior decision in 6 *Cow.* 208. See *Jackson v. Kniffen*. Decision in 6 *Cow.*, though questioned in that of 6 *Wend.*, yet approved (Admissibility of testator's declarations) in *Waterman v. Whitney*, 11 *N. Y.* 157. Thought in 3 *Am. Dec.* 397, *n.*, to be of doubtful authority. Decisions in 9 *Cow.* and 6 *Wend.* commented on (Cancellation of will) in *Hillard on Executors*, 126.
- *v. Blanshan*, 3 *Johns.* 292; *s. c.*, 3 *Am. Dec.* 485, with note, wherein it is shown to have been well sustained as an authority respecting what is an executory devise; though not uniformly followed in *N. Y.* as to admissibility of ancient documents in evidence, *Clark v. Owens*, 18 *N. Y.* 437, being thought by the editor to hold the correct doctrine on the latter point, and one which has been supported elsewhere. Also reported in 3 *N. Y. Com. L. Law.* ed. 610, 612, with brief notes of contrary authorities. Subsequent decision in 6 *Johns.* 54; *s. c.*, 5 *Am. Dec.* 188; 4 *N. Y. Com. L. Law.* ed. 50, with brief note. See

- Ridgeley v. Johnson. Decision in 3 *Johns.* questioned (Proof of ancient document) in that in 6 *Id.* Disapproved in *Hewlett v. Cock*, 7 *Wend.* 371. Commented on in 1 *Greenl. on Ev.* 14 ed. § 144, n. 1; *Id.* 570, n. 2. Appears to conflict with English authorities cited in 1 *Taylor on Ev.* 105. Followed with *Moffat v. Strong*, 10 *Johns.* 12; *Jackson v. Staats*, 11 *Id.* 337; *Anderson v. Jackson*, 16 *Id.* 382 (Effect of devise over in case of first taker "dying without issue) in *Lewis v. Claiborne* 5 *Jerg. (Tenn.)* 369; s. c., 26 *Am. Dec.* 270. Decision in 6 *Johns.* adhered to (Reading "and" as "or") in *Roome v. Phillips*, 24 *N. Y.* 463, 469. Followed in *Sayward v. Sayward*, 7 *Greenl. (Me.)* 210; s. c., 22 *Am. Dec.* 191, 197; *Janney v. Sprigg*, 7 *Gill (Md.)* 197; s. c., 48 *Am. Dec.* 557, with extended note wherein (on p. 567) *Jackson v. Blanshan* is referred to as a leading case.
- *v. Blodget*, 5 *Cow.* 202; s. c., 8 *N. Y. Com. L. Law. ed.* 625, with brief note. See *Jackson v. Willard*. Referred to with *Jackson v. Willard*, 4 *Johns.* 43, in 17 *Am. R.* 91, n. as contrary to *Bailey v. Smith*, 14 *Ohio St.* 393 (Effect of mortgage given at same time with note, and to secure payment of it). Applied with *Jackson v. Dunlap*, 1 *Johns. Cas.* 114 (Necessity that grantee in deed assent to receive it), in *Kingsbury v. Burnside*, 58 *Ill.* 310; s. c., 11 *Am. R.* 67, 72.
- *v. Bowen*, 1 *Cai.* 358; s. c., 2 *Am. Dec.* 193; 2 *N. Y. Com. L. Law. ed.* 182; with brief note on contradicting by parol. See *Wendell v. Jackson*. Explained (Loss of title by abandonment) in 3 *Washb. on Real Prop.* 4 ed. 65.
- *v. —*, 7 *Cow.* 13. See *Green v. Burke*; *Woodcock v. Bennet*. Disting'd (Rights of assignee, etc., as affected by prior usurious transaction) in *Gray v. Green*, 77 *N. Y.* 619. Followed (Effect of deed from assignee of mortgage) in *Niles v. Ransford*, 1 *Mich.* 338; s. c., 51 *Am. Dec.* 95, 99, with note. Applied (Rights of purchaser at irregular judicial sale) in *Davis v. Gaines*, 104 *U. S.* 386, 406.
- *v. Bradford*, 4 *Wend.* 619. Explained (Leases operating by way of estoppel) in 4 *Kent Com.* 99.
- *v. Bradt*, 2 *Cai.* 169. See *Jackson v. Harder*. Compare (What is tenancy from year to year) *Jackson v. Wilsey*, 9 *Johns.* 267. Compared with *Jackson v. Rogers*, 2 *Cai. Cas.* 314, and other cases in *Rich v. Bolton*, 46 *Vt.* 84; s. c., 14 *Am. R.* 615. Quoted (Ejectment as between tenants in common) in *Sedgw. & W. on Tr. of Tit. to Land*, § 297. See *Code Civ. Pro.* 1881, § 1500, n. Quoted (Ejectment against tenant at will) in *Sedgw. & W. on Tr. of Tit. to Land*, § 384. Discussed (partition without deed) in *Browne on Stat. of Frauds*, § 68, 4 ed.
- *v. Bronson*, 19 *Johns.* 325. Followed (assignment of mortgage) in *Wilson v. Troup*, 2 *Cow.* 195, 231.
- *v. Brookins*, 2 *Hun.* 530. See *Aldrich v. Sager*; *Hayes v. Phelan*. Sustained (Joint demurrer) in *Hoffman v. Wheelock*, 22 *Northw. Rep.* 713, 716.
- *v. Brooks*, 8 *Wend.* 426. Aff'd in 15 *Id.* 111, but without opinion. These decisions collated (Expert testimony on issue of genuineness of ancient documents) in 1 *Whart. Com. on Ev.* § 704.
- *v. —*, 14 *Wend.* 649. Discussed (Judicial powers as affecting operation of statute of limitations) in *Ang. on Limit.* § 314, 6 ed.
- *v. Brown*, 4 *Cow.* 550. See *People v. Steuben Com. Pl.*
- *v. —*, 15 *Johns.* 264. Overruled (Validity of title derived from Indian) in *Jackson v. Goodell*, 20 *Id.* 693.
- *v. Brownell*, 1 *Johns.* 267; s. c., 3 *Am. Dec.* 326. See *Stewart v. Doughty*; *Taylor v. Bradley*. Doubted (Nature of contract to work farm on shares) in *Putnam v. Wise*, 1 *Hill*, 234. Reviewed and modified in *Taylor v. Bradley*, 39 *N. Y.* 129.
- *v. Browner*, 18 *Johns.* 37. Reviewed with *Alexander v. Chamberlain*, 1 *Sup'm. Ct. (T. & C.)* 600, and other cases (Hearsay evidence in matters of pedigree) in *Northrop v. Hale*, 76 *Me.* 306. Explained in 2 *Add. on Torts*, 613, n. Wood's ed. Quoted in 2 *Best on Ev.* § 498, n. a, Wood's ed.
- *v. Brownson*, 7 *Johns.* 227; s. c., 5 *Am. Dec.* 258. Disting'd (Ejectment for waste) in *Patrick v. Sherwood*, 4 *Blatchf. C. Ct.* 112, 114. Collated with *Van Deusen v. Young*, 29 *N. Y.* 30, and other cases, and substantially approved (What is not waste by life tenant) in *Wilkinson v. Wilkinson*, 59 *Wis.* 561.
- *v. Bryan*, 1 *Johns.* 322. Disting'd with *Jackson v. Laughhead*, 2 *Id.* 75; *Jackson v. Wheeler*, 6 *Id.* 271 (Tenant at will, when entitled to six months' notice to quit) in *Rich v. Bolton*, 46 *Vt.* 84; s. c. 14 *Am. R.* 615.
- *v. Buel*, 9 *Johns.* 298. Discussed (For what interest ejectment lies) in *Sedgw. & W. on Tr. of Tit. to Land*, § 99.
- *v. Bull*, 1 *Johns. Cas.* 81; s. c., 1 *N. Y. Com. L. Law. ed.* 250, with brief note. See *Jackson v. Raymond*. Disapproved with *Jackson v. Murray*, 12 *Johns.* 201 (Estoppel created by conveyance without covenant of warranty) in *Pike v. Galvin*, 29 *Me.* 183 (cited in 54 *Am. Dec.* 635, n.), and thought to have been overruled by *Pelletreau v. Jackson*, 11 *Wend.* 110. These two cases also thought, in *Williams v. Gray*, 3 *Greenl. (Me.)* 207; s. c., 14 *Am. Dec.* 234, not to have been decided on the ground of estoppel, technically considered.
- *v. —*, 10 *Johns.* 19; s. c., 4 *N. Y. Com. L. Law. ed.* 917, with brief note. Followed (Limitation over after devise, when void) in *McKenzie's Appeal*, 41 *Conn.* 607; s. c. 19 *Am. R.* 525. Followed with *Jackson v. Robins*, 13 *Johns.* 169; in *Burbank v. Whitney*, 24 *Pick. (Mass.)* 146; s. c., 35 *Am. Dec.* 312, 317, with note. Reviewed

- with Jackson v. Robins, in Smith v. Bell, 1 *Mart. & Y. (Tenn.)* 302; s. c., 17 *Am. Dec.* 793. See *Cruise's Dig.* tit. 38, c. 11, §§ 11,—12 and 16. Followed with Helmer v. Shoemaker, 22 *Wend.* 137; in Rona v. Meier, 47 *Iowa*, 607; s. c., 29 *Am. R.* 493. Approved in Howard v. Carusi, 109 *U. S.* 725, 731.
- **v. Bull**, 10 *Johns.* 148; s. c., 6 *Am. Dec.* 321. Approved (Devise when enlarged into fee) in Jackson v. Babcock, 12 *Johns.* 389; Jackson v. Martin, 18 *Id.* 31. Quoted and collated with other cases in *Sharsw. & B. Cas. on Real Prop.* 67.
- **v. Burchin**, 14 *Johns.* 124; s. c., 5 *N. Y. Com. L. Law. ed.* 799, with brief note. See Dominick v. Michael; Jackson v. Carpenter. Approved in part (Avoidance of infants' voidable acts) in Breckenridge's Heirs v. Ormsby, 1 *J. J. Marsh (Ky.)* 236; s. c., 19 *Am. Dec.* 71, 81 with note. Approved in 2 *Kent Com.* 238, and cited in *Id.* n. c. as approved by STORY, J., in Tucker v. Moreland, 10 *Pet.* 73. Commented on in *Exell Lead. Cas. on Inf. &c.* 90. Quoted and explained in 1 *Pars. on Contr.* 325, n. u.
- **v. Burgott**, 10 *Johns.* 457; s. c., 6 *Am. Dec.* 349, with note. Followed (Effect of unrecorded deed, as against purchaser with notice) in Draper v. Bryson, 17 *Mo.* 71; s. c., 57 *Am. Dec.* 257. Approved in Givens v. Branford, 2 *McCord (So. Car.)* 152; s. c., 13 *Am. Dec.* 702, as applicable to case of unrecorded marriage settlement. Explained in 4 *Kent Com.* 172.
- **v. Burton**, 11 *Johns.* 64. Commented on (Proof of handwriting of subscribing witness) in Jackson v. Waldron, 13 *Wend.* 178, 199.
- **v. —**, 1 *Wend.* 341. Disting'd and applied (Tenant's possession when not adverse) in Sherman v. Kane, 86 *N. Y.* 57, 67, which aff'd 46 *Super. Ct. (J. & S.)* 310, 317, which see.
- **v. Bush**, 10 *Johns.* 223. See Jackson v. Graham. Followed with Gorham v. Gale, 7 *Cow.* 737 (Validity of sheriff's deed executed by deputy) in Haines' Lessee v. Lindsey, 4 *Ohio*, 88; s. c., 19 *Am. Dec.* 586, with note. See 7 *Com. Dig. Viscount.* p. 542 (B.)
- **v. Cadwell**, 1 *Cow.* 622. See Jackson v. Anderson; Jackson v. Roberts; Wood v. Colvin; Woodcock v. Bennet. Followed with Jackson v. Walker, 4 *Wend.* 462 (Sheriff's sale when not invalidated by irregularities) in Minor v. Natchez, 4 *Smedes & M. (Miss.)* 602; s. c., 43 *Am. Dec.* 483, 492, with note; Jackson v. Shepard, 7 *Cow.* 88, being disting'd as a case arising out of a tax collector's deed. Discussed (What will sustain covenant to stand seized) in 3 *Washb. on Real Prop.* 4 ed. 372.
- **v. Camp**, 1 *Cow.* 605. See Jackson v. Waters; Lafrombois v. Jackson. Followed with Jackson v. Schoonmaker, 2 *Johns.* 230 (Requisites of adverse possession) in Casey's Lessee v. Inloes, 1 *Gill (Md.)* 430; s. c., 39 *Am. Dec.* 638, 675.
- **v. Carey**. See Jackson v. Stevens.
- **v. Carpenter**, 11 *Johns.* 541. Followed with Jackson v. Burchin, 14 *Johns.* 124 (Disaffirmance of infant's conveyance) in Cresinger v. Welch, 15 *Ohio*, 156; s. c., 45 *Am. Dec.* 565, 568, with note; Tucker v. Moreland, 10 *Pet.* 58, 72. Approved in Phillips v. Green, 3 *A. K. Marsh, (Ky.)* 7; s. c., 13 *Am. Dec.* 124, with note. With Voorhies v. Voorhies, 24 *Barb.* 150; McMurray v. McMurray, 66 *N. Y.* 175. Collated with contrary cases (Declano v. Blake, 11 *Wend.* 85; Bostwick v. Atkins, 3 *N. Y.* 53; Chapin v. Shafer, 49 *Id.* 407; Jones v. Butler, 30 *Barb.* 641); and the rule of reasonable time followed in preference to the statute of limitations, in Goodnow v. Empire Lumber Co., 31 *Minn.* 468; s. c., 47 *Am. R.* 798; 2; *Am. L. Reg. N. S.* 329, with note. See also Anderson v. Soward, 40 *Ohio St.* 325, approving Taft v. Sergeant, 18 *Barb.* 320. Approved in 2 *Kent Com.* 238. Quoted and explained (Ratification after majority) in 1 *Pars. on Contr.* 325, n. u.
- **v. Catlin**, 2 *Johns.* 248; s. c., 3 *Am. Dec.* 415. Aff'd in 8 *Johns.* 520. See Archer v. Whalen; Brackett v. Barney. Decision in 2 *Johns.* followed (Deed when delivered as escrow) in Stone v. Duvall, 77 *Ill.* 475; s. c., 16 *Am. Dec.* 40, n. Disting'd (Sheriffs sales, as affected by statute of frauds) in Pomeroy v. Winship, 12 *Mass.* 513; s. c., 7 *Am. Dec.* 91, 97. Both decisions cited as authority in Nichol v. Ridley, 5 *Yerg. (Tenn.)* 63; s. c., 26 *Am. Dec.* 254. Cited approving (Limitation of operation of private statutes) in 1 *Kent Com.* 460.
- **v. Chapin**, 5 *Cow.* 435. Disting'd (Effect of parol declarations of person having title to land) in Keator v. Dimmick, 46 *Barb.* 153.
- **v. Christman**, 4 *Wend.* 277. Quoted and collated with other cases (Proof to establish will) in *Redf. Lead. Cas. on Wills*, 675.
- **v. Clark**, 3 *Johns.* 424. Applied with Jackson v. Myers, *Id.* 383 (Instrument, when regarded as agreement for future conveyance) in Atwood v. Cobb, 16 *Pick. (Mass.)* 227; s. c., 26 *Am. Dec.* 607, with extended note.
- **v. —**, 7 *Johns.* 217. Followed (Effect of words superadded to description in grant, &c.) in Sharp v. Dimmick, 4 *Lans.* 496, 499. Applied (Postponement of mortgage sale) to execution sale, in Frederick v. Wheeler, 3 *Sup'm. Ct. (T. & C.)* 210, 213.
- **v. Claw**, 18 *Johns.* 346. See Starr v. Peck; Matter of Taylor. Followed (Presumption of marriage) in Durand v. Durand, 2 *Sweeny*, 315. Approved in Blanchard v. Lambert, 43 *Iowa*, 228; s. c., 22 *Am. R.* 248. Disting'd with King v. Paddock, 18 *Johns.* 326 (Presumption of death of husband or wife) in Machini v. Zanoni, 5 *Redf.* 492. Applied (Rebutting presumption of marriage) in Weatherford v. Weatherford, 20 *Ala.* 548; s. c., 56 *Am. Dec.* 206. Cited as authority in Sneed v. Ewing, 5 *J. J.*

- Marsh (Ky.)* 460; s. c., 22 *Am. Dec.* 41, 70, with note.
- *v. Cody*. See *Jackson v. Stanley*.
- *v. Colden*, 4 *Cow.* 266. Explained (Making deed to mortgagee, on sale under power in mortgage) in *Hall v. Bliss*, 118 *Mass.* 554; s. c., 19 *Am. R.* 476.
- *v. Cole*. See *Day v. Alverson*.
- *v. Coleman*. See *Jackson v. Robins*. Collated with other cases (Enlarging devise into fee) in *Sharsw. & B. Cas. on Real Prop.* 64.
- *v. Collins*, 3 *Cow.* 89; s. c., 8 *N. Y. Com. L. Law. Ed.* 61, with brief note. Followed (Continuation of authority of deputy, after sheriff goes out of office) in *Jackson v. Tuttle*, 9 *Cow.* 239; *People v. Baker*, 20 *Wend.* 604. Followed with *People v. Baker*, in *Tyree v. Wilson*, 9 *Gratt. (Va.)* 59; s. c., 58 *Am. Dec.* 213. Applied (Construction of statutes) in *Rice v. Mead*, 22 *How. Pr.* 449. Opposed (Adverse possession under sheriff's sale) in *Cook v. Norton*, 48 *Ill.* 20.
- *v. —*, 11 *Johns.* 1. Explained with *Jackson v. Vincent*, 4 *Wend.* 633 (Forfeiture of estate for parol denial of tenancy) in *Delancey v. Ganong*, 9 *N. Y.* 9, 20, 27.
- *v. Combs*, 7 *Cow.* 36. Aff'd in 2 *Wend.* 153.
- *v. Cooley*, 8 *Johns.* 128. Cited (Admissibility of writings of deceased relative to prove a pedigree) in 1 *Whart. Com. on Ev.* § 210.
- *v. Cornell*, 1 *Sandf. Ch.* 348. Cited (Preference of partnership creditors) in 3 *Kent Com.* 66, n. d., as adjudged on good consideration. Collated with other cases in *Bishop on Assign.* § 189. Quoted in 1 *Pars. on Contr.* 211, n. l. Discussed in *Burrill on Assign.* § 211, 4 ed. Commented on (Delivery of possession) in *Id.* § 277, n. 2.
- *v. Cory*, 8 *Johns.* 385. Applied with *Hornbeck v. Westbrook*, 9 *Id.* 73 (Grant, &c., when void for uncertainty of grantee) in *Greene v. Dennis*, 6 *Conn.* 293; s. c., 16 *Am. Dec.* 58, 64, with note.
- *v. Covert*. See *Bennett v. Hull*.
- *v. Crafts*, 18 *Johns.* 110. Doubted (Effect of tender of money due on mortgage, if made after law-day) in *Post v. Arnot*; 2 *Den.* 344. Approved in *Kortright v. Cady*, 21 *N. Y.* 843, 349-373. Said to be denied in *Merriitt v. Lambert*, 7 *Paige*, 344, and—with *Edwards v. Farmers' Fire and Loan Ins. Co.*, 21 *Wend.* 467; 26 *Id.* 541; *Arnot v. Pctst*, 6 *Hill*, 65; *Kortright v. Cady*, 21 *N. Y.* 343—disapproved, as contrary to all authority, in *Shields v. Lozear*, 34 *N. J.* 496; s. c., 3 *Am. R.* 256, 262, where *Post v. Arnot*, 2 *Den.* 344, was also referred to as maintaining a contrary doctrine.
- *v. Cryslar*, 1 *Johns. Cas.* 125. Explained (Effect of parol assent to destroy effect of express condition in deed) in 44 *Am. Dec.* 746, n. Quoted and collated with other cases (Forfeiture and entry for breach of condition) in *Sharsw. & B. Cas. on Real Prop.* 144.
- *v. Davenport*, 18 *Johns.* 295. Aff'd in 20 *Id.* 537. See *Raymond v. Squire*. Decision in 20 *Johns.* applied (Limitation of doctrine enabling deed executing power to relate back) in *Shaffner v. Briggs*, 36 *Ind.* 55; s. c., 10 *Am. R.* 1.
- *v. Davis*, 5 *Cow.* 123; s. c., 15 *Am. Dec.* 451, with note. Further decision respecting title to lands in question,—in *Jackson v. Vincent*, 4 *Wend.* 633. See *Jackson v. Pratt*; *Jackson v. Willard*; *Jackson v. Wood*; *Ridgeley v. Johnson*. Applied (Objection, when to be taken on trial) in *Cheney v. Beals*, 47 *Barb.* 526; *Gillham v. State B'k*, 2 *Scam. (Ill.)* 245; s. c., 35 *Am. Dec.* 105, with note. Compared with other cases (Presumption of payment of rent, derived from lapse of time) in *Tyler v. Heidorn*, 46 *Barb.* 460. Applied in *Lyon v. Chase*, 51 *Id.* 16, which was disapproved in *Lyon v. Adde*, 63 *Id.* 96, which see. Relied on in dissenting opinion of *HUNT, C.*, in *Central B'k of Troy v. Heydorn*, 48 *N. Y.* 274. Discussed in *Ang. on Limit.* § 438, 6 ed. Followed (Relation of landlord and tenant attaches to those succeeding to possession through tenant) in *Jackson v. Harson*, 7 *Cow.* 325. Disting'd in *Sands v. Hughes*, 53 *N. Y.* 293, as inapplicable to assessment lease.
- *v. Delacroix*, 2 *Wend.* 433. Explained (Agreement for lease) in *Washb. on Real Prop.* 4 ed. 451, n. 4. Collated with other cases in *McAdam on Landl. & T.* 2 ed. § 41.
- *v. Delancey*, 11 *Johns.* 365. Aff'd in 13 *Id.* 536; s. c., 7 *Am. Dec.* 403. See *Jackson v. Bartlett*. Decision in 11 *Johns.* disting'd (Sufficient description in deed) in *Durant v. Kenyon*, 32 *Hun.* 634. Decision in 13 *Johns.* disting'd in *Scully v. Sanders*, 44 *Super. Ct. (J. & S.)* 89, 92. Both decisions disting'd with *Jackson v. Rosevelt*, 13 *Johns.* 97, in *Coxe v. Blanden*, 1 *Watts (Pa.)* 533; s. c., 26 *Am. Dec.* 83, 86, with note. Decision in 13 *Johns.* questioned with *Jackson v. Robins*, 16 *Id.* 576 (Validity of execution sale had after death of judgment debtor) in *Lessee of Massie's Heirs v. Long*, 2 *Ohio*, 287; s. c., 15 *Am. Dec.* 547, 550, with note. Approved (Execution, when not void for want of renewal of judgment) in *Collingsworth v. Horn*, 4 *Stew. & P. (Ala.)* 237; s. c., 24 *Am. Dec.* 753, 760, with note. Explained (Passing of trust under general words in will relating to realty) in 4 *Kent Com.* 311, n. e.
- *v. —*, 4 *Cow.* 427; s. c., 8 *N. Y. Com. L. Law. ed.* 437, with brief note. Deed in question explained on subsequent adjudication thereupon,—in *Rogers v. Eagle Fire Ins. Co.*, 9 *Wend.* 611. Discussed (Consideration to support covenant to stand seized) in 3 *Washb. on Real Prop.* 4 ed. 372.
- *v. Demarest*, 2 *Cai.* 382. Disapproved with *Jackson v. Walsh*, 2 *Johns.* 226; *Jackson v. Stewart*, 6 *Id.* 34; *Jackson v. Ellsworth*, 20 *Id.* 180 (Presumption of re-entry by lessor for non-payment of rent) in

- Alexander v. Walter, 8 *Gill*. (Md.) 239; s. c., 50 *Am. Dec.* 688, 697, with note.
- v. **Denison**. See Day v. Alverson.
- v. **De Witt**, 6 *Cow.* 316. See Stow v. Tift. Overruled with Cunningham v. Knight, 1 *Barb.* 399 (Dower in case of mortgage given for purchase-money) in Mills v. Van Voorhis, 23 *Id.* 125. Approved with Hitchcock v. Harrington, 6 *Johns.* 290; Collins v. Torrey, 7 *Id.* 278; Runyan v. Stewart, 13 *Barb.* 537 (Dower in mortgaged property) in Bartlett v. Musliner, 28 *Hun.* 235.
- v. **Deyo**, 3 *Johns.* 422. See Jackson v. Wheeler. Followed (Necessity of notice to quit dispensed with by tenant denying landlord's title) in Vincent v. Corbin, 85 *N. C.* 112.
- v. **Dickenson**, 15 *Johns.* 309; s. c., 8 *Am. Dec.* 236. See Dana v. Tucker; Johnson v. Stagg. Disting'd (Extension back of legal title by relation) in Laurissini v. Corquette, 25 *Miss.* 177; s. c., 57 *Am. Dec.* 200. Followed (Admissibility of affidavits of jurors to impeach verdict) in Little v. Larrabee, 2 *Greenl. (Me.)* 37; s. c., 11 *Am. Dec.* 438. See also *Proffatt on Jury Trial*, §§ 408-410, 456-464.
- v. **Dieffendorf**, 3 *Johns.* 267. Followed with Jackson v. Oltz, 8 *Wend.* 440 (Recovery in ejectment, on proof of adverse possession) in Armstrong v. Risteau, 5 *Md.* 256; s. c., 59 *Am. Dec.* 115-122.
- v. **Dubois**, 4 *Johns.* 216. Disting'd (Effect of lien of which no notice is given by registry) in Kaufelt v. Bower, 7 *Serg. & R. (Pa.)* 64; s. c., 10 *Am. Dec.* 428, 438. Cited (*Bona fide* purchaser in case of judicial sale) in Martin v. Baldwin, 30 *Minn.* 540.
- v. **Dunlap**, 1 *Johns. Cas.* 114; s. c., 1 *Am. Dec.* 100; 1 *N.Y. Com. L. Law. ed.* 263, with brief note. See Church v. Gilman; Jackson v. Bodle. Collated with Stephens v. Buffalo & N. Y. City R. R. Co., 20 *Barb.* 332, and other cases (What constitutes effectual delivery of deed) in 40 *Am. R.* 217, n.
- v. **Dunsbagh**, 1 *Johns. Cas.* 91; s. c., 1 *N.Y. Com. L. Law. ed.* 254, with brief note. See Stow v. Tift. Denied with Jackson v. Swart, 20 *Johns.* 87. (Deed of bargain and sale to commence in futuro) in Wallis v. Wallis, 4 *Mass.* 136; Welch v. Foster, 2 *Id.* 96. Also cited with Jackson v. Swart, Jackson v. McKenny, 3 *Wend.* 233; Rogers v. Eagle Fire Ins. Co., 9 *Id.* 611, in Trafton v. Hawes, 102 *Mass.* 533; s. c., 3 *Am. R.* 494, as contrary to doctrine in Mass. Quoted and discussed in 2 *Washb. on Real Prop.* 4 ed. 418. Explained (How use in real property may be raised) in 2 *Id.* 450, 454.
- v. **Durland**. See Jackson v. Woods.
- v. **Dysling**, 2 *Cal.* 198; s. c., 2 *N.Y. Com. L. Law. ed.* 388, with brief note. Followed with Jackson v. Pierce, 2 *Johns.* 224 (Parol agreement as to boundary line) in Sawyer v. Fellows, 6 *N. H.* 107; s. c., 25 *Am. Dec.* 452. Disting'd with Kip v. Norton, 12 *Wend.* 127; in Crowell v. Maughs, 2 *Gilm. (Ill.)* 419; s. c., 43 *Am. Dec.* 62, with note.
- v. **Eddy**, 2 *Cow.* 598. Followed (Payment of costs as condition precedent to proceeding in action) in Somers v. Sloan, 3 *Harr. (N. J.)* 46; s. c., 35 *Am. Dec.* 526.
- v. **Edwards**, 7 *Paige*, 386. Aff'd in 22 *Wend.* 498. Remarks of BRONSON, J., in *Id.* disapproved (Purchaser, when excused by delay in perfecting title) in Merchants' Bank v. Thomson, 55 *N. Y.* 7, 15. Decision in 7 *Paige* followed (Valuation of inchoate right of dower) in Doty v. Baker, 11 *Hun.* 222. Discussed (Power of appointment to married woman) in *Kent Com.* 325, n. c.
- v. **Ellis**, 13 *Johns.* 118. See Smith v. Burtis. Followed with Clapp v. Bromagham, 9 *Cow.* 530; Jackson v. Woodruff, 1 *Id.* 276 (Entry under color of title as constituting adverse possession, in Beverly v. Burke, 9 *Ga.* 440; s. c., 54 *Am. Dec.* 351, with note. Explained in *Ang. on Limit.* § 414, 6 ed.
- v. **Elsworth**, 20 *Johns.* 180. See Jackson v. Demarest. Re-aff'd (Determination of lease for life, on violation of condition therein) in Allen v. Brown, 5 *Lans.* 280; and see Same v. Same, 60 *Barb.* 39.
- v. **Esty**, 7 *Wend.* 148. Approved (Statute to be strictly construed, in proceedings to divest one of property) in Sears v. Terry, 26 *Conn.* 273. Followed as a decisive authority in Bunner v. Eastman, 50 *Barb.* 639.
- v. **Farmer**, 9 *Wend.* 201. See Hyatt v. Wood. Relied on (Right of one having legal right of entry, to enter by force) in Low v. Elwell, 121 *Mass.* 309; s. c., 23 *Am. R.* 272, 277.
- v. **Fassett**, 17 *How. Pr.* 453; s. c., 9 *Abb. Pr.* 137. Aff'd in 12 *Id.* 281; s. c., 33 *Barb.* 645; 21 *How. Pr.* 279. Opinion and head-note in 33 *Barb.* corrected in Ferguson v. Hamilton, 35 *Id.* 427, 439. See Aeby v. Rapelye. Decision in 33 *Barb.* explained (Motion for new trial, to what cases limited) in Van de Wiele v. Callanan, 7 *Daly*, 386, 391. See *Code Civ. Pro.* 1881, § 1002, n.
- v. **Fish**, 10 *Johns.* 456. Disting'd and Jackson v. Wright, 14 *Id.* 193; Jackson v. Winslow, 9 *Cow.* 18; Jackson v. Peek, 4 *Wend.* 305; Jackson v. Hubble, 1 *Cow.* 613, followed (After-acquired title will not pass by quit-claim deed) in Frink v. Darst, 14 *Ill.* 304; s. c., 58 *Am. Dec.* 575, with note. Explained (Uses in real property) in 2 *Wash. on Real Prop.* 4 ed. 450.
- v. **Florence**, 16 *Johns.* 47. Disting'd (Consideration to support deed) in Spalding v. Hallenbeck, 30 *Barb.* 298. Followed with Palmer v. Plank-road Co., 11 *N. Y.* 389 (Deed, when insufficient to show promissory undertaking) in Close v. Burlington, C. R. & N. R'y Co., 64 *Iowa*, 149, 152.

- **v. Foster.** See *Jackson v. Hart*.
- **v. Freer,** 17 *Johns.* 29. Followed (When public grant may refer to plan of survey) in *Hagan v. Campbell*, 8 *Port. (Ala.)* 9; s. c., 33 *Am. Dec.* 267, 273, with note.
- **v. French,** 3 *Wend.* 337; s. c., 20 *Am. Dec.* 699. Examined with *Coveney v. Tanabill*, 1 *Hill*, 33 (Privileged communications) in *Brayton v. Chase*, 3 *Wisc.* 460.
- **v. Frier.** See *Hilts v. Colvin*.
- **v. Gardner,** 8 *Johns.* 394. Explained (Assignment and surrender of interest in lands) in *Browne on Stat. of Frauds*, § 44, 4 ed.
- **v. Garnsey,** 16 *Johns.* 189. See *Osborne v. Moss*. Collected with *Stewart v. Ackley*, 52 *Barb.* 283; *Scholey v. Worcester*, 6 *Sup'm. Ct. (T. & C.)* 574; and many other cases in 15 *Am. Dec.* 599, n. as showing the law to be perfectly well settled (Effect of illegal conveyance as between parties). Quoted in *Wait on Fraud. Conv.* § 395.
- **v. Gilchrist,** 15 *Johns.* 69. Approved (Resort to preamble, in construction of statute) in *Robinson v. Tuttle*, 37 *N. H.* 243. Thoroughly examined in *Constantine v. Van Winkle*, 6 *Hill*, 177.
- **v. Given,** 8 *Johns.* 137; s. c., 5 *Am. Dec.* 328, with note. Reviewed with other cases (Notice sufficient to supply place of prior registry) in *McMechan v. Griffing*, 3 *Pick. (Mass.)* 149; s. c., 15 *Am. Dec.* 198.
- **v. —,** 16 *Johns.* 167. Examined and dicta disapproved (Execution of power) in *Taylor v. Morris* 1 *N. Y.* 341, 353.
- **v. Goes,** 13 *Johns.* 518; s. c., 7 *Am. Dec.* 399. Applied (Extrinsic evidence to to identify grantee) in *Stockton v. Williams*, 1 *Doug. (Mich.)* 569.
- **v. Goodell,** 20 *Johns.* 188. Rev'd in *Id.* 693.
- **v. Gould,** 7 *Wend.* 364. Compared with other cases (Altered deed, as evidence to sustain title) in *Woods v. Hilderbrand*, 46 *Mo.* 284; s. c., 2 *Am. R.* 513.
- **v. Graham,** 3 *Cai.* 188. Followed with *Jackson v. Bush*, 10 *Johns.* 223 (Outstanding title in third person not to be set up by debtor sued in ejectment by purchaser at sheriff's sale) in *Avent v. Read*, 2 *Port. (Ala.)*, 480; s. c., 27 *Am. Dec.* 663.
- **v. Green,** 4 *Johns.* 186; s. c., 3 *N. Y. Com. L. Law. ed.* 789, with brief note. See *Jackson v. Laughhead*.
- **v. —,** 7 *Wend.* 333. Followed (Inheritance between children of alien parents) in *Renner v. Muller*, 44 *Super. Ct. (J. & S.)* 535, 549.
- **v. Groat,** 7 *Cow.* 285. Discussed (Conditions in deed restraining alienation) in 4 *Kent Com.* 124, n. c.
- **v. Gumaer,** 2 *Cow.* 552. Collected with *Ingraham v. Baldwin*, 9 *N. Y.* 45, and other cases, in 15 *Am. Dec.* 364, n. as showing the prevailing tendency in this country to regard the deed or other contract of an insane person as voidable rather than void. Compare (Sufficiency of certificates of acknowledgment) *Hiles v. La Flesh*, 59 *Wis.* 465, 470.
- **v. Halstead,** 5 *Cow.* 216. Applied (Inclosure sufficient for purposes of adverse possession) in *Trustees of East Hampton v. Kirke*, 84 *N. Y.* 215, 220.
- **v. Hammond,** 1 *Cai.* 496. Followed with *White v. Lovejoy*, 3 *Johns.* 448 (Substitution of copies in case of loss or destruction of records) in *McLendon v. Jones*, 8 *Ala.* 298; s. c., 42 *Am. Dec.* 640.
- **v. —,** 2 *Cai. Cas.* 337. Discussed with *McCartee v. Orphan Asylum Soc.*, 2 *Cow.* 461 (Power of corporation to take by devise) in *Ang. & A. on Corp.* § 177, 11 ed.
- **v. Harder,** 4 *Johns.* 202; s. c., 4 *Am. Dec.* 262, with note, wherein it is shown to have been well recognized in N. Y. as an authority (Validity of partition by parol), and to be in harmony with the decisions on the point in *Miss., Pa., So. Car., Va., Ohio and Tex.*, though in conflict with those in *Mass.* and *Me.*, citing *Freem. on Cotenancy, &c.* §§ 397, 398. See *Smith v. Burtis*. Explained and questioned with *Jackson v. Vosburgh*, 9 *Johns.* 270; *Jackson v. Livingston*, 7 *Wend.* 141; *Corbin v. Jackson*, 14 *Id.* 625; *Ryers v. Wheeler*, 25 *Id.* 436; *Jackson v. Bradt*, 2 *Cai.* 169 (Parol partition of land); in *Dow v. Jewell*, 18 *N. H.* 340; s. c., 45 *Am. Dec.* 371, 377, with note. Discussed in *Browne on Stat. of Frauds*, § 68, 4 ed.
- **v. Harris,** 8 *Johns.* 141. Commented on (Words carrying fee by implication) in *Jackson v. Bull*, 10 *Id.* 148; *Jackson v. Babcock*, 12 *Id.* 389, 392.
- **v. Hart,** 12 *Johns.* 77; s. c., 7 *Am. Dec.* 280. Cited with *Jackson v. Foster*, 12 *Johns.* 488 (Parol evidence to show insertion of wrong name in contract, by mistake) in 2 *Whart. Com. on Ev.* § 1030, n.
- **v. Hartwell,** 8 *Johns.* 422. Explained (Powers of private corporation relating to property) in *Ang. & A. on Corp.* § 168, 11 ed.
- **v. Hasbrouck,** 12 *Johns.* 213. See *Jackson v. Pratt*. Approved and followed with *Barrie v. Dana*, 20 *Id.* 307 (Execution without judgment) in *Townshend v. Wesson*, 4 *Duer*, 342.
- **v. Hathaway,** 15 *Johns.* 447; s. c., 8 *Am. Dec.* 263, with note. See *Jackson v. Louw*. Disting'd (Highway when not included in conveyance of land bounded on it) in *Adams v. Saratoga & Washington R. R. Co.*, 11 *Barb.* 452; *Lozier v. N. Y. Central R. R. Co.*, 42 *Id.* 468. Applied in *Sizer v. Devereux*, 16 *Id.* 163. Explained and applied in *Dunham v. Williams*, 36 *Id.* 155. Applied to river bed, in *Child v. Starr*, 4 *Hill*, 373, which rev'd 20 *Wend.* 163, which see. Disting'd (Title to land taken for highway purposes) in *Heath v. Barmore*, 50 *N. Y.* 306. Examined with *Whitbeck v. Cook*, 15 *Johns.* 483 (Reversion of dedicated land) in *Gardner v. Tisdale*, 2 *Wisc.* 195. Applied (Rights in land taken for highway purposes) in *Town of*



- Suffield v. Hathaway, 44 Conn. 521; s. c., 26 Am. R. 488. Relied on in Pomeroy v. Mills, 3 Verm. 279; s. c., 23 Am. Dec. 207, 209. Approved and applied (Land cannot pass as appurtenant to land) in Lawrence v. Delano, 3 Sandf. 340. Followed (Ejectment by owner of land over which highway passes) in Brown v. Galley, Hill & D. 310. Cited with Dunham v. Williams, 36 Barb. 136; Carpenter v. Oswego & Syracuse R. R. Co., 24 N. Y. 655, in 28 Am. Dec. 304, n. Applied in Cole v. Drew, 44 Vt. 49; s. c., 8 Am. R. 363, to action for trespass.
- v. Haviland, 13 Johns. 229. Approvingly reviewed with other cases (Effect of proceedings in ejectment on statute of limitations) in 54 Am. Dec. 545, n.
- v. Hawks. See Fox v. Smith.
- v. Henry, 10 Johns. 185; s. c., 6 Am. Dec. 328. See Roberts v. Anderson. Explained and limited with Jackson v. Slater, 5 Wend. 295 (Rights of bona fide purchaser under statute foreclosure) in Cameron v. Irwin, 5 Hill, 272. Applied (Necessity of deed, on sale of mortgaged premises) in Jackson v. Colden, 4 Cow. 281. Approved (Assignee, when not prejudiced by notice to his assignor) in Bush v. Lathrop, 22 N. Y. 549. Disting'd in Schafer v. Reilly, 50 Id. 68; Trustees of Union College v. Wheeler, 61 Id. 117. Disting'd (Bona fide purchaser of mortgaged premises, as affected by usury) in Hyland v. Stafford, 10 Barb. 563; Jackson v. Dominick, 14 Johns. 441. Followed in Elliott v. Wood, 53 Barb. 806. Disting'd (What is evidence of usury) in Booth v. Swezey, 8 N. Y. 281. Disting'd (Effect of usury in contract on subsequent transactions) in McCraney v. Alden, 46 Barb. 277; Gray v. Green, 77 N. Y. 619. Commented on in Little v. Barker, Hoffm. 494.
- v. Hinman, 10 Johns. 292. Referred to as substantially overruled (Estoppel in deed) in 3 Am. L. Reg. N. S. 151.
- v. Hobby, 20 Johns. 357. Disting'd (Return of commission) in Pendell v. Coon, 20 N. Y. 134, 136.
- v. Hoffman, 9 Cow. 271; s. c., 9 N. Y. Com. L. Law. ed. 639, with brief note.
- v. Hogeboom, 11 Johns. 163. Explained (Ejectment for non-payment of rent) in De Lancey v. Ganong, 9 N. Y. 9, 20.
- v. Holladay, 3 Redf. 379. Compare for conflicting authorities (Ordering sale for executor's relief) 7 South. L. Rev. N. S. 649.
- v. Holloway, 7 Johns. 394. Disting'd (Effect of alteration of will) in Lovell v. Quitman, 25 Hun, 537. Followed with McPherson v. Clark, 3 Bradf. 99; Eschbach v. Collins, 61 Md. 478; s. c., 48 Am. R. 123. Cited as authority in Probate of Will of Penniman, 20 Minn. 245; s. c., 18 Am. R. 368. Cited as authority with McPherson v. Clark, 3 Bradf. 92, in Matter of Ladd's Will, 60 Wis. 187, 198, 200, where also
- Jackson v. Kniffen, 2 Johns. 31; Waterman v. Whitney, 11 N. Y. 157, were cited as authority (Inadmissibility of testator's declarations). Explained in Willard on Executors, 123.
- v. Hooker. See Jackson v. Kenney.
- v. Hopkins. See Jackson v. Laughhead.
- v. Hornbeck, 2 Johns. Cas. 115; s. c., Col. & C. Cas. 137. Overruled (Enlarging time for making case) in Block v. Brown, 9 Johns. 264.
- v. Hotchkiss, 6 Cow. 401. See to the contrary (Presumption of payment) Dedlake v. Robb, 1 Woods, 680. See also Abb. Tr. Ev. 812.
- v. Housel, 17 Johns. 281; s. c., 6 N. Y. Com. L. Law. ed. 366, with brief note. Compare (Meaning of "property") Stief v. Hart, 1 N. Y. 20, 24; and see Owen v. Smith, 31 Barb. 641, 646.
- v. Howe, 14 Johns. 405. Quoted (Adverse possession of wild lands) in Ang. on Lim. § 394, 6 ed.
- v. Hubbard, 1 Cai. 82. Examined (Priority of deeds of military lots) in Jackson v. Harrington, 6 Cow. 136.
- v. Hubble. See Jackson v. Barringer; Jackson v. Fish; Jackson v. McCall; Jackson v. Wright.
- v. Hull, 10 Johns. 481. Disapproved (Sale of mortgaged property, under judgment for mortgage debt) in Davis v. Hamilton, 50 Miss. 213. Examined (Effect of default in payment of mortgage debt) in Mundy v. Monroe, 1 Mich. 71. Followed and approved in Rice v. Wilburn, 31 Ark. 108; s. c., 25 Am. R. 549, 551. Explained in Fosdick v. Risk, 15 Ohio, 84; s. c., 45 Am. Dec. 562.
- v. Humphrey, 1 Johns. 498. Said in Lessee of Moore v. Vance, 1 Ohio, 18, to have been overruled (Oath when void as extra judicial).
- v. Hunter, 1 Johns. 495. Overruled (Rectification of mistake in location of boundary of lot of public land) in Jackson v. Cole, 16 Id. 257, 263.
- v. Huntley, 5 Johns. 59. Approved (Limitation of time within which to bring action, after award respecting title to land) in Waln v. Shearman, 8 Serg. & R. (Pa.) 357; s. c., 11 Am. Dec. 624, with note, as applicable to case of land sold for taxes.
- v. Ingraham, 4 Johns. 163. Quoted and explained (Adverse possession) in Ang. on Lim. § 411, 6 ed.
- v. Ireland, 3 Wend. 99. Discussed (Estoppel as created by recitals in deeds) in 3 Wash. on Real Prop. 4 ed. 101.
- v. Jackson, 39 N. Y. 153. Subsequent proceeding in Jackson's Estate, Tuck. 259. Decision in 39 N. Y. disting'd (Formalities of execution of will) in Sisters of Charity v. Kelly, 7 Hun, 294, which was rev'd in 67 N. Y. 413, which see; Williamson v. Williamson, 2 Redf. 449. Followed in Rugg v. Rugg, 21 Hun, 384; Matter of

- Collins, 5 *Redf.* 20. Reviewed with other cases in *Norton v. Norton*, 2 *Id.* 6, 17. Cited as authority in *Estate of Johnson*, 57 *Cal.* 529. Approved with *Gilbert v. Knox*, 52 *N. Y.* 125, in 10 *Am. Dec.* 516, *n.*
- *v.* —, 1 *Johns.* 424. See *Kinnier v. Kinnier*. Disting'd (Effect of foreign divorce) in *Kinnier v. Kinnier*, 45 *N. Y.* 535. Followed with *Borden v. Fitch*, 15 *Johns.* 140; *Bradshaw v. Heath*, 13 *Wend.* 423, in *Forrest v. Forrest*, 2 *Edm. Sel. Cas.* 180. Referred to in *People v. Dawell*, 25 *Mich.* 247; *s. c.*, 12 *Am. R.* 260, 272, as overruled by *Kinnier v. Kinnier*. Disting'd in *Harding v. Alden*, 9 *Greenl. (Me.)* 140; *s. c.*, 23 *Am. Dec.* 549, 555. Approved and cases cited in 3 *Am. L. Reg. N. S.* 215. Reviewed with other cases in *Tyler on Inf. & Cov.* 2 ed. § 686. Discussed in 2 *Kent Com.* 109. Applied with *Dunn v. Dunn*, 4 *Paige*, 425 (Setting aside decree of divorce, when obtained by fraud) in *Edson v. Edson*, 108 *Mass.* 590; *s. c.*, 11 *Am. R.* 393, 399. Applied with *Borden v. Fitch*, 15 *Johns.* 421 (Foreign judgment may be impeached for fraud) in *Dunlap v. Cody*, 31 *Iowa*, 260; *s. c.*, 7 *Am. R.* 129, 136, with note.
- *v. Johnson*, 5 *Cow.* 74; *s. c.*, 15 *Am. Dec.* 433, with note, wherein it is said to have been frequently cited and followed. See *Jackson v. Schoonmaker*. Followed (Conveyance by trustee, &c., as foundation of adverse possession) in *Bradstreet v. Clarke*, 12 *Wend.* 675. Applied (Effect of acts of trustee of realty) in *Bennett v. Garlock*, 79 *N. Y.* 321. Commented on (When possession of tenant begins to be adverse) in *Jackson v. Miller*, 6 *Cow.* 755. Followed (Running of statute of limitations against remainderman, &c.) in *Fogal v. Pirro*, 17 *Abb. Pr.* 128; *Jackson v. Mancius*, 2 *Wend.* 369. Disting'd (Adverse possession by one holding under contract to purchase) in *Kellogg v. Kellogg*, 6 *Barb.* 123. Explained in *Vrooman v. Shepherd*, 14 *Id.* 454. Compare *Clapp v. Bromagham*, 9 *Cow.* 530; *Whitney v. Wright*, 15 *Wend.* 181. Applied (Seizin to support curtesy) in *Graham v. Luddington*, 19 *Hun.* 251. Collated with other cases in *Sharsw. & B. Cas. on Real Prop.* 264. Discussed in 1 *Washb. on Real Prop.* 4 ed. 181 *n.* Commented on (Disabilities with respect to real property) in *Ang. on Limit.* § 481, 6 ed. Quoted (Ejectment) in *Id.* § 371.
- *v.* —, 11 *Hun.* 509. See *Johnson v. Hartshorne*. Conditionally rev'd in 74 *N. Y.* 607, but not on either of points reported below.
- *v. Jones*. See *Jackson v. Pratt*; *Jackson v. Streeter*.
- *v. King*, 4 *Cow.* 207; *s. c.*, 15 *Am. Dec.* 354, with note, wherein it is considered as a most valuable case (Defence of lunacy) and one that has never been overruled, at least in *N. Y.* though sometimes thought rather strict. See *Culver v. Haslam*; *Jackson v. Van Dusen*.
- *v.* —, 5 *Cow.* 237; *s. c.*, 14 *Am. Dec.* 468. See cases cited to the contrary (Proof of identity) in *Abb. Tr. Ev.* *n.* 7.
- *v. Kingsley*. See *Smith v. Stewart*.
- *v. Kinney*, 14 *Johns.* 186. Disting'd with *Jackson v. Hooker*, 5 *Cow.* 207 (New trials on ground of newly discovered evidence) in *State v. Carr*, 21 *N. H.* 166; *s. c.*, 53 *Am. Dec.* 179, with note.
- *v. Kniffen*, 2 *Johns.* 31; *s. c.*, 3 *Am. Dec.* 390, with note, wherein it and *Waterman v. Whitney*, 11 *N. Y.* 157, are examined and said to be generally regarded as authoritative. See *Jackson v. Holloway*; *Waterman v. Whitney*. Approved as a leading case (Inadmissibility of testator's declarations) in *Waterman v. Whitney*, 11 *N. Y.* 157, 162. Reviewed at length with *Dan v. Brown*, 4 *Cow.* 483; *Jackson v. Betts*, 6 *Id.* 377; *Betts v. Jackson*, 6 *Wend.* 173; *Knapp v. Knapp*, 10 *N. Y.* 276; *Bulkley v. Redmond*, 2 *Bradf.* 281; *Waterman v. Whitney*, 11 *N. Y.* 157; *Sisson v. Conger*, 1 *Sup'm. Ct. (T. & C.)* 564; *Cudney v. Cudney*, 68 *N. Y.* 148; *Horn v. Pullman*, 72 *Id.* 269; *Marx v. McGlynn*, 88 *Id.* 357; *Eighmy v. People*, 79 *Id.* 546; in *Hamersley v. Lockman*, 2 *Dem.* 524. Reviewed with other cases in *Shailer v. Bumstead*, 99 *Mass.* 112, 123. Disapproved in *Reel v. Reel*, 1 *Hawks. (N. C.)* 248; *s. c.*, 9 *Am. R.* 632. Approved in *Comstock v. Hadlyme Society*, 8 *Conn.* 254; *s. c.*, 20 *Am. Dec.* 100, 105, with note.
- *v. Lamb*, 7 *Cow.* 431. See *Hewlett v. Cock*; *Jackson v. Lunn*. Disting'd (Release, as evidenced by statement in lease) in *McKinnon v. Bliss*, 21 *N. Y.* 206, 211.
- *v. Laroway*, 3 *Johns. Cas.* 283. See *Hewlett v. Cock*. Followed (Proof of ancient deed) in *Jackson v. Luquere*, 5 *Conn.* 221; *Hewlett v. Cock*, 7 *Wend.* 371. Commented on in 1 *Greenl. on Ev.* 14 ed. § 144, *n.* 1.
- *v. Laughhead*, 2 *Johns.* 75. See *Jackson v. Bryan*. Denied (Necessity of notice to quit in ejectment against mortgagor) in *Ellis v. Paige*, 1 *Pick. (Mass.)* 48. Shown with *Jackson v. Green*, 4 *Johns.* 186; *Jackson v. Hopkins*, 18 *Id.* 487, and other *N. Y.* cases,—in 42 *Am. Dec.* 136, *n.*, to be contrary to the rule prevailing at common law and in most of the States.
- *v. Law*, 5 *Cow.* 248. Aff'd in 9 *Id.* 641, but without opinion. Case of deft in Ct. of Errors, published at Salem, in 1825. Decision in 5 *Cow.* disting'd (Effect of tender of amount of judgment) in *Tiffany v. St. John*, 65 *N. Y.* 320.
- *v. Lawton*, 10 *Johns.* 23; *s. c.*, 6 *Am. Dec.* 311, with note. Followed (Impeachment of patent collaterally) in *Winter v. Jones*, 10 *Ga.* 190; *s. c.*, 54 *Am. Dec.* 379, 391; *Overton v. Campbell*, 5 *Hayw. (Tenn.)* 165; *s. c.*, 9 *Am. Dec.* 780. Referred to in 2 *Am. Dec.* 570, *n.* as a leading case. Quoted in 3 *Washb. on Real Prop.* 4 ed. 198.
- *v. Leek*. See *McArthur v. Sears*.

- **v. Leggett.** See *Town of North Hempstead v. Town of Hempstead*.
- **v. Leonard.** 6 *Wend.* 534. See *Brandt v. Ogden*. Qualified (Action for mesne profits abolished) in *Leland v. Tousey*, 6 *Hill*, 328.
- **v. Lurvey**, 5 *Cow.* 397. Applied (Marriage of slaves) in *Minor v. Jones*, 2 *Redf.* 289, 295.
- **v. Lewis**, 18 *Johns.* 504. Aff'd in 17 *Id.* 475. See *Gilbert v. Sheldon*. Followed (Impeachment of female witness by evidence of prostitution) in *Gilchrist v. McKee*, 4 *Watts (Pa.)* 380; s. c., 28 *Am. Dec.* 721, with note. Followed with *Bakeman v. Rose*, 14 *Wend.* 105; 18 *Id.* 146, in *Commonwealth v. Churchill*, 11 *Metc. (Mass.)* 538; s. c., 45 *Am. Dec.* 229, with note. See to the contrary *Commonwealth v. Murphy*, 14 *Mass.* 387.
- **v. Livingston**, 7 *Wend.* 136; s. c., 11 *N. Y. Com. L. Law. ed.* 82, with brief note, on declarations by possessor of land. See *Jackson v. Harder*.
- **v. Lloyd.** Cited in *Jackson v. Woodruff*, 1 *Cow.* 286. Followed (Adverse possession in case of occupancy by mistake) in *Crary v. Goodman*, 22 *N. Y.* 170, 172. Approved in *Pope v. Hammer*, 74 *Id.* 240, 244.
- **v. Loomis**, 18 *Johns.* 81. Aff'd in 19 *Id.* 449. Decision in subsequent action for mesne profits, in 4 *Cow.* 168; s. c., 15 *Am. Dec.* 347, with note. Decision in 4 *Cow.* followed (Right of innocent purchaser of land to set-off value of improvements) in *Byers v. Fowler*, 12 *Ark.* 218; s. c., 54 *Am. Dec.* 271, 292, with note; *Murray v. Gouverneur*, 2 *Johns. Cas.* 441, being also relied on. Quoted and commented on (Improvements after suit brought) in *Sedgwick v. W. on Tr. of Tit. to Land*, § 705.
- **v. Losee**, 4 *Sandf. Ch.* 381. Explained (What passes under assignment for benefit of creditors) in *Burrill on Assign.* § 100, n. 3, 4 ed.
- **v. Louw**, 12 *Johns.* 255. Followed with *Jackson v. Hathaway*, 15 *Id.* 453 (Ownership of road, &c., dividing two tracts of land) in *Witter v. Harvey*, 1 *McC. (So. Car.)* 67; s. c., 10 *Am. Dec.* 650. Followed (Description in deed, of a line as running up or down river, &c.) in *Pike v. Monroe*, 36 *Me.* 309; s. c., 53 *Am. Dec.* 751.
- **v. Lucett**, 2 *Cal.* 363. Approved with *Williams v. Jackson*, 5 *Johns.* 489; *Van Gorden v. Jackson*, 5 *Id.* 440 (Construction of grants of determinate breadth extending along river or other irregular line) in *Winthrop v. Curtis*, 3 *Greenl. (Me.)* 110; s. c., 14 *Am. Dec.* 216.
- **v. Lunn**, 3 *Johns.* *Cas.* 109. Explained and disting'd with *Doe v. Phelps*, 9 *Johns.* 169; *Jackson v. Lamb*, 7 *Cow.* 431 (Effect of recitals in deeds) in *McKinnon v. Bliss*, 21 *N. Y.* 206. Overruled (Inheritance by alien) in *Orser v. Hoag*, 3 *Hill*, 79. Quoted and collated with other other cases in *Sharswood & B. Cas. on Real Prop.* 507.
- Disting'd (Evidence of title, furnished by acts of ownership and possession of lands) in *Thompson v. Burhans*, 79 *N. Y.* 107. Approved with *Jackson v. McCall*, 10 *Johns.* 377; *Clinton v. Campbell*, *Id.* 475; *Jackson v. Russell*, 4 *Wend.* 543 (Presumptions respecting conveyances, arising from long possession) in *Stevenson's Heirs v. McReary*, 12 *Smedes & M. (Miss.)* 9; s. c., 51 *Am. Dec.* 102, 107.
- **v. Luquere**, 5 *Cow.* 221. See *Hewlett v. Cock*. Followed, but dictum doubted in subsequent decision arising under same will,—in *Boal v. Mix*, 17 *Wend.* 119.
- **v. McCall**, 10 *Johns.* 377; s. c., 6 *Am. Dec.* 343. See *Jackson v. Bard*; *Jackson v. Lunn*; *Waring v. Warren*. Followed, and explained as not conflicting with *Shepherd v. Thompson*, 4 *N. H.* 213 (Statements by deceased owner of land,—effect of, as binding on heirs) in *Pike v. Hayes*, 14 *N. H.* 19; s. c., 40 *Am. Dec.* 171. Relied on with *Jackson v. Murray*, 7 *Johns.* 5; *Jackson v. Hudson*, 3 *Id.* 375 (Long-continued possession when presumed to have been lawful in origin) in *University of Vt. v. Reynolds' Ex'r*, 3 *Vt.* 542; s. c., 23 *Am. Dec.* 234, 243. Disting'd with *Jackson v. Pratt*, 10 *Johns.* 381 (Presumption of grant, derived from lapse of time) in *Campbell v. Smith*, 3 *Halst. (N. J.)* 140; s. c., 14 *Am. Dec.* 400, 407, 414. Cited in 1 *Taylor on Ev.* 145.
- **v. McChesney**, 7 *Cow.* 360; s. c., 17 *Am. Dec.* 521, with note; wherein it is thought to be fully supported by *Wood v. Chapin*, 13 *N. Y.* 509 (Acknowledgment in deed, of receipt of consideration, as *prima facie* evidence that grantee is purchaser for value). See however doubts expressed in *Bolton v. Jacks*, 6 *Robt.* 234; *Peck v. Malhams*, 10 *N. Y.* 528. Compare *Morse v. Shattuck*, 4 *N. H.* 223; s. c., 17 *Am. Dec.* 419. See also 2 *Co.* 76 a. with learned note (G. 1), and references. Criticised with *Wood v. Chapin* in *Shotwell v. Harrison*, 22 *Mich.* 418. See also dissenting opinion, p. 425. Compare 2 *Whart. Com. on Ev.* § 1043.
- **v. McConnell**, 12 *Wend.* 421; s. c., 12 *N. Y. Com. L. Law. ed.* 180, with brief note. Subsequent decision in proceedings between same parties, in 19 *Wend.* 175. See *Baldwin v. Brown*; *Barber v. Harris*; *Torrey v. Torrey*. Decision in 19 *Wend.* criticised and disproved as not sustained by the cases relied upon (Power of husband over estate held by him and wife as tenants by the entirety) in *Chander v. Cheney*, 37 *Ind.* 391, 402. Cited in *Tyler on Inf. & Cov.* 2 ed. § 260, as in conflict with the doctrine there maintained.
- **v. McKenny**. See *Jackson v. Dunsbagh*.
- **v. McVey**, 18 *Johns.* 330. Cited (Witness not to be discredited by failure to recall the precise terms of written paper as to which he is testifying) in 1 *Whart. Com. on Ev.* § 412.

- *v. Malin*, 15 *Johns*. 293. See *Rees v. v. Overbaugh*. Overruled (Devise as avoided by alteration in will) in *Herrick v. Malin*, 22 *Wend*. 388.
- *v. Marsh*, 6 *Cow*. 281. See *Loomis v. Jackson*. Applied (Grant, when not frustrated by addition of false description) in *Morton v. Jackson*, 1 *Smedes & M. (Miss.)* 494; s. c., 40 *Am. Dec.* 107, with note.
- *v. Mather*, 7 *Cow*. 301. Commented on (Fraud in case of assignment for benefit of creditors) in *Burrill on Assign.* § 339, 4 ed.
- *v. Matsdorf*, 11 *Johns*. 91; s. c., 6 *Am. Dec.* 355. See *Boyd v. McLean*. Explained as not authority since *R. S.* (Resulting trust in favor of person paying consideration on sale of lands) in *Everett v. Everett*, 48 *N. Y.* 218, 223. Followed with *Jackson v. Wright*, 14 *Johns*. 93 (Mortgagee when estopped by covenant of warranty) in *Rigg v. Cook*, 4 *Gilm. (Ill.)* 336; s. c., 46 *Am. Dec.* 462, 470, with note. Cited with *Jackson v. Wright*, in 1 *Taylor on Ev.* 109.
- *v. Merrill*, 6 *Johns*. 185; s. c., 5 *Am. Dec.* 213. Followed with *Fox v. Phelps*, 17 *Wend*. 393; 20 *Id.* 437 (When fee passes by will) in *Schriver v. Meyer*, 19 *Penn. St.* 87; s. c., 57 *Am. Dec.* 634, with note.
- *v. Miller*, 6 *Cow*. 751. Aff'd in 6 *Wend*. 228; s. c., 21 *Am. Dec.* 316. Decision in *Id.* commented on (Partition of land, when to be presumed) in *Kincaid v. Meadows*, 3 *Head (Tenn.)* 188.
- *v. —*, 7 *Cow*. 747. See *Jackson v. Moncrief*.
- *v. Moncrief*, 5 *Wend*. 26. Followed with *Jackson v. Miller*, 7 *Cow*. 751 (Ejectment, without notice to quit, against one in possession under contract to purchase) in *Chapman v. Glassell*, 13 *Ala.* 50; s. c., 48 *Am. Dec.* 41, 44, with note.
- *v. Moore*, 6 *Cow*. 706. Rev'd in *Moore v. Jackson*, 4 *Wend*. 59. See *Mann v. Pearson*; *Steere v. Steere*. Explained and distinguishing'd (Effect of mistake in description in conveyance) in *Belknap v. Lealey*, 14 *N. Y.* 143. Approved in *Johnson v. Simpson*, 36 *N. H.* 91.
- *v. —*, 13 *Johns*. 513; s. c., 7 *Am. Dec.* 398. Cited with other cases in 36 *Am. Dec.* 68, *n.*, as indicating the position sustained by the weight of authority (Running of statute of limitations in case of descent to infant heir). Collated with *Fleming v. Griswold*, 3 *Hill*, 85, and other cases, in *Tyler on Inf. & Cov.* 2 ed. § 116.
- *v. Morse*, 16 *Johns*. 197; s. c., 8 *Am. Dec.* 306. Followed (Resulting trust) in *Arnot v. Beadle*, *Hill & D.* 181. Followed with *Rogers v. Murray*, 3 *Paige*, 398; *Green v. Drummond*, 31 *Md.* 71; s. c., 1 *Am. R.* 14, 17.
- *v. —*, 18 *Johns*. 441. See *Varick v. Tallman*; *Wheeler v. Anthony*; *Woodcock Bennett*.
- *v. Murray*, 7 *Johns*. 5. Trial at nisi prius reported in *Anth. N. P.* 143. See *Jackson v. McCall*.
- *v. —*, 12 *Johns*. 201. See *Jackson v. Bull*.
- *v. —*, 1 *Cow*. 156; s. c., 13 *Am. Dec.* 517. Commented on (Amendment enabling defense of statute of limitations to be set up) in *Beach v. Fulton B'k*, 3 *Wend*. 586.
- *v. Myers*, 3 *Johns*. 388; s. c., 3 *Am. Dec.* 504. See *Jackson v. Clark*; *Smith v. Burtis*. Commented on (Agreement to convey) in *Jackson v. Blodget*, 16 *Johns*. 172. Referred to as a leading case (When words of present grant do not convey title) in 48 *Am. Dec.* 45, *n.* Collated with other cases (Enlarging estate in fee) in *Sharsw. & B. Cas. on Real Prop.* 55. Explained (Uses in real property) in 2 *Washb. on Real Prop.* 4 ed. 450.
- *v. —*, 18 *Johns*. 525. Applied (Right to show fraudulent character of deed) in *Smith v. Salomon*, 7 *Daly*, 216, 222. Relied on (Who entitled, as creditor, to show conveyance to be fraudulent) in *Hutchison v. Kelly*, 1 *Rob. (Va.)* 23; s. c., 39 *Am. Dec.* 250, 259.
- *v. Neely*, 10 *Johns*. 374. Doubtful (Effect of depositing conveyance that recites power of attorney) in *Wendell v. Wadsworth*, 20 *Id.* 639; *Jackson v. Bowen*, 6 *Cow*. 146.
- *v. Nestles*, 3 *Johns*. 115. Approved and applied (Trial of right to office of trustees of religious corporation) in *Parish of Bellport v. Tooker*, 29 *Barb.* 256, 276.
- *v. Newton*. See *La Frombois v. Jackson*.
- *v. N. Y. Central R. R. Co.*, 2 *Sup'm. Ct. (T. & C.)* 653. Aff'd in 58 *N. Y.* 623, on opinion below. See *Duncomb v. N. Y. Housatonic, &c. R. R. Co.*
- *v. N. Y. Ins. Co.*, 2 *Johns*. 191. See *Duguet v. Rhinelander*. Overruled (Neutral character of property held by naturalized citizen) in *Duguet v. Rhinelander*, 2 *Johns*. 191. See *Cai. Cas.* XXV.
- *v. Olitz*. See *Jackson v. Dieffendorf*.
- *v. Osborn*, 2 *Wend*. 555; s. c., 20 *Am. Dec.* 649. Followed (Witness not to be impeached by proof of particular fact) in *Berner v. Mitnacht*, 2 *Sweeney*, 582. Commented on in 1 *Best on Ev.* § 130, *n. a.*, *Wood's* ed. Reviewed with other cases (Presumptions arising from erasures and interlineations) in *Bailey v. Taylor*, 11 *Conn.* 521; s. c., 29 *Am. Dec.* 321, 325. Explained in 2 *Chitty on Contr.* 1163, *n. c.*, 11 *Am. ed.*
- *v. Page*, 4 *Wend*. 585. Relied on with *Swan v. Saddlemire*, 8 *Id.* 676 (Title of purchaser at execution sale, when not invalidated by variance between judgment and execution) in *Sprott v. Reid*, 3 *G. Greene (Iowa)* 489; s. c., 56 *Am. Dec.* 549.
- *v. Parker*, 9 *Cow*. 73. See *Foot v. Colvin*. Disapproved (Possession of land under contract for purchase, subject to levy

- and sale on execution) in *Kerchnal v. Wood*, 3 *Mich.* 513. Disting'd in *Rhea v. Hughes*, 1 *Ala.* 219; s. c., 34 *Am. Dec.* 772, as not applicable to case of mere permissive occupation.
- v. —, 3 *Johns. Cas.* 134. See *Smith v. Burtis*.
- v. *Parkhurst*. See *Denn v. Cornell*.
- v. *Pearce*. See *Jackson v. Dysling*.
- v. *Peck*. See *Jackson v. Fish*.
- v. *Perkins*, 2 *Wend.* 303. Applied (Record of deed as evidence of its delivery) in *Lawrence v. Farley*, 24 *Hun.* 293, 295. Reviewed with *Gilbert v. North Am. F. Ins. Co.*, 23 *Wend.* 43; *Jackson v. Phipps*, 12 *Johns.* 418; *Jackson v. Richards*, 6 *Cow.* 617, and other cases in *Union Mut. Ins. Co. v. Campbell*, 95 *Ill.* 267; s. c., 35 *Am. R.* 166, 168.
- v. *Phillips*, 9 *Cow.* 94; s. c., 9 *N. Y. Com. L. Law. ed.* 578, with brief note on unrecorded deeds. Disapproved (Who is subscribing witness) in *Hollenbach v. Fleming*, 6 *Hill.* 303. Overruled (Comparison of signatures) in *Miles v. Loomis*, 75 *N. Y.* 288, 293.
- v. *Phipps*, 12 *Johns.* 418. See *Jackson v. Perkins*. Followed (What is insufficient delivery of deed) in *Barns v. Hatch*, 3 *N. H.* 304; s. c., 14 *Am. Dec.* 369, with note; *Herbert v. Herbert*, *Breese (Ill.)* 354; s. c., 12 *Am. Dec.* 192, 197. See also *Hatch v. Hatch*, 9 *Miss.* 307; s. c., 12 *Am. Dec.* 67. Disting'd in *Merrills v. Swift*, 18 *Conn.* 257; s. c., 46 *Am. Dec.* 315, 318.
- v. *Pierce*, 2 *Johns.* 221. See *Town of No. Hempstead v. Town of Hempstead*.
- v. —, 10 *Johns.* 414. See *Bailey v. Jackson*. Followed with *Bailey v. Jackson*, 16 *Johns.* 214 (Lapse of time as presumptive bar to action) in *Gulick v. Loder*, 1 *Green L. (N. J.)* 63; s. c., 23 *Am. Dec.* 711, with note. Criticised (Mortgagee as bound by partition made by mortgagor) in *Colton v. Smith*, 11 *Pick. (Mass.)* 311; s. c., 22 *Am. Dec.* 375. Disting'd (Mortgage of interest of one of two or more tenants in common) in *Green v. Arnold*, 11 *R. I.* 364; s. c., 23 *Am. R.* 466, 469.
- v. *Pike*, 9 *Cow.* 69. See (consideration to support deed of real property) *Spalding v. Hallenback*, 30 *Barb.* 292, 298. Explained in 3 *Washb. on Real Prop.* 4 ed. 370.
- v. *Plumbe*, 8 *Johns.* 378. See *Bank of Michigan v. Williams*; *Bank of Utica v. Smalley*; *Dutchess Cotton Manufactory v. Davis*. Denied with *Bank of Auburn v. Weed*, 19 *Johns.* 300; *Clark v. Niblo*, 6 *Wend.* 236; *Bank of Utica v. Smalley*, 2 *Cow.* 770; *Proprietors, &c. of Southold v. Horton*, 6 *Hill.* 501 (Necessity that corporation suing prove its existence, &c. under general issue) in *Alderman v. Finley*, 10 *Ark.* 423; s. c., 52 *Am. Dec.* 244, with note; as contrary to principle and authority. Reviewed and criticised with *Overseers of Shephentown v. Whitman*, 15 *Johns.* 208; *Bank of Auburn v. Aiken*, 18 *Id.* 137; *Same v. Same*, 19 *Id.* 300; in *Prince v.*
- Com'l Bank of Columbus*, 1 *Ala.* 241; s. c., 34 *Am. Dec.* 773, 776. Compare *Conard v. Atlantic Ins. Co.*, 4 *Pet.* 450.
- v. *Post*, 9 *Cow.* 120. Subsequent decision in 15 *Wend.* 583. See *Jackson v. Burgett*. Decision in 9 *Cow.* explained (Purchaser at judgment sale as affected by prior conveyance by judgment debtor) in *Jackson v. Chamberlain*, 8 *Wend.* 626. Followed with *Jackson v. Burgett*, 10 *Johns.* 461 (Effect of unrecorded deed) in *Floyd v. Ricks*, 14 *Ark.* 286; s. c., 58 *Am. Dec.* 379. Decision in 15 *Wend.* applied (Sheriff's deed as subject to prior equity) in *Sieman v. Austin*, 33 *Barb.* 19. Commented on and explained in *Hooker v. Pierce*, 2 *Hill.* 651. Applied (Effect of notice of deed) in *Van Rensselaer v. Clark*, 17 *Wend.* 30. Applied (Effect of voluntary conveyance of debtor) in *Dunlap v. Hawkins*, 59 *N. Y.* 342, 347.
- v. *Potter*, 9 *Johns.* 312. See *McKinnon v. Thompson*. Compared with other cases (Formalities necessary to republication of will) in *Carey v. Baughn*, 36 *Iowa*, 540; s. c., *Am. R.* 534, 537.
- v. —, 4 *Wend.* 672. See *Smith v. N. Y. Central R. R. Co.* Collated with *Saunders v. Springsteen*, 4 *Wend.* 429; *Smith v. N. Y. Central R. R. Co.*, 43 *Barb.* 225; *Wilkins v. Earle*, 44 *N. Y.* 172; *Nixon v. Palmer*, 10 *Barb.* 175; *Walrod v. Ball*, 9 *Id.* 271; *Cooper v. Dedrick*, 22 *Id.* 516; *Smith v. Smith*, 4 *Puige*, 432; *People v. McLeod*, 1 *Hill.* 407; *Gelston v. Hoyt*, 1 *Johns. Ch.* 543; *People v. Manhattan Co.*, 9 *Wend.* 351, and other authorities (Presumption of continuance) in 28 *Alb. L. J.* 284.
- v. *Pratt*, 10 *Johns.* 381. See *Bissell v. Kip*; *Jackson v. McCall*; *Jackson v. Streeter*; *Jackson v. Willard*; *Raynor v. Wilson*. Reviewed and disting'd with *Jackson v. Streeter*, 5 *Cow.* 530, and other cases (Recitals in sheriff's deeds) in *Tanner v. Stine*, 18 *Mo.* 580; s. c., 59 *Am. Dec.* 320. Followed with *Jackson v. Jones*, 9 *Cow.* 182, in *Doe v. Rue*, 4 *Blackf. (Ind.)* 263; s. c., 29 *Am. Dec.* 368, 371, with note. Followed with *Jackson v. Davis*, 18 *Johns.* 7, in *Armstrong v. McCoy*, 8 *Ohio*, 128; s. c., 31 *Am. Dec.* 435, 437. Disting'd with *Jackson v. Jones*, on statutory grounds, in *Den v. Despreaux*, 7 *Halt. (N. J.)* 182; s. c., 22 *Am. Dec.* 485, where *Jackson v. Hasbrouck*, 12 *Johns.* 213, was cited as authority.
- v. *Ramsay*, 3 *Cow.* 75; s. c., 15 *Am. Dec.* 242, with note. See *Johnson v. Stagg*. Applied with *Heath v. Ross*, 12 *Johns.* 140 (Doctrine of relation) in *Stout v. Keyes*, 2 *Doug. (Mich.)*, 184; s. c., 43 *Am. Dec.* 465, 468, with note. Followed in *Clark v. West*, 23 *Mich.* 242. Cited as authority with *Van Rensselaer v. Sheriff of Onondaga*, 1 *Cow.* 449; in *Whipple v. Farrar*, 3 *Mich.* 447. Though subsequently modified by statute, said in 15 *Am. Dec.* 255, *n.*, to have been referred to in many cases in N. Y. and elsewhere as an authority. See many other

- citations in same note. [Owing to mistake in printing the original report, this case is sometimes erroneously cited as Jackson v. McMichael, or Jackson v. McCall.]
- **v. Ransom**, 18 *Johns.* 107. Followed (Extrinsic evidence as to what figure in instrument was intended to be) in *Arthur v. Roberts*, 62 *Barb.* 580.
- **v. Raymond**, 1 *Johns. Cas.* 85. Followed with *Jackson v. Bull*, *Id.* 81; *Heath v. Ross*, 12 *Johns.* 140 (Relation back of deed) in *Ferguson v. Miles*, 3 *Gilm. (Ill.)* 358; s. c., 44 *Am. Dec.* 702, 706, with note.
- **v. Rayner**, 12 *Johns.* 291. See *Simpson v. Patten*. Limited (Original and collateral promises to pay debt of another) in *Malloy v. Gillett*, 21 *N. Y.* 412, 426, 444. Approved and relied on with *Leonard v. Vredenberg*, 8 *Johns.* 29; *Farley v. Cleveland*, 4 *Cov.* 432; in *Nelson v. Boynton*, 3 *Metc. (Mass.)* 396; s. c., 37 *Am. Dec.* 148, with note. Discussed in *Browne on Stat. of Frauds*, § 170, 4 ed.
- **v. Richards**, 2 *Cai.* 343. See *Osborn v. Moncure*. Recognized as authority but disting'd (Insolvency of maker, &c. of note, as excuse for notice of non-payment) in *Barton v. Baker*, 1 *Serg. & R. (Pa.)* 334; s. c., 7 *Am. Dec.* 620. Relied on by *Hosmer, J.*, in *Buck v. Cotton*, 2 *Conn.* 126; s. c., 7 *Am. Dec.* 251. Quoted with cases to the contrary in *Bigel. on B. & N.* 2 ed. 379.
- **v. —**, 6 *Cow.* 617. See *Jackson v. Perkins*.
- **v. Richtmyer**, 13 *Johns.* 367. Aff'd in 16 *Id.* 314.
- **v. Roberts**, 7 *Wend.* 83. Aff'd in 11 *Id.* 422. See *Benham v. Cary*. Decision in 7 *Wend.* followed with *Jackson v. Cadwell*, 1 *Cow.* 644 (Conclusiveness of sheriff's deed) in *Newton v. State B'k*, 14 *Ark.* 9; s. c., 58 *Am. Dec.* 363, with note. Followed with *Jackson v. Vanderheyden*, 17 *Johns.* 167; *Jackson v. Sternberg*, 20 *Id.* 49, in *Reed v. Austin's Heirs*, 9 *Mo.* 722; s. c., 45 *Am. Dec.* 336, 341, with note. Decision in 11 *Wend.* applied to collector's sale in *Alexander v. Walter*, 8 *Gill. (Md.)* 239; s. c., 50 *Am. Dec.* 688, 700, with note. Collated with *Varick v. Tallman*, 2 *Barb.* 117; *Harrington v. People*, 6 *Id.* 611; *Hoyt v. Dillon*, 19 *Id.* 644, and other cases, in 17 *Am. Dec.* 505, *n.*, as establishing the rule that neither a tax deed nor its recitals are evidence of compliance with the statutory requisites; *Sharp v. Speir*, 4 *Hill*, 86, being approved as containing a clear and cogent statement of the principles on which this doctrine is based, and *Jackson v. Shepard*, 7 *Cow.* 88, being said to be at variance with various cases cited.
- **v. Robins**, 15 *Johns.* 169. Aff'd in 16 *Id.* 537. See *Jackson v. Bull*; *Jackson v. Delancey*. Decision in 16 *Johns.* followed (Fee when carried by creation of interest with power of disposal) in *McDonald v. Walgrove*, *Sandf. Ch.* 278; *Bradstreet v. Clarke*, 12 *Wend.* 662. Cited and *Jackson v. Cole-*
- man*, 2 *Johns.* 392, disting'd in *Burleigh v. Clough*, 52 *N. H.* 267; s. c., 13 *Am. R.* 23, 27, 32, 39. Examined and approved as a well-considered case in *Rubey v. Barnett*, 12 *Mo.* 3; s. c., 49 *Am. Dec.* 112, with extended note. Followed in *Smith v. Starr*, 3 *Whart. (Pa.)* 62; s. c., 31 *Am. Dec.* 498, 500, with note; *Reinders v. Koppelman*, 68 *Mo.* 482; s. c., 30 *Am. R.* 802. Compare 4 *Kent Com.* 319, 320; 2 *Jarm. on Wills*, 268, *n.* 1; and 295, *n.* 1, 5 *Am. ed.*; *Redf. on Wills*, 2 ed. 277; *Ide v. Ide*, 5 *Mass.* 500–504. Approved and applied (Effect of judgment on *scire facias*) in *Thompson v. Hammond*, 1 *Edw.* 504. Examined (Effect of sale under irregular execution) in *Woodcock v. Bennet*, 1 *Cov.* 737. Followed in *Mitchell v. Evans*, 5 *How. (Miss.)* 548; s. c., 37 *Am. Dec.* 169; *Byers v. Fowler*, 12 *Ark.* 218; s. c., 54 *Am. Dec.* 271, 277, with note; *Simonds v. Catlin*, 2 *Cai.* 61, being disting'd as a case of a void execution. Followed with *Thompson v. Skinner*, 7 *Johns.* 556 (When by reason of lapse of time judicial proceedings will not be set aside for irregularity) in *Ingram v. Belk*, 2 *Strob. (So. Car.)* 207; s. c., 47 *Am. Dec.* 591, 595.
- **v. Robinson**, 4 *Wend.* 436. See *Bloom v. Burdick*. Followed (Necessity of proof of surrogate's jurisdiction) in *People ex rel. Meyer v. Hartman*, 2 *Sweezy*, 576. Approved in preference to *Hannum v. Day*, 105 *Mass.* 33, 35 (Validity of license to one of several administrators or executors to sell real estate) in 7 *South. L. Rev. N. S.* 647.
- **v. Rogers**, 1 *Johns. Cas.* 33; s. c., 2 *Cui. Cas.* 314; 1 *N. Y. Com. L. Law. ed.* 233, with brief note on parol gifts of land. See *Jackson v. Bradt*. Explained (Adverse possession) in *Ang. on Limit.* § 407, 6 ed.
- **v. Root**, 18 *Johns.* 60. Explained (Uses in real property) in 2 *Washb. on Real Prop.* 4 ed. 450.
- **v. Roosevelt**, 13 *Johns.* 97. See *Jackson v. Delancey*. Approved but disting'd (Rights under purchase at sheriff's sale) in *Armstrong v. Jackson*, 1 *Black. (Ind.)* 210; s. c., 12 *Am. Dec.* 225. Applied in *Rector v. Hartt*, 8 *Mo.* 448; s. c., 41 *Am. Dec.* 650, 658, with note.
- **v. Rowan**. See *Smith v. Stewart*.
- **v. Rowland**, 6 *Wend.* 666; s. c., 10 *N. Y. Com. L. Law. ed.* 1231, with brief note on escrow. Applied (Tenant, when not to dispute his landlord's title) in *Bigler v. Furman*, 58 *Barb.* 555; *Hilton v. Bender*, 2 *Hun.* 5; *Despard v. Walbridge*, 15 *N. Y.* 377. Cited as authority with *Nellers v. Lathrop*, 22 *Wend.* 121, in *Beall v. Davenport*, 48 *Ga.* 165; s. c., 15 *Am. R.* 656, 658. Compared (Defenses in ejectment against tenant of mortgagor) in 3 *Am. L. Reg. N. S.* 151.
- **v. Rumsey**, 3 *Johns. Cas.* 234. Applied (Probate of will as evidence) in *Bailey v. Stewart*, 2 *Redf.* 212, 232.
- **v. Russell**, 4 *Wend.* 543. Aff'd as *Rus-*

- sell *v. Jackson*, in 22 *Wend.* 276. See *Jackson v. Lunn*. Decision in 4 *Wend.* explained (Sufficiency of search for missing paper) in *Josuez v. Conner*, 7 *Daly*, 443, 454.
- *v. Sackett*, 7 *Wend.* 94; s. c., 11 *N. Y. Com. L. Law. ed.* 66, with brief note. Questioned (Presumption of payment of mortgage) in *Heyer v. Pruyne*, 7 *Paige*, 470. Questioned and disting'd in *Belknap v. Gleason*, 11 *Conn.* 160; s. c., 27 *Am. Dec.* 721, with note. Discussed in *Ang. on Limit.* § 73, 6 ed. Criticised and compared in 14 *Alb. L. J.* 209.
- *v. Sample*, 1 *Johns. Cas.* 231. Relied on (Right of one of several tenants in common to recover on his separate demise) in *Rawls v. Doe ex dem. Kennedy*, 23 *Ala.* 240; s. c., 58 *Am. Dec.* 289.
- *v. Schaubert*, 4 *Cow.* 78. Quoted (Consolidation of actions of ejectment) in *Sedgw. & W. on Tr. of Tit. to Land*, § 638.
- *v. —*, 7 *Cow.* 187. Rev'd in 2 *Wend.* 13. Decision in 7 *Cow.* explained (Effect of direction in will for executors to sell lands) in *Moncrief v. Ross*, 50 *N. Y.* 431. Followed in *Doe v. Lanius*, 3 *Ind.* 441; s. c., 56 *Am. Dec.* 518. Disting'd (When heir may be disinherited by implication) in dissenting opinion of *TUCKER, P.*, in *Boisseau v. Aldridges*, 5 *Leigh (Va.)* 222; s. c., 27 *Am. Dec.* 590, 604, with note.
- *v. —*, 4 *Wend.* 216. Approved (Stay of proceedings, until payment of costs) in *Felt v. Amidon*, 48 *Wis.* 66, 74.
- *v. Schoonmaker*, 2 *Johns.* 230. See *Johnson v. Camp*. Explained (Inclosure requisite for purposes of adverse possession) in *Trustees of East Hampton v. Kirk*, 84 *N. Y.* 215, 220. Criticised in *Conyers v. Kenan*, 4 *Ga.* 308; s. c., 43 *Am. Dec.* 226, 230, with note, as laying down too strict a rule. Approved in *Bailey v. Irby*, 2 *Nott. & McC. (So. Car.)* 343; s. c., 10 *Am. Dec.* 609. Followed in *Kennebec Purchase v. Saboree*, 2 *Greenl. (Me.)* 275; s. c., 11 *Am. Dec.* 79, 97. Applied with *Jackson v. Warford*, 7 *Wend.* 65, in *Smith v. Hosmer*, 7 *N. H.* 436; s. c., 28 *Am. Dec.* 354, with note. Applied (Parol evidence to control date of deed) in *Barmore v. Jay*, 2 *McCord (So. Car.)* 371; s. c., 13 *Am. Dec.* 736.
- *v. —*, 4 *Johns.* 390. Followed with *Jackson v. Sellick*, 8 *Johns.* 262; *Jackson v. Johnson*, 5 *Cow.* 96 (Remaindermen, &c. not affected by running of statute of limitations) in *McCorry v. King's Heirs*, 3 *Humph. (Tenn.)* 267; s. c., 39 *Am. Dec.* 165, 172, with note. Explained in *Ang. on Limit.* §§ 371, 395, 6 ed.
- *v. Schutz*, 18 *Johns.* 174; s. c., 9 *Am. Dec.* 195, with note. See *De Peyster v. Michael*. Limited and explained (Restraints on alienation) in *Livingston v. Stickles*, 1 *Hill*, 253; *Overbagh v. Patrie*, 8 *Barb.* 28. Disapproved in *Mandlebaum v. McDonell*, 29 *Mich.* 78; s. c., 18 *Am. R.* 61, 77. Colated with other cases in *Sharew. & B. Lead. Cas. on Real Prop.* 133. Discussed in 4 *Kent Com.* 124, n. c.
- *v. Scott*, 18 *Johns.* 94. Followed (Possession of land under contract of purchase is subject to sale under execution) in *Jackson v. Parker*, 9 *Cow.* 73. See, also, *Forstyth v. Clark*, 3 *Wend.* 637; *Kellogg v. Wood*, 4 *Paige*, 578; *Ellsworth v. Cuyler*, 9 *Id.* 418.
- *v. Sebring*, 16 *Johns.* 515; s. c., 8 *Am. Dec.* 357, with note wherein it is said to have been followed in *N. Y.*, *N. H.*, *Ohio* and *R. I.*, though not in *Mass.* (Consideration to support covenant to stand seized). See, on general subject, *Cheney's Lessee v. Watkins*, 2 *Am. Dec.* 530; *Wallis v. Wallis*, 3 *Id.* 210. Reviewed with other cases from *N. Y.*, and elsewhere, in *Thompson v. Thompson*, 17 *Ohio St.* 649, 660. Disapproved in *Trafton v. Hawes*, 102 *Mass.* 537; s. c., 3 *Am. R.* 497. Explained in 3 *Washb. on Real Prop.* 4 ed. 372.
- *v. Second Ave. R. R. Co.*, 47 *N. Y.* 274. Followed (Liability for acts of servants) in *Shea v. Sixth Ave. R. R. Co.*, 5 *Daly*, 223, which was aff'd in 62 *N. Y.* 185, which see; *Hoffman v. N. Y. Central, &c. R. R. Co.*, 44 *Super. Ct. (J. & S.)* 1, 4. Disting'd in *Hughes v. N. Y. & N. H. R. R. Co.*, 36 *Id.* 222, 226.
- *v. Sellick*, 8 *Johns.* 262. See *Jackson v. Schoonmaker*. Applied (Adverse possession of wild lands) in *Jackson v. Gilchrist*, 15 *Johns.* 89, 117. Explained, in *Ang. on Limit.* § 483, 6 ed.
- *v. Seward*, 5 *Cow.* 67. Rev'd, in 8 *Id.* 406. Another proceeding concerning the same conveyance in 6 *Paige*, 62, which was aff'd in 18 *Wend.* 375. All these cases examined (Fraudulent conveyance) in *Babcock v. Eckler*, 24 *N. Y.* 623, 627.
- *v. Sharp*, 9 *Johns.* 163; s. c., 6 *Am. Dec.* 267; 4 *N. Y. Com. L. Law. ed.* 713, with brief note. See *Bank of U. S. v. Davis*; *Brandt v. Ogden*; *Byrne v. Van Hoesen*.
- *v. —*, 14 *Johns.* 472. Overruled (Validity of conveyance by Indian) in *Jackson v. Goodell*, 20 *Id.* 693.
- *v. Shearman*. See *Brown v. Bowen*.
- *v. Sheldon*, 9 *Abb. Pr.* 127. Qualified (Equality among creditors) in *Artisan's Bank v. Treadwell*, 34 *Barb.* 553, 563. Quoted (Receiver of partnership) in *High on Receiv.* § 508, n. 2.
- *v. Shepard*, 7 *Cow.* 88; s. c., 17 *Am. Dec.* 502, with note. See *Jackson v. Cadwell*; *Jackson v. Roberts*. Followed (Provisions of statute directing tax sale, to be strictly construed) in *Scales v. Alves*, 12 *Ala.* 617; s. c., 46 *Am. Dec.* 269.
- *v. Sidney*. See *Same v. Woods*.
- *v. Sill*, 11 *Johns.* 201, with note, wherein it is referred to as a very strong case (Inadmissibility of parol evidence as to testamentary provisions). See *Roman Catholic Orphan Asylum v. Emmons*. Followed and approved in *Brown v. Saltonstall*, 3 *Metc. (Mass.)* 427; *Tucker v. Sea-*

- man's Aid Society, 7 *Id.* 208. Cited as authority with *Mann v. Mann*, 1 *Johns. Ch.* 231, in *Kurtz v. Hibner*, 55 *Ill.* 514; s. c., 8 *Am. R.* 665, with note. Applied (False description when immaterial) in *Sharp v. Dimmick*, 4 *Lans.* 496, 499.
- *v. Silvernail*, 15 *Johns.* 278. Applied (What is breach of covenant against sale, &c) in *Hammel v. Queen's Ins. Co.*, 54 *Wis.* 72, 77.
- *v. Slater*. See *Jackson v. Henry*.
- *v. Staats*, 11 *Johns.* 337; s. c., 6 *Am. Dec.* 376. See *Jackson v. Blanshan*. Cited with *Moffat v. Strong*, 10 *Johns.* 12 (Effect of limitation over in case of death of first taker without issue) in *Deihl v. King*, 6 *Serg. & R. (Pa.)* 29; s. c., 9 *Am. Dec.* 407, 410.
- *v. Stanley*, 10 *Johns.* 133; s. c., 6 *Am. Dec.* 319. Questioned with *Jackson v. Cody*, 9 *Cow.* 140 (Impeaching grant collaterally) in *Sykes v. McRory*, 10 *Ga.* 465; s. c., 54 *Am. Dec.* 402, with note. Compare *Winter v. Jones*, 10 *Ga.* 190; s. c., 54 *Am. Dec.* 379, with note.
- *v. Sternberg*. See *Jackson v. Roberts*.
- *v. Sternbergh*, 1 *Johns. Cas.* 153. Followed (Sheriff's return on execution sale not essential to validity of purchaser's title) in *Mitchell v. Lipe*, 8 *Yerg. (Tenn.)* 179; s. c., 29 *Am. Dec.* 116, with note. Relied on with *Jackson v. Walker*, 4 *Wend.* 462, in *Brooks v. Rooney*, 11 *Ga.* 423; s. c., 56 *Am. Dec.* 430.
- *v. Stevens*, 16 *Johns.* 110. See *Beach v. Hollister*. Followed with *Rogers v. Beuson*, 5 *Johns. Ch.* 427 (Effect of conveyance to husband and wife) in *Taul v. Campbell*, 7 *Yerg. (Tenn.)* 319; s. c., 27 *Am. Dec.* 508, 511, with note. Followed with *Sutliff v. v. Forgey*, 1 *Cow.* 89; *Doc v. Howland*, 8 *Id.* 277, in *Brownson v. Hull*, 16 *Verm.* 309; s. c., 42 *Am. Dec.* 517; *Gibson v. Zimmerman*, 12 *Mo.* 885; s. c., 51 *Am. Dec.* 168, 170, with note. Followed with *Jackson v. Carey*, 16 *Johns.* 305, in *Den v. Hardenbergh*, 5 *Halst. (N. J.)* 42; s. c., 18 *Am. Dec.* 371, 376, with lengthy note. Compare *Co. Lit.* §§ 291, 665; 1 *Co.* 76, b. n. (D. I.); 2 *Id.* 5a 2nd; 2 *Kent Com.* 132; 7 *Abb. N. C.* 310, n.; *Abb. N. Y. Dig. Supp.* 602, n. 3; *Abb. Annual Dig.* 1882-3, 132, § 28, collecting cases; *Id.* 242, § 16, n. See to the contrary *Whittlesey v. Fuller*, 11 *Conn.* 337; and see *Sanford v. Button*, 4 *Day*, 310.
- *v. Stewart*. See *Adams v. Gilbert*; *Jackson v. Demarest*.
- *v. Stiles*, 3 *Cai.* 93. Disting'd (Sufficient affidavit of merits) in *Briggs v. Briggs*, 3 *Johns.* 449.
- *v.* —, 3 *Cow.* 356. Disting'd (Separate consent rules in ejectment) in *Jackson v. Scoville*, 5 *Wend.* 96.
- *v.* —, 5 *Cow.* 282. See *Wilkinson v. Johnson*.
- *v.* —, 10 *Johns.* 67. Explained (Insolvent's discharge as affecting right to come in and defend in ejectment) in *Sedgw. & W. on Tr. of Tit. to Land*, § 253.
- *v. Stone*, 13 *Johns.* 447. Followed (Conclusiveness of recovery in ejectment, as to right to recover mesne profits) in *Drexel v. Man*, 2 *Penn. St.* 271; s. c., 44 *Am. Dec.* 195, 197, with note. Followed with *Morgan v. Varick*, 8 *Wend.* 587, in *Trubee v. Miller*, 48 *Conn.* 347; s. c., 40 *Am. R.* 177.
- *v. Streeter*, 5 *Cow.* 259. See *Jackson v. Pratt*. Followed with *Jackson v. Jones*, 9 *Cow.* 182; *Jackson v. Pratt*, 10 *Johns.* 381 (Effect of mis-recital of execution, in sheriff's deed) in *Howard v. North*, 5 *Tex.* 290; s. c., 51 *Am. Dec.* 769, 782.
- *v. Striker*. See *Parsons v. Johnson*.
- *v. Swart*, 20 *Johns.* 85. See *Jackson v. Dunsbagh*. Applied (Operation of deed as covenant to stand seized) in *Eysaman v. Eysaman*, 24 *Hun.* 430, 432.
- *v. Tallmadge*, 4 *Cow.* 450; s. c., 8 *N. Y. Com. L. Law. ed.* 446, with brief note.
- *v. Thomas*. See *Byrne v. Van Hoesen*; *Jackson v. Waters*.
- *v. Thompson*, 6 *Cow.* 178; s. c., 8 *N. Y. Com. L. Law. ed.* 873, with brief note on construction of the word "children."
- *v. Tibbitts*, 9 *Cow.* 241; s. c., 9 *N. Y. Com. L. Law. ed.* 628, with brief note as to possession by one tenant in common. Explained in *Ang. on Limit.* § 429, 6 ed.
- *v. Timmerman*, 7 *Wend.* 436. Explained (Contract for sale of goods) in *Chitty on Contr.* 571 n. y<sup>1</sup>, 573, 11 *Am. ed.* Quoted (Fraud in case of assignment for benefit of creditors) in *Burrill on Assign.* § 339, 4 ed.
- *v. Titus*, 2 *Johns.* 430. Quoted (Effect of sealing and signing under statute of frauds) in *Browne on Stat. of Frauds*, § 12a, 4 ed.
- *v. Todd*, 2 *Cai.* 183; s. c., 2 *N. Y. Com. L. Law. ed.* 381, with brief note. Quoted (Adverse possession) in *Ang. on Limit.* § 385, 6 ed.
- *v.* —, 3 *Johns.* 300; s. c., 3 *N. Y. Com. L. Law. ed.* 613, with brief note.
- *v.* —, 6 *Johns.* 257. See *Van Bramer v. Cooper*.
- *v. Topping*, 1 *Wend.* 388; s. c., 19 *Am. Dec.* 515. Denied with *Cole v. Patterson*, 25 *Wend.* 450 (Right of one of several heirs to maintain action affecting his separate portion) in *Cruger v. McLaury*, 41 *N. Y.* 219, 226. Cited with other cases (Entry as necessary to defeat estate, on breach of condition) in 9 *Am. L. Reg. N. S.* 524.
- *v. Town*, 4 *Cow.* 599; s. c., 15 *Am. Dec.* 405, with note. Commented on (Rights of purchaser under judgment, as against prior deed) in *Jackson v. Chamberlain*, 8 *Wend.* 626.
- *v. Townsend* (cited in 7 *Wend.* 379). Overruled (Resulting trust as defense in ejectment) in *Moore v. Spellman*, 5 *Den.* 225.
- *v. Turner*, 7 *Wend.* 458. Followed (What mortgage may be foreclosed by ad-



- vertisement) in *Mowry v. Sanborn*, 62 *Barb.* 223.
- **v. Tuttle**, 9 *Cow.* 233. Rev'd in 6 *Wend.* 213. See *Lion v. Burtis*.
- **v. Van Antwerp**, 1 *Wend.* 295. Overruled (Costs against landlord defending in name of tenant) in *Livingston v. Clement*, 1 *Hill*, 648. Approved in *Farmers' Loan & Trust Co. v. Kursch*, 5 *N. Y.* 558.
- **v. Van Corlear**. See *Terry v. Chandler*.
- **v. Vanderheyden**, 17 *Johns.* 167; s. c., 8 *Am. Dec.* 378. See *Edwards v. Davis*; *Jackson v. Roberts*. Applied (Estoppel arising from married woman's deed) in *Martin v. Dwelly*, 6 *Wend.* 14. Cited as authority in *Bank of America v. Banks*, 101 *U. S.* 240, 246. Disapproved in *Hill v. West*, 8 *Ohio*, 222; 31 *Am. Dec.* 442, with note, as unsupported by American authority. Also denied as contrary to authority in *King v. Rea*, 56 *Ind.* 1, 18. Followed with *Teal v. Woodworth*, 3 *Paige*, 470; in *Gonzales v. Hukil*, 49 *Ala.* 260; s. c., 20 *Am. R.* 232. Referred to in 43 *Am. Dec.* 426, *n.*, as a leading case, and holding a doctrine which is said to have been frequently affirmed. Said in *Tyler on Inf. & Cov.* 2 ed. § 210, to be in accordance with the general doctrine of the common law, though contrary to the decisions in some of the States. Quoted and discussed in 3 *Washb. on Real Prop.* 4 ed. 114. Included with notes in *Fowell Lead. Cas. on Inf. & Co.* 310.
- **v. Van Dusen**, 5 *Johns.* 144. See *Jackson v. Bard*; *Sprague v. Duel*. Applied with *Babbott v. Thomas*, 31 *Barb.* 277 (Incompetency of wife as witness under *Code Civ. Pro.* § 829, by reason of interest) and *Eckford v. DeKay*, 6 *Paige*, 565; *Farnsworth v. Ebbs*, 2 *Hun*, 438. Disting'd in *Scherrer v. Kaufman*, 1 *Dem.* 39. See to the contrary *Steele v. Ward*, 30 *Hun*, 555. Discussed with *Delafield v. Parish*, 25 *N. Y.* 34; *Ean v. Snyder*, 46 *Barb.* 232; *Allen v. Public Adm'r* 1 *Bradf.* 378; *Gombault v. Public Adm'r* 4 *Id.* 244; *Jackson v. King*, 4 *Cow.* 207; *Phelan's Case*, 9 *Abb. Pr.* 286 (Burden of proof of insanity in will contests) in 18 *Cent. L. J.* 283. Quoted (Personal disabilities of testators) in 1 *Jurm. on Wills*, Rand & T. ed. 105, *n.*
- **v. Van Hoesen**, 4 *Cow.* 325. Included with note (Words of limitation in lease) in *Sharsw. & B. Cas. on Real Prop.* 191.
- **v. Van Slyke**, 44 *Barb.* 116. Further decision in 52 *N. Y.* 645.
- **v. Valkenburgh**, 8 *Cow.* 260. Denied (Constructive notice) in *Williams v. Birbeck*, *Hoffm.* 374. Explained in *Williamson v. Brown*, 15 *N. Y.* 356. Approved (Assignee, when not bound by notice to his assignor) in *Bush v. Lathrop*, 22 *Id.* 549. Disting'd in *Schafer v. Reilly*, 50 *Id.* 268; *Trustees of Union Coll. v. Wheeler*, 61 *Id.* 117; *DeLancey v. Stearns*, 66 *Id.* 161; *Westbrook v. Gleason*, 79 *Id.* 31. Examined with other cases in *Bank for Savings v. Frank*, 45 *Super. Ct.* (J. & S.) 412. Rule herein declared obsolete in *Decker v. Boice*, 83 *N. Y.* 215, 219. Explained (Computation of time under statute of limitation) in *Ang. on Limit.* § 50, *n.* 5, 6 ed.
- **v. Varick**, 7 *Cow.* 238. Aff'd in 2 *Wend.* 166. Decision in 7 *Cow.* followed (One who has introduced a witness cannot question his competency) in *Stockton v. Demuth*, 7 *Watts. (Pa.)* 39; s. c., 32 *Am. Dec.* 735, with note. Explained (Interest in land capable of devise) 4 *Kent Com.* 512.
- **v. Vermilyea**, 6 *Cow.* 677. Disting'd, and head-note said to be too broad (Effect of possession under lease, as adverse) in *Bedell v. Shaw*, 59 *N. Y.* 46, 50.
- **v. Vincent**, 4 *Wend.* 633. See *Jackson v. Collins*. Explained (Effect of parol disclaimer of landlord's title) in *De Lancey v. Ganong*, 12 *Barb.* 120, which was aff'd in 9 *N. Y.* 9, 23, 27, which see.
- **v. Virgil**, 3 *Johns.* 540. See *Laimbeer v. Allen*. Applied (Sufficiency of signature) in *Weisbrod v. Marquardt*, 8 *Abb. N. C.* 243, 246. Disapproved with *Millius v. Shafer*, 3 *Den.* 60; *Haff v. Spicer*, 3 *Cal.* 190; in *Wright v. Fallon*, 47 *Wis.* 488.
- **v. Vosburgh**, 9 *Johns.* 270; s. c., 6 *Am. Dec.* 276. See *Brown v. Bowen*; *Jackson v. Harder*. Discussed (Partition without deed) in *Browne on Stat. of Frauds*, § 68, 4 ed.
- **v. Vredenberg**. See *Jackson v. Bard*.
- **v. Waldron**, 13 *Wend.* 178. Aff'g *Pelletreau v. Jackson*, 11 *Id.* 110. See subsequent decisions arising under same will in *Edwards v. Varick*, 5 *Den.* 664, 691, which rev'd *Hoffm.* 282. Decision in 13 *Wend.* explained and disting'd (Assignment of contingent interest) in *Miller v. Emans*, 19 *N. Y.* 384, 397. Criticised with *Edwards v. Varick*, 5 *Den.* 644, in *Grayson v. Tyler's Adm'r*, 80 *Ky.* 358, 361. Disting'd in 3 *Am. L. Reg. N. S.* 152. Explained in 4 *Kent Com.* 262, *n. a.* Applied (Estoppel created by recital in deed) in *Esterbrook v. Savage*, 21 *Hun*, 145, 153. Approved in *Casey's Lessee v. Inloes*, 1 *Gill. (Md.)* 430; s. c., 39 *Am. Dec.* 659, 671, with note. Criticised (Proof of instrument in absence of subscribing witness) in 2 *Taylor on Ev.* 1583.
- **v. Walker**, 5 *Hill*, 27. Aff'd in 7 *Id.* 387, the court being equally divided and no opinion reported. See *Bissell v. Kip*; *Foot v. Colvin*; *Jackson v. Cadwell*; *Jackson v. Sternbergh*. Decision in 5 *Hill* criticised and limited (Contract for election purposes, when illegal) in *Hurley v. Van Wagner*, 28 *Barb.* 112. Criticised with *Hurley v. Van Wagner*; *Sizer v. Daniels*, 66 *Id.* 426, in *Murphy v. English*, 64 *Hov. Pr.* 362. Commented on in *Cooley on Const. Limit.* 5 ed. 772, *n.* 5. Included with notes in *Brightly Cas. on Elect.* 613. Collated with other cases (Lease for unlawful purposes) in *McAdam on Landl. & T.* 2 ed.

- § 77. Explained (Consideration illegal by statute) in 1 *Par. on Contr.* 459, n. d.
- *v. Walsh*, 3 *Johns.* 226. See Jackson *v. Demarest*. Explained (Common seal of private corporation) in *Ang. & A. on Corp.* § 225, 11 ed. Considered (Entries in books of corporation as evidence) in *Id.* § 679.
- *v. —*, 14 *Johns.* 407. See *Roberts v. Anderson*. Discussed (Purchase by trustee or agent) in 1 *Par. on Contr.* 88, n. o.
- *v. Warford*. See Jackson *v. Schoonmaker*.
- *v. Waters*, 12 *Johns.* 365. Explained (Possession when under claim of title, so as to be adverse) in *La Frombois v. Jackson*, 8 *Cow.* 589, 606, 613. Relied on with Jackson *v. Thomas*, 16 *Johns.* 293; Jackson *v. Camp*, 1 *Cow.* 605; *La Frombois v. Jackson*, 8 *Id.* 589, in Link *v. Doerfer*, 42 *Wis.* 391; s. c., 24 *Am. R.* 417. Discussed in *Ang. on Limit.* § 411, 6 ed.
- *v. Welden*, 3 *Johns.* 283. See *Hewlett v. Cock*. Discussed (Effect of statute of limitations as to landlord and tenant) in *Ang. on Limit.* § 445, 6 ed.
- *v. Wendell*. See *Wendell v. Jackson*.
- *v. Wheat*. See *La Frombois v. Jackson*.
- *v. Wheeler*, 6 *Johns.* 271. See Jackson *v. Bryan*. Followed with Jackson *v. Deyo*, 3 *Johns.* 422 (Tenant denying landlord's title, not entitled to notice to quit) in *Vincent v. Corbin*, 85 *N. C.* 108, 112.
- *v. Wilkinson*. See Jackson *v. Barringer*. Approved and followed (Construction of grant) in Jackson *v. Sprague*, 1 *Paine*, 497.
- *v. Whitbeck*, 6 *Cow.* 632; s. c., 16 *Am. Dec.* 454. Disting'd (Adverse possession by tenant in common) in *Kathan v. Rockwell*, 16 *Hun.* 90, 92. Followed in *Johnson v. Toulmin*, 18 *Ala.* 50; s. c., 52 *Am. Dec.* 212, 214, with note.
- *v. White*, 20 *Johns.* 313. Discussed (Duty of allegiance) in 2 *Kent Com.* 41.
- *v. Willard*, 4 *Johns.* 41. Applied (Mortgage as incident to debt) in *Cooper v. Newland*, 17 *Abb. Pr.* 344; *Beck v. McGillis*, 9 *Barb.* 55; *Waring v. Smith*, 2 *Barb. Ch.* 128; *Campbell v. Parker*, 9 *Bosw.* 329; Jackson *v. Blodget*, 5 *Cow.* 206; *Purdy v. Huntington*, 42 *N. Y.* 346. Explained (Passing of title to mortgage) in *Trustees of Union College v. Wheeler*, 61 *Id.* 118. Explained (Extent of interest of mortgagee of land) in Jackson *v. Dubois*, 4 *Johns.* 221. Applied in *Phyfe v. Riley*, 15 *Wend.* 255. Followed with *Hitchcock v. Harrington*, 6 *Johns.* 290 (Mortgagor when to be deemed legal owner) in *Perkins' Lessee v. Dibble*, 10 *Ohio*, 433; s. c., 36 *Am. Dec.* 97, with note; the cases of Jackson *v. Davis*, 18 *Johns.* 7; Jackson *v. Blodget*, 5 *Cow.* 202, being also followed in *Perkins' Lessee v. Dibble* (Satisfaction of mortgage causes estate to revert to mortgagor without conveyance). Cited as authority with *Hitchcock v. Harrington*, 6 *Johns.* 294; *Collins v. Torrey*, 7 *Id.* 278; Jackson *v. Pratt*, 10 *Id.* 381; *Titus v. Neilson*, 5 *Johns. Ch.* 454; *Giles v. Barremore*, *Id.* 552; *Aymar v. Bill*, *Id.* 570 (When payment of mortgage will divest mortgagee of title) in *Breckenridge's Heirs v. Ormsby*, 1 *J. J. Marsh (Ky.)* 236; s. c., 19 *Am. Dec.* 71, 90, with note. Relied on with *Wilkes v. Ferris*, 5 *Johns.* 335; *Hagaman v. Jackson*, 1 *Wend.* 502 (What is interest that may be sold on execution) in *Bowman v. People*, 82 *Ill.* 246; s. c., 25 *Am. R.* 316, 319. Applied to execution against trustee in *Bostick v. Keizer*, 4 *J. J. Marsh (Ky.)* 597; s. c., 20 *Am. Dec.* 237, with note.
- *v. Wilsey*, 9 *Johns.* 287; s. c., 4 *N. Y. Com. L. Law. ed.* 753, with brief note. Commented on (Right of tenant at will to notice to quit) in *Ang. on Limit.* § 453, n. 1, 6 ed.
- *v. Winne*, 7 *Wend.* 47; s. c., 22 *Am. Dec.* 563, with note, wherein it is said to be considered one of the cases settling the proposition in *N. Y.*, that consent of the parties is the only requisite to the marriage contract. See *Fenton v. Reed*.
- *v. Winslow*, 9 *Cow.* 18. See Jackson *v. Fish*.
- *v. —*, 2 *Johns.* 81. Quoted and discussed (Ejectment by State or people) in *Sedgw. & W. on Tr. of Tit. to Land.* § 192.
- *v. Wiseburn*, 5 *Wend.* 136. Disting'd (Power to extend statutory time for performing an act) in *Burnham v. Hays*, 3 *Cal.* 115; s. c., 57 *Am. Dec.* 389, with note.
- *v. Wood*, 12 *Johns.* 73; s. c., 5 *N. Y. Com. L. Law. ed.* 307, with brief note. Explained (Necessity of seal for conveyance) in *Browne on Stat. of Frauds*, § 6, n. 1, 4 ed.
- *v. —*, 12 *Johns.* 242; s. c., 7 *Am. Dec.* 315. Collated with *Livingston v. Livingston*, 4 *Johns. Ch.* 287; *Dunham v. Minard*, 4 *Paige*, 443; *Ileyer v. Pruyn*, 7 *Id.* 465; *Collins v. Tenney*, 7 *Johns.* 279; Jackson *v. Davies*, 5 *Cow.* 130, and other authorities (Presumption of payment of mortgage) in 30 *Alb. L. J.* 85. Discussed in *Ang. on Limit.* § 454, 6 ed.
- *v. —*, 24 *Wend.* 443. Quoted (Interest on mesne profits) in *Sedgw. & W. on Tr. of Tit. to Land.* § 670.
- *v. —*, 3 *Wend.* 27. See *Wood v. Jackson*.
- *v. Woodruff*, 1 *Cow.* 276; s. c., 13 *Am. Dec.* 525. See Jackson *v. Ellis*. Applied (Necessity of actual occupancy to create adverse possession) in *Lane v. Gould*, 10 *Barb.* 257; Jackson *v. Camp*, 1 *Cow.* 610; *Pope v. Hammer*, 8 *Hun.* 270, which was aff'd in 74 *N. Y.* 244, which see. Approved and applied in *Thompson v. Burhans*, 61 *Id.* 69. Quoted in *Ang. on Limit.* § 403, 6 ed. Applied (Necessity of rightful title, to adverse possession) in *La Frombois v. Jackson*, 8 *Cow.* 609; *Swettenham v. Leary*, 18 *Hun.* 286; *Proprietors of Enfield v. Day*, 7 *N. H.* 457; s. c., 28 *Am. Dec.* 360, 363. Quoted in *Sedgw. & W. on Tr. of Tit. to Land.* §§ 769, 774.

- **v. Woods**, 1 *Johns. Cas.* 163. Disapproved with *Jackson v. Durland*, 2 *Id.* 314 (Wife as competent witness to will containing devise to husband) in *Sullivan v. Sullivan*, 106 *Mass.* 474; s. c., 8 *Am. R.* 356.
- **v. —**, 5 *Johns.* 278. Relied on with *Jackson v. Sidney*, 12 *Id.* 185 (Recovery for several distinct parcels in one action of ejectment) in *Den v. Snowhill*, 1 *Green. (N. J.)* 23; s. c., 22 *Am. Dec.* 496, 501. Followed and approved in *Lessee of Bayard v. Colefax*, 4 *Wash. C. Ct.* 38.
- **v. Woolsey**, 11 *Johns.* 446. Denied (Purchase of ward's property by guardian) in *Gallatin v. Cunningham*, 8 *Cow.* 361, 379. Applied (When execution of deed may be presumed) in *Armstrong v. McCoy*, 8 *Ohio*, 128; s. c., 31 *Am. Dec.* 435, with note.
- **v. Wright**, 14 *Johns.* 193. See *Jackson v. Fish*; *Jackson v. Matsdorf*. Followed with *Jackson v. Hubble*, 1 *Cow.* 616 (Interest passing by deed containing no warranty) in *Bruce v. Luke*, 9 *Kans.* 201; s. c., 12 *Am. R.* 491.
- Jacobowski v. People**, 6 *Hun.* 524. Aff'd in 64 *N. Y.* 659, on opinion of DANIELS, J., below. Decision in 6 *Hun.* followed (What is a disorderly house) in *Barnesciotta v. People*, 10 *Id.* 137, 139.
- Jacobs v. Hogan**, 15 *Hun.* 197. Rev'd in 85 *N. Y.* 243.
- **v. Miller**, 10 *Hun.* 230. Further proceeding in 11 *Id.* 441.
- **v. Morange**, 1 *Daly*, 523. Rev'd (Relief against mistake of law) in 47 *N. Y.* 57. See *Holdredge v. Webb*.
- **v. Remsen**, 35 *Barb.* 384; s. c., 12 *Abb. Pr.* 390. Subsequent decision in 36 *N. Y.* 668. Decision in *Id.* quoted (Preferences in case of assignment for benefit of creditors) in *Burrill on Assign.* § 166, 4 ed. Explained (Fraudulent debts) in *Id.* § 117, n. 4.
- Jacobson v. Fountain**, 2 *Johns.* 170. Discussed (Exclusive right of fishery in navigable waters) in 3 *Kent Com.* 417.
- **v. Le Grange**, 3 *Johns.* 199; s. c., 3 *N. Y. Com. L. Law. ed.* 576, with brief note. Followed (Implied agreement for compensation for personal services) in *Eagan v. Kergill*, 1 *Dem.* 464, 468. Explained in 2 *Pars. on Contr.* 54, n. f.
- Jacoby v. Johnston**. See *Larkin v. Robbins*.
- Jacquiu v. Buisson**, 11 *How. Pr.* 387. Discussed (Executor carrying on partnership) in 1 *Collyer on Partn.* § 178, n. 2, Wood's *Am. ed.*
- Jaeger v. Kelly**, 44 *How. Pr.* 122. Aff'd in 52 *N. Y.* 274. Decision in *Id.* reconciled and approved (Proof necessary to invalidate sale as fraudulent against creditors) in *Sherman v. Hogland*, 73 *Ind.* 477. Cited (Agent cannot establish agency by his own declarations) in *Whart. Com. on Ag.* § 163.
- Jaffe v. Harteau**, 14 *Abb. Pr. N. S.* 263. Aff'd in 56 *N. Y.* 393.
- Jaffray v. Brown**, 74 *N. Y.* 393. Further proceeding in 17 *Hun.* 575.
- Jagger Iron Co. v. Walker**, 43 *Super. Ct. (J. & S.)* 275. Aff'd in 76 *N. Y.* 521. Decision in *Id.* quoted (Payment and tender) in 2 *Benj. on Sales*, § 1081 (Corbin's 4 *Am. ed.*). See, also, *Id.* § 1110, n. p.
- James v. Andrews**. See *James v. Stull*.
- **v. Burchell**, 7 *Daly*, 531. Aff'd in 92 *N. Y.* 108.
- **v. Chalmers**, 5 *Sandf.* 52. Aff'd in 6 *N. Y.* 209. Decision in *Id.* followed (Actions by parties not in interest) in *Eaton v. Alger*, 57 *Barb.* 179. Explained as not in conflict with *Brisbane v. Pratt*, 4 *Den.* 63 (Effect of declarations of prior holder against holder for value) in *Von Sachs v. Kretz*, 72 *N. Y.* 548, 554.
- **v. Cowing**, 17 *Hun.* 256. Rev'd in 92 *N. Y.* 449.
- **v. Delevan**, 7 *Wend.* 511. Disting'd (Effect of failure of plaintiff to pay costs on discontinuance) in *People v. Tweed*, 5 *Hun.* 393.
- **v. Hamilton**, 2 *Hun.* 630; s. c., 5 *Sup'm. Ct. (T. & C.)* 183. Aff'd, it seems, in 63 *N. Y.* 616, but without opinion.
- **v. James**, 4 *Paige*, 115. Explained, as turning on peculiar words in the will (Effect of residuary devise of real estate) in *Lowers v. Smith*, 10 *Id.* 193. Doubted in *Craig v. Craig*, 3 *Barb. Ch.* 76, 102. Explained with *Van Kleeck v. Dutch Church*, 6 *Paige*, 600; 20 *Wend.* 458, in *Youngs v. Youngs*, 45 *N. Y.* 254, 258.
- **v. Le Roy**, 6 *Johns.* 274. Aff'g *Anth. N. P.* 159. Decision in 6 *Johns.* followed (Right of owner of runaway apprentice to value of his service) in *Trongott v. Byers*, 5 *Cow.* 480, as applicable to slave.
- **v. Johnson**, 6 *Johns. Ch.* 417. Rev'd as *James v. Morey*, in 2 *Cow.* 246. See *Bebee v. Bank of N. Y.*; *Dey v. Dunham*; *Stafford v. Van Rensselaer*; *Wendell v. Wadsworth*; Decision in 2 *Cow.* reported in 14 *Am. Dec.* 475, 512, with note, wherein its doctrine as to merger is said to have been frequently cited and approved. Decision in 6 *Johns. Ch.* explained (Mortgage, as security for future advances) in *Truscott v. King*, 6 *Barb.* 350, which was rev'd in 12 *N. Y.* 147, 166, which see; *Bank of Albion v. Burns*, 2 *Lans.* 57. Examined with other cases in *Ackerman v. Hunsicker*, 21 *Hun.* 55, which was however rev'd in 85 *N. Y.* 43. Followed in *McIntyre v. Humphreys*, *Uoffm.* 36; *Curtis v. Leavitt*, 15 *N. Y.* 209. Decision in 2 *Cow.* disting'd in *Mead v. York*, 6 *N. Y.* 452. Followed with *Brinkerhoff v. Lansing*, 4 *Johns. Ch.* 73, in *Commercial B'k v. Cunningham*, 24 *Pick. (Mass.)* 270; s. c., 35 *Am. Dec.* 322, with note. Cited as contrary to the prevailing authority in *Jones on Chatt. M.* § 96, n. Both decisions examined with other cases in *Townsend v. Empire Stone-Dressing Co.*, 6 *Duer*, 217. Applied in *Craig v. Tappin*, 2 *Sandf.* 83. Decision in 2 *Cow.* disting'd (Rights of assignee of mortgage) in *Hartley v. Tatham*, 10 *Low.* 282; *Purser v. Anderson*, 4 *Edw.* 17, 21; *Vanderkemp v. Skelton*, 11 *Paige*,

37. Approved in *Van Keuren v. Corkins*, 66 *N. Y.* 80. Criticised at length and referred to as overruled,—in *Bush v. Lathrop*, 12 *Id.* 542. So referred to in *Trustees of Union College v. Wheeler*, 61 *Id.* 88, 105. Both decisions applied (Necessity of recording conveyance intended as mortgage) in *White v. Moore*, 1 *Paige*, 554. Decision in 2 *Cow.* commented on (Judgment by confession—as to whom fraudulent) in *Kendall v. Hodgkins*, 7 *Abb. Pr.* 315. Applied (Merger of mortgage) in *Casey v. Buttolph*, 12 *Barb.* 639; *Russell v. Austin*, 1 *Paige*, 195; *Mickles v. Townsend*, 18 *N. Y.* 582; *Champney v. Coope*, 32 *Id.* 548; *Bascom v. Smith*, 34 *Id.* 329. Approved and explained in *Schermerhorn v. Merrill*, 1 *Barb.* 516. Explained in *Clift v. White*, 15 *Id.* 76, which was rev'd in 12 *N. Y.* 527, which see. Explained with *Roberts v. Jackson*, 1 *Wend.* 484, in *Decker v. Hall*, 1 *Edm. Sel. Cas.* 282. Both decisions explained in *Van Dyne v. Thayer*, 19 *Wend.* 170. Decision in 2 *Cow.* applied (Record, when not constructive notice) in *Williams v. Birbeck*, *Hoffm.* 369. Both decisions applied (Mortgagee as bona fide purchaser) in *Daly v. Matthews*, 12 *Abb. Pr.* 407, *n.*
- *v. Patten*, 8 *Barb.* 344. Rev'd in 6 *N. Y.* 9; *s. c.*, 55 *Am. Dec.* 376, with note containing citations (Construction of statutes. How far decision is authority). See (Subscription required by statute of frauds) *Vielie v. Osgood*, 8 *Barb.* 130.
- *v. Schmidt*, 5 *Abb. L. J.* 216. Rev'd in 57 *N. Y.* 686.
- *v. Stull*, 9 *Barb.* 482. Aff'd as *James v. Andrews*, in *Seld. Notes*, No. 1, 6; *s. c.*, 1 *Liv. Law. Mag.* 147.
- *v. Stuyvesant*, 3 *Sandf.* 665, *n.* See notes on this case in 1 *Civ. Pro. R.* 425.
- *v. Woodruff*, 10 *Paige*, 541. Aff'd in 2 *Den.* 574, but without opinion.
- Jamieson v. Jamieson**, 53 *How. Pr.* 112; *s. c.*, 11 *Hun.* 38. See also in 3 *Abb. N. C.* 3, *n.*, affidavit on which order of arrest was granted. See *Longendyke v. Longendyke*.
- Jamison v. Cornell**, 3 *Hun.* 557. Reported fully in 5 *Sup'm. Ct. (T. & C.)* 628.
- Jandon v. Randall**, 13 *Weekly Dig.* 37; *s. c.*, in full, as *Jandon v. Randall*, 47 *Super. Ct. (J. & S.)* 374.
- Jansen v. Cairnes**, 2 *Barb. Ch.* 350. Further decision as *Emmons v. Cairns*, 3 *Barb.* 243, which rev'd 2 *Sandf. Ch.* 369.
- *v. Stoutenbergh*, 9 *Johns.* 369. Overruled (Action of debt against sheriff for escape, cognizable in justice's court) in *Brown v. Genung*, 1 *Wend.* 115.
- Jaques v. Greenwood**, 12 *Abb. Pr.* 232. Commented on (Assignment hindering and delaying creditors) in *Wait on Fraud. Conv.* § 341.
- *v. Marquand*, 6 *Cow.* 497. Explained, and dictum as to assent of partners, disapproved (Liability of firm for money borrowed by member thereof) in *Whittaker v. Brown*, 16 *Wend.* 505. Disting'd and explained in *Ontario Bank v. Hennessy*, 48 *N. Y.* 551. Followed with *Nat. B'k of Salem v. Thomas*, 47 *Id.* 15, in *Peterson v. Roach*, 32 *Ohio St.* 374; *s. c.*, 30 *Am. R.* 607, 609.
- *v. Methodist Episcopal Church*, 17 *Johns.* 549; *s. c.*, 8 *Am. Dec.* 447, with note, wherein it is said to be one of the leading cases in the country. See *Yale v. Dederer*. Applied (Property rights of married woman) in *Firemen's Ins. Co. of Albany v. Bay*, 4 *Barb.* 413, which was aff'd in 4 *N. Y.* 12, which see; *Strong v. Skinner*, 4 *Barb.* 553; *Cruger v. Cruger*, 5 *Id.* 268; *American Home Miss. Soc. v. Wadhams*, 10 *Id.* 604; *Colvin v. Currier*, 22 *Id.* 380; *Gage v. Dauchy*, 28 *Id.* 625; *Gibson v. Walker*, 20 *N. Y.* 481; *North Am. Coal Co. v. Dyett*, 7 *Paige*, 15, which was aff'd in 20 *Wend.* 573, which see. Examined at length with other cases in *Corn Exchange Ins. Co. v. Babcock*, 42 *N. Y.* 629. Followed in *Calhoun v. Calhoun*, 2 *Strobb. Eq. (So. Car.)* 231; *s. c.*, 49 *Am. Dec.* 667. Cited with *Gardner v. Gardner*, 22 *Wend.* 526, and the latter preferred in *Bank of Louisiana v. Williams*, 46 *Miss.* 618; *s. c.*, 12 *Am. R.* 319, 325. Approved with *Strong v. Skinner*, 4 *Barb.* 546; *Gardner v. Gardner*, 7 *Paige*, 112; 22 *Wend.* 528; *Curtis v. Engel*, 2 *Sandf. Ch.* 287; *Dyett v. North American Coal Co.*, 20 *Wend.* 510; *Knowles v. McKamly*, 10 *Paige*, 343; *Yale v. Dederer*, 18 *N. Y.* 265; 22 *Id.* 450; in *Kimm v. Weippert*, 46 *Mo.* 532; *s. c.*, 2 *Am. R.* 541, 550. Approved in *Smith v. Thompson*, 2 *McArth.* 291; *s. c.* 29 *Am. R.* 621, where decision in 3 *Johns. Ch.* was denied. Reviewed at length with *Curtis v. Engel*, 2 *Sandf.* 287; *Yale v. Dederer*, 18 *N. Y.* 265; 22 *Id.* 450; 68 *Id.* 329; *Second Nat. B'k of Watkins v. Miller*, 63 *Id.* 639; *Corn Insurance Co. v. Babcock*, 42 *Id.* 613, in 5 *Am. Dec.* 589, *n.*, as showing the fluctuating course and chaotic condition of the *N. Y.* decisions. Reviewed with *Yale v. Dederer*, 18 *N. Y.* 265; 22 *Id.* 450; 68 *Id.* 329; and many other cases from *N. Y.* and elsewhere, in extended note in 30 *Am. Dec.* 236 *n.* Disapproved in *McClintic v. Ocheltree*, 4 *W. Va.* 249. Approved in *Knowles v. Dodge*, *Sup'm. Ct. Dist. Columbia*; 9 *Wash. L. Rep.* 227, 331. Discussed and commented on unfavorably in 2 *Kent Com.* 166. Discussed, and cases following it cited in 4 *Am. L. Reg. N. S.* 154. Collated with cases *pro* and *con* from other States in 17 *Cent. L. J.* 27. Included with note in *Lawson's Lead. Eq. Cas. Simplified*, 77. Criticised (Implied restriction on power of alienation) in 1 *Am. L. Reg. N. S.* 667. Followed (Effect of appeal from final decree, in opening up prior orders) in *Atkinson v. Manks*, 1 *Cow.* 702. Explained in *Bank of Orange County v. Fink*, 7 *Paige*, 93; *Kane v. Whittick*, 8 *Wend.* 233. Criticised (What is final decree) in *Jenkins v. Wild*, 14 *Wend.* 543.

- **v. Public Administrator**, 1 *Brady*. 499. Compare (Marriage with lunatic) *Stuckey v. Mathes*, 24 *Hun.* 461, 463.
- **v. Todd**, 3 *Wend.* 83. Included with notes (Express and implied agent) in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 670.
- Jarvis v. Driggs**, 69 *N. Y.* 143. Disting'd with *Keogh v. Westervelt*, 66 *Id.* 636 (What questions may be raised on appeal) as applicable only to the appellate power of the Court of Appeals, in *Mandeville v. Marvin*, 30 *Hun.* 282. See to the contrary (Proof of tenancy) *Boller v. Mayor, &c. of N. Y.*, 40 *Super. Ct. (J. & S.)* 523. See *Abb. Tr. Ev.* 523. See to the contrary (Conclusiveness of record in summary proceedings, as to amount of rent) *Brown v. Mayor &c. of N. Y.*, 5 *Daly*, 481. But see *Abb. Tr. Ev.* 528.
- **v. Furman**, 25 *Hun.* 391. Followed (Evidence of value) in *Thorn v. Sutherland*, *Id.* 435.
- **v. Hatheway**, 3 *Johns.* 180; s. c., 3 *Am. Dec.* 473. Followed (Language in complaint by one church member against another—when is not libelous) in *Remington v. Congdon*, 2 *Pick. (Mass.)* 310; s. c., 13 *Am. Dec.* 431, with note.
- **v. Peck**, *Hoffm.* 479. Aff'd in 10 *Paige*, 118. See *Van Marter v. Babcock*. Decision in *Hoffm.* followed (Covenant, when not in restraint of trade) in *Alcock v. Giberton*, 5 *Duer* 76. Commented on in 2 *Chitty on Cont.* 1001, n. k, 11 *Am. ed.* Decision in 10 *Paige* followed (Effect of contract containing valid and invalid provisions) in *Arnot v. Pittston & Elmira Coal Co.*, 2 *Hun.* 591, 594. Doubted in 1 *Pars. on Contr.* 381, n. v.
- Janncey v. Thorne**, 2 *Barb. Ch.* 40; s. c., 45 *Am. Dec.* 424, with note wherein are collected citations. See *Tarrant v. Ware*. Followed (Proof to establish will) in *Norton v. Norton*, 2 *Redf.* 6, 13. Included with notes in *Relf. Lead. Cas. on Wills*, 655. Commented upon in *Id.* 677. Collected with *Nelson v. McGiffert*, 3 *Barb. Ch.* 158; *Thompson v. Senstedt*, 6 *Sup'm. Ct. (T. & C.)* 78; and other cases in 15 *Am. Dec.* 127, n., as showing the settled doctrine of most of the States (When will of realty may be established by one only of attesting witnesses).
- Jay v. De Groot**, 4 *Sup'm. Ct. (T. & C.)* 670. Fully reported in 2 *Hun.* 205. Applied (One arguing motion is concluded by it) in *Schrauth v. Dry Dock Savg's B'k*, 8 *Daly*, 106, 109.
- **v. Martine**, 2 *Duer*, 654. See (Execution after creditor's death) *Code Civ. Pro.* 1881, § 1376, n.
- Jaycox v. Caldwell**, 37 *How. Pr.* 240. Aff'd in 51 *N. Y.* 395. Decision in *Id.* applied (Separate property of wife) in *Treadwell v. Hoffman*, 5 *Daly*, 207, 212.
- **v. Collins**, 26 *How. Pr.* 496. Followed (Curtesy, as affected by statute) in *Beamish v. Hoyt*, 2 *Robt.* 307. Examined with other cases in *Matter of Winne*, 1 *Lans.* 508, 521, which was, however, rev'd in 2 *Id.* 21. Collated with other cases in *Sharnw. & B. Cas. on Real Prop.* 289.
- Jefferson County Bk. v. Chapman**. See *Bank of Niagara v. McCracken*.
- Jefferson Ins. Co. v. Cothcal**, 7 *Wend.* 72; s. c., 22 *Am. Dec.* 567. Reviewed with other cases (Opinions of witnesses as to what is material to risk), in *Hartford Prot'n Ins. Co. v. Harmer*, 2 *Ohio St.* 452; s. c., 59 *Am. Dec.* 684. Reviewed with *Norman v. Wells*, 17 *Wend.* 137, 164; *Fish v. Dodge*, 4 *Den.* 311; *Lincoln v. Saratoga & Schenectady R. R. Co.*, 23 *Wend.* 425; in *Hill v. Lafayette Ins. Co.* 2 *Mich.* 476 (cited in 1 *Whart. Com. on Ev.* § 507). See to the contrary, cases cited in *Abb. Tr. Ev.* 494, n. 1. Followed with *Snyder v. Farmers' Ins. & Loan Co.*, 13 *Wend.* 92 (Warranty in fire policy not to be created by construction) in *Hartford Prot'n Ins. Co. v. Harmer*, *supra*, 698 (59 *Am. Dec.*).
- Jeffes v. Cochran**, 47 *Barb.* 557. Aff'd, it seems, in 48 *N. Y.* 671; but without opinion. Decision in *Id.* disting'd (Application of doctrine of *lis pendens* to commercial paper, &c.) in *Holbrook v. N. J. Zinc Co.*, 57 *Id.* 616, 631.
- Jeffrey v. Bigelow**, 13 *Wend.* 518; s. c., 28 *Am. Dec.* 476, with note, wherein it is shown to have been frequently cited. See *Dunkle v. Kocker*; *Tice v. Gallup*. Commented on and explained with *Sandford v. Handy*, 23 *Wend.* 260. and other cases (Liability of principal for agent's deceit which he has neither authorized nor ratified) in *Whart. Com. on Ag.* § 478. Explained in 1 *Pars. on Contr.* 74, n. h. Discussed with numerous cases in *Bigel. Cas. on Torts*, 24.
- Jellinghaus v. N. Y. Ins. Co.**, 4 *Sandf.* 18. Further decision on the merits, in 6 *Duer*, 1; on the practice, in 5 *Boss.* 678; and on the merits again, in 8 *Id.* 281.
- Jemison v. Citizens' Sav'g's Bk. of Texas**, 24 *Hun.* 350. Rev'd in 85 *N. Y.* 546.
- Jencks v. Smith**, 1 *N. Y.* 90, mem. s. c., 3 *Den.* 592; aff'g 1 *Id.* 580. See argument of counsel in *Ct. of App.* in *How. App. Cas.* 150.
- Jenkins v. Continental Ins. Co.**, 12 *How. Pr.* 66. Disapproved (Right to compel assignment as flowing from right to redeem) in *Ellsworth v. Lockwood*, 42 *N. Y.* 89, 97.
- **v. De Groot**, 1 *Cai. Cas.* 122. Approved (Liability of separate estate of partner for firm debts) in *Bardwell v. Perry*, 19 *Vt.* 292; s. c., 47 *Am. Dec.* 687, 690, with note; *Murray v. Murray*, 5 *Johns. Ch.* 60, being referred to as fully and clearly stating the history of the subject. Collated with *Hammersley v. Lambert*, 1 *Johns. Ch.* 508; *Trustees of Lenke & Watts Orphan House v. Lawrence*, 11 *Paige*, 80; 2 *Den.* 577; *Voorhis v. Childs*, 17 *N. Y.* 354; *Richter v. Poppenhausen*, 43 *Id.* 74; *Hoyt v. Bonnett*, 50 *Id.* 538; *Pope v. Cole*, 55 *Id.* 124, and many other cases in 19 *Cent. L. J.* 467,

- where N. H., Vt., Conn., N. J., Ala., Ark., Tenn., Fla., Tex., Ind., Miss., and Ill., are said to authorize immediate remedy against the estate, while the contrary is held by N. Y., Ga., Wis., Penn., Ohio, and probably N. and S. Car. Approved (Right arising from survivorship not favored by the courts) in dissenting opinion of ARCHER, J., in *Waters Representatives v. Riley's Adm'r*, 2 *Harr. & G. (Md.)* 305; s. c., 18 *Am. Dec.* 302, 309.
- *v. Fahey*, 11 *Hun.* 351. Rev'd (Sale of estate in remainder belonging to infant) in 73 *N. Y.* 355, and so referred to in *Matter of Haight*, 14 *Hun.* 176. See *Code Civ. Pro.* 1881, § 2348, n.
- *v. Freyer*, 4 *Paige*, 47. See *McDowl v. Charles*; *Marsellis v. Thalhimer*. Collated with other cases (Who are comprehended in devise or bequest to "children" of a certain person) in 28 *Am. R.* 486, n.
- *v. Pell*, 17 *Wend.* 417. Aff'd in 20 *Id.* 450.
- *v. Union Turnpike Co.*, 1 *Cai. Cas.* 86; s. c., 2 *N. Y. Com. L. Law. ed.* 724, with brief note. Rev'g *Union Turnpike Co. v. Jenkins*, 1 *Cai.* 381; s. c., *Col. & C. Cas.* 264; also s. c., 2 *N. Y. Com. L. Law. ed.* 193, with brief note. Both decisions explained (Liability on subscription to stock) in *Fort Edward, &c. P'k Road Co. v. Payne*, 17 *Barb.* 573; *Sagory v. Dubois*, 3 *Sandf. Ch.* 493; *Herkimer Manuf. &c. Co. v. Small*, 21 *Wend.* 275. Applied in dissenting opinion in *Knowlton v. Congress & Empire Spring Co.*, 57 *N. Y.* 542. Decision in 1 *Cai.* discussed in *Ang. on Corp.* §§ 527, 530, 11 ed. Followed, as unaffected by reversal (Expectation of profits, as consideration) in *Smedes v. Utica B'k*, 20 *Johns.* 382. Decision in 1 *Cai. Cas.* doubted (Effect of statutory provision requiring payment on stock at time of subscription) in *Rensselaer & W. Plank-road Co.*, 16 *N. Y.* 457, n. Explained in *Dutchess Cotton Manuf. v. Davis*, 14 *Id.* 238, 244, citing also *Goshen, &c. Turnpike Road v. Hurtin*, 9 *Id.* 217. Relied on in *Excelsior Grain Binder Co. v. Stayner*, 25 *Hun.* 91, 95. Approved with *Goshen Turnpike Co. v. Hurtin*, 9 *Johns.* 218; *Highland Turnpike Co. v. McKean*, 10 *Id.* 154; *Dutchess Cotton Manuf. Co. v. Davis*, 14 *Id.* 238, in *Southern Life Ins. and Trust Co. v. Lanier*, 5 *Fla.* 110; s. c., 58 *Am. Dec.* 448. Criticised and disapproved with *Highland Turnpike Co. v. McKean*, 11 *Johns.* 98; *Crocker v. Crane*, 21 *Wend.* 211, in *Minneapolis & St. Louis R'y Co. v. Bassett*, 20 *Minn.* 535; s. c., 18 *Am. R.* 376, where *Beach v. Smith*, 30 *N. Y.* 116; *Black River & Utica R. R. Co. v. Clarke*, 25 *Id.* 208, were disting'd; and *Rensselaer & Washington R. R. Co. v. Barton*, 16 *Id.* 457, cited as doubting conclusion in *Jenkins v. Union Turnpike Co.* Followed with *Goshen Turnpike Co. v. Hurtin*, 2 *Johns.* 217; *Highland Turnpike Co. v. McKean*, 11 *Id.* 98, in *Hibernia T. Corp. v. Henderson*, 8 *Serg. & R. (Pa.)* 219; s. c., 11 *Am. Dec.* 593, with note. See however, dissenting opinion of DUNCAN, J.
- *v. Van Schaack*, 3 *Paige*, 242. Disting'd (Conclusiveness of judgment in partition) in *Jordan v. Van Epps*, 85 *N. Y.* 427, 434.
- *v. Waldron*, 11 *Johns.* 114; s. c., 6 *Am. Dec.* 359. Followed (Liability of inspector of election for refusing vote) in *Goetchens v. Matthewson*, 5 *Lana.* 217; *People v. Boas*, 29 *Hun.* 381. Followed in *Wheeler v. Patterson*, 1 *N. H.* 88; s. c., 8 *Am. Dec.* 41. Included with notes in *Brightly Cas. on Elect.* 190. Followed (Liability of officer having discretionary power) in *McCormick v. Burt*, 9 *Ill.* 163; s. c., 35 *Am. R.* 163, 166.
- *v. Wheeler*, 4 *Robt.* 575. Aff'd in 2 *Abb. Ct. App. Dec.* 442; s. c., 3 *Keyes*, 645.
- Jenks *v. Brown*, 4 *Hun.* 128. Aff'd in 66 *N. Y.* 629.
- *v. Hallet*, 1 *Cai.* 60. Aff'd in 1 *Cai. Cas.* 43.
- *v. Robertson*, 2 *Sup'm. Ct. (T. & C.)* 225. Aff'd, it seems, in 58 *N. Y.* 621, but without opinion.
- *v. Smith*. See *Jencks v. Smith*.
- Jenner *v. Joliffe*, 6 *Johns.* 9. Subsequent proceeding in 9 *Id.* 381. These decisions explained and limited (Property in custody of law, not to be made subject of new and separate action) in *Fairbanks v. Bloomfield*, 5 *Duer*, 434.
- Jennery *v. Olmstead*, 24 *Hun.* 602; abridg't s. c. as *Jenney v. Olmstead*, 12 *Weekly Dig.* 379. Rev'd in 90 *N. Y.* 363.
- Jennings, *Ex parte*, 6 *Cow.* 518; s. c., 8 *N. Y. Com. L. Law. ed.* 991, with brief note; s. c., 16 *Am. Dec.* 447, with note (containing citations) wherein it is said to have been frequently approved in N. Y. (Rights of riparian owners, in case of non navigable stream) though its doctrine is thought by the editor not to be applicable to large rivers, since *People v. Canal Appraisers*, 33 *N. Y.* 468, which is referred to as according with the prevalent doctrine in the U. S. See *Hooker v. Cummings*. Approved in *Che-nango Bridge Co. v. Paige*, 83 *N. Y.* 178, 185. Applied with *Child v. Starr*, 4 *Hill*, 369; *Halsey v. McCormick*, 13 *N. Y.* 296, in *Holbert v. Edens*, 5 *Lea (Tenn.)* 204; s. c., 40 *Am. R.* 26. Collated with other cases in *Mills Thomps. on Highw.* 3 ed. 47.
- Jennings *v. Camp*, 13 *Johns.* 94; s. c., 7 *Am. Dec.* 367, with note. See *McMillan v. Vanderlip*. Followed (Part performance of entire contract entitles to no recovery) in *Winstead v. Reid*, *Busbee's (N. C.) L.* 76; s. c., 57 *Am. Dec.* 571, with note.
- *v. Chenango County Mut. Ins. Co.*, 2 *Den.* 75. See *Bidwell v. Northwestern Ins. Co.*; *Brown v. Cattaraugus County Mut. Ins. Co.*; *Farmers' Ins. & Loan Co. v. Snyder*. Approved but disting'd (Warranty as to condition of insured premises) in *Gates v. Madison County Mut. Ins. Co.*, 2 *N. Y.* 51; 5 *Id.* 473; *Smith v. Mechanics' &c. Ins. Co.*, 32 *Id.* 401. Followed in Wil-

son v. Herkimer County Mut. Ins. Co., 6 *Id.* 59; Chaffee v. Cattaraugus County Mut. Ins. Co., 18 *Id.* 379. Applied in Bryce v. Lorillard Fire Ins. Co., 35 *Super. Ct. (J. & S.)* 401. Questioned and disting'd in Hartford Protection Ins. Co. v. Harmer, 2 *Ohio St.* 452; s. c., 59 *Am. Dec.* 699, and thought to have been overthrown by Gates v. Madison, &c. Ins. Co., 2 *N. Y.* 43; 5 *Id.* 469; s. c., 55 *Am. Dec.* 360. Examined in Glendale Manuf. Co. v. Protection Ins. Co., 21 *Conn.* 34. Cited as authority in Kelsey v. Universal Life Ins. Co., 35 *Conn.* 225. Applied (Whether warranty must be material) in Fitch v. Am. Popular Life Ins. Co., 2 *Sup'm Ct. (T. & C.)* 252. Disting'd (Evidence of knowledge of parties to modify conditions of insurance policy) in Harris v. Columbiana Co. Mut. Ins. Co., 18 *Ohio*, 116; s. c., 51 *Am. Dec.* 448, with note. Reviewed with Vandevoort v. Columbian Ins. Co., 2 *Cal.* 155; Plumb v. Cattaraugus Ins. Co., 18 *N. Y.* 392; Rowley v. Empire Ins. Co., 36 *Id.* 550; Rohrbach v. Germania Ins. Co., 62 *Id.* 47, 63; Maher v. Hibernian Ins. Co., 67 *Id.* 283; Van Schoick v. Niagara Fire Ins. Co., 68 *Id.* 438, in Franklin Fire Ins. Co. v. Martin, 11 *Vroom (N. J.)* 568; s. c., 29 *Am. R.* 271, 277, as showing the law in N. Y. to be unsettled and unsatisfactory on this point. Followed and approved with Brown v. Cattaraugus Mut. Ins. Co., 18 *N. Y.* 337 (Effect of knowledge by insurer's agent, of falsity of warranty) in Chase v. Hamilton Ins. Co., 20 *Id.* 56. Referred to with Brown v. Cattaraugus County Mut. Ins. Co., in 2 *Whart. Com. on Ev.* § 1172, as qualifying the conclusion there reached, but also referred to as overruled by later N. Y. cases. These two cases also criticised and disapproved in North American Fire Ins. Co. v. Throop, 22 *Mich.* 146; s. c., 7 *Am. R.* 638. Reviewed with Turley v. North Am. Ins. Co., 25 *Wend.* 374 (Construction to be put on stipulations in contract of insurance) in Hartford Protection Ins. Co., *supra* (59 *Am. Dec.* 697). Applied (Right of insured to repair) in Townsend v. Northw. Ins. Co., 18 *N. Y.* 175.

— v. Conboy, 10 *Hun.* 77; Rev'd in 73 *N. Y.* 230.

— v. Jennings, 5 *Sandf.* 174. Aff'd in 7 *N. Y.* 547. See Hone v. Van Schaick. Decision in 5 *Sandf.* discussed (Perpetuities) in 1 *Jarm. on Wills*, Rand and T. ed. 513, n.

— v. Merrill, 20 *Wend.* 9. Cited with Cartwright v. Wilmerding, 24 *N. Y.* 521; Walther v. Wetmore, 1 *E. D. Smith*, 7; Stevens v. Wilson, 6 *Hill*, 512; 3 *Den.* 472; Pogram v. Carson, 10 *Bow.* 505, and other cases (Factor's statutory right to pledge) in *Whart. Com. on Ag.* §§ 753, 754.

— v. Whittemore, 2 *Sup'm Ct. (T. & C.)* 377. Aff'd, it seems, in 58 *N. Y.* 675, but without opinion.

**Jermain v. Denniston.** See Paige v. Cagwin.

— v. Pattison, 46 *Barb.* 9. Discussed (Assignee taking possession under assignment for benefit of creditors) in *Burrill on Assign.* § 374, n. 3, 4 cd.

— v. Worth, 5 *Den.* 342. Rev'd in Jermain v. Denniston, 6 *N. Y.* 276.

**Jermaine v. Waggener**, 1 *Hill*, 279. Rev'd in 7 *Id.* 357.

**Jerome v. Boeram.** See Krekeler v. Thaulle.

— v. Ross, 7 *Johns. Ch.* 315; s. c., 11 *Am. Dec.* 484, with note, wherein it is said to have been extensively followed. See Livingston v. Livingston. Denied (Necessity that statute authorizing private property to be taken for public use, provide method for obtaining compensation) in Bloodgood v. Mohawk, &c. R. R. Co., 9 *Wend.*; 18 *Id.* 9, 17. Applied (Injunction to restrain trespass) in Troy & Boston R. R. Co. v. Boston, Hoosac T. &c. R'y Co., 86 *N. Y.* 107, 123; Quackenbush v. Van Riper, 2 *Green. Ch. (N. J.)* 350; s. c., 29 *Am. Dec.* 716, 720, with note. Disting'd, and Stevens v. Beekman, 1 *Johns. Ch.* 318, cited in Scudder v. Trenton Del. Falls Co. 1 *Saxt. Ch. (N. J.)*, 694; s. c., 23 *Am. Dec.* 756. Reviewed in White v. Flannigan, 1 *Md.* 525; s. c., 54 *Am. Dec.* 668. Referred to in Smith v. Pettingill, 15 *Verm.* 82; s. c., 40 *Am. Dec.* 667, as elaborately discussing the doctrine and placing it on its true ground. Followed and approved in Amelung v. Seekamp, 9 *Gill & J. (Md.)* 468, 473. Quoted and explained in 1 *High on Inj.* 2 ed. § 713, n. 4.

**Jervis v. Smith**, 7 *Abb. Pr. N. S.* 217. Collated with other cases (Payment of dividends by assignee for benefit of creditors) in *Bishop on Assign.* § 398.

**Jessup v. Carnegie**, 44 *Super. Ct. (J. & S.)* 260. Rev'd in 80 *N. Y.* 441. Another proceeding in 45 *Super. Ct. (J. & S.)* 310.

— v. Hulse, 29 *Barb.* 539. Rev'd in 21 *N. Y.* 168. See Brigham v. Tillinghast. Decision in 21 *N. Y.* followed as decisive (Validity of assignment for creditors, giving assignee discretion as to time of sale) in Benedict v. Huntington, 32 *Id.* 219, 225. Collated with other cases in *Bishop on Assign.* § 209. Commented on and collated with other cases in *Id.* § 195.

**Jesup v. Jones**, 32 *How. Pr.* 191. See (Jurisdiction in supplementary proceedings as determined by residence of debtor) *Code Civ. Pro.* 1881, § 2458, n.

**Jessurun v. Mackie**, 24 *Hun.* 624; s. c., 61 *How. Pr.* 261. Appeal dismissed in 86 *N. Y.* 622.

**Jetter, Matter of**, 55 *How. Pr.* 67; s. c., less fully, 14 *Hun.* 93. Rev'd in 78 *N. Y.* 601. Decision in *Id.* followed, but point not indicated, in Matter of Trustees of Presbytery of N. Y., 80 *Id.* 642.

**Jetter v. N. Y. & Harlem R. R. Co.**, 2 *Abb. Ct. App. Dec.* 458; s. c., 2 *Keyes*, 154. See Brown v. Buffalo & State Line R. R. Co. Followed (Violation of ordinance, as evidence of negligence) in Devlin v. Gallagher, 6 *Daly*, 494. Limited and disting'd in Knup-

- file v. Knickerbocker Ice Co., 84 *N. Y.* 488, 491. Cited as authority in *Ryan v. Thomson*, 38 *Super. Ct. (J. & S.)* 133, 135. Approved in *Baker v. Pendergast*, 32 *Ohio St.* 494; s. c., 30 *Am. R.* 620, 622. Cited as authority with *McGrath v. N. Y. Central, &c. R. R. Co.*, 63 *N. Y.* 522, in *Meek v. Penn. R. R. Co.*, 38 *Ohio St.* 633. See cases collated (Contributory negligence of parents, &c.) in 6 *Abb. N. C.* 115, n.
- Jewell v. Harrington**, 19 *Wend.* 471. Examined with other cases (Defences open to grantee who has taken subject to dower, mortgage, &c.) in *Thomas on Mort.* 298.
- **v. Schroeppel**, 4 *Cow.* 564. See *Linningdale v. Livingston*. Commented on (Recovery for work done under special contract) in *Pullman v. Corning*, 9 *N. Y.* 93. Recognized as authority (Assumpsit, in case of parol contract, wherein are incorporated stipulations of a deed) in *Vicary v. Moore*, 22 *Watts (Pa.)* 451; s. c., 27 *Am. Dec.* 323, with note.
- **v. Wright**, 12 *Abb. Pr.* 55. Rev'd in 30 *N. Y.* 259; s. c., 18 *Abb. Pr.* 80; 27 *How. Pr.* 481. See *Bowen v. Bradley*; *Cook v. Litchfield*. Decision in 30 *N. Y.* explained (Usury as determined by law of place) in *Wayne Co. Sav'gs Bk. v. Low*, 81 *Id.* 566, 570, which aff'd 6 *Abb. N. C.* 76, 84, which see. Opposed and *Moss v. Rainey*, *Buffalo Super. Ct.* (1866), preferred in *Bowen v. Bradley*, 9 *Abb. Pr. N. S.* 395. Criticised and doubted in *First Nat. Bank of N. Y. v. Morris*, 1 *Hun.* 680, 682. Followed in *Dickinson v. Edwards*, 13 *Id.* 405, which was aff'd in 77 *N. Y.* 573, which see. Disting'd in *Sheldon v. Haxton*, 24 *Hun.* 196.
- Jewitt v. Banning**, 23 *Barb.* 13. Aff'd in 21 *N. Y.* 27. Decision in *Id.* approved (Evidence of ill-will as tending to show commission of crime) in *Stokes v. People*, 53 *Id.* 164, 175.
- **v. Keenholts**, 16 *Barb.* 193. Limited (Effect of debts as lien on decedent's real estate) in *Fonda v. Chapman*, 23 *Hun.* 119, 122.
- **v. Miller**, 10 *N. Y.* 402. See *Torrey v. Bank of Orleans*. Quoted (Receiver as purchaser of trust property) in *High on Receiv.* § 194, n. 3.
- **v. Palmer**, 7 *Johns. Ch.* 65; s. c., 11 *Am. Dec.* 401. See *Frost v. Beekman*.
- **v. Woodward**, 1 *Edw. Ch.* 195. Disting'd (Validity of provision in assignment for benefit of creditors, enabling assignee to compromise) in *McConnell v. Sherwood*, 84 *N. Y.* 522, 530. Explained in *Burrillon Assign.* § 314, 4 ed.
- Jex v. Board of Education**, 1 *Hun.* 157. Disting'd (Declarations of agent) in *Pierson v. Atlantic Nat. Bank*, 77 *N. Y.* 304, 310.
- **v. Jacob**, 19 *Hun.* 105; s. c., more fully, 7 *Abb. N. C.* 452. Followed (Effect of recovery for portion of indivisible claim) in *Althof v. Fox*, *Hamilton Co. Ohio Dist. Ct.* Compare *Burritt v. Belfy*, 47 *Conn.* 323.
- Joannes v. Jennings**, 6 *Sup'm. Ct. (T. & C.)* 138. Followed (Practice on motion for new trial) in *Alfaro v. Davidson*, 39 *Super. Ct. (J. & S.)* 463, 466.
- John and Cherry Streets, Matter of**, 19 *Weid.* 659. See *Matter of Albany Street*. Explained (Change of ownership in real property by legislative act) in 3 *Washb. on Real Prop.* 4 ed. 214.
- Johns, Matter of**, 1 *Month. L. Bul.* 75. See to the contrary (Waiver of misnomer of defendant in supplementary proceedings) *Muldoon v. Pierz*, 1 *Abb. N. C.* 309.
- Johnson, Ex parte**, 3 *Cow.* 371. Examined with *Judges of Oneida C. P. v. People*, 18 *Wend.* 79 (Exercise of discretion by inferior jurisdiction, when not reviewable) in *People v. Stout*, 11 *Abb. Pr.* 17, 21, 25.
- Johnson v. Albany & Susquehanna R. R. Co.**, 40 *How. Pr.* 193. Rev'd in 5 *Lans.* 222, and that aff'd in 54 *N. Y.* 416; s. c., 13 *Am. R.* 607.
- **v. Bank of North America**, 5 *Robt.* 554. It appears from 6 *Id.* 573, that *MONELL, J.*, dissented. Reasserted (Payment of draft by check of drawers) in *Smith v. Miller*, 6 *Abb. Pr. N. S.* 234.
- **v. Beardslee**, 15 *Johns.* 3; s. c., 5 *N. Y. Com. L. Law. ed.* 990, with note citing cases to contrary. See *Dean v. Pitts*; *Mooers v. White*; *Smith v. Ludlow*; *Van Keuren v. Parmelee*. Overruled (Effect of promise of joint debtor to remove bar of statute of limitations) in *Van Keuren v. Parmelee*, 2 *N. Y.* 523. Denied with *Patterson v. Choate*, 7 *Wend.* 441; the cases of *Van Keuren v. Parmelee*, 2 *N. Y.* 523; *Shoemaker v. Benedict*, 11 *Id.* 176; *Winchell v. Hicks*, 18 *Id.* 558, being followed in *Kallenbach v. Dickinson*, 100 *Ill.* 426; s. c., 39 *Am. R.* 47, 59. Explained with *Hammon v. Huntley*, 4 *Cow.* 493; *Mooers v. White*, 6 *Johns. Ch.* 360 (Effect of promise by executor, &c.) in *Henderson v. Hsley*, 11 *Smedes & M. (Miss.)* 9; s. c., 49 *Am. Dec.* 41, 43, with note. Examined with *Hammon v. Huntley*, 4 *Cow.* 493; *Cayuga Co. Bank v. Bennett*, 5 *Hill*, 236, and authorities from other jurisdictions in *Shreve v. Joyce*, 36 *N. J.* (7 *Vroom.*) 44; s. c., 13 *Am. R.* 417. Commented on in *Ang. on Limit.* § 264, 6 ed.
- **v. Belden**, 2 *Lans.* 433. Aff'd in 47 *N. Y.* 130. See *Losee v. Clute*.
- **v. Bloodgood**, 2 *Cai. Cus.* 303; s. c., 1 *Johns. Cus.* 515; 1 *Am. Dec.* 93; 1 *N. Y. Com. L. Law. ed.* 239, with brief note. See *Anderson v. Van Alen*. Explained (Rights of assignee for creditors, as assignee for value) in *Schieffelin v. Hawkins*, 14 *Abb. Pr.* 112, 117. Approved (Notice of assignment of chose in action, when presumed) in *Tritt v. Colwell*, 31 *Penn.* 228.
- **v. Bridge**, 6 *Cow.* 693. Aff'd in 5 *Wend.* 342. Decision in 6 *Cow.* applied (Set-off, when only available) in *Chandler v. Drew*, 6 *N. H.* 469; s. c., 26 *Am. Dec.* 704, with note.



- **v. Brown**, 57 *Barb.* 118. Followed (Amendment of complaint before verdict) in *Knapp v. Roche*, 37 *Super. Ct. (J. & S.)* 395, 407.
- **v. Casey**, 3 *Robt.* 710. Reported in 28 *How. Pr.* 492.
- **v. Caulkins**, 1 *Johns. Cas.* 116; s. c., 1 *Am. Dec.* 102, with note, wherein its doctrine is shown to have been subsequently approved in *N. Y.*, as in *Willard v. Stone*, 7 *Cow.* 22; *Palmer v. Andrews*, 7 *Wend.* 142 (Evidence of plaintiff's character in action for breach of promise of marriage). Followed in *Green v. Spencer*, 3 *Mo.* 318; s. c., 26 *Am. Dec.* 672, with note. Explained (Defence that performance of contract has become impossible to other party) in 2 *Par. on Contr.* 675, n. n.
- **v. Conger**, 14 *Abb. Pr.* 195. Disting'd (Lessee's option as to renewal of lease) in *Bruce v. Fulton Nat. B'k*, 79 *N. Y.* 165.
- **v. Corbett**, 11 *Paige*, 265. See *Bates v. Underhill*. Disregarded (Power of surrogate as to disputed claim) in *Glacius v. Fogel*, 4 *Redf.* 516, 519; and compare *Same v. Same*, 88 *N. Y.* 434.
- **v. Crane**, 40 *Barb.* 78. Compare (Effect of prior unrecorded deed) *Ring v. Steele*, 4 *Abb. Ct. App. Dec.* 68.
- **v. Crofoot**, 37 *How. Pr.* 59; s. c., 53 *Barb.* 574. Disting'd (Leviable interest in products of leased premises) in *McCombs v. Becker*, 5 *Sup'm. Ct. (T. & C.)* 550, 552; *Schroepfel v. Dingman*, 17 *Weekly Dig.* 257.
- **v. Dalton**, 1 *Cow.* 543; s. c., 13 *Am. Dec.* 564, with note, wherein it, with *Gardner v. Thomas*, 14 *Johns.* 136, is said to have been frequently approved in *N. Y.* and elsewhere (Jurisdiction of torts committed on high seas).
- **v. Daverne**, 19 *Johns.* 134; s. c., 10 *Am. Dec.* 198. Disting'd (Letter or telegraphic dispatch as evidence) in *Howley v. Whipple*, 48 *N. H.* 483-90.
- **v. Dixon**, 1 *Daly*, 178. Criticised (as decided by a divided court, without allusion to principles previously announced in *Walker v. Swayzee*, 5 *Abb. Pr.* 136) in *Flynn v. Halton*, 43 *How. Pr.* 333, 351.
- **v. Dodd**, 56 *N. Y.* 76. Applied (Execution of power delegated to several) in *First Nat. B'k of North Bennington v. Town of Mt. Tabor*, 52 *Vt.* 87; s. c., 36 *Am. R.* 734, 741.
- **v. Elwood**, 53 *N. Y.* 431. Modified on reargument in 56 *Id.* 614. Further proceeding in 15 *Id.*, 14; and that rev'd in 82 *N. Y.* 362. See *Van Rensselaer v. Witbeck*.
- **v. First Nat. B'k of Hoboken**, 6 *Id.*, 124. Aff'd on opinion of DANIELS, J., in 68 *N. Y.* 616.
- **v. Gere**, 2 *Johns. Ch.* 546. Questioned (Claim of title by third person, as ground of relief against payment of purchase-money) in *Miller v. Avery*, 2 *Barb. Ch.* 582.
- **v. Gibson**, 4 *E. D. Smith*, 231. See *Burlingame v. Burlingame*.
- **v. Gilbert**, 4 *Hill*, 178. Applied with *Brown v. Curtis*, 2 *N. Y.* 225; *Harrison v. Sawtell*, 10 *Johns.* 242 (Guaranty, when not within statute of frauds) in *Garner v. Hudgins*, 46 *Mo.* 399; s. c., 2 *Am. R.* 520, 524. Quoted and explained in 3 *Par. on Contr.* 26, n. v.
- **v. Hart**, 3 *Johns. Cas.* 322. See *Mooers v. White*. Disting'd (Assignor of mortgage as party to foreclosure proceeding) in *Christie v. Herrick*, 1 *Barb. Ch.* 259; *Whitney v. McKinney*, 7 *Johns. Ch.* 147. Followed in *Kittle v. Van Dyck*, 1 *Sandf. Ch.* 78. Followed as never having been questioned,—in *Bard v. Poole*, 12 *N. Y.* 508. Explained (Transfer of title to mortgage) in *Trustees of Union College v. Wheeler*, 61 *Id.* 118. Approved (Effect of purchase by alien) in *Jackson v. Lunn*, 3 *Johns. Cas.* 113.
- **v. Hartshorne**, 52 *N. Y.* 173. Disting'd (Interest on advances by co-partner) in *Gilbooly v. Hart*, 8 *Daly*, 176, 179. Cited with *Jackson v. Johnson*, 11 *Hun.* 509; *Beacham v. Eckford*, 2 *Sandf. Ch.* 116, in *Story on Partn.* 7 ed. § 182, n., as indicating the weight of authority as to allowance of such interest. Cited (Termination of continuing contract with partnership, by change in partnership) in *Story on Partn.* 7 ed. § 249, n.
- **v. Hicks**. See *Waterman v. Whitney*.
- **v. Hudson River R. R. Co.**, 5 *Duer*, 21. Further decision in 6 *Id.* 633, aff'd in 20 *N. Y.* 65. See *Button v. Hudson R. R. Co.*; *Teal v. Barton*. Decision in 20 *N. Y.* approved (Contributory negligence, as question for jury) in *Jetter v. N. Y. & Harlem R. R. Co.*, 2 *Abb. Ct. App. Dec.* 460. Explained and followed (Contributory negligence as matter of defence) in *Urquhart v. City of Ogdensburgh*, 23 *Hun.* 75, 77. Decision in 5 *Duer* followed and approved in *Hoyt v. Hudson*, 41 *Wis.* 105; s. c., 22 *Am. R.* 714, 717. Cited as authority in *Cassidy v. Angell*, 12 *R. I.* 447; 34 *Am. R.* 690, with note collating *Reynolds v. N. Y. Central, & c. R. R. Co.*, 58 *N. Y.* 248; *Cordell v. Same*, 75 *Id.* 330, and other cases. See also, for extensive collation and discussion of *N. Y.* cases, 18 *Ab. L. J.* 144, 164, 184, 204; 20 *Id.* 359. Decision in 20 *N. Y.* followed (Degree of care required of railroad company) in *Fero v. Buffalo & State Line R. R. Co.*, 22 *Id.* 209, 213. Limited (Duty to give warning at crossings) in *Weber v. N. Y. Central, & c. R. R. Co.*, 58 *Id.* 451, 461. Collated with *Beisiegel v. N. Y. Central R. R. Co.*, 40 *Id.* 12; *Harty v. Central R. R. Co. of N. J.*, 42 *Id.* 472; *Richardson v. N. Y. Central R. R. Co.*, 45 *Id.* 850; *Eaton v. Erie R. R. Co.*, 51 *Id.* 544; *Culhane v. N. Y. Central, & c. R. R. Co.*, 60 *Id.* 133; *McGrath v. N. Y. Central, & c. R. R. Co.*, 59 *Id.* 468; *Cordell v. N. Y. Central, & c. R. R. Co.*, 70 *Id.* 123, and other cases in 26 *Am. R.* 208, n. Followed (Instinct of self-preservation as

- supplying place of positive evidence) in *Thomas v. Delaware, &c. R. R. Co.*, 11 *U. S. Cir. Ct. N. D. N. Y.*; 12 *Reporter*, 739; s. c., 8 *Fed. R.* 729.
- *v. —*, 2 *Sweeney*, 298. Rev'd in 49 *N. Y.* 455.
- *v. Hunt*, 23 *Wend.* 87. Dissented from (Effect of foreign statutory transfers) by *Ruggles, C. J.*, in *Hoyt v. Thompson*, 5 *N. Y.* 320, 343. See *Kelly v. Crapo*, 45 *Id.* 86. Explained in *Hibernia Bk. v. Mechanics*, &c. Bk., 21 *Hun.* 166, 176; which was aff'd in 84 *N. Y.* 367, 385, which see. Disting'd in *Lowry v. Hall*, 2 *Watts & Serg. (Pa.)* 29; s. c., 37 *Am. Dec.* 495, with note, *Abraham v. Plestoro*, 3 *Wend.* 538, being criticised and doubted, and *Morris v. De Witt*, 5 *Johns.* 71, being also relied on. Cited with other authorities in 2 *Kent Com.* 409, n. c., as conforming to the general doctrine prevalent in the U. S.
- *v. Jenkins*, 24 *N. Y.* 252. Cited as authority with *Thorn v. Knapp*, 42 *Id.* 474 (Punitive damages for breach of promise to marry) in *Kurtz v. Frank*, 76 *Ind.* 594; s. c., 40 *Am. R.* 275.
- *v. Johnson*, 1 *Edw.* 430. Rev'd in 4 *Paige*, 460; and that rev'd in 14 *Wend.* 637; s. c., 12 *N. Y. Com. L. Law. ed.* 742, with brief note citing cases. Decision in 4 *Paige* followed with *Hanford v. Hanford*, 3 *Edw.* 468; *People v. Stout*, 3 *Park.* 670; *Sloan v. N. Y. Central R. R. Co.*, 45 *N. Y.* 125; *Edgington v. Ins. Co.*, 13 *Hun.* 543; and *Gratton v. Ins. Co.*, 24 *Id.* 43, as indicative of a long line of decisions (Privilege as to communications between physician and patient) in *Gartside v. Conn. Mut. Life Ins. Co.*, 76 *Mo.* 446; s. c., 43 *Am. R.* 765. Decision in 14 *Wend.* cited in 1 *Whart. Com. on Ev.* § 606, as to such privilege being waived by the patient, *Allen v. Public Adm'r*, 1 *Bradf.* 221, being cited as to it not extending to testamentary inquiries, and *Hewitt v. Prime*, 21 *Wend.* 79, as to its not protecting consultations for criminal purposes. See *Code Civ. Pro.* 1881, § 836, n. Decision in 14 *Wend.* followed (Effect of condemnation when destroyed) in *Gordon v. Gordon*, 88 *N. C.* 51. Decision in 4 *Paige* discussed in 2 *Bish. on Mar. and D.* § 57, 6 ed. Commented on in 2 *Greenl. on Ev.* 14 ed § 521, n. a.
- *v. Jones*, 4 *Barb.* 369. Collated with other cases (Agency implied from course of dealing) in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 690.
- *v. Kelly*, 2 *Hun.* 139. See (Demurrer as to demand of judgment) *Code Civ. Pro.* 1881, § 488, n.
- *v. Kemp*, 11 *How. Pr.* 186. Overruled (Pleading incorporation) in *Shoe & Leather Bank v. Brown*, 9 *Abb. Pr.* 218, 219.
- *v. McConnel*, 15 *Hun.* 293. Explained (What constitutes assault and battery) in 3 *Greenl. on Ev.* 14 ed. § 85, n. a.
- *v. McIntosh*. See *Field v. N. Y. Central R. R. Co.*; *Pechner v. Phoenix Ins. Co.*; *Wright v. N. Y. Central R. R. Co.*
- *v. Martin*, 1 *Sup'm. Ct. (T. & C.)* 504, Disting'd (Irregularity in receiver's bond) in *Morgan v. Potter*, 17 *Hun.* 403; *Northrup v. Garrett*, *Id.* 497.
- *v. Monell*, 2 *Abb. Cl. App. Dec.* 470. Head-note criticised (Concealment of insolvency, as rendering sale voidable for fraud) in 33 *Am. Dec.* 708, n.
- *v. Morgan*, 6 *Daly*, 333. Aff'd in 68 *N. Y.* 494.
- *v. Moss*, 20 *Wend.* 145. Cited (Goods attached to be seized and returned as property of defendant) in *Waples on Proc. in Rem.*, § 590, n., as contrary to the doctrine in the text.
- *v. Mulry*, 4 *Robt.* 401. Aff'd in 51 *N. Y.* 634.
- *v. National Bank of Gloversville*, 74 *N. Y.* 329. Aff'd as *National Bank v. Johnson*, 104 *U. S.* 271. See *Cram v. Hendricks*. Decision 74 *N. Y.* explained and applied (Right of bank to discount) in *Atlantic State B'k of Brooklyn v. Savery*, 82 *Id.* 291, 302. Disting'd in *Hine v. Marmolejo*, 60 *Cal.* 229, 232.
- *v. N. Y. Central R. R. Co.*, 31 *Barb.* 196. In effect rev'd, in further decision, in 33 *N. Y.* 610; and that reaff'd on another appeal, 39 *How. Pr.* 127. See *Barker v. Havens*. Decision in 33 *N. Y.* followed (Duty of carrier to observe principal's instructions) in *Wilts v. Morrell*, 66 *Barb.* 511, 513. Applied in *McEwen v. Jeffersonville, &c. R. R. Co.*, 33 *Ind.* 368; s. c., 5 *Am. R.* 216. Decision in 39 *How. Pr.* explained (Torts produced by negligence) in *Moak's Underhill's Torts*, 1 *Am. ed.* 320.
- *v. Oppenheim*, 34 *Super. Ct. (J. & S.)* 416; s. c., 12 *Abb. Pr. N. S.* 449; 43 *How. Pr.* 433. Further decision in 35 *Super. Ct. (J. & S.)* 440, which was aff'd in 55 *N. Y.* 280. Decision in *Id.* disting'd (Effect of lease to preclude proof of verbal agreement) in *Lewis v. Seabury*, 74 *Id.* 409, 413. Compare (Evidence of oral condition) *Van Brunt v. Day*, 31 *Id.* 251; s. c., 8 *Abb. N. C.* 336, which rev'd 17 *Hun.* 166, which see. Applied (Effect of lessor's making erection on premises adjoining those leased) in *Doyle v. Lord*, 39 *Super. Ct. (J. & S.)* 433. Followed in *Hilliard v. N. Y. & Cleveland Gas Coal Co.*, 41 *Ohio St.* 662, 668. Compare *Code Civ. Pro.* § 2253.
- *v. People*, 4 *Den.* 364. Disting'd (Evidence to sustain conviction for larceny of bank-notes) in *Ramsen v. People*, 57 *Barb.* 324, 336.
- *v. —*, 65 *Barb.* 342. Aff'd in 55 *N. Y.* 512. Decision in 65 *Barb.* overruled in effect (Omission of averment in indictment) in *Wood v. People*, 53 *N. Y.* 511.
- *v. Rich*, 9 *Barb.* 680. Approved (Constitutionality of law passed subject to popular vote) in *Bull v. Read*, 13 *Gratt. (Va.)* 78, 95. Overruled in *Barto v. Himrod*, 8 *N. Y.* 493; and see *Bradley v. Baxter*, 8

- How. Pr.* 18; *Clarke v. City of Rochester*, 28 *N. Y.* 695.
- *v. Smith*, 8 *Johns.* 383. See *Manny v. Harris*.
- *v. —*, 14 *Abb. Pr.* 421. See (Docketing judgment in justices' court) *Code Civ. Pro.* 1881, § 3021, *n.* Collated with other cases in *Throop's Justices' Man.* 2 ed. 71.
- *v. Steamboat Sandusky*, 5 *Wend.* 510. See to the contrary (Meaning of "supplies") *Clark v. Smith*, 14 *Ill.* 361.
- *v. Stagg*, 2 *Johns.* 510. Relied on with *Jackson v. Dickenson*, 15 *Id.* 309; *Jackson v. Ramsay*, 3 *Cow.* 75 (Application of doctrine of relation) in *Cavender v. Smith*, 3 *G. Greene (Iowa)*, 349; *s. c.*, 56 *Am. Dec.* 541. Followed as the prevailing doctrine (Conveyance of an equitable interest in land is within recording acts) in *Edwards v. McKernan*, *Sup'm Ct. (Mich.)* 22 *Northw. Rep.* 20, 22. Quoted (All acts necessary to make conveyance are to be taken together) in 3 *Washb. on Real Prop.* 4 ed. 309.
- *v. Underhill*, 52 *N. Y.* 203. Disting'd (Liability created by purchase of stock) in *Wintringham v. Rosenthal*, 25 *Hun.* 580, 582. Disting'd with *Shellington v. Howland*, 53 *N. Y.* 376; *Schenck v. Andrews*, 46 *Id.* 593; *Cuykendall v. Douglas*, 19 *Hun.* 577 (Effect of non-payment of increased stock on liability of original stockholders) in *Veeder v. Mudgett*, 95 *N. Y.* 295.
- *v. Weed*, 9 *Johns.* 310; *s. c.*, 6 *Am. Dec.* 270. See *Coddington v. Bay*; *Ontario Bank v. Lightbody*; *Tobey v. Barber*. Limited (Effect of taking note to suspend original cause of action) in *Whitbeck v. Van Ness*, 11 *Johns.* 412. Followed in *Porter v. Talcott*, 1 *Cow.* 359, 384. Followed with *Tobey v. Barber*, 5 *Johns.* 68, in *Steamboat Charlotte v. Hammond*, 9 *Mo.* 58; *s. c.*, 43 *Am. Dec.* 536, 639, with note. Followed (Return of valueless note, when unnecessary) in *Pope v. Nance*, 1 *Stev. (Ala.)* 351; *s. c.*, 18 *Am. Dec.* 60.
- *v. Wetmore*, 12 *Barb.* 433. See (Contents of demurrer) *Code Civ. Pro.* 1881, § 490, *n.*
- *v. White*, 11 *Barb.* 194. Disting'd (Removal of fixtures from mortgaged premises) in *Sullivan v. Toole*, 26 *Hun.* 203. Doubted (Restraining waste of mortgaged premises) in *Thomas on Mort.* 53.
- *v. Whitlock*, 13 *N. Y.* 344. Questioned, and said to be superseded (Separate findings of fact by referee) in *Manley v. Ins. Co. of N. A.*, 1 *Luns.* 20; *Vanslyke v. Hyatt*, 46 *N. Y.* 263. See (Exceptions) *Code Civ. Pro.* 1881, § 994, *n.* Applied (Time of service of case) in *French v. Powers*, 80 *N. Y.* 146, 149. See (Necessity of case) *Code Civ. Pro.* 1881, § 998, *n.* See (Motion for new trial) *Id.* § 1002, *n.*
- *v. Williams*, 39 *Super. Ct. (J. & S.)* 547. Aff'd, it seems, in 63 *N. Y.* 622, but without opinion.
- *v. Wygant*. See *Seers v. Fowler*.
- *v. Yeomans*, 8 *How. Pr.* 140. Explained and applied (Security for costs, pending appeal) in *Flint v. Van Deusen*, 24 *Hun.* 440, 442.
- *v. Zink*, 52 *Barb.* 396. Aff'd in 51 *N. Y.* 333. Decision in *Id.* applied (Subrogation to benefits of mortgage) in *Twombly v. Cassidy*, 82 *Id.* 155, 159. Followed (Sale of land subject to mortgage) in *Lewis v. Day*, 53 *Iowa*, 579.
- Johnston v. Allen*, 39 *How. Pr.* 506. See *People v. Humphrey*. Cited (Repudiation of relation of husband and wife) in 2 *Whart. Com. on Ev.* § 1151.
- *v. Johnston*, 1 *Robt.* 642; *s. c.*, 16 *Abb. Pr.* 43. Not followed (Writ of *exeat* abolished by Code) in *Collins v. Collins*, 17 *Hun.* 598. Disapproved with *Fuller v. Eunice*, 2 *Sandf.* 626, in *Beckwith v. Smith*, 4 *Lans.* 182. See *Code Civ. Pro.* 1881, § 548, *n.*
- Johnston Harvester Co. v. Meinhardt*, 24 *Hun.* 489. Reported in 9 *Abb. N. C.* 393.
- Jones, Matter of*, 4 *Sandf. Ch.* 615. Disting'd (Commissions of trustees) in *Matter of Moffat*, 24 *Hun.* 325, 327.
- *v. Bach*, 48 *Barb.* 568. Rev'd as *Wood v. Bach*, in 54 *Id.* 134.
- *v. Baker*, 7 *Cow.* 455. Approved (Action for damages for injury caused by conspiracy among employees) in *Mapstrick v. Ranage*, 9 *Neb.* 390; *s. c.*, 31 *Am. R.* 415, 417.
- *v. Barlow*, 38 *Super. Ct. (J. & S.)* 142. Rev'd in 62 *N. Y.* 202, unless plaintiff should stipulate to modify. See *Harger v. McCullough*. Decision in 62 *N. Y.* applied (Liability of trustees of corporation for its debts) in *Bruce v. Platt*, 80 *Id.* 379, 388; *Whitney Arms Co. v. Barlow*, 63 *Id.* 73. Explained in *Duckworth v. Roach*, 8 *Daly*, 159, 161, which was aff'd in 81 *N. Y.* 49, which see. Disting'd in *Robinson v. Attrill*, 66 *Iowa. Pr.* 121; *Anderson v. Speers*, 21 *Hun.* 568, 571, which rev'd 8 *Abb. N. C.* 383, which see. Disting'd with *Shaler & Hall Quarry Co. v. Bliss*, 27 *N. Y.* 297, in *Vernon v. Palmer*, 48 *Super. Ct. (J. & S.)* 231. Applied (Right of creditor to maintain separate action to enforce such liability) in *Wiles v. Suydam*, 10 *Hun.* 578.
- *v. Benedict*, 17 *Hun.* 128. Aff'd in 83 *N. Y.* 79.
- *v. Butler*, 51 *N. Y.* 658. Rev'g, in effect, 30 *Barb.* 641; *s. c.*, 20 *How. Pr.* 189. Further proceeding in 11 *Hun.* 413. See *Bostwick v. Atkins*; *Jackson v. Carpenter*.
- *v. Carroll*, 3 *Hun.* 556. Fully reported in 5 *Sup'm Ct. (T. & C.)* 631.
- *v. Case*, 38 *How. Pr.* 349. Disting'd (Trial fee on discontinuance) in *Sutphen v. Lash*, 10 *Hun.* 120, 122.
- *v. Caswell*, 3 *Johns. Cas.* 29; *s. c.*, 2 *Am. Dec.* 134, with note. See *Doolin v. Ward*. Reviewed and recognized as authority with *Doolin v. Ward*, 6 *Johns.* 194; *Troup v. Wood*, 4 *Johns. Ch.* 228; *Hawley v. Cramer*, 4 *Cow.* 718 (Invalidity of agree-

- ments not to bid) in *James v. Fulcro*, 5 *Tex.* 512; s. c., 55 *Am. Dec.* 743, 749. Followed and approved with *Troup v. Wood*, 4 *Johns. Ch.* 254; *Thompson v. Davies*, 13 *Johns.* 113; in *Hamilton v. Hamilton*, 2 *Rich. Eq. (So. Car.)* 355; s. c., 46 *Am. Dec.* 58, 61. Followed and approved with *Troup v. Wood*, 4 *Johns. Ch.* 254, in *Dudley v. Odom*, 5 *S. C.*, 134; s. c., 22 *Am. R.* 6, 9, 10. Approved with *Doolin v. Ward*, 6 *Johns.* 194; *Wilbur v. How*, 8 *Id.* 444; *Thompson v. Davies*, 13 *Id.* 112; in *Gulick v. Ward*, 5 *Halst. (N. J.)* 87, s. c., 18 *Am. Dec.* 389, 394, with note.
- *v. Chantry*, 1 *Hun.* 613. Fully reported in 4 *Sup'm. Ct. (T. & C.)* 63. Explained (Nuisance in highway) in *Wood on Nuis.* 2 ed. § 263, n. 1. Discussed in 1 *Add. on Torts*, 2 n. 1 *Wood's ed.*
- *v. Clark*, 20 *Johns.* 51. Followed (Attornment of tenant of mortgagor to mortgagee) in *Magill v. Hinsdale*, 6 *Conn.* 464a.; s. c., 16 *Am. Dec.* 70, with note. See *Co. Litt.* 309a, n. 272.
- *v. Cook*, 1 *Cow.* 309. See *McIntyre v. Rowan*.
- *v. —*, 11 *Hun.* 230. See (Notice of appeal in justices' court) *Code Civ. Pro.* 1881, § 3070, n.
- *v. Dana*, 24 *Barb.* 395. Cited as authority (When only validity of incorporation may be impeached) in *Lafin and Rand Powder Co. v. Sinsheimer*, 46 *Md.* 315; s. c., 24 *Am. R.* 522.
- *v. Fireman's Fund Ins. Co.*, 2 *Daly*, 307. Aff'd in 51 *N. Y.* 318. See *Hickok v. Trustees of Plattsburgh*.
- *v. Gardner*, 10 *Johns.* 266. Followed (Inchoate right of dower as incumbrance) in *Porter v. Noyes*, 2 *Greenl. (Me.)* 22; s. c., 11 *Am. Dec.* 30.
- *v. Grant*, 10 *Paige*, 350. Disting'd (Adjudication between co-defendants) in *Dusenbury v. Fisher*, 47 *Super. Ct. (J. & S.)* 482, 487.
- *v. Hake*, 2 *Johns. Cas.* 60; s. c., 1 *N. Y. Com. L. Law. ed.* 488, with brief note as to effect of purchaser of negotiable paper receiving usurious interest. See *Aeby v. Rapelye*. Applied with *Wilkie v. Roosevelt*, 3 *Johns. Cas.* 66, 206 (Effect of usury on subsequent transactions) in *Bridge v. Hubbard*, 15 *Mass.* 96; s. c., 8 *Am. Dec.* 86.
- *v. Hay*, 52 *Barb.* 501. Disting'd (Recovery where contract is void under statute of frauds) *Van Vaulkenburg v. Croffut*, 15 *Hun.* 147, 150.
- *v. Jones*, 18 *Hun.* 438. Appeal dismissed in 81 *N. Y.* 35. In head note of decision in *Id.* for section of Code in 8th line from bottom, read "190," not "198."
- *v. Judd*, 4 *N. Y.* 411. See *Harmony v. Bingham*. Explained and applied (Recovery on *quantum meruit* in case of special contract) in *Marsh v. Holbrook*, 3 *Abb. Ct. App. Dec.* 180; *Wolfe v. Howes*, 24 *Barb.* 176, which was aff'd in 20 *N. Y.* 197, 202, which see; *Heine v. Meyer*, 61 *Id.* 176.
- Disting'd in *McConihe v. N. Y. & Erie R. Co.*, 20 *Id.* 49; *Clark v. Gilbert*, 26 *Id.* 284. Compare *Same v. Same*, 32 *Barb.* 576, 584. Explained (Performance of contract, when excused) in *Niblo v. Binsse*, 44 *Barb.* 59, n., which was rev'd in 3 *Abb. Ct. App. Dec.* 375, 381, which see; *First Nat. B'k of Ballston Spa v. Ins. Co. of N. America*, 5 *Luns.* 205. Applied (Contract when terminated through the act of the law) on *Hildreth v. Buell*, 18 *Barb.* 110; *Mutual Benefit Life Ins. Co. v. Hillyard*, 8 *Vroom (N. J.)* 444; s. c., 18 *Am. R.* 741, 751.
- *v. Kent*, 45 *Super. Ct. (J. & S.)* 66. Rev'd in 80 *N. Y.* 585; s. c., 8 *Abb. N. C.* 300.
- *v. Lawlin*, 1 *Sandf.* 722. Overruled (Requisites of affidavit to obtain examination of judgment debtor) in *Anon.*, 3 *Id.* 725.
- *v. Merchants' Bank of Albany*, 4 *Robt.* 221. This is not the opinion of the court. See decision reported in 6 *Id.* 162.
- *v. Morrill*, 42 *Barb.* 623. Disting'd (Boarding-house keepers) in *Cady v. McDowell*, 1 *Lans.* 484.
- *v. N. Y. & Erie R. R. Co.*, 29 *Barb.* 633. See *Conger v. Hudson River R. R. Co.*; *Wibert v. N. Y. & Erie R. R. Co.* Followed (Damages for failure of carrier to deliver) in *Kirkland v. Leary*, 2 *Sweeney*, 677.
- *v. Norwich & N. Y. Transportation Co.*, 50 *Barb.* 193. Dictum disapproved (Time of objection to want of jurisdiction over foreign corporation) in *McCormick v. Penn. Cent. R. R. Co.*, 49 *N. Y.* 303. Explained and compared (Common carrier, how long liable for passenger's baggage) in *Ang. on Car.* § 114, n. a., 5 ed.
- *v. Norwood*, 37 *Super. Ct. (J. & S.)* 276. Aff'd, it seems, in 66 *N. Y.* 616, but without opinion.
- *v. Osgood*, 6 *N. Y.* 233. Applied (Exception to charge, when insufficient) in *O'Donnell v. N. Y. & Harlem R. R. Co.*, 3 *Daly*, 409, 414.
- *v. People*, 20 *Hun.* 546. Aff'd, it seems, in 81 *N. Y.* 637, on opinion below.
- *v. —*, 5 *Park.* 126. Followed (Possession of stolen goods as *prima facie* evidence) in *Knickerbocker v. People*, 57 *Barb.* 365, 375.
- *v. Phoenix Bank*, 3 *N. Y.* 228. See *Hatch v. Mann*. Collated (Affirmance by infant of contract upon reaching majority) in *Euell Lead. Cas. on Inf. &c.* 169.
- *v. Roberts*, 4 *Edm.* 611. Aff'd in 6 *Ch. Sent.* 37, and that aff'd in *How. App. Cas.* 315.
- *v. Savage*, 6 *Wend.* 658. Subsequent decision in 10 *Id.* 658. See *Trimble v. Thorne*. Decision in 6 *Id.* overruled (Presumptive evidence of notice to indorser) in *Tebbetts v. Dowd*, 23 *Wend.* 379, 385, 398, 413. Decision in 10 *Id.* followed (Attorney's liability for costs of non-resident) in *Wilmot v. Meserole*, 16 *Abb. Pr. V. S.* 308.
- *v. Seligman*, 16 *Hun.* 230. Aff'd in 81 *N. Y.* 190.

- **v. Seward**, 40 *Barb.* 563; s. c., 26 *How. Pr.* 33. Rev'd in 41 *Barb.* 269; s. c., 17 *Abb. Pr.* 377; 26 *How. Pr.* 433. Decision in *Id.* disapproved (Validity of U. S. Habeas Corpus Act [of March 3, 1863], as defense to action) in *Benjamin v. Murray*, 28 *How. Pr.* 193.
- **v. Sheldon**, 50 *N. Y.* 477. Applied (Jurisdiction of proceedings for sale of trespassing animals) in *Coles v. Burns*, 21 *Hun.* 246, 249. Compare *Code Civ. Pro.* 1881, § 3085, n.
- **v. Smith**, 5 *Sup'm. Ct. (T. & C.)* 490; mem: s. c., 3 *Hun.* 351. Rev'd in 64 *N. Y.* 180. Further decision in 73 *Id.* 205. Decision in *Id.* applied (Location of boundary line by division fence acquiesced in by adjoining owners) in *Sherman v. Kane*, 86 *Id.* 57, 73; which aff'd 46 *Super. Ct. (J. & S.)* 310, which see.
- **v. Terre Haute & Richmond R. Co.**, 29 *Barb.* 353; s. c., 17 *How. Pr.* 529. Further decision to similar effect in 57 *N. Y.* 196. Decision in 29 *Barb.* followed and approved with *Brundage v. Brundage*, 65 *Id.* 397 (Who entitled to stock dividend) in *Bright v. Lord*, 51 *Ind.* 272; s. c., 19 *Am. R.* 732, 734.
- **v. Thompson**, 6 *Hill*, 621. Followed (Correctness of decision on demurrer, when admitted) in *People v. Reagh*, 60 *Barb.* 527.
- **v. U. S. Slate Co.**, 16 *How. Pr.* 129. Followed (Time to move to set aside judgment for irregularity) in *Jenkins v. Esterly*, 24 *Wisc.* 340.
- **v. Walker**, 1 *Buff. Super. Ct. (Sheldon)* 350. Aff'd in 63 *N. Y.* 612. Decision in *Id.* disting'd (Married woman when bound by acts of her husband as agent) in *Treman v. Allen*, 15 *Hun.* 4. Followed in *Lauer v. Bandow*, 43 *Wisc.* 556; s. c., 28 *Am. R.* 571, 574.
- **v. Welwood**, 9 *Hun.* 166. Aff'd in 71 *N. Y.* 203. Another proceeding in 1 *Sup'm. Ct. (T. & C.)* Add. 11.
- Jordan v. National Shoe & Leather Bank**, 12 *Hun.* 512. Aff'd in 74 *N. Y.* 467; s. c., 30 *Am. R.* 312. Another proceeding in 45 *Super. Ct. (J. & S.)* 423. Decision in 74 *N. Y.* applied (Right of set-off) in *Taylor v. Mayor, &c. of N. Y.*, 82 *Id.* 10, 17; *Seymour v. Dunham*, 24 *Hun.* 93, 95, 97. See *Code Civ. Pro.* 1881, §§ 503, n., 506, n. Explained (Counter-claims in actions by executors or administrators) in note by *M. H. Tinkroop*, 3 *Civ. Pro. R. (Browne)* 226.
- **v. Poillon**, 77 *N. Y.* 518. Disting'd (Completion of purpose where title is doubtful) in *Onderdonk v. Ackerman*, 62 *How. Pr.* 318, 322. Approved and disting'd (Parties to proceedings for sale of real estate of decedent) in *Matter of Dolan*, 88 *N. Y.* 309.
- **v. Van Epps**, 19 *Hun.* 526. Aff'd in 85 *N. Y.* 427. Compare (Inchoate right of dower as affected by proceedings in partition) *Code Civ. Pro.* § 1570. •
- **v. Volkening**, 14 *Hun.* 118. Previous proceeding in 72 *N. Y.* 300.
- Josephine, The**, 39 *N. Y.* 19. See *Brookman v. Hamill*. Commented upon and disting'd (Constitutionality of State statute giving lien on vessel) in *Shepherd v. Steele*, 43 *N. Y.* 52. Explained and limited in *Brookman v. Hamill*, *Id.* 555. Limited in *Fisher v. Luling*, 33 *Super. Ct. (J. & S.)* 337, 345. Disapproved, but followed as controlling, *Ferran v. Hosford*, 54 *Barb.* 200. Explained in *King v. Greenway*, 71 *N. Y.* 413, 418. Reaff'd in *Poole v. Kermit*, 59 *Id.* 554, 556. Followed in *The B. F. Woolsey*, 18 *Blatchf. C. Ct.* 344, 348; *Re Surplus and Remnants of the Proceeds of the Ship Edith*, 11 *Id.* 451, 453, 456; *The Circassian*, *Id.* 472, 479.
- Josephthal v. Heyman**, 2 *Abb. N. C.* 22. For a similar action between apparently the same parties, see *Josephthal v. Steffen*.
- **v. Steffen**, 8 *Weekly Dig.* 61. Rev'd in 83 *N. Y.* 612, but without opinion. See *Josephthal v. Heyman*.
- Joslin v. Cowee**, 60 *Barb.* 48. Rev'd in 52 *N. Y.* 90. Further decision in 56 *Id.* 626. See *Rowe v. Stevens*; *Silsbury v. McCoon*. Decision in 52 *N. Y.* cited (When factor may bind principal by sale of goods, without receiving money in payment) in *Whart. Com. on Ag.* § 742, n. Decision in 56 *N. Y.* cited (When agent may, with principal's consent, accept adverse interest) in *Whart. Com. on Ag.* § 244. Also cited with *Warren v. Sprague*, 4 *Edw.* 416; *Herrick v. Catley*, 1 *Daly*, 512; in *Id.* § 573, with respect to attorneys.
- Joslyn v. Fisk**, 59 *Barb.* 308. It seems from *Id.* 313, that the court did not adopt the opinion here reported.
- Josuez v. Conner**, 7 *Daly*, 448. Appeal dismissed in 75 *N. Y.* 156.
- **v. Murphy**, 6 *Daly*, 324. Further decision in *Id.* 404.
- Journey v. Brackley**, 1 *Hill*, 447. Collated with other cases (When assignee of lease is liable for rent) in *McAdam on Landl. & Ten.* 2 ed. § 132.
- Joy v. Hopkins**, 5 *Den.* 84. Collated with other cases (Opinion of value) in 36 *Am. R.* 437, n. See to the contrary *Graves v. Moses*, 13 *Minn.* 335. But see *Abb. Tr. Ev.* 347.
- Joyce v. Adams**, 2 *Sandf.* 1. Rev'd in 8 *N. Y.* 391. Decision in *Id.* cited as a case in which the general rule is succinctly stated by *Jewett, J.* (Sale of specific chattels unconditionally) in *Benj. on Sales*, § 319 (Corbin's 4 *Am. ed.*)
- **v. Mayor, &c. of N. Y.**, 12 *Abb. Pr.* 309. Explained (Review of order judgment opening judgment) *Ramsay v. Gould*, 4 *Lans.* 476, 479.
- **v. Williams**, 14 *Wend.* 141. Disting'd (Liability of firm on firm note) in *Osgood v. Glover*, 7 *Daly*, 367, 372.
- J. Russell Manuf. Co. v. New Haven Steamboat Co.** See *Russell v. Same*.
- Judah v. Harris**, 19 *Johns.* 144. See *Keith*

- v. Jones. Approved (Negotiability of instrument) in *Pardee v. Fish*, 60 *N. Y.* 265, 270. See to the contrary *McCormick v. Trotter*, 10 *Serg. & R. (Pa.)* 94. Compared in 4 *Am. L. Reg. N. S.* 344. Included in 1 *Ames Cas. on B. & N.* 47.
- *v. Randal*, 2 *Cal. Cas.* 324. Approved and applied (What constitutes total loss) in *Williams v. Hartford Ins. Co.*, 54 *Cal.* 442; s. c., 35 *Am. R.* 77.
- Judd v. Fox**, 9 *Cow.* 259. Shown in 9 *Am. Dec.* 105, n. to be contrary (Replevying property taken on execution from judgment debtor's possession) to what is now settled law in *N. Y.*, as laid down in *Dunham v. Wyckoff*, 3 *Wend.* 280; *Rogers v. Weir*, 34 *N. Y.* 463, and adapted in various States.
- *v. Fulton*. See *Cornell v. Moulton*.
- *v. O'Brien*, 21 *N. Y.* 186. Applied (Sufficiency of notice of sale on foreclosure) *Candee v. Burke*, 4 *Sup'm. Ct. (T. & C.)* 143, 146.
- *v. Seekins*, 3 *Sup'm. Ct. (T. & C.)* 266. Aff'd in 62 *N. Y.* 266.
- Judd Linseed, &c. Oil Co. v. Hubbell**, 76 *N. Y.* 543. Disting'd (Right of co-surety to contribution as affected by entry of judgment against him) in *Waggoner v. Walrath*, 24 *Hun.* 443, 445.
- Judge v. Hall**, 5 *Lans.* 69. Disapproved (Complaint in action in County Court) in *Holbrook v. Baker*, 16 *Hun.* 176.
- Judges of Oneida Common Pleas v. People**, 18 *Wend.* 79. See *Ex parte Johnson*. Cited approvingly with other authorities (Mandamus not the process to review judicial errors) in 1 *Kent Com.* 322 n. b.
- Judson v. Easton**, 1 *Sup'm. Ct. (T. & C.)* 598. Aff'd in 58 *N. Y.* 664.
- *v. Gibbons*, 5 *Wend.* 224. Not followed under *R. S.* (Power of executor before letters granted) in *Humbert v. Wurster*, 22 *Hun.* 405. Confirmed (Retraction of renunciation) in *Code Civ. Pro.* § 2639.
- *v. Gray*, 11 *N. Y.* 408. See *Adams v. Hopkins*; *Schemerhorn v. Vanderheyden*. Followed as settled law (Liability of attorney for fees of officer) in *Birkbeck v. Stafford*, 14 *Abb. Pr.* 285, 289. Also followed in *Campbell v. Cothran*, 65 *Barb.* 536, which was aff'd in 56 *N. Y.* 281, which see. Explained and applied in *Bonyng v. Waterbury*, 12 *Hun.* 535. Quoted and collated with other cases in *Smith on Sheriffs*, 524.
- *v. Stilwell*, 26 *How. Pr.* 513, 523. Qualified (Defenses in action by undisclosed principal) in 38 *Am. Dec.* 619, n.
- Juhel v. Church**, 2 *Johns. Cas.* 333; s. c., 1 *N. Y. Com. L. Law. ed.* 534, with brief note. With this case and *Buchanan v. Ocean Ins. Co.*, 6 *Cow.* 318; *Bunn v. Riker*, 4 *Johns.* 426. Compare (Validity of wagering contract) *Amory v. Gilman*, 2 *Mass.* 1; *Babcock v. Thompson*, 3 *Pick. (Mass.)* 446; *Adams v. Penn. Ins. Co.*, 1 *Rawle (Pa.)* 107. See 1 *R. S.* 662, §§ 8, 9, 10.
- *v. Rhinelander*, 2 *Johns. Cas.* 120. Aff'd in *Id.* 487. These decisions criticised (Disclosure to underwriter as to insurance of contraband of war) in 3 *Kent Com.* 269, n. a.
- Juland v. Rathbone**, 39 *Barb.* 97. Disapproved as to validity of assignment, but aff'd on other grounds, in 39 *N. Y.* 369. Decision in 39 *Barb.* examined and explained with *Van Vleet v. Slauson*, 45 *Id.* 317; *Evans v. Chapin*, 12 *Abb. Pr.* 161; 20 *How. Pr.* 289; *Barbour v. Emerson*, 16 *Abb. Pr.* 366 (Provisions in Assignment Act, when directory) in *Hardman v. Bowen*, 39 *N. Y.* 196. Decision in *Id.* disting'd (Assignment when invalidated by failure to conform to requirements of statute) in *Worthy v. Benham*, 13 *Hun.* 176. Dicta herein overruled in *Brennan v. Willson*, 4 *Abb. N. C.* 279, 287, which aff'd 7 *Daly*, 59, which see. Followed in *Hedges v. Buggay*, 6 *Sup'm Ct. (T. & C.)* 304. Rule herein said to be abrogated,—in *Produce Bank v. Morton*, 67 *N. Y.* 199.
- Julke v. Adams**, 1 *Redf.* 454. Disting'd (Declarations of legatee, &c., as tending to show undue influence) in *La Bau v. Vanderbilt*, 3 *Id.* 404.
- *v. Jumel*, 7 *Paige*, 591. Explained with *Ferris v. Crawford*, 2 *Den.* 595; *Tillotson v. Boyd*, 4 *Sandf.* 516; *Murray v. Smith*, 1 *Duer*, 412 (Effect of clause in deed, declaring it to be subject to mortgage) in *Stebbins v. Hall*, 29 *Barb.* 524. Explained (Power of surrogate to enforce right of subrogation) in *Leviness v. Cassebeer*, 3 *Redf.* 497. Applied (Conversion of equitable into legal estate) in *Bowen v. Chase*, 94 *U. S.* 812, 819.
- *v. Marine Ins. Co.*, 7 *Johns.* 412; s. c., 5 *Am. Dec.* 283. See *Robinson v. United Ins. Co.*
- Justh v. National B'k of Commonwealth**, 36 *Super. Ct. (J. & S.)* 273; s. c., 45 *How. Pr.* 492. Aff'd in 56 *N. Y.* 478. Decision in *Id.* disting'd (Payment of check to wrongful holder) in *Johnson v. First Nat. Bank of Hoboken*, 6 *Hun.* 124, 126. Approved (Existing debt as consideration to uphold title to money fraudulently obtained) in *Stephens v. Board of Education of Brooklyn*, 79 *N. Y.* 183, 188. Explained (Recovery of money, &c., paid by mistake) in *Southwick v. First Nat. B'k of Memphis*, 84 *Id.* 420, 434.
- Justice v. Lang**, 42 *N. Y.* 493. Modified or questioned on further decision in 52 *Id.* 323. Further decision in 39 *Super. Ct. (J. & S.)* 283, which was aff'd in 63 *N. Y.* 633, but without opinion. Decisions in 42 and 52 *Id.* followed (Parol proof of consideration for agreement) in *Mason v. Decker*, 42 *Super. Ct. (J. & S.)* 115, which was aff'd in 72 *N. Y.* 595, which see. Explained (Sufficiency of memorandum required by statute of frauds) in *Butler v. Thomson*, 92 *U. S.* 412, 416. Compare comments on *Butler v. Thomson*, in 2 *South. L. Rev. N. S.* 321. Decision in 42 *N. Y.* 493, referred to as modified if not entirely repudiated in that

in 52 *N. Y.* (Necessity of mutuality of promise) in *Ellsworth v. Southern Minnesota Ry. Extension Co.*, 31 *Minn.* 543, 553. Quoted and explained in 1 *Benj. on Sales*, § 254, n. 49 (Corbin's 4 *Am. ed.*). Decision in 42 *N. Y.* referred to in 7 *Am. Dec.* 288, n., as very ably tracing the statutory provisions and adjudications thereon in *N. Y.* (Memoranda of contracts of sales within statute of frauds). Criticised (Statute of frauds as mere rule of evidence) in *Marie v. Garrison*, 13 *Abb. N. C.* 210, 259.

**Jutte v. Hughes**, 40 *Super. Ct. (J. & S.)* 120. Rev'd in 67 *N. Y.* 268. See *Francis v. Schoellkopf*. Decision in 67 *N. Y.* applied (Necessity of allegations of special damage) in *Herfort v. Cramer*, 7 *Col.* 483, 492. Collated with other cases (Accumulation of water to detriment of neighboring premises) in 1 *Thomps. on Negl.* 104.

**J. W. B. v. F. D. B.**, 11 *N. Y. Leg. Obs.* 350. Overruled (Counterclaim in divorce) in *R. F. H. v. S. H.*, 40 *Barb.* 9.

## K.

**Kahn v. Norrie**, 4 *Hun.* 72. Compare (Stenographer's fees) *Code Civ. Pro.* §§ 3256, 3311.

**Kain v. Delano**, 11 *Abb. Pr. N. S.* 29. Applied (Compulsory reference) in *Magown v. Sinclair*, 5 *Daly*, 63, 65; *Marryatt v. Thayer*, 39 *Super. Ct. (J. & S.)* 417, 419. Followed in *Camp v. Ingersoll*, 86 *N. Y.* 433, 436; *Evans v. Kalbfleisch*, 36 *Super. Ct. (J. & S.)* 450, 458. Disting'd in *De Graff v. MacKinley*, 38 *Id.* 203, 207. Collated with other cases in *Hoffm. on Referees*, 12. See *Code Civ. Pro.* 1881, § 1013, n.

— **v. Masterton**, 16 *N. Y.* 174. Confirmed (Order to vacate decedent's real estate) in *Code Civ. Pro.* § 2775.

— **v. Smith**, 11 *Hun.* 552. Rev'd in 80 *N. Y.* 458. In decision in *Id.* in last line of second paragraph of head note, for "employees" read "employers."

**Kaiser v. Hirth**, 36 *Super. Ct. (J. & S.)* 344. See *Casey v. Mann*. Collated with other cases (Liability for negligence injuring trespasser, &c.) in 6 *Abb. N. C.* 119, n.

**Kalbfleisch, Matter of**, 6 *Sup'm Ct. (T. & C.)* 320; mem. s. c., 3 *Hun.* 623. Rev'd in 62 *N. Y.* 457 as *Matter of Kiernan*.

**Kalbfleisch v. Kalbfleisch**, 67 *N. Y.* 354. Explained (Devises and bequests to children as taking effect *per stirpes* or *per capita*) in 2 *Jarm. on Wills*, Rand. & T. ed. 756, n. 24.

**Kalt v. Lignot**, 3 *Abb. Pr.* 33; s. c., 12 *How. Pr.* 585. Aff'd in 3 *Abb. Pr.* 190. See *Crane v. Holcomb*. Decision in 3 *Abb. Pr.* 190 disapproved (Costs where counter-claim has been interposed) in *Thayer v. Holland*, 63 *How. Pr.* 179; *Landsberger v. Magnetic Telegraph Co.*, 8 *Abb. Pr.* 35.

**Kamena v. Warner**, 15 *How. Pr.* 5. Rev'd in 6 *Abb. Pr.* 193.

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**Kamp v. Kamp**, 44 *How. Pr.* 505. Further proceedings in 46 *Id.* 143, and 37 *Super. Ct. (J. & S.)* 241. The latter rev'd, and the two former in part overruled, in 59 *N. Y.* 212. Decision in *Id.* disting'd with *Crimmins v. Crimmins*, 28 *Hun.* 200; *Johnson v. Johnson*, 18 *Weekly Dig.* 27 (Modification of judgment in divorce) in *Catlin v. Catlin*, 31 *Hun.* 632. Followed in *Crimmins v. Crimmins*, 28 *Id.* 200. Disting'd in *Kerr v. Kerr*, 9 *Daly*, 517; and compare *Same v. Same*, 59 *How. Pr.* 255; 2 *Month. L. Bul.* 42. Followed in *Winton v. Winton*, 31 *Hun.* 290, which rev'd 12 *Abb. N. C.* 159, which see; *Erkenbrach v. Erkenbrach*, 96 *N. Y.* 456. See, also, *Holt v. Holt*, 42 *Ark.* 495; s. c., 19 *Cent. L. J.* 34, with note. See *Code Civ. Pro.* 1881, § 1759, n. Examined with other cases (Correction of judgment) in *Rockwell v. Carpenter*, 25 *Hun.* 529, 532, 535.

**Kane v. Astor**, 5 *Sandf.* 467. Modified in 9 *N. Y.* 113.

— **v. Bloodgood**, 7 *Johns. Ch.* 90; s. c., 11 *Am. Dec.* 417, with note. Aff'd in 8 *Cow.* 300. See *Decouche v. Savetier*; *Lansing v. Starr*; *Murray v. Coster*. Decision in 7 *Johns. Ch.* followed (Action for money had and received, maintainable for dividend declared) in *Van Dyck v. McQuade*, 86 *N. Y.* 38, 52. Cited as authority (Trusts as affected by statute of limitations) in *Matter of Leiman*, 32 *Id.* 225; s. c., 3 *Am. R.* 132. Discussed, and *Coster v. Murray*, 5 *Johns. Ch.* 522, criticised, in *Tinnen v. Mebane*, 10 *Tex.* 246; s. c., 60 *Am. Dec.* 205, 208. Applied in *Lexington, &c. R. R. Co. v. Bridges*, 7 *B. Mon. (Ky.)* 556; s. c., 46 *Am. Dec.* 528, 534; *U. S. v. Taylor*, 104 *U. S.* 216, 222. Approved with *Murray v. Coster*, 20 *Johns.* 576, in *Armstrong v. Campbell*, 3 *Yerg. (Tenn.)* 201; s. c., 24 *Am. Dec.* 556, 562, with note. Approved with *Coster v. Murray*, 5 *Johns. Ch.* 522, in *Cocke v. McGinnis*, 1 *Mart. & Y. (Tenn.)* 361; s. c., 17 *Am. Dec.* 809, with note. Disting'd with *Roosevelt v. Mark*, 6 *Johns. Ch.* 266, in *Young v. Wiseman*, 7 *T. B. Monr. (Ky.)* 270; s. c., 18 *Am. Dec.* 176. Followed with approval in *Finney v. Cochran*, 1 *Watts & S. (Pa.)* 112; s. c., 37 *Am. Dec.* 450, with note. Approved and applied, and with *Bartlett v. Judd*, 23 *Barb.* 263; *Varick v. Edwards*, 11 *Paige*, 290; *Miller v. Bear*, 3 *Id.* 466; *Waters v. Travers*, 9 *Johns.* 450, examined, in *Love v. Watkins*, 40 *Cal.* 547; s. c., 6 *Am. R.* 624, 634, 637. Followed, as sustained by abundant authority, in *Speidel v. Trustees of Harmony Society*, *U. S. Cir. Ct. W. D. Penn.* 15 *Reporter*, 423; s. c., 15 *Fed. Rep.* 753. Commented on in *Ang. on Limit.* §§ 166, 178, 6 ed. Cited, with other cases, in 12 *Am. L. Reg. N. S.* 361.

— **v. Commercial Ins. Co.**, 8 *Johns.* 229. Included with notes (Double insurance) in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 947.

— **v. Gott**, 24 *Wend.* 641, s. c., 35 *Am. Dec.*

- 641, 651, with note, wherein it is shown to have been frequently cited in N. Y. See *Bunn v. Vaughan*; *Dodge v. Pond*; *Grout v. Van Schoonhoven*. Opinion of COWEN, herein, and that of SANDFORD, Vice-Ch., in *Grout v. Van Schoonhoven*, 1 *Sandf. Ch.* 336, opposed (Trusts in personality, as affected by provisions in R. S.) in *Graff v. Bonnett*, 31 *N. Y.* 13. Disapproved in *Roosevelt v. Roosevelt*, 6 *Hun*, 31, 44. Explained and limited in *Curtis v. Smith*, 60 *Barb.* 9. Cited as authority (Conversion of real estate into personality) in *Fellows v. Heermans*, 4 *Lans.* 230, 240.
- *v. Johnston*, 9 *Bosw.* 154. Collated with *People ex rel. Smith v. Pease*, 27 *N. Y.* 45, and other cases (Burden of proof as to whether one has license) in 1 *Whart. Com. on Ev.* § 363. Explained (Damages in action for nuisance) in *Wood on Nuis.* 2 ed. § 873.
- *v. Kane*, 3 *Edw.* 389. Disting'd (Pleadings in action for divorce) in *Mitchell v. Mitchell*, 61 *N. Y.* 398, 406.
- *v. People*, 3 *Wend.* 363. Aff'd in 8 *Id.* 203. Decision in *Id.* limited (Cumulative sentence) in *People ex rel. Tweed v. Liscomb*, 60 *N. Y.* 559, 577.
- *v. Sanger*, 14 *Johns.* 89. See *Withy v. Mumford*. Dictum overruled (Right of action on covenant running with land) in *Withy v. Mumford*, 5 *Cow.* 137. So referred to in 2 *Am. L. Reg. N. S.* 211, 258. Cited with approval in *Schofield v. Homestead Co.*, 32 *Iowa*, 317; s. c., 7 *Am. R.* 197, 200.
- *v. Smith*, 12 *Johns.* 156. Approved (Allowance of interest) in *Reid v. Rensselaer Glass Factory*, 3 *Cow.* 387, 423.
- *v. Vanderburgh*, 1 *Johns. Ch.* 11. Quoted and explained (Injunction to stop waste) in 1 *High on Inj.* 2 ed. § 671, n. 1.
- *v. Whittick*, 8 *Wend.* 219, 224. Examined with *Rowley v. Van Benthuyzen*, 16 *Id.* 369 (Final and interlocutory decrees) in *Wing v. Warner*, 2 *Doug. (Mich.)* 291.
- Kanouse v. Martin**, 3 *Sandf.* 593; s. c., 8 *N. Y. Leg. Obs.* 305, where points of counsel are more fully given.
- *v. —*, 3 *How. Pr.* 24. Applied (Security for costs on appeal) in *Flint v. Van Deusen*, 24 *Hun*, 440, 442.
- Kasson v. Kellogg Bridge Co.**, 71 *N. Y.* 589; s. c., more fully, 5 *Weekly Dig.* 288.
- *v. Mills*, 8 *How. Pr.* 377. See *Farrell v. Calkins*. Questioned (Reversal in part) in *Fields v. Moul*, 15 *Abb. Pr.* 6, 10; *Staats v. Hudson River R. R. Co.*, 23 *How. Pr.* 463, 465.
- *v. Smith*, 8 *Wend.* 437. Commented on (Liability of accommodation indorser) in *Spencer v. Ballou*, 18 *N. Y.* 327.
- Kattenstroth v. Astor Bank**, 2 *Duer*, 632. Overruled with *Brahe v. Pythagoras Assoc.*, 4 *Id.* 658 (Jurisdiction of N. Y. Superior Court) in *Van Pelt v. U. S. & C. Shoe-heel Co.*, 35 *Super. Ct. (J. & S.)* 111.
- Kavanagh v. Beckwith**, 44 *Barb.* 192. Explained (Fraudulent debts in case of assignment for benefit of creditors) in *Burrill on Assign.* § 117, n. 4, 4 ed.
- *v. Wilson*, 70 *N. Y.* 177. Followed (Evidence of inadequacy, &c., of consideration as tending to show that terms of contract are different from those claimed) in *Cornell v. Markham*, 19 *Hun*, 275. Followed (Effect of uncontradicted testimony) in *Koehler v. Adler*, 78 *N. Y.* 287, 292. Explained and followed in *Nicholson v. Conner*, 8 *Daly*, 212.
- Kay v. Whittaker**, 44 *N. Y.* 565. Disting'd (Sham answer) in *Neuberger v. Webb*, 24 *Hun*, 347, 349. Doubted in *Roby v. Hallock*, 5 *Abb. N. C.* 86, 88. Applied (Issues between co-defendants) in *Lansing v. Had-sall*, 26 *Hun*, 619. Commented on as an extraordinary decision and as being probably an inadvertence (Defendants in foreclosure suits) in *Pomeroy on Rem.* § 336 n. 1, p. 387.
- Kayser v. Sichel**, 34 *Barb.* 84. Aff'd as *Wigand v. Sichel* in 4 *Abb. Ct. App. Dec.* 592; s. c., less fully, 3 *Keyes*, 120; 33 *How. Pr.* 174.
- Kearney's case**. See *Mitchell's case*.
- Kearney v. Missionary Society of St. Paul**, 10 *Abb. N. C.* 274. See *Barnes v. Underwood*. Disting'd (Administration by husband) in *Fry v. Smith*, 10 *Abb. N. C.* 224, 234.
- Kearny v. Post**, 1 *Sandf.* 105. Aff'd in 2 *N. Y.* 394.
- Keating v. N. Y. Central R. R. Co.**, 3 *Lans.* 469. Aff'd in 49 *N. Y.* 673, but without opinion.
- *v. Price*, 1 *Johns. Cas.* 22; s. c., 1 *Am. Dec.* 92, with note; 1 *N. Y. Com. L. Law. ed.* 226, with brief note. See *Fleming v. Gilbert*; *Freeman v. Adams*; *Fulton v. Mathews*; *Lattimore v. Harsen*. Reviewed and explained with *Miller v. Holbrook*, 1 *Wend.* 318; *Fleming v. Gilbert*, 3 *Johns.* 520; *Frost v. Everett*, 5 *Cow.* 498; *Mayor, &c. of N. Y. v. Butler*, 1 *Barb.* 337; *Esmond v. Van Benschoten*, 12 *Id.* 368; *Franchot v. Leach*, 5 *Cow.* 506; *Hasbrouck v. Tappan*, 15 *Johns.* 200; *Dearborne v. Cross*, 7 *Cow.* 48; *Clark v. Dales*, 20 *Barb.* 45; *Stone v. Sprague*, *Id.* 509; *French v. New*, *Id.* 482; *Friess v. Rider*, 24 *N. Y.* 367; *Blanchard v. Trim*, 38 *Id.* 225; *Erwin v. Saunders*, 1 *Cow.* 249; *Parmelee v. Thompson*, 45 *N. Y.* 58 (Performance of terms of contract, when waived by subsequent agreement) in *Hill v. Blake*, 48 *Super. Ct. (J. & S.)* 253. Followed in *Baker v. Whiteside*, *Breeze (Ill.)* 133; s. c., 12 *Am. Dec.* 168, with note.
- Keator v. Ulster & Delaware Plank Rd. Co.**, 7 *How. Pr.* 41. Followed (Waiver of referee's oath) in *Nason v. Ludington*, 8 *Daly*, 149.
- Keck v. Werder**, 46 *Super. Ct. (J. & S.)* 339. Appeal dismissed in 86 *N. Y.* 264.
- Keefe v. People**, 40 *N. Y.* 348; s. c., 7 *Abb. Pr. N. S.* 76. Followed (Upon trial of common law indictment for murder, defendant may be convicted of murder in the



- second decree) in *People v. Thompson*, 41 *N. Y.* 1.
- Keegan v. Western R. R. Co.**, 8 *N. Y.* 175; s. c., 59 *Am. Dec.* 476, with note. See *Wright v. N. Y. Central R. R. Co.* Disting'd (Liability for injuries caused by negligence of co-servant) in *Baulec v. N. Y. & Harlem R. R. Co.*, 12 *Abb. Pr. N. S.* 316. Disting'd in *Wright v. N. Y. Central R. R. Co.*, 25 *N. Y.* 567. Reviewed with other cases in *Warner v. Erie R'y Co.*, 39 *Id.* 477. Applied in *Cone v. Delaware, Lack. & E. R. Co.*, 15 *Hun.* 177. Explained and applied (Liability for injuries caused to servant by defective machinery, &c.) in *McMillan v. Saratoga, &c. R. R. Co.*, 20 *Barb.* 452. Approved and applied in *Smith v. N. Y. & Harlem R. R. Co.*, 6 *Duer.* 230. Disting'd in *Loonam v. Brockway*, 28 *How. Pr.* 474. Followed in *Byron v. N. Y. State Printing Tel. Co.*, 26 *Barb.* 39. Commented on in 2 *Thomp. on Negl.* 991.
- Keeler v. Field**, 1 *Paige*, 312. See *Steel-yards v. Singer*. See authorities collected (Validity of conditional sales as to third persons) in *Lewis v. McCabe*, 49 *Conn.* 141, 148; s. c., 21 *Am. L. Reg. N. S.* 217, with extended note.
- **v. Fireman's Ins. Co.**, 3 *Hill*, 250. Disting'd (Seaworthiness as affected by omission to take pilot) in *Borland v. Merc. Mut. Ins. Co.*, 46 *Super. Ct. (J. & S.)* 433, 443.
- **v. Poughkeepsie, &c. Plank-Road Co.**, 10 *How. Pr.* 11. Opposed (Power to compel a reference) in *Whittaker v. Desfosse*, 7 *Bosw.* 678, 681.
- **v. Salisbury**, 33 *N. Y.* 648. See *Harrison v. Close*. Disting'd (Effect of payment by debtor of sum less than that due) in *Luddington v. Bell*, 77 *N. Y.* 138. Applied (Ratification of act of agent) in *Thompson v. Craig*, 16 *Abb. Pr. N. S.* 32.
- **v. Vandervere**, 5 *Lans.* 313. Applied (Contract to be executed distributively) in *Aldrich v. Pyatt*, 64 *Barb.* 391, 396. Explained (Sales of specific chattels conditionally) in *Benj. on Sales*, § 403 (Corbin's 4 *Am. ed.*).
- Keenan v. Dorflinger**, 19 *How. Pr.* 153. See *McDowell v. Second Ave. R. R. Co.* Doubted (Settlement between parties to action) in *Christy v. Perkins*, 6 *Daly*, 237.
- Keene v. Clark**, 5 *Robt.* 38. Approved and followed (Reproduction of uncopyrighted drama) in *Palmer v. De Witt*, 5 *Abb. Pr. N. S.* 130. Reviewed at length, however, and in part disapproved in subsequent decision, in *Palmer v. De Witt*, 2 *Sweeny*, 530. Reviewed in connection with subsequent litigation in 8 *South. L. Rev.* 19. Cited in *Tompkins v. Halleck*, 133 *Mass.* 32.
- **v. La Farge**, 1 *Bosw.* 671. Compare (Effect of death of sole defendant after issue joined) *Livermore v. Bainbridge*, 43 *How. Pr.* 272, 273.
- Keeney v. Grand Trunk Railway Co.**, 59 *Barb.* 104. Aff'd in 47 *N. Y.* 525. See *Pouchier v. N. Y. Central R. R. Co.* Decision in 59 *Barb.* collated with other cases (Common carrier limiting responsibility by contract) in 2 *Redf. Am. Railw. Cas.* 273.
- **v. Home Ins. Co.**, 3 *Sup'm Ct. (T. & C.)* 478. Rev'd in 71 *N. Y.* 396; s. c., 27 *Am. R.* 60. Decision in 3 *Sup'm Ct. (T. & C.)* explained (Change of title to insured property) in *Browning v. Home Ins. Co. of Columbus*, 6 *Daly*, 522, 524.
- Keenholts v. Becker**, 3 *Den.* 346. Applied (Recovery of damages for slanderous words) in *Olmsted v. Brown*, 12 *Barb.* 662, 666; *Knight v. Wilcox*, 18 *Id.* 220; *Bassil v. Elmore*, 65 *Id.* 634, which was aff'd in 48 *N. Y.* 567, which see. Followed in *Frazier v. McCloskey*, 60 *Id.* 337. Doubted in *Titus v. Sumner*, 44 *Id.* 269.
- Keep v. Kauffman**, 36 *Super. Ct. (J. & S.)* 141. Aff'd in 56 *N. Y.* 332. Further proceeding in 38 *Super. Ct. (J. & S.)* 476; and that aff'd, it seems, in 63 *N. Y.* 643, but without opinion. Decision in 56 *Id.* cited as authority (Joinder of causes of action) in *Thompson v. St. Nicholas Nat. B'k*, 61 *How. Pr.* 163.
- **v. Keep**, 16 *Hun.* 141. Further decisions in 17 *Id.* 152; 58 *How. Pr.* 139; 7 *Abb. N. C.* 240. With decision in 17 *Hun.*, see (Submission by married woman to arbitration) *Code Civ. Pro.* 1881, § 2365, *n.*
- **v. Lord**, 2 *Duer.* 78; s. c., 11 *Leg. Obs.* 178. Criticised, and dissented from (Set-off against assignee of insolvent) in *Maas v. Goodman*, 2 *Hilt.* 275; *Schieffelin v. Hawkins*, 14 *Abb. Pr.* 112, 115, which was aff'd in 1 *Daly*, 289, which see. See also *Martin v. Kuntzmuller*, 38 *N. Y.* 396. Quoted and explained in *Burrill on Assign.* § 403, *n.* 4, 4 ed.
- Keese v. N. Y., New Haven, &c. R. R. Co.** See *Kuse v. Same*.
- Kelley v. Dusenbury**, 42 *Super. Ct. (J. & S.)* 238. Aff'd, it seems, in 77 *N. Y.* 597, but without opinion. Another proceeding in 2 *Abb. N. C.* 360; s. c., 52 *How. Pr.* 277; and that rev'd in *People ex rel. Keiley v. Speir*, 12 *Hun.* 70; s. c., 54 *How. Pr.* 73, and less fully 2 *Abb. N. C.* 466. With decision in 42 *Super. Ct. (J. & S.)* compare (Time to object that remedy is at law) *De Bussiere v. Holladay*, 4 *Abb. N. C.* 111.
- Kein v. Tupper**, 33 *Super. Ct. (J. & S.)* 465; s. c., 42 *How. Pr.* 437. Aff'd in 52 *N. Y.* 550. Decision in *Id.* applied (When title passes to goods sold) in *Cooke v. Millard*, 65 *Id.* 367. Disting'd in *Burrows v. Whitaker*, 71 *Id.* 295. Disting'd with *Hammett v. Linneman*, 48 *Id.* 399; *Rodgers v. Phillips*, 40 *Id.* 519, in *Smith v. Edwards*, 29 *Hun.* 493. Explained in 1 *Benj. on Sales*, § 416, (Corbin's 4 *Am. ed.*). Quoted and discussed (Implied contracts of sale) in *Id.* § 48, *n.* 12.
- Keirsted v. Avery**, 4 *Paige*, 9. Approved (Judgment, as subject to prior equities) in *Cook v. Craft*, 60 *Barb.* 409.
- Keisselbrack v. Livingston**, 4 *Johns. Ch.*

144. Followed (Correcting mistake by oral evidence) in *Walden v. Skinner*, 101 *U. S.* 577, 585. Referred to as a leading case in 2 *Pomeroy on Eq. Jur.* 330, n.
- Keith v. Jones**, 9 *Johns.* 120. Doctrine of this case and *Judah v. Harris*, 19 *Id.* 144 denied (Negotiability of note payable in bank bills) in *Gray v. Donahoe*, 4 *Watts (Pa.)* 400; *McCormick v. Trotter*, 10 *Serg. & R. (Pa.)* 94; 3 *Kent Com.* 75. Compared in 4 *Am. L. Reg. N. S.* 344.
- Kellam v. McKinstry**, 6 *Hun.* 381. Aff'd in 69 *N. Y.* 264. Decision in *Id.* explained (Effect of license to sever portion of realty) in *Lacustrine, &c. Co. v. Lake Guano, &c. Co.*, 82 *Id.* 476, 482. Examined with other cases in *Alleghany Oil Co. v. Bradford Oil Co.*, 21 *Hun.* 26, 81.
- Keller v. N. Y. Central R. R. Co.**, 17 *How. Pr.* 102. Aff'd in 2 *Abb. Ct. App. Dec.* 480; s. c., 24 *How. Pr.* 172. See *Ireland v. Oswego, Hannibal, &c. Plank Rd. Co.*; *Rawls v. American Mut. Life Ins. Co.* Decision in 24 *How. Pr.* cited with approval (When negligence question for jury) in *Barton v. St. Louis & Iron Mountain R. R. Co.*, 52 *Mo.* 253; s. c., 14 *Am. R.* 418.
- **v. Philips**, 40 *Barb.* 390. Aff'd in 39 *N. Y.* 351.
- Kellett v. Rathbun**, 4 *Paige*, 102. Applied (Service of citation on infant, when insufficient) in *Hood v. Hood*, 85 *N. Y.* 561, 578.
- Kelley's Estate**, 1 *Abb. N. C.* 102. Cited as authority with *McFeeley's Estate*, 2 *Redf.* 541, 543 (Statutory requirements essential) in proceedings for sale of real estate for debts) in 7 *South. L. Rev. N. S.* 643.
- Kelley v. Mayor, &c. of Brooklyn**, 4 *Hill*, 263 (Liability of municipal corporation on draft, &c.) in *Lake v. Trustees of Williamsburgh*, 4 *Den.* 524. Disting'd (Draft, when payable out of particular fund) in *Van Wagner v. Terrett*, 27 *Barb.* 186. Applied in *Brill v. Tuttle*, 15 *Hun.* 290, which was rev'd in 81 *N. Y.* 461, which see. Followed and applied in *Carran v. Little*, 40 *Ohio St.* 399. Discussed (Contract by corporation) in *Ang. & A. on Corp.* § 253a, 11 ed.
- **v. Mayor, &c. of N. Y.**, 4 *E. D. Smith*, 291. Rev'd in *Kelly v. Same*, 11 *N. Y.* 432.
- **v. People**, 55 *N. Y.* 563. Aff'g *Armsby v. People*, 2 *Sup'm. Ct. (T. & C.)* 157. Decision in 55 *N. Y.* collated with other cases (Challenge for principal cause) in 6 *Abb. N. C.* 18, n. Compare *L.* 1858, c. 322, §§ 7, 10; *Code Civ. Pro.* §§ 1027, 1175.
- **v. Upton**, 5 *Duer*, 336. Followed (Contract for transfer of stock, when executory) in *Currie v. White*, 7 *Robt.* 637.
- Kellogg, Matter of**, 7 *Paige*, 265. Followed (Commissions of executors, &c.) in *Betts v. Betts*, 4 *Abb. N. C.* 317, 442; *Ward v. Ford*, 4 *Redf.* 34, 41.
- Kellogg v. Adams**, 39 *N. Y.* 28. Followed (Usury affecting assignee of mortgage) in *Patterson v. Birdsall*, 6 *Hun.* 632, 639, 640,
641. Disting'd in *Wyeth v. Braniff*, 84 *N. Y.* 627, 633.
- **v. Ames**, 41 *Barb.* 218. Rev'd in 41 *N. Y.* 259. Decision in *Id.* collated and discussed with *Marvin v. Vedder*, 5 *Conn.* 671; *Truscott v. King*, 6 *N. Y.* 162; *Mickles v. Townsend*, 18 *Id.* 575; and *Hubbell v. Blakesley*, 71 *Id.* 10 (Merger of mortgages) in 26 *Alb. L. J.* 506.
- **v. Gilbert**, 10 *Johns.* 220; s. c., 6 *Am. Dec.* 335. See *Crary v. Turner*.
- **v. Griffin**, 17 *Johns.* 274. See *Crary v. Turner*. Cited approvingly (Preference of prior execution, how lost) in *Olson v. Pierce*, 55 *Wis.* 214. Followed in *Palmer v. Clarke*, 2 *Dev. (N. C.)* 354; s. c., 12 *Am. Dec.* 340, with note.
- **v. Howell**, 62 *Barb.* 280. Aff'd in 53 *N. Y.* 609, but without opinion.
- **v. Kellogg**, 6 *Barb.* 116. Disting'd (Whether agreement for sale of land gives right of possession) in *Miller v. Ball*, 64 *N. Y.* 236, 294. See (Action by joint tenant, &c., to recover real property) *Code Civ. Pro.* 1881, § 1500, n.
- **v. Klock**, 2 *Code R.* 28. Followed (Effect of appearance by infant without guardian *ad litem*) in *McMurray v. McMurray*, 60 *Barb.* 117. Disting'd in *Graham v. Pinckney*, 7 *Robt.* 147. Compare *Barnes v. Gill*, 13 *Abb. Pr. N. S.* 169. Referred to as holding same doctrine with *Simmons v. Simmons*, 6 *Ind.* 8; *Randall v. Wilson*, 24 *Mo.* 76, in *Tyler on Inf. & Cov.* 2 ed. § 31.
- **v. N. Y. Central, &c. R. R. Co.**, 79 *N. Y.* 72. Followed with *Davis v. Same*, 47 *Id.* 400 (Negligence as a proper question for jury) in *Kelly v. St. Paul, M. & M. R. R. Co.*, 29 *Minn.* 1, 4. Followed in preference to the doctrine of *Penn. R. R. Co. v. Beale*, 73 *Penn. St.* 504, in *Plummer v. Eastern R. R. Co.*, 73 *Me.* 593; s. c., 26 *Alb. L. J.* 181; 14 *Reporter*, 367.
- **v. Olmstead**, 28 *Barb.* 96. Aff'd in 25 *N. Y.* 189. Decision in *Id.* followed (Consideration for promise to extend time of payment) in *Parmelee v. Thompson*, 45 *Id.* 58.
- **v. Paine**, 8 *How. Pr.* 329. Followed (Precluding proof of account included in bill of particulars) in *Dowdney v. Volkening*, 37 *Super. Ct. (J. & S.)* 313, 319.
- **v. Richards**, 14 *Wend.* 116. See *Boyd v. Hitchcock*; *Van Ostrand v. Reed*. Disting'd and explained (Conclusiveness of receipt) in *Ryar v. Ward*, 48 *N. Y.* 207. Applied with *Boyd v. Hitchcock*, 20 *Johns.* 76 (Sufficiency of accord and satisfaction) in *Mitchell v. Wheaton*, 46 *Conn.* 315; s. c., 33 *Am. R.* 24, 26. Quoted in 2 *Greenl. on Ev.* 4 ed. § 28, n. a.
- **v. Schuyler**, 2 *Den.* 73. See *Thompson v. Hewitt*. Cited with approval with *Thompson v. Hewitt*, 6 *Hill*, 254 (Judgment as barred by prior discharge in bankruptcy) in *Woodbury v. Perkins*, 5 *Cush. (Mass.)* 86; s. c., 51 *Am. Dec.* 51, with note.
- **v. Slauson**, 11 *N. Y.* 302. Aff'g 15 *Barb.* 56. See opinion of *Jounson, J.*, in

- Ct. of App. in 3 *Liv. Law. Mag.* 39. See *Nicholson v. Leavitt*; *Brigham v. Tillinghast*. Decision in 11 *N. Y.* explained (Authority to assignee to sell on credit) in *Brigham v. Tillinghast*, 13 *Id.* 215. Regarded as direct adjudication on this point, in *Wilson v. Robertson*, 21 *Id.* 587, 589. Collated with other cases in *Bishop on Assign.* § 211. Commented on in *Wait on Fraud. Conv.* § 332. Explained (Description of property) in *Burrill on Assign.* § 134, 4 ed. § 139, n. 1. Discussed and quoted (Terms of sale) in *Id.* § 224, n. 1.
- *v. Smith*, 26 *N. Y.* 18. See *Williamson v. Brown*. Disting'd with *Brown v. Blydenburgh*, 7 *N. Y.* 141 (Necessity for production or surrender of mortgage bond) in *Bacon v. Van Schoonhoven*, 87 *Id.* 446. Disting'd in *Van Keuren v. Corkins*, 66 *Id.* 81. Disting'd as case of purchaser of bond and mortgage, and not of grantee of land, in *Purdy v. Huntington*, 46 *Barb.* 389.
- *v. Sweeney*, 1 *Lans.* 397. Modified in 46 *N. Y.* 291. Decision in *Id.* followed (Verdict for conversion of gold, should be in gold) in *Phillips v. Speyers*, 49 *Id.* 653.
- *v. Witherhead*, 4 *Hun.* 273. Reported in 6 *Sup'm Ct. (T. & C.)* 525. Explained (Agreements for work and labor as distinguished from sales) in *Benj. on Sales*, § 109, n. y. (Bennett's 4 Am. ed.) Explained (Acceptance required by statute of frauds) in *Id.* § 155, n. o.
- Kellum, Matter of**, 6 *Lans.* 1. Rev'd in 50 *N. Y.* 298. Another decision in 52 *Id.* 517. See *Dan v. Brown*. Decision in 52 *N. Y.* applied (Proof of due execution of will) in *Rugg v. Rugg*, 21 *Hun.* 383; which was aff'd in 83 *N. Y.* 592, which see. Decision in 50 *Id.* disting'd (Power of surrogate to open decree of probate) in *Bailey v. Stewart*, 2 *Redf.* 212, 225. See *Code Civ. Pro.* 1881, § 2647, n.
- Kellum v. Durfoo**. See *Kellum v. Knecht*.
- *v. Knecht*, 17 *Hun.* 583. Appeal dismissed in *Kellum v. Durfoo*, 78 *N. Y.* 484. See *Wilson v. Reed*.
- Kelly, Matter of**, 3 *Hun.* 636; s. c., 6 *Sup'm Ct. (T. & C.)* 117. Appeal dismissed in 62 *N. Y.* 198. Previous proceeding in 59 *Id.* 595. See *Mohawk & Hudson River R. R. Co. v. Archer*. Decision in 62 *N. Y.* disting'd (Liability of attorney for failure to pay costs) in *Mack v. Cohn*, 27 *Hun.* 463. Decision in 59 *N. Y.* cited approvingly with *Matter of Eldridge*, 82 *Id.* 161 (Disbarring attorney) in *Re Orton, Sup'm Ct. Wis.* 26 *Abb. L. J.* 213.
- Kelly's Application**, 10 *Abb. Pr.* 208. Approved and followed (Proceedings to enforce payment of personal tax) in *Smyth v. International Life Ass. Co. of London*, 4 *Abb. Pr. N. S.* 11.
- Kelly v. Archer**, 48 *Barb.* 68. Disting'd (When jurisdiction of justice of peace in attachment suit may be attacked) in *Northrup v. Garrett*, 17 *Hun.* 497, 499. Followed (Affidavit to obtain attachment) in *Taylor v. Reed*, 54 *How. Pr.* 27. Disting'd, and *Homan v. Brinckerhoff*, 1 *Den.* 184, disapproved (Defects in bond required by statute) in *Whitney v. Coleman*, 9 *Daly*, 238.
- *v. Baker*, 2 *Hilt.* 531. See *Deming v. Colt*; *Robinson v. McIntosh*. Collated with other cases (Power of partner to make assignment for benefit of creditors) in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 549.
- *v. Bernheimer*, 1 *Hun.* 112. Fully reported in 3 *Sup'm Ct. (T. & C.)* 140; s. c., 47 *How. Pr.* 62.
- *v. Breusing*, 32 *Barb.* 601. Aff'd in 33 *Id.* 123.
- *v. Christal*, 16 *Hun.* 242. Aff'd in 81 *N. Y.* 619.
- *v. Countryman*, 15 *Hun.* 97. Approved (Effect on attachment if statute is not complied with) in *Blossom v. Estes*, 84 *N. Y.* 614, 618.
- *v. Crapo*, 41 *Barb.* 603. Rev'd in 45 *N. Y.* 86, and the latter rev'd as *Crapo v. Kelly* in 16 *Wall.* 610. See *Hoyt v. Thompson*. Decision in 45 *N. Y.* disting'd (Effect of foreign statutory transfer) in *Kerstadt v. Reilly*, 55 *How. Pr.* 373. Applied in *Dugan v. L. S. & M. S. R. R. Co.*, 1 *Sheld.* 401. Reaff'd on this point in *Hibernia Nat. B'k v. Lacombe*, 84 *N. Y.* 367, 385. Followed in *Pond v. Cooke*, 45 *Conn.* 126; s. c., 29 *Am. R.* 668, 672. Decision in 45 *N. Y.* not followed, and that in 16 *Wall.* adopted (State jurisdiction over vessel on the high seas) in *McDonald v. Mallory*, 77 *N. Y.* 546, which rev'd 44 *Super. Ct. (J. & S.)* 80, 88, which see.
- *v. Downing*, 42 *N. Y.* 71. The first two head-notes seem to be contrary to the opinion (Equitable action by sheriff to reach funds) which treats the action as appropriate if sustained by proof. See (Demurrer as answer) *Code Civ. Pro.* 1881, § 1207, n.
- *v. Fall Brook Coal Co.*, 4 *Hun.* 261; s. c., more fully, 67 *Barb.* 183.
- *v. Griffin*. See *Bliss v. Ball*.
- *v. Kelly*, 5 *Lans.* 443. Aff'd in 61 *N. Y.* 47.
- *v. Lane*, 28 *How. Pr.* 128; s. c., more fully, 42 *Barb.* 594; 18 *Abb. Pr.* 229. Dissenting opinion herein referred to in *Greenleaf v. Mumford*, 50 *Barb.* 543 (Action to subject property to attachment) as sustained in *Lawrence v. B'k of Republic*, 35 *N. Y.* 320.
- *v. McCarthy*, 3 *Bradf.* 7. Cited as authority (Law of place as determining marriage rights) in *Minor v. Jones*, 2 *Redf.* 289, 295.
- *v. McCormick*, 2 *E. D. Smith*, 503. Aff'd in 28 *N. Y.* 318. Decision in *Id.* disting'd (Surety on attachment estopped from setting up want of seal as defense) in *Avery v. Town of Springfield*, 14 *Blatchf. C. Ct.* 272.
- *v. Mayor, &c. of N. Y.*, 11 *N. Y.* 432. See

- Blake v. Ferris; City of Buffalo v. Holloway; King v. N. Y. Central R. R. Co.; Pack v. Mayor, &c. of N. Y.; Storrs v. City of Utica. Applied (Liability for negligence resulting from negligence of contractor, &c.) in Norton v. Wiswall, 26 Barb. 623; Fish v. Dodge, 38 Id. 172; Schular v. Hudson River R. R. Co., 39 Id. 655; Treadwell v. Mayor, &c. of N. Y., 1 Daly, 128; Gilbert v. Beach, 5 Bosw. 449; O'Rourke v. Hart, 7 Id. 513; McCafferty v. Spuyten Duyvil, &c. R. R. Co., 61 N. Y. 182, 200; Ham v. Mayor, &c. of N. Y., 70 Id. 462; Burmeister v. N. Y. Elevated R. R. Co., 47 Super. Ct. (J. & S.) 264, 268. Disting'd in Lockwood v. Mayor, &c. of N. Y., 2 Hill. 67. Examined with other cases at length in Sulzbacher v. Dickie, 6 Daly, 472. Examined and compared with Blake v. Ferris, 5 N. Y. 48; Pack v. Mayor, &c. of N. Y., 8 Id. 222; Storrs v. City of Utica, 17 Id. 104; City of Buffalo v. Holloway, 7 Id. 493; Congreve v. Smith, 18 Id. 79, in Creed v. Hartman, 29 Id. 591. Approved and explained in Storrs v. City of Utica, 17 N. Y. 107. Applied (Liability for injury caused by defect in street) in Bliss v. Schaub, 48 Barb. 343. Disting'd in Russell v. Inhabitants of Town of Columbia, 74 Mo. 480; s. c., 41 Am. R. 325. See also Griffin v. Mayor, &c. of N. Y., 9 N. Y. 456; Hume v. Mayor, &c. of N. Y., 47 Id. 639. Collated with other cases on this point in 20 Am. L. Reg. N. S. 803.
- **v. N. Y. & Manhattan Beach Ry. Co.**, 19 Hun, 363. Aff'd in 81 N. Y. 233. Decision in *Id.* followed (Costs, where title to real estate arises on pleadings) in Green v. Village of Canandaigua, 30 Hun, 306.
- **v. Roberts**, 40 N. Y. 432. See Martin v. Funk. Disting'd (Sufficiency of attachment accompanied with notice) in O'Brien v. Mech. & Traders' Ins. Co., 56 N. Y. 55. Reconciled (Effect of promise to one person for benefit of another) in Barlow v. Myers, 3 Hun, 720, 724. Followed as decisive in Aetna Nat. B'k v. Fourth Nat. B'k, 46 N. Y. 92. Disting'd in Rogers' Locomotive, &c. Works v. Kelley, 88 Id. 239. Explained (Right to release obligation in such case) in Whiting v. Gearty, 14 Hun, 501, and in connection with Whiting v. Gearty, in Douglass v. Wells, 18 Id. 91. Applied in Knickerbocker Life Ins. Co. v. Nelson, 78 N. Y. 153. Disting'd in Freund v. Importers' & Traders' Nat. B'k, 12 Hun, 537, 540.
- **v. Scott**, 49 N. Y. 595. Writ of error dismissed in Scott v. Kelly, 22 Wall. 57. Decision in 49 N. Y. applied (Estoppel, as against one making advance on strength of representations) in Barnett v. Zacharias, 24 Hun, 304, 306. Cited (Separate estate of partner, when considered partnership property) in Story on Partn. 7 ed. § 372, n.
- **v. Scripture**, 9 Hun, 283. Disting'd (Arrest of factor) in Truninger v. Busch, 7 Daly, 124, 126.
- **v. Sheehan**, 76 N. Y. 325. Disting'd (Time within which to appeal) in Heilner v. Walsh, 47 Super. Ct. (J. & S.) 269, 272. Followed with Kilmer v. Hathorn, 78 N. Y. 229, in Langdon v. Evans, 29 Hun, 652.
- **v. Tilton**, 2 Abb. Ct. App. Dec. 495. Followed (Liability of one keeping vicious animals) in Lynch v. McNally, 7 Daly, 126, 132.
- Kelsey v. Barney**, 12 N. Y. 425. See Teall v. Barton. Followed (Liability for collision) in Fero v. Buffalo & State Line R. R. Co., 22 N. Y. 209, 213.
- **v. Bradbury**, 12 N. Y. Leg. Obs. 222. Aff'd in 21 Barb. 531.
- **v. Campbell**, 38 Barb. 238. Explained as referring to Ct. of App. (Appeal without security) in Kitching v. Diehl, 40 Id. 433.
- **v. Deyo**, 3 Cow. 133. Explained (Real estate when charged with testator's debts) in 3 Jarm. on W. Rand. and T. ed. 403, n.
- **v. King**, 32 Barb. 410; s. c., 11 Abb. Pr. 180. Aff'd in 33 How. Pr. 39; s. c., 1 Transc. App. 133. See Milhau v. Sharp. Decision in 33 How. Pr. collated with other cases (Compensation to owner of fee of highway, for construction of sewer therein) in Cook Highw. L. 4 ed. 9. Collated with other cases (What rights are acquired by dedication) in Mills Thompson on Highw. 3 ed. 68.
- **v. Murray**, 18 Abb. Pr. 294. See other cases collected (Application to intervene) in 6 Abb. N. C. 306, n.
- **v. Northern Light Oil Co.**, 54 Barb. 111. Aff'd in 45 N. Y. 505.
- **v. Rourke**, 50 How. Pr. 315. Explained (Personal judgment in proceeding to enforce mechanics' lien) in Burroughs v. Fosteran, 2 Abb. N. C. 333, 339.
- **v. Ward**, 16 Abb. Pr. 98. Aff'd; in part, in 38 N. Y. 83; Yates v. Fassett. Decision in 38 N. Y. applied (Liability for occupation of part of demised premises) in Knox v. Hexter, 42 Super. Ct. (J. & S.) 8, 11.
- Kelso v. Kelly**, 1 Daly, 419. Approved and followed (Specific performance of covenant to renew lease) in Viany v. Ferran, 5 Abb. Pr. N. S. 110. Relied on (Effect of continuance in possession by lessee after expiration of term) in Delashman v. Berry, 20 Mich. 292; s. c., 4 Am. R. 392.
- **v. Lorillard**, 8 Daly, 300. Aff'd in 85 N. Y. 177. See Van Kleeck v. Reformed Dutch Church.
- **v. Tabor**, 52 Barb. 125. See Barnett v. Lichtenstein; Perkins v. Perkins. Said in Tyler on Inf. & Cov. 2 ed. § 475, to have been overruled (Married woman as surety on bond or undertaking) in so far as it conflicts with Woolsey v. Brown, 11 Hun, 52; 74 N. Y. 82.
- Kelty v. Second Nat. Bank of Erie**, 52 Barb. 328. Cited with Benedict v. Fields,

- 16 *N. Y.* 595; *Roberts v. Fisher*, 43 *Id.* 159; *Lightbody v. Ontario Bank*, 11 *Wend.* 1; 13 *Id.* 101, and many other cases (Implied warranty of solvency of bills and notes) in 19 *Cent. L. J.* 427.
- Kemble v. Bowne**, 1 *Cal.* 75. Relied on in dissenting opinion of *Norr, J.* (Materiality of position of insured vessel at time of executing policy) in *Stoney v. Union Ins. Co.*, 3 *McCord (So. Car.)* 387; s. c., 15 *Am. Dec.* 637.
- Kemp v. Carnley**, 3 *Duer*, 1. See *Havens v. Hussey*; *Robinson v. McIntosh*. Explained (Power of partner to make assignment for benefit of creditors) in *Burrill on Assign.* § 80, 4 ed.
- **v. Coughtry**, 11 *Johns.* 107. See *Colt v. McMechen*. Disting'd from admiralty causes with *Williams v. Nichols*, 13 *Wend.* 58 (Liability for failure to return proceeds of cargo) in *The New Hampshire, U. S. Dist. Ct. E. D. Mich.* 1880, 21 *Fed. Rep.* 926. Cited as authority in *Hart v. Leach, U. S. Dist. Ct. D. Md.* 1884, 21 *Fed. Rep.* 80. Followed in *Emery v. Hersey*, 4 *Greenl. (Me.)* 407; s. c., 16 *Am. Dec.* 268, with note; *Harrington v. McShane*, 2 *Watts (Pa.)* 443; s. c., 27 *Am. Dec.* 321, with note. Explained as resting on a particular custom, in *The Waldo, Daveis (2 Ware)* 161; *Newhall v. Dunlap*, 14 *Me.* 180; s. c., 31 *Am. Dec.* 45. Discussed in *Ang. on Carr.* § 104, 5 ed. Quoted in 2 *Par. on Contr.* 211, n. o. See *Story on Bailm.* §§ 547, 548.
- **v. Knickerbocker Ice Co.**, 51 *How. Pr.* 31. Rev'd in 69 *N. Y.* 45. See *Bagley v. Peddie*. Decision in 69 *N. Y.* disting'd (Right to maintain action for mutual mistake when complaint is for fraud) in *McMichael v. Kilmer*, 76 *Id.* 36, 40. Disting'd (Construction of contract for supply of ice) in *Winch v. Mut. Benefit Ice Co.*, 86 *Id.* 618.
- Kempshall v. Burns**, 4 *Hill*, 468. Explained (Right to examine plaintiff, to prove usury) in *Henry v. Bank of Salina*, 5 *Id.* 523.
- **v. Stone**, 5 *Johns. Ch.* 193. Explained (Jurisdiction of equity as to claim for damages) in *Hammond v. Pennock*, 61 *N. Y.* 145, 156.
- Kendall v. Brill**, 4 *Hun*, 664. Aff'd, it seems, in 64 *N. Y.* 638, but without opinion.
- **v. Holland Purchase Ins. Co.**, 2 *Sup'm. Ct. (T. & C.)* 275. Aff'd, it seems, in 58 *N. Y.* 682, but without opinion.
- **v. Niebuhr**, 45 *Super. Ct. (J. & S.)* 542; s. c., 58 *How. Pr.* 156. Aff'd in 46 *Super. Ct. (J. & S.)* 544, and this aff'd in *Kendall v. Woodruff*, 87 *N. Y.* 1.
- **v. Rider**. See *Luckley v. Buckley*.
- **v. Stone**, 2 *Sandf.* 269. Rev'd in 5 *N. Y.* 14, without passing on question of exemplary damages. Decision in *Id.* quoted and collated with other cases (Malice as element of slander of title) in *Bigel. Cas. on Torts*, 57.
- **v. Washburn**, 14 *How. Pr.* 43. Disting'd but approved (Amendment of summons served by publication) in *Talcott v. Rosenburg*, 8 *Abb. Pr. N. S.* 287, a case of attachment. Disting'd in *Maples v. Mackey*, 15 *Hun* 533, 538, a case of admission of service.
- **v. Woodruff**. See *Kendall v. Niebuhr*.
- Kendenburg v. Morgan**, 18 *How. Pr.* 469. Followed (Execution against the person) in *Molenaar v. Koerner*, 13 *Abb. Pr.* 241, 242, n. See also *Stelle v. Palmer*, 11 *Id.* 62, 64.
- Kennedy v. Barandon**, 4 *Hun*, 642; s. c., more fully, 67 *Barb.* 209.
- **v. City of Troy**, 14 *Hun*, 308. Rev'd in 77 *N. Y.* 498.
- **v. Cotton**, 28 *Barb.* 59. Quoted and collated with other cases (Allegation in pleading of corporate existence in action against corporation) in *Throop's Justice's Man.* 2 ed. 289. See *Code Civ. Pro.* 1881, § 1775, n.
- **v. Crandell**, 3 *Lans.* 1. Applied (Effect of fraudulent alteration of written evidence of contract) in *Meyer v. Huneke*, 55 *N. Y.* 412, 418.
- **v. Eilan**, 26 *How. Pr.* 197; s. c., more fully, 17 *Abb. Pr.* 73.
- **v. Gifford**, 19 *Wend.* 296; s. c., 13 *N. Y. Com. L. Law. ed.* 613, with brief note.
- **v. Kennedy**, 73 *N. Y.* 369. Subsequent decision in 60 *How. Pr.* 151. Decision in 73 *N. Y.* relied on (Cruelty, as between husband and wife) in *Carpenter v. Carpenter*, 30 *Kans.* 712; s. c., 46 *Am. R.* 108.
- **v. Mayor, &c. of N. Y.**, 73 *N. Y.* 365; s. c., 29 *Am. R.* 169. Disting'd (Liability of municipal corporation for injuries resulting from unmanageableness of horse) in *Moss v. City of Burlington*, 80 *Iowa*, 438; s. c., 46 *Am. R.* 82. Relied on in *Spaulding v. Inhabitants of Winslow*, 74 *Me.* 528, 536; s. c., 28 *Abb. L. J.* 14.
- **v. —**, 79 *N. Y.* 361. Followed (Appointment of janitor of public buildings in *N. Y. city*) in *Fagan v. Mayor, &c. of N. Y.*, 84 *Id.* 348, 351.
- **v. Newman**. See *Tallmadge v. Wallis*.
- **v. People**, 39 *N. Y.* 245; s. c., 5 *Abb. Pr. N. S.* 147. See *Fitzgerald v. Same*; *People v. Rogers*. Compare (Mistake in indictment) *Crowley v. People*, 8 *Abb. N. C.* 1. Disapproved (Sentence under general verdict of guilty on indictment not showing degree) in *Hogan v. State*, 30 *Wis.* 428; s. c., 11 *Am. R.* 578.
- **v. Ryall**, 67 *N. Y.* 379. Aff'g *Ryall v. Kennedy*, 40 *Super. Ct. (J. & S.)* 347. Further proceeding in 41 *Id.* 531; s. c., 52 *How. Pr.* 517. Decision in 67 *N. Y.* applied (Domicil of infant is that of parent) in *Von Hoffman v. Ward*, 4 *Redf.* 244, 253.
- **v. St. Lawrence County Mut. Ins. Co.**, 10 *Barb.* 285. See *Bidwell v. North Western Ins. Co.* Disapproved (Estoppel of insurance company to deny written statement that it has caused insurer to make) in

- Lasher v. Northwestern Nat. Ins. Co.**, 55 *How. Pr.* 318, 322.
- **v. Simmons**, 1 *Hun.* 603. See also (What county judge may act) *Code Civ. Pro.* § 773.
- **v. Strong**, 14 *Johns.* 128. See *Schemerhorn v. Van Volkenburgh*. Followed with *Fountain v. Phoenix Ins. Co.*, 11 *Johns.* 293; *Bennett v. American Art Union*, 5 *Sandf.* 614 (Effect of forfeiture declared by statute) in *Oakland R. R. Co. v. Oakland, Brooklyn, &c. R. R. Co.*, 45 *Cal.* 365; s. c., 13 *Am. R.* 181, 186.
- **v. Thorp**, 2 *Daly*, 258; s. c., 3 *Abb. Pr.* N. S. 131. Rev'd in 51 *N. Y.* 174. With decision in 3 *Abb. Pr. N. S.* compare (Fraud as ground of attachment) *Place v. Miller*, 6 *Id.* 178.
- Kenner v. Morrison**, 12 *Hun.* 204. Explained (Justice liable for false imprisonment) in *Moak's Underhill's Torts*, 1 *Am. ed.* 192.
- Kenny v. Clarkson**, 1 *Johns.* 385; s. c., 3 *Am. Dec.* 336; 3 *N. Y. Com. L. Law. ed.* 183; with brief note on effect of bottomry bonds and prior insurances.
- **v. People**, 31 *N. Y.* 330. Aff'd 18 *Abb. Pr.* 91; s. c., 27 *How. Pr.* 202. Decision in 31 *N. Y.* applied (Intoxication as excuse for crime) in *Flanigan v. People*, 86 *Id.* 554, 560.
- **v. Udall**, 5 *Johns. Ch.* 464. Modified and aff'd in *Udall v. Kenney*, 3 *Cov.* 590. Decision in 5 *Johns. Ch.* followed and approved with *Haviland v. Myers*, 6 *Id.* 25 (Equity of wife where husband or those claiming under him seek to obtain possession of her estate) in *Elliott v. Waring*, 5 *T. B. Monr. (Ky.)* 338; s. c., 17 *Am. Dec.* 69. Followed with *Haviland v. Bloom*, 6 *Johns. Ch.* 178, in *Duvall v. Farmers' Bank*, 4 *Gill & J. (Md.)* 282; s. c., 23 *Am. Dec.* 558, with note. Disting'd as inapplicable where the husband was in actual possession of the property, and had incumbered it with judgments and executions,—with *Haviland v. Myers*, 6 *Johns. Ch.* 25; *Haviland v. Bloom*, *Id.* 178,—in *Thomas v. Sheppard*, 2 *McCord Ch. (So. Car.)* 36; s. c., 16 *Am. Dec.* 632. Cited in 2 *Kent Com.* 140, as a case containing a review of the principal authorities on the subject.
- Kent v. Hudson River R. R. Co.**, 22 *Barb.* 278. See *Conger v. Hudson River R. R. Co.*; *Wibert v. N. Y. & Erie R. R. Co.* Disapproved (Measure of damages for failure of carrier to deliver) in *Jones v. N. Y. & Erie R. R. Co.*, 29 *Barb.* 633. See also *Wibert v. N. Y. & Erie R. R. Co.*, 19 *Id.* 36.
- **v. Kent**, 3 *Sup'm. Ct. (T. & C.)* 630; mem. s. c., 1 *Hun.* 529. Rev'd in 62 *N. Y.* 560; s. c., 20 *Am. R.* 502. See contrary to decision in *Id.* (Judgment against executor, as evidence) *Harvey v. Wilde*, *L. R.* 14 *Eq. C.* 438; s. c., 3 *Moak's Eng.* 811. But see *Abb. Tr. Ec.* 160, n. 9. Followed (Contract when not void as not to be performed within a year) in *Smith v. Conlin*, 19 *Hun.* 234.
- **v. Quicksilver Mining Co.**, 12 *Hun.* 53. Aff'd in part, in 78 *N. Y.* 159 which also aff'd 17 *Hun.* 169. Another proceeding in 23 *Id.* 199. See *Garnsey v. Rogers*; *Scott v. Depreyster*. Decision in 78 *N. Y.* applied (Ratification of corporate contracts made *ultra vires*) in *Sheldon Hat Blocking Co. v. Eickemeyer Hat Blocking Co.*, 90 *Id.* 607. Applied to third person dealing with corporation in *Tone v. Columbus*, 39 *Ohio St.* 281; s. c., 48 *Am. R.* 438, 451. Explained in *Morawetz on Corp.* § 77. Quoted in *Id.* § 79. Disting'd with *Gunlach v. Germania Mechanics' Ass'n*, 4 *Hun.* 339; *Coyle v. Father Mathew, &c. Society*, 17 *Weekly Dig.* 17 (Provision made by association, when invalid as affecting rights of members) and *McCabe v. Father Mathew Society*, 24 *Hun.* 149. Applied in *Poultney v. Bachman*, 31 *Id.* 49. Quoted in *Morawetz on Corp.* § 368. Considered as an authority (Power of corporation to issue preferred stock without a charter provision to that effect) in 18 *Am. L. Rev.* 43, where other cases are discussed. Discussed in 20 *Am. L. Reg. N. S.* 634, etc., citing other cases. Quoted and explained in *Morawetz on Corp.* § 353, n. 2.
- **v. Walton**, 7 *Wend.* 256. See *Hurd v. West*. Included with notes (Usury as defense to action on note) in 2 *Ames Cas. on B. & N.* 678.
- **v. Welch**, 7 *Johns.* 258; s. c., 5 *Am. Dec.* 266. See *Frost v. Raymond*; *Greenby v. Wilcocks*.
- Kentish v. Tatham**, 6 *Hill.* 372. Followed (Staying second suit until payment of costs of former suit) in *Hill v. Grant*, 2 *Sup'm. Ct. (T. & C.)* 467.
- Kentucky v. Bassford**. See *Commonwealth of Kentucky v. Bassford*.
- Kenyon v. N. Y. Central, &c. R. R. Co.**, 5 *Hun.* 479. Further proceeding in 76 *N. Y.* 607. See *Harty v. Central R. R. Co. of N. J.* With decision in 5 *Hun.* see other cases collected (Contributory negligence of child) in 6 *Abb. N. C.* 106, n.
- **v. People**, 26 *N. Y.* 203. Followed (Evidence as to character for chastity) in *Kauffman v. People*, 11 *Hun.* 86. Applied (Evidence to sustain conviction for seduction) in *Crandall v. People*, 2 *Lans.* 312; *Armstrong v. People*, 62 *N. Y.* 43. Disting'd in *Cook v. People*, 2 *Sup'm. Ct. (T. & C.)* 410. Followed in *Callahan v. State*, 63 *Ind.* 198; s. c., 30 *Am. R.* 211, 214.
- Kenzel v. Kirk**, 37 *Barb.* 113; s. c., 21 *How. Pr.* 184. Aff'd in 32 *How. Pr.* 269.
- Kercher v. Schloss**, 49 *How. Pr.* 284. Quoted and collated with other cases (Declaring future preferences in assignment for benefit of creditors) in *Bishop on Assign.* § 212.
- Kern v. Rackow**, 34 *Super. Ct. (J. & S.)* 239. Previous proceeding as *Kern v. Rackow*, in 44 *How. Pr.* 443.
- **v. Towsley**, 45 *Barb.* 150. See *Rundell*

- v. Lakey.** Doctrine discussed (Lien of taxes) in 1 *Abb. L. J.* 514.
- Kernochan v. N. Y. Bowery Fire Ins. Co.,** 5 *Duer*, 1. Aff'd in 17 *N. Y.* 428. See *Benjamin v. Saratoga County Mut. Ins. Co.* Decision in 17 *N. Y.* explained (Insurance of mortgaged premises) in *Bradford v. Greenwich Ins. Co.*, 8 *Abb. Pr.* 267. Disting'd in *Shotwell v. Jefferson Ins. Co.*, 5 *Bosw.* 262; *Foster v. Van Reed*, 70 *N. Y.* 26. Dictum explained in *Excelsior Fire Ins. Co. v. Royal Ins. Co.*, 55 *Id.* 356. Followed in *Norwich Fire Ins. Co. v. Broomer*, 52 *Ill.* 442; s. c., 4 *Am. R.* 618. Cited, with numerous other cases, in *Dick v. Frankliu Fire Ins. Co.*, 10 *Mo. App.* 376, 385.
- Kerr, Matter of,** 42 *Barb.* 119. Relied on (Right to take franchise or property of one corporation for purposes of another) in *Grand Rapids, &c. R. R. Co. v. Grand Rapids & Indiana R. R. Co.*, 35 *Mich.* 265; s. c., 24 *Am. R.* 545.
- Kerr v. Blodgett,** 25 *How. Pr.* 303; s. c., more fully, 16 *Abb. Pr.* 137. Another decision in 43 *N. Y.* 62. Decision in *Id.* disting'd (What creditors are entitled to dividends from debtor's assigned estate) in *Matter of Currier*, 8 *Daly*, 119, which was, however, overruled in *Matter of Bailey*, 58 *How. Pr.* 446, which see. Compare (Parties in creditor's action) Anonymous, 18 *Abb. Pr.* 87. Referred to in 34 *Am. Dec.* 723, n., as an instructive illustration of the doctrine (*Cestuis que trust* as parties, in case of their being numerous).
- **v. Dougherty,** 59 *How. Pr.* 44. Modified and aff'd in 17 *Hun.* 341; and that aff'd in 79 *N. Y.* 327. See *Chamberlain v. Chamberlain*. Decision in 79 *N. Y.* explained (Lapsed legacies when included in residue) in *Matter of Benson*, 96 *Id.* 499. Disting'd in *Matter of L'Hommiedieu*, 32 *Hun.* 10. Disting'd with *Stephenson v. Short*, 92 *N. Y.* 433; *Lefevre v. Lefevre*, 59 *Id.* 134 (Bequests to corporations) in *Hollis v. Drew Theological Seminary*, 95 *Id.* 166. Disting'd in *Riley v. Diggs*, 2 *Dem.* 184. Followed with *Lefevre v. Lefevre*, 59 *N. Y.* 434, in *Stephenson v. Short*, 92 *Id.* 433. See *L.* 1881, c. 641.
- **v. Hays,** 35 *N. Y.* 331. Followed (Parol evidence as to matters passed on in former suit) in *Pierce v. Tuttle*, 58 *Id.* 651.
- **v. Kerr,** 41 *N. Y.* 272. See *Hoffman v. Hoffman*; *Huggins v. King*; *Kinnier v. Kinnier*; *Shumway v. Stillman*. Followed (Effect of foreign divorce) in *Phelps v. Baker*, 60 *Barb.* 110; *People v. Baker*, 76 *N. Y.* 83. Disting'd in *Hunt v. Hunt*, 9 *Hun.* 624; which was aff'd in 72 *N. Y.* 217, 240, which see. Applied (Effect of judgment rendered on unauthorized appearance) in dissenting opinion of *GROVER, J.*, in *Brown v. Nichols*, 42 *Id.* 40, and see note thereto. Applied (Inquiry into jurisdiction of court other State) in *Sheriff v. Smith*, 47 *How. Pr.* 471. Doctrine declared applicable to domestic judgments in *Ferguson v. Crawford*, 70 *N. Y.* 261. Cited in 1 *Kent Com.* 262, n. 1, *Holme's ed.*, with many authorities *pro* and *con.* See (Revocation of letters) *Code Civ. Pro.* 1881, § 2685, n.
- **v. McGuire,** 28 *N. Y.* 446. See (Service of papers) *Code Civ. Pro.* 1881, § 796, n.
- **v. Merchants' Exchange Co.,** 3 *Edw.* 315. Approved (Extent of interest of lessee of apartment) in *Graves v. Berdan*, 29 *Barb.* 100. Followed in *Stockwell v. Hunter*, 11 *Metc. (Mass.)* 448; s. c., 45 *Am. Dec.* 220, 224, with note. Cited with approval in *Curtiss v. Hoyt*, 19 *Conn.* 154; s. c., 48 *Am. Dec.* 149, 155, with note, where it was held that the possession of the lessor was such as to enable him to maintain trespass for the destruction.
- **v. Mount,** 28 *N. Y.* 659. Explained and disting'd with *Lyon v. Yates*, 52 *Barb.* 238 (Protection afforded by erroneous process) in *Hall v. Munger*, 5 *Lans.* 110. Disting'd in *Day v. Bach*, 46 *Super. Ct. (J. & S.)* 460, 466. Opposed (Time of issuing attachment) in *Corson v. Ball*, 44 *Barb.* 452. Applied in *Taddiken v. Cantrell*, 4 *Sup'm. Ct. (T. & C.)* 222. Explained as decided before amendment of *Code Pro.* § 227,—in *Wallace v. Castle*, 68 *N. Y.* 370. Disting'd in *Webb v. Bailey*, 54 *Id.* 164.
- **v. Purdy,** 50 *Barb.* 24. Rev'd in 51 *N. Y.* 629. See *Ketchum v. Evertson*.
- **v. Shaw,** 13 *Johns.* 236. Disting'd (What is breach of covenant for quiet enjoyment) in *St. John v. Palmer*, 5 *Hill.* 602; *Webb v. Alexander*, 7 *Wend.* 285. Examined with other cases in dissenting opinion of *DWIGHT, C.*, in *Shattuck v. Lamb*, 65 *N. Y.* 512. Applied (What constitutes eviction) in *Lansing v. Van Alstyne*, 2 *Wend.* 564, n. Explained (Sufficiency of memorandum required by statute of frauds) in *Broune on Stat. of Frauds*, § 231, n. 2, 4 ed. Cited as sustaining the English doctrine in *Benj. on Sales*, § 232, n. u (*Bennett's* 4 *Am. ed.*).
- Kerrinus v. People,** 60 *N. Y.* 221. Examined and applied (Distinction between occupancy as servant and as tenant) in *Chatard v. O'Donovan*, 60 *Ind.* 20; s. c., 41 *Am. R.* 782; 21 *Am. L. Reg. N. S.* 461, 463.
- Kerrigan v. Force,** 9 *Hun.* 185. Aff'd in 68 *N. Y.* 381. See *People ex rel. Comm'rs of Washington Park v. Banks*.
- Kerrison v. Kerrison,** 8 *Abb. N. C.* 444. Followed (Marriage when valid though prohibited by statute) in *Van Voorhis v. Brintnall*, 86 *N. Y.* 18, 27.
- Kershaw v. Thompson,** 4 *Johns. Ch.* 609. Followed (Jurisdiction of court of chancery to decree possession of land) in *Irvine's Heirs v. McRee*, 5 *Humph. (Tenn.)* 554; s. c., 42 *Am. Dec.* 468.
- Kerslake v. Schoonmaker,** 1 *Hun.* 436. Fully reported in 3 *Sup'm. Ct. (T. & C.)* 524. Collated with other cases (Rejection of competent evidence by referee) in *Hoffm. on Referees*, 72.

**Kerwin, Ex parte**, 8 *Cow.* 118. Disapproved with *Woolly v. Constant*, 4 *Johns.* 60 (Parol proof, of authority to fill in blanks of deed) in *Williams v. Crutcher* 5 *How.* (Miss.) 71; s. c., 35 *Am. Dec.* 422, with note. Cited with *Hanford v. McNair*, 9 *Wend.* 54; *Blood v. Goodrich*, *Id.* 68; *Worrall v. Munn*, 5 *N. Y.* 229; *Knight v. Sabler*, 30 *Barb.* 218, in 10 *Am. R.* 268, n., as showing the question to be not settled in *N. Y.* Compared, and rule in other States stated, in 12 *Am. L. Reg. N. S.* 713.

**Kesler v. Haynes**, 6 *Wend.* 547. Overruled (Effect of omission of sheriff to take sufficient security in replevin) in *Smith v. McFall*, 18 *Id.* 521; *Wilson v. Williams*, *Id.* 581.

**Kessel v. Albetis**, 56 *Barb.* 362. Cited (Dismissal of action on transaction violating revenue laws) in 1 *Whart. Com. on Ev.* § 283.

**Kessler v. N. Y. Central, &c. R. R. Co.**, 7 *Lans.* 62. Aff'd in 61 *N. Y.* 538. See *Bostwick v. Champion*; *Quimby v. Vanderbilt*.

**Ketcham v. Clark**, 6 *Johns.* 144; s. c., 5 *Am. Dec.* 197. Explained with *Marquand v. N. Y. Manuf. Co.*, 17 *Johns.* 525; *Skinner v. Dayton*, 19 *Id.* 513, as not authorities (Power of partner to dissolve partnership made for specified time) in *Ferrero v. Buhlmeier*, 34 *How. Pr.* 33. Followed with *National B'k v. Norton*, 1 *Hill*, 572; *Davis v. Allen*, 3 *N. Y.* 168; *Austin v. Holland*, 69 *Id.* 571 (Power of partner to bind firm after its dissolution) in *National Shoe & L. B'k v. Herz*, 89 *N. Y.* 629. Quoted in 2 *Collyer on Partn.* § 536, n. 1, *Wood's Am. ed.*

— **v. Hiller**, 48 *Barb.* 596. Disting'd and applied (Option of delivery of goods sold) in *Brooklyn Oil Refinery v. Brown*, 38 *How. Pr.* 444.

— **v. Woodruff**, 24 *Barb.* 147. See to the contrary (Remedy for review of judgment on award) *Isaacs v. Beth Hamedrash Soc.*, 19 *N. Y.* 584.

**Ketchell v. Burns**, 24 *Wend.* 456. See *Lamoureux v. Hewitt*; *Packer v. Willson*. Disting'd (Negotiability of guaranty) in *Hayden v. Weldon*, 14 *Vroom (N. J.)* 133. Commented on in *Bigel. on B. & N.* 2 ed. 139. Explained in 2 *Pars. on Contr.* 3, n. a.

**Ketchum v. Bank of Commerce**, 19 *N. Y.* 499. Doctrine discussed and cases collected (Payment of forged paper) in 5 *Am. L. Reg. N. S.* 337.

— **v. Barber**, 4 *Hill*, 224. Aff'd in 7 *Id.* 444. Opinion of *Bronson, J.*, in 4 *Hill*, explained (Sale of credit, when not usurious) in *More v. Howland*, 4 *Den.* 264. Compare (Contents of notary's certificate of protest) *Code Civ. Pro.* § 923.

— **v. City of Buffalo**, 21 *Barb.* 294. Aff'd in 14 *N. Y.* 356. Decision in *Id.* followed (Implied powers of municipal corporations to incur debt) in *City of Williamsport v. Commonwealth*, 84 *Penn. St.* 487; s. c., 24 *Am. R.* 208, 222. Disting'd in *Pratt v.*

*Luther*, 45 *Ind.* 250. Applied in *Smith v. City of Newbern*, 70 *N. C.* 14; s. c., 13 *Am. R.* 766, 768. Reviewed in 30 *Am. Dec.* 193, n., as illustrating distinction between power of municipal corporation to borrow, and to create indebtedness in pursuit of its municipal powers or duties; see also *Barry v. Merchants' Exchange Co.*, 1 *Sandf. Ch.* 269; *Curtiss v. Leavitt*, 15 *N. Y.* 269 (dissenting opinion of *SELDEN, J.*), collated as to the implied power of private corporations to borrow.

— **v. Durkee, Hoffm.** 538. Rev'd in part, in 1 *Barb. Ch.* 480; s. c., 45 *Am. Dec.* 412, with note wherein are collected citations. See *Deveau v. Fowler*. Decision in 1 *Barb. Ch.* doubted (Rights of creditors, on dissolution of partnership) in *Cory v. Long*, 2 *Sweeny*, 491.

— **v. Evertson**, 13 *Johns.* 359; s. c., 7 *Am. Dec.* 334. See *Battle v. Rochester City B'k*; *Ellis v. Hoskins*; *Gazley v. Price*; *Van Eps v. Mayor of Schenectady*. Limited to contracts for a single thing (Forfeiture on failure to perform contracts to purchase land, &c.) in *Tipton v. Feitner*, 20 *N. Y.* 423, 428. Approved and applied as having been constantly re-asserted, and acted upon, in *Monroe v. Reynolds*, 47 *Barb.* 574. Applied in *Davison v. Associates of the Jersey Co.*, 6 *Hun.* 470, 473; Reviewed with *Raymond v. Bernhard*, 12 *Johns.* 274, and other cases, in *Packer v. Button*, 35 *Vt.* 188, 193. Disting'd in *Baston v. Clifford*, 68 *Ill.* 67; s. c., 18 *Am. R.* 547, 550. See cases collected in 7 *Am. L. Reg. N. S.* 79. Cited with *Robinson v. Cropsey*, 2 *Edw.* 147; *Wells v. Smith*, 7 *Paige*, 22; *Kerr v. Purdy*, 51 *N. Y.* 629; *Peoples' Bank v. Mitchell*, 73 *Id.* 406 (Time as essence of contract to purchase) in *Steele v. Bond*, 32 *Minn.* 14, 22.

— **v. Ketchum**, 1 *Abb. Pr. N. S.* 157. Aff'd as *Isaham v. Ketchum*, 46 *Barb.* 43. See *Tracy v. First Nat. Bank of Selma*. Decision in 1 *Abb. Pr. N. S.* denied (Motion after judgment to vacate attachment) in *Zeregal v. Benoist*, 7 *Robt.* 199, as sufficiently answered by *Thompson v. Culver*, 15 *Abb. Pr.* 97. See *Code Civ. Pro.* 1881, § 682, n. See (When attachment may be granted) *Code Civ. Pro.* 1881, ch. VII, tit. III, art. 1, n.

— **v. Miln**, 3 *Selden's Notes*, 152. See *Rawson v. Copland*. Followed (Set-off against personal representative) in *Jordon v. Shoe & Leather Nat. B'k* 12 *Hun.* 512, 514. Explained and followed in *Patterson v. Patterson*, 59 *N. Y.* 574, 577.

— **v. Stevens**, 6 *Duer*, 463. Aff'd in 19 *N. Y.* 499.

**Keteltas, Matter of.** See *Ketteltas, Matter of*.

**Keteltas v. Coleman**, 2 *E. D. Smith*, 408. See *Keteltas v. Murphy*. See authority reviewed (Sub-leases and assignments) in 16 *Am. L. Rev.* 30.

— **v. Fleet**, 7 *Johns.* 324. Trial at *nisi prius*, reported in *Anth. N. P.* 52.



- **v. Green.** See *Keteltas v. Keteltas*.
- **v. Keteltas,** 53 *How. Pr.* 65. Another proceeding in 72 *N. Y.* 312; s. c., 28 *Am. R.* 155. Also another proceeding as *Keteltas v. Green*, 9 *Hun.* 599. See *Murdock v. Ward*; *Wright v. Trustees of Meth. Epis. Church*. Decision in 53 *How. Pr.* disting'd (Who may sue for construction of will) in *Duncan v. Duncan*, 4 *Abb. N. C.* 275, 278. Decision in 72 *N. Y.* disting'd (Widow's right, as next of kin, to share in estate) in *Betsinger v. Chapman*, 24 *Hun.* 15, 18. With decision in 9 *Id.* compare (Title must be clear to give surrogate jurisdiction to distribute) *Code Civ. Pro.* § 2719.
- **v. Murphy,** 11 *N. Y. Leg. Obs.* 151. Aff'd as *Keteltas v. Coleman*, in 2 *E. D. Smith*, 408.
- **v. Myers,** 3 *E. D. Smith*, 83; s. c., more fully, 1 *Abb. Pr.* 403. Rev'd on the question of the sufficiency of the complaint, in 19 *N. Y.* 231.
- **v. Penfold,** 4 *E. D. Smith*, 122. Cited with *Rindge v. Baker*, 57 *N. Y.* 209 (Effect of party-wall agreement) in *Roche v. Ullman*, 104 *Ill.* 11, 20. See also *Hazlett v. Sinclair*, 76 *Ind.* 488; s. c., 40 *Am. R.* 274. Collated with other cases in *McAdam Landl. & T.* 2 ed. § 233.
- **v. Wilson,** 36 *Barb.* 298. Collated with other cases (Acts showing intention to delay creditor) in *Bishop on Assign.* § 222. Quoted in *Burrill on Assign.* § 331, n. 1, 4 ed. Quoted (Expenses of the trust) in *Id.* § 418, n. 5.
- Keteltas, Matter of,** 2 *Hun.* 221; s. c., less fully, 48 *How. Pr.* 116; mem. s. c., 4 *Sup'm. Ct. (T. & C.)* 657. Modified, it seems, as *Matter of Keteltas*, in 62 *N. Y.* 624, but without opinion.
- Keutgen v. Parks,** 2 *Sandf.* 60. See *Ramsdell v. Morgan*. Disapproved with *Pringle v. Phillips*, 5 *Sandf.* 60; *Danforth v. Dart*, 4 *Duer*, 101 (Who is bona fide holder) in *Belmont Branch B'k v. Hoge*, 35 *N. Y.* 65.
- Keyser, Matter of,** 10 *Abb. Pr.* 481. Qualified (Meaning of "fraud or legal irregularity") in *Matter of Babcock*, 23 *How. Pr.* 118.
- Keyser v. Harbeck,** 3 *Duer*, 373; s. c., 12 *N. Y. Leg. Obs.* 201; 2 *Liv. Law Mag.* 548. Compare with this case and *People v. Adler*, 3 *Parb.* 249; *Ward v. People*, 3 *Hill*, 398 (Disqualification of witness) *Shay v. People*, 22 *N. Y.* 317.
- **v. Kelly,** 43 *Super. Ct. (J. & S.)* 22. Another proceeding in 4 *Redf.* 157.
- Kiah v. Grenier,** 1 *Sup'm Ct. (T. & C.)* 388. Aff'd in 56 *N. Y.* 220, without passing on anything but the construction of the will. Decision in *Id.* disting'd (Who may maintain action for construction of will) in *Chipman v. Montgomery*, 63 *Id.* 221, 231.
- Kidd v. Chapman,** 2 *Barb. Ch.* 414. See *Fitzpatrick v. Brady*. Followed (Surrogate's power to decree payment of judgment) in *McNulty v. Hurd*, 11 *Hun.* 339, 341. Applied (What is rejection of claim, by executor, &c.) in *Hoyt v. Bonnett*, 50 *N. Y.* 538, 544.
- **v. McCormick,** 83 *N. Y.* 391. Quoted and explained (Damages in actions on contract) in 2 *Greenl. on Ev.* 14 ed. § 261, n. a.
- Kidder v. Horrobin,** 72 *N. Y.* 159. Followed (Right of assignee in bankruptcy to sue in state court) in *Wetmore v. McMillan*, 57 *Iowa*, 344, 349. See also *Wheelock v. Lee*, 5 *Abb. N. C.* 72.
- Kiernan, Matter of,** 6 *Sup'm. Ct. (T. & C.)* 320; mem. s. c., 3 *Hun.* 623. Rev'd in 62 *N. Y.* 457. Decision in *Id.* disting'd (Effect of L. 1859, c. 213, respecting local improvements in Brooklyn) in *People ex rel. Ross v. City of Brooklyn*, 69 *N. Y.* 605.
- Kierstedt v. Orange & Alexandria R. R. Co.,** 1 *Hun.* 151; s. c., 3 *Sup'm. Ct. (T. & C.)* 662. Further decision in 54 *How. Pr.* 29, which was rev'd in 69 *N. Y.* 343; s. c., 55 *How. Pr.* 51; 25 *Am. R.* 199. Previous proceeding in 44 *How. Pr.* 379. Decision in 69 *N. Y.* disting'd with *Briggs v. Partridge*, 64 *Id.* 357; *Taft v. Brewster*, 9 *Johns.* 334; *Stone v. Wood*, 7 *Cow.* 453; *Guyon v. Lewis*, 7 *Wend.* 26 (Individual liability of agent executing contract) in *Whitford v. Laidler*, 94 *N. Y.* 145, which rev'd 25 *Hun.* 136, which see. Compare (Action for use and occupation under deed) 6 *Am. L. Rev.* 17, 18; *Abb. Tr. Ev.* 352.
- Kiff v. Youmans,** 30 *Hun.* 123. Rev'd in 86 *N. Y.* 324. See *Kipp v. Youmans*; *Phelps v. Nowlen*.
- Kilbourne v. Allyn,** 7 *Lans.* 352. Aff'd as *Kilbourne v. St. John*, 59 *N. Y.* 21; s. c., 17 *Am. R.* 291. Decision in *Id.* disting'd (Action by tax-payer to prevent waste of county funds) in *Newton v. Keech*, 9 *Hun.* 375. Commented on in 2 *High on Inj.* 2 ed. § 1296, n. 1.
- **v. St. John.** See *Kilbourne v. Allyn*.
- Kilburn v. Coe,** 47 *How. Pr.* 467. Further proceeding in 48 *How. Pr.* 144. See *Christy v. Kierstedt*.
- **v. Low,** 25 *Hun.* 61. Abridg't s. c., 12 *Weekly Dig.* 556.
- **v. Partridge.** Reported under *Mason v. Partridge*, 4 *Hun.* 621. Aff'd in 66 *N. Y.* 633.
- **v. Woodworth,** 5 *Johns.* 37; s. c., 4 *Am. Dec.* 321. Disting'd (Validity of foreign judgment) in *Holmes v. Holmes*, 8 *Abb. Pr. N. S.* 3. Examined with other cases in *Harrod v. Barretto*, 1 *Hall*, 161. Followed in *Robinson v. Ward*, 8 *Johns.* 90; *Fenton v. Garlick*, *Id.* 197; *Bradshaw v. Heath*, 13 *Wend.* 418. Cited approvingly in 1 *Kent Com.* 261, n. b, with many other authorities.
- Killmer v. Hobart,** 58 *How. Pr.* 452. See *Runk v. St. John*. Relied on with other cases (Right of foreign receiver to possession of property held by him as receiver) in *Chicago, Milwaukee, & N. Y. Co. v. Keokuk, &c. Packet Co.*, 108 *Ill.* 317; s. c., 48 *Am. R.* 557.

- Killmore v. Culver**, 24 *Burb.* 656. Overruled (Denial of plaintiff's title to note) in *Hays v. Southgate*, 10 *Hun.* 511, 514; which was, however, rev'd in *Hays v. Hathorn*, 74 *N. Y.* 486.
- **v. Howlett**, 48 *N. Y.* 569. See *Bank of Lansingburgh v. Cray*. Followed (Contract for cutting of timber as affected by statute of frauds) in *Boyce v. Washburn*, 4 *Hun.* 792. Explained in 1 *Benj. on Sales*, § 117, n. 5 (Corbin's 4 Am. ed.). Explained (Agreements for work and labor, distinguished from sales) in *Id.* § 109, n. y (Bennett's 4 Am. ed.).
- Kilmer v. Bradley**, 45 *Super. Ct. (J. & S.)* 585. Appeal dismissed in 80 *N. Y.* 630.
- **v. Hathorn**. See *Bockes v. Hathorn*; *Kelly v. Sheehan*. Disting'd (Time within which to appeal) in *Heilner v. Walsh*, 47 *Super. Ct. (J. & S.)* 269, 272.
- **v. O'Brien**, 13 *Hun.* 224. Further proceeding as *Kilner v. O'Brien*, 14 *Hun.* 414.
- **v. Smith**, 43 *Super. Ct. (J. & S.)* 461. Aff'd in 77 *N. Y.* 226. See *Welles v. Yates*. Decision in 77 *N. Y.* applied (Reformation of deed) in *Albany City Savgs. Inst. v. Burdick*, 87 *Id.* 40, 48; *Smith v. Truslow*, 84 *Id.* 660.
- Kilner v. O'Brien**. See *Kilmer v. O'Brien*. Disting'd (Effect of usurious transaction on subsequent contract) in *Tyler v. McNeil*, 16 *Weekly Dig.* 389.
- Kilpatrick v. Johnson**, 15 *N. Y.* 322. See *Haxtun v. Corse*. Followed with *Haxtun v. Corse*, 2 *Barb.* 506; *Robison v. Robison*, 5 *Lans.* 165 (Disposition of income of property unlawfully directed to be accumulated) *Vail v. Vail*, 4 *Paige*, 317, disapproved, and *Phelps v. Pond*, 23 *N. Y.* 69; *Hull v. Hull*, 24 *Id.* 647, criticised in *Cook v. Lowry*, 29 *Hun.* 20. Explained in *McGrath v. Van Stavoren*, 8 *Daly*, 454, 457.
- **v. People**, 5 *Den.* 277. Collated with other cases (Malicious mischief when indictable) in 1 *Bennett & H. Cds. on Crim. L.* 18.
- Kimball v. Davis**, 19 *Wend.* 437. Rev'd as *Brown v. Kimball* in 25 *Wend.* 259; See *Mott v. Doughty*. Decision in 19 *Wend.* approved (Effect of formal defects in return to commission) in *Rust v. Eckler*, 41 *N. Y.* 497. Decision in 25 *Wend.* limited (Proof of deed) in *Northrup v. Wright*, 7 *Hill*, 476. See (Admissibility of declarations of witnesses to contradict their depositions) *Evertson v. Carpenter*, 17 *Wend.* 419; *Howland v. Conway*, 1 *Abb. Adm.* 281, and cases cited in note.
- **v. Hamilton Ins. Co.** See *Ætna Fire Ins. Co. v. Tyler*; *Deming v. Colt*.
- **v. Huntington**, 10 *Wend.* 675; s. c., 25 *Am. Dec.* 590. See *Andrews v. Beecker*; *Russell v. Whipple*. Recognized as authorities (Effect of plea *puis darrein continuance* after plea in bar) in *True v. Huntoon*, 54 *N. H.* 121.
- **v. Newell**, 7 *Hill*, 116. Followed (Liability of surety on married woman's contract) in *Davis v. Statts*, 43 *Ind.* 103; s. c., 13 *Am. R.* 382; *Osborn v. Robbins*, 36 *N. Y.* 865, being disting'd as the case of a note procured by duress. Followed in *Hicks v. Randolph*, 3 *Bart. (Tenn.)* 352; s. c., 27 *Am. R.* 760. Followed in *Wagoner v. Watts*, 15 *Vroom (N. J.)* 126. Citing also *Remsen v. Graves*, 41 *N. Y.* 471.
- Kimberly v. Patchin**, 19 *N. Y.* 330. Disting'd (Passing of title, on sale of personal property) in *Cooke v. Millard*, 65 *Id.* 365; *Higgins v. Delaware. L. & W. R. R. Co.*, 60 *Id.* 553. Explained and disting'd in *Foot v. Marsh*, 51 *Id.* 288, 292. Followed and approved in *Hurff v. Hires*, 11 *Vroom (N. J.)* 581; s. c., 29 *Am. R.* 282, 291. Denied in *Ferguson v. Northern Bank of Kentucky*, 14 *Bush (Ky.)* 555; s. c., 29 *Am. R.* 418, 423. Disapproved in *Commercial Nat'l B'k v. Gillette*, 90 *Ind.* 268; s. c., 46 *Am. R.* 222. Discussed in *Benj. on Sales*, § 347, n. c. (Bennett's 4 Am. ed.); *Id.* § 352, n. a. Explained in 1 *Id.* (Corbin's 4 Am. ed.). Quoted and explained in *Id.* § 478; *Id.* §§ 484, 485. Followed and applied to case of severance of personalty between tenants in common, in *Channon v. Lusk*, 2 *Lans.* 211. *Lobdell v. Stowell*, 51 *N. Y.* 70, 75.
- Kincaid v. Archibald**, 10 *Hun.* 9. Aff'd in 73 *N. Y.* 189.
- **v. Dwinelle**, 37 *Super. Ct. (J. & S.)* 326. Aff'd in 59 *N. Y.* 548. See *Hovey v. Ten Broeck*; *People v. Globe Mut. Ins. Co.* With decision in 59 *N. Y.* compare (Rights of creditor of corporation, as affected by appointment of receiver) *Chamberlain v. Rochester Seamless Paper Vessel Co.*, 7 *Hun.* 557; *Hetzell v. Tannehill Silver Mining Co.*, 4 *Abb. N. C.* 40. Applied (Effect of judgment against corporation, as against stockholder) in *Wheeler v. Miller*, 24 *Hun.* 541, 544. Applied with *People v. Albany & Susquehanna R. R. Co.*, 1 *Lans.* 308; 5 *Id.* 25 (Effect of injunction against corporation) in *Society of Italian Union v. Montedonico*, *Ky. Super. Ct. Ky. L. Rep. & J.* 587.
- **v. Richardson**, 9 *Abb. N. C.* 315. Aff'd by Gen. Term, 4th Dept. Oct. 1881.
- King v. Baldwin**, 2 *Johns. Ch.* 554. Rev'd in 17 *Johns.* 384; s. c., 8 *Am. Dec.* 415, with note; 6 *N. Y. Com. L. Law. ed.* 404, with note, collating conflicting authorities. See *Beardsley v. Warner*; *Gahn v. Niemcewicz*; *Hayes v. Ward*; *Hubbard v. Gurney*; *Pain v. Packard*; *People v. Berner*; *People v. Jansen*, *Schroepf v. Shaw*. Decision in 2 *Johns. Ch.* examined with other cases (Rights of surety in equity) in *Pardee v. Van Anken*, 3 *Barb.* 540. Approved in *Hellams v. Abercrombie*, 15 *So. Car.* 110. Decision in 17 *Johns.* criticised and doubted in *Schroepf v. Shaw*, 3 *N. Y.* 454. Included with notes in 2 *Hare & W. Am. Leud. Cas.* 5 ed. 372. Decision in 2 *Johns. Ch.* disting'd (Surety as affected by failure of creditor to proceed against debtor) in *Supervisors of Monroe v. Otis*, 62 *N. Y.* 94. Approved in *Caston v. Dunlap*, *Rich*

- Eq. (So. Car.)* 77; s. c., 23 *Am. Dec.* 194, with note, notwithstanding *Pain v. Packard*, 13 *Johns.* 174, and decision in 17 *Id.* Followed in *Smith v. Tunn*, 1 *McCord's Ch. (So. Car.)* 443; s. c., 16 *Am. Dec.* 617, with note. Included in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 364. Approved (Authority of *Tothill's Reports*) in *Beall v. Hilliary*, 1 *Md.* 86; s. c., 54 *Am. Dec.* 649, 651, with note. Decision in 17 *Johns* disting'd (Surety as affected by failure of creditor to proceed against debtor) in *Ruggles v. Holden*, 3 *Wend.* 217. Criticised and limited in *Warner v. Beardsley*, 8 *Wend.* 198. Applied in *Row v. Pulver*, 1 *Cow.* 247; *Field v. Cutler*, 4 *Lans.* 197; *Albany Dutch Church v. Vedder*, 14 *Wend.* 171. Approved in *Hubbard v. Gurney*, 54 *N. Y.* 464. Disapproved with *Pain v. Packard*, 13 *Johns.* 174, in *Herrick v. Borst*, 4 *Hill.* 656. Followed as settled law in *Remsen v. Beekman*, 25 *N. Y.* 556; *Colgrove v. Tallman*, 67 *Id.* 99; *Toles v. Adees*, 84 *Id.* 222, 239. Limited in *Converse v. Cook*, 25 *Hun.* 44, 47. Referred to in 34 *Am. Dec.* 580, n., as (though always having been followed in N. Y., and to some extent elsewhere) being against the weight of authority in America and England. Decisions in 2 *Johns. Ch.* and 17 *Johns* commented on at length with *Pain v. Packard*, 13 *Johns.* 174, in *Sprigg v. Bank of Mount Pleasant*, 10 *Pet.* 257, 266. Decision in 12 *Johns.* approved (Proof at law, that one is bound as surety) in *Harmon v. Hale*, 1 *Wash.* 422; s. c., 34 *Am. R.* 816, 820. Followed with *Post v. Kimberly*, 9 *Johns.* 470; *Rathbone v. Warren*, 10 *Id.* 595, and *LeGuen v. Gouverneur*, 1 *Johns. Cas.* 436; disting'd (Equitable relief on grounds available at law) in *Hempstead v. Watkins*, 6 *Ark.* 317; s. c., 42 *Am. Dec.* 696, 704, 706.
- *v. Bardeau*, 6 *Johns. Ch.* 38; s. c., 10 *Am. Dec.* 312. Explained and followed (Specific performance of contract of sale of real estate) in *Beyer v. Marks*, 2 *Sweeny*, 715. Disting'd in *Stokes v. Johnson*, 57 *N. Y.* 673, 675.
- *v. Brown*, 2 *Hill.* 485. See *Shute v. Dorr*. Doubtful (Remedy for money paid, &c., on void contract) in *Hellman v. Strauss*, 2 *Hill.* 9, 11. Explained in *Jack v. McKee*, 9 *Burr (Penn.)* 235. Differently explained in *Malaun's Administrator v. Ammon*, 1 *Grant's (Penn.) Cas.* 123, 142. See *Erben v. Lorillard*, 19 *N. Y.* 299. Applied with cases from N. Y. and elsewhere in *Williams v. Bemis*, 108 *Mass.* 91; s. c., 11 *Am. R.* 318. Discussed in 2 *Chitty on Contr.* 1823, n. b, 11 *Am. ed.* Explained in *Id.* 852, n. k, 854.
- *v. Butler*, 15 *Johns.* 281. Disting'd with *Olney v. Wickes*, 18 *Id.* 125 (Liability of successors of overseers of the poor) in *Grant v. Fancher*, 5 *Cow.* 309, 312.
- *v. Despard*, 5 *Wend.* 277. Commented on (Guaranties as affected by statute of frauds) in *Browne on Stat. of Frauds*, § 204, n. 1, 4 ed. Explained in *Chitty on Contr.* 753, n. n, 11 *Am. ed.*
- *v. Dowdall*, 2 *Sandf.* 181. Followed (Sunday when included in computation of time) in *Cressey v. Parks*, 75 *Me.* 387; s. c., 46 *Am. R.* 406.
- *v. Fitch*, 2 *Abb. Ct. App. Dec.* 508. Followed (Evidence of prior fraudulent representations) in *Coffin v. Hollister*, 31 *Hun.* 81. See to the contrary (Testimony of parties) *Learned v. Ryder*, 61 *Barb.* 552. See also *Abb. Tr. Ev.* 620.
- *v. Galvin*, 6 *Sup'm. Ct. (T. & C.)* 467; mem. s. c., 4 *Hun.* 258. Appeal dismissed in 62 *N. Y.* 238. Decision in *Id.* applied (Right to appeal, as determined by amount in controversy) in *Roosevelt v. Linkert*, 67 *Id.* 447; *Brown v. Sigourney*, 72 *Id.* 122. Followed, but point not indicated, in *Nat. B'k of Port Edward v. Washington County Nat. B'k*, *Id.* 606.
- *v. Greenway*, 71 *N. Y.* 413. See *Fralick v. Betts*. Explained (Maritime contracts) in *Wilson v. Lawrence*, 82 *N. Y.* 409.
- *v. Harris*, 30 *Barb.* 471. Aff'd in 34 *N. Y.* 330. Decision in *Id.* followed (Lien of judgment as affected by decision reversing decision by which judgment was vacated or reversed) in *Underwood v. Green*, 36 *Super. Ct. (J. & S.)* 481, 485.
- *v. Havens*, 25 *Wend.* 420. See (Double, &c., damages) *Code Civ. Pro.* 1881, § 1184, n.
- *v. Knapp*, 66 *Barb.* 225. Aff'd in 50 *N. Y.* 462. See *Phillip v. Gallant*.
- *v. Leighton*, 22 *Hun.* 419. Compare other proceedings in 58 *N. Y.* 383; also mem. in 23 *Hun.* 533. Decision in 58 *N. Y.* followed (Party to action, when not to be compelled to be examined) in *Burnett v. Snyder*, 41 *Super. Ct. (J. & S.)* 342, 347. See *Code Civ. Pro.* 1881, § 885, n.
- *v. Lenox*, 19 *Johns.* 235. Followed with *Satterlee v. Groat*, 1 *Wend.* 272; *Allen v. Sewall*, 2 *Id.* 327 (Liability of carrier for loss of goods shipped under contract with agent) in *Jones v. Sims*, 9 *Port. (Ala.)* 236; s. c., 33 *Am. Dec.* 313, 316. Appears to be limited with *Satterlee v. Groat*, 1 *Wend.* 272 (Who are not liable as common carriers) in *Jones v. Pitcher*, 3 *Stew. & P. (Ala.)* 135; s. c., 24 *Am. Dec.* 716, 741. Discussed in *Ang. on Carr.* § 146, 5 ed.
- *v. Livermore*, 9 *Hun.* 298. Aff'd, it seems, in 71 *N. Y.* 605, but without opinion.
- *v. Mayor, &c. of N. Y.*, 36 *N. Y.* 182. Followed as decisive (Appeal to General Term in proceedings to take land for streets) in *Matter of widening Broadway*, 61 *Barb.* 485; *Matter of Kingbridge Road*, 4 *Hun.* 604. Followed (Conclusiveness of decision of General Term in such proceedings) in *Matter of Comm'r's of Central Park*, 50 *N. Y.* 497.
- *v. Merchants' Exchange Co.*, 5 *N. Y.* 547. Examined and applied (Implied power of corporation to borrow money) in *Curtis v. Leavitt*, 15 *N. Y.* 9, 63, 220.

- **v. N. Y. Central, &c. R. R. Co.**, 4 *Hun*, 769. Rev'd in 66 *N. Y.* 181; s. c., 23 *Am. R.* 37. Mem. of further appeal in 72 *N. Y.* 607. See *Higgins v. Watervliet Turnpike Co.* Decision in 72 *N. Y.* applied (Admissibility of evidence of a collateral nature) in *Saulsbury v. Village of Ithaca*, 24 *Hun*, 12, 15. Disting'd (Negligent use of derrick) in *Derrenbacher v. Lehigh Valley R'y Co.*, 87 *N. Y.* 636. Decision in 4 *Hun*, disting'd in *Marvin v. Muller*, 25 *Id.* 163, 165. Decision in 66 *N. Y.* followed (Existence of relation of master and servant); *Coughtry v. Globe Woolen Co.*, 56 *Id.* 124, being disting'd in *Larock v. Ogdensburg & L. C. R. R. Co.*, 26 *Hun*, 382. Collated with *McCafferty v. Spuyten Duyvil & P. M. R. R. Co.*, 61 *N. Y.* 178; *Pack v. Mayor, &c. of N. Y.*, 8 *Id.* 222; *Kelly v. Mayor, &c. of N. Y.*, 11 *Id.* 482 (Liability of employer for wrongful acts of employee) in 18 *Am. L. Rev.* 635, 641.
- **v. O'Brien**, 38 *Super. Ct. (J. & S.)* 49. Appeal dismissed, it seems, in 57 *N. Y.* 653, but without opinion.
- **v. Orser**, 4 *Duer*, 431. Disting'd (Officer's liability in replevin) in *Manning v. Keenan*, 9 *Hun*, 686, 689.
- **v. Phillips**. See *Wood v. Same*.
- **v. Platt**, 37 *N. Y.* 155. Other proceedings in 34 *How. Pr.* 26. See *Collier v. Whipple*. Decision in 34 *How. Pr.* cited as authority (Time for appealing from final orders) in *Jarvis v. Hamilton*, 37 *Wis.* 87. Decision in 37 *N. Y.* followed (Setting aside judicial sale) in *Kellogg v. Howell*, 62 *Barb.* 280, 291.
- **v. Poole**, 36 *Barb.* 242. See *Humiston v. Ballard*. Followed and approved (Right of successful party to costs where suit is dismissed for want of jurisdiction) in *Bitz v. Meyer*, 11 *Vroom (N. J.)* 252; s. c., 29 *Am. R.* 233.
- **v. Root**, 4 *Wend.* 113; s. c., 21 *Am. Dec.* 102, with note containing citations of the case. See *Root v. King*. Quoted and commented on (Action against newspaper for libel) in *Cooley on Cons. Limit.* 5 ed. 561.
- **v. Rundle**, 15 *Barb.* 139. Compare (Bequests, &c. to religious corporations) *Williams v. Williams*, 8 *N. Y.* 525. Collated with other cases in *Gerard's Titles to Real Est.* 2 ed. 298.
- **v. Sarria**, 7 *Hun*, 167. Aff'd in 69 *N. Y.* 24; s. c., 25 *Am. R.* 128. Decision in *Id.* followed (Enforcing and recognizing foreign partnership law) in *Lawrence v. Batcheller*, 131 *Mass.* 504, 509.
- **v. Stow**, 6 *Johns. Ch.* 323. Overruled (Validity of sale of mortgaged land by one loan commissioner) in *Powell v. Tuttle*, 3 *N. Y.* 396.
- **v. Talbot**, 40 *N. Y.* 76. Aff'g 50 *Barb.* 453. Decision in 40 *N. Y.* followed (Duty of trustees as to investments) in *Goodwin v. Howe*, 62 *How. Pr.* 134, 136; *Gillespie v. Brooks*, 2 *Redf.* 349, 358. Disting'd in *Judd v. Warner*, 2 *Dem.* 104. Collated with other cases in other jurisdictions holding a less strict rule, in *Lamar v. Micou*, 112 *U. S.* 452, 468. Collated with other cases in 7 *Am. R.* 33, n. Included in *Zinn's Lead. Cas. on Trusts*, 322. Commented on in *Hoffm. on Referees*, 110. Disting'd (Charging trustees at reduced rate of interest) in *Whitney v. Phoenix*, 4 *Redf.* 180, 199. Applied in *Livermore v. Wortman*, 25 *Hun*, 341, 343. Reviewed and explained with *Shuttleworth v. Winter*, 55 *N. Y.* 624; *Haskins v. Teller*, 3 *Redf.* 323; *Wheeler v. Ruthven*, 2 *Id.* 495; *Hoffman v. Pennsylvania Hospital*, 1 *Dem.* 118. Followed and approved in *Micou v. Lamar*, *U. S. Cir. Ct. S. D. N. Y.*, 12 *Reporter*, 39; s. c., 7 *Fed. Rep.* 180. Disting'd (Interest on advances by trustees) in *Cook v. Lowry*, 29 *Hun*, 20.
- **v. Van Dusen**, 25 *Hun*, 60; Abridg't, s. c., 12 *Weekly Dig.* 562.
- **v. West**, 10 *How. Pr.* 333. See *Mutual Life Ins. Co. v. Bowen*. Overruled (Determination of claims as to surplus money's in foreclosure) in *Bergen v. Carman*, 79 *N. Y.* 152. Compare *Thomas on Mort.* 380. Collated with other cases in *Colby on Forecl.* 42.
- **v. Whitely**, *Hoffm.* 477. Aff'd in 10 *Paige*, 463. See *Hamill v. Gillespie*; *Trotter v. Hughes*. Decision in 10 *Paige*, followed (Liability of purchaser of incumbered property) in *Ford v. David*, 1 *Bow.* 600. Reviewed with other cases in *Garney v. Rogers*, 47 *N. Y.* 236; *Real Estate Co. v. Balch*, 45 *Super. Ct. (J. & S.)* 531; *Pardee v. Treat*, 82 *N. Y.* 385, 388. Explained in *Douglass v. Wells*, 18 *Hun*, 91. Approved and applied in *Trotter v. Hughes*, 12 *N. Y.* 77. Explained and commented on with *Trotter v. Hughes*, *Burr v. Beers*, 24 *N. Y.* 178, in *Thorp v. Keokuk Coal Co.*, 48 *Id.* 253. Said in *Vrooman v. Turner*, 69 *Id.* 285, not to have been overruled by *Lawrence v. Fox*, 20 *Id.* 268. Disapproved in dissenting opinion in *Dunning v. Leavitt*, 85 *Id.* 39.
- **v. Woodhull**, 3 *Edw.* 79. Commented on with other cases (Void gifts included in residuary legacies) in *Betts v. Betts*, 4 *Abb. N. C.* 317, 420. Compared (Bequest to unincorporated society) in 4 *Am. L. Reg. N. S.* 274. Explained in 2 *Perry on Trusts*, 3 ed. § 748, n.
- Kinghorn v. Wright**, 45 *Super. Ct. (J. & S.)* 615. Aff'd in 83 *N. Y.* 604.
- Kingman v. Hotaling**. See *Roth v. Palmer*.
- Kingsbridge Road, Matter of**, 4 *Hun*, 599. Aff'd, it seems, in 62 *N. Y.* 645, but without opinion. Another decision in 5 *Hun*, 146.
- Kingsbury v. Kirwin**, 43 *Super. Ct. (J. & S.)* 451. Aff'd as *Kingsbury v. Kirwan*, in 77 *N. Y.* 612. Decision in *Id.* reviewed with *Bigelow v. Benedict*, 70 *Id.* 202; *Markham v. Jaudon*, 41 *Id.* 235; *Baker v. Drake*, 66 *Id.* 518; *Gruman v. Smith*, 81 *Id.* 25; *Wicks v. Hatch*, 62 *Id.* 535; *Knowlton v. Fitch*, 52 *Id.* 288; in *Flagg v. Baldwin*, 38 *N. J. Eq. (11 Stew.)* 219; s. c., 48 *Am. R.* 308, 315; where the *N. Y.* cases are ap-

proved as to their doctrine, that a contract relating to differences in prices is a wager contract, but are disapproved as to their doctrine respecting the nature of dealings in stock on a margin.

**Kings County Elevated Ry. Co., Matter of,** 18 *Hun.* 378. Further decisions in 78 *N. Y.* 383; 20 *Hun.* 217, an appeal from which was dismissed in 82 *N. Y.* 95.

**Kingsland v. Chittenden,** 6 *Lans.* 15. Aff'd, it seems, in 61 *N. Y.* 618. See cases cited (Determining boundaries of adjoining owners in respect to water surface) in 5 *Abb. N. C.* 174, n.

— **v. Mayor, &c. of N. Y.,** 5 *Daly.* 448. Collated with other cases (Municipal contracts) in 5 *Abb. N. C.* 43, n. Collated with other cases (Limit of cost in execution of public works) in *Id.* 468, n.

**Kingsley v. Balcome,** 4 *Barb.* 181. See Chapin v. Merrill; Leonard v. Vredenberg. Qualified (When promise to pay debt of another is within statute of frauds) in Mallory v. Gillett, 21 *N. Y.* 412, 427. Followed, notwithstanding Mallory v. Gillett, in Baker v. Dillman, 12 *Abb. Pr.* 313, 316. Approved in Stern v. Drinker, 2 *E. D. Smith.* 401. Compared in 4 *Am. L. Reg. N. S.* 242. Quoted in *Broune on Stat. of Frauds*, § 212, n. 2, 4 ed.

— **v. City of Brooklyn,** 5 *Abb. N. C.* 1. Aff'd in 7 *Id.* 28; s. c., 78 *N. Y.* 200. Previous proceeding in 1 *Abb. N. C.* 108. With decision in 5 *Id.* see also (Ratification of payment, by legislative acts) People v. Denison, 8 *Id.* 128, 143, n.

— **v. Vernon.** See Commercial B'k of Buffalo v. Warren.

**Kingston B'k v. Eltinge,** 40 *N. Y.* 391. Subsequent proceeding in 5 *Hun.* 653; and that aff'd in 66 *N. Y.* 653. See Canal B'k v. B'k of Albany. Decision in 40 *N. Y.* extended and applied (Effect of negligence on right to recover money paid by mistake) in U. S. v. Nat. Park B'k, U. S. *Dist. Ct. S. D. N. Y.*; 6 *Fed. Rep.* 854.

— **v. Gay,** 19 *Barb.* 459. Approved in dissenting opinion (Set-off of amount deposited in bank) in Seymour v. Dunham, 24 *Hun.* 93, 97.

**Kinne v. City of Syracuse.** See Kinney v. Same.

— **v. Ford,** 52 *Barb.* 194. Aff'd in 43 *N. Y.* 587.

**Kinney v. Basch,** *Sup'm Ct. Special Term*, 1877; 16 *Am. L. Reg. N. S.* 597. Followed (Infringement of trade-mark by colorable imitation) in Enoch Morgan's Sons' Co. v. Schwachofer, 5 *Abb. N. C.* 265, 271. Followed (Trade-marks in numerals) in Collins v. Reynolds Card Mfg. Co., 7 *Id.* 17.

— **v. City of Syracuse,** 30 *Barb.* 349. Aff'd, as Kinne v. City of Syracuse, in 3 *Keyes*, 110; s. c., 2 *Abb. Ct. App. Dec.* 534.

— **v. Kiernan,** 2 *Lans.* 492. Rev'd in 49 *N. Y.* 164.

— **v. Watts,** 14 *Wend.* 38. Approved (Damages for breach of covenant of warranty, &c.) in Baxter v. Ryerss, 13 *Barb.* 283; Moak v. Johnson, 1 *Hill*, 99. Doubted (Provisions of R. S. respecting implied covenants in conveyances—whether applicable to leases,—how far applicable to lands outside the State) in Tone v. Brace, 8 *Paige*, 567; 11 *Id.* 566. Disapproved and Tone v. Brace approved (Application of such provisions to leases) in Mayor, &c. of N. Y. v. Mabie, 13 *N. Y.* 151. Commented on in 1 *Washb. on Real Prop.* 4 ed. 487, n. 6.

— **v. Winter.** See Winter v. Kinney.

**Kinnier v. Kinnier,** 53 *Barb.* 454; s. c., 3 *Abb. Pr. N. S.* 425; 35 *Hov. Pr.* 66. Aff'd in 58 *Barb.* 424; and the latter aff'd in 45 *N. Y.* 535; s. c., 6 *Am. R.* 132. Decision in *Id.* applied (Effect of foreign divorce) in Hunt v. Hunt, 9 *Hun.* 622, which was aff'd in 72 *N. Y.* 217, which see. Explained in People v. Baker, 76 *Id.* 83. Compare Hoffman v. Hoffman, 46 *Id.* 30. Followed in Johnson v. Johnson, 67 *Hov. Pr.* 144. Questioned in so far as contrary to Pawling v. Bird, 13 *Johns.* 192; Borden v. Fitch, 15 *Id.* 121; Vischer v. Vischer, 12 *Barb.* 640; McGiffert v. McGiffert, 31 *Id.* 62; Kerr v. Kerr, 41 *N. Y.* 272; Todd v. Kerr, 42 *Barb.* 317, in People v. Dawell, 25 *Mich.* 247; s. c., 12 *Am. R.* 271, where it is thought to overrule in terms only Jackson v. Jackson, 1 *Johns.* 424. Disting'd (Questioning judgment of divorce collaterally) in Kamp v. Kamp, 59 *N. Y.* 223. Followed (Binding effect of divorce obtained by fraud and collusion) in Ruger v. Heckel, 21 *Hun.* 491, which was aff'd in 85 *N. Y.* 483, which see.

— **v. Rogers,** 42 *N. Y.* 531. Aff'g Hunnier v. Rogers, 55 *Barb.* 85. See Lupton v. Lupton; Reynolds v. Reynolds. Decision in 42 *N. Y.* followed (Effect of power of sale given to executor) in Hetzell v. Barber, 6 *Hun.* 540. Disting'd in McCarty v. Deming, 4 *Lans.* 443.

**Kinsey v. Bailey,** 9 *Hun.* 452. Followed (What is personal property, though annexed to realty) in Sisson v. Hibbard, 10 *Hun.* 420, 424.

— **v. Ford.** See Carpenter v. Goodwin.

**Kip, Matter of,** 1 *Paige*, 601. Applied (Affidavit to obtain examination of party before trial) in Hynes v. McDermott, 7 *Daly.* 513, 519. Cited as settled law (Testimony by corporator by or against corporation) in *Ang. & A. on Corp.* § 652, 11 ed.

**Kip v. Brigham,** 7 *Johns.* 163. Previous decision in 6 *Id.* 158. See Doty v. Brown. Decision in 7 *Johns.* explained (Contract of indemnity when broken) in Gilbert v. Wiman, 1 *N. Y.* 550, 562. Cited as a similar case (When record of former suit is admissible) in Pope v. Nance, 1 *Stew. (Ala.)* 354; s. c., 18 *Am. Dec.* 60, 66. Decision in 6 *Johns.* applied (Estoppel of sureties on bond of sheriff, &c.) in Crisman v. Matthews, 1 *Scam. (Ill.)* 148; s. c., 26 *Am. Dec.* 417, 421, with note. Both decisions

- approvingly reviewed in *Masser v. Strickland*, 17 *Serg. & R.* 354; s. c., 17 *Am. Dec.* 668, 670, with note; but see dissenting opinion.
- *v. Deniston*, 4 *Johns.* 23. See *Bates v. Underhill*. Explained (Liability of executors, &c. for defaults of co-executors, &c.) in *Lacey v. Davis*, 5 *Redf.* 301, 306. Reviewed with *Shepherd v. Little*, 14 *Johns.* 210, and other cases (When and for what purposes consideration expressed in deed may be contradicted) in *Morse v. Shattuck*, 4 *N. H.* 229; s. c., 17 *Am. Dec.* 419. Compare 1 *Co.* 175; 2 *Id.* 76a, with learned note (G. 1); 4 *Id.* 3b.; 7 *Id.* 40; see 17 *Am. Dec.* 523, n.; *Betts v. Union B'k of Maryland*, 1 *Harr. & G. (Md.)* 175; s. c., 18 *Am. Dec.* 233; *Com. Dig.* tit. *Covenant*, G. 3, collating cases.
- *v. Merwin*, 34 *Super. Ct. (J. & S.)* 531. Aff'd in 52 *N. Y.* 542.
- *v. N. Y. & Harlem R. R. Co.*, 6 *Hun*, 24. Aff'd in 67 *N. Y.* 227.
- *v. Norton*, 12 *Wend.* 127; s. c., 27 *Am. Dec.* 120, with note, wherein are collected citations respecting the settlement of a disputed boundary. See *Baldwin v. Brown*; *Jackson v. Dysling*.
- Kipp v. Yeomans**, 9 *Weekly Dig.* 461. Reported as *Kiff v. Youmans*, 20 *Hun*, 123; Rev'd in 86 *N. Y.* 324.
- Kirby v. Carpenter**, 7 *Barb.* 373. Disting'd (Power of surrogate in distributing estate) in *Harris v. Meyer*, 3 *Redf.* 456.
- *v. Fitzgerald*, 31 *N. Y.* 417. Applied (Statement on confession of judgment) in *Union Bank v. Bush*, 36 *Id.* 631, 637.
- *v. Hewitt*, 26 *Barb.* 607. Erroneously reported as a Special Term case. The decision was at General Term.
- *v. Kirby*, 1 *Paige*, 261. Subsequent decision in *Id.* 565. Decision on p. 565 relied on (Settlement between parties as affecting attorney's lien) in *Christy v. Perkins*, 6 *Daly*, 237, 240. Decision on p. 261 quoted (*Alimony pendente lite*) in 2 *Bish. on Mar. & D.* § 395, n. 3, 6 ed.
- *v. Schoonmaker*, 3 *Barb. Ch.* 46; s. c., 49 *Am. Dec.* 160, with note, wherein are collected citations of the case. Quoted and collated, with other cases (Rights of firm and individual creditors) in *Bishop on Assign.* §§ 188, 189. Quoted and discussed in *Burrill on Assign.* §§ 210, 211, 4 ed.
- *v. Taylor*, 6 *Johns. Ch.* 242. Followed (Effect of settlement between guardian and ward) in *Aaron v. Mendell*, 78 *Ky.* 427; s. c., 39 *Am. R.* 248. Disapproved (Distinction between release given by ward to his guardian and gift or conveyance to guardian) in *Ferguson v. Lowery*, 54 *Ala.* 510; s. c., 25 *Am. R.* 718, 720.
- Kirk, Matter of**, 1 *Park.* 67. See Mr. Jay's argument in 5 *N. Y. Leg. Obs.* 52.
- Kirk v. Blashfield**, 4 *Hun*, 269. Reported in 6 *Sup'm Ct. (T. & C.)* 509.
- Kirkland v. Dinsmore**, 2 *Hun*, 46; s. c., 4 *Sup'm Ct. (T. & C.)* 304. Rev'd in 62 *N. Y.* 171; s. c., 20 *Am. R.* 475. Decision in *Id.* disting'd (Limitation of carrier's liability) in *Woodruff v. Sherrard*, 9 *Hun*, 322. Explained in *Madan v. Sherrard*, 42 *Super. Ct. (J. & S.)* 353, 364.
- Kirkpatrick v. Stainer**, 22 *Wend.* 244. Approved (Liability of foreign principal's agent) in *Green v. Kopke*, 18 *C. B.* 555. See to the contrary, cases cited in *Abb. Tr. Ev.* 302, n. 2. Relied on in *Whart. Com. on Ag.* § 791. Discussed in 1 *Pars. on Cont.* 96, n. b. Quoted in *Benj. on Sales*, § 237, n. 37 (Corbin's 4 *Am. ed.*)
- Kissam v. Forrest**, 25 *Wend.* 651. Rev'd in 7 *Hill*, 463.
- *v. Hamilton*, 20 *How. Pr.* 369. Disting'd (Abatement of action by death of party) in *Robinson v. Brisbane*, 7 *Hun*, 182. Cited as authority with *Ayrault v. Sackett*, 17 *How. Pr.* 461; *Putnam v. Crombie*, 34 *Barb.* 239 (Decision after expiration of term) in *Cain v. Libby*, 32 *Minn.* 491.
- *v. Marshall*, 10 *Abb. Pr.* 424. To similar effect see (Amendment of warrant of attachment) *Heilner v. Walsh*, 47 *Super. Ct. (J. & S.)* 269, 271.
- Kissenger v. N. Y. & Harlem R. R. Co.**, 36 *Super. Ct. (J. & S.)* 572. Aff'd, it seems, in 56 *N. Y.* 538.
- Kitchen v. Lee**, 11 *Paige*, 107. Followed (Duty of an infant who rescinds contract of sale, to restore consideration) in *Carr v. Clough*, 26 *N. H.* 280; s. c., 59 *Am. Dec.* 345.
- *v. Place*, 41 *Barb.* 465. See *Gould v. Segee*. Disting'd (Filling blank in note) in *McGrath v. Clark*, 56 *N. Y.* 34, 37.
- Kittell v. Osborn**, 1 *Hun*, 613. Fully reported in 4 *Sup'm Ct. (T. & C.)* 45.
- Kitts v. Massasoit Ins. Co.**, 56 *Barb.* 177. Collated with *Marcus v. St. Louis Mut. Life Ins. Co.*, 68 *N. Y.* 625; *Cromwell v. Brooklyn Fire Ins. Co.*, 39 *Barb.* 227, and other cases (What constitutes assignment of policy) in 56 *Am. Dec.* 753, n. Said with *Savage v. Long Island Ins. Co.*, 43 *How. Pr.* 462, in 59 *Am. Dec.* 310, n., to be overruled by *Savage v. Howard Ins. Co.* 52 *N. Y.* 502.
- Klein v. Klein**, 11 *Abb. Pr. N. S.* 450; s. c., 42 *How. Pr.* 166, and more fully, 34 *Super. Ct. (J. & S.)* 48.
- Klinck v. Colby**. See *Streety v. Wood*.
- *v. Kelly*, 7 *Alb. L. J.* 93. Fully reported in 63 *Barb.* 622.
- Kline v. Bauendahl**, 6 *Sup'm Ct. (T. & C.)* 546; mem. s. c., as *McDonnell v. Bauendahl*, 4 *Hun*, 265. Aff'd it seems in 64 *N. Y.* 638, but without opinion.
- *v. L'Amoureux*, 2 *Paige*, 419; s. c., 22 *Am. Dec.* 652, with note containing citations (Inquisitions of lunacy).
- *v. Queen Ins. Co.*, 7 *Hun*, 267. Aff'd, it seems, in 69 *N. Y.* 614, but without opinion.
- Klock v. Cronkhite**, 1 *Hill*, 107. Reasserted (Judgment creditor must go into equity to

- redeem from mortgage) in *Arnot v. Post*, 6 *Id.* 65.
- *v. People*, 2 *Park.* 676. Relied on with *People v. Olcott*, 2 *Johns. Cas.* 301; *People v. Barrett*, 2 *Cai.* 100, 304 (Proceedings when equivalent to acquittal) in *Lee v. State*, 26 *Ark.* 260; s. c., 7 *Am. R.* 611.
- Knapp, Matter of**, 8 *Abb. N. C.* 308; s. c., 59 *How. Pr.* 367; brief mem. in 22 *Hun.* 479. Rev'd in 85 *N. Y.* 284.
- Knapp v. Alford**, 10 *Paige*, 205. Relied on (Agency coupled with interest, not closed by principal's death) in *Whart. Com. on Ag.* § 105. Cited as authority (Property delivered to creditor as security, when a pledge) in *Thomas on Mort.* 432.
- *v. Anderson*, 7 *Hun.* 295. Aff'd in 71 *N. Y.* 466. See *Gibbons v. Berhard*.
- *v. Brown*, 45 *N. Y.* 207; s. c., 11 *Abb. Pr. N. S.* 118. See *Glackin v. Zeller*. Disting'd (Mechanic's lien for work by permission of owner) in *Burkitt v. Harper*, 14 *Hun.* 584, which was aff'd in 79 *N. Y.* 277, which see. Followed in *Muldoon v. Pitt*, 54 *Id.* 272. Disting'd (Waiver of right to appeal) in *Barker v. White*, 58 *Id.* 211. See *Code Civ. Pro.* 1881, § 1294, n.
- *v. Dagg*, 18 *How. Pr.* 165. See *Chapman v. New Haven R. R. Co.* Disapproved (Imputing negligence of driver of conveyance) in *Brown v. N. Y. Central R. R. Co.*, 31 *Barb.* 385. Criticised and compared (Joint negligence) in 4 *Am. L. Reg. N. S.* 25.
- *v. Maltby*. See *Bagley v. Peddie*.
- *v. Meigs*, 11 *Abb. Pr. N. S.* 405. See (Attachment of property) *Code Civ. Pro.* 1881, c. VII., art. 1, n.
- *v. North Western Mut. Life Ins. Co.*, 79 *N. Y.* 634. Compare (Bond given on removal of cause to U. S. court) *Nye v. Northern Central R'y Co.*, 24 *Hun.* 556, 559.
- *v. Roche*, 37 *Super. Ct. (J. & S.)* 395. Rev'd in part in 62 *N. Y.* 614. Subsequent decision in 94 *Id.* 329, which was followed (Effect of part payment by one wrongdoer upon recovery against another) in *Muser v. Lewis*, 50 *Super. Ct. (J. & S.)* 431.
- *v. —*, *Super. Ct. (J. & S.)* 200. Aff'd in 82 *N. Y.* 366.
- *v. Simon*, 46 *Super. Ct. (J. & S.)* 225. Rev'd in 86 *N. Y.* 311. Subsequent decision in 49 *Super. Ct. (J. & S.)* 17, rev'd in 96 *N. Y.* 284.
- *v. Smith*, 27 *N. Y.* 277. See *Walsh v. Kelly*. Followed (Liability of wife's separate estate managed by husband as agent) in *Kluender v. Lynch*, 2 *Abb. Ct. App. Dec.* 549; *Merchant v. Bunnell*, 3 *Id.* 284; *Buckley v. Wells*, 33 *N. Y.* 521; *Gage v. Dauchy*, 34 *Id.* 296; *Abbey v. Deyo*, 44 *Id.* 346; *Dingens v. Clancey*, 67 *Barb.* 568. Applied (Fraudulent character of such arrangement when question for jury) in *O'Leary v. Walter*, 10 *Abb. Pr. N. S.* 447. Applied (Her right to prove her ownership of business) in *Garlinghouse v. Whitwell*, 51 *Barb.* 208, 212. Applied (Extent of her power in carrying it on) in *James v. Taylor*, 43 *Id.* 530, 532. Applied (Property rights independently of *L.* 1860, c. 90) in *Griffin v. Banks*, 37 *N. Y.* 624. Applied (Testimony as to ownership) in *Caspar v. O'Brien*, 15 *Abb. Pr. N. S.* 404. Disting'd in *Nicolay v. Unger*, 80 *N. Y.* 57, a case of a question as to fact of sale.
- *v. Wallace*, 41 *N. Y.* 477. Relied on with *Stillman v. Mitchell*, 2 *Robt.* 523; *Higgins v. Moore*, 24 *N. Y.* 417; *Heinrich v. Korn*, 4 *Daly*, 74; *Mooney v. Elder*, 56 *N. Y.* 238; *Barnard v. Monnot*, 3 *Keyes*, 203 (When a broker is entitled to commissions) in *Love v. Miller*, 53 *Ind.* 294; s. c., 21 *Am. R.* 182, 197.
- Knanth v. Bassett**, 34 *Barb.* 31. Overruled in effect (Effect of assignment of partnership assets, preferring individual creditors) in *Hurlbert v. Dean*, 2 *Abb. Ct. App. Dec.* 429. Quoted and collated with other cases in *Bishop on Assign.* § 165.
- Kneettle v. Newcomb**, 31 *Barb.* 163. Aff'd in 22 *N. Y.* 249. See *Harper v. Leal*. Applied (Construction of statute exempting property from execution) in *Becker v. Becker*, 47 *Barb.* 499; *Wilcox v. Hawley*, 31 *N. Y.* 654. Decision in 22 *Id.* applied, and that in 31 *Barb.* examined with *Crawford v. Lockwood*, 9 *How. Pr.* 547 (Effect of agreement to waive benefit of statute) in *Shapley v. Abbott*, 42 *N. Y.* 451. Relied on with *Woodward v. Murray*, 18 *Johns.* 400; *Harper v. Leal*, 10 *How. Pr.* 276, in *Phelps v. Phelps*, 72 *Ill.* 545; s. c., 22 *Am. R.* 149, 152. Followed in *Wallingsford v. Bennett*, *Sup'm. Ct. Dist. Col.* 9 *Wash. L. R.* 819, 822. See *Code Civ. Pro.* 1881, § 1404, n.
- Kneib v. People**, 6 *Hun.* 238. Reported in 50 *How. Pr.* 140.
- Kneiss v. Seligman**, 9 *How. Pr.* 425. Collated with other cases (Contract for immoral purposes) in *McAdam on Landl. & T.* 2 ed. §§ 76, 77.
- Knickerbocker v. Seymour**, 46 *Barb.* 198. Disting'd (Widow, when included in "next of kin") in *Murdock v. Ward*, 67 *N. Y.* 387, 390.
- *v. Shipherd*, 3 *Cow.* 383. Questioned (Sheriff's fees, as lien) in *Bank of Whitehall v. Weed*, 8 *How. Pr.* 104, 110.
- Knickerbocker v. People**, 57 *Barb.* 365. Aff'd in 43 *N. Y.* 177. Decision in 57 *Barb.* quoted (Presumption of larceny arising from possession of stolen goods) in 1 *Best on Ev.* § 214, n. a, Wood's ed.
- Knickerbocker Bank, Matter of**, 19 *Barb.* 602. Quoted and explained (Appointment of creditor as receiver) in *High on Receiv.* § 73, n. 2.
- Knickerbocker Life Ins. Co. v. Ecclesine**, 6 *Abb. Pr. N. S.* 9. Aff'd in 11 *Id.* 385; s. c., 42 *How. Pr.* 201. See *Shoe & Leather Bank v. Thompson*.
- *v. Hill*, 6 *Supm. Ct. (T. & C.)* 285; s. c., 3 *Hun.* 577; 16 *Abb. Pr. N. S.* 321.

- Doctrine discussed (Who may set up usury) in 13 *Abb. L. J.* 39, 71.
- *v. Nelson*, 13 *Hun.* 321. Aff'd in 78 *N. Y.* 137; s. c., 7 *Abb. N. C.* 170. Previous proceeding in 8 *Hun.* 21; also mem. of another in 52 *Id.* 616. See further litigation in *Russell v. Nelson*, 99 *N. Y.* 119.
- *v. Patterson*, 43 *Super. Ct. (J. & S.)* 547. Aff'd in 75 *N. Y.* 589. Decision in *Id.* collated with other cases (Liability of assignee of lease for rent) in *McAdam on Landl. & T.* 2 ed. § 182.
- Kniffen v. McConnell**, 30 *N. Y.* 285. See *Lewis v. Chapman*; *Wells v. Padgett*. Discussed, and reconciled with *Southard v. Rexford*, 6 *Cow.* 254 (Allegations of unchastity of plaintiff in action for breach of promise as aggravating damages) in *Thorn v. Knapp*, 42 *N. Y.* 474-7. Quoted in 2 *Greenl. on Ev.* 14 ed. § 273 n., a. Included with note in *Sedgw. Cas. on Dama.* 760.
- Knight v. Cunningham**, 6 *Hun.* 100. See (Books of account, as evidence) *Clarke v. Smith*, 46 *Barb.* 30. But see *Abb. Tr. Ev.* 372.
- *v. Lang*, 4 *E. D. Smith*, 381; s. c., more fully, 2 *Abb. Pr.* 227.
- *v. Weatherwax*, 7 *Paige*, 182. Compared with other cases (Gifts by will to heir as purchaser) in 2 *Jarm. on Wills*, Rand. and T. ed. 617, n. 17.
- *v. Wilcox*, 15 *Barb.* 279. Further decision in 18 *Id.* 212, and that rev'd in 14 *N. Y.* 413. See *Ingersoll v. Jones*. Decision in 14 *N. Y.* distinguishing (Loss of service as basis of action for seduction) in *White v. Nellis*, 31 *N. Y.* 405. Questioned (Action for seduction not followed by pregnancy) and *White v. Nellis*, 31 *N. Y.* 405; *Ingerson v. Miller*, 47 *Barb.* 47, followed in *Leloup v. Eschause*, *N. Y. Daily Reg. June*, 11, 1884. See cases cited in 34 *Am. R.* 366, n.
- Kniskern v. Lutheran Churches**, 1 *Sandf. Ch.* 439. See *Miller v. Gable*; *Yates v. Yates*. Overruled (Removal of trustees of religious corporation) in *Robertson v. Bullions*, 11 *N. Y.* 243, 253, 271. Reasserted (Charitable uses) in *Shotwell v. Mott*, 2 *Sandf. Ch.* 50. Approved with *Shotwell v. Mott*, in *Boyce v. City of St. Louis*, 29 *Barb.* 657. Cited in 2 *Kent Com.* 288, n. a, as a very learned and able judgment. See cases collected in 12 *Am. L. Reg. N. S.* 360, n. Quoted in 1 *High on Inj.* 2 ed. § 304, n. 1.
- Knoepfel v. Kings County Fire Ins. Co.**, 39 *Super. Ct. (J. & S.)* 553. Aff'd in 66 *N. Y.* 639. Other proceedings in 47 *How. Pr.* 412, and 48 *Id.* 208.
- Knolls v. Barnhart**, 9 *Hun.* 443. Aff'd in 71 *N. Y.* 474. Decision in *Id.* explained (Rights between tenants in common as to rents and profits) in *Moak's Underhill's Torts*, 1 *Am. ed.* 380.
- Knothe v. Kaiser**, 2 *Hun.* 515. Reported in 5 *Sup'm. Ct. (T. & C.)* 4.
- Knowles v. McKamly**. See *Jaques v. M. E. Church*.
- Knowlton v. Congress & Empire Spring Co.**, 57 *N. Y.* 518. See to the contrary (Decision made after removal to U. S. Cir. Ct.) *Spring Co. v. Knowlton*, 103 *U. S.* 49, which aff'd 14 *Blatchf. Ct. Ct.* 364. See *Woodworth v. Bennett*. Decision in 103 *U. S.* examined and disting'd (*Recovery back of money paid illegally*) in *Birkett v. Chatterton*, 13 *R. I.* 302; s. c., 12 *Reporter*, 441. See also *Smart v. White*, 37 *Me.* 332; s. c., 40 *Am. R.* 356. Decision in 57 *N. Y.* quoted in 2 *Greenl. on Ev.* 14 ed. § 111, n. a.
- *v. Fitch*. See *Kingsbury v. Kirwin*.
- *v. Providence & N. Y. Steamship Co.*, 33 *Super. Ct. (J. & S.)* 370. Confirmed in further decision in 53 *N. Y.* 76; which rev'd 35 *Super. Ct. (J. & S.)* 370. Decision in 53 *N. Y.* followed (Right to proceed in State courts to enforce shipowners liability for loss) in *Checkley v. Providence & Stonington Steamship Co.*, 60 *How. Pr.* 510.
- Knox v. Hexter**, 71 *N. Y.* 461. Rev'd 42 *Super. Ct. (J. & S.)* 8. See other proceedings in *Id.* 496; also in *Hexter v. Knox*, 39 *Super. Ct. (J. & S.)* 109, which was aff'd in 63 *N. Y.* 561. Decision in 71 *Id.* distinguishing (Right to bring new action for severable cause of action sued on in former action) in *Davies v. Mayor, &c. of N. Y.*, 48 *Super. Ct. (J. & S.)* 194. Decision in *Id.* quoted and collated with other cases (Taking possession under lease) in *McAdam on Landl. & T.* 2 ed. § 78.
- *v. Jones*, 47 *N. Y.* 389. Applied (Separation of void trust from valid provision in will) in *McCormack v. McCormack*, 60 *How. Pr.* 196, 198. Disting'd in *Van Schuyver v. Mulford*, 59 *N. Y.* 426, 431.
- Knuipple v. Knickerbocker Ice Co.**, 23 *Hun.* 159. Rev'd in 84 *N. Y.* 488. See *McGrath v. N. Y. Central, &c. R. R. Co.*
- Kobbe v. Clark**, 4 *Seld. Notes*, 11. Compare (Effect of check as payment of draft) *Smith v. Miller*, 43 *N. Y.* 171.
- Koch v. Purcell**, 45 *Super. Ct. (J. & S.)* 162. See also (Terms of sale by referee) *Buttrou v. Tibbitts*, 10 *Abb. N. C.* 41.
- *v. Village of Edgewater*, 14 *Hun.* 544. Further decision in 18 *Id.* 407.
- Koelges v. Guardian Life Ins. Co.**, 57 *N. Y.* 638. Previous decision, as it seems, as *Kolgers v. Same*, 10 *Abb. Pr. N. S.* 176.
- Koenig v. Steckel**, 36 *Super. Ct. (J. & S.)* 167. Aff'd in 58 *N. Y.* 475.
- Kohler v. Kohler**, 2 *Edw.* 69. Disting'd (Charging expenses in case of sale of mortgaged premises) in *Raynor v. Selmes*, 52 *N. Y.* 579, 582.
- *v. Mattinge*, 42 *Super. Ct. (J. & S.)* 247. Aff'd in 72 *N. Y.* 259.
- Kohn v. Koehler**, 21 *Hun.* 466. See mem. in *Id.* 618, giving leave to go to Ct. of App.
- Kohner v. Higgins**, 42 *Super. Ct. (J. & S.)* 4. See cases cited (Liability created by assumption of mortgage) in 5 *Abb. N. C.* 230, n.
- Kolgers v. Guardian Life Ins. Co.** See *Koelges v. Same*.



**Kolls v. De Leyer**, 41 *Barb.* 208; s. c., 17 *Abb. Pr.* 312; 26 *How. Pr.* 468. Explained (Power of married woman to contract) in *Coakley v. Chamberlain*, 8 *Abb. Pr. N. S.* 37. Referred to with *Sigel v. Johns*, 58 *Barb.* 620, in *Tyler on Inf. & Cov.* 2 ed. § 458, as holding a more consistent doctrine than that of cases such as *Coakley v. Chamberlain*.

**Konitzky v. Meyer**, 40 *N. Y.* 571. See *Chapin v. Merrill*. Collated with *Dobsen v. Pearce*, 12 *N. Y.* 156, and other cases (Effect of foreign judgments on actions of which they are the foundation) in 17 *Am. L. Rev.* 421.

**Koon v. Greenman**, 7 *Wend.* 121. Reviewed and relied on with *Ladue v. Seymour*, 24 *Id.* 60; *Vanderbilt v. Eagle Iron Works*, 25 *Id.* 665, and other authorities (Amount recoverable on special contract for work or materials, partly performed or furnished) in *McKinney v. Springer*, 3 *Ind.* 59; s. c., 54 *Am. Dec.* 470, 476, with note. Explained in 2 *Chitty on Contr.* 830, n. 4, 11 *Am. ed.*

— **v. Thurman**, 2 *Hill*, 357. Explained ("Costs to abide event") in *Mott v. Consumers' Ice Co.*, 8 *Daly*, 244, 246. Explained and followed in *First Nat. B'k of Meadville v. Fourth Nat. B'k of N. Y.*, 84 *N. Y.* 469.

**Kortright v. Blunt**. See *Kortright v. Cady*. — **v. Buffalo Commercial Bank**, 20 *Wend.* 91. Aff'd as *Commercial B'k of Buffalo v. Kortright*, 22 *Id.* 347. See *Bank of Utica v. Smalley*; *Matter of Barker*; *Shipley v. Mechanics' Bank*. Decision in 20 *Wend.* examined and limited (Damages for conversion, &c., of stock) in *Baker v. Drake*, 53 *N. Y.* 211, 222. Applied with *McNeil v. Tenth Nat. B'k*, 46 *Id.* 329; *Moore v. Metropolitan B'k*, 55 *Id.* 41 (which is said to overrule *Bush v. Lathrop*, 22 *Id.* 535) (Rights of transferee of stock certificates, &c.) in *International Bank v. German Bank*, 71 *Mo.* 183; s. c., 36 *Am. R.* 468. Explained in *Ang. & A. on Corp.* § 565, 11 ed. Decision in 22 *Wend.* disting'd (Transfer of stock certificate in blank) as inapplicable to case of mortgage, — in *Chauncey v. Arnold*, 24 *N. Y.* 330, 334. Followed in *McNeil v. Tenth Nat. Bank*, 46 *Id.* 325. Discussed (Remedy where transfer of shares is wrongfully refused) in *Morawetz on Corp.* § 338.

— **v. Cady**, 23 *Barb.* 490. Rev'g *Kortright v. Blunt*, 12 *How. Tr.* 424. Rev'd in 21 *N. Y.* 343. See *Jackson v. Crafts*. Decision in 21 *N. Y.* applied (Effect of tender made after law-day, of amount due on mortgage) to case of pledge, in *Haskins v. Kelly*, 1 *Abb. Pr. N. S.* 75. Disting'd as inapplicable to tender by junior mortgagee, — in *Frost v. Yonkers Sav'gs B'k*, 8 *Hun*, 28. Commented on and limited in *Harris v. Jex*, 66 *Barb.* 237, which was aff'd in 55 *N. Y.* 423, which see. Disting'd in *Halestead v. Swartz*, 46 *How. Pr.* 292, a case of a chattel mortgage. Compare *Jones on*

*Chat. M.* §§ 634, 637. Applied in *Groff v. Flanders*, 13 *Weekly Dig.* 382. Denied in *Tompkins v. Batic*, 11 *Neb.* 147; s. c., 38 *Am. L.* 361, a case, however, of a chattel mortgage. Disapproved, and *Merritt v. Lambert*, 7 *Paige*, 344, relied on, as sustaining a contrary doctrine, — in *Crain v. McGoon*, 86 *Ill.* 431; s. c., 29 *Am. R.* 37. Approved in *Ketchum v. Crippen*, 37 *Cal.* 223, notwithstanding *Perre v. Castro*, 14 *Id.* 519. Explained with *Edwards v. Farmers' Fire Ins. & Loan Co.*, 21 *Wend.* 467, in *Mitchell v. Roberts*, *U. S. Cir. Ct. E. D. Ark.* 17 *Fed. Rep.* 776, 779, with note. Decision in 23 *Barb.* relied on (Effect of payment of taxes by mortgagee) in *Hogg v. Longstreet*, 97 *Pa. St.* 259. Disting'd (Effect of tender) in *Dodge v. Fearey*, 19 *Hun*, 277. Applied to tender by judgment debtor to sheriff, — in *Tiffany v. St. John*, 65 *N. Y.* 318. Applied (Effect of possession by mortgagee) in *Trimm v. Marsh*, 54 *Id.* 606 (and see pp. 614, 622, 625); *Madison Ave. Church v. Oliver St. Church*, 41 *Super. Ct. (J. & S.)* 378. Quoted (Mortgagee's interest until foreclosure) in 2 *Washb. on Real Prop.* 4 ed. 103.

**Kortz v. Carpenter**, 5 *Johns.* 120. Overruled (What is breach of covenant for quiet enjoyment) in *Shattuck v. Lamb*, 65 *N. Y.* 504.

**Kowing v. Manley**, 2 *Abb. Pr. N. S.* 377. Further decision in 57 *Barb.* 469; and the latter rev'd in 13 *Abb. Pr. N. S.* 276; s. c., 49 *N. Y.* 192. Decision in *Id.* applied (Husband as party to action for wife's tort) in *Berrien v. Steel*, 62 *How. Pr.* 335, n. Approved as an exhaustive decision in *Pomeroy on Rem.* § 320, n. 1. Explained (Comparison of handwritings) in *Miles v. Loomis*, 10 *Hun*, 372, 377. Cited with *Merchants' Will. Tuck.* 151; in 1 *Whart. Com. on Ev.* § 718. Followed (Liability of gratuitous bailee for unauthorized disposition of property) in *Jenkins v. Bacon*, 111 *Mass.* 373; s. c., 15 *Am. R.* 33, 38. Discussed in 1 *Add. on Torts.* 649, n. Wood's ed.

**Kraushaar v. Meyer**, 72 *N. Y.* 602. Disting'd (Evidence of conversation with deceased) in *Gorham v. Price*, 25 *Hun*, 11, 13.

**Krekeler v. Ritter**, 62 *N. Y.* 372. See *Mandeville v. Reynolds*; *Verplanck v. Van Buren*. See to the contrary (Former judgment as estoppel) *Digel on Estoppel*, 520. See also *Abb. Tr. Ev.* 828. Cited with *Miller v. White*, 50 *Id.* 143 (Former judgment as evidence, when not pleaded) in 2 *Whart. Com. on Ev.* § 765, n. Explained with *Hawley v. Mancine*, 7 *Johns. Ch.* 182 (Impeaching judgment for fraud) in 2 *Whart. Com. on Ev.* § 797.

— **v. Thaulé**, 7 *Daly*, 152. Aff'd in 73 *N. Y.* 608. Other proceeding in 49 *How. Pr.* 138. Decision in *Id.* cited with *Jerome v. Bowman*, 1 *Wend.* 393 (Necessity that change of attorney be by court order) in *Whart. Com. on Ag.* § 636.

**Kreuder v. Woolcott**, 1 *Hill.* 223. Disting'd

- (Liability for safe delivery of goods received for carriage) in *Robinson v. Chittenden*, 69 *N. Y.* 535.
- Krom v. Hogan**, 4 *How. Pr.* 225; s. c., 2 *Code R.* 144. Dictum disapproved (Violation of injunction, as answer to motion to dissolve it) in *Smith v. Reno*, 6 *How. Pr.* 124.
- **v. Levy**, 1 *Hun.* 171; s. c., 47 *How. Pr.* 97; 3 *Sup'm. Ct. (T. & C.)* 704. Reargument denied in 6 *Id.* 253; mem. s. c., 4 *Hun.* 79. Appeal dismissed in 60 *N. Y.* 126.
- **v. Schoonmaker**, 3 *Barb.* 647. Followed (Disproportionate damages as ground for new trial) in *Murray v. Hudson River R. R. Co.*, 47 *Id.* 196. Explained (Liability of lunatic for his own tort) in *Karow v. Continental Ins. Co. of N. Y.*, 57 *Wis.* 56; s. c., 46 *Am. R.* 17. Included in *Lawson's Lead. Com. L. Cas. Simplified*, 52. Included with notes in *Ewell. Lead. Cas. on Inf. &c.* 638.
- Kromer v. Heim**, 44 *Super. Ct. (J. & S.)* 237. Aff'd in 75 *N. Y.* 574; s. c., 31 *Am. R.* 491. See *Russell v. Lytle*. Decision in 75 *N. Y.* followed with *Noe v. Christie*, 51 *Id.* 273 (Accord and satisfaction) in *Brennan v. Ostrander*, 50 *Super. Ct. (J. & S.)* 426.
- Krulder v. Ellison**, 47 *N. Y.* 36; s. c., 7 *Am. R.* 402, with note. See *Bank of Rochester v. Jones*; *Green v. Clark*. Disting'd with *Thompson v. Fargo*, 49 *N. Y.* 188; *Bailey v. Hudson River R. R. Co.*, *Id.* 70 (Effect of delivery of goods to carrier) in *Porter Manuf'g Co. v. Edwards*, 29 *Hun.* 509. Approved with *Allard v. Gressert*, 61 *N. Y.* 1, in *Keiwert v. Meyer*, 62 *Ind.* 587; s. c., 30 *Am. R.* 206, 210. See *Rogers v. Phillips*, 40 *N. Y.* 519. Collated with other cases (Consignee's right of action against carrier) in 7 *South. L. Rev. N. S.* 274, 283.
- Kuhlman v. Orser**, 5 *Duer.* 242. See *Wilson v. Duncan*. Followed as settled law (Requisites of notice of attachment) in *O'Brien v. Mechanics', &c. Fire Ins. Co.*, 36 *Super. Ct. (J. & S.)* 110.
- Kuhn v. Stevens**, 36 *How. Pr.* 275. Disting'd (Parol agreement in discharge of sealed contract) in *Anthony v. Harrison*, 14 *Hun.* 198, 210.
- Kundolf v. Thalheimer**, 17 *Barb.* 506. Rev'd in 12 *N. Y.* 593. See *Frees v. Ford*. Decision in 12 *N. Y.* disting'd (Jurisdiction of county court) in *Doubleday v. Heath*, 16 *Id.* 80. Criticised and questioned in *Arnold v. Rees*, 18 *Id.* 57. See *Code Civ. Pro.* 1881, § 2944, *n.*
- Kunz v. Bachman**, 24 *Hun.* 662. Reported in 61 *How. Pr.* 519; s. c., 1 *Civ. Pro. R.* 281.
- Kunzler v. Kohaus**, 5 *Hill.* 317. Cited with *Sackett v. Andross*, *Id.* 327, as establishing what is now the law of the land (Power of Congress to pass insolvent laws) in *Geery's Appeal*, 43 *Conn.* 289; s. c., 21 *Am. R.* 653. Followed with *Sackett v. Andross*, in *Matter of Reynolds*, 8 *R. I.* 485; s. c., 5 *Am. R.* 615. Discussed in 3 *Para. on Cont.* 432, *n. p.*
- Kunze v. American Exchange Fire Ins. Co.**, 2 *Robt.*, 443. Compare subsequent decision in 41 *N. Y.* 412.
- Kuse v. N. Y., New Haven, &c. R. R. Co.**, 4 *Hun.* 673; s. c., more fully, as *Keese v. Same*, 67 *Barb.* 205.
- Kyle v. Kyle**, 3 *Hun.* 458; s. c., 5 *Sup'm. Ct. (T. & C.)* 648. Rev'd in 67 *N. Y.* 400. See *Gardner v. Gardner*; *Tucker v. Tucker*. Decision in 67 *N. Y.* disting'd (Passing on validity of claims as between executor and estate) as inapplicable to case of assignment for creditors,—in *Matter of Raymond*, 27 *Hun.* 508. Followed in *Boughton v. Flint*, 5 *Abb. N. C.* 217. Disting'd (Recovery of rents and profits by one entitled to dower) in *Witthaus v. Schack*, 31 *Hun.* 590. See *Code Civ. Pro.* 1881, § 1600, *n.*

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- Labar v. Koplin**. See *Fox v. Smith*.
- La Beau v. People**, 34 *N. Y.* 223. Followed (When evidence offered to discredit witness may be excluded) in *Canaday v. Krum*, 83 *N. Y.* 67, 74.
- Labron v. Woram**. See *Herrick v. Carman*.
- Lacour v. Mayor, &c. of N. Y.**, 3 *Duer.* 406. See *Wilson v. Same*. Disting'd (Injuries through defective public works) in *Mills v. City of Brooklyn*, 32 *N. Y.* 489, 500. Disting'd, and *Wilson v. Mayor, &c. of N. Y.*, 1 *Den.* 595; *Mills v. City of Brooklyn*, 32 *N. Y.* 489, followed in *Detroit v. Beekman*, 34 *Mich.* 125; s. c., 22 *Am. R.* 507, 509. Followed (Damages, where cause is remote), in *Morey v. Metropolitan Gas Light Co.*, 38 *Super. Ct. (J. & S.)* 185, 188. See cases collected (What municipal duties are judicial) in 5 *Am. L. Reg. N. S.* 43.
- Lacker v. Rhoades**, 45 *Barb.* 499. Rev'd in 51 *N. Y.* 641.
- Lacustrine Fertilizer Co. v. Lake Guano, &c. Co.**, 56 *How. Pr.* 370; s. c., 16 *Hun.* 484. Further decision in 19 *Id.* 47; and that aff'd in 82 *N. Y.* 476.
- Ladd v. Arkell**, 37 *Super. Ct. (J. & S.)* 35. Further decision in 40 *Id.* 150.
- **v. Moore**, 3 *Sandf.* 589. See *Nellis v. Bradley*. Applied (Duty of one seeking to disaffirm contract) *Harris v. Equitable Life Assur. Soc.*, 3 *Hun.* 724, 735; s. c., 6 *Sup'm. Ct. (T. & C.)* 108. Criticised in *Gould v. Cayuga, &c. Nat. B'k*, 21 *Hun.* 293, as having been distrusted and repudiated in other cases. Approved in *Pearse v. Pettis*, 47 *Barb.* 276. Questioned in *Weed v. Page*, 7 *Wis.* 503, 512.
- Ladue v. Griffith**, 25 *N. Y.* 364. See *Blossom v. Griffin*; *McDonald v. Western R. R. Co.* Limited (Liability of intermediate carrier) in *Fenner v. Buffalo & State Line R. R. Co.*, 44 *N. Y.* 505.
- **v. Seymour**, 24 *Wend.* 60. See *Koon v. Greenman*. Followed (Proof of contract

- defeats action on *quantum meruit* in Alger v. Raymond, 7 *Bosw.* 418, 427.
- Lady Superior v. McNamara**, 3 *Barb. Ch.* 375. Cited as authority (Naming grantee in deed, &c.) in Sherry v. Gilmore, 58 *Wis.* 324, 333.
- La Farge v. Herter**, 3 *Den.* 157. Subsequent proceedings in 4 *Barb.* 346; 11 *Id.* 159; and the latter aff'd in 9 *N. Y.* 241. See *Billington v. Wagoner*; *Witherby v. Mann*. Decision in 9 *N. Y.* disapproved (Effect of usury in security upon a valid claim embraced therein) in *Underhill v. Clennan*, 14 *Weekly Dig.* 1.
- Lafond v. Deems**, 52 *How. Pr.* 41; s. c., 1 *Abb. N. C.* 318. Rev'd in 8 *Id.* 344; s. c., 81 *N. Y.* 507. Decision in *Id.* collated with other cases (Good standing in benefit associations) in 19 *Cent. L. J.* 154, n. With decision in 1 *Abb. N. C.* compare (Voluntary associations) *Ferris v. Shaw*, 5 *Mo. App.* 279; *Ash v. Guic*, 97 *Pa. St.* 493.
- La Frombois v. Jackson**, 8 *Cov.* 589; s. c., 18 *Am. Dec.* 463, with note containing citations of the case. See *Jackson v. Waters*. Explained (Foundation for claim of adverse possession) in *Wiseman v. Luck-singer*, 84 *N. Y.* 31, 46. Approved and applied with *Briggs v. Prosser*, 14 *Wend.* 227; *Fosgate v. Herkimer Mfg Co.*, 12 *Barb.* 352, in *Cawley v. Johnson*, *U. S. Cir. Ct. W. D. Wis.*, 21 *Fed. Rep.*, 494. Approved and relied on with *Smith v. Burtis*, 9 *Johns.* 180; *Jackson v. Wheat*, 18 *Id.* 40; *Jackson v. Newton*, *Id.* 355; *Jackson v. Camp*, 1 *Cov.* 605; in *McClellan v. Kellogg*, 17 *Ill.* 501. Compare 14 *Am. Dec.* 581, n. Followed with *Smith v. Burtis*, 9 *Johns.* 180, in *Moody v. Fleming*, 4 *Ga.* 115; s. c., 48 *Am. Dec.* 210, 215, with note. Followed in *Conyers v. Kenan*, 4 *Ga.* 308; s. c., 48 *Am. Dec.* 226, 234, with note. Relied on in dissenting opinions of *HASTINGS*, C. J., in *Suñol v. Hepburn*, 1 *Cal.* 290; *Woodworth v. Fulton*, *Id.* 319, though referred to in *Bernel v. Gleim*, 33 *Id.* 676, as holding that an absolute nullity will not constitute color of title. Commented on in *Ang. on Limit.* § 404, 6 ed.; *Sedgw. & W. on Tr. of Tit. to Land*, § 764.
- La Grange v. Merrill**, 3 *Barb. Ch.* 625. Cited with other cases (Liability of successive securities) in 13 *Am. L. Reg. N. S.* 476.
- Lagrange's Case**, 14 *Abb. Pr. N. S.* 333. Followed (Effect of personal service obtained by fraud) in *Blair v. Turtle*, *U. S. Cir. Ct. Neb.*, 24 *Alb. L. J.* 435.
- Lahey v. Brady**, 1 *Daly*, 443. Approved and followed (Abatement and revival of replevin) in *Potter v. Van Vranken*, 36 *N. Y.* 619.
- Laidlaw v. Gilmore**, 47 *How. Pr.* 67. Aff'd, it seems, in 56 *N. Y.* 621, but without opinion.
- Lainbeer v. Allen**, 2 *Sandf.* 648; s. c., 2 *Code R.* 15. Disapproved, and *Jackson v. Virgil*, 3 *Johns.* 539, preferred (Effect of omission of signature to affidavit) in *Soule v. Chase*, 1 *Abb. Pr. N. S.* 48.
- Laing v. United Ins. Co.**, 2 *Johns. Cas.* 174. Rev'd in *Id.* 487.
- Laird v. Arnold**, 12 *Weekly Dig.* 507. Reported in 25 *Hun.* 4.
- Lake v. Artizans' Bank**, 17 *Abb. Pr.* 232. Rev'd in part, in 3 *Abb. Pr. N. S.* 209; s. c., 3 *Keyes*, 276; 3 *Abb. Ct. App. Dec.* 10. Decision in *Id.* explained as superseded by *Code Civ. Pro.* (Hearing exceptions at General Term after non-suit) in *Sceley v. N. Y. Central, &c. R. R. Co.*, 25 *Hun.* 280.
- **v. Gibson**, 2 *N. Y.* 188. Followed (Appeal lies to Court of Appeals only after actual determination at General Term) in *Delaney v. Brett*, 51 *N. Y.* 78, 82.
- **v. Kels**, 11 *Abb. Pr. N. S.* 37. See (Service of notice of appeal from justice's decision) *Code Civ. Pro.* 1881, § 3048, n.
- **v. People**, 1 *Park.* 495. Aff'd as *People v. Lake*, 12 *N. Y.* 358.
- Lakeman v. Grinnell**, 5 *Bosw.* 625. Explained (Measure of damages in actions against carrier) in *Ang. on Carr.* § 487, n. a, 5 ed.
- Lake Ontario, &c. R. R. Co. v. Mason**, 16 *N. Y.* 451. Disting'd (Validity of subscription to stock, as affected by failure to make cash payment) in *Excelsior Grain Binding Co. v. Stayner*, 25 *Hun.* 91, 95. Disting'd (Right to withdraw after having signed paper in aid of railroad construction) in *People ex rel. Irwin v. Sawyer*, 52 *N. Y.* 296, 300. Quoted in *Morawetz on Corp.* § 260.
- Lamatt v. Hudson River Fire Ins. Co.**, 17 *N. Y.* 199, n. Followed (Parol evidence to vary terms of policy) in *Pohalski v. Mut. Life Ins. Co.*, 36 *Super. Ct. (J. & S.)* 234, 249.
- Lamb v. Camden & Amboy R. R. and Transportation Co.**, 2 *Daly*, 454. Rev'd in 46 *N. Y.* 271; s. c., 6 *Am. R.* 327. See *Beardslee v. Richardson*. Decision in 46 *N. Y.* disting'd (Burden of proof as to carrier's negligence) in *J. Russell Mfg. Co. v. N. H. Steamboat Co.*, 50 *Id.* 127. Applied to warehouseman in *Claffin v. Meyer*, 75 *Id.* 263. Disting'd as to warehouseman, and reconciled with *Schwerin v. McLee*, 5 *Robt.* 404, and *Burnell v. N. Y. Central, &c. R. R. Co.*, 45 *N. Y.* 184, in *Coleman v. Livingston*, 36 *Super. Ct. (J. & S.)* 32. Explained in *Koenigsheim v. Hamburg & Am. Packet Co.*, 17 *Weekly Dig.* 405. Dissented from with *Cochran v. Dinsmore*, 49 *N. Y.* 249; *Steers v. Liverpool, N. Y., &c. Steamship Co.*, 57 *Id.* 1, in *Chicago, St. Louis, &c. R. R. Co. v. Moss*, 60 *Miss.* 1003; s. c., 45 *Am. R.* 428. Approved with *J. Russell Mfg. Co. v. N. H. Steamboat Co.*, 50 *N. Y.* 121, in 1 *Whart. Com. on Ev.* § 363; where *Platt v. Hibbard*, 7 *Cov.* 497; *Westcott v. Fargo*, 63 *Barb.* 349, were with other cases cited as holding a contrary view. Applied (Liability for loss occasioned by carrier's own negligence) in *Condit v. Grand Trunk R'y*, 54 *N. Y.* 505; *Magnin v. Dinsmore*, 56 *Id.* 174; and see *Same v. Same*,

- 35 *Super. Ct. (J. & S.)* 185; 38 *Id.* 250. Explained (Effect of contract for carriage of goods that are to be carried over connecting lines) in *Babcock v. Lake Shore, &c. R'y Co.*, 49 *N. Y.* 497. Applied (Power of carrier to bind owner by contract with connecting carrier) in *Rawson v. Holland*, 5 *Daly*, 157, which was aff'd in 59 *N. Y.* 617, which see. Approved with *Burnell v. N. Y. Central R. R. Co.*, 45 *Id.* 184 (Liability of carrier acting as warehouseman) in *National Line S. S. Co. v. Smart*, 107 *Pa. St.* 492.
- **v. Lathrop**, 18 *Wend.* 95; s. c., 27 *Am. Dec.* 174, with note containing citations of the case on various points respecting tender. See *Coit v. Houston*.
- Lambert v. Paulding**, 18 *Johns.* 311. See *Haggerty v. Wilber*; *Hotchkiss v. McVicar*; *Marsh v. Lawrence*. Disting'd (Rights of sheriff under execution, before levy) in *Hathaway v. Howell*, 54 *N. Y.* 97, 111. Applied with *Marsh v. Lawrence*, 4 *Cow.* 461 (Priority of execution lien, &c., as determined by priority of delivery of warrant) in *Evans v. Walsh*, 12 *Vroom (N. J.)* 281; s. c., 32 *Am. R.* 201, 206.
- **v. People**, 14 *Hun.* 512. Rev'd in 76 *N. Y.* 220; s. c., 6 *Abb. N. C.* 181; 32 *Am. R.* 293.
- **v. —**, 7 *Cow.* 166. Rev'd in 9 *Id.* 578. Decision in *Id.* followed (Requisites of indictment for conspiracy) in *People ex rel. Lawrence v. Brady*, 56 *N. Y.* 182, 189. Compared with other cases in *Commonwealth v. Hunt*, 4 *Metc. (Mass.)* 111; s. c., 38 *Am. Dec.* 346, 350, with note. Followed in *Commonwealth v. Eastman*, 1 *Cush. (Mass.)* 189; s. c., 48 *Am. Dec.* 596, 607, with note. Considered, and the minority opinion approved, in *People v. Richards*, 1 *Mich.* 216; s. c., 51 *Am. Dec.* 75, with note. Collated with other cases in 1 *Barb. on Crim. L.* 3 ed. 247, n.
- Lambertson v. Van Boskerck**, 4 *Hun.* 628. Reported in 49 *How. Pr.* 266.
- Lambrecht, Estate of, Gould's Ann. Dig.** for 1881, 72, 179. Rev'd in *N. Y. Daily Reg.* Apr. 23, 1881. Compare (Renunciation of appointment as testamentary guardian) *Geohagan v. Foley*, 5 *Redf.* 501.
- Lament v. Haight**, 44 *How. Pr.* 1. Approved and applied (Personal liability of highway commissioners for injuries from defect, when out of funds) in *Warren v. Clement*, 24 *Hun.* 472, 475.
- Lamerson v. Marvin**, 8 *Barb.* 9. Approved and followed with *Griswold v. Fowler*, 24 *Id.* 135 (Sale of mortgaged premises in gross) in *Hubbell v. Sibley*, 5 *Lans.* 51. Disting'd in *Wolcott v. Schenck*, 23 *How. Pr.* 385, 388.
- Lamkin v. Starkey**, 7 *Hun.* 479. Disting'd (Exemption of witness from service of process) in *Frisby v. Young*, 11 *Id.* 474.
- Lamont v. Cheshire**, 6 *Lans.* 234. Aff'd in 65 *N. Y.* 30. Decision in *Id.* followed (Priority of attachment) in *Wilson v. Kelly*, 31 *Hun.* 75. Reconciled in *Porter v. Pico*, 55 *Cal.* 175. Disting'd (Right of purchaser at execution sale to attack prior conveyance by debtor) in *Bergen v. Snedeker*, 79 *N. Y.* 146. With decision in 6 *Lans.* see (Application of notice of *lis pendens*) *Code Civ. Pro.* 1881, § 1670, n.
- Lamoree's Case**, 11 *Abb. N. C.* 274. Approved but disting'd (Appointment of stranger as committee of lunatic, &c. without assent of next of kin) in *Matter of Owens*, 5 *Daly*, 288, 290.
- L'Amoreux v. Gould**, 7 *N. Y.* 349; s. c., 57 *Am. Dec.* 524, with note. Applied with *Willetts v. Sun Mut. Ins. Co.*, 45 *N. Y.* 45; *Sands v. Crooke*, 46 *Id.* 564; *White v. Baxter*, 71 *Id.* 254; *Marie v. Garrison*, 83 *Id.* 26 (Subsequent performance as consideration) in *Miller v. McKenzie*, 95 *Id.* 575.
- L'Amoureux v. Crosby**. See *Lewis v. Jones*.
- Lamourieux v. Hewit**, 5 *Wend.* 307. Disting'd (Effect of guaranty of promissory note, &c.) in *Myrick v. Hasey*, 27 *Me.* 9; s. c., 46 *Am. Dec.* 583, 585. Applied with *Ellis v. Brown*, 6 *Barb.* 282; *McLaren v. Watson's Executors*, 26 *Wend.* 425; and *Ketchell v. Burns*, 24 *Id.* 456; *Leggett v. Raymond*, 6 *Hill*, 639, disting'd in *Hayden v. Weldon*, 14 *Vroom (N. J.)* 128; s. c., 39 *Am. R.* 551.
- Lampman v. Cochran**, 19 *Barb.* 388. Aff'd in 16 *N. Y.* 275. See *Dennis v. Cummins*. Decision in 16 *N. Y.* disting'd (Liquidated damages and penalty) in *Clement v. Cash*, 21 *Id.* 253.
- **v. Hammond**, 3 *Supm. Ct. (T. & C.)* 293. Applied (Who may maintain action for seduction) in *Certwell v. Hoyt*, 6 *Hun.* 575, 577.
- **v. Mills**, 21 *N. Y.* 505. See *Burr v. Mills*; *Palmer v. Wetmore*; *Parsons v. Johnson*. Limited (Implied easements) in *Doyle v. Lord*, 39 *Super. Ct. (J. & S.)* 421, 433, which was, however, rev'd in 64 *N. Y.* 432. Limited with *Butterworth v. Crawford*, 46 *Id.* 349, and *Outerbridge v. Phelps*, 45 *Super. Ct. (J. & S.)* 555, with other cases reviewed in *Shoemaker v. Shoemaker*, 11 *Abb. N. C.* 80. Disting'd in *Schrymser v. Phelps*, 62 *How. Pr.* 1, 3; *Vidvard v. Cushman*, 23 *Hun.* 434, 437; *Crippen v. Morss*, 49 *N. Y.* 67; *Outerbridge v. Phelps*, 45 *Super. Ct. (J. & S.)* 555, 563. Followed in *Simmons v. Cloonan*, 2 *Lans.* 346. Collated with *Simmons v. Cloonan*, 81 *N. Y.* 557 and other cases in 57 *Am. Dec.* 762, n. Collated with *Burr v. Mills*, 21 *Wend.* 290; *Shoemaker v. Shoemaker*, 11 *Abb. N. C.* 80; and other cases in *Id.* 769, n. Cited as authority in *Janes v. Jenkins*, 34 *Md.* 1; s. c., 6 *Am. R.* 300, with note collating cases Cited in *McPherson v. Acker*, *MacArth. & Mack*, 150; s. c., 48 *Am. R.* 749, as clearly stating the rule. Collated with *Myers v. Gemmel*, 10 *Barb.* 537, and other cases in *Turner v. Thompson*, 58 *Ga.* 268; s. c., 24 *Am. R.* 497. Relied on in *Henry v. Koch*, 80 *Ky.* 395; s. c., 22 *Am. L. Reg. N. S.* 397, with note, wherein *Partridge v.*

- Gilbert, 15 *N. Y.* 601; *Reynolds v. Fargo*, 1 *Sheld.* 531, and cases from other States are collated. Examined in 4 *Am. L. Rev.* 50. Quoted and explained in *Wood on Nuis.* 2 ed. § 412.
- Lancey v. Clark**, 3 *Hun.* 575. Aff'd in 64 *N. Y.* 209; s. c., 21 *Am. R.* 604. With decision in *Id.* compare (Payment of debt) *Brice's Appeal*, 12 *Cent. L. J.* 330. See also cases collected in 24 *Moak's Eng.* 233.
- Landell v. Hotchkiss**, 1 *Sup'm. Ct. (T. & C.)* 580. Cited in illustration (Effect of taint in part of mass of action that is examined in block) in 1 *Whart. Com. on Ev.* § 39.
- Landers v. Staten Island R. R. Co.**, 13 *Abb. Pr. N. S.* 338. Rev'd in 14 *Abb. Pr. N. S.* 346; s. c., more fully, 53 *N. Y.* 450. See *Brauneck v. Knickerbocker Life Ins. Co.*; *Burokle v. Eckhart*. Decision in 53 *N. Y.* followed (Jurisdiction of superior city courts) in *Wheelock v. Lee*, 74 *Id.* 497. Applied in *People ex rel. Ryan v. Green*, 58 *Id.* 302; *Rae v. Mayor, &c. of N. Y.*, 39 *Super. Ct. (J. & S.)* 197. Applied, but disting'd on question of waiver in *Spyer v. Fisher*, 37 *Id.* 102. Disting'd in *Hoag v. Lamont*, 16 *Abb. Pr. N. S.* 96, which was rev'd in 60 *N. Y.* 98, which see. Explained in *Masters v. Eclectic Life Ins. Co.*, 6 *Daly*, 456. Disting'd in *Whitehead v. Kennedy*, *Id.* 548; *Gemp v. Pratt*, 7 *Id.* 199. Applied to *N. Y. Surrogate's Court* in *Danser v. Jeremiah*, 3 *Redf.* 134. Disting'd in *Sweet v. Flannagan*, 61 *How. Pr.* 333, a case of a County Court. See *Code Civ. Pro.* 1881, pp. 98, 99, n. Disting'd (Constitutionality of *L. 1873, c. 239*) in *Darragh v. McKim*, 2 *Hun.* 337.
- **v. Watertown Fire Ins. Co.**, 19 *Hun.* 174. Rev'd in 86 *N. Y.* 414. Decision in *Id.* disapproved, and the contrary held (Effect of condition against other insurance) in *Firemans' Ins. Co. v. Holt*, 35 *Ohio St.* 189; s. c., 35 *Am. R.* 601; *Jersey City Ins. Co. v. Nichols*, 35 *N. J. Eq. (8 Stew.)* 291; s. c., 40 *Am. R.* 625; *Royal Ins. Co. v. McCrea*, 8 *Lea (Tenn.)* 531, 535. But see *N. Y.* rule applied in *Funke v. Minn. Farmers' Mut. Life Ins. Ass'n*, 29 *Minn.* 347; s. c., 43 *Am. R.* 216, with note; in *Turner v. Meridan Fire Ins. Co.*, *U. S. Cir. Ct. D. R. I.*, 22 *Am. L. Reg. N. S.* 275.
- Landon v. Mayor, &c. of N. Y.**, 49 *How. Pr.* 218; s. c., 39 *Super. Ct. (J. & S.)* 467. Disting'd (What are city and county officers) in *Dolan v. Mayor, &c. of N. Y.*, 6 *Hun.* 506. Approved and followed in *Whitmore v. Mayor, &c. of N. Y.*, 5 *Id.* 195, which was aff'd in 67 *N. Y.* 21, which see.
- **v. Supervisors of Schenectady**, 24 *Hun.* 75. Disting'd (Enjoining summary proceedings) in *Knox v. McDonald*, 25 *Id.* 268, 271.
- Lands in Town of Flatbush, Matter of**, 60 *N. Y.* 398. See *City of Brooklyn v. Lott*. Disting'd (Title of local act) in *People ex rel. Commissioners v. Banks*, 67 *N. Y.* 568, 572.
- Landsberger v. Magnetic Tel. Co.**, 32 *Barb.* 530. See *Griffin v. Colver*; *Leonard v. N. Y., Albany, &c. Tel. Co.* Disapproved with *Baldwin v. U. S. Tel. Co.*, 45 *N. Y.* 744 (Damages against telegraph company, for failure or delay in delivering despatch) in *Daughtery v. Am. U. Tel. Co.*, 75 *Ala.* 172. Applied with *McCall v. W. U. Tel. Co.*, 44 *Super. Ct. (J. & S.)* 487; *Baldwin v. U. S. Tel. Co.*, 35 *N. Y.* 744, in *McKay v. W. U. Tel. Co.*, 16 *Nev.* 222. Doctrine discussed in 4 *Am. L. Reg. N. S.* 204. Explained in 2 *Pars. on Contr.* 257m, n. s.; *Id.* 257n, n. e.
- Landt v. Hiltz**. See *Taylor v. Trask*.
- Lanc, Matter of**, 3 *Redf.* 462, n. See (Surrogate's power to punish for contempt) *Code Civ. Pro.* 1881, § 2555, n.
- Lane v. Cole**, 12 *Barb.* 680. See (Effect of failure to produce document, as contempt) *Code Civ. Pro.* 1881, § 3001, n.
- **v. Gilbert**, 9 *How. Pr.* 150. Examined with others cases (Practice on assessment of damages) in *Thompson v. Lumley*, 7 *Daly*, 74, 80.
- **v. Hitchcock**, 14 *Johns.* 213. Approved with *Bank of Rome v. Mott*, 17 *Wend.* 554 (Liability for act done with intent to diminish value of mortgaged premises) in *Gardner v. Heartt*, 3 *Den.* 232.
- **v. King**, 8 *Wend.* 585; s. c., 24 *Am. Dec.* 105. Criticised and disting'd (Right of mortgagee or one claiming under him to growing crops) in *Willis v. Moore*, 59 *Tex.* 628; s. c., 46 *Am. R.* 284.
- **v. Losee**, 2 *Abb. Pr.* 129; s. c., more fully in *How. Pr.* 360.
- **v. Morse**, 6 *How. Pr.* 394. Disting'd and limited (Affidavit as affected by omission of venue) in *People ex rel. Mosher v. Stowell*, 9 *Abb. N. C.* 456, 461.
- **v. Salter**, 4 *Robt.* 239. Rev'd in 51 *N. Y.* 1. Decision is *Id.* commented on (Judgment against one joint debtor when not bar to action against another) in *Organ v. Wall*, 19 *Hun.* 184, 186. Decision in 4 *Robt.* commented on (Evidence of negligence) in 2 *Thomps. on Negl.* 1232.
- **v. Schermerhorn**, 1 *Hill.* 97. Quoted (Ejection by committee of lunatic) in *Sedgw. & W. on Tr. of Tit. to Land*, § 203.
- **v. Stebbins**, 3 *Edw.* 480. Rev'd in 9 *Paige*, 622.
- **v. Wilcox**. See *Tinney v. N. J. Steamboat Co.*
- Lanergan v. People**, 50 *Barb.* 266; s. c., 34 *How. Pr.* 390. Rev'd in 39 *N. Y.* 39; s. c., 5 *Abb. Pr. N. S.* 113; 6 *Park.* 209. See *Gibney v. Marchay*. Decision in 39 *N. Y.* explained (Declarations made in presence of prisoner) in *State v. Middleham*, 62 *Iowa*, 151.
- Lang v. Ropke**, 5 *Sandf.* 363. Subsequent decision in 1 *Duer.* 701. See also decision arising under same will in *Lang v. Wilbraham*, 2 *Duer.* 171. Decision in 5 *Sandf.* disting'd with *Downing v. Marshall*, 23 *N. Y.* 366; *Crittenden v. Fairchild*, 41 *Id.* 289,

- 292; *Tucker v. Tucker*, 5 *N. Y.* 408; *Robert v. Corning*, 23 *Hun.* 299 (Trust, when allowed to be executed as a power) in *Bailey v. Bailey*, 28 *Id.* 603. Applied in *McGrath v. Van Stavoren*, 8 *Daly*, 454, 457. Decreed overruled with *Griffin v. Ford*, 1 *Bosw.* 123 (What will not cure invalidity of trust that unlawfully suspends power of alienation) in *Odell v. Youngs*, 64 *How. Pr.* 56. Collated with other cases in *Gerard Titles to Real Est.* 2 ed. 270, 273. With decision in 1 *Duer*, see (Judgment by default) *Code Civ. Pro.* 1881, § 1526, *n.*
- Langdon v. Astor's Executors**, 3 *Duer*, 477. Rev'd in 16 *N. Y.* 9. Decision in *Id.* Followed (What only is revocation of will) in *Ordish v. McDermott*, 2 *Redf.* 460, 463. Explained in *Willard on Executors*, 120.
- *v. Buel*, 9 *Wend.* 80. See *Wilson v. Little*. Followed with *Case v. Boughton*, 11 *Wend.* 106 (Pledgee's right to proceed personally against pledgor) in *Sonoma Valley Bank v. Hill*, 59 *Cal.* 110.
- *v. N. Y. Equitable Ins. Co.*, 1 *Hall*, 226. Aff'd in 6 *Wend.* 623. See *Harper v. Albany Mut. Ins. Co.* Decision in 1 *Hall* followed and approved (Extent of use of insured building for business purposes) in *Rafferty v. N. Brunswick Ins. Co.*, 3 *Harr. (N. J.)* 480; *s. c.*, 38 *Am. Dec.* 525, 527, with note.
- Lange v. Benedict**, 48 *How. Pr.* 465. Rev'd in 8 *Hun.* 362, which was aff'd in 73 *N. Y.* 12; *s. c.*, 29 *Am. R.* 80, with note. Writ of error dismissed in 99 *U. S.* 68. See also *Ex parte Lange*, 18 *Wall.* 163. Decision in 73 *N. Y.* followed (Judicial decision when not to be impeached) in *Chapman v. Phoenix Nat. B'k of N. Y.*, 5 *Abb. N. C.* 118, 127. Collated with other cases (Non-liability of judicial officer) in dissenting opinion of *POWERS, J.*, in *Vaughan v. Congdon*, 56 *Vt.* 125. Also collated with other cases in 23 *Am. R.* 693, *n.* Thought in 6 *Am. Dec.* 303, *n.*, to have carried the doctrine farther than any other case, but likely to be regarded as a leading case from the singularity of the facts and the importance of the principles involved. Examined and said to be contrary to the great weight of authority, in 15 *Am. L. Rev.* 441. Doctrine extended to case of arbitrator in *Jones v. Brown*, 54 *Iowa*, 74, 78.
- Langley v. Warner**, 1 *Sandf.* 209. Rev'd in 3 *N. Y.* 327. Another decision in 1 *Id.* 606. Decision in 3 *Id.* disting'd (Restitution of money paid to creditors) in *Matter of Guardian Sav'gs Instn.*, 78 *Id.* 403, 413.
- Langworthy v. Oswego, &c. Ins. Co.**, 8 *Weekly Dig.* 458. Aff'd in 85 *N. Y.* 632. Further decision on merits in 11 *Reporter*, 744.
- *v. Smith*, 2 *Wend.* 587; *s. c.*, 20 *Am. Dec.* 652. See *Fleming v. Gilbert*; *Freeman v. Adams*.
- Lanigan v. Mayor, &c. of N. Y.**, 70 *N. Y.* 454. Disting'd (Power to audit) in *Matter of Murphy*, 24 *Hun.* 592, 596.
- Laning v. N. Y. Central R. R. Co.**, 49 *N. Y.* 521; *s. c.*, 10 *Am. R.* 417. For facts see *Brickner v. Same*, 2 *Lans.* 506; the latter being aff'd in 49 *N. Y.* 672, but without opinion. See *Corcoran v. Holbrook*; *Flike v. Boston & Albany R. R. Co.* Decision in 49 *N. Y.* applied (Duty of master to servant, to keep machinery in safe condition) in *King v. N. Y. Central, &c. R. R. Co.*, 4 *Hun.* 770; *Kirkpatrick v. Same*, 79 *N. Y.* 245; *Hoffnagle v. Same*, 1 *Sup'm. Ct. (T. & C.)* 350. Explained in *DeGraff v. N. Y. Central, &c. R. R. Co.*, 3 *Id.* 257. Approved and applied in *Smith v. Oxford Iron Co.*, 13 *Vroom (N. J.)* 467; *s. c.*, 36 *Am. R.* 535, 538. Explained (Liability to servant for injury resulting from negligence of co-servant) in *Ross v. N. Y. Central, &c. R. R. Co.*, 5 *Hun.* 494. Applied in *Flike v. Boston & Albany R. R. Co.*, 53 *N. Y.* 552, 554; *Chapman v. Erie R'y Co.*, 55 *Id.* 583, which rev'd 1 *Sup'm. Ct. (T. & C.)* 526, which see; *McCorker v. Long Island R. R. Co.*, 21 *Hun.* 500. Disting'd at length, in *Malone v. Hathaway*, 64 *N. Y.* 9. Disting'd in *Besel v. N. Y. Central, &c. R. R. Co.*, 70 *Id.* 174. Disting'd with *Corcoran v. Holbrook*, 59 *Id.* 517, in *Conboy v. Donaldson*, *N. Y. Daily Reg.* Jan. 26, 1884. Applied with *Flike v. Boston & Albany R. R. Co.*, 53 *N. Y.* 549; *Booth v. Same*, 73 *Id.* 39; *Fuller v. Jewett*, 80 *Id.* 46, in *Mann v. Delaware & Hudson Canal Co.*, 91 *Id.* 495. Also, with *Cone v. Delaware, Lackawanna, &c. R. R. Co.*, 81 *Id.* 206 applied, and *Slater v. Jewett*, 85 *Id.* 61, disting'd in *Sheehan v. N. Y. Central, &c. R. R. Co.*, 91 *Id.* 332. Reviewed with *Flike v. Boston & Albany R. R. Co.*, 53 *Id.* 549; *Brickner v. N. Y. Central R. R. Co.*, 2 *Lans.* 506; *Corcoran v. Holbrook*, 59 *N. Y.* 517, and other cases, in 16 *Am. R.* 495, *n.* Applied with *Flike v. Boston & Albany R. R. Co.*, 53 *N. Y.* 549; *Corcoran v. Holbrook*, 59 *Id.* 520; *Brickner v. N. Y. Central R. R. Co.*, 2 *Lans.* 506, in *Dobbin v. Richmond & Danville R. R. Co.*, 81 *N. C.* 446; *s. c.*, 31 *Am. R.* 512, 514. Included in 2 *Thomps. on Negl.* 932. Disting'd (Power of General Term to affirm on condition of reduction of damages) in *Whitehead v. Kennedy*, 69 *N. Y.* 462, 470. Applied (Contributory negligence in servant, as question for jury) in *Hawley v. Northern Central R'y Co.*, 17 *Hun.* 118; *Marsh v. Chickering*, 25 *Id.* 405, 407.
- Lannen v. Albany Gas Light Co.**, 46 *Barb.* 264. Aff'd in 44 *N. Y.* 459. Decision in *Id.* disting'd (Gas company's liability for explosion caused by leakage) in *Schermerhorn v. Metropolitan Gas Light Co.*, 5 *Daly*, 144, 150. Explained in 1 *Add. on Torts*, 590, *n.* Wood's ed.
- Lanning v. Carpenter**, 23 *Barb.* 402. Aff'd in 20 *N. Y.* 447. Previous decision in 12 *How. Pr.* 191. See *Freligh v. Brink* Subsequent decision in 48 *N. Y.* 408. Decision in 23 *Barb.* qualified (Confession of judg-

- ment) in *Daly v. Matthews*, 12 *Abb. Pr.* 403, 405, *n.* In *Lyon v. Sherman*, 14 *Id.* 393, it is held to have overruled *Claffin v. Sanger*, 11 *Id.* 338; *Moody v. Townsend*, 3 *Id.* 375; *Davis v. Morris*, 21 *Barb.* 152. Approved with *Freligh v. Brink*, 22 *Barb.* 418, in *Frost v. Koon*, 30 *N. Y.* 428, 442. Decision in 48 *Id.* disting'd (Action for waste of judgment debtor) in *Vandemark v. Schoonmaker*, 9 *Hun.* 16, 22.
- *v. Streeter*, 57 *Barb.* 33. Overruled in effect (Creditor's action to enforce attachment) in *Thurber v. Blanck*, 50 *N. Y.* 80.
- Lansing v. Caswell**, 4 *Paige*, 519. Approved (Laying out highway through yard, &c.) in *People ex rel. Miller v. Comes*, 1 *Hun.* 530.
- *v. Easton*, 7 *Paige*, 364. Disting'd (Fine for contempt in violation of order) in *Marshall v. Hitchcock*, 3 *Redf.* 464.
- *v. Eddy*, 1 *Johns. Ch.* 49. Followed (Excuse for neglect to defend) in *Hamel v. Grimm*, 10 *Abb. Pr.* 150, 152.
- *v. Fleet*, 2 *Johns. Cas.* 3; *s. c.*, 1 *Am. Dec.* 143; 1 *N. Y. Com. L. Law. ed.* 418, with brief note. Shown in 1 *Am. Dec.* 153, *n.*, to have been approved in later cases in *N. Y.*, though the dissenting opinion of *RADCLIFF, J.*, was approved in *Carthrae v. Clarke*, 5 *Leigh (Va.)* 288 (Power of sheriff to retake and detain after voluntary escape).
- *v. Gaine*, 2 *Johns.* 300; *s. c.*, 3 *Am. Dec.* 422; 3 *N. Y. Com. L. Law. ed.* 391, with brief note. See *Foot v. Sabin*; *Hackley v. Patrick*; *Sanford v. Mickles*. Followed (Note takes effect from delivery, and not from date) in *Woodford v. Dorwin*, 3 *Verm.* 82; *s. c.*, 21 *Am. Dec.* 573, 576; *English v. Breneman*, 5 *Ark.* 377; *s. c.*, 41 *Am. Dec.* 96. Cited with other cases (Firm paper executed after dissolution) in 11 *Am. L. Reg. N. S.* 546.
- *v. Goelet*, 9 *Cow.* 346. Cited as according with the weight of authority, with *Holden v. Sackett*, 12 *Abb. Pr.* 473; *Packer v. Rochester & S. R. R. Co.*, 17 *N. Y.* 287 (What interest passes to purchaser in foreclosure sale) in *Poweshiek County v. Dennison*, 36 *Iowa*, 244; *s. c.*, 14 *Am. R.* 521, 524. Examined in *Weiner v. Heintz*, 17 *Ill.* 261. Explained (Equity of redemption as barred without express decree of foreclosure) in 4 *Kent Com.* 181, *n. b.*; *Id.* 184.
- *v. Gulick*, 26 *How. Pr.* 250. See (Curtesy as affected by statute) *Matter of Winne*, 1 *Lans.* 508, 522; which was rev'd in 2 *Id.* 21. Collated with other cases in 1 *Sharsv. & B. Cas. on Real Prop.* 289.
- *v. Lansing*, 41 *How. Pr.* 248. Rev'd in 4 *Lans.* 377. See *Valentine v. Valentine*; *Vischer v. Yates*; *Westerfield v. Westerfield*. Decision in 4 *Lans.* disting'd and questioned (Proceedings for non-payment of alimony) in *Strobridge v. Strobridge*, 21 *Hun.* 288, 291. Criticised in *Park v. Park*, 18 *Id.* 466, which was aff'd in 80 *N. Y.* 156, which latter decision is thought, in *Boucicault v. Boucicault*, 21 *Hun.* 431, 436, to have shaken *Lansing v. Lansing*. Reconciled with *Park v. Park*, 18 *Hun.* 466 in *Gane v. Gane*, 46 *Super. Ct. (J. & S.)* 218, 220. Followed with *Strobridge v. Strobridge*, 21 *Hun.* 288; *Baker v. Baker*, 23 *Id.* 356; *People ex rel. Fries v. Riley*, 25 *Id.* 587; *Randall v. Dusenbury*, 41 *Super. Ct. (J. & S.)* 456; *Watson v. Nelson*, 69 *N. Y.* 536; *O'Gara v. Kearney*, 77 *Id.* 423 (Commitment for non-payment of money) in *Myers v. Becker*, 95 *Id.* 486.
- *v.*, 45 *Barb.* 182. Applied (Commissions of executors, &c.) in *Hall v. Hall*, 78 *N. Y.* 535, 539. Explained in *Ward v. Ford*, 4 *Redf.* 34, 45.
- *v.*, 18 *Johns.* 502. Explained and qualified (Proper form of judgment) in *People v. Judges of Erie*, 4 *Cow.* 445.
- *v. McKillip*, 3 *Cal.* 286. Explained (Words "value received" as evidence of consideration) in *Jerome v. Whitney*, 7 *Johns.* 323.
- *v. McPherson*, 3 *Johns. Ch.* 424. Followed with *Duncan v. Dodd*, 2 *Paige*, 99 (Setting aside mortgage sale) in *Hill v. Hoover*, 5 *Wis.* 376; citing *Cotton v. Strong*, 1 *Id.* 471.
- *v. Montgomery*, 2 *Johns.* 382. Approved (Estoppels operate only on parties and privies) in *Alexander v. Walter*, 8 *Gill (Md.)* 239; *s. c.*, 50 *Am. Dec.* 688, 692, with note; *Welland Canal Co. v. Hathaway*, 8 *Wend.* 483; *Dezell v. Odell*, 3 *Hill*, 215; *Presbyterian Congregation of Salem v. Williams*, 9 *Wend.* 147, also being reviewed (Nature of estoppel *in pais*). Opposed (Estoppel not to be taken by inference, but to be relied on in pleading) in *Adams v. Barnes*, 17 *Mass.* 368; *Howard v. Mitchell*, 14 *Id.* 241.
- *v. North River Steamboat Co.*, 7 *Johns. Ch.* 162. Cited and discussed (Control of Federal over State courts) in 1 *Kent Com.* 413.
- *v. Pine*, 4 *Paige*, 639. Compare (Venue of complaint) 1 *Barb. Ch. Pr.* 44; Explained in *Woodworth v. Edwards*, 3 *Woodb. & M.* 120.
- *v. Quackenbush*, 5 *Cow.* 38. Followed (Relief in equity from sale on execution) in *O'Donnell v. Lindsay*, 39 *Super. Ct. (J. & S.)* 523, 539.
- *v. Russell*, 3 *Barb. Ch.* 325. Explained (Expert evidence as to genuineness of signature) in *Kowing v. Manly*, 49 *N. Y.* 192.
- *v. Smith*, 8 *Cow.* 146; *s. c.*, 9 *N. Y. Com. L. Law. ed.* 340, with brief note. Aff'd in 4 *Wend.* 9; *s. c.*, 21 *Am. Dec.* 89, with note containing citations of the case. See *Bellinger v. N. Y. Central R. R. Co.*; *Chapman v. Albany & Schenectady R. R. Co.*; *Dyert v. Schenck*; *Marshall v. Guion*. Decision in 4 *Wend.* followed (Public rights in navigable stream) in *Bailey v. P., W. & B. R. R. Co.*, 4 *Harr. (Del.)* 389; *s. c.*, 44 *Am. Dec.* 593, 598, 611, with note. Disting'd with *People v. Tibbetts*, 19 *N. Y.* 553; in *Morrill v. St. Anthony Falls Water Power Co.*, 26 *Minn.*

- 222; s. c., 37 *Am. R.* 399. Decision in 8 *Cow.* followed in *Hollister v. Union Co.*, 9 *Conn.* 436; s. c., 25 *Am. Dec.* 36, 40, with note. With Gould v. Hudson River R. R. Co., 6 *N. Y.* 522; *Furman v. Mayor, &c. of N. Y.*, 10 *Id.* 567, not considered authority in *Van Dolsen v. Mayor, &c. of N. Y.*, *U. S. Cir. Ct. S. D. N. Y.*, 17 *Cent. L. J.* 231. Quoted and explained in *Wood on Nuis.* 2 ed. §§ 603, 732. Quoted in *Cooley on Const. Limit.* 5 ed. 674, n. 1.
- *v. Starr*, 2 *Johns. Ch.* 150. Disting'd with *Roosevelt v. Mark*, 6 *Id.* 289; *Kane v. Bloodgood*, 7 *Id.* 90 (Equitable aid to claims that are barred at law) in *Belknap v. Gleason*, 11 *Conn.* 160; s. c., 27 *Am. Dec.* 721, with note.
- *v. Tremain*. See *People ex rel. McCann v. Kilbourn*.
- *v. Turner*, 2 *Johns.* 13. Reviewed with *Bailey v. Ogden*, 3 *Id.* 399, and other cases (Constructive delivery of personal property) in *Cobb v. Haskell*, 14 *Me.* 303; s. c., 31 *Am. Dec.* 56, with note.
- *v. Wiswall*, 5 *Den.* 213. Aff'd as *Wiswall v. Lansing*, but without opinion, in 5 *How. Pr.* 77. See *Dyert v. Schenck*.
- *v. Woodworth*, 1 *Sandf. Ch.* 43. Limited (Security for future advances) in *Ackerman v. Hunsicker*, 35 *N. Y.* 43, 51; which rev'd 21 *Hun.* 53, which see. Discussed in *Burrill on Assign.* § 356, 4 ed.
- Lantry v. Parks**, 8 *Cow.* 63. See *Harmony v. Bingham*; *McMillan v. Vanderlip*. Disapproved (Recovery for partial performance of special contract for labor) in *Britton v. Turner*, 6 *N. H.* 481; s. c., 26 *Am. Dec.* 713, 716, with note. Relied on in *Miller v. Goddard*, 34 *Me.* 102; s. c., 56 *Am. Dec.* 638. Explained in 2 *Chitty on Contr.* 844, n. d<sup>3</sup>, 845, 11 *Am. ed.*
- Lantz v. Buckingham**, 4 *Lans.* 484; s. c., 11 *Abb. Pr. N. S.* 64. See *Buffalo City Cemetery v. City of Buffalo*. Disting'd (Mortgage of cemetery lot) in *Thompson v. Hickey*, 8 *Abb. N. C.* 159, 165.
- Lapham v. Rice**, 63 *Barb.* 485. Reargument denied in 66 *Id.* 487. Aff'd on ground that plaintiff had no cause of action, but in other respects overruled in 55 *N. Y.* 472. With decision in *Id.* compare (Town in which to bring action before justice) *Code Civ. Pro.* § 2869.
- La Place v. Anpoix**, 1 *Johns. Cas.* 406. Followed (When trover will lie without proof of demand and refusal) in *Jamison v. Hendricks*, 2 *Blackf. (Ind.)* 94; s. c., 18 *Am. Dec.* 131.
- Lappin v. Charter Oak Ins. Co.**, 58 *Barb.* 325. Followed (Fire policy annulled by change of title) in *Sherwood v. Agricultural Ins. Co.*, 10 *Hun.* 593, which was aff'd in 73 *N. Y.* 447, which see. Explained in *Browning v. Home Ins. Co. of Columbus*, 6 *Daly*, 522, 524. Questioned in 4 *Abb. L. J.* 37.
- Laraway v. Perkins**, 10 *N. Y.* 371. Applied (Damages for breach of covenant to build) in *Kidd v. McCormick*, 83 *Id.* 391, 395.
- Larkin v. Robbins**, 2 *Wend.* 505. See *Miller v. Van Anken*. Collated with *Ex parte Wright*, 6 *Cow.* 399; *Jacoby v. Johnston*, 1 *Hun.* 242; *Ensign v. St. Louis & San Francisco R. Co.*, 62 *How. Pr.* 123; *Buel v. Dewey*, 22 *Id.* 342; *Van Slyke v. Lettice*, 6 *Hill*, 610; *Grosvenor v. Hunt*, 11 *How. Pr.* 355; *Baldwin v. Barrett*, 4 *Hun.* 119; *Frets v. Frets*, 1 *Cow.* 335; *Delaware & Hudson Canal Co. v. Penn. Coal Co.*, 50 *N. Y.* 259 (Effect of agreement to submit to arbitration) in 56 *Am. Dec.* 381, n.
- Larned v. Hudson**, 57 *N. Y.* 151. Explained (Claim in ejectment for *mesne profits*) in *Candee v. Burke*, 10 *Hun.* 350, 357. Disting'd in *Cagger v. Lansing*, 64 *N. Y.* 417, 431. Discussed in *Sedgw. & W. on Tr. of Tit. to Land*, § 653. See *Code Civ. Pro.* 1881, § 1496, n. Explained (Ejectment against tenant at will) in *Sedgw. & W. on Tr. of Tit. to Land*, § 384.
- Larrabee v. Van Alstine**, 1 *Johns.* 307; s. c., 2 *Am. Dec.* 333; 3 *N. Y. Com. L. Law.* ed. 152, with brief note.
- Larreau v. Davignon**, 5 *Abb. Pr. N. S.* 367. Superseded (Descent of land from naturalized citizen) by amendment. *L.* 1874, c. 261; *L.* 1875, c. 38.
- Larue v. Rowland**, 7 *Barb.* 107. See *Tomlinson v. Borst*. Disting'd (Physician's books of account as evidence) in *Knight v. Cunningham*, 6 *Hun.* 100, 103.
- Lasala v. Holbrook**, 4 *Paige*, 169; s. c., 25 *Am. Dec.* 524. See *Farrand v. Marshall*; *Hay v. Cohoes Co.*; *Panton v. Holland*; *Radcliff v. Mayor, &c. of Brooklyn*. Dictum disapproved (Right to lateral support from adjoining soil) in *Radcliff v. Mayor, &c. of Brooklyn*, 4 *N. Y.* 195. Collated with other cases in *Bigel Cas. on Torts*, 552; *McAdam on Landl. & T.* 2 ed. § 222. Quoted in 2 *Washb. on Real Prop.* 4 ed. 361. Explained in *Wood on Nuis.* 2 ed. § 2, n. 1. Quoted in *Id.* §§ 174, 188, 191.
- Lasher v. Northwestern Nat. Ins. Co.**, 55 *How. Pr.* 324. Rev'd in 18 *Hun.* 98; s. c., 57 *How. Pr.* 222. Another proceeding in 55 *How. Pr.* 318.
- *v. St. Joseph Fire & Marine Ins. Co.*, 9 *Weekly Dig.* 457. Aff'd in 86 *N. Y.* 423.
- *v. Williamson*, 55 *N. Y.* 619. Disting'd (Defense by surety) in *Bookstaver v. Jayne*, 60 *Id.* 146, 150.
- Latham v. Edgerton**, 9 *Cow.* 227. Doubted (Sufficiency of appeal bond) in *Van Deusen v. Hayward*, 17 *Wend.* 69.
- *v. Richards*, 12 *Hun.* 360. Appeal dismissed, it seems, in 72 *N. Y.* 607, but without opinion. Another proceeding in 15 *Hun.* 129. With decision in 12 *Id.* see (Limitation of cost of public works) *People ex rel. Murphy v. Kelly*, 5 *Abb. N. C.* 383, 468.
- *v. Westervelt*, 16 *Barb.* 421. Further decision in 26 *Id.* 256.
- Lathers v. Fish**, 4 *Lans.* 213. Applied (Guardian cannot submit a controversy) as



- authority against allowing guardian to consent to distribution of assets) in *Carman v. Cowles*, 2 *Redf.* 414, 418.
- Lathrop v. Bramhall**, 5 *Sup'm. Ct. (T. & C.)* 680; mem. s. c., 3 *Hun.* 394. Aff'd in 64 *N. Y.* 365.
- **v. Clapp**, 40 *N. Y.* 328. Aff'g 23 *How. Pr.* 423.
- **v. Dunlop**, 4 *Hun.* 213; s. c., less fully, 6 *Sup'm. Ct. (T. & C.)* 512. Aff'd, it seems, in 63 *N. Y.* 610, but without opinion. See *Matter of Thompson*. Compare (Distinction between effect of express and of implied revocation) *Dowd's Will*, 8 *Abb. N. C.* 118, 120.
- **v. Heacock**, 4 *Lans.* 1. Dictum disapproved (Necessity of service of process on wife, where husband is served) in *Northrup v. Wheeler*, 43 *How. Pr.* 122.
- **v. Hoyt**, 7 *Barb.* 59. Approved (Effect of parol agreement respecting land, as foundation of trust) in *Wheeler v. Reynolds*, 66 *N. Y.* 236.
- **v. Lathrop**, 47 *How. Pr.* 532. Collated with other cases (Use of partnership name after dissolution) in 35 *Am. R.* 550, n.
- **v. Morris**, 5 *Sandf.* 7. See *De Zeng v. Fyfe*. Questioned (Pledge of accommodation paper as security for pre-existing debt, as *bona fide* holder) in *Bowman v. Van Kuren*, 29 *Wis.* 209; s. c., *Am. R.* 557.
- **v. Singer**, 39 *Barb.* 396. See *Schouton v. Kilmer*. Followed (Homestead exemption not applicable to cases of tort) in *Frazier v. Baker*, *Sup'm. Ct. App. Va.*, 12 *Reporter*, 670.
- **v. Smith**, 35 *Barb.* 64. Aff'd in 24 *N. Y.* 417. Decision in *Id.* followed (Qualification of one claiming administration, as a relative) in *Butler v. Perrott*, 1 *Dem.* 9, in preference to *Public Adm'r v. Watts*, 1 *Paige*, 382; *Public Adm'r v. Peters*, 1 *Bradf.* 100.
- Latimer v. Wheeler**, 30 *Barb.* 485. Aff'd in 3 *Abb. Ct. App. Dec.* 35; s. c., 1 *Keyes*, 468.
- Latorre v. O'Brien**, 5 *Abb. Pr. N. S.* 223; s. c., as *People ex rel. Latorre v. O'Brien*, 54 *Barb.* 38. Aff'd, except as to costs, in 6 *Abb. Pr. N. S.* 63.
- Latourette v. Clarke**, 45 *Barb.* 327; s. c., 30 *How. Pr.* 242, where opinion of CLERKE, J., is erroneously given as opinion of court. Rev'd in 51 *N. Y.* 639. Compare (Jurisdiction in action of tort between citizens of other jurisdictions) *Johnson v. Whitman*, 10 *Abb. Pr. N. S.* 111; *Dewitt v. Buchanan*, 54 *Barb.* 31; *Barney v. Burstenbinder*, 64 *Id.* 212; *Brown v. Ashbough*, 40 *How. Pr.* 226; *Dike v. Erie R'y Co.*, 45 *N. Y.* 113.
- **v. Williams**. See *Neufville v. Thompson*.
- Latson, Matter of**, 1 *Duer*, 696. See (Surrogates' power to punish for contempt) *Code Civ. Pro.* 1881, § 2555, n.
- Lattin v. Livermore**, 72 *N. Y.* 174. Modifying *Lottimer v. Livermore*, 6 *Daly*, 501. See *People v. Albany & Susquehanna R. R. Co.*; *People v. N. Y. and Staten Island Ferry Co.* Decision in 72 *N. Y.* applied (Basis of extra allowance) in *Williams v. Western Union Tel. Co.*, 61 *How. Pr.* 305, 308.
- Lattimore v. Harsen**, 14 *Johns.* 330. See *Dearborn v. Cross*. Explained (Discharge of specialty by subsequent parol agreement) in *Dearborn v. Cross*, 7 *Cow.* 48. Explained with *Dearborn v. Cross*, in *Allen v. Jaquish*, 21 *Wend.* 628. See also *Eddy v. Graves*, 23 *Id.* 82. Cited as authority with *Dearborn v. Cross*; *Fleming v. Gilbert*, 3 *Johns.* 528; *Keating v. Price*, 1 *Johns. Cas.* 22; *Ballard v. Walker*, 3 *Id.* 64; *Erwin v. Saunders*, 1 *Cow.* 250; in *Munroe v. Perkins*, 9 *Pick. (Mass.)* 298; s. c., 20 *Am. Dec.* 475, with note. See *Grafton B'k v. Woodward*, 5 *N. H.* 99; s. c., 20 *Am. Dec.* 566. Approved (Validity of contract made on cancellation of existing one) in *Vanderbilt v. Schreyer*, 91 *N. Y.* 392.
- Lattin v. McCarty**, 17 *How. Pr.* 239; s. c., more fully, 8 *Abb. Pr.* 225. Rev'd, in 21 *N. Y.* 107. Decision in *Id.* explained and commented on (Joinder of claims against debtor by creditor) in *Wait on Fraud. Conv.* § 54. Cited as a leading case (Distinctions between actions at law and suits in equity) in *Pomeroy on Rem.* § 68, n. 1; 1 *Pomeroy on Eq. Jur.* § 354, n. 1, p. 383.
- Laub v. Buckmiller**, 17 *N. Y.* 620. Explained (Joinder of actions of ejectment) in *Sedgw. & W. on Tr. of Tit. to Land*, § 639.
- Laughran v. Smith**, 11 *Hun.* 311. Aff'd in 75 *N. Y.* 205. See *Thomas v. Nelson*.
- Laurence v. Hopkins**, 13 *Johns.* 288. Discussed (New promises and acknowledgments) in *Ang. on Limit.* § 214, 6 ed.
- Laverty v. Burr**, 1 *Wend.* 529. Cited (Partner's authority to bind firm by signing its name to note) in *Story on Partn.* 7 ed. § 127, n.
- **v. Moore**, 32 *Barb.* 347. Aff'd in 33 *N. Y.* 658. Decision in 32 *Barb.* discussed (Estoppel as created by agreement respecting boundary lines) in 3 *Washb. on Real Prop.* 4 ed. 85.
- **v. Snethen**, 68 *N. Y.* 522. Applied with *Covell v. Hill*, 6 *Id.* 374 (Disposition of property by agent, when a conversion) in *Second Ave. R. R. Co. v. Mehrbach*, 50 *Super. Ct. (J. & S.)* 1. Explained in *Moak's Underhill's Torts*, 1 *Am. ed.* 571.
- Law v. Ford**, 2 *Paige*, 310. Collated with *Marten v. Van Schaick*, 4 *Il.* 479, and other cases (When receiver of partnership property will be appointed) in *Story on Partn.* 7 ed. § 330, n.
- **v. McDonald**, 9 *Hun.* 23. Examined with other cases (Costs in equitable actions) in *Black v. O'Brien*, 23 *Id.* 82, 85.
- Lawless v. Hackett**, 16 *Johns.* 149. Explained as not authority, under the Code (Form of confession of judgment) in *Acker v. Acker*, 1 *Abb. Ct. App. Dec.* 1.
- Lawrence, Ex parte**, 4 *Cow.* 417; s. c., 15 *Am. Dec.* 386, with note. See *Green v. Burke*.

**Lawrence v. Ball**, 14 *N. Y.* 447. Followed (Presumption of payment created by statute of limitations is not ground for affirmative relief) in *Johnson v. Albany & Susquehanna R. R. Co.*, 54 *Id.* 416, 425. Discussed in *Sedgw. & W. on Tr. of Tit. to Land*, § 751, n. 2.

— **v. Bank of the Republic**, 3 *Robt.* 142. Rev'd in 35 *N. Y.* 320; s. c., 31 *How. Pr.* 602. Decision in *Id.* approved and followed notwithstanding criticisms in *Greenleaf v. Mumford*, 50 *Barb.* 543 (Attachment as basis for proceeding to remove fraudulent obstruction) in *Thurber v. Blanck*, 50 *N. Y.* 80. Recorded with other cases in *Gross v. Daly*, 5 *Daly*, 540, 543. Followed (Judgment debtor as necessary party to creditor's action) in *Miller v. Hall*, 40 *Super. Ct. (J. & S.)* 262, 268. Quoted in *Wait on Fraud. Conv.* § 128. Collated with other cases (Set-off in actions by assignee for creditors) in *Bishop on Assign.* § 318.

— **v. Barker**, 5 *Wend.* 301; s. c., 10 *N. Y. Com. L. Law. ed.* 857, with brief note. See *Fector v. Heath*; *McArthur v. Sears*. Overruled with *Fector v. Heath*, 11 *Wend.* 485 (Memoranda as evidence) in *Guy v. Mead*, 22 *N. Y.* 462, 465, citing *Merrill v. Ithaca & Owego R. R. Co.*, 16 *Wend.* 599; *Bank of Monroe v. Culver*, 2 *Hill*, 531; *Halsey v. Sinsebaugh*, 15 *N. Y.* 485. Limited in *Thurman v. Mosher*, 1 *Hun.* 344, 348.

— **v. Bayard**, 7 *Paige*, 70. Cited as conclusive authority (Whether mere possibility, coupled with interest, is capable of being conveyed) in *Freeborn v. Wagner*, 49 *Barb.* 43. Explained in *Moore v. Littell*, 41 *N. Y.* 66.

— **v. Bowne**. See *Crygier v. Long*.

— **v. Clark**, 36 *N. Y.* 128. See *Breck v. Cole*; *Phoenix Ins. Co. v. Church*; *Stalker v. McDonald*. Applied (Who is not holder for value) in *Weaver v. Barden*, 49 *N. Y.* 295. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 241.

— **v. Cornell**, 4 *Johns. Ch.* 542. See *Schwinger v. Hickock*. Reviewed with other cases (Correction of judgment) in *Rockwell v. Carpenter*, 25 *Hun.* 529, 531, and (dissenting opinion) 535.

— **v. Dale**, 3 *Johns. Ch.* 23. Aff'd in *McNeven v. Livingston*, 17 *Johns.* 437, but without opinion.

— **v. Davis**, 7 *How. Pr.* 354. See *Butchers', &c. Bank of Providence v. Jacobson*. Criticised (When judgment for plaintiff on demurrer entitles him to costs) in *Van Valkenburgh v. Van Shaick*, 8 *How. Pr.* 271. Compare *Pardee v. Schenck*, 11 *Id.* 500.

— **v. Embree**, 3 *Bradf.* 364. See *Bradner v. Faulkner*. Held to be overruled by *Bradner v. Faulkner*, 12 *N. Y.* 472 (Interest on legacies) in *Matter of Fish's Estate*, 19 *Abb. Pr.* 209, which was, however, rev'd in *Campbell v. Cowdrey*, 31 *How. Pr.* 172, which see. Corrected in *Matter of Lynch*,

52 *How. Pr.* 367; citing *Matter of Fish's Estate*, 19 *Abb. Pr.* 209; *Braddon v. Halker*, 12 *N. Y.* 72; *Cooke v. Meeker*, 36 *Id.* 15.

— **v. Farmers' Loan & Trust Co.**, 15 *How. Pr.* 57. Rev'd in 13 *N. Y.* 200. Opinion of *CRIPPEN, J.*, in *Id.* 642. See *Cooper v. Whitnev*. Decision in 13 *N. Y.* limited to lands in the State (Sale of mortgaged premises under power) in *Elliott v. Wood*, 45 *N. Y.* 71. Applied in *Shillaber v. Robinson*, 97 *U. S.* 68, 77. Explained in 2 *Washb. on Real Prop.* 4 ed. 75. Decision in 15 *How. Pr.* 57, criticised and explained (Decision from which appeal may be taken to General Term) in *Smith v. Lewis*, 1 *Daly*, 452.

— **v. Fox**, 20 *N. Y.* 268. See *Hamill v. Gillespie*. Applied (Action on contract made with third person) in *Secor v. Law*, 4 *Abb. Ct. App. Dec.* 190; *Schindler v. Euell*, 45 *How. Pr.* 35; *Campbell v. Smith*, 71 *N. Y.* 28, which aff'd 8 *Hun.* 6, which see; *May v. Nat. B'k of Malone*, 9 *Id.* 112; *Burr v. Beers*, 24 *N. Y.* 180; *Becker v. Torrance*, 31 *Id.* 643; *Van Schaick v. Third Ave. R. R. Co.*, 38 *Id.* 354; *Hutchings v. Miner*, 46 *Id.* 460; *Claffin v. Ostrom*, 54 *Id.* 584; *Connor v. Williams*, 2 *Robt.* 51; *Glen v. Hope Mut. Life Ins. Co.*, 1 *Sup'm. Ct. (T. & C.)* 465, which was aff'd in 56 *N. Y.* 381, which see; *Hand v. Kennedy*, 83 *Id.* 149, 154. Cited as settled law, but disting'd, in *Barlow v. Myers*, 64 *Id.* 4, which rev'd 3 *Hun.* 720, which see. Examined with other cases in *Douglass v. Wells*, 18 *Id.* 92. Disting'd in *Hoffman v. Schwaebel*, 33 *Barb.* 194; *Gridley v. Gridley*, *Id.* 252; *Johnson v. Morgan*, 68 *N. Y.* 496, which aff'd 6 *Daly*, 333, 337, which see; *McCafferty v. Decker*, 12 *Hun.* 459; *Davis v. Morris*, 36 *N. Y.* 575; *Kelly v. Roberts*, 40 *Id.* 438; *Garvey v. Jarvis*, 46 *Id.* 312; *Garnsey v. Rogers*, 47 *Id.* 237; *Brisbane v. Beebe*, 48 *Id.* 631, 636; *Merrill v. Green*, 55 *Id.* 273; *Simson v. Brown*, 68 *Id.* 358; *Vrooman v. Turner*, 69 *Id.* 283; *Belknap v. Bender*, 75 *Id.* 449; *Rogers' Locomotive, &c. Works v. Kelly*, 19 *Hun.* 399, 405; *Bean v. Edge*, 84 *N. Y.* 514; *Dunning v. Leavitt*, 85 *Id.* 30, 35 (and see dissenting opinion 39). Disting'd with *Burr v. Beers*, 24 *Id.* 178, in *Seward v. Huntington*, 94 *Id.* 104. Limited in *Storrs v. Flint*, 46 *Super. Ct. (J. & S.)* 498, 521. Explained and applied in *Hennan v. Bowen*, 3 *Hun.* 193. Explained in *Kingsbury v. Earle*, 27 *Id.* 141. Rule herein referred to as one that recent cases show a disinclination to extend,—in *Pardee v. Treat*, 82 *N. Y.* 385. Explained and limited in *Aetna Nat. B'k v. Fourth Nat. B'k*, 46 *Id.* 92. Relied on with *Burr v. Beers*, 24 *Id.* 178; *Blyer v. Monholland*, 2 *Sandf. Ch.* 478, in *Schmucker v. Sibert*, 18 *Kans.* 104; s. c., 26 *Am. R.* 765, 769. See to the contrary *Exchange B'k of St. Louis v. Rice*, 107 *Mass.* 37; s. c., 9 *Am. R.* 1. But see *Abb. Tr. Et.* 386. With *Garnsey v. Rogers*, 47 *N. Y.* 233; *Vrooman v. Turner*, 69 *Id.* 280, and *Lake Ontario Shore R. R. Co. v. Cur-*

- tiss, 80 *Id.* 223, compared and regarded as representing an oscillation of opinion on the rule, in note by FRANCIS WHARTON, in 18 *Fed. Rep.* 525. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 174. Commented on in *Wait. on Fraud. Conv.* § 43. See also 17 *Moak Eng.* 765, comparing and citing other cases.
- **v. French**, 25 *Wend.* 433. Aff'd in 7 *Hill*, 519, but without opinion.
- **v. Gallagher**, 42 *Super. Ct. (J. & S.)* 309. Aff'd in 73 *N. Y.* 613.
- **v. Hunt**, 10 *Wend.* 80; s. c., 25 *Am. Dec.* 539. with note, wherein it is shown to be supported by recent adjudications, and by subsequent decisions in N. Y. (What parties are bound by former judgment). See *Green v. Clark*; *Jackson v. Wood*; *Wood v. Jackson*. Cited with other cases as showing rule prevailing in America, though not in England (Effect of judgment offered in evidence, but not pleaded by way of estoppel) in 2 *Taylor on Ev.* 1435. See to the contrary *Bigelow on Estoppel*, 520. See also *Abb. Tr. Ev.* 828.
- **v. Jones**, 15 *Abb. Pr.* 110. See *Persse & Brooks Paper Co. v. Willet*. Disting'd, and also criticised as conflicting with *Garbutt v. Hauff*, 15 *Abb. Pr.* 189 (Time of motion to vacate attachment for irregularity) in *Swezey v. Bartlett*, 3 *Abb. Pr. N. S.* 444.
- **v. Kemp**. See *Shaw v. Lenke*.
- **v. Kidder**, 10 *Barb.* 641. See *Chappel v. Brockway*; *Curtis v. Gokey*; *Dunlop v. Gregory*; *Maier v. Homan*. Relied on (Invalidity of contract in restraint of trade) in *West Va. Transp. Co. v. Ohio River Pipe Line Co.*, 22 *W. Va.* 600; s. c., 46 *Am. R.* 527. Explained in *Benj. on Sales*, § 521, n. a, Bennett's 4 *Am. ed.* Quoted in 1 *Story on Contr.* 5 ed. § 680, n. 1; § 681, n. 3; § 683, n. 7.
- **v. Leake & Watts Orphan House**, 2 *Den.* 577. Aff'g 11 *Paige*, 80. See *Calkins v. Calkins*. Decision in 11 *Paige* criticised, and *Williamson v. Field*, 2 *Sandf. Ch.* 533, 568-572, followed in preference (Retrospective effect of statute limiting time in which to bring suits of equitable cognizance) in *Calkins v. Calkins*, 3 *Barb.* 311. Decision in 2 *Den.* cited as settled law (Right to recover partnership debt out of assets of deceased partner) in *Hoyt v. Bonnett*, 50 *N. Y.* 538, 545. Criticised and disting'd with *Bradley v. Burwell*, 3 *Den.* 61, in *Camp v. Grant*, 21 *Conn.* 41; s. c., 54 *Am. Dec.* 321, 330, with note. Decision in 11 *Paige* disapproved with *Voorhis v. Childs*, 17 *N. Y.* 354, in *Doggett v. Dill*, 108 *Ill.* 560; s. c., 48 *Am. R.* 565. Decision in 2 *Den.* quoted (Application of statute of limitations to suits in equity) in *Ang. on Limit.* § 26, n. 2.
- **v. Lindsay**, 7 *Hun.* 641. Rev'd in 68 *N. Y.* 108. Further proceeding in 70 *Id.* 566. Decision in 68 *Id.* followed (Evidence of advancements) in *Marsh v. Brown*, 18 *Hun.* 319; *Benjamin v. Dimmick*, 4 *Redf.* 7, 10. With decision in 70 *N. Y.* compare (Costs on appeal from surrogate) *Code Civ. Pro.* § 3240.
- **v. Maxwell**, 6 *Lans.* 469; s. c., 64 *Barb.* 102. Aff'd in 53 *N. Y.* 19. Previous decision in 58 *Barb.* 511. With decision in 53 *N. Y.* see other cases collected (Usage to vary contract) in 1 *Abb. N. C.* 472, n.
- **v. Mayor, &c. of N. Y.**, 54 *How. Pr.* 255. Compare (Who are agents of municipal corporation) *Save v. City of Brooklyn*, 8 *Abb. N. C.* 279.
- **v. Merrifield**, 42 *Super. Ct. (J. & S.)* 36. Aff'd, it seems, in 73 *N. Y.* 590, but without opinion. Decision in 42 *Super. Ct. (J. & S.)* disting'd (Payment of capital by special partner) in *Metropolitan Nat. B'k v. Sirret*, 15 *Weekly Dig.* 289.
- **v. Miller**, 1 *Sandf.* 516. Rev'd in 2 *N. Y.* 245. Decision in *Id.* followed (Seizin of heir how affected by admeasurement of dower) in *Graham v. Luddington*, 19 *Hun.* 246.
- **v. —**. Disting'd (Sufficiency of notice to indorser) in *West River Bank v. Taylor*, 7 *Bosw.* 466, 479; *Manufacturers & Traders' Bank v. Hazard*, 30 *N. Y.* 226.
- **v. Nelson**, 4 *Bosw.* 240. Aff'd in 21 *N. Y.* 158. Decision in *Id.* explained (Set-off as against insolent corporation) in *New Amsterdam Sav'gs B'k v. Tartter*, 4 *Abb. N. C.* 215, 218. Followed, and *New Amsterdam Sav'gs B'k v. Tartter* disting'd, in *Hannon v. Williams*, 7 *Stew. (34 N. J. Eq.)* 255; s. c., 38 *Am. R.* 378. Approved and followed (Set-off against obligation to insurance company) in *Scammon v. Kimball*, 5 *Biss.* 431, 441.
- **v. N. Y. Ins. Co.**, 3 *Johns. Cas.* 217. Followed (Connection of underwriter with freight, duties and charges on goods insured) in *Cory v. Boylston Fire & Marine Ins. Co.*, 107 *Mass.* 140; s. c., 9 *Am. R.* 14.
- **v. Norton**, 45 *Barb.* 448. See (Proof of wills) *Code Civ. Pro.* 1881, § 2620, n.
- **v. Ocean Ins. Co.**, 11 *Johns.* 241. Aff'd in *N. Y. Ins. Co. v. Lawrence*, 14 *Id.* 46.
- **v. Sebor**. See *Murray v. Columbian Ins. Co.*
- **v. Taylor**, 5 *Hill*, 107. See *Dubois v. Delaware & Hudson Canal Co.* Cited as authority (Recovery back of money paid upon contract for sale of land) in *Doherty v. Dolan*, 65 *Me.* 87; s. c., 20 *Am. R.* 677. Quoted (Rights respecting real estate belonging to partners and employed in partnership business) in 1 *Pars. on Contr.* 150, n. i.
- **v. Van Horne**, 1 *Cui.* 276; s. c., 2 *N. Y. Com. L. Law. ed.* 151. Explained (Effect of notice to produce paper) in *Kenny v. Clarkson*, 1 *Johns.* 385, 394.
- **v. Williams**, 1 *Duer*, 585. Rev'd in unreported decision, for account of which see *Wall v. Buffalo Waterworks Co.*, 18 *N. Y.* 119, 122.
- Lawson v. Bachman**, 44 *Super. Ct. (J. & S.)* 396. Rev'd in 81 *N. Y.* 616.
- Lawton v. Commissioners of Cambridge**, 2 *Cui.* 179. See *Hartwell v. Armstrong*.

- Applied (Power to interfere by *certiorari*) in *People ex rel. Seymour v. Canal Board*, 7 *Lans.* 222. Dicta criticised in *Matter of Mt. Morris Square*, 2 *Hill*, 22. Applied with *Wood v. Peake*, 8 *Johns.* 69; *Wildy v. Washburn*, 16 *Id.* 49, and other cases in *Parks v. Boston*, 8 *Pick. (Mass.)* 218; s. c., 19 *Am. Dec.* 322. See *Bac. Abr. Certiorari B.* Cited as authority (Presumption that road was laid out of proper width) in *Alvord v. Ashley*, 17 *Ill.* 370. Superseded (Time of allowing *certiorari*) by 2 *R. S.* 391, § 16.
- *v. Green*, 5 *Hun.* 157. Modified in 64 *N. Y.* 326. Decision in *Id.* disting'd (Time to grant order of reference to assess damages arising from injunction) in *Musgrave v. Sherwood*, 76 *Id.* 194. Followed (Making such order prematurely is mere irregularity) in *Roberts v. White*, 43 *Super. Ct. (J. & S.)* 455, 457. Applied (Enforcing liability of surety on undertaking given on granting injunction) in *Randall v. Carpenter*, 47 *Super. Ct. (J. & S.)* 205. Relied on with *Cayuga Bridge Co. v. Magee*, 2 *Paige*, 121; *Loveland v. Burnham*, 1 *Barb. Ch.* 65; *Leavitt v. Dabney*, 40 *How. Pr.* 281 (Statutory bond is sole remedy for damages under injunction in absence of malice) in *Hayden v. Keith*, 32 *Minn.* 277, where also it is said that the Minnesota statute on this subject is drawn from § 222 of *N. Y. Code Pro.* See (Costs on motion) *Code Civ. Pro.* 1881, § 3236, n.
- *v. Reil*, 34 *How. Pr.* 465. Followed (Attachment against non-resident) in *Clews v. Rockford*, *Rock I. & St. L. R. R. Co.*, 2 *Hun.* 379.
- Lawyer v. Cipperly.** See *Baptist Church of Hartford v. Witherell*.
- Layman v. Whiting**, 20 *Barb.* 559. See (When title passes to purchaser of mortgaged premises) *Code Civ. Pro.* 1881, § 2400, n.
- Lazier v. Westcott**, 26 *N. Y.* 146. Cited with *Vandervoort v. Smith*, 2 *Cai.* 154; *Packard v. Hill*, 7 *Cow.* 434 (How exemplification of foreign record may be proved) in 1 *Whart. Com. on Ev.* § 110. Thought in 2 *Id.* § 802, to hold what is the better view (Effect of foreign judgment *in personam*).
- Lea v. Wolf**, 13 *Abb. Pr. N. S.* 389; s. c., 1 *Sup'm. Ct. (T. & C.)* 626, n. Modified in 15 *Abb. Pr. N. S.* 1; s. c., 1 *Sup'm. Ct. (T. & C.)* 626; 46 *How. Pr.* 157. See *Matsell v. Flanagan*. Decision in 15 *Abb. Pr. N. S.* explained (Trademarks, &c.) in *Moak's Underhill's Torts*, 1 *Am. ed.* 619.
- Leach v. Leach**, 2 *Sup'm. Ct. (T. & C.)* 657. Aff'd in 58 *N. Y.* 630, on opinion of PARKER, J., below.
- *v. —*, 21 *Hun.* 381. Collated with other cases (Estate by curtesy, how affected by statute) in *Shars. & B. Cas. on Real Prop.* 289.
- Leaird v. Smith**, 44 *N. Y.* 618. Explained (Time within which specific performance may be enforced) in *Peters v. Delaplaine*, 49 *Id.* 362.
- Leake & Watts Orphan House v. Lawrence.** See *Lawrence v. Leake & Watts Orphan House*.
- Learn v. Currier**, 15 *Hun.* 184. Aff'd, it seems, in 76 *N. Y.* 625, but without opinion. Decision in 15 *Hun* followed (Costs in case presenting question of title) in *Falkel v. Moore*, 32 *Id.* 293.
- Learned v. Ryder**, 5 *Lans.* 539; s. c., more fully, 61 *Barb.* 552. See *King v. Fitch*.
- *v. Vandenburg*, 7 *How. Pr.* 379. Aff'd in 8 *Id.* 77. Decision in *Id.* disting'd (Levy under attachment) in *Rogers v. Bonner*, 55 *Barb.* 9, '24.
- Leavenworth v. Brockway**, 2 *Hill*, 201. Followed (Burden of proof as to laws of another State) in *McCulloch v. Norwood*, 36 *Super. Ct. (J. & S.)* 180, 187; *Donegan v. Wood*, 49 *Ala.* 242; s. c., 20 *Am. R.* 275.
- *v. Delafield*, 1 *Cai.* 573; s. c., 2 *Am. Dec.* 201, with valuable note wherein this case is compared with other authorities as to what is subject of general average, what are proper rules for valuation of ships, cargo, &c. Followed with approval (Rule for valuation of lost ships) in *Gray v. Waln*, 2 *Serg. & R. (Pa.)* 229; s. c., 7 *Am. Dec.* 642, 647, 650. Commented on (Adjustment of general average) in 3 *Kent Com.* 243.
- *v. Packer*, 52 *Barb.* 132. Followed with *Vasear v. Livingston*, 13 *N. Y.* 248; *Pattison v. Richards*, 22 *Barb.* 143; *Mattoon v. Baker*, 24 *How. Pr.* 329; *National Fire Ins. Co. v. McKay*, 21 *N. Y.* 191 (Definition of counter-claim) in *Heckman v. Swartz*, 55 *Wis.* 173.
- Leavitt v. Blatchford**, 5 *Barb.* 9. Rev'd in part, and aff'd in part, as *Leavitt v. Palmer*, 3 *N. Y.* 19. Subsequent proceeding arising out of transaction here involved in 17 *Barb.* 390, and that aff'd in 17 *N. Y.* 521. See *Curtis v. Leavitt*. Decision in 17 *N. Y.* approved (Provisions of R. S. relating to moneyed corporations do not apply to banking associations under Act of 1838) in *McLean v. Eastman*, 21 *Hun.* 312. Discussed in *Ang. & A. on Corp.* § 88, n. 5, 11 ed.
- *v. Cruger*, 1 *Paige*, 421. Followed (When service of process on husband in foreclosure proceedings makes service on wife unnecessary) in *Watson v. Church*, 5 *Sup'm. Ct. (T. & C.)* 243, 245.
- *v. Dabney*, 9 *Abb. Pr. N. S.* 373; s. c., 40 *How. Pr.* 277. See *Lawton v. Green*. Followed (Liability on injunction undertaking) in *Hovey v. Rubber Tip Pencil Co.*, 38 *Super. Ct. (J. & S.)* 428, 430; *Randall v. Carpenter*, 47 *Id.* 205.
- *v. DeLannay*, 4 *Sandf. Ch.* 281. Rev'd in 4 *N. Y.* 363.
- *v. Palmer*, 3 *N. Y.* 19; s. c., 51 *Am. Dec.* 333, with note collecting citations thereof; s. c., as *Leavitt v. Blatchford*, 8 *N. Y. Leg. Obs.* 53, with copy of deed of trust. See *Oneida Bank v. Ontario Bank*. Commented on in *Curtis v. Leavitt*, 15 *N. Y.* 9, 101, 180, 231, 271, a decision arising

- out of same transactions here involved. Compare (Validity of corporate acts in violation of statute) *Bissell v. Michigan Southern R. R. Co.*, 22 *Id.* 258, 302. Followed (Mistakes in law) in *Garnar v. Bird*, 57 *Barb.* 277. Language of *Bronson, J.*, quoted (Consideration in part illegal) in 1 *Pars. on Contr.* 457, n. u.
- *v. Pell*, 24 *Barb.* 322. Aff'd on the ground that the power was lawful, and the mortgage within its terms, in 25 *N. Y.* 474.
- *v. Putnam*, 1 *Sandf.* 199. Rev'd in 3 *N. Y.* 494; s. c., 53 *Am. Dec.* 322. See *Berry v. Robinson*. Cited (Liability of indorser after maturity) in *Scott v. First Nat. B'k*, 71 *Ind.* 448. Included in 1 *Ames Cas. on B. & N.* 784. Also in *Bigel. on B. & N.* 2 ed. 129. Commented upon in *Id.* 138. Included with note in *Redf. & B. Lead. Cas. on B. of Exch.* 156.
- *v. Stanton, Hill & D.* 413. Applied (Liability of bank to depositor for paying forged check) in *Frank v. Chemical Nat. B'k*, 45 *Super. Ct. (J. & S.)* 457.
- *v. Thompson*, 56 *Barb.* 542. Rev'd in 52 *N. Y.* 62. See *Cook v. Gregg*. Decision in 56 *Barb.* disapproved (Constitutionality of act as to trespass by animals) in *Squares v. Campbell*, 60 *Id.* 391. See *Campbell v. Evans*, 45 *N. Y.* 356. See (Action by owner of animal seized) *Code Civ. Pro.* 1881, § 3108, n.
- *v. Woods*, 10 *Wend.* 558. Overruled (Effect of condition annexed to confession of judgment) in *Hecox v. Ellis*, 19 *Id.* 157.
- *v. Yates, 4 Edw.* 134. Cited with *Taylor v. Hutton*, 43 *Barb.* 195, in *Whart. Com. on Ag.* § 681, as showing supreme control exercised over bank by its directors. Explained (Expenses of trust in case of assignment for benefit of creditors) in *Burrill on Assign.* § 417, 4 ed. Quoted and explained (Receiver, when appointed) in *High on Receiv.* § 6, n. 2.
- Leavy v. Roberts**, 8 *Abb. Pr.* 310. Aff'd in 2 *Hill.* 285.
- Leaycraft v. Dempsey**. See *Murray v. Toland*.
- *v. Simmons*, 3 *Bradf.* 35. Quoted (Execution and attestation of will) in 1 *Jarm. on Wills*. Rand. and T. ed. 218, n. 17. Explained (Old age of testator) in *Willard on Executors*, 86.
- Le Blanc, Matter of**, 4 *Abb. N. C.* 221; s. c., 14 *Hun.* 8. Aff'd, it seems, in 75 *N. Y.* 598, but without opinion. See *Martin v. Funk*. Decision in 14 *Hun* applied (Lien created by specific appropriation of fund), and *People v. Merchants' & Mechanics' B'k*, 78 *N. Y.* 269, disting'd, in *People v. City B'k of Rochester*, 96 *Id.* 32. Disting'd in *People v. Merchants' & Mechanics' B'k*, 78 *Id.* 269, 273; *Peckham v. Van Wageningen*, 83 *Id.* 40, 45. Compare *Attorney General v. Continental Life Ins. Co.*, 7 *Id.* 325.
- Le Breton v. Miles**, 8 *Paige*, 261. Followed (Law of actual domicile as governing future acquisitions) in *Fuss v. Fuss*, 24 *Wis.* 256; s. c., 1 *Am. R.* 180, 182. Relied on in *Besse v. Pellochoux*, 73 *Ill.* 285; s. c., 24 *Am. R.* 242.
- Le Clare v. Stewart**, 8 *Hun.* 127. Disting'd (Evidence of personal communication, &c. with deceased) in *Lathrop v. Hopkins*, 29 *Id.* 608. Examined with other cases in *Marsh v. Gilbert*, 2 *Redf.* 465, 475. See 1 *Whart. Com. on Ev.* § 471; *Abb. Tr. Ev.* 63.
- Le Couteux v. Supervisors of Erie**, 7 *Barb.* 249. Approved (Validity, force and construction of L. 1846, c. 327) in *City of Buffalo v. Le Couteux*, 15 *N. Y.* 451.
- Ledwith v. McKim**, 35 *Super. Ct. (J. & S.)* 304. Aff'd as *Ledwich v. McKim*, 53 *N. Y.* 307. Decision in 53 *Id.* explained and limited (Title, &c. to non-negotiable paper) in *Holbrook v. N. J. Zinc Co.*, 57 *Id.* 616, 623. Disting'd (Effect of allegations in complaint to determine character of action, as in tort or on contract) in *Beard v. Yates*, 2 *Hun.* 467; *Peck v. Root*, 5 *Id.* 549. Approved in *Pomeroy on Rem.* § 559, n. 1, p. 607. See also *Abb. Tr. Ev.* 339, citing *Code Civ. Pro.* § 549. See (Form of summons) *Code Civ. Pro.* 1881, § 422, n.
- Ledyard v. Butler**, 9 *Paige*, 132; s. c., 37 *Am. Dec.* 379. Cited as authority (Title of bona fide purchaser from a fraudulent grantee) in *Sedgwick v. Place*, 10 *Nat. Bank. Reg.* 37; s. c., 12 *Blatchf.* 174.
- *v. Jones*, 4 *Sandf.* 67. Aff'd in 7 *N. Y.* 550.
- Lee v. Adsit**, 37 *N. Y.* 78. Followed (Parol evidence to vary writing in case of insurance) in *Richardson v. Home Ins. Co.*, 47 *Super. Ct. (J. & S.)* 188, 155.
- *v. Chadsey*, 3 *Abb. Ct. App. Dec.* 43; s. c., 2 *Keyes*, 543; 3 *Id.* 225. Applied (Mode of impeaching witness) in *Wilder v. Peabody*, 21 *Hun.* 380. Applied (Effect of evidence of impeached witness) in *White v. McLean*, 57 *Hov. Pr.* 199; *Deering v. Metcalf*, 74 *N. Y.* 505. Followed (Usury as determined by acceptance of bonus by agent) in *Estevez v. Purdy*, 66 *Id.* 449. Disting'd with *Estevez v. Purdy*; *Bell v. Day*, 32 *Id.* 165; *Condit v. Baldwin*, 21 *Id.* 219, in *Erickson v. Bell*, 53 *Iowa*, 627; s. c., 36 *Am. R.* 246.
- *v. Clark*, 1 *Hill.* 56. See *Bartlett v. Campbell*; *Doty v. Brown*. Upheld (Judgment, &c. against principal as evidence against surety) in *Stephens v. Shafer*, 48 *Wis.* 63, citing many cases.
- *v. Dill*, 30 *Barb.* 516; s. c., 16 *Abb. Pr.* 92. Said in 41 *N. Y.* 619, to have been aff'd, with costs, in *Ct. of App.* March, 1869.
- *v. Gargulio*, 45 *Super. Ct. (J. & S.)* 595. Aff'd, it seems, in 81 *N. Y.* 643, but without opinion.
- *v. Grinnell*, 5 *Duer*, 400. Explained (Right to benefit of general average as affected by success of the sacrifice) in 2 *Pars. on Contr.* 328, n. m. Language of

- DUER, J., criticised (Denial of contribution where value of article is gone at time of sacrifice) in 3 *Kent. Com.* 234, n. 1 (c), Holmes' ed.
- *v. Lee*, 39 *Barb.* 172; s. c., more fully, 16 *Abb. Pr.* 127. Followed (Surrogate's award of costs) in *Noyes v. Childrens' Aid Soc.*, 10 *Hun.* 289, 291.
- *v. Pittsburgh Coal & Mining Co.*, 56 *How. Pr.* 373. Aff'd, it seems, in 75 *N. Y.* 601, but without opinion.
- *v. Salter*, *Hill & D.* 163. Included with note (Demanding freight on goods carried) in 2 *Redf. Am. Railw. Cas.* 219.
- *v. Selleck*, 32 *Barb.* 522; s. c., 20 *How. Pr.* 275. Aff'd in 33 *N. Y.* 615. Decision in 32 *Barb.* explained (Law of place of contract governing promissory notes, &c.) in *Artisans' B'k v. Park B'k*, 41 *Id.* 599. Decision in 33 *N. Y.* commented on and applied in *Hibernia Nat. B'k v. Lacombe*, 84 *Id.* 367, 378, 381. Applied in *Weil v. Lange*, 6 *Daly*, 549. Approved in *Tilden v. Blair*, 21 *Wall.* 241, 247. Included in 2 *Ames Cas. on B. & N.* 237.
- *v. Stanley*, 9 *How. Pr.* 272. Collated with other cases (Attachment as affected by law of domicile) in *Thomps. on Prov. Rem.* 359.
- *v. Tillotson*, 24 *Wencl.* 337; s. c., 14 *N. Y. Com. L. Law. ed.* 629, with long brief note; and s. c., 35 *Am. Dec.* 624, with note wherein are collected citations of the case. See *Story v. Furman*. Followed (Constitutionality of laws providing for reference of causes) in *Holmes v. Hunt*, 122 *Mass.* 505; s. c., 23 *Am. R.* 381. Disting'd as a case of a right exercised before the adoption of the constitution,—in *St. Paul & Sioux City R. R. Co. v. Gardner*, 19 *Minn.* 132; s. c., 18 *Am. R.* 334.
- *v. Village of Sandy Hill*, 40 *N. Y.* 442. See *Hutson v. Mayor, &c. of N. Y.*; *Rochester White Lead Co. v. City of Rochester*; *Sandford v. Handy*. Followed (Liability of municipal corporation for acts of officer) in *Peters v. Mayor, &c. of N. Y.*, 8 *Hun.* 405. Disting'd in *Smith v. City of Rochester*, 76 *N. Y.* 506, 510. Followed in *Hunt v. City of Boonville*, 65 *Mo.* 620; s. c., 27 *Am. R.* 299. Included in *Field on Ultra Vires*, 513. Collated with other cases in *Id.* 582.
- *v. Woolsey*, 19 *Johns.* 319; s. c., 10 *Am. Dec.* 230. Applied with *Willis v. Forrest*, 2 *Duer*, 310; *Dolan v. Fagan*, 63 *Barb.* 73 (Evidence to mitigate damages in action for assault) in *Kieser v. Smith*, 71 *Ala.* 481; s. c., 46 *Am. R.* 342. Cited with approval in *Rawlings v. Commonwealth*, 1 *Leigh (Va.)* 581; s. c., 19 *Am. Dec.* 757. Followed in *Fullerton v. Warrick*, 3 *Blackf. (Ind.)* 219; s. c., 25 *Am. Dec.* 99. Cited with approval and applied to case of action in trespass for personal injury in *Cummins v. Crawford*, 88 *Ill.* 312; s. c., 30 *Am. R.* 558, 261.
- Lee & Co's Bank**, *Matter of*, 21 *N. Y.* 9. Followed (Validity of State constitutional provision that has retroactive effect) in *Matter of Reciprocity B'k*, 22 *Id.* 9. Followed with *Matter of Reciprocity B'k*, in *Bender v. Crawford*, 33 *Tex.* 745; s. c., 7 *Am. R.* 270, 276. Quoted in *Cooley on Const. Limit.* 5 ed. 43, n. 1; *Id.* 76, n. 2. Applied (Power of legislature to amend or repeal law under which corporation acts) in *Poughkeepsie, & C. Plankroad Co. v. Griffin*, 24 *N. Y.* 156; *Albany Northern R. R. Co. v. Brownell*, *Id.* 350. Applied (Subscription to capital stock, when not defeated by amendment of charter) in *Union Hotel Co. v. Hersee*, 79 *Id.* 459.
- Leeds v. Bowen**, 1 *Robt.* 10; s. c., 2 *Abb. Pr. N. S.* 43. See *Russell v. Miner*. Approved (Auctioneers compensation) in *Russell v. Miner*, 25 *Hun.* 114. Doubt'd in *Same v. Same*, 61 *Barb.* 534.
- *v. Brown*, 5 *Abb. Pr.* 418. Opposed (Examination of party) in *Watson v. Gage*, 12 *Id.* 215.
- Leeffe, Matter of**, 4 *Edw.* 395. See *Oakley v. Aspinwall*. Collated with others cases (Effect of statutes on rights of aliens) in *Sharsw. & B. Cas. on Real Prop.* 519.
- Leetch v. Atlantic Mut. Ins. Co.**, 4 *Daly*, 518. Followed (Power of courts to allow amendments) in *Matter of Christern*, 43 *Super. Ct. (J. & S.)* 523, 528.
- Lefevre v. Lefevre**, 2 *Sup'm. Ct. (T. & C.)* 330. Rev'd on other grounds in 59 *N. Y.* 434. See *Gallup v. Wright*; *Harris v. Slaght*; *Kerr v. Dougherty*. With decision 59 *N. Y.* see (Bequests to benevolent, &c. corporations) *Betts v. Betts*, 4 *Abb. N. C.* 317, 319. Explained in *Dowd's Will*, 8 *Id.* 118, 122. Applied in *Kerr v. Dougherty*, 59 *How. Pr.* 44, 56. Explained (What is intestacy) in *Fry v. Smith*, 10 *Id.* 224, 230. Quoted (Misdescription in will) in 1 *Jarm. on Wills*, Rand. & T. ed. 662, n.
- Lefferts v. Brampton**, 24 *How. Pr.* 257. Followed as conclusive (Right to inspection of books and documents) in *Union Paper Collar Co. v. Metropolitan Collar Co.*, 3 *Daly*, 171.
- *v. Hollister*, 10 *How. Pr.* 383. See other cases collected (Pleading statute of limitations) in 8 *Abb. N. C.* 197, n.
- Leffingwell v. White**, 1 *Johns. Cas.* 99; s. c., 1 *Am. Dec.* 97, with note. See *Mechanics' B'k v. Griswold*. Criticised as against the preponderance of legal authority (Notice of dishonor excused by proof of indorser's verbal promise) in *Allen v. Rundle*, 50 *Conn.* 9; s. c., 47 *Am. R.* 599.
- Lefler v. Field**, 42 *How. Pr.* 420. Further decision in 47 *N. Y.* 407. Also, as it seems, in 50 *Barb.* 407; 52 *N. Y.* 621. Decision in 50 *Barb.* explained (Practice on findings by referee on settlement of case) in *Excelsior Petroleum Co. v. Lacy*, 5 *Sup'm. Ct. (T. & C.)* 305. See (Exceptions to rulings on questions of fact) *Code Civ. Pro.* 1881, § 992, n. Decision in 52 *N. Y.* disting'd (Sufficiency of allegations of fraud) in *Dudley v. Scranton*, 57 *Id.* 424, 428.

- Leger v. Bonnaffe**, 2 *Barb.* 475. See *Des Arts v. Leggett*; *Ontario Bank v. Lightbody*. Explained (Mistake of fact) in 1 *Story on Contr.* 5 ed. § 539.
- Legg v. Dorsheim**, 19 *Wend.* 700. Referred to as superseded by statute (Right to move for change of venue, in action against maker and indorser) in *Sherman v. Gregory*, 42 *How. Pr.* 481.
- **v. Overbagh**, 4 *Wend.* 188; s. c., 21 *Am. Dec.* 115, with extended note as to power of appellate court after remittitur.
- **v. Stillman**, 2 *Cow.* 418. Applied with *Bromley v. Smith*, 2 *Hill*, 517 (Sufficiency of service of defendant in justice's court) in *Shaw v. Moser*, 3 *Mich.* 73.
- Leggett v. Bank of Sing Sing**, 25 *Barb.* 326. Rev'd in 24 *N. Y.* 283. See *Bank of Attica v. Manufacturers' & Traders' Bank*. Decision in 24 *N. Y.* disting'd (Corporate power to regulate transfer of stock) in *Driscoll v. West, &c. Manfg Co.*, 59 *Id.* 96, 107.
- **v. Boyd**, 3 *Wend.* 376. Followed (Discretionary power of court as to delay of trial for purpose of procuring attendance of witness) in *Taylor v. Commonwealth*, 77 *Va.* 695. Approved (Refusal to admit evidence after close of case,—on ground for new trial) in *Sanford M'fg Co. v. Wiggins*, 14 *N. H.* 441; s. c., 40 *Am. Dec.* 198, 203.
- **v. Dubois**, 5 *Paige*, 114; s. c., 28 *Am. Dec.* 413. Prior decision in 2 *Paige*, 114. Decision in 5 *Id.* approved and applied (Enforcing trust arising out of illegal transaction) in *Miller v. Davidson*, 3 *Gilm. (Ill.)* 518; s. c., 44 *Am. Dec.* 715, 720, with note. Approved in *Redmond v. Pakenham*, 66 *Ill.* 435. Disting'd (Proof of resulting trust by parol evidence) in *Bayles v. Baxter*, 22 *Cal.* 579. Cited as authority in *U. S. v. Union Pacific R. R. Co.*, 11 *Blatchf. Ct. Ct.* 402. With decision in 2 *Paige* see (Proceedings on death of party) *Code Civ. Pro.* § 760, n.
- **v. Henneberger**. See *Leggett v. Hyde*; *Manhattan Brass & Manuf. Co. v. Sears*. Decision in 19 *N. Y.* explained as not designed to overrule *Powers v. Bergen*, 6 *Id.* 358 (Power of legislature to authorize sale of lands in which adults have interest) in *Brevoort v. Grace*, 53 *Id.* 245, 256. Both decisions explained and applied (Right of remaining trustees after resignation, &c. of one, to sell land) in *Matter of Bernstein*, 3 *Redf.* 26.
- **v. Hunter**, 25 *Barb.* 81. Aff'd in 19 *N. Y.* 445. See *Powers v. Bergen*.
- **v. Hyde**, 58 *N. Y.* 272; s. c., 17 *Am. R.* 244. Aff'g *Leggett v. Henneberger*, 1 *Sup'm. Ct. (T. & C.)* 418. See *Gibson v. Stone*; *Richardson v. Hughitt*. Decision in 58 *N. Y.* applied (Partnership as created by participation in profits) in *Williams v. Gillies*, 53 *How. Pr.* 430; *Haas v. Roat*, 16 *Hun.* 526. Disting'd in *Smith v. Bodine*, 74 *N. Y.* 33; *Richardson v. Hughitt*, 76 *Id.* 58; *Eager v. Crawford*, *Id.* 101; *Burnett v. Snyder*, *Id.* 351, and see *Same v. Same*, 81 *Id.* 555. Disting'd in *Harvey v. Childs*, 23 *Ohio St.* 319; s. c., 22 *Am. R.* 387, 390. Followed, and *Richardson v. Hughitt*, 76 *N. Y.* 91, disting'd, in *Rosenfeld v. Haigh*, 53 *Wis.* 250; s. c., 40 *Am. R.* 77. Explained and criticised in 30 *Alb. L. J.* 23. Quoted and discussed in 1 *Collyer on Partn.* § 47, n. 1, *Wood's Am. ed.* Cited with *Haas v. Roat*, 16 *Hun.* 526, in *Story on Partn.* 7 ed. 850, n. Explained and disting'd (Relation of principal and agent, as between members of a firm) in *King v. Sarria*, 69 *N. Y.* 35. Explained (Effect of direction of verdict in favor of a party) in *Wombough v. Cooper*, 2 *Hun.* 431. Applied in *Hagaman v. Burr*, 41 *Super. Ct. (J. & S.)* 425.
- **v. Mutual Life Ins. Co.**, 64 *Barb.* 23. Rev'd in 53 *N. Y.* 394. Previous decision in 50 *Barb.* 616. See *Bagley v. Peddie*.
- **v. Perkins**, 2 *N. Y.* 297. Further decision involving effect of same will, in *Leggett v. Hunter*, 25 *Barb.* 81, 98, which was aff'd in 19 *N. Y.* 445, 454. Also further decision in *Post v. Post*, 47 *Barb.* 72. Applied (Validity of trust to receive and pay over rents and profits) in *Noyes v. Blakeman*, 3 *Sandf.* 541, which was aff'd in 6 *N. Y.* 567, 581, which see. Followed, as of unquestioned authority, in *Moore v. Hegeman*, 72 *Id.* 384. Applied with *Moore v. Hegeman*, while *Donovan v. Van de Mark*, 78 *N. Y.* 244; *Ireland v. Ireland*, 84 *Id.* 321; *Willetts v. Titus*, 14 *Hun.* 554, were disting'd in *Murray v. Bronson*, 1 *Dem.* 217. Disting'd (Extent of trustee's discretion) in *Rodman v. Munson*, 13 *Barb.* 82. Applied (Trust in real estate, when created by will) in *Killam v. Allen*, 52 *Id.* 608. Followed in *Tobias v. Ketchum*, 32 *N. Y.* 319, 330. Disting'd (Validity of trust in real estate, created by will) in *Donovan v. Vandemark*, 18 *Hun.* 200. Disting'd (Devise of trust estate by implication) in *Post v. Hover*, 33 *N. Y.* 600.
- **v. Raymond**, 6 *Hill*, 639. See *Hough v. Gray*; *Lamourieux v. Hewitt*; *Pucker v. Willson*. Overruled (Liability of guarantor of note) in *Brown v. Curtiss*, 2 *N. Y.* 225. Disting'd in *Hayden v. Weldon*, 14 *Vroom (N. J.)* 133. Commented on in *Bigel. on B. & N.* 2 ed. 138.
- **v. Rogers**. See *Varick v. Tallman*.
- Legrand v. Manhattan Mercantile Assoc.**, 44 *Super. Ct. (J. & S.)* 562. Aff'd in 80 *N. Y.* 638.
- Le Guen v. Gouverneur**, 1 *Johns. Cas.* 436; s. c., 1 *Am. Dec.* 121; 1 *N. Y. Com. L. Lav. ed.* 381; with collection of subsequent cases in which it is cited. See *King v. Baldwin*. See cases and argument (*Alb. and N. Y.* 1797-1800) collected in 5 vols. at State Library in Albany. Applied (Damages in cases of violation of instructions given to factor respecting sale) in *Whelan v. Lynch*, 65 *Barb.* 328. Cited as a case of considerable magnitude,—in 2 *Sedgw. on Dam.* 7 ed. 68. Applied (What may be considered on appeal) in *Beckman v. Frost*,

- 18 *Johns.* 560; *Reid v. Vanderheyden*, 5 *Cow.* 735. Explained in *Bank of Orange County v. Fink*, 7 *Paige*, 91. Explained and approved in *Kane v. Whittick*, 8 *Wend.* 232. Examined with other cases (Costs on appeal) in *Mott v. Consumers' Ice Co.*, 8 *Daly*, 244, 246. Criticised and disting'd (Conclusiveness of judgment) in *Lewis v. Smith*, 11 *Barb.* 157; *Yates v. Fassett*, 5 *Den.* 29. Approved but disting'd in *Belmont v. Erie Ry. Co.*, 52 *Barb.* 646; *Simson v. Hart*, 14 *Johns.* 77. Applied in *Vandenhoevel v. United Ins. Co.*, 2 *Johns. Cas.* 156; *Binck v. Wood*, 43 *Barb.* 319. Disting'd in *Mason v. Alston*, 9 *N. Y.* 28, 35. Limited in *Barnum v. Reynolds*, 38 *Cal.* 643. Followed with *Simson v. Hart*, 1 *Johns. Ch.* 91; in *Emery v. Goodwin*, 13 *Me.* 14; s. c., 29 *Am. Dec.* 475, 479; Cited and fully approved in *McClure v. Miller*, 1 *Bailey (So. Car.)* 107; s. c., 21 *Am. Dec.* 522, 525.
- Lehman v. City of Brooklyn**, 29 *Barb.* 234. See *Oldfield v. N. Y. & Harlem R. R. Co.* Opposed (Measure of damages for injury to child) in *Baltimore, &c. R. R. Co. v. State*, 30 *Md.* 47. Quoted and commented on in 2 *Thomps. on Negl.* 1293. Collated with other cases (Negligence in keeping well open) in *Bigel. Cas. on Torts*, 599.
- Leichtweiss v. Treskow**, 21 *Hun.* 487. Cited as stating what is the American rule, wherever the common law prevails (Effect of infant's promise to marry) in 20 *Am. L. Reg. N. S.* 459, n.
- Leitch v. Atlantic Mut. Ins. Co.**, 66 *N. Y.* 100. Disting'd (Conclusiveness of expert testimony) in *Cornish v. Farm Buildings Fire Ins. Co.*, 74 *Id.* 295, 298.
- **v. Hollister**, 4 *N. Y.* 211. Dictum disapproved (Trust created for creditors, when invalid as also creating trust for grantor) in *Curtis v. Leavitt*, 15 *Id.* 9, 118, 176. Explained in *Burrill on Assign.* § 209, 4 ed. Explained (Assignment for creditors as distinguished from mortgage) in *Id.* § 6.
- **v. Wells**, 48 *Barb.* 637. Rev'd in 48 *N. Y.* 585. With decision in *Id.* compare (Application of doctrine of *lis pendens* to stocks) *Dovey's Appeal*, 97 *Pa. St.* 162.
- Leland, Matter of**. See *Matter of Heyward*.
- Leland v. Cameron**, 81 *N. Y.* 115. Applied (Effect of entries made in course of professional or official employment) in *Livingston v. Arnoux*, 56 *Id.* 507, 518; *Mandeville v. Reynolds*, 68 *Id.* 436.
- **v. Douglass**, 1 *Wend.* 490. See *Van Allen v. Vanderpool*. Compare (Evidence of usage as to sale by agent for cash) *Clark v. Van Northwick*, 1 *Pick. (Mass.)* 343; *Stewart v. Scudder*, 24 *N. J. L.* 96.
- **v. Smith**, 11 *Abb. Pr. N. S.* 231. Modified, on appeal, in 3 *Daly*, 309.
- **v. Tousey**, 6 *Hill*, 328. Disting'd (Action for mesne profits, when maintainable) in *Thompson v. Bower*, 60 *Barb.* 463. Discussed in *Bigel. Cas. on Torts*, 369.
- Lemen v. Wood**, 16 *How. Pr.* 285. See to same effect (Costs against executors) *Tindal v. Jones*, 11 *Abb. Pr.* 258.
- Lemmon v. People**, 26 *Barb.* 270. See *grrata*, *Id.* 4. Aff'd in 20 *N. Y.* 562. See statements and points in *Ct. of App. Cas.* in *Law Inst. Libr. N. Y. City*. See also Vol. 34 of Charles O'Connor's "My own Cases," in same Library.
- Lemoine v. Gauton**, 2 *E. D. Smith*, 343. Cited as authority (Effect of misrepresentations by vendor as to who manufactured goods sold) in *Miller Tobacco Manufactory v. Commerce*, 16 *Vroom. (N. J.)* 18; s. c., 46 *Am. R.* 750.
- Lemon v. Trull**, 13 *How. Pr.* 248. Aff'd in 16 *Id.* 576, n., but without opinion.
- Lenahan v. People**, 3 *Hun.* 164; s. c., 5 *Sup'm. Ct. (T. & C.)* 265. Aff'd, it seems, as *People v. Lenahan*, in 62 *N. Y.* 623, but without opinion.
- Lenihan v. Hamann**, 14 *Abb. Pr. N. S.* 274. Aff'd in 55 *N. Y.* 652, but without opinion. With decision in 14 *Abb. Pr. N. S.* see also (Performance of contract for sale of land) in *Rinaldo v. Housmann*, 1 *Abb. N. C.* 312.
- Lennon v. Mayor, &c. of N. Y.**, 5 *Daly*, 347. Aff'd in 55 *N. Y.* 361. Decision in *Id.* followed (Constitutionality of *L. 1872, c. 580*, § 7, prohibiting vacating assessments) in *Eno v. Mayor, &c. of N. Y.*, 68 *Id.* 214, 217. Applied (Effect of such act) in *Astor v. Mayor, &c. of N. Y.*, 39 *Super. Ct. (J. & S.)* 120, 127. Collated with other cases (Remedies against illegal taxation) in 20 *Am. L. Reg. N. S.* 15.
- Lennox v. Eldred**, 1 *Sup'm. Ct. (T. & C.)* 140. Compare (Husband as necessary party to action against wife for debt contracted before marriage) *Heller v. Rosselle*, 6 *Hun.* 631.
- Lenox v. United Ins. Co.**, 3 *Johns. Cas.* 178; s. c., 1 *N. Y. Com. L. Law. ed.* 660, with brief note. See *Smith v. Wright*. Overruled (Foreign adjustment of average loss not conclusive) in *Strong v. N. Y. Firemen's Ins. Co.*, 11 *Johns.* 323; *Lewis v. Williams*, 1 *Hall*, 430; *Depau v. Ocean Ins. Co.*, 5 *Cow.* 63.
- Lentilhon v. Moffatt**, 1 *Edw.* 451. Discussed (Provision for releases in assignment for benefit of creditors) in *Burrill on Assign.* § 192, 4 ed.
- Lenton v. Gunther**, 4 *Hun.* 142. Aff'd, it seems, in 64 *N. Y.* 634, but without opinion.
- Leonard v. Bell**, 1 *Sup'm. Ct. (T. & C.)* 608. Aff'd, it seems, in 58 *N. Y.* 676, but without opinion.
- **v. Barker**, 5 *Den.* 220. Dictum disapproved (Effect of prior judgment as estoppel against indorser) in *Barker v. Cassidy*, 16 *Barb.* 177.
- **v. City of Brooklyn**. See *Leonard v. Reynolds*.
- **v. Columbia Steam Nav. Co.**, 84 *N. Y.* 48. See *Whitford v. Panama R. R. Co.* Approved (Right of action for death hap-



- pening in another State) in *Dennick v. Railroad Co.*, 103 *U. S.* 11, 21. Explained as turning on the ground that the Connecticut statute is in all material respects the same as that of N. Y.,—in *Vawter v. Missouri Pac. R. R. Co.*, *Sup'm. Ct. Mo.* 1884; 20 *Cent. L. J.* 352. Explained and collated with other cases in *Morris v. Chicago, R. I. & P. R. Co.*, 65 *Iowa*, 731.
- *Fowler*, 44 *N. Y.* 289. See *Salisbury v. Stainer*. Explained (Sale by average sample) in *Benj. on Sales*, § 654 (Bennett's 4 *Am. ed.*); 2 *Id.* § 931 (Corbin's 4 *Am. ed.*).
- *v. Huntington*. See *Wendover v. Hogeboom*.
- *v. Martin*, 52 *Barb.* 113. Discussed (Accounting between partners) in 1 *Collyer on Partn.* § 334, n. 3, Wood's *Am. ed.*
- *v. Mason*, 1 *Mand.* 522. Disting'd (What is bill of exchange) in *Munger v. Shannon*, 61 *N. Y.* 251, 257. Included in 1 *Ames Cas. on B. & N.* 57. Collated with other cases in *Redf. & B. Lead. Cas. on B. of Exch.* 10; also in *Bigel. on B. & N.* 2 ed. 17.
- *N. Y., Albany, &c. Tel. Co.*, 41 *N. Y.* 544; s. c., 1 *Am. R.* 443. See *Baldwin v. U. S. Tel. Co.*; *Breese v. U. S. Tel. Co.*; *De Rutte v. N. Y., &c. Tel. Co.*; *Griffin v. Colver*; *Staats v. Ten Eyck*. Followed (Liability of telegraph company for failure to transmit message) in *Rittenhouse v. Independent Line of Telegraph*, 44 *N. Y.* 263. Cited with approval with *De Rutte v. N. Y. Tel. Co.*, 30 *How. Pr.* 405; *Rittenhouse v. Independent Tel. Co.*, 44 *N. Y.* 263; *Lryant v. American Tel. Co.*, 1 *Daly*, 590; *Sprague v. Western Union Tel. Co.*, 6 *Id.* 201, in *McKay v. Western Union Tel. Co.*, 16 *Nev.* 222. Examined with *Baldwin v. Tel. Co.*, 54 *Barb.* 505; 1 *Lans.* 125; 45 *N. Y.* 744; *Landsberger v. Magnetic Tel. Co.*, 32 *Barb.* 530; *Lowery v. Western Union Tel. Co.*, 60 *N. Y.* 198; in *First Nat. B'k of Barnesville v. Telegraph Co.*, 30 *Ohio St.* 555; s. c., 27 *Am. R.* 485, 489, where *Bryant v. American Telegraph Co.*, 1 *Daly*, 575, and other cases were disting'd. Relied on with *Elwood v. Western Union Tel. Co.*, 45 *N. Y.* 544; while *Landsberger v. Magnetic Tel. Co.*, 32 *Barb.* 530; *Baldwin v. U. S. Tel. Co.*, 45 *N. Y.* 744, were disting'd in *Daugherty v. American Union Tel. Co.*, 57 *Ala.* 171; s. c., 46 *Am. R.* 631, n. Questioned in *Western Union Tel. Co. v. Bertram*, *Sup'm. Ct. Tex.* 1881; 12 *Reporter*, 798. Approved and applied in 23 *Am. L. Reg. N. S.* 287. Cited approvingly in 2 *Pars. on Contr.* 257b, n. u. Explained in *Id.* 257c, n. b.; *Id.* 257f, n. e.; *Id.* 257i, n. m.; *Id.* 257m, n. s. Quoted and explained in *Id.* 257v, n. e.
- *v. N. Y. Central, &c. R. R. Co.*, 44 *Super. Ct. (J. & S.)* 575. Aff'd, it seems, in 80 *N. Y.* 659, but without opinion. Prior decision in 42 *Super. Ct. (J. & S.)* 225.
- *v. Pitney*, 5 *Wend.* 30. See *Allen v. Miller*; *Troop v. Smith*. Commented on (Fraud as affecting operation of statute of limitations) in *Ang. on Limit.* § 185, 6 ed. See *Code Civ. Pro.* 1881, § 410, n.
- *v. Reynolds*, 7 *Hun.* 73. Aff'd as *Leonard v. City of Brooklyn*, in 71 *N. Y.* 498; s. c., 27 *Am. R.* 80, with note. See *City of Rochester v. Town of Rush*.
- *v. Vredenburg*, 8 *Johns.* 29; s. c., 4 *N. Y. Conn. L. Law. ed.* 456, with brief note, saying the case is not law (Necessity of expressing in writing consideration required by statute of frauds), citing *Brewster v. Silence*, 8 *N. Y.* 211. Also reported in 5 *Am. Dec.* 317, 321, with note, wherein it is said to be greatly weakened as an authority, especially in N. Y., where, by statute, the consideration for such a promise is required to be expressed. (But by the act of 1863, c. 464, this requirement has been abrogated.) See *Jackson v. Rayner*; *Sears v. Brink*. Examined with other cases (Promise to pay debt of another when within statute of frauds) in *Farley v. Cleveland*, 4 *Cow.* 434. Explained in *Carville v. Crane*, 5 *Hill.* 486. Examined and explained with *Farley v. Cleveland*, 4 *Cow.* 432; *Chapin v. Merrill*, 4 *Wend.* 657; *Slingerland v. Morse*, 7 *Johns.* 463; *Mercein v. Andrus*, 10 *Wend.* 461; *Barker v. Bucklin*, 2 *Den.* 45; *Kingsley v. Balcome*, 4 *Barb.* 131, in *Mallory v. Gillett*, 21 *N. Y.* 412. Applied in *Prime v. Koehler*, 7 *Daly*, 350; *Barker v. Bucklin*, 2 *Den.* 54; *May v. Nat. B'k of Malone*, 9 *Hun.* 110; *Allen v. Eighmie*, 14 *Il.* 561; *Skelton v. Brewster*, 8 *Johns.* 377; *Gold v. Phillips*, 10 *Id.* 414; *Myers v. Morse*, 15 *Id.* 427; *Brown v. Curtiss*, 2 *N. Y.* 229; *Sanders v. Gillespie*, 59 *Id.* 252; *Larson v. Wyman*, 14 *Wend.* 247. Followed with *Mallory v. Gillett*, 21 *N. Y.* 42; *Paine v. Koehler*, 77 *Id.* 91; while *Roe v. Barker*, 82 *N. Y.* 431; *Pfeiffer v. Adler*, 37 *Id.* 164; *Duffy v. Wunsch*, 42 *Id.* 243; *Brown v. Webber*, 38 *Id.* 187; *Smith v. Ives*, 15 *Wend.* 182; *Watson v. Randall*, 20 *Id.* 201, were disting'd in *White v. Rintoul*, 49 *Super. Ct. (J. & S.)* 421. Followed with *Bailey v. Freeman*, 4 *Johns.* 280; *Gates v. McKee*, 13 *N. Y.* 232; *Church v. Brown*, 21 *Id.* 315; *Douglass v. Howland*, 24 *Wend.* 35; *Rogers v. Kucelund*, 10 *Id.* 218; while *Union Bank v. Coster*, 3 *N. Y.* 211; *Newcomb v. Clark*, 1 *Den.* 226; *Brewster v. Silence*, 8 *N. Y.* 207; *Draper v. Snow*, 20 *Id.* 331, were superseded in *Evansville Nat. B'k v. Kaufman*, 93 *N. Y.* 273, which by confirming *Speyers v. Lambert*, 6 *Abb. Pr. N. S.* 309, in effect overruled *Castle v. Beardsley*, 10 *Hun.* 343. Followed in *Dearborn v. Parks*, 5 *Greenl. (Me.)* 81; s. c., 17 *Am. Dec.* 206; *Jones v. Palmer*, 1 *Doug. (Mich.)* 379, 382. Collated with other cases in *Townsend v. Long*, 77 *Penn. St.* 143; s. c., 18 *Am. R.* 438. Criticised in *Muller v. Riviere*, 59 *Tex.* 640; s. c., 46 *Am. R.* 201; *Fitzgerald v. Morrissey*, 14 *Neb.* 198; s. c., 46 *Am. R.* 296, with note. Followed in *Anderson v. Davis*, 9 *Verm.* 136; s. c., 31 *Am. Dec.* 612, with note. Cited as a

leading case, in *Baylies on Sureties*, 65. Said to be inaccurate, and to practically deny all effect to the statute,—in *Maule v. Bucknell*, 50 *Pa. St.* 39, 53. Followed in *Wilson v. Hentges*, 29 *Minn.* 105. Discussed and compared in 13 *Am. L. Reg. N. S.* 593. Discussed in *Browne on Stat. of Frauds*, §§ 171, 191, 212, 4 ed. Examined with other cases (Necessity of expressing consideration) in *Speyers v. Lambert*, 6 *Abb. Pr. N. S.* 313. Disting'd in *Spicer v. Norton*, 13 *Burb.* 548; *Hall v. Farmer*, 5 *Den.* 488; in opinion of *Jewett, C. J.*, in *Durham v. Manrow*, 2 *N. Y.* 550. Disting'd and disapproved in *Brewster v. Silence*, 8 *Id.* 211, but reaff'd in *Church v. Brown*, 21 *Id.* 333. Commented on at length and fully approved in *Houghton v. Ely*, 26 *Wis.* 181; s. c., 7 *Am. R.* 52, where *Brewster v. Silence*, *N. Y.* 211; *Church v. Brown*, 21 *Id.* 333, were disapproved in so far as they conflict with *Leonard v. Vredenburg*, and *Union Bank v. Coster's Executors*, 3 *N. Y.* 209; *Richards v. Warring*, 1 *Keyes*, 576, were approvingly cited. See also cases collated in note. See to the contrary, *Deutsch v. Bond*, 46 *Md.* 164; *Palmor v. Haggard*, 78 *Ill.* 607. See also *Abb. Tr. Ev.* 471. Quoted and discussed in *Id.* § 407. Quoted and collated with other cases in *Holcombe Lead. Cus. on Com.* 427. Cited in *Benj. on Sales*, § 232, n. u. (Bennett's 4 *Am. ed.*) as sustaining the English doctrine. Cited as a case in which the distinction between "bargain" and "agreement" was recognized, in 1 *Benj. on Sales*, § 248, n. 45 (Corbin's *Am. Ed.*). Applied (Proof of consideration to support guaranty) in *Tyler v. Stevens*, 11 *Barb.* 487; *Wheelewright v. Moore*, 1 *Hall*, 207, and see *Same v. Same*, *Id.* 652; 2 *Id.* 149. Followed (Guaranty as part of same transaction as making of note) in *Higgins v. Watson*, 1 *Mich.* 429, a case of indorsement. Relied on with *Bailey v. Freeman*, 11 *Johns.* 221; in *Read v. Cutts*, 7 *Greenl. (Me.)* 186; s. c., 22 *Am. Dec.* 184, with note. Explained in 2 *Pars. on Contr.* 7, n. v.

**Leonardsville Bank v. Willard**, 16 *Abb. Pr.* 111. Aff'd in 25 *N. Y.* 574.

**Le Pige v. McCrea**, 1 *Wend.* 164; s. c., 19 *Am. Dec.* 469, with note. See *Witherby v. Mann*.

**Lequeer v. Prosser**, 1 *Hill*, 256. Aff'd in 4 *Id.* 420. See *Allen v. Rightmere*; *Hough v. Gray*; *Manrow v. Durham*; *Packer v. Willson*; *Russell v. Whipple*. Decision in 1 *Hill* commented on and disapproved (Liability of guarantor of note) in *Brewster v. Silence*, 8 *N. Y.* 207. Cited as authority (Liability of surety and of guarantor on note is the same) in *Houghton v. Ely*, 26 *Wis.* 181; s. c., 7 *Am. R.* 52, 66.

**LeRoy v. Globe Ins. Co.**, 2 *Edw.* 657. Followed (Stockholders acquire vested right in dividend when declared) in *Van Dyck v. McQuade*, 86 *N. Y.* 38, 52. Disting'd in *Peckham v. Van Wagenen*, 83 *Id.* 40, 45.

— **v. Gouverneur**, 1 *Johns. Cas.* 226. Commented on with *Magrath v. Church*, 1 *Cal.* 196; *Neilson v. Columbian Ins. Co.*, 3 *Id.* 108; *Saltus v. Ocean Ins. Co.*, 14 *Johns.* 138; *Moreau v. United States Ins. Co.*, 1 *Wheat.* 219; *De Peyster v. Sun, &c. Ins. Co.*, 19 *N. Y.* 272 (Doctrine of constructive total loss in insurance) in *Wallerstein v. Columbian Ins. Co.*, 44 *N. Y.* 204, 218.

— **v. Market Fire Ins. Co.**, 39 *N. Y.* 60, 90. Further decision in 45 *Id.* 80.

— **v. Mayor, &c. of New York**, 20 *Johns.* 430; s. c., 11 *Am. Dec.* 289. Prior decision on application for assessment in 4 *Johns. Ch.* 352. Decision in 20 *Johns.* applied (Review of assessment proceedings) in *People v. City of Brooklyn*, 23 *Barb.* 174; *People v. County Court of Jefferson*, 56 *Id.* 148; *Whitney v. Mayor, &c. of N. Y.*, 1 *Paige*, 548. Criticised in *Matter of Morris Square*, 2 *Hill*, 25. Applied in *Bouton v. President, &c. of Brooklyn*, 2 *Wend.* 398. Explained in *People v. Mayor, &c. of N. Y.*, 2 *Hill*, 11; *People v. Supervisors of Allegany*, 15 *Wend.* 209; *Exp. Mayor, &c. of Albany*, 23 *Id.* 282. Applied to proceedings of canal board, in *People ex rel. Seymour v. Canal Board*, 7 *Lans.* 222. Criticised as limited by subsequent decisions (Power to award writ of *certiorari*) in *People v. Supervisors of Livingston*, 43 *Barb.* 235. Decision in 4 *Johns. Ch.* quoted and explained (Injunction against taxes) in 1 *High on Inj.* 2 ed. § 490, n. 4.

— **v. Park Ins. Co.**, 39 *N. Y.* 90. See *Le Roy v. Market Fire Ins. Co.*

— **v. Platt**, 4 *Paige*, 77. Disting'd (When right to flood land passes as collateral privilege) in *Tabor v. Bradley*, 18 *N. Y.* 113.

— **v. United Ins. Co.**, 7 *Johns.* 343. Discussed (Adjustment of partial loss) in 3 *Kent Com.* 336.

**Leshner v. Roessner**. See *McGregor v. Comstock*.

**Leslie v. Knickerbocker Life Ins. Co.**, 2 *Hun.* 616; s. c., 5 *Sup'm. Ct. (T. & C.)* 193. Aff'd in 63 *N. Y.* 27. And see *L.* 1876, c. 341. Decision in 63 *N. Y.* followed (Failure to give notice of amount of premium, when waiver of prompt payment thereof) in *Meyer v. Knickerbocker Life Ins. Co.*, 73 *Id.* 516, 528, which aff'd, in effect, 51 *Hov. Pr.* 263, which see.

— **v. Leslie**, 6 *Abb. Pr. N. S.* 193. Another decision in 3 *Daly*, 194, and that aff'd in 10 *Abb. Pr. N. S.* 64. Further decision in 11 *Id.* 311. Decision in *Id.* disting'd (Enforcing payment of alimony) in *Allen v. Allen*, 8 *Abb. N. C.* 175, 187. Decision in 11 *Abb. Pr. N. S.* disting'd (Calendar practice in action for divorce) in *Compton v. Compton*, 46 *Super. Ct. (J. & S.)* 579. With decision in 10 *Abb. Pr. N. S.* see (Power to grant alimony) *Code Civ. Pro.* 1881, § 1769, n.

**Lesser v. People**, 12 *Hun.* 668. Aff'd in 73 *N. Y.* 78. Decision in *Id.* disting'd (False

- representation of existing fact) in *People v. Blanchard*, 90 *Id.* 314.
- Lester v. Crary**, 1 *Den.* 81. See (Action, how commenced in justice's courts) *Code Civ. Pro.* 1881, § 2876, *n.*
- **v. Jewett**, 12 *Barb.* 502. Rev'd in 11 *N. Y.* 453.
- **v. Rome, Watertown, &c. R. R. Co.**, 2 *Sup'm. Ct. (T. & C.)* 672. Rule said to be changed by *Code Civ. Pro.* (Practice on appeal from County Court) in *Kilmer v. O'Brien*, 13 *Hun.* 224.
- **v. Thompson**, 1 *Johns.* 300. Followed (Conclusiveness of discharge of insolvent debtor) in *Sheets v. Hawk*, 14 *Serg. & R. (Pa.)* 173; *s. c.*, 16 *Am. Dec.* 486, with note.
- Letson v. Dodge**, 61 *Barb.* 125. Followed (Extent of liability on bond given on commencement of replevin action) and applied to appeal bond,—in *Hinckley v. Kreitz*, 36 *Super. Ct. (J. & S.)* 413, 424. See *Code Civ. Pro.* 1881, § 1733, *n.*
- Leutze v. Butterfield**, 51 *How. Pr.* 89; *s. c.*, 1 *Abb. N. C.* 18. Rev'd in *Id.* 367; *s. c.*, 52 *How. Pr.* 367; 7 *Daly*, 24. Decision in 1 *Abb. N. C.* 367, confirmed (Removal of causes) in *Claffin v. Commonwealth Ins. Co.*, 110 *U. S.* 81.
- Leven v. Smith**, 1 *Den.* 571. Followed (Conditional sale of chattels) in *Miller v. Jones*, 66 *Barb.* 148, 150. Explained in 1 *Benj. on Sales*, § 338 (Corbin's 4 *Am. ed.*).
- Leverick v. Meigs**, 1 *Cov.* 645. See *Wolff v. Koppel*. Followed (Effect of contract of guaranty entered into by factor) in *Sharp v. Emmet*, 5 *Whart. (Pa.)* 238; *s. c.*, 34 *Am. Dec.* 554, with note. With *Cartwright v. Greene*, 47 *Barb.* 9; said not to be consistent with the present current of adjudication,—in *Whart. Com. on Ag.* § 784, citing *Wolff v. Koppel*, 5 *Hill*, 458; 2 *Den.* 368; *Holbrook v. Wright*, 24 *Wend.* 169, while *Boston Carpet Co. v. Journeay*, 36 *N. Y.* 384; *Heubach v. Rother*, 2 *Duer*, 227, were cited in note.
- Levi v. Jakeways**, 4 *How. Pr.* 126; *s. c.*, as *Linn v. Jakeways*, in 2 *Code R.* 29, where facts are stated. Disting'd with *Williams v. Sargeant*, 46 *N. Y.* 481; *Quinby v. Straus*, 90 *Id.* 664 (Objection to competency of witness) in *Sanford v. Ellithorp*, 95 *Id.* 48.
- Levin v. Russell**, 41 *N. Y.* 251. See *Scotfield v. Whitelegge*. Disting'd (Allegations, in complaint in replevin action) in *Schofield v. Whitelegge*, 49 *N. Y.* 259. Followed in *Van der Minden v. Elsas*, 36 *Super. Ct. (J. & S.)* 66.
- Leviness v. Cassebeer**. See *Tucker v. Tucker*.
- Levy's Accounting**, 1 *Abb. N. C.* 177. Reiterated and applied (Allowance to assignee for legal action or assistance) in *Matter of Burbank*, 65 *How. Pr.* 129. Quoted (Assignee carrying on business) in *Burrill on Assign.* § 397, 4 *ed.*
- Levy, Matter of**, 4 *Hun.* 501. Aff'd, it seems, in 63 *N. Y.* 637, but without opinion.
- Levy v. Brush**, 8 *Abb. Pr. N. S.* 418; *s. c.*, 1 *Sweeney*, 653. Rev'd in 45 *N. Y.* 589. See *Botsford v. Burr*; *Hess v. Fox*. Decision in 45 *N. Y.* cited as authority (Enforcing parol agreement respecting land) in *Church v. Kidd*, 3 *Hun.* 265; *Moyer v. Moyer*, 21 *Id.* 72. Cited as a closely analogous case, in *Chamberlin v. Chamberlin*, 44 *Super. Ct. (J. & S.)* 116, 124. Applied in *Wheeler v. Reynolds*, 66 *N. Y.* 234. Disting'd in *Traphagen v. Burt*, 67 *Id.* 85. Disting'd in *Cornell v. King*, 13 *Weekly Dig.* 327; which aff'd 61 *How. Pr.* 184, 193, which see. Followed in *Randall v. Constans*, 33 *Minn.* 329, 336.
- **v. Burgess**, 38 *Super. Ct. (J. & S.)* 431. Approved, though rev'd on another point, in 64 *N. Y.* 390.
- **v. Hart**, 54 *Barb.* 248. Discussed (Perpetuities) in 1 *Jarm. on Wills*, *Rand. & T. ed.* 512, *n.*
- **v. Joyce**, 1 *Bow.* 622. Explained (Correction of judgment) in *Rockwell v. Carpenter*, 25 *Hun.* 529, 531, and (dissenting opinion) 535.
- **v. Kaim**, 54 *How. Pr.* 136. Cited as authority (Right to jail liberties) in *Boucicault v. Boucicault*, 21 *Hun.* 431.
- **v. Levy**, 40 *Barb.* 585. Rev'd in 33 *N. Y.* 97. See *Tucker v. Rector, &c. of St. Clement's Church*; *Williams v. Williams*. Decision in 33 *N. Y.* collated with other cases (Charitable trusts) in *Gerard Titles to Real Est.* 2 *ed.* 302. Quoted in 1 *Jarm. on Wills*, *Rand. & T. ed.* 410, *n.* Commented on in 1 *Perry on Trusts*, 3 *ed.* § 45, *n.* 3. Effect of this decision, with respect to rights of State of Virginia, therein involved,—determined in *Commonwealth v. Levy*, 23 *Gratt. (Va.)* 21.
- **v. Loeb**, 44 *Super. Ct. (J. & S.)* 291; *s. c.*, 5 *Abb. N. C.* 157. Aff'd, it seems, in 75 *N. Y.* 609, but without opinion. Decision in 44 *Super. Ct. (J. & S.)* approved (Vacating order for examination before trial) in *Corbett v. De Comeau*, 5 *Abb. N. C.* 169.
- **v. —**, 47 *Super. Ct. (J. & S.)* 61. Rev'd in 85 *N. Y.* 365. See previous proceeding in 1 *Month. L. Bul.* 84. Subsequent appeal in 89 *N. Y.* 386.
- **v. Mayor, &c. of N. Y.**, 1 *Sandf.* 465. See *Pack v. Mayor, &c. of N. Y.* Approved (Liability of municipal corporation for injury resulting from obstruction in street) in *Griffin v. Mayor, &c. of N. Y.*, 9 *N. Y.* 456.
- **v. Merrill**, 52 *How. Pr.* 360. Aff'd in 14 *Hun.* 145. Both decisions explained (Right of action to prevent cloud on title) in *Pier v. Fon du Lac County*, 53 *Wis.* 426.
- **v. Nicholas**, 19 *Abb. Pr.* 282. See (Exoneration of bail) *Code Civ. Pro.* 1881, § 601, *n.*
- **v. People**, 19 *Hun.* 383. Aff'd in 80 *N. Y.* 327. Decision in *Id.* explained (Evidence as to ownership of house in arson cases) in 3 *Greenl. on Ev.* 14 *ed.* § 53, *n. a.*
- **v. Welsh**, 2 *Edw.* 438. See *Smith v.*

- Acker. Criticised as sound in equity rather than at law (Effect of mortgage of goods that mortgagor has in store and may thereafter bring in) in *Thomas on Mort.* 471.
- Lewenthal v. Mayor, &c. of N. Y.**, 5 *Lans.* 532; s. c., more fully, 61 *Barb.* 511. See *Mills v. City of Brooklyn*.
- Lewin v. Stewart**, 10 *How. Pr.* 509. Rev'd in 17 *Id.* 5; holding that the facts did not amount to a delivery.
- Lewis, Matter of**, 9 *N. Y. Leg. Obs.* 150. Aff'd as *Lewis v. Lewis*, in 13 *Barb.* 17; and the latter aff'd in 11 *N. Y.* 220. See *Murray v. Judson*.
- Lewis v. Acker**, 7 *Weekly Dig.* 169. Questioned (Time to file transcript of justice's judgment) in *Kincaid v. Richardson*, 9 *Abb. N. C.* 315, 320, as overlooking *Code Civ. Pro.* § 414, subd. 3.
- **v. Babcock**, 18 *Johns.* 443. Followed (Husband's right of action for injury to wife) in *McKinney v. Western Stage Co.*, 4 *Iowa*, 420.
- **v. Berry**, 64 *Barb.* 593. See *Hutter v. Ellwanger*. See (Effect of order payable out of particular fund, as equitable assignment) *Brill v. Tuttle*, 81 *N. Y.* 454.
- **v. Broadway Bank**, 2 *Abb. Pr. N. S.* 93; s. c., 30 *How. Pr.* 115. Aff'd in 2 *Daly*, 86; and the latter aff'd in 42 *N. Y.* 463.
- **v. Chapman**, 19 *Barb.* 252. Rev'd in 16 *N. Y.* 369. See *Bush v. Prosser*; *Streety v. Wood*. Decision in 16 *N. Y.* followed with *Washburn v. Cook*, 3 *Den.* 110 (Nature of privileged communication) in *Knowles v. Peck*, 42 *Conn.* 386; s. c., 19 *Am. R.* 542, 545. Decision in 19 *Barb.* cited with *Bump v. Betts*, 23 *Wend.* 85; *McConnell v. Hampton*, 12 *Johns.* 235; *Dain v. Wycoff*, 7 *N. Y.* 191; *Palmer v. Haskins*, 28 *Barb.* 90; *Kniffen v. McCohnell*, 30 *N. Y.* 289 (Evidence of defendant's wealth, in action for slander, &c.) in reporter's note to 33 *Am. R.* 377.
- **v. Davis**, 3 *Johns.* 17. Discussed (Contribution by crew for embezzlement by seaman) in 3 *Kent Com.* 194.
- **v. Elmendorf**, 2 *Johns. Cas.* 222. Examined with other cases (How long the privilege of member of Congress from arrest continues) in *Hoppin v. Jenckes*, 8 *R. I.* 453; s. c., 5 *Am. lt.* 597, 601, 613.
- **v. Few**, 5 *Johns.* 1. Trial at *nisi prius*, reported in *Anth. N. P.* 102.
- **v. Greider**, 49 *Barb.* 606. Aff'd in 51 *N. Y.* 231. Decision in *Id.* explained (Duty of vendor as to resale) in 2 *Benj. on Sales*, § 1180, n. 5, 4 *Am. ed.*
- **v. Jones**, 50 *Barb.* 645. See *Pechner v. Phoenix Ins. Co.* Followed (Capacity of habitual drunkard to make will) in *McLaughlin's Will*, 2 *Redf.* 504, 514. Colated with *Van Dusen v. Sweet*, 51 *N. Y.* 378; *Banker v. Banker*, 63 *Id.* 409; *L'Amoureux v. Crosby*, 2 *Paige*, 422, and other cases (Mental incapacity as avoiding contract, &c.) in 21 *Am. R.* 29, n.
- **v. Laroway**. See *Ridgeley v. Johnson*.
- **v. Lewis**, 11 *N. Y.* 220. Aff'g 13 *Barb.* 17, and the latter aff'g *Matter of Lewis*, 9 *N. Y. Leg. Obs.* 150. See *Brinckerhoof v. Remsen*. Decision in 11 *N. Y.* followed (Proof of execution and publication of will) in *Bagley v. Blackman*, 2 *Lans.* 41. Followed with *Mitchell v. Mitchell*, 16 *Hun*, 97, in *Woolley v. Woolley*, 95 *N. Y.* 231. Applied in *Norton v. Norton*, 2 *Redf.* 6, 13. Followed in *Neugent v. Neugent*, *Id.* 369, 376. Disting'd in *McMillen v. McMillen*, 13 *Weekly Dig.* 350. Quoted in 1 *Jarm. on Wills*, Rand. and T. ed. 208, n.
- **v. McMillen**, 31 *Barb.* 395. Further decision in 41 *Id.* 420. Decision in *Id.* followed (Inability to give good title when not defense to action for purchase money) in *Linsey v. Ferguson*, 3 *Lans.* 196.
- **v. Mayor, &c. of N. Y.**, 35 *How. Pr.* 162. Compared with other cases (Assessment, when not invalidated by slight excess) in *Colman v. Shattuck*, 2 *Hun*, 497, 507.
- **v. Miner**, 3 *Den.* 103. Followed (Recovery by loser in illegal bet) in action against stakeholder, in *Ruckman v. Pitcher*, 1 *N. Y.* 392, 408.
- **v. Mott**, 36 *N. Y.* 395. Followed (Effect of allegations in complaint to fix action as on contract, or for tort) in *Beard v. Yates*, 2 *Hun*, 466.
- **v. Palmer**, 28 *N. Y.* 271. Applied (Subrogation of surety to position of principal creditor) in *Townsend v. Whitney*, 75 *N. Y.* 432.
- **v. Park Bank**, 42 *N. Y.* 463. Aff'g 2 *Daly*, 86, and the latter aff'g 2 *Abb. Pr. N. S.* 93; s. c., 30 *How. Pr.* 115. Decision in 42 *N. Y.* explained and applied with *Swartwout v. Mechanics' Bank of N. Y.*, 5 *Den.* 555 (Title to moneys deposited in bank in representative capacity) in *Carman v. Franklin Bank*, 61 *Id.* 470.
- **v. Payn**, 8 *Cov.* 71; s. c., 18 *Am. Dec.* 427, with note; 9 *N. Y. Com. L. Law. ed.* 314, with brief note. Subsequent decision in 4 *Wend.* 423. See *Rees v. Overbaugh*. Decision in 8 *Cov.* followed and approved (Effect of alteration in deed by grantee therein) in *Bliss v. McIntyre*, 13 *Verm.* 466; s. c., 46 *Am. Dec.* 165, with note. Decision in 4 *Wend.* quoted in 1 *Washb. on Real Prop.* 4 ed. 520.
- **v. Seabury**, 74 *N. Y.* 409. Followed (Oral evidence to vary writing) in *Van Brunt v. Day*, 8 *Abb. N. C.* 330, 341.
- **v. Smith**, 11 *Barb.* 152; s. c., more fully, 9 *N. Y. Leg. Obs.* 292. Further decision in 9 *N. Y.* 502. See *Wood v. Wood*. Decision in 9 *N. Y.* applied (Interest in contract for sale of lands, when personal estate) in *Smith v. Gage*, 41 *Barb.* 65. Followed (Widow, when put to her election between dower and provision in will) in *Tobias v. Ketchum*, 36 *Id.* 305; *Bond v. McNiff*, 38 *Super. Ct. (J. & S.)* 94. Disting'd in *Matter of Zahrt*, 94 *N. Y.* 605. Applied (Who not bound by decree in fore-

- closure) in *Frost v. Koon*, 30 *N. Y.* 444; *Payn v. Grant*, 23 *Hun.* 136; *Lee v. Parker*, 43 *Barb.* 614. Cited as settled law in *Emigrant Indust. Sav'gs B'k v. Goldman*, 75 *N. Y.* 131. Applied to action for specific performance in *Grady v. McCorkle*, 57 *Mo.* 172; s. c., 17 *Am. R.* 676.
- *v. Stevenson*. See *Bissell v. Hopkins*.
- *v. Trickey*, 20 *Barb.* 387. Explained and applied (Evidence as to value of services, under agreement to remunerate and board) in *Stevens v. Benton*, 2 *Lans.* 156.
- *v. Woodruff*, 15 *How. Pr.* 539. See (Power of attorney to acknowledge satisfaction of judgment) *Code Civ. Pro.* 1881, § 1260, *n.*
- *v. Woodworth*, 2 *N. Y.* 512; s. c., 51 *Am. Dec.* 319, with note collecting citations (Admissions by one of two makers of note) and on similar points.
- Lewis Street, Matter of**, 2 *Wend.* 472. See *Matter of Mercer street*; *Wyman v. Mayor, &c. of N. Y.* Followed (Covenant implied on sale of property as bounded on street), and *Underwood v. Stuyvesant*, 19 *Johns.* 186, disting'd in *White v. Flannigan*, 1 *Md.* 525; s. c., 54 *Am. Dec.* 668, 672.
- Lexington Avenue, Matter of**, 50 *How. Pr.* 114. Aff'd in 5 *Sup'm. Ct. (T. & C.)* 436; s. c., 3 *Hun.* 221. See *People ex rel. Commissioners of Washington Park v. Banks*.
- Lexington & Big Sandy R. R. Co. v. Goodman**, 15 *How. Pr.* 85; s. c., 5 *Abb. Pr.* 492; 25 *Barb.* 469. Doubted as not authoritative (Joinder of fraudulent transferror and transferees as parties) in *Pomeroy on Rem.* § 482.
- Lexow v. Julian**, 14 *Hun.* 152. Further decision in 21 *Id.* 577; and that aff'd in 86 *N. Y.* 638, but without opinion.
- Libbey v. Strasburger**, 14 *Hun.* 120. Followed (Action on debt created by fraud, not barred by composition in bankruptcy) in *Scott v. Olmstead*, 52 *Vt.* 215.
- Libby v. Rosekrans**, 55 *Barb.* 202. See *Palmer v. Lockwood*. Questioned (Remedy against order respecting sale by receiver) in *Hackley v. Draper*, 60 *N. Y.* 88, 93. Cited as authority (Error, when not to be corrected by motion), in *Bullard v. Sherwood*, 85 *Id.* 253, 257.
- Liddell v. Paton**, 7 *Hun.* 195. Appeal dismissed in 67 *N. Y.* 393. Decision in *Id.* followed (Appeal in case of order vacating order of arrest) in *Dixon v. Beach*, 80 *Id.* 641. Applied to order exonerating bail in *Douglass v. Haberstro*, 82 *Id.* 572, 574.
- Liddle v. Market Fire Ins. Co.**, 4 *Bow.* 178. Further decision, in 29 *N. Y.* 184.
- Lieber v. Goodrich**, 5 *Cow.* 186. Disting'd (Negotiability of instrument) in *Pardec v. Fish*, 60 *N. Y.* 265, 270.
- Liegeois v. McCrackan**, 22 *Hun.* 69. Appeal dismissed in 83 *N. Y.* 624, without opinion.
- Liefmann v. Solomon**, 7 *Abb. Pr.* 409, *n.* Compared with other cases (Actions for breach of promise to marry) in 11 *Am. L. Reg. N. S.* 72.
- Life and Fire Ins. Co. v. Mechanics' Fire Ins. Co.**, 7 *Wend.* 31. Compare (Corporation may be bound by unlawful act) *Bissell v. Michigan Southern & Northern Indiana R. R. Cos.*, 22 *N. Y.* 258, 265; *Goodspeed v. East Haddam Bank*, 22 *Conn.* 537. Approved (Acts of directors the acts of corporation) in *Smith v. Rathbun*, 66 *Barb.* 402, 403. Followed (Void contract for loan of money cannot be foundation of action) in *Re Jaycox*, 12 *Blatchf. C. Ct.* 209, 216.
- Lightbody v. North American Ins. Co.**, 23 *Wend.* 18. See *Whittaker v. Farmers' Union Ins. Co.* Approved (Insurance on property already lost) in *Hallock v. Ins. Co.*, 2 *Dutch. (N. J.)* 268.
- *v. Ontario Bank*, 11 *Wend.* 11. Aff'd in 13 *Id.* 101; s. c., 27 *Am. Dec.* 179. See *Kelty v. Second Nat. B'k of Erie*. Both decisions examined and approved (Effect of payment in notes of insolvent bank, &c.) in *Benedict v. Field*, 4 *Duer*, 154. Discussed at length and denied in *Bayard v. Shunk*, 1 *Watts & S. (Pa.)* 92; s. c., 37 *Am. Dec.* 441, with note. Followed and fully approved in *Frontier Bank v. Morse*, 22 *Me.* 88; s. c., 38 *Am. Dec.* 284, 286, with note. Followed in *Wainwright v. Webster*, 11 *Verm.* 576; s. c., 34 *Am. Dec.* 707, 710; *Markle v. Hatfield*, 2 *Johns.* 458, being also cited as sustaining the decision.
- Like v. McKinstry**, 41 *Barb.* 186. Aff'd in 4 *Keyes*, 397.
- Lillie v. Sherman**, 39 *How. Pr.* 287. Cited as authority (Error when not to be corrected by motion) in *Bullard v. Sherwood* 85 *N. Y.* 253, 257. Disapproved (Term "dollars," as including dollars in U. S. legal tender currency) in *Ransford v. Marvin*, 8 *Abb. Pr. N. S.* 432.
- Lillis v. O'Connor**, 49 *How. Pr.* 497. Aff'd in 8 *Hun.* 280. With decision in *Id.* compare (Costs where title to real property is involved) *Code Civ. Pro.* § 3243.
- Lima, Matter of**, 77 *N. Y.* 170. See *Peyser v. Mayor, &c. of N. Y.* Applied (Vacating of assessment) in *Matter of Hughes*, 93 *N. Y.* 512. Disting'd in *Horn v. Town of New Lots*, 83 *Id.* 100, 104; *Matter of Rust*, 24 *Hun.* 229, latter being case of application to reduce assessment.
- Lincoln & Saratoga & Schenectady R. R. Co.**, 23 *Wend.* 425. See *Jefferson Ins. Co. v. Cothel*; *Norman v. Wells*. Applied (Inadmissibility of opinions of witness as to damage) in *Harger v. Edmonds*, 4 *Barb.* 259; *Troy & Boston R. R. Co. v. Northern Turnpike Co.*, 16 *Id.* 103. Reviewed at length with other cases in *Clark v. Baird*, 9 *N. Y.* 190. Explained (Damages for personal injury whereby one is prevented from attending to business) in *Masterton v. Village of Mount Vernon*, 53 *Id.* 395. Applied (Compensation for bodily suffering) in *Ransom v. N. Y. & Erie R. R. Co.*, 15 *Id.* 423. Doctrine applied (Approximate damages) in *Starbird v. Barrons*, 4 *Sup'm. Ct. (T. & C.)* 686. Explained (Allowing damages for

- expenses incurred in conducting suit) in *Hicks v. Foster*, 13 *Barb.* 667. Collated with *Hicks v. Foster*; *Elliott v. Brown*, 2 *Wend.* 500; *Waffle v. Dillenbeck*, 38 *N. Y.* 53, in 27 *Am. R.* 528, n. Opposed with *Blythe v. Thompson*, 2 *Abb. Pr.* 428, in 16 *Fed. Rep.* 95, n. But see *Strang v. Whitehead*, 12 *Wend.* 64. Relied on and approved in dissenting opinion of *WAIRRE, J.*, in *Linsley v. Bushnell*, 16 *Conn.* 225; s. c., 38 *Am. Dec.* 79, 85, with note.
- Lindauer v. Fourth National Bank**, 55 *Barb.* 75. Followed (Rights of bank receiving draft for collection) in *Dod v. Same*, 49 *Id.* 265.
- Linden v. Graham**, 1 *Duer*, 670. See *Shipman v. Burrows*. Explained (Pleading in action for slander) in *Havemeyer v. Fuller*, 10 *Abb. N. C.* 9, 13.
- **v. Hepburn**, 3 *Sandf.* 668; s. c., 9 *N. Y. Leg. Obs.* 80, where points of counsel are given. Qualified (Sub-lease and assignment) in *Constantine v. Wake*, 1 *Sweeny*, 239, 248. See authority reviewed in 16 *Am. L. Rev.* 80. Discussed in 1 *Washb. on Real Prop.* 4 ed. 512.
- Lindenmuller v. People**, 33 *Barb.* 548. Approved (Constitutionality of act prohibiting dramatic performances on Sunday) in *Neuendorf v. Duryea*, 69 *N. Y.* 557, 561, 563; which aff'd 6 *Daly*, 276, which see. Stated in 49 *Am. Dec.* 618, n., to be opposed to some decisions elsewhere (Common law as it existed April 20, 1777, —is part of the law of the State) see cases cited.
- Lindner v. Sabler**. See *Bradstreet v. Clarke*.
- Lindsay v. Jackson**, 2 *Paige*, 581. Disting'd (Set-off, in case of demand not due) in *Keep v. Lord*, 2 *Duer*, 82; *Chance v. Isaacs*, 2 *Edw.* 356, which was aff'd in 5 *Paige*, 595, which see; *Bradley v. Angell*, 3 *N. Y.* 478. Applied in *Mel v. Holbrook*, 4 *Edw.* 542. Followed as never having been questioned, in *Smith v. Felton*, 43 *N. Y.* 422. Compare *Seymour v. Dunham*, 24 *Hun*, 93. Followed with *Bradley v. Angel*, 3 *N. Y.* 475, in *Spaulding v. Backus*, 122 *Mass.* 553; s. c., 23 *Am. R.* 391, 395. Followed (Set-off in case of insolvency) in *Thrall v. Omaha Hotel Co.*, 5 *Neb.* 295; s. c., 25 *Am. R.* 488, 491.
- **v. People**, 5 *Hun*, 104; s. c.; fully reported, 67 *Barb.* 548. Aff'd in 63 *N. Y.* 143. See *People v. Costello*. Reviewed with other cases (Evidence of accomplices) in 17 *Alb. L. J.* 420.
- **v. Sherman**, 5 *How. Pr.* 308; s. c., 1 *Code R. N. S.* 25, 232. Approved in *Frederick v. Decker*, 18 *How. Pr.* 96 (Requisites of affidavit of assignee of judgment, seeking to examine judgment debtor) in preference to *Orr's Case*, 2 *Abb. Pr.* 457.
- Lindsley v. Simonds**, 2 *Abb. Pr. N. S.* 69. Said to be overruled by *Shellington v. Howland*, 67 *Barb.* 14 (When liability of stockholder of manufacturing company attaches) in *Handy v. Draper*, 23 *Hun*, 256, 259.
- Linn v. Jakeways**. See *Levi v. Same*.
- Linningdale v. Livingston**, 10 *Johns.* 36. Explained (Recovery on *quantum meruit* in case of special agreement) in *Jennings v. Camp*, 13 *Id.* 94. Disting'd in *Helm v. Wilson*, 4 *Mo.* 41; s. c., 28 *Am. Dec.* 336, with note. Followed with *Jewell v. Schroppe*, 4 *Cow.* 564, in *Davis v. Fish*, 1 *G. Greene (Iowa)*, 406; s. c., 48 *Am. Dec.* 387. Reviewed and applied with *Porter v. Talcott*, 1 *Cow.* 359, in *Pool v. Tuttle*, 11 *Me.* 468; s. c., 26 *Am. Dec.* 552, with note.
- Lintz v. Howard**, 18 *Hun*, 424. See *Ward v. Howard*.
- Lion v. Burtis**, 18 *Johns.* 510. Subsequent decision, as it seems, in 20 *Id.* 483. Decision in *Id.* commented on (Effect of limitation over, on death without issue) in *Vedder v. Evertson*, 3 *Paige*, 231. Discussed in 2 *Washb. on Real Prop.* 4 ed. 695. Decision in 18 *Johns.* relied on with *Jackson v. Tuttle*, 6 *Cow.* 590 (Amendment of time of demise in ejectment) in *Den v. Snowhill*, 1 *Green (N. J.)* 23; s. c., 22 *Am. Dec.* 496, 505; and *Every v. Merwin*, 6 *Cow.* 366, relied on as to amendments generally.
- Liotard v. Graves**, 3 *Cui.* 226; s. c., 2 *N. Y. Com. L. Law. ed.* 619, with brief note.
- Lipe v. Eisenlurd**, 32 *N. Y.* 229. (See dissenting opinion, on p. 729.) See *Ingersoll v. Jones*. Followed (Charge of crime as affecting credibility of witness) in *Berner Mitnacht*, 2 *Sweeny*, 582. Explained (Who may maintain action for seduction) in dissenting opinion of *MERWIN, J.*, in *Certwell v. Hoyt*, 6 *Hun*, 582. Applied in *Gray v. Durland*, 51 *N. Y.* 429. Explained in 2 *Greenl. on Ev.* 14 ed. § 572, n. c. Applied (Damages in action for seduction) in *Badgley v. Decker*, 44 *Barb.* 595. Applied (Gravamen of action for seduction) in *Holliday v. Parker*, 23 *Hun*, 71.
- Lisk v. Sherman**, 25 *Barb.* 433. Applied (Recovery for services rendered in pursuance of void contract) in *Bailey v. Gardner*, 6 *Abb. N. C.* 147, 150. Applied (Specific performance of uncertain contract) in *Shakespeare v. Markham*, 10 *Hun*, 311, 324, which was aff'd in 72 *N. Y.* 400, which see.
- Lister v. Wright**, 2 *Hill*, 323. Disting'd (Mitigation of damages for libel) in *Palmer v. Lang*, 7 *Daly*, 33.
- Litchfield v. Barwell**. See *Van Rensselaer v. Chadwick*.
- **v. Vernon**, 41 *N. Y.* 123. See *People ex rel. Griffing v. Mayor, &c. of Brooklyn*. Applied (Burden of proof on one suing for recovery of assessment) in *Weinberger v. Fauerbach*, 14 *Abb. Pr. N. S.* 92. Disting'd (Effect of determination by common council in assessment proceedings) in *Matter of Kiernan*, 62 *N. Y.* 459. Applied (Extent of taxing power of legislature) in *People ex rel. N. Y. & Harlem R. R. Co. v. Havemeyer*, 47 *How. Pr.* 514; *Astor v. Mayor, &c. of N. Y.*, 37 *Super. Ct. (J. & S.)* 562. See cases collected in 10 *Am. L. Reg. N. S.* 163.
- **v. White**, 3 *Sandf.* 545. Aff'd in 7 *N. Y.* 438; s. c., 57 *Am. Dec.* 534. Decision

- in 3 *Sandf.* followed with approval with *Barney v. Griffin*, 2 *N. Y.* 365; *Nicholson v. Leavitt*, 6 *Id.* 510 (Effect of provisions respecting assignee's liability, contained in assignment for creditors) in *Hutchinson v. Lord*, 1 *Wis.* 286; s. c., 60 *Am. Dec.* 381, with note. Compare *Keep v. Sanderson*, 2 *Wis.* 42; s. c., 60 *Am. Dec.* 404, with note. Explained in *Burrill on Assign.* § 460, 4 ed. Decision in 7 *N. Y.* quoted and discussed in *Wait on Fraud. Conv.* § 334. Compared in 15 *Am. L. Rev.* 170. Decision in 3 *Sandf.* quoted (Unusual stipulations in debtor's favor) in *Burrill on Assign.* § 183, 4 ed.
- Litchfield Iron Co. v. Bennett**, 7 *Cov.* 234. Quoted and explained (Evidence to prove who are directors of company) in *Morawetz on Corp.* § 74, n. 71.
- Littauer v. Goldman**, 9 *Hun.* 231. Rev'd in 72 *N. Y.* 506; s. c., 28 *Am. R.* 171. Decision in *Id.* disting'd (Warranty of title by vendor of negotiable paper) in *Wood v. Sheldon*, 13 *Vroom (N. J.)* 421; s. c., 36 *Am. R.* 523. Explained in *Benj. on Sales*, 607, n. e (Bennett's 4 *Am. ed.*); 1 *Id.* § 619, n. 10 (Corbin's 4 *Am. ed.*).
- Little, Matter of**, 5 *Sup'm. Ct. (T. & C.)* 343; mem. s. c., 3 *Hun.* 215. Rev'd in 60 *N. Y.* 343. Decision in *Id.* followed (Effect of failure to give notice required by statute, of proceedings for laying assessment) in *Matter of De Pieris*, 82 *Id.* 243, 245. Disting'd (Designation as corporation paper) in *Matter of Anderson*, 60 *Id.* 457, 461.
- Little v. Banks**, 20 *Hun.* 143. Aff'd in 85 *N. Y.* 258.
- **v. Denn**, 1 *Keyes*, 235; s. c., 34 *How. Pr.* 68. See subsequent decision made after reargument and in which different conclusion was reached, in 34 *N. Y.* 452.
- **v. Harvey**, 9 *Wend.* 157. Relied on with *Graff v. Kip*, 1 *Edw.* 620; *Tufts v. Tufts*, 18 *Wend.* 622; *Dickenson v. Gilliland*, 1 *Cov.* 481; *Roe v. Swart*, 5 *Id.* 294; *Wood v. Colvin*, 5 *Hill*, 228; *Mower v. Kip*, 6 *Paige*, 90; *Crosier v. Acer*, 7 *Id.* 140 (Levy of execution during continuance of judgment lien does not continue lien beyond statutory period) in *Trapnall v. Richardson*, 13 *Ark.* 543; s. c., 58 *Am. Dec.* 358, 346, with note. See *Code Civ. Pro.* 1881, § 1251, n.
- **v. Martin**, 3 *Wend.* 219; s. c., 20 *Am. Dec.* 688. Discussed (Effect of verbal contract within statute of frauds, as evidence) in *Browne on Stat. of Frauds.* § 125, 4 ed.
- **v. Phoenix Bank**, 2 *Hill*, 425. Aff'd in 7 *Id.* 359. Decision in 2 *Id.* approved (Effect of delay in presentment of check) in *Case v. Morris*, 31 *Penn.* 100. Explained in *Woodin v. Frazee*, 38 *Super. Ct. (J. & S.)* 190, 195. Cited in 3 *Kent Com.* 1C4, n. c., as a case in which the distinction between checks and notes has been judicially settled.
- **v. Willetts**. See *Rawson v. Penn. R. Co.*
- Littlefield v. Brown**. See *Jackson v. Bartlett*; *McElroy v. Mancius*.
- **v. Story**. See *Andrews v. Beecker*.
- Littlejohn v. Greeley**, 13 *Abb. Pr.* 41. Further decision in *Id.* 311; s. c., 22 *How. Pr.* 345. See arguments and points of counsel in volume published at N. Y. in 1861, and to be found in *Law Inst. Libr. N. Y. City*.
- Livermore v. Bainbridge**, 42 *How. Pr.* 53. Aff'd in 61 *Barb.* 358; s. c., 43 *How. Pr.* 272, which was aff'd in 49 *N. Y.* 125. Further proceeding in 44 *How. Pr.* 357, which was aff'd in 14 *Abb. Pr. N. S.* 227; s. c., 47 *How. Pr.* 350. Appeal from latter dismissed in 56 *N. Y.* 72; s. c., 15 *Abb. Pr. N. S.* 436; 47 *How. Pr.* 354. See *Gray v. Fisk*.
- **v. Northrup**, 44 *N. Y.* 107. Reviewed with *Reynolds v. Shuler*, 5 *Cov.* 323 (Effect of offer to return converted property) in 11 *Am. Dec.* 523, n. Criticised as extreme (Assumption by debtor, of payment of debt of third person) in *First Nat. Bk. of Appleton v. Bertschy*, 52 *Wis.* 454.
- **v. Rhodes**, 27 *How. Pr.* 506. Followed (When threats of assignment will sustain attachment) in *Anthony v. Stype*, 19 *Hun.* 265.
- Livingston, Matter of**, 9 *Paige*, 440. Aff'd in 2 *Ien.* 575. Decision in 9 *Paige* criticised and qualified (Compensation to committee of lunatic) in *Matter of Colah*, 6 *Daly*, 51.
- Livingston, Matter of**, 34 *N. Y.* 555. Disting'd (Trusts to receive rents and profits of land) in *Ileermans v. Robertson*, 3 *Hun.* 464, 468, which was aff'd in 64 *N. Y.* 332, dissenting opinion of which see. Explained in dissenting opinion of *MILLER, J.*, in *Fellows v. Ileermans*, 4 *Lans.* 253. Explained at length and *dicta* criticised (Rehearing when granted) in *Belmont v. Erie R'y Co.*, 52 *Barb.* 651. Explained in *Riggs v. Pursell*, 74 *N. Y.* 379. Applied (Reviewing decision of another judge) in *Kamp v. Kamp*, 46 *How. Pr.* 144. Followed, but joint not stated, in *Matter of Schell*, 49 *N. Y.* 653.
- Livingston v. Adams**, 8 *Cov.* 195. See *Hay v. Cohoes Co.* Relied on (*Casus* as defense, where agent is sought to be held for loss of principal's property) in *Whart. Com. on Ag.* § 254.
- **v. Arnoux**, 56 *N. Y.* 507. Aff'g *Livingstone v. Arnoux*, 15 *Abb. Pr. N. S.* 158. Decision in 56 *N. Y.* disting'd (To whom redemption of lands sold on execution is to be made) in *People ex rel. McAllister v. Lynch*, 63 *Id.* 473, 478. See *Code Civ. Pro.* 1881, § 1476 n. See also (Acknowledgment and record of certificate of redemption) *Id.* § 1470, n. Cited at length (Receipts of deceased public officer as evidence) in 1 *Whart. Com. on Ev.* § 239.
- **v. Bishop**, 1 *Johns.* 290; s. c., 3 *Am. Dec.* 330. See *Rawson v. Turner*. Followed (Enforcing liability of joint trespassers, &c.) in *Hawkins v. Hatton*, 1 *Nott &*

- McC. (So. Car.)* 318; s. c., 9 *Am. R.* 700; *Wright v. Lathrop*, 2 *Ohio*, 33; s. c., 15 *Am. Dec.* 529, 532, with note. Compared with English authorities in *Gunther v. Lee*, 45 *Md.* 60; s. c., 24 *Am. R.* 504. Followed with *Osterhout v. Roberts*, 8 *Cow.* 43; in *Blann v. Crocheron*, 19 *Ala.* 647; s. c., 54 *Am. Dec.* 203, with note; wherein *Livingston v. Bishop* is referred to as the leading case in the U. S. on this subject, and the one that may be regarded as having settled the law, and formed the basis of judicial decision. Collated with *Thomas v. Rumsey*, 6 *Johns.* 30, and other cases, as showing a weight of authority strongly enforced by reason and analogy, in *Elliott v. Porter*, 5 *Dana (Ky.)* 299; s. c., 30 *Am. Dec.* 689. Followed with *Thomas v. Rumsey*, 6 *Johns.* 26, in *Sheldon v. Kibbe*, 3 *Conn.* 214; s. c., 8 *Am. Dec.* 176. Approved in *Lovejoy v. Murray*, 3 *Wall.* 1.
- *v. Cheetham*, 1 *Johns.* 61. Subsequent decision in 2 *Id.* 479. See *W. Sampson's* publication, N. Y. 1807.
- *v. Clements*, 1 *Hill*, 648. See (Costs against landlord who defends in name of tenant) *Farmers' Loan and Trust Co. v. Kursch*, 5 *N. Y.* 558.
- *v. Curtis*, 54 *How. Pr.* 370; s. c., more fully, 12 *Hun.* 127.
- *v. Dean*, 2 *Johns. Ch.* 479. See *Beebe v. Bank of N. Y.*; *Murray v. Lylburn*; *Staford v. Van Rensselaer*. Followed (Assignee of mortgage, subject to what equities) in *Mott v. Clark*, 9 *Penn. St.* 399; s. c., 49 *Am. Dec.* 566, 569, with note. Disapproved in *Thomas on Mort.* 106; citing *Bush v. Lathrop*, 22 *N. Y.* 535. Referred to as overruled,—in 2 *Pomeroy on Eq. Jur.* 170, n.
- *v. Gibbons*, See *Norton v. Hayes*.
- *v. Gordon*, 7 *Abb. N. C.* 53. Aff'd as *Livingston v. St. Joseph's Home*, 21 *Hun.* 233; which was aff'd as *Livingston v. Gordon*, 84 *N. Y.* 136.
- *v. Greene*, 6 *Lans.* 50. Aff'd in 52 *N. Y.* 118. Decision in *Id.* followed (Vested remainder when created by will) in *Ackerman v. Gorton*, 6 *Hun.* 301; which was rev'd in 67 *N. Y.* 63, which see; *Drake v. Lawrence*, 19 *Hun.* 115. Disting'd in *Buel v. Southwick*, 70 *N. Y.* 586. Applied in *Bedell v. Guyon*, 12 *Hun.* 396; *McKinstry v. Sanders*, 2 *Sup'm. Ct. (T. & C.)* 194; *Embury v. Sheldon*, 68 *N. Y.* 236.
- *v. Hammer*, 7 *Boss.* 670. Disting'd (Action on undertaking in replevin) in *Hager v. Clute*, 10 *Hun.* 447, 450. See *Code Civ. Pro.* 1881, § 1733, n.
- *v. Harris*, 3 *Paige*, 528. Aff'd in 11 *Wend.* 329. Decision in *Id.* disapproved (Surety, as borrower, within meaning of usury act) in *Vilas v. Jones*, 1 *N. Y.* 274, 279, which was approved and decision in 11 *Wend.* disting'd in *Allerton v. Belden*, 49 *N. Y.* 373, which rev'd 3 *Lans.* 494, which see Decision in 3 *Paige* disting'd (Offer to pay sum due, as condition of relief against usurious contract) in *Cooper v. Tappan*, 4 *Wis.* 370.
- *v. Hastie*, 2 *Cai.* 246. See *Foot v. Sabin*. Disapproved (Contesting consideration of negotiable paper) in *Kennedy v. Goodman*, 14 *Neb.* 585.
- *v. Hollenbeck*, 4 *Barb.* 9. Approved (Effect of L. 1846, c. 327) in *Chemical Bank v. Mayor of N. Y.*, 1 *Abb. Pr.* 79; *City of Buffalo v. Le Couteux*, 15 *N. Y.* 451. Approved (Enjoining collection of taxes) in *Dodd v. City of Hartford*, 25 *Conn.* 232.
- *v. Hubbs*, 3 *Johns. Ch.* 124. Cited as authority (Ignorance of defence at law, not ground for interfering with judgment) in *Wixon v. Davis*, *Walk. Ch. (Mich.)* 18.
- *v. Keech*, 34 *Super. Ct. (J. & S.)* 547. Cited (Extent of cross examination of party) in 1 *Whart. Com. on Ev.* § 481.
- *v. Kiersted*, 10 *Johns.* 362. Cited as authority with *Sisson v. Conger*, 1 *Sup'm. Ct. (T. & C.)* 564; *Rivara v. Ghio*, 3 *E. D. Smith*, 264 (Impeachment of mental capacity of witness) in *Alleman v. Stepp*, 52 *Iowa*, 626; s. c., 35 *Am. R.* 288, with note, collating cases.
- *v. Livingston*, 2 *Johns. Ch.* 537. Cited as authority (Decree against infant holding land in trust) in *Walsh v. Walsh*, 116 *Mass.* 377; s. c., 17 *Am. R.* 162, 166. Included (Contract by married woman with husband) in *Eicell Lead. Cas. on Inf. &c.* 293. Cited approvingly and discussed in 2 *Kent Com.* 167.
- *v. —*, 3 *Johns. Ch.* 51. Referred to in *Gridley v. Gridley*, 24 *N. Y.* 130, 133, as overruled by *Spraker v. Van Alstyne*, 18 *Wend.* 200 (Payment of debts, &c. when not personal duty of devisee).
- *v. —*, 3 *Johns. Ch.* 148. Not followed (Right of administrator to sue to set aside fraudulent conveyance by intestate) in *Barton v. Hosner*, 24 *Hun.* 467.
- *v. —*, 3 *Johns.* 189. Approved with *Beecker v. Beecker*, 7 *Id.* 99 (Payment of debts, &c. when not personal duty of devisee) in *Brown v. Furer*, 4 *Serg. & R. (Pa.)* 213; s. c., 8 *Am. Dec.* 693. Cited with *Beecker v. Beecker*; *Van Orden v. Van Orden*, 10 *Johns.* 30; as fully sustaining the position (Legacy charged on land when recoverable in court of law) in *Woodward v. Woodward*, 4 *Halst. (N. J.)* 115; s. c., 17 *Am. Dec.* 462.
- *v. —*, 4 *Johns. Ch.* 294. Disting'd (Presumption created by long-continued failure to pay rent) in *Central Bank of Troy v. Heydorn*, 48 *N. Y.* 265.
- *v. —*, 6 *Johns. Ch.* 497; s. c., 10 *Am. Dec.* 353. Disting'd (When equity will grant injunction) in *Troy & Boston R. R. Co. v. Boston, Hoosac T. & Western R'y Co.*, 86 *N. Y.* 107, 126. Examined with *Jerome v. Ross*, 7 *Johns. Ch.* 315, in *Williams v. Mayor of Detroit*, 2 *Mich.* 582. Reviewed and followed with *Hart v. Mayor of Albany*, 3 *Paige*, 213; *Mohawk & H. R. Co. v. Artcher*, 6 *Id.* 88; *Oakley v.*



- Trustees of Williamsburgh, *Id.* 264; Pettit v. Shepherd, 4 *Paige*, 501; in Lyon v. Hunt, 11 *Ala.* 295; s. c., 46 *Am. Dec.* 216.
- **v. Lynch**, 4 *Johns. Ch.* 573. See *Ebbinghousen v. Worth Club*. Compare (Members of private association, how bound) *Wilkins v. Pearce*, 5 *Den.* 541. Cited in *Story on Partn.* 7 ed. § 125. Denied as contrary to what is settled law (Joint stock company, whether partnership) in *Townsend v. Goewey*, 19 *Wend.* 424. Collated with other cases (*Ultra vires* contract for carriage of goods) in 2 *Redf. Am. Rail. Cas.* 151.
- **v. McInlay**. See *Brinkerhoff v. Marvin*.
- **v. Mayor, &c. of N. Y.**, 8 *Wend.* 85; s. c., 22 *Am. Dec.* 622, 634, with note containing citations. See *Matter of Mercer St.*; *Wyman v. Mayor, &c. of N. Y.* Examined and disting'd with *Wyman v. Mayor, &c. of N. Y.*, 11 *Wend.* 486; *Champlin v. Laytin*, 18 *Id.* 411 (Effect of grant of land abutting on street) in *Bissell v. N. Y. Central R. R. Co.*, 23 *N. Y.* 61, 67. Disting'd in *Matter of Fourth Avenue*, 11 *Abb. Pr.* 189, 199; and see *Newcomb v. Smith*, 1 *Chand. (Wis.)* 86. Followed with *Wiggin v. Mayor, &c. of N. Y.*, 9 *Paige*, 23 (Right of State to confer on subordinate jurisdictions authority to take private property for public use) in *Alexander v. Mayor*, 5 *Gill (Md.)* 383; s. c., 46 *Am. Dec.* 630, 634, with note. Applied (Compensation for land taken) in *Long Island R. R. Co. v. Bennett*, 10 *Hun.* 91, 93. Followed with *Beekman v. Saratoga & Schenectady R. R. Co.*, 3 *Paige*, 45 (Limitations to right to trial by jury) in *Anderson v. Caldwell*, 91 *Ind.* 451; s. c., 46 *Am. R.* 613. Applied in *Astor v. Mayor, &c. of N. Y.*, 37 *Super. Ct. (J. & S.)* 539, 568. Relied on (Constitutionality of assessments for local improvements) in *McMasters v. Commonwealth*, 3 *Watts (Pa.)* 292; *McMasters v. Commonwealth* being followed on this point in *Hammatt v. Philadelphia*, 65 *Penn. St.* 146; s. c., 3 *Am. R.* 615.
- **v. Mildrum**, 19 *N. Y.* 440. Applied (Directing sale of mortgaged premises for benefit of subsequent incumbrancers) in *Barnes v. Stoughton*, 10 *Hun.* 14, 16. Followed (Sale of all of mortgaged premises) in *De Forest v. Farley*, 4 *Id.* 640. Applied (What equities are before court in foreclosure suit) in *Bergen v. Snedeker*, 8 *Abb. N. C.* 50, 56.
- **v. Miller**, 7 *How. Pr.* 219. Applied (Amendment of cases &c. on appeal) in *O'Gorman v. Kamak*, 5 *Daly*, 517, 519.
- **v. Murray**, 67 *Barb.* 214; *Mem. s. c.*, 4 *Hun.* 619. Modified in 68 *N. Y.* 485. Decision in *Id.* disting'd (Rights of legatee for life of specific property) in *Getman v. McMahon*, 30 *Hun.* 531. Followed in *Montfort v. Montfort*, 24 *Id.* 121.
- **v. Newkirk**, 3 *Johns. Ch.* 312. See *McKinnon v. Thompson*; *Reed v. Pruyn*. Followed (What lands chargeable with testator's debts) in *Stires v. Stires*, 1 *Halst. Ch. (N. J.)* 224; s. c., 43 *Am. Dec.* 626, 628, with note.
- **v. N. Y. Central, &c. R. R. Co.**, 5 *Hun.* 562. *Mem.* of further decision on appeal after second trial in 76 *N. Y.* 631.
- **v. Painter**, 24 *How. Pr.* 231; s. c., 15 *Abb. Pr.* 360, n. Rev'd in 19 *Id.* 28; s. c., 28 *How. Pr.* 517; 43 *Barb.* 270.
- **v. Peru Iron Co.**, 2 *Paige*, 390. Rev'd in 9 *Wend.* 512. See *Humbert v. Trinity Church*. Decision in 9 *Wend.* disapproved (What is adverse possession) in *Humbert v. Trinity Church*, 24 *Id.* 587, with which it is reconciled in *Crary v. Goodman*, 22 *N. Y.* 170. See, also, *Woodward v. McReynolds*, 1 *Chand. (Wis.)* 250. Said in *McMahon v. Allen*, 34 *Barb.* 56, 63, to have been qualified, or to be deemed overruled by *Humbert v. Trinity Church*. Disting'd with *Crary v. Goodman*, 22 *N. Y.* 170; *Moody v. Moody*, 16 *Hun.* 189 (Deed when void as purporting to convey lands held adversely) in *Van Voorhis v. Kelly*, 13 *Hun.* 293. Discussed in *Sedgwick & W. on Tr. of Tit. to Land*, § 757; *Id.* § 767; *Id.* § 776. Decision in 2 *Paige*, criticised as opposed to all sound equitable principles (Effect of suppression of material fact to avoid contract) in *Pomeroy on Sp. Perf.* § 270, n.
- **v. Proseus**, 2 *Hill*, 526. Followed and approved (Effect of deed by disseizee) in *McMahan v. Bowe*, 114 *Mass.* 140; s. c., 19 *Am. E.* 321, 323.
- **v. Radcliff**, 6 *Barb.* 201. Cited in *Whart. Com. on Ag.* § 583, n., as showing modification of rule (What attorney may receive in payment of debt).
- **v. Rendall**, 59 *Barb.* 493. Applied (Judgment against deceased) in *Grant v. Griswold*, 21 *Hun.* 509, 512. See *Code Civ. Pro.* 1881; § 1210, n.
- **v. Rogers**, 1 *Cai. Cas.* 27. Followed (Secondary evidence of contents of lost instrument) in *Bank of U. S. v. Sill*, 5 *Conn.* 106; s. c., 13 *Am. Dec.* 44, with note.
- **v. Roosevelt**, 4 *Johns.* 251; s. c., 4 *Am. Dec.* 273, 288, with note, wherein it is said to be regarded as an important case on the law of partnership, especially in N. Y. See *Calkins v. Smith*; *Dob v. Halsey*; *Foot v. Sabin*. Doctrine herein confirmed (Power of partner to bind firm) in *Mercein v. Mack*, 10 *Wend.* 461; *Nichols v. Hughes*, 2 *Bailey (So. Car.)* 109; *Wolcott v. Canfield*, 3 *Conn.* 194, 198; *Thomas v. Harding*, 8 *Greenl. (Me.)* 417; *Cocke v. Branch Bank*, 3 *Ala.* 175; *Goode v. Linneum*, 1 *How. (Miss.)* 281; *Eastman v. Cooper*, 15 *Pick. (Mass.)* 276. Examined with other cases in *Osgood v. Glover*, 7 *Daly*, 367, 370. Applied in *Crosthwait v. Ross*, 1 *Humph. (Tenn.)* 23; s. c., 34 *Am. Dec.* 613, 615. Included in 1 *Hare & W. Lead. Cas.* 507. Disting'd with *Dob v. Halsey*, 16 *Johns.* 34; *Evernghim v. Ensworth*, 7 *Wend.* 326 (Validity of transfer of partnership property in payment of separate debt of part-

- ner) in *Locke v. Lewis*, 124 *Mass.* 1; s. c., 26 *Am. R.* 631, 640.
- *v. St. Joseph's Home*. See *Livingston v. Gordon*.
- *v. Stickles*, 8 *Paige*, 398. Aff'd in 7 *Hill*, 253. Decision in *Id.* explained (Effect of condition in restraint of alienation) in *Overbagh v. Patrie*, 8 *Barb.* 28. Decision in 8 *Paige* discussed in 4 *Kent Com.* 124, n. c. Decision in 7 *Hill* applied with *Breasted v. Farmers' Loan & Trust Co.*, 8 *N.Y.* 299, 305; *Herrman v. Adriatic Fire Ins. Co.*, 45 *Super. Ct. (J. & S.)* 394 (Construction of conditions providing for dissabilities and forfeitures) *Carr v. Roger Williams' Ins. Co.*, 13 *Ins. L. J.* 446; s. c., less fully, 60 *N.H.* 512, 519; citing *Hoffman v. Aetna Ins. Co.*, 32 *N.Y.* 405, 414.
- *v. Tanner*, 12 *Barb.* 481. Rev'd in 14 *N.Y.* 64. Decision in 12 *Barb.* followed (Evidence of damages for withholding possession of lands) in *Larned v. Hudson*, 57 *N.Y.* 151, 154. Quoted and collated with other cases (When notice to tenant to quit is not necessary) in *McAdam on Landl. & T.* 2 ed. § 107.
- *v. Ten Broeck*, 16 *Johns.* 14; s. c., 8 *Am. Dec.* 287, with note. Explained and reconciled (When right of common is apportionable) in *Hall v. Lawrence*, 2 *R. I.* 218; s. c., 57 *Am. Dec.* 715.
- *v. Tompkins*, 4 *Johns. Ch.* 415; s. c., 8 *Am. Dec.* 598. Disting'd as to facts, but approved as to principle (Equity will not aid in working forfeiture) in *Smith v. Allen*, 1 *Saet. (N.J.)* 43; s. c., 21 *Am. Dec.* 33-37, with note.
- *v. Van Ingen*, 9 *Johns.* 507. Approved and followed (Protection to one exercising franchise conferred by statute) in *McGowen v. Stark*, 1 *Nott. & McC. (So. Car.)* 387; s. c., 9 *Am. Dec.* 712. See *Newburgh Turnpike Road v. Miller*, 5 *Johns. Ch.* 101; s. c., 9 *Am. Dec.* 274, with note. Disting'd in *Sullivan v. Redfield*, 1 *Paine*, 448. Explained and compared with *Gibbons v. Ogden*, 9 *Wheat.* 1, in *North River Steamboat Co. v. Livingston*, 3 *Cov.* 713 as to the effect and validity of the laws in question. Applied (When State has authority to restrain use of patent right) in *Patterson v. Commonwealth*, 11 *Bush.\* (Ky.)* 311; s. c., 1 *Am. R.* 220, 222. Collated with other cases in 22 *Am. R.* 67, n. Cited, as entitled to great weight, in *Patterson v. Kentucky*, 97 *U. S.* 508. Quoted approvingly in 1 *Kent Com.* 391.
- Livingstone v. Arnoux**. See *Livingston v. Arnoux*.
- Llamosas v. Llamosas**, 4 *Supm. Ct. (T. & C.)* 574; s. c., as *DeLlamosas v. DeLlamosas*, 2 *Hun.* 380. Appeal dismissed in 62 *N.Y.* 618.
- Lloyd v. Brewster**, 4 *Paige*, 537; s. c., 27 *Am. Dec.* 88. See *Mowry v. Walsh*. Examined with *Colt v. Ross*, 2 *Paige*, 396 (Bill with double aspect) in *Hart v. McKeen*, *Walk. Ch. (Mich.)* 420. Approved (Right to disaffirm sale for fraud) in *Bliss v. Cottle*, 32 *Barb.* 322, 324. Applied in *Henshaw v. Bryant*, 4 *Seam. (Ill.)* 107. Followed with *Bk. of Beloit v. Beale*, 34 *N.Y.* 473; *Morris v. Rexford*, 18 *Id.* 552; *Rodermund v. Clark*, 46 *Id.* 354; *Field v. Bland*, 59 *How. Pr.* 85; *Sanger v. Wood*, 3 *Johns. Ch.* 416 (Remedies, when not inconsistent) in *Bowen v. Mandeville*, 29 *Hun.* 42.
- *v. Burges*, 38 *Super. Ct. (J. & S.)* 423. Aff'd, it seems, in 62 *N.Y.* 651, but without opinion.
- *v. Carrier*, 2 *Lans.* 364. Applied (Interest on advances by co-partner) in *Gilhooly v. Hart*, 8 *Daly*, 176, 180.
- *v. Matthews*, 51 *N.Y.* 124. See also (brokers commissions) *Sibbald v. Bethlehem Iron Co.*, 83 *Id.* 378, 382.
- *v. Mayor, &c. of N. Y.*, 5 *N.Y.* 369; s. c., 55 *Am. Dec.* 347, with note containing citations of the case. See *Bartlett v. Crozier*; *Mayor, &c. of N. Y. v. Bailey*; *Mayor, &c. of N. Y. v. Furze*; *Rochester White Lead Co. v. City of Rochester*. Followed with *Barton v. City of Syracuse*, 36 *N.Y.* 54; *Weed v. Village of Ballston Spa*, 76 *Id.* 329; *Hines v. City of Lockport*, 50 *Id.* 236 (Liability for neglect of corporate duty) in *Levy v. Salt Lake City*, 3 *Utah*, 68. Explained in *Eastman v. Meredith*, 36 *N.H.*, 284. Compared with other cases (Negligence of contractors) in 3 *Am. L. Reg. N. S.* 359.
- Lobdell v. Hopkins**, 5 *Cov.* 516. See *Goodwin v. Holbrook*; *Vance v. Bloomer*. Followed with approval (Right of action on contract to pay in specific articles) in *Ragland v. Wood*, 71 *Ala.* 145; s. c., 46 *Am. R.* 305, with note collating cases. Followed in *Bailey v. Simonds*, 6 *N.H.* 159; s. c., 25 *Am. Dec.* 454.
- *v. Lobdell*, 36 *N.Y.* 327. Disting'd (Evidence of personal communication with deceased) in *Ross v. Harden*, 42 *Super. Ct. (J. & S.)* 427, 435. Followed in *Marsh v. Gilbert*, 2 *Redf.* 465, 476. Explained in *Brayne v. Lord*, 41 *Super. Ct. (J. & S.)* 193, 196. Followed with *Freeman v. Freeman*, 43 *N.Y.* 34 (Compelling conveyance of legal title of land claimed under parol gift) in *Burkholder v. Ludlam*, 30 *Gratt. (Va.)* 255; s. c., 32 *Am. R.* 668, 670.
- *v. Stowell*, 37 *How. Pr.* 88. Aff'd in 51 *N.Y.* 70. Decision in 37 *How. Pr.* followed as a binding and conclusive authority (Conversion, as between tenants in common) in *Channon v. Lusk*, 2 *Lans.* 211, n. Decision in 51 *N.Y.* compared (Sale of chattel not specific) in 1 *Benj. on Sales*, § 478 (Corbin's 4 *Am. ed.*).
- Loeke v. Mabbett**, 2 *Keyes*, 457; s. c., 3 *Abb. Ct. App. Dec.* 68. Disting'd (Right of creditors to reach surplus income) in *Williams v. Thorn*, 70 *N.Y.* 270, 276.
- Lockhart v. Public Adm'r**, 4 *Bradf.* 21. Followed (Investments by administrators, &c.) in *Gillespie v. Brooks*, 2 *Redf.* 349, 359.
- Lockport & Buffalo R. R. Co., Matter of**,

- 15 *Hun*, 365. Rev'd in 77 *N. Y.* 557. Another proceeding in 19 *Hun*, 38.
- Lockwood v. Barnes**, 3 *Hill*, 128; s. c., 38 *Am. Dec.* 620, with note; 15 *N. Y. Com. L. Law. ed.* 538, with brief note. Followed (Validity under statute of frauds, of agreement to deliver colt that may be raised from mare) in *Groves v. Cook*, 88 *Ind.* 169; s. c., 46 *Am. R.* 462. Discussed in *Browne on Stat. of Frauds*, § 280, 4 ed. Followed (Effect of non-performance of portion of contract void by statute of frauds) in *Weir v. Hill*, 2 *Lans.* 278. Approved in *Galvin v. Prentice*, 45 *N. Y.* 162, which also cited *Dowdle v. Camp*, 12 *Johns.* 451; *Abbot v. Draper*, 4 *Den.* 51; *Collier v. Coates*, 17 *Barb.* 471.
- **v. Thorne**, 12 *Barb.* 487. Rev'd in 11 *N. Y.* 170. Subsequent decision in 24 *Barb.* 391, and that rev'd in 18 *N. Y.* 285. See *Murray v. Toland*. Decisions in 11 and 18 *N. Y.* applied (Conclusiveness of account stated) in *Hutchinson v. Market B'k of Troy*, 48 *Barb.* 324; *Gilchrist v. Brooklyn Grocers' Manuf'g Assoc.*, 66 *Id.* 401. Decision in 11 *N. Y.* disting'd in *Porter v. Lobach*, 2 *Dow.* 194; *Carpenter v. Nickerson*, 7 *Daly*, 425. Decision in 18 *N. Y.* approved in *Quincey v. White*, 63 *Id.* 377. Applied in *Baker v. Hoff*, 52 *How. Pr.* 384; *Bucklin v. Chaplin*, 1 *Lans.* 447. Cited as weighty authority in *Wharton v. Anderson*, 23 *Minn.* 305. Decision in 11 *N. Y.* disapproved (Account stated between other than merchants) in *Auding v. Levy*, 57 *Miss.* 54; s. c., 34 *Am. R.* 433.
- **v. Underwood**, 16 *Hun*, 592. Rev'd, it seems, in 83 *N. Y.* 619, but without opinion.
- Loder v. Hatfield**, 4 *Hun*, 36; s. c., 6 *Sup'm. Ct. (T. & C.)* 229. Aff'd in 71 *N. Y.* 92. See *McCartee v. Camel*. Decision in 71 *N. Y.* disting'd with *Patterson v. Ellis*, 11 *Wend.* 260; *Everitt v. Everitt*, 29 *N. Y.* 39; *Warner v. Durant*, 76 *Id.* 133 (Vested and contingent legacies) in *Bushnell v. Carpenter*, 92 *Id.* 270. Disting'd (Statute of limitations as applicable to trusts) in *Neilly v. Neilly*, 23 *Hun*, 651, 655.
- Lodge v. Phelps**, 1 *Johns. Cas.* 139; s. c., 2 *Civ. Cas.* 321; 1 *N. Y. Com. L. Law. ed.* 275, with brief note. Included (Assignee of note prohibited in his own State from bringing action, but suing here) in 1 *Ames Cas. on B. & N.* 332.
- Loeb v. Hellman**, 45 *Super. Ct. (J. & S.)* 336. Aff'd in 83 *N. Y.* 601.
- **v. Willis**, 22 *Hun*, 508. Compare brief mem. in 23 *Id.* 354, denying motion for re-argument.
- Loeffler v. Fox**, 23 *Hun*, 149. Reported in 11 *Weekly Dig.* 217. Explained (Torts affecting rights of way) in *Moak's Underhill's Torts*, 1 *Am. ed.* 491.
- Loeschick v. Baldwin**. See *Loeschick v. Baldwin*.
- Loeschigk v. Addison**, 3 *Robt.* 331; s. c., 19 *Abb. Pr.* 169. Subsequent decision, as it seems, in 7 *Robt.* 506. See *Same v. Hatfield*.
- **v. Baldwin**, 1 *Robt.* 377. Aff'd in *Loeschick v. Baldwin*, 38 *N. Y.* 326. Decision in *Id.* explained (Other transfers in connection with assignment for benefit of creditors) in *Burrill on Assign.* § 357, n. 3, 4 ed.
- **v. Bridge**, 42 *N. Y.* 421. Applied (Transfer by party in failing circumstances, when not fraudulent) in *Ruhl v. Phillips*, 48 *N. Y.* 128.
- **v. Hatfield**, 5 *Robt.* 26; s. c., as *Loeschigk v. Addison*, 4 *Abb. Pr. N. S.* 210. Aff'd in 51 *N. Y.* 660. Decision in *Id.* followed in *Cushman v. Addison*, 52 *Id.* 628, a case presenting question as to validity of same transfers. Decision in 5 *Robt.* quoted (Surviving partner's rights) in 2 *Collyer on Partn.* § 623, n. 1, *Wood's Am. ed.*
- Loew, Matter of**, 5 *Hun*, 462; s. c., more fully, 50 *How. Pr.* 373.
- Loftin v. Fowler**. See *Cathcart v. Cannon*.
- Loftus v. Union Ferry Co. of Brooklyn**, 22 *Hun*, 33. Aff'd in 84 *N. Y.* 455; s. c., 38 *Am. R.* 533, with note. See *Ward v. Atlantic, &c. Telegraph Co.*
- Logue v. Link**, 4 *E. D. Smith*, 63. Explained (Liability for injury done by vicious dog) in *Lynch v. McNally*, 7 *Daly*, 126, 134.
- Lohman v. People**, 2 *Barb.* 216. Aff'd in 1 *N. Y.* 379; s. c., 49 *Am. Dec.* 340, with note wherein are collected citations of the case. See *People v. Abbot*. Decision in 1 *N. Y.* cited as settling the rule (Obligation of witness to answer disparaging questions) in *Great Western Turnpike Co. v. Loomis*, 32 *Id.* 127, 136. Examined with other cases (Competency of juror, as affected by his opinion) in *Greenfield v. People*, 6 *Abb. N. C.* 1, 9.
- Lomer v. Meeker**, 25 *N. Y.* 361. Applied (Duty to non-suit) in *Robinson v. McManus*, 4 *Lans.* 380, 386; *Desh v. Barnes*, 13 *Weekly Dig.* 251.
- Long v. Bussell**, 45 *Super. Ct. (J. & S.)* 434. Aff'd in 83 *N. Y.* 606, but without opinion.
- **v. Majestic**, 1 *Johns. Ch.* 202. Approved (What amounts to waiver of security for costs) in *Shuttleworth v. Dunlop*, 34 *N. J. Eq.* 492.
- **v. N. Y. Central R. R. Co.**, 50 *N. Y.* 76. Explained (Effect of carrier's receipt) in *Kirkland v. Dismore*, 2 *Hun*, 49, which was rev'd in 62 *N. Y.* 178, which see. Applied in *Hineckley v. N. Y. Central, &c. R. R. Co.*, 56 *Id.* 432.
- Longendyke v. Longendyke**, 44 *Barb.* 366. See *Gould v. Gould*. Followed (Suit between husband and wife) in *Perkins v. Perkins*, 62 *Barb.* 531, 537. Dissented from with *Perkins v. Perkins*, in *Schultz v. Schultz*, 27 *Hun*, 26, which was, however, rev'd in 89 *N. Y.* 644. See also *Berdell v. Parkhurst*, 19 *Hun*, 353; *Jamieson v. Jamieson*, *Id.* 33, applied, and *Shuttleworth v. Winter*, 55 *N. Y.* disting'd, in 27 *Hun*.
- Long Island City v. Long Island R. R. Co.**, 8 *Hun*, 58. Aff'd in 79 *N. Y.* 561.
- Long Island R. R. Co., Matter of**, 19 *Wend.*

- 37; s. c., 32 *Am. Dec.* 429, with note on the subject of corporate elections, &c. See *Hart v. Mayor*, &c. of Albany.
- , 3 *Edw.* 487. Quoted and explained (Duty of carrier as to property by the way-side) in *Ang. on Carr.* § 567, n. 1, 5 ed.
- , 6 *Sup'm. Ct. (T. & C.)* 298; mem. s. c., as *Van Sise v. Long Island R. R. Co.*, 3 *Hun.* 613.
- Long Island R. R. Co. v. Conklin**, 32 *Barb.* 331. Aff'd in 29 *N. Y.* 572. Brown, J.'s, definition, in 32 *Barb.*, of covenant of warranty, approved in *Kilmer v. Wilson*, 49 *Id.* 86.
- Look v. Comstock**, 15 *Wend.* 244; s. c., 12 *N. Y. Com. L. Law. ed.* 851, with brief note citing cases.
- Loomer v. Wheelwright**, 3 *Sandf. Ch.* 135. Former decision, on bill and cross bill, in 2 *Edw.* 232.
- Loomis v. Edgerton**, 19 *Wend.* 419. See *People v. Smith*. Disting'd with *People v. Smith*, 5 *Cow.* 258; *People v. Anderson*, 14 *Johns.* 294 (What constitutes larceny) in dissenting opinion of LEARNED, P. J., in *People v. Woodward*, 31 *Hun.* 57. Quoted (Malicious mischief, when indictable) in 1 *Bennett & H. Cas. on Crim. L.* 18.
- **v. Higbie**, 29 *How. Pr.* 232. See (Notice of appeal from justice's decision) *Code Civ. Pro.* 1881, § 3070, n.
- **v. Jackson**, 19 *Johns.* 449. Approved with *Lush v. Druse*, 4 *Wend.* 313; *Jackson v. Marsh*, 6 *Cow.* 281 (Construction of deed in case of palpable mistake) in *Johnson v. Simpson*, 36 *N. H.* 91. Followed in *Norwood v. Byrd*, 2 *Rich. L. (So. Car.)* 135; s. c., 42 *Am. Dec.* 406, 409, with note. Reviewed with other cases (What is constructive notice sufficient to affect rights of purchaser of land) in *Jones v. McNarrin*, 68 *Me.* 334; s. c., 28 *Am. R.* 66, 69; *Birdsall v. Russell*, 29 *N. Y.* 220, 250, being, with other cases, cited on the subject of constructive notice generally.
- **v. Loomis**, 60 *Barb.* 22. See *McKillip v. McKillip*. Compare (Deed, &c. when regarded as mortgage) *Stoddard v. Whiting*, 46 *N. Y.* 627; *Carr v. Carr*, 4 *Lans.* 314.
- **v. Mowry**, 4 *Hun.* 271. Another proceeding in 8 *Id.* 311. See *Bank of Orleans v. Barry*.
- **v. People**, 67 *N. Y.* 322. See *Hildebrand v. Same*. Disting'd (What is larceny) in *Zink v. People*, 71 *N. Y.* 114, 129; *Thorn v. Turk*, 13 *Weekly Dig.* 550. Approved and followed in *People v. Rac*, *Sup'm. Ct. Cal.* 6 *Pac. Rep.* 1, 3.
- **v. Ruck**, 1 *Sup'm. Ct. (T. & C.)* 442; s. c., 14 *Abb. Pr. N. S.* 385. Rev'd in part, and aff'd in part, in 56 *N. Y.* 462. See *Yale v. Dederer*. Decision in 56 *N. Y.* disting'd (Married woman's obligation) in *Woolsey v. Brown*, 74 *N. Y.* 82, 85, which aff'd 11 *Hun.* 52, which see.
- **v. Terry**, 17 *Wend.* 496. See *Owen v. Hudson River R. R. Co.*; *Putnam v. Payne*. Disapproved (Liability of one who keeps vicious dog) in *Kelly v. Tilton*, 3 *Keyes*, 263. Followed in *Lynch v. McNally*, 7 *Daly*, 126, 132; *Meibus v. Dodge*, 38 *Wis.* 300; s. c., 20 *Am. R.* 6, 10. Included with note in 1 *Thomp. on Negl.* 192. Applied to case of one placing spring-gun, as protection against trespassers, in *Hooker v. Miller*, 37 *Iowa*, 613; s. c., 18 *Am. R.* 18, 20.
- **v. Tift**, 16 *Barb.* 541. See *Estes v. Wilcox*. Disregarded as overruled by *Evans v. Hill*, 18 *Hun.* 465 (Relief against fraudulent conveyance) in *Adsit v. Sanford*, 23 *Id.* 45, 49. Not followed in *Barton v. Hosner*, 24 *Id.* 467. Disapproved in *Lichtenberg v. Herdtfelder*, 5 *Civ. Pro. R. (Droune)* 426. Followed (Judgment against administrator) in *Sharp v. Freeman*, 2 *Lans.* 171.
- Looney v. Hughes**, 30 *Barb.* 605. Aff'd in 26 *N. Y.* 514. See *People v. Jansen*. Decision in 26 *N. Y.* cited, and *Muzzy v. Shattuck*, 1 *Den.* 233; *Supervisors of Albany v. Dorr*, 25 *Wend.* 440, reconciled, all being disting'd as decided under statutes (Liability of county treasurer for moneys lost by robbery) in *Cumberland v. Pennell*, 69 *Me.* 357; s. c., 31 *Am. Dec.* 284.
- Loonie v. Hogan**, 9 *N. Y.* 435. See points of counsel in 2 *E. D. Smith*, 681. See *Champion v. White*. Followed (Mechanics' lien in case of contract of purchase) in *Rollin v. Cross*, 45 *N. Y.* 766.
- Loop v. Litchfield**, 42 *N. Y.* 351. See *Thomas v. Winchester*. Disting'd (Liability for negligence) in *Coughtry v. Globe Woolen Co.*, 56 *N. Y.* 124, 127.
- Lord, Matter of**, 78 *N. Y.* 109. Further decision in 21 *Hun.* 555. Decision in *Id.* followed (Effect of delay in moving to vacate assessment) in *Matter of Brady*, 47 *Super. Ct. (J. & S.)* 36.
- Lord v. Arnold**, 18 *Barb.* 104. Disting'd (Taxation of personal securities held by agent) in *People ex rel. Jefferson v. Smith*, 88 *N. Y.* 576. Explained in *Boardman v. Supervisors of Tompkins*, 22 *Hun.* 231, 233.
- **v. Cheesbrough**, 4 *Sandf.* 696. Explained and approved (Sufficiency of allegation of title to note) in *Bank of Geneva v. Gulick*, 8 *How. Pr.* 51.
- **v. Thomas**, 64 *N. Y.* 107. Compare (State as party to contract for prosecuting public work) *Sage v. City of Brooklyn*, 8 *Abb. N. C.* 279, and cases cited in note.
- **v. Underdunk**, 1 *Sandf. Ch.* 46. Disting'd (Rights of assignee of vendee in land contract) in *Cavalli v. Allen*, 57 *N. Y.* 508, 514.
- **v. Vreeland**, 18 *Abb. Pr.* 195. Aff'd in 15 *Id.* 122; s. c., 24 *How. Pr.* 316.
- **v. Wilkinson**, 66 *Barb.* 607. Other proceedings in 2 *Sup'm. Ct. (T. & C.)* 179; 56 *Barb.* 593. Decision in 2 *Sup'm. Ct. (T. & C.)* said in 5 *Id.* to have been aff'd.
- Lorillard v. Clyde**, 86 *N. Y.* 384. Prior decision in action between same parties, in 44 *Super. Ct. (J. & S.)* 556.

- **v. Coster**, 5 *Paige*, 172. Rev'd in 14 *Wend.* 265; on ground of invalidity of trust.
- **v. Palmer**, 15 *Johns.* 14. Rev'd in 16 *Id.* 348.
- **v. Robinson**. See *McDowell v. Second Ave. R. R. Co.*
- **v. Silver**, 35 *Barb.* 132. Rev'd in 36 *N. Y.* 578. Decision in 33 *Id.* followed (Effect of making payment for work conditional) in *Murray v. Baker*, 6 *Hun.* 264. Disting'd (Sale on agreement to share advance) in *Jones v. Kent*, 80 *N. Y.* 585, 590.
- **v. Town of Monroe**, 12 *Barb.* 161. Aff'd in 11 *N. Y.* 392. See *Pack v. Mayor, &c. of N. Y.* Applied (Limitation on right of town to sue or be sued) in *Town of Fishkill v. Fishkill, &c. Plank Road Co.*, 22 *Barb.* 645; *Town of Galen v. Clyde, &c. Plank Road Co.*, 27 *Id.* 551; *Onderdonk v. City of Brooklyn*, 31 *Id.* 507; *Gailor v. Herrick*, 42 *Id.* 85; *McLanahan v. City of Syracuse*, 18 *Hun.* 264; *Town of Guilford v. Supervisors of Chenango*, 13 *N. Y.* 147; *Swift v. City of Poughkeepsie*, 37 *Id.* 515; *People ex rel. Van Keuren v. Auditors of Esopus*, 74 *Id.* 316; *City of Rochester v. Town of Rush*, 80 *Id.* 311. Applied to county, in *De Grauw v. Supervisors of Queens*, 13 *Hun.* 385. Disting'd in *Hathaway v. Town of Homer*, 5 *Lans.* 274; *Bank of Commonwealth v. Mayor, &c. of N. Y.*, 43 *N. Y.* 189; *Newman v. Supervisors of Livingston*, 45 *Id.* 682. Applied (Definition of town) in *Chicago & N. W. R'y Co. v. Town of Oconto*, 50 *Wis.* 189; s. c., 36 *Am. R.* 840, 843.
- Loring v. U. S. Vulcanized Gutta Percha Co.**, 30 *Barb.* 644. Approved as to invalidity of assignment, but rev'd because of giving plaintiff preference, in 36 *Id.* 329.
- Losee v. Buchanan**, 61 *Barb.* 86. Rev'd in 51 *N. Y.* 476; s. c., 10 *Am. R.* 623. Previous decision as *Losee v. Saratoga Paper Co.*, 42 *How. Pr.* 385. Decision in 51 *N. Y.* disting'd (Liability of owner of dangerous premises) in *Mullen v. St. John*, 57 *Id.* 567, 572. Cited, and *Moore v. Goedel*, 34 *Id.* 527, 530, approved, in *Simonton v. Loring*, 68 *Me.* 164; s. c., 28 *Am. R.* 29, with note wherein *Robbins v. Mount*, 4 *Robt.* 553, and other cases are collated, and wherein remark quoted from *Moore v. Goedel* is said to be *obiter*. Followed in *Marshall v. Welwood*, 9 *Vroom (N. J.)* 339; s. c., 20 *Am. R.* 394, 399. Included in 1 *Thomps. on Negl.* 47. Collated with other cases in *Id.* 112. Collated, and cases cited to the contrary, in *Bigel. Cas. on Torts*, 498, 499, 500. Relied on and applied to case of unmanageable horse, in *Brown v. Collins*, 53 *N. H.* 442; s. c., 16 *Am. R.* 372, 378.
- **v. Bullard**, 54 *How. Pr.* 319. First part aff'd in effect in 79 *N. Y.* 404. See *Huguenot Nat. Bank v. Studwell*. Decision in 79 *N. Y.* followed (Duty of trustees of corporation to file report) in *Cornell v. Roach*, 9 *Abb. N. C.* 275. Applied in *Bruce v. Platt*, 80 *N. Y.* 379, 388.
- **v. Clute**, 51 *N. Y.* 494; s. c., 10 *Am. R.* 638. Aff'g, in part, *Losee v. Saratoga Paper Co.*, 42 *How. Pr.* 385. Decision as to other defendants limited on further decision in *Losee v. Buchanan*, 61 *Barb.* 86. See *Thomas v. Winchester*. Disting'd (Liability for negligence) in *Coughtry v. Globe Woolen Co.*, 56 *N. Y.* 124, 127. Cited with *City of Brooklyn v. Brooklyn City R. R. Co.*, 47 *Id.* 471, as against right of action by strangers for breach of constructive duty,—in 19 *Cent. L. J.* 168, where also *Robinson v. Chamberlain*, 34 *N. Y.* 389; *Johnson v. Bellden*, 47 *Id.* 130, were disting'd as cases of statute contract with State, and *Thomas v. Winchester*, 6 *Id.* 397, was regarded as founded on negligence. Collated with other cases in *Bigel. Cas. on Torts*, 618. Included in 1 *Thomps. on Negl.* 233.
- **v. Dunkin**, 7 *Johns.* 70; s. c., 5 *Am. Dec.* 245. See *Sice v. Cunningham*. Included with notes (Transfer of overdue note) in 1 *Ames Cas. on B. & N.* 782.
- **v. Losee**, 2 *Hill*, 609. Cited and approved (Statements of subscribing witness to will as evidence) in *Otterson v. Hoford*, 36 *N. J. (7 Vroom)* 129; s. c., 13 *Am. R.* 429, 431.
- **v. Mathews**, 5 *Abb. L. J.* 26. Rev'd in 61 *N. Y.* 627.
- **v. Morey**, 57 *Barb.* 561. See other cases collected (Testimony of parties) in 1 *Abb. N. C.* 363, n.
- **v. Saratoga Paper Co.** See *Losee v. Clute*.
- Losee v. Ellis**, 13 *Hun.* 635. Further decision as to costs in *Id.* 655. Decision in *Id.* 635, disting'd (Effect of covenant to stand seized) in *Eysaman v. Eysman*, 24 *Id.* 430, 433.
- Lott v. Swezy**. See *Forest v. Mayor, &c. of N. Y.*
- **v. Wyckoff**, 1 *Barb.* 565. Aff'd in 2 *N. Y.* 355. Decision in *Id.* disting'd (Effect of limitation over, created by will) in *Dumond v. Stringham*, 26 *Barb.* 104, 112, 117. Followed in *Barlow v. Barlow*, 2 *N. Y.* 386.
- Lottimer v. Livermore**, 6 *Daly*, 501. Modified on appeal in *Lattimer v. Livermore*, 72 *N. Y.* 174.
- Loucks v. Van Allen**, 11 *Abb. Pr. N. S.* 427. Approved and applied (Disposal of surplus on foreclosure) in *Fleiss v. Buckley*, 24 *Hun.* 514, 516. Followed in *German Sav'gs B'k v. Sharer*, 25 *Id.* 499, 413.
- Loughran v. Ross**, 45 *N. Y.* 792; s. c., 6 *Am. R.* 173. See *Holmes v. Tremper*. Disting'd (Tenant's right to remove fixtures, as affected by renewal of lease) in *Livingston v. Sulzer*, 19 *Hun.* 375, 381. Disapproved in *Kerr v. Kingsbury*, 39 *Mich.* 150; s. c., 33 *Am. R.* 363. Relied on in *Watriss v. First Nat. Bank of Cambridge*, 124 *Mass.* 571; s. c., 26 *Am. R.* 694, 699. Followed in *Marks v. Ryan*, 63 *Cal.* 107, 111.

- **v. Smith**, 75 *N. Y.* 205. Examined with other cases (Tenancies from year to year) in 19 *Alb. L. J.* 46. Collated with other cases (When relation of landlord and tenant commences) in *McAdam on Landl. & T.* 2 ed. § 29.
- Lounsberry v. Snyder**, 31 *N. Y.* 514. See *Dyett v. Pendleton*. Cited with approval with *Smith v. Niver*, 2 *Barb.* 180 (Effect of transfer by tenant of his interest, when contrary to statute of frauds) in 2 *Whart. Com. on Ev.* § 860. Collated with other cases (Eviction of tenant) in *McAdam on Landl. & T.* 2 ed. § 212.
- Lounsbury v. Potter**, 37 *Super. Ct. (J. & S.)* 57. See also (Rights of purchaser in contract for sale of incumbered land) *Rinaldo v. Housmann*, 1 *Abb. N. C.* 312.
- **v. Purdy**, 11 *Barb.* 490. Aff'd in 16 *Id.* 376; and that aff'd in 18 *N. Y.* 515. See *Botsford v. Burr*. Decision in 18 *N. Y.* disting'd (Trust in case of land paid for one person, title being taken by another) in *Brown v. Cherry*, 59 *Barb.* 628. Applied in *Fairchild v. Fairchild*, 5 *Hun.* 412, which was aff'd in 64 *N. Y.* 476, which see; *Simon v. Schurck*, 29 *Id.* 612. Examined with other cases (Amendment of pleadings) in *Williams v. Birch*, 6 *Bosw.* 677. Followed as decisive (Parol evidence to establish trust) in *Swinburne v. Swinburne*, 28 *N. Y.* 571. Collated and compared with other cases in *Randall v. Constans*, 33 *Minn.* 329, 336.
- Love v. Palmer**, 7 *Johns.* 159. Examined with *Dole v. Bull*, 2 *Johns. Cas.* 239, and other cases (Security when invalid, as taken *colore officii*) in *Richardson v. Crandall*, 48 *N. Y.* 359.
- Lovecraft v. Stanley**, 25 *Hun.* 59. Abridg't s. c., 12 *Weekly Dig.* 509.
- Loveland v. Atwood**, 31 *How. Pr.* 467. See (Notice of appeal from justice's decision) *Code Civ. Pro.* 1881, § 3070, n.
- **v. Burnham**. See *Lawton v. Green*.
- **v. Shepard**. See *Moakely v. Riggs*.
- Lovell v. Martin**, 21 *How. Pr.* 238. Subsequent motion for leave to renew denied in 12 *Abb. Pr.* 178.
- Lovett v. Adams**, 3 *Wend.* 380. Applied (Effect of written instruments, &c., conditionally executed) in *People v. Bostwick*, 32 *N. Y.* 445. Cited as authority with *Bronson v. Noyes*, 7 *Wend.* 188; *People v. Bostwick*, 43 *Barb.* 9; 32 *N. Y.* 445, in *Ayres v. Milroy*, 53 *Mo.* 516; s. c., 14 *Am. R.* 465, 466, 469. Collated with *Bronson v. Noyes*, 7 *Wend.* 88; *People v. Bostwick*, 32 *N. Y.* 445, in 25 *Am. R.* 706, n.; *People v. Bostwick*, being thought to be shaken, if not overruled, by *Russell v. Freer*, 56 *N. Y.* 67. Criticised and disting'd with *Bronson v. Noyes*, 7 *Wend.* 188; *People v. Bostwick*, 32 *N. Y.* 445, in *State v. Potter*, 63 *Mo.* 212; s. c., 21 *Am. R.* 440, 445. Followed in *Hall v. Parker*, 37 *Mich.* 590; s. c., 26 *Am. R.* 540.
- **v. Buloid**, 3 *Barb. Ch.* 137. Followed (Gift by will, when vested at testator's death) in *Meyer's Will*, 6 *Abb. N. C.* 438, 443.
- **v. Gillender**, 35 *N. Y.* 617. Aff'g *Lovett v. Kingsland*, 44 *Barb.* 560. See papers bound up in No. 79, of Charles O'Connor's "My Own Cases," in Law Inst. Libr. N. Y. City.
- **v. Robinson**, 7 *How. Pr.* 105. Approved (Liability of wife's separate estate) in *Glann v. Younglove*, 27 *Barb.* 480; *Gales v. Brower*, 9 *N. Y.* 205.
- Low v. Austin**, 25 *Barb.* 26. Aff'd in 20 *N. Y.* 181.
- **v. Cheney**, 3 *How. Pr.* 287. See arguments of counsel in 1 *Code. R.* 29.
- **v. Graydon**. See *Persse & Crooks' Paper Co. v. Willet*.
- **v. Hall**, 47 *N. Y.* 104. Disting'd (Restraining use of trademark) in *Hier v. Abrahams*, 82 *Id.* 519, 525. Compare (Sufficiency of exception) *Chapman v. Gates*, 54 *Id.* 132, 143.
- **v. Purdy**, 2 *Lans.* 422. Quoted (Measure of damages for loss of mesne profits) in *Sedgw. & W. on Tr. of Tit. to Land*, § 666.
- **v. Rice**, 8 *Johns.* 409. See *Tenny v. Filser*. See (Costs in justices' court) *Code Civ. Pro.* 1881, § 3075, n.
- Lowber v. Kelly**, 17 *Abb. Pr.* 452. Aff'd in 9 *Bosw.* 494. With decision in *Id.* see (Adverse possession) *Code Civ. Pro.* 1881, § 1501, n.
- **v. Mayor, &c. of N. Y.**, 15 *How. Pr.* 123; s. c., more fully, 5 *Abb. Pr.* 485.
- Lowell v. Allen**. See *Allen v. Lowell*.
- **v. Quitman**. See *Matter of Thompson*.
- Lowenberg v. People**, 26 *How. Pr.* 202; s. c., more fully, 37 *N. Y.* 336. Aff'g 5 *Park.* 414. See *Stephens v. People*.
- Lowenstein v. Flauraud**, 11 *Hun.* 399; s. c., 53 *How. Pr.* 463. Aff'd in 82 *N. Y.* 494.
- Lower v. Winters**, 7 *Cow.* 263. Following with *People v. Mather*, 4 *Wend.* 229 (What impeaching witness may be asked) in *Weeks v. Hull*, 19 *Conn.* 376; s. c., 50 *Am. Dec.* 249, with note.
- Loweroe v. Babcock**, 8 *Abb. Pr. N. S.* 255. Overruled (Liability of separate estate of married woman) in *Corn Exch. Ins. Co. v. Babcock*, 9 *Abb. Pr. N. S.* 255.
- Lowrey v. Brooklyn City, &c. R. R. Co.**, 76 *N. Y.* 28. Rev'g *Lowrey v. Brooklyn City, &c. R. R. Co.*, 4 *Abb. N. C.* 32. Decision in 76 *N. Y.* disting'd (Duty of maintaining track and pavement) in *Woolley v. Grand St. & Newtown R. R. Co.*, 83 *Id.* 122, 127.
- **v. Scott**, 24 *Wend.* 358. Commented on (Where notice of dishonor should be sent) in *Bigel. on B. & L.* 2 ed. § 340.
- **v. Western Union Tel. Co.** See *Griffin v. Colver*; *Leonard v. N. Y., Albany, &c. Tel. Co.*
- **v. Steward**, 5 *Bosw.* 505. Aff'd, on the merits, in 25 *N. Y.* 239. Decision in *Id.* followed (Effect of order on particular fund) in *Shuttleworth v. Bruce*, 7 *Robt.* 160.

- Lowndes v. Campbell**, 1 *Hall*, 598. Further proceeding, confirming this decision as to the conclusiveness of the award, in *Campbell v. Western*, 3 *Paige*, 124.
- **v. Dickerson**, 34 *Barb.* 586. Followed (Using lands for fishing purposes, when a trespass) in *Whittaker v. Burhans*, 62 *Id.* 237. Questioned and disting'd (Construction of certain grants) in *Robins v. Ackerly*, 91 *N. Y.* 98; which aff'd 24 *Hun.* 499, which see.
- Lownds v. Remsen**, 7 *Wend.* 35. Explained (Effect of satisfaction piece) in *Booth v. Farmers' and Mechanics' Nat'l B'k*, 4 *Lans.* 301, 307.
- Lowrey v. Brooklyn City, &c. R. R. Co.** See *Lowery v. Same*.
- Lowry v. Inman**, 37 *How. Pr.* 153; s. c., 6 *Abb. Pr. N. S.* 394. Aff'd in 2 *Sweeny*, 117, and that aff'd in 46 *N. Y.* 119. Decision in *Id.* applied (Enforcing individual liability of stockholders, under statute) in *Jesup v. Carnegie*, 80 *Id.* 441, 456.
- **v. Lawrence**, 1 *Cai.* 69; s. c., 2 *N. Y. Com. L. Law. ed.* 68, with brief note (Premature actions). Commented on in *Ang. on Limit.* § 312, 6 ed.
- **v. Tew**, 3 *Barb. Ch.* 413. See *Malins v. Brown*. Approved and followed (Effect of part performance of parol agreement) in *Dygart v. Remerschnider*, 32 *N. Y.* 629, 644.
- Lowther v. Crummie**. See *Bowen v. Bell*.
- Luby v. Hudson River R. R. Co.**, 17 *N. Y.* 131. See *Anderson v. Rome, &c. R. R. Co.* Applied (Effect of declaration of agent, as against principal) in *Greene v. Gonzales*, 2 *Daly*, 414. Applied with *White v. Miller*, 71 *N. Y.* 136, in *Darling v. Oswego Falls Man'g Co.*, 80 *Hun.* 276. Relied on in *Ryan v. Gilmer*, 2 *Mont.* 517; s. c., 25 *Am. R.* 744. Followed in *Alabama Great Southern R. R. Co. v. Hawk*, 72 *Ala.* 112; s. c., 47 *Am. R.*, 403; *Hawker v. Baltimore & O. R. R. Co.*, 15 *W. Va.* 455; s. c., 36 *Am. R.* 820, 827, with note. Approved in *Bellefontaine R'y Co. v. Hunter*, 33 *Ind.* 335; s. c., 5 *Am. R.*, 205. Reviewed at length with *Hamilton v. N. Y. Central R. R. Co.*, 51 *N. Y.* 100; *Whitaker v. Eighth Ave. R. R. Co.*, *Id.* 295; *People v. Davis*, 56 *Id.* 95; *Tilson v. Terwilliger*, 56 *Id.* 273; *Casey v. N. Y. Central, &c. R. R. Co.*, 78 *Id.* 518; *Swift v. Mass. Mut. Life Ins. Co.*, 63 *Id.* 186; *Schnicker v. People*, 88 *Id.* 192 (Admissibility of declarations as part of *res gestae*) in *Waldele v. N. Y. Central, &c. R. R. Co.*, 95 *Id.* 274.
- Lucas v. Jefferson Ins. Co.**, 6 *Cow.* 635. Collated and reviewed with other cases (Liabilities of successive insurers) in 28 *Am. Dec.* 122, n.
- **v. Johnson**, 8 *Barb.* 244. See *Boyce v. Bates*. Explained (Ejectment against trustees of religious corporations) in *Sedgw. & W. on Tr. of Tit. to Land*, § 243.
- **v. N. Y. Central R. R. Co.** See *Safford v. Drew*.
- Luce v. Carley**, 24 *Wend.* 451; s. c., 35 *Am. Dec.* 637, with note wherein are collected citations. See *Child v. Starr*. Followed (Boundary of land on stream) in *Warren v. Thompson*, 75 *Me.* 329; s. c., 46 *Am. R.* 397. Explained in 3 *Washb. on Real Prop.* 4 cd. 411.
- **v. Dunham**, 7 *Hun.* 202. Aff'd and rev'd in part, and modified in 69 *N. Y.* 86. See *Murdock v. Ward*; *Wright v. Trustees of Meth. Epis. Church*. Decision in 69 *N. Y.* disting'd (Widow, as next of kin) in *Betsinger v. Chapman*, 24 *Hun.* 15, 18. Followed in *Keteltas v. Keteltas*, 72 *N. Y.* 312, 316. Disting'd (Effect of gift to "heirs") in *Loomis v. White*, 16 *Weekly Dig.* 407.
- **v. Hartshorn**, 7 *Lans.* 331. Aff'd in 56 *N. Y.* 621.
- **v. Trempert**, 9 *How. Pr.* 212. See (Service of copy of complaint) *Code Civ. Pro.* 1881, § 479, n.
- Ludden v. Hazen**, 31 *Barb.* 650. See *Steel-yards v. Singer*. Disting'd (Effect of conditional sale, as to third persons) in *Powell v. Preston*, 1 *Hun.* 513. See authorities collected in *Lewis v. McCabe*, 49 *Conn.* 141, 149; s. c., 21 *Am. L. Reg. N. S.* 217, with note, also collating authorities.
- Luddington v. Miller**, 36 *Super. Ct. (J. & S.)* 1. Aff'd, it seems, in 53 *N. Y.* 643, but without opinion. Further proceeding in 38 *Super. Ct. (J. & S.)* 478.
- Ludington v. Bell**, 43 *Super. Ct. (J. & S.)* 557. Rev'd in 77 *N. Y.* 138; s. c., 33 *Am. R.* 601. Another proceeding in 45 *Super. Ct. (J. & S.)* 513.
- Ludlam v. Ludlam**, 31 *Barb.* 486. Aff'd in 26 *N. Y.* 356. Decision in *Id.* cited (Citizenship of children born abroad of American citizens) in 2 *Kent Com.* 49, n. b, *Holmes' ed.*; and compared with *Ch. J. Cockburn's* work on *Nationality*, ch. 1, § 2.
- Ludlow v. Bowne**, 1 *Johns.* 1; s. c., 3 *N. Y. Com. L. Law. ed.* 35, with brief note. Approved and followed (Effect of shipment from neutral to belligerent) in *N. Y. Ins. Co. v. De Wolf*, 2 *Cow.* 56, 106. Cited with *De Wolf v. N. Y. Ins. Co.*, 20 *Johns.* 214, as contrary to the doctrine in the text, in *Waples Proc. in Rem.*, § 292.
- **v. Dale**, 1 *Johns. Cas.* 16. Rev'd in 2 *Id.* 451. See other cases collated (Effect of foreign sentence in prize court of admiralty) in 2 *Kent Com.* 121, n. c.
- **v. Dole**, 1 *Hun.* 715; s. c., 4 *Sup'm. Ct. (T. & C.)* 653. Aff'd in 62 *N. Y.* 617.
- **v. Hudson River R. R. Co.**, 6 *Lans.* 128. Further decision in 4 *Hun.* 239; s. c., 6 *Sup'm. Ct. (T. & C.)* 420. Decision in 6 *Lans.* quoted and discussed (Nuisance as affecting support of lands) in *Wood on Nuis.* 2 ed. § 208.
- **v. Hurd**, 19 *Johns.* 218. See *Barrow v. Paxton*; *Beals v. Guernsey*. Commented on (Effect of retention of possession by vendor of goods) in 1 *Story on Contr.* 5 ed. § 666, n. 2.

- **v. N. Y. & Harlem R. R. Co.**, 12 *Barb.* 440. Explained (Waiver of forfeiture for breach of condition) in 2 *Washb. on Real Prop.* 4 ed. 20.
- **v. Simond**, 2 *Cal. Cas.* 1; s. c., 2 *Am. Dec.* 291, with note, wherein it is shown to have been extensively cited and indorsed both in the Federal courts and elsewhere as an authority. See *Mackay v. Bloodgood*; *Pain v. Packard*; *Rochester City Bank v. Elwood*; *Woodworth v. Bank of America*. Applied (Jurisdiction of equity in matters of account) in *Hawley v. Cramer*, 4 *Cow.* 727. Followed and approved (Objection to jurisdiction of equity, when too late) in *Rees v. Smith*, 1 *Ohio*, 124; s. c., 13 *Am. Dec.* 599, with note. Cited as uniformly sustained (Equitable liability of surety) in *Kelso v. Tabor*, 52 *Barb.* 131. Applied to liability of married woman's separate estate,—in *Yale v. Dederer*, 18 *N. Y.* 276, but explained on this point in *Corn Exchange Ins. Co. v. Babcock*, 42 *Id.* 643. Cited with approval (Principles regulating liability of surety) in *Citizen's Loan Ass'n of Newark v. Nugent*, 11 *Vroom (N. J.)* 215; s. c., 29 *Am. R.* 230. Followed in *W. W. Kimball Co. v. Baker*, 62 *Wis.* 530. Applied (Effect of sealed agreement executed by partner for firm) in *Gram v. Seton*, 1 *Hall*, 272. Approved and relied on with *Mackay v. Bloodgood*, 9 *Johns.* 285; *Skinner v. Dayton*, 19 *Id.* 513; *Randall v. Van Vechten*, *Id.* 60; *Gram v. Seton*, 1 *Hall*, 262, in *Cady v. Shepherd*, 11 *Pick. (Mass.)* 400; s. c., 22 *Am. Dec.* 379, 382, with note.
- **v. Van Rensselaer**, 1 *Johns.* 94; s. c., 3 *N. Y. Com. L. Law. ed.* 70, with brief note (Validity of contract as determined by law of place).
- **v. Village of Yonkers**, 43 *Barb.* 493. Explained (Damages for nuisance) in *Wood on Nuis.* 2 ed. § 873.
- Luff v. Pope**, 5 *Hill*, 413. Aff'd in 7 *Id.* 577. See *Cowperthwaite v. Sheffield*; *Hutter v. Ellwanger*. Both decisions applied (Right of action on promise to accept or pay draft) in *Exchange B'k of St. Louis v. Rice*, 107 *Mass.* 37; s. c., 9 *Am. R.* 1.
- Luhres v. Eimer**, 15 *Hun*, 399. Aff'd in 80 *N. Y.* 171.
- Luke v. City of Brooklyn**, 43 *Barb.* 54. See *Atlantic Dock Co. v. City of Brooklyn*. Followed (Boundary between N. Y. and Kings counties) in *Atlantic Dock Co. v. City of Brooklyn*, 1 *Abb. Ct. App. Dec.* 24. Explained and disting'd in *Orr v. Same*, 36 *N. Y.* 661.
- Luling v. Atlantic Mut. Ins. Co.**, 45 *Barb.* 510; s. c., 30 *How. Pr.* 69. Rev'd in 50 *Barb.* 520; and that aff'd in 51 *N. Y.* 207.
- Lumbard v. Syracuse, B. & N. Y. R. R. Co.**, 64 *Barb.* 609. Rev'd in 55 *N. Y.* 491. Further decision in 62 *Id.* 290. Decision in 55 *Id.* followed (Mechanic's lien, when not to be acquired by material man to sub-contractor) in *Crane v. Genin*, 60 *Id.* 127, 129.
- Lummis v. Kasson**, 43 *Barb.* 373. Followed (Effect of offer of indemnity on liability of sheriff) in *Dolson v. Saxton*, 11 *Hun*, 565. Followed and approved in *Wadsworth v. Walliker*, 45 *Iowa*, 395; s. c., 24 *Am. R.* 788, 791.
- Lund v. Seaman's Bank**, 20 *How. Pr.* 461. Further decision in 37 *Barb.* 129; s. c., 23 *How. Pr.* 258. Decision in *Id.* disting'd (Interpleader by bank) in *Bruggemann v. Bank of Metropolis*, 1 *City Ct.* 86. Disting'd (Claim by third person, when a defense) in *Matheny v. Mason*, 73 *Mo.* 677; s. c., 39 *Am. R.* 641.
- Lunt v. Bank of North America**, 49 *Barb.* 221. Cited as authority with *Chapman v. White*, 6 *N. Y.* 412; *Ætna Bank v. Fourth Nat. Bank*, 46 *Id.* 82; *Duncan v. Berlin*, 60 *Id.* 151; *Attorney-General v. Continental Life Ins. Co.*, 71 *Id.* 325 (Effect of check as assignment) in *Dickinson v. Coats*, 79 *Mo.* 250, 253; s. c., 45 *Am. R.* 355, n.; where also the doctrine in said to be supported by the weight of authority, by U. S. Sup'm. Ct. and courts of last resort in Md., Mass., N. Y., & Pa. as against Iowa, So. Car. and the case of *Munn v. Burch*, 25 *Ill.* 85.
- Lupin v. Marie**, 2 *Paige*, 169. Aff'd in 6 *Wend.* 77; s. c., 21 *Am. Dec.* 256, with note, wherein it is said to have been frequently approved in N. Y. (No property passes to one purchasing goods with preconceived design of not paying for them) in *Bidaut v. Wales*, 19 *Mo.* 36; s. c., 19 *Am. Dec.* 327.
- Lupton v. Lupton**, 2 *Johns. Ch.* 623. See *Reynolds v. Reynolds*. Reviewed and disting'd with *Myers v. Eddy*, 47 *Barb.* 263; *Spilane v. Duryea*, 51 *How. Pr.* 260; *Babcock v. Stoddard*, 3 *Sup'm. Ct. (T. & C.)* 207; *Kinnier v. Rogers*, 42 *N. Y.* 531; *Hoyt v. Hoyt*, 85 *Id.* 142, 147; *Bevan v. Cooper*, 72 *Id.* 317; *Shulters v. Johnson*, 38 *Barb.* 80; *Tracy v. Tracy*, 15 *Id.* 503; *R. C. Church v. Wachter*, 42 *Id.* 43; *Ragan v. Allen*, 7 *Hun*, 537; *Hall v. Thompson*, 23 *Id.* 334; *Taylor v. Dodd*, 58 *N. Y.* 335; *Lefevre v. Toole*, 84 *Id.* 95; *Finch v. Hull*, 24 *Hun*, 227; *Manson v. Manson*, 8 *Abb. N. C.* 123 (Legacies; when chargeable on real estate) in *McCorn v. McCorn*, 30 *Hun*, 171. Followed in *Babcock v. Stoddard*, 3 *Sup'm. Ct. (T. & C.)* 207, 209. Disting'd with *Bevan v. Cooper*, 72 *N. Y.* 317; in *Scott v. Stebbins*, 91 *N. Y.* 605. Followed as always having been regarded as a leading authority,—in *Stoddard v. Johnson*, 13 *Hun*, 606. Approved and followed, in *Myers v. Eddy*, 47 *Barb.* 263, 270. Explained in *Hoyt v. Hoyt*, 85 *N. Y.* 142, 149. Disting'd in *Ragan v. Allen*, 7 *Hun*, 537. Disting'd (Liability of executor to legatees in case of waste of assets) in *Johnson v. Johnson*, 2 *Hill Ch. (So. Car.)* 277; s. c., 29 *Am. Dec.* 72, 85, with note.
- **v. Smith**, 3 *Hun*, 1; s. c., more fully, 48 *How. Pr.* 261; 5 *Sup'm. Ct. (T. & C.)* 274.
- Lush v. Alburtis**, 1 *Bradf.* 456. Explained



- (Parties to be cited to probate of will) in *Willard on Executors*, 155.
- **v. Druze**, 4 *Wend.* 313. See *Loomis v. Jackson*; *Remsen v. Conklin*. Followed and approved (Interest on arrears of rent) in *Van Rensselaer v. Jewett*, 5 *Den.* 135. Disting'd (Evidence of market price) in 60 *N. Y.* 469, 474.
- Lusk v. Campbell**, 3 *Hun.* 607. Aff'd in 63 *N. Y.* 619.
- **v. Hastings**, 1 *Hill*, 656. Approved and followed (When powers of attorney of record terminate) in *Doane v. Glenn*, 1 *Col.* 454.
- **v. Lusk**. See *Lusk v. Smith*.
- **v. Smith**, 8 *Barb.* 570; s. c., as *Lusk v. Lusk*, 4 *How. Pr.* 418; s. c., 3 *Code R.* 113. Disting'd (Power of judge at Special Term to hear motion for new trial) in *Van de Wiele v. Callanan*, 7 *Daly*, 386, 391. Cited with other cases (Surviving partner cannot execute firm note) in 11 *Am. L. Reg. N. S.* 545.
- Lutes v. Briggs**, 5 *Hun.* 67. Rev'd in 64 *N. Y.* 404. Decision in *Id.* collated with other cases (Change of plan of public work) in 5 *Abb. N. C.* 44, n.
- Lyddy v. Kenny**, *N. Y. Daily Reg.* Feb. 10, 1879. Disapproved (Costs to abide event) in *Mott v. Consumers' Ice Co.*, 8 *Daly*, 245, 247, where *Carvey v. Rider*, 2 *Cow.* 617, was followed in preference.
- Lyke v. Van Leuven**, 4 *Den.* 127. Aff'd in 1 *N. Y.* 515. Both decisions followed (Liability of owner of trespassing animal) in *Chunot v. Larson*, 43 *Wis.* 536; s. c., 28 *Am. R.* 567.
- Lyle v. Murray**, 4 *Sandf.* 590. Applied (When statute of limitations begins to run) in *Mills v. Hicks*, 44 *Super. Ct. (J. & S.)* 527, 530. Collated with other cases in *Throop's Justice's Man.* 2 ed. 188. See *Code Civ. Pro.* 1881, § 410, n.
- **v. Smith**, 13 *How. Pr.* 104. See, also (Appointment of guardian *ad litem* in partition suit) *Varian v. Stevens*, 2 *Duer*, 635. See to the contrary *Townley v. Harrison*, 25 *How. Pr.* 266.
- Lyman v. Cartwright**, 3 *E. D. Smith*, 117. See (Effect of payment by person indebted to judgment debtor) *Code Civ. Pro.* 1881, § 2450, n.
- **v. Mutual Ins. Co.** See *Fulton v. Matthews*.
- **v. Parsons**, 28 *Barb.* 564. Aff'd as *Parsons v. Lyman*, in 20 *N. Y.* 103; but different directions given as to principles of accounting.
- **v. United Ins. Co.**, 2 *Johns. Cas.* 630. Aff'd in 17 *Johns.* 373; s. c., 6 *N. Y. Com. L. Law. ed.* 400, with brief note. See *Wiser v. Blachly*. Decision in 17 *Johns.* approved by *Wright, J.* (Reformation of contract for mistake) in *Rider v. Powell*, 4 *Abb. Ct. App. Dec.* 63, 67.
- Lynch, Ex parte**, 2 *Hill*, 46. Opinion of *Nelson, J.*, followed (Action for neglect of corporate duty to pay debt) in *Brown v. Town of Canton*, 4 *Lans.* 409, 412.
- Lynch v. Clark**, 1 *Sandf. Ch.* 583. Criticised (Citizenship of person born of alien parents within U. S.) in 12 *Wash. L. R.* 729. Cited as a case containing extensive discussion (Distinction between aliens and citizens in law) in 2 *Kent Com.* 39, n. a.
- **v. Crary**, 34 *Super. Ct. (J. & S.)* 461. Rev'd in 52 *N. Y.* 181; s. c., more fully, 14 *Abb. Pr. N. S.* 85. Decision in *Id.* cited as authority (Extent of power to levy on debt) in *Smith v. Longmire*, 24 *Hun.* 257, 259.
- **v. Cunningham**, 6 *Abb. Pr.* 94. Explained (Effect of failure to pay interest on mortgage, when due) in *Asendorf v. Meyer*, 8 *Daly*, 278, 281.
- **v. Davis**, 12 *How. Pr.* 323. Explained and criticised (Right of husband to recover for injury causing death of wife) in *Green v. Hudson River R. R. Co.*, 2 *Alb. Ct. App. Dec.* 280, 284. But see *L.* 1860, c. 90.
- **v. Johnson**, 46 *Barb.* 56. Aff'd in 48 *N. Y.* 27. With decision in *Id.* see (Application in supplementary proceedings of property of debtor to payment of judgment) *Code Civ. Pro.* 1881, § 2450, n.
- **v. Livingston**, 8 *Barb.* 463. Aff'd in 6 *N. Y.* 422.
- **v. McNally**, 7 *Daly*, 126. Aff'd in 73 *N. Y.* 347.
- **v. Mayor, &c. of N. Y.**, 76 *N. Y.* 60; s. c., 32 *Am. R.* 271, with note on obstruction of surface water. Followed (Liability of municipal corporation for error of judgment) in *Burford v. Grand Rapids*, 53 *Mich.* 98, 101.
- **v. Metropolitan Elevated R. R. Co.**, 24 *Hun.* 506. Aff'd in 90 *N. Y.* 77. Decision in *Id.* commented on (Common carrier detaining passenger after trip is completed, to collect ticket) in 1 *Add. on Contr.* 567, n. 1, *Abb. ed.* Decision in 24 *Hun.* quoted and collated with other cases in *Lawson Lead. Cas. Crim. L. Simplified*, 190.
- **v. Meyers**, 3 *Daly*, 256. See (Taxation of sheriff's fees, how obtained) *Code Civ. Pro.* 1881, § 3287, n.
- **v. Mosher**, 4 *How. Pr.* 86. See *Barnard v. Wheeler*. Opposed (Time of motion to change place of trial) in *Schenck v. McKie*, 4 *How. Pr.* 246. See *Mixer v. Kuhn*, *Id.* 409.
- **v. Stone**, 4 *Den.* 356. Explained (Estoppel created by declarations of agent of the State who takes water for canal purposes) in *Walrath v. Baxter*, 11 *Barb.* 382; *Walrath v. Redfield*, 18 *N. Y.* 457. Disting'd (Exercise of power confided to canal commissioners) in *St. Peter v. Denison*, 58 *N. Y.* 416, 422.
- **v. Utica Ins. Co.** See *Foote v. Colvin*.
- Lynde v. Budd**, 2 *Paige*, 191; s. c., 21 *Am. Dec.* 84, with note containing citations of the case respecting infants' contracts.
- **v. Hough**, 27 *Barb.* 415. Explained (Condition not to underlet, whether broken by assignment of the entire term) in 1 *Wash. on Real Prop.* 4 ed. 473.

— **v. Lynde**, 4 *Sandf. Ch.* 373. Aff'd in 2 *Barb. Ch.* 62. These decisions 4 *Sand. Ch.* 373, explained (Alimony *pendente lite*) in 2 *Bish. on Mar. & D.* § 457, n. 1, 6 ed.

— **v. Noble**, 20 *Johns.* 80. Examined and followed (Effect of certiorari) in Devlin v. Platt, 11 *Abb. Pr.* 398, 400.

**Lynes v. Townsend**, 33 *N. Y.* 558. Applied (When subsequently acquired lands will pass by will) in Quinn v. Hardenbrook, 54 *Id.* 83, 89. Explained in Youngs v. Youngs, 45 *Id.* 254. Cited with Byrnes v. Baer, 86 *Id.* 210; Lent v. Lent, 24 *Hun.* 436; Quinn v. Hardenbrook, 54 *N. Y.* 83; Newell v. Toles, 17 *Hun.* 76; Woods v. Moore, 4 *Sandf.* 579; Hancock v. Hancock, 22 *N. Y.* 568, in reporter's note to Ex'r of Gardner v. Gardner, 10 *Stew.* (37 *N. J. Eq.*) 487; s. c., 29 *Alb. L. J.* 190. Quoted in 1 *Jarm. on Wills*, Rand. & T. ed. 604, n.

**Lyon v. Bakesly**, 19 *Hun.* 299. Followed (Allegations in affidavit for attachment) in Trow Printing, &c. Co. v. Hart, 60 *How. Pr.* 190.

— **v. Blossom**, 4 *Duer*, 318. Applied (Duty of "third arbitrator") in Day v. Hammond, 57 *N. Y.* 479, 484.

— **v. Chase**, 51 *Barb.* 14. Disapproved (Presumption of payment of rent) in subsequent decision in 63 *Id.* 89, 96. Decision in 8 *N. Y.* disting'd (Amount of recovery on bond) in Beers v. Shannon, 73 *Id.* 292, 303; which rev'd 12 *Hun.* 61, which see. Reviewed with Brainard v. Jones, 18 *N. Y.* 35, and other cases in 1 *Am. Dec.* 338, n. Commented on in 2 *Sedgw. on Dama.* 7 ed. 262, n.

— **v. Jerome**, 15 *Wend.* 569. Rev'd in 26 *Id.* 485.

— **v. Mitchell**, 36 *N. Y.* 235. Dissenting opinion of GROVER, J., is at p. 682. See decision below in 2 *Robt.* 523. Decision in 36 *N. Y.* explained and followed (Invalidity of claim for lobby service) in Russell v. Burton, 66 *Barb.* 539, 544. Examined with other cases (Broker's commissions, when earned) in Sibbald v. Bethlehem Iron Co., 83 *N. Y.* 378, 382.

— **v. Platner**, 11 *N. Y. Leg. Obs.* 87. Collated with other cases (Assignee for benefit of creditors, selling on credit) in *Bishop on Assign.* § 211.

— **v. Richmond**, 2 *Johns. Ch.* 51. Rev'd as Lyon v. Tallmadge, in 14 *Johns.* 501. See Clark v. Dutcher; Shotwell v. Murray. Decision in 2 *Johns. Ch.* followed (Relief against mistake of law) in Fellows v. Heermans, 4 *Lans.* 230, 243. Reviewed with Hall v. Reed, 2 *Barb. Ch.* 503; Champlin v. Laytin, 18 *Wend.* 423; 1 *Edw.* 467, and other cases in State v. Paup, 13 *Ark.* 129; s. c., 56 *Am. Dec.* 303. Approved in *Waterman on Sp. Perf.* § 356, n. Doctrine discussed in 3 *Alb. L. J.* 449.

— **v. Smith**, 11 *Barb.* 124. See Butler v. Benson. Quoted (Execution and attestation of will) in 1 *Jarm. on Wills*, Rand. & T. ed. 222, n. 19.

— **v. Snyder**. See Van Tuyl v. Van Tuyl.

— **v. Tallmadge**. See Lyon v. Richmond; Shotwell v. Murray.

— **v. Valentine**, 33 *Barb.* 271. See to the contrary (Broker's commissions) Elting v. Sturtevant, 41 *Conn.* 176. But see *Abb. Tr. Ev.* 380.

— **v. Yates**, 52 *Barb.* 237. See Kerr v. Mount. Disting'd (Liability for acting under erroneous process) in Day v. Bach, 46 *Super. Ct. (J. & S.)* 460, 466. Explained and disting'd in Hall v. Munger, 5 *Lans.* 100.

**Lytle v. Beveridge**, 7 *Lans.* 225. Aff'd in 58 *N. Y.* 592. See Davoue v. Fanning. Decision in 58 *N. Y.* quoted (Voidable purchases by trustees) in *Wait on Fraud. Conv.* § 470.

## M.

**Maas v. Goodman**, 2 *Hill.* 275. Approved (Set-off against assignee) in Schieffelin v. Hawkins, 14 *Abb. Pr.* 112, 115. Overruled in Martin v. Kunzmueller, 37 *N. Y.* 396.

— **v. Missouri, Kansas & T. R. R. Co.**, 11 *Hun.* 8. Further decision in 83 *N. Y.* 223.

— **v. O'Brien**, 14 *Hun.* 95. Applied (Effect of bankruptcy proceedings on imprisonment under State law) in matter of Fitzgerald, 8 *Daly*, 188, 190.

**Mabbett v. White**, 12 *N. Y.* 442. See Havens v. Hussey. Followed (Power of one partner to transfer partnership property) in McClelland v. Remsen, 14 *Abb. Pr.* 335; Graser v. Stellwagen, 25 *N. Y.* 317. Followed as established law, in Van Brunt v. Applegate, 44 *Id.* 547. Disting'd in Pettie v. Orser, 6 *Bosc.* 136. Compare Welles v. March, 30 *N. Y.* 350; Palmer v. Myers, 29 *How. Pr.* 9. Collated with Egberts v. Wood, 3 *Paige*, 517; Everit v. Strong, 5 *Hill*, 163; 7 *Id.* 583; Hudson v. McKenzie, 1 *E. D. Smith*, 358, and authorities from other States in 22 *Am. L. Reg. N. S.* 37. Followed as decisive (Objection when too general) in Murphy v. People, 63 *N. Y.* 595.

**McAdam v. Cooke**, 6 *Daly*, 101. Followed (When one is not *bona fide* holder of note for value) in Ayres v. Leyboldt, *Id.* 91, 94.

**McAdams, Matter of**, 19 *Hun.* 292. Compare (Costs in lunacy proceedings) *Code Civ. Pro.* § 2336.

**McAllister v. Hammond**, 6 *Cow.* 342. Disting'd with Guille v. Swan, 19 *Johns.* 381; Hay v. Cohoes Co., 2 *N. Y.* 159 (Liability of one engaged in lawful act, for accidental injury) in Miller v. Martin, 16 *Mo.* 508; s. c., 57 *Am. Dec.* 242.

— **v. Reab**, 4 *Wend.* 483. Aff'd as Reab v. McAllister, in 8 *Id.* 109. See Batterman v. Pierce; Pechner v. Phoenix Ins. Co. Decision in 4 *Wend.* explained (Duty of one sued for purchase price to set up breach of warranty, &c.) in McDonald v. Christie, 42 *Barb.* 36, 40; Barth v. Burt, 17 *Abb. Pr.* 353. Approved in 2 *Sedgw. on Meas. of*

- Dama*, 7 ed. 289. For extension of rule see (Proof of accuracy of books) *Foster v. Coleman*, 1 *E. D. Smith*, 85. See also *Abb. Tr. Ev.* 325. Criticised as incorrect (Presumption that uniform custom of merchant is known to customers, &c.) in *Lawson on Usages and Customs*, 52. Applied (Recoupment in cases other than those of fraud) in *Allaire Works v. Guion*, 10 *Barb.* 58; *Batterman v. Pierce*, 3 *Hill*, 177; *Whitbeck v. Skinner*, 7 *Id.* 55. Decision in 8 *Wend.* disting'd in *Walker v. Shoemaker*, 4 *Hun.* 579, 581, a case of action for rent. Head-note to 4 *Wend.* corrected (Interest on running account) in *Eslery v. Cole*, 1 *Barb.* 236.
- McAlpin v. Powell**, 1 *Abb. N. C.* 427. Rev'd in 70 *N. Y.* 126; s. c., 55 *How. Pr.* 163; 29 *Am. R.* 555, with note. See *Mangan v. Brooklyn R. R. Co.* Decision in 1 *Abb. N. C.* approved (Liability of landlord for failure to provide sufficient fire-escapes) in *Willy v. Mulledy*, 6 *Abb. N. C.* 97, 103, notwithstanding reversal in 70 *N. Y.* Decision in *Id.* collated with *Church of Ascension v. Buckhart*, 3 *Hill*, 193; *Mullaney v. Spence*, 15 *Abb. Pr. N. S.* 319, and other cases. (Negligence and contributory negligence in case of injuries received by children) in 31 *Am. R.* 206, n.
- McAndrew v. Whitlock**, 52-*N. Y.* 40. See *Place v. Union Express Co.*; *Redmond v. Liverpool, &c. Steamship Co.* Collated with other cases (When liability of carrier ends) in 8 *Am. Dec.* 215, n.
- McArdle v. Barney**, 16 *Abb. Pr. N. S.* 228; s. c., 50 *How. Pr.* 97. See *McArdle v. Barney*. Approved (Who may be appointed receiver) in *Chamberlain v. Greenleaf*, 4 *Abb. N. C.* 92, 95.
- McArthur v. Sears**, 21 *Wend.* 190. Followed with *Lawrence v. Barker*, 5 *Id.* 305; *Jackson v. Leek*, 12 *Id.* 105 (Contradicting one's own witness) in *Swamscot Machine Co. v. Walker*, 22 *N. H.* 457; s. c., 55 *Am. Dec.* 172. Followed (Carrier's exemption from liability for loss arising from "perils of the sea") in *Plaisted v. B. & K. S. N. Co.*, 27 *Me.* 132; s. c., 46 *Am. Dec.* 587, 590, with note. Discussed in *Ang. on Carr.* § 155, n. 5, §§ 196, 199, 5 ed. Approved in *Hutchinson on Carr.* § 181. Included with notes in 2 *Redf. Am. Railw. Cases*, 11.
- *v. Soule*, 66 *Barb.* 423. Further decision in 5 *Hun.* 63.
- McAuley v. Billinger**, 20 *Johns.* 89. See *Trustees of Hamilton College v. Stewart*. Examined (Subscriber's liability) in *Trustees of Hamilton College v. Stewart*, 1 *N. Y.* 581, 584. See cases collected (Limit of cost in execution of public undertaking) in 5 *Abb. N. C.* 463, n.
- McAvery v. Mayor, &c. of N. Y.** See *McAvery v. Same*.
- McAvery v. Mayor, &c. of N. Y.**, 54 *How. Pr.* 245. Previous decision briefly reported as *McAvery v. Same*, 4 *Weekly Dig.* 538. With decision in 54 *How. Pr.* compare (City officers as public agents) *Sage v. City of Brooklyn*, 8 *Abb. N. C.* 279.
- McBride v. Farmers' Bank**, 25 *Barb.* 657. Aff'd, on somewhat different grounds, in 26 *N. Y.* 450. Decision in *Id.* followed and explained (Title to notes, &c., received by bank for collection) in *Commercial Bank of Clyde v. Marine Bank*, 6 *Abb. Pr. N. S.* 40. Followed in *Lindauer v. Fourth Nat. B'k*, 55 *Barb.* 84. Disting'd in *Dickerson v. Wason*, 48 *Id.* 235. Cited as authority with *Commercial Bank of Clyde v. Marine Bank*, 3 *Keyes*, 337, in *Blaine v. Bourne*, 11 *R. I.* 119; s. c., 23 *Am. R.* 429. Followed (Antecedent debt, when not a consideration) in *Philbrick v. Dallett*, 12 *Abb. Pr. N. S.* 426. Applied (Effect of assignment of demand, made to avoid difficulty as to jurisdiction) in *Petersen v. Chemical B'k*, 32 *N. Y.* 48. Followed as decisive (Title to proceeds of negotiable paper) in *Comstock v. Hier*, 73 *Id.* 277. Applied (Power of judge at trial to direct hearing at General Term) in *Dickerson v. Wason*, 48 *Barb.* 513.
- *v. Hagan*. See *Buckley v. Buckley*; *Green v. Beals*.
- McBurney v. Wellman**, 42 *Barb.* 390. Aff'd as *Dodge v. Wellman*, 1 *Abb. Ct. App. Dec.* 512; s. c., 43 *How. Pr.* 427. Decision in 42 *Barb.* followed (Right to show that grant, absolute on its face, is intended as mortgage) in *Carr v. Carr*, 52 *N. Y.* 251, 259; which aff'd 4 *Lans.* 314, 326, 330, which see.
- McButt v. Hirsch**, 4 *Abb. Pr.* 441. Disting'd with *Mallory v. Leach*, 14 *Id.* 449 (Merger of original cause of action for fraud in judgment) in *Warner v. Cronkhite*, *U. S. Cir. Ct. E. D. Wis.*, 13 *Nat. Bankr. Reg.* 52. See *Code Civ. Pro.* 1881, § 552, n.
- McCabe v. McCabe**, 18 *Hun.* 153. Explained (Compensation as between tenants in common) in *Moak's Undervill's Torts*, 1 *Am. ed.* 384. See *Code Civ. Pro.* 1881, § 1589, n.
- McCafferty v. Decker**, 3 *Hun.* 604. Further proceedings in 12 *Hun.* 455.
- *v. Spuyten Duyvil, &c. R. R. Co.*, 61 *N. Y.* 178; s. c., 19 *Am. R.* 267, and less fully, 48 *How. Pr.* 44. See *Blake v. Ferris*; *King v. N. Y. Central R. R. Co.* Applied (Liability of one employing contractor) in *Martin v. Tribune Ass'n*, 30 *Hun.* 391.
- McCahey v. Woodin**, 62 *Barb.* 316. Rev'd in 65 *N. Y.* 459; s. c., 22 *Am. R.* 644, with note. See *Gardner v. McEwen*. Decision in 65 *N. Y.* explained and followed (Mortgaging after-acquired property) in *Kennedy v. Nat. Union Bank of Watertown*, 23 *Hun.* 494, 497. Followed in *Moore v. Byrum*, 10 *So. Car.* 452; s. c., 30 *Am. R.* 58, with note collating cases. Approved in *Fejavy v. Broesch*, 52 *Iowa*, 88; s. c., 35 *Am. R.* 261. Approved in *Parker v. Jacobs*, 14 *So. Car.* 114. Collated with other cases in *McAdam on Landl. & T.* 2 ed. §§ 121, 150. Quoted and explained and applied to sales in 1 *Benj. on Sales*, § 80, n. 4 (Corbin's 4 *Am. ed.*)

- McCahill v. Hamilton**, 20 *Hun*, 388. See *Amsbey v. Hinds*. Disting'd (Right of purchaser to refuse doubtful title) in *Onderdonk v. Ackerman*, 62 *How. Pr.* 318, 322.
- McCall v. McCall**, 54 *N. Y.* 541. Examined with other cases (Correction of judgment) in *Rockwell v. Carpenter*, 25 *Hun*, 529, 532.
- **v. N. Y. Central, & C. R. R. Co.**, 54 *N. Y.* 642. Followed (Contributory negligence in one driving across railroad track) in *Bronk v. N. Y. & New Haven R. R. Co.*, 5 *Daly*, 454, 457. Disting'd in *Stackus v. N. Y. Central, & C. R. R. Co.*, 79 *N. Y.* 468.
- **v. Sun Mutual Ins. Co.**, 39 *Super. Ct. (J. & S.)* 330. Rev'd in 66 *N. Y.* 505.
- McCann v. Bradley**, 15 *How. Pr.* 72. Opposed (Costs against executors) in *Tindal v. Jones*, 11 *Abb. Pr.* 258. Overruled in *Merritt v. Thompson*, 27 *N. Y.* 225. Compared and denied in 25 *Moak Eng.* 83, n.
- **v. People**, 3 *Park.* 272. Rev'd in *People v. McCann*, 16 *N. Y.* 578. See opinions in both courts, in 15 *How. Pr.* 503, with charge of GOULD, J., on third trial. Decision in 6 *Park.* stated to be practically overruled (Review in criminal cases) in 1 *Ab. L. J.* 83.
- McCardle v. Barney**, cited in *Chamberlain v. Greenleaf*, 4 *Abb. N. C.* 92, 95, is reported as *McArdle v. Barney*, 16 *Abb. Pr. N. S.* 228; s. c., 50 *How. Pr.* 97.
- McCarney v. People**. Explained (Participation as principal or accessory) in 3 *Greenl. on Ev.* 14 ed. § 40, n. a.
- McCarron v. People**, 2 *Park.* 183. Aff'd in 13 *N. Y.* 74.
- McCartee v. Camel**, 1 *Barb. Ch.* 455. See *Stouvenel v. Stephens*. Disting'd with *Clark v. Chadeagne*, 10 *Hun*, 97; *Clark v. Ford*, 1 *Abb. Ct. App. Dec.* 359; *Loder v. Hatfield*, 71 *N. Y.* 102; *Warren v. Paff*, 4 *Bradf.* 260 (Limitation of action on claim of legatee) in *Foster v. Town*, 2 *Dem.* 333.
- **v. Orphan Asylum Soc'y**, 9 *Cov.* 437; s. c., 18 *Am. Dec.* 516, with note showing it to have been often approved on the points decided. See case, &c., bound with that in *Seymour v. Delancey*, at State Libr. in Albany. See *Coggeshall v. Pelton*; *Downing v. Marshall*; *Jackson v. Hammond*. Examined (Devises to corporations) in *McCaughal v. Ryan*, 27 *Barb.* 385; *Wright v. Trustees of Meth. Epis. Church*, *Hoffm.* 227; *King v. Woodhull*, 3 *Edw.* 87; *Ayres v. Methodist Church*, 3 *Sandf.* 302. Examined at length in *Downing v. Marshall*, 23 *N. Y.* 384, and see dissenting opinion of DAVIES, J., in 23 *How. Pr.* 10. Applied in *Attorney-General v. Ref'd Prot. Dutch Church*, 33 *Barb.* 313. Explained in *Williams v. Williams*, 8 *N. Y.* 551. Opinion of JONES, Chancellor, followed and reversal explained, in *Theological Sem. of Auburn v. Childs*, 4 *Paige*, 424. Commented on in *Morawetz on Corp.* § 160. Discussed in *Ang. & A. on Corp.* §§ 178, 182, 11 ed. Opinion of JONES, Chancellor, approved, in *Levy v. Levy*, 33 *N. Y.* 134, as exhaustively examining subject of charitable trusts. Opinion in *Ct. of Errors* likewise approved in *Bascom v. Albertson*, 34 *N. Y.* 608. Approved with *Attorney-General v. Utica Ins. Co.*, 2 *Johns. Ch.* 383, in *Moore's Heirs v. v. Moore's Devises*, 4 *Dana (Ky.)* 354; s. c., 29 *Am. Dec.* 417, 420, with note. See cases collected in 13 *Am. L. Reg. N. S.* 81. Followed (Repeal by implication) in *Peck v. Peck*, 8 *Abb. N. C.* 400, 402.
- **v. Teller**, 2 *Paige*, 511. Aff'd in 8 *Wend.* 267. See *Shotwell v. Murray*. Decision in 2 *Paige* commented on (Agreement of infant not to claim dower) in *Sharsw. & B. Cas. on Real Prop.* 355.
- McCarthy v. City of Syracuse**, 46 *N. Y.* 194. See *Mills v. City of Brooklyn*. Applied (Liability of public officer) in *Bassett v. Fish*, 12 *Hun*, 210, which was rev'd in 75 *N. Y.* 310, which see. Applied (Liability of municipal corporation for neglect of officers) in *Bastable v. City of Syracuse*, 8 *Hun*, 587, 593; *Nims v. Mayor, &c. of Troy*, 59 *N. Y.* 508, which aff'd 3 *Sup'm. Ct. (T. & C.)* 7, which see. Disting'd (Duty of municipal corporation to keep streets, &c., in repair) in *Hartford & N. Y. Steamboat Co. v. Mayor, &c. of N. Y.*, 12 *Hun*, 554; *Smith v. Mayor, &c. of N. Y.*, 6 *Sup'm. Ct. (T. & C.)* 686. Applied (Liability as affected by want of notice of defect) in *Irvine v. Wood*, 51 *N. Y.* 229; and see dissenting opinion of MONELL, Ch. J., in *Ham v. Mayor, &c. of N. Y.*, 37 *Super. Ct. (J. & S.)* 479.
- **v. McCarthy**, 54 *How. Pr.* 97. Rev'd in 13 *Hun*, 579. Further decision in 55 *How. Pr.* 418, aff'd in 16 *Hun*, 546; and that aff'd, but without opinion, in 84 *N. Y.* 671.
- **v. Noble**, 5 *N. Y. Leg. Obs.* 380. Colated with other cases (When objections to summary proceedings are to be made) in *McAdam on Landl. & T.* 2 ed. § 264.
- **v. Penke**, 18 *How. Pr.* 138. Further decision in 9 *Abb. Pr.* 164. Decision in *Id.* applied (Right of court first acquiring jurisdiction, to proceed) in *Harrington v. Libby*, 6 *Daly*, 259, 265. Explained in *Litchfield v. Smith*, 7 *Robt.* 306.
- **v. Whalen**, 19 *Hun*, 503. Aff'd in 87 *N. Y.* 148. Compare brief mem. in 21 *Hun*, 103, denying motion for leave to go to *Ct. of App.*
- McCartney v. Bostwick**, 31 *Barb.* 390. Rev'd in 32 *N. Y.* 53. See *Garfield v. Hatmaker*. Decision in 32 *N. Y.* applied (Rights of creditor in equity as affected by failure to exhaust legal remedies) in *Kamp v. Kamp*, 46 *How. Pr.* 147. Explained in *Sloan v. Waring*, 55 *Id.* 64; *Olcott v. Ocean Nat. B'k*, 46 *N. Y.* 20; and see *Chillingworth v. Freeman*, 67 *Barb.* 379, 383, as to effect of *Olcott v. Ocean Nat. B'k*. Referred to in *Evans v. Hill*, 18 *Hun*, 465, as overruled by *Estes v. Wilcox*, 67 *N. Y.* 264. Disting'd in *Elwell v. Johnson*, 3 *Hun*, 539; *Davis v. Bruns*, 33 *Id.* 649. Effect of this and other earlier cases, such

- as *Garfield v. Hatmaker*, 15 *N. Y.* 475; *Wood v. Robinson*, 22 *Id.* 564, compared with effect of later decisions, such as *Ocean Nat. B'k v. Olcott*, 46 *N. Y.* 12; *Dunlap v. Hawkins*, 59 *Id.* 342; 2 *Sup'm. Ct. (T. & C.)* 292, in *Pomeroy on Eq. Jur.* 615. Discussed in *Wait on Fraud. Conv.* § 83.
- *v. Welch*, 44 *Barb.* 271. Aff'd in 51 *N. Y.* 626. These decisions explained (Preference to loan made by wife) in *Burrill on Assign.* § 119, 4 ed.
- McCarty v. Deming**, 4 *Lans.* 440. Cited as authority (What may be proved by declarations of deceased persons) in *Southwest School District v. Williams*, 48 *Conn.* 504.
- *v. McPherson*, 11 *Johns.* 407. Applied with *Sprague v. Shed*, 9 *Id.* 140 (Discontinuance of suit brought before justice) in *Martin v. Fales*, 18 *Me.* 23; s. c., 36 *Am. Dec.* 693. See *Code Civ. Pro.* 1881, § 3075, n.
- McCaughal v. Ryan**, 27 *Barb.* 376. See *Jackson v. Adams*. Approved (Charitable uses) in 27 *Barb.* 260, 276. Collated with other cases in *Gerard Titles to Real Est.* 2 ed. 299. Followed (No proceedings necessary for escheat) in *Ettenheimer v. Heffernan*, 66 *Barb.* 374, 377.
- McCaughey v. Smith**, 27 *N. Y.* 39. See *Card v. Miller*; *Chappel v. Spencer*; *Muir v. Demaree*; *Partridge v. Colby*. Followed (Alteration of note when not material) in *Card v. Miller*, 1 *Hun.* 506. Disapproved as deciding no principle, and as clearly erroneous, in *McVean v. Scott*, 46 *Barb.* 379, 387.
- McCay v. Wait**, 51 *Barb.* 225. See (Action for waste) *Code Civ. Pro.* 1881, § 1651, n.
- McClaghry v. Wetmore**, 6 *Johns.* 82; s. c., 5 *Am. Dec.* 194. Followed (Language used by party or his counsel when not privileged) in *Mower v. Watson*, 11 *Verm.* 536; s. c., 34 *Am. Dec.* 704, 707.
- McClave v. Paine**, 2 *Sweeney*, 407; s. c., 41 *How. Pr.* 140. Aff'd 49 *N. Y.* 561; s. c., 10 *Am. R.* 431. See *Sibbald v. Bethlehem Iron Co.* Decision in 49 *N. Y.* followed (Broker's commissions, when earned) in *Dolan v. Scanlon*, 57 *Cal.* 265.
- McCleary v. Edwards**, 27 *Barb.* 239. See *Hall v. Barton*.
- *v. Kent*, 3 *Duer*, 27. Applied (Doctrine of *respondere superior*) in *Sulzbacher v. Dickie*, 6 *Daly*, 469, 479. Explained in 1 *Add. on Torts*, 591, n. Wood's ed.
- McClelland v. Remsen**, 36 *Barb.* 622; s. c., 14 *Abb. Pr.* 331. Aff'd in 3 *Abb. Ct. App. Dec.* 74; s. c., *Abb. Pr. N. S.* 250; 3 *Keyes*, 454. Decision in 14 *Abb. Pr.* quoted and collated with other cases (Assignment of part of debtor's property) in *Bishop on Assign.* § 167.
- McClosky v. Stewart**, 63 *How. Pr.* 137. Discussed (Creditor reaching property substituted or mingled) in *Wait on Fraud. Conv.* § 28.
- McClure v. Erwin**. See *Woods v. Rowan*.
- *v. Supervisors of Niagara*, 50 *Barb.* 594; s. c., 33 *How. Pr.* 262. Appeal dismissed in 3 *Abb. Ct. App. Dec.* 83; s. c., *Abb. Pr. N. S.* 202. Decision in 50 *Barb.* explained (Right to costs, as affected by failure to present claim to fiscal officer for allowance) in *Childs v. Village of West Troy*, 23 *Hun.* 68, 70.
- McClusky v. Cromwell**, 11 *N. Y.* 593. See *Rochester City Bank v. Elwood*. Followed (Liability of surety) in *Smith v. U. S.*, 2 *Wall.* 219.
- McColl v. Sun Mutnal Ins. Co.**, 34 *Super. Ct. (J. & S.)* 313. Aff'd in 50 *N. Y.* 332; s. c., 44 *How. Pr.* 452, where opinions in both courts are given. Another proceeding on the merits in 34 *Super. Ct. (J. & S.)* 313; also further decision in 39 *Id.* 330, which was rev'd in 66 *N. Y.* 505. With decision in 50 *Id.* see (When commission may issue) *Code Civ. Pro.* 1881, § 888, n.
- *v. Western Union Telegraph Co.* See *Landsberger v. Magnetic Tel. Co.*; *Young v. Western Union Tel. Co.*
- McCollum v. Seward**, 62 *N. Y.* 316. Disting'd (Opinion of witness, based on statement of another) in *Hagadorn v. Conn. Mut. Life Ins. Co.*, 22 *Hun.* 249, 262. Followed in *Seymour v. Fellows*, 44 *Super. Ct. (J. & S.)* 124, 129. Reviewed with other cases (Allowance of interest) in *White v. Miller*, 78 *N. Y.* 393, 397.
- McComb v. Wright**, 4 *Johns. Ch.* 659. Followed (Authority of auctioneer to make memorandum required by statute of frauds) in *Episcopal Church v. Wiley*, 2 *Hill (So. Car.)* 584; 1 *Riley*, 156; s. c., 30 *Am. Dec.* 386; *Walker v. Herring*, 21 *Gratt. (Va.)* 678; s. c., 8 *Am. R.* 616, 618. Reluctantly followed in *Meadows v. Meadows*, 3 *McCord (So. Car.)* 458; s. c., 15 *Am. Dec.* 645, with note.
- *v. —*, 5 *Johns. Ch.* 263. Collated with numerous cases illustrating the rule (Presumption that person unmarried when last heard from, died childless) in 29 *Alb. L. J.* 348.
- McCombs v. Allen**, 18 *Hun.* 190. Aff'd in 82 *N. Y.* 114.
- McConihe v. N. Y. & Erie R. R. Co.**, 20 *N. Y.* 495. See *Bement v. Smith*; *Stephens v. Wider*. Followed with *Andrews v. Durant*, 11 *N. Y.* 35 (Passing of title to articles contracted to be manufactured) in *Shaw v. Smith*, 48 *Conn.* 306; s. c., 40 *Am. R.* 170.
- McConnell v. Hampton**. See *Lewis v. Chapman*.
- *v. Pyne*, 5 *Alb. L. J.* 25. See history of this case in note to title "Brokers" in 7 *Abb. Dig. (Suppl.)*
- *v. Sherwood*, 19 *Hun.* 519; s. c., 58 *How. Pr.* 453. Aff'd in 84 *N. Y.* 522; s. c., 38 *Am. R.* 537, with note, and 61 *How. Pr.* 67. Decision in *Id.* explained (Power to compound and compromise debts) in *Burrill on Assign.* § 228, 4 ed. Quoted (Fraudulent assignment void *per se.*) in *Wait on Fraud. Conv.* § 322, n. 1.
- *v. Aerman*, 56 *Barb.* 534. See *Cook v.*

- Gregg. Reviewed (Constitutionality of law to prevent animals running at large on highways) in *Leavitt v. Thompson*, 56 *Barb.* 542. Disapproved in *Squares v. Campbell*, 60 *Id.* 391.
- McConochie v. Sun Mut. Ins. Co.**, 3 *Bosw.* 99. Rev'd, on the ground that the notice was insufficient, in 26 *N. Y.* 477.
- McCool v. Boller**, 14 *Hun.* 73. Followed (Order for service by publication) in *Johanning v. Johanning*, 1 *Civ. Pro. R.* 145, n.
- McCoon v. Smith**, 3 *Hill*, 147. Included (Estoppel in ejectment against infant) in *Evell Lead. Cas. on Inf. &c.* 220.
- McCord v. People**, 46 *N. Y.* 470. Followed and approved with *People v. Stetson*, 4 *Barb.* 151; *People v. Clough*, 17 *Wend.* 351 (Conspiracy, to be criminal must be against innocent person) in *State v. Crowley*, 41 *Wis.* 271; s. c., 22 *Am. R.* 719, 725.
- **v. Woodhull**, 27 *How. Pr.* 54. Followed (Running of statute of limitations as affected by non-residency) in *Tioga R. R. v. Blossburg & C. R. R.*, 20 *Wall.* 137, 150.
- McCormick, Matter of**, 2 *Bradf.* 169. See (Ancillary letters upon foreign probate) *Code Civ. Pro.* 1881, § 2695, n.
- McCormick v. Barnum**. See *Baldwin v. Brown*.
- **v. Pennsylvania Cent. R. R. Co.**, 49 *N. Y.* 303. Rev'g decision noted in 3 *Alb. L. J.* 129. Subsequent decision in 80 *N. Y.* 353. See *Downs v. N. Y. Central R. R. Co.*; *Harriot v. N. J. R. R. &c. Co.*; *Hulbert v. Hope Mut. Ins. Co.* Decision in 49 *N. Y.* explained (Jurisdiction over foreign corporation) in *Gibbs v. Queen Ins. Co.*, 63 *Id.* 130. Applied (Consent as conferring jurisdiction) in *Spyer v. Fisher*, 38 *Super. Ct. (J. & S.)* 104.
- **v. Sarson**, 1 *Sweeney*, 161; s. c., 38 *How. Pr.* 190. Aff'd in 45 *N. Y.* 265. See *Reed v. Randall*. Decision in 45 *N. Y.* distinguishing (Purchaser's remedy for defect in quality) in *Day v. Pool*, 52 *Id.* 420, which aff'd 63 *Barb.* 522, which see. Dissents herein explained in *Gaylord Man'g Co. v. Allen*, 53 *N. Y.* 519. Compare *Harris v. Rathbun*, 2 *Abb. Ct. App. Dec.* 326; *Pike v. Nash*, 3 *Id.* 610. Explained in 2 *Benj. on Sales*, § 977, n. 29 (Corbin's 4 *Am. ed.*).
- McCosker v. Brady**, 1 *Burb. Ch.* 329. Aff'd in 1 *N. Y.* 214.
- **v. Golden**, 1 *Bradf.* 64. Applied (Disposition of estate of married woman dying intestate) in *Fry v. Smith*, 10 *Abb. N. C.* 224, 231.
- **v. Long Island R. R. Co.**, 21 *Hun.* 500; s. c., 69 *How. Pr.* 258. Rev'd in 84 *N. Y.* 77. See *Crispin v. Babbitt*.
- McCotter v. Hooker**, 8 *N. Y.* 497. Aff'g 1 *Code R. N. S.* 217.
- **v. McCotter**, 25 *How. Pr.* 478; s. c., more fully, 16 *Abb. Pr.* 265.
- **v. Mayor &c. of N. Y.**, 35 *Barb.* 609. Aff'd in 37 *N. Y.* 325.
- McConn v. N. Y. Central, &c. R. R. Co.**, 7 *Luns.* 75. Aff'd in effect as to right of appeal but overruled as to form of summons in 50 *N. Y.* 176. Further proceeding on the merits in 66 *Barb.* 338.
- McCoy v. Artcher**, 3 *Barb.* 323. Followed and approved with *Edick v. Crim*, 10 *Id.* 445; *Hopkins v. Grinnell*, 28 *Id.* 538 (Implied warranty of property on sale of chattel out of possession) in *Scranton v. Clark*, 39 *N. Y.* 220. Followed in *Huntington v. Hall*, 36 *Me.* 501; s. c., 58 *Am. Dec.* 765. Reviewed, and other cases cited, in 15 *Am. L. Rev.* 659. Explained and highly commended in 1 *Pars. on Contr.* 575, n. a.
- **v. Curtice**, 9 *Wend.* 17; s. c., 24 *Am. Dec.* 113, with note containing citations on other points, and as to when majority may execute power delegated to several; its doctrine on this point being said to have been adopted into the R. S.
- **v. Huffman**, 8 *Cow.* 84. See *Medbury v. Watrous*. Overruled (Recovery by infant, &c. for what he has advanced under contract) in *Medbury v. Watrous*, 7 *Hill*, 110. Disapproved in *Shurtliff v. Mitlard*, 12 *R. I.* 272; s. c., 34 *Am. R.* 642. Followed in *Harney v. Owen*, 4 *Blackf. (Ind.)* 337; s. c., 30 *Am. Dec.* 662. Reviewed in *Judkins v. Walker*, 17 *Me.* 38; s. c., 35 *Am. Dec.* 229, with note. Commented upon in 1 *Chitty on Contr.* 200, n. 4, 11 *Am. ed.*
- **v. Hyde**, 8 *Cow.* 68. Disting'd (Use of old affidavit) in *Mojarrieta v. Saenz*, 80 *N. Y.* 547, 551.
- **v. O'Donnell**, 2 *Sup'm. Ct. (T. & C.)* 671. Aff'd, it seems, in 59 *N. Y.* 656, but without opinion.
- McCraney v. Alden**. See *Cope v. Wheeler*.
- McCrea v. McCrea**, 58 *How. Pr.* 220. Overruled in effect (Striking out answer not allowed) in *Walker v. Walker*, 3 *Abb. N. C.* 436.
- **v. Purmort**, 16 *Wend.* 460; s. c., 30 *Am. Dec.* 103, with note, wherein it is shown to be recognized both in *N. Y.* and elsewhere as a valuable authority. Aff'g Attorney-General *v. Purmort*, 5 *Paige*, 620. See *Bingham v. Weiderwax*; *Bowen v. Bell*; *Fellows v. Prentiss*; *Murray v. Smith*; *Shepard v. Little*; *Soulden v. Van Rensselaer*. Examined (Parol evidence of consideration for deed) in *Frink v. Green*, 5 *Barb.* 457. Cited as authority in *Grout v. Townsend*, 2 *Den.* 340. Applied to bond and warrant of attorney,—in *Averill v. Loucks*, 6 *Barb.* 24. To assignment of lease,—in *Adams v. Hull*, 2 *Hill*, 310, 312, 316. To assignment of claim,—in *Henderson v. Fullerton*, 54 *How. Pr.* 425. To chattel mortgage,—in *McKinster v. Babcock*, 26 *N. Y.* 380. Explained at length and disting'd in *Anthony v. Harrison*, 14 *Hun.* 210, a case of a note under seal. Limited to inquiries between parties to instrument, in *Halliday v. Hart*, 30 *N. Y.* 495. Referred to in 3 *Am. Dec.* 306, n. as a leading case, and said to settle the doctrine in *N. Y.* Cited as authority in *Thomas on*

- Mort.* 57. Explained in 2 *Chitty on Contr.* 1119, n. y, 11 Am. ed. Approved and applied (Distinction between release and receipt) in *Stearns v. Tappin*, 5 *Duer*, 297. Applied (Admission that removes bar of statute of limitation) in *Watkins v. Stevens*, 4 *Barb.* 179; *Philips v. Peters*, 21 *Id.* 359. Disting'd under the Code in *Shapley v. Abbott*, 42 *N. Y.* 446. Followed (Effect of agreement signed by one party) in *Justice v. Lang*, *Id.* 524; *Johnson v. Dodge*, 17 *Ill.* 442. Disting'd (Right of grantee to recover from grantor amount paid to discharge incumbrance) in *McCoy v. Lord*, 19 *Barb.* 19. Both decisions applied (Relief against payment of mortgage) in *Hunt v. Amidon*, 4 *Hill*, 350.
- McCreedy v. Rumsey**, 21 *How. Pr.* 271. This report attributes to OAKLEY, C. J., an opinion of BOSWORTH, J. See correct report, where all the opinions are given, and the facts stated in 6 *Duer*, 574. See *Fatman v. Lobach*. Decision in 6 *Duer* disting'd (Lien on stock) in *Driscoll v. West, &c. Manuf'g Co.*, 59 *N. Y.* 96, 107.
- **v. Thorn**, 51 *N. Y.* 454. Cited (Right of master of vessel appointed by majority of part owners to bind the rest) in *Story on Partn.* 7 ed. § 445, n. Also cited (When part owners, &c. are justified in borrowing money on credit of owners) in *Id.* 446, n.
- McCreery v. Willett**, 4 *Bosw.* 643. Aff'd in 23 *How. Pr.* 129.
- McCue v. Garvey**, 14 *Hun*, 562. Rev'g Garvey v. McCue, 3 *Redf.* 313. Decision in 14 *Hun* followed (Charging wife's estate with expenses of her funeral) in *Jackson v. West-erfield*, 61 *How. Pr.* 399, 403; *Freeman v. Coit*, 27 *Hun*, 447.
- McCulloch v. Hoffman**, 10 *Hun*, 133. Aff'd in 73 *N. Y.* 615, but apparently upon other points. Decision in 10 *Hun* included (Want of consideration of negotiable paper when not to be shown) in 2 *Ames Cas. on B. & N.* 257.
- **v. Norwood**, 36 *Super. Ct. (J. & S.)* 180. Modified in 58 *N. Y.* 562. Decision in *Id.* followed (Invalidity of proceedings had after dissolution of corporation) in *Sturges v. Vanderbilt*, 73 *N. Y.* 383, which modified 11 *Hun*, 136, which see. Followed in *Matter of Norwood*, 32 *Id.* 196. Reviewed with *Sturges v. Vanderbilt*, 73 *N. Y.* 384, in 40 *Am. Dec.* 737, n. Cited (Notoriously peculiar domestic rule not presumed to obtain in another State) in 1 *Whart. Com. on Ev.* § 315.
- McCullough v. Colby**, 4 *Bosw.* 603. Further proceeding in 5 *Id.* 477. See *North American Fire Ins. Co. v. Graham*. Decision in 5 *Bosw.* approved (Execution necessary to sustain creditor's suit) in *Payne v. Sheldon*, 43 *How. Pr.* 1, 3.
- **v. Mayor of Brooklyn**, 23 *Wend.* 458. Questioned with *People ex rel. Griffin v. Steele*, 2 *Barb.* 397 (Compelling corporations, &c. by mandamus to exercise their functions) in *People v. Supervisors of Che-nango*, 11 *N. Y.* 563. And see *People ex rel. Hackley v. Croton Aqueduct Board*, 49 *Barb.* 259.
- **v. Moss**, 5 *Den.* 575. Applied (Power of directors of corporations) in *Matter of Excelsior Fire Ins. Co.*, 16 *Abb. Pr.* 15. Explained with *Hoyt v. Thompson*, 19 *N. Y.* 207, in *Metropolitan R'y Co. v. Manhattan R'y Co.*, 14 *Abb. N. C.* 103, 251. Explained and applied (Power of corporations to incur debts) in *Ketchum v. City of Buffalo*, 14 *N. Y.* 363. Commented on in *Ang. & A. on Corp.* §§ 271, 616, 11 ed. Explained (Liability of corporation, as party to note, &c.) in *Merchants' B'k'g Assoc. v. Spring Valley, &c. Co.*, 25 *Barb.* 420; *Belmont v. Coleman*, 1 *Bosw.* 195. Syllabus criticised as unsupported by opinions, in *Fink v. Canyon Road Co.*, 5 *Oreg.* 301, 307, where *Moss v. McCullough*, 7 *Barb.* 284, is examined at length.
- McCullough's Lead Co. v. Strong**, 35 *Super. Ct. (J. & S.)* 21. Further decision in 56 *N. Y.* 660. Aff'g 36 *Super. Ct. (J. & S.)* 571, in which there is no opinion.
- McCullum v. Gourlay**, 8 *Johns.* 147; s. c., 4 *N. Y. Com. L. Law. ed.* 496, with brief note. Followed (Recovery of money paid under wagering contract) in *Allen v. Dodd*, 4 *Humph. (Tenn.)* 131; s. c., 40 *Am. Dec.* 632, 635, with note.
- McCutchen v. McGahay**, 11 *Johns.* 281; s. c., 6 *Am. Dec.* 373. Followed and approved (Liability of husband for debts of wife contracted after decree for alimony) in *Bennett v. O'Fallon*, 2 *Mo.* 69; s. c., 22 *Am. Dec.* 440. Cited in *Tyler on Inf. & Cov.* § 230, as holding what is the law (Effect of offer of wife to return to husband after desertion). See cases collected in 9 *Am. L. Reg. N. S.* 347.
- McDermett v. City of Kingston**, 6 *Abb. N. C.* 246. Rev'd as *McDermott v. Same*, 19 *Hun*, 198.
- McDermott v. Palmer**, 11 *Barb.* 9. Rev'd in 8 *N. Y.* 393. See comments in 2 *E. D. Smith*, 548, n. Decision in 11 *Barb.* overruled ("Owner" within meaning of mechanics' lien law) in *Loonie v. Hogan*, 9 *N. Y.* 435.
- **v. Strong**, 4 *Johns. Ch.* 637. See *Edmeston v. Lyde*. Followed with *Austin v. Bell*, 20 *Johns. Ch.* 442 (Effect of setting aside deed as fraudulent against creditors) in *Gracey v. Davis*, 3 *Strobh. Eq. (So. Car.)* 55; s. c., 51 *Am. Dec.* 663. Applied as often cited and never questioned (Preference acquired by creditor's bill) in *Freedman's Savings & Trust Co. v. Earle*, 110 *U. S.* 710, 717.
- McDonald v. Bunn**, 3 *Den.* 45. See to the contrary (Action for false return) *Bliven v. Bleakley*, 23 *How. Pr.* 126. See also *Abb. Tr. Ev.* 611.
- **v. Christie**, 42 *Barb.* 36. See to the contrary (Opinion of witness) *Graves v. Moses*, 13 *Minn.* 335. But see *Abb. Tr. Ev.* 347.

- **v. Mallory**, 44 *Super. Ct. (J. & S.)* 80. Rev'd in 77 *N. Y.* 546; s. c., 7 *Abb. N. C.* 84; 33 *Am. R.* 604. See *Whitford v. Panama R. R. Co.* Decision in 77 *N. Y.* approved as just and reasonable (Proof required in action on foreign statute) in *Leonard v. Columbia Steam Nav. Co.*, 84 *Id.* 48, 53.
- **v. Mayor, &c. of N. Y.**, 4 *Sup'm. Ct. (T. & C.)* 177; mem. s. c., 1 *Hun.* 719. Aff'd in 68 *N. Y.* 23; s. c., 23 *Am. R.* 144. Statement in 68 *N. Y.* that it was an appeal from judgment entered upon verdict is incorrect. It was upon report of a referee. Decision in 4 *Sup'm. Ct. (T. & C.)* disting'd (*Contracts of municipal corporation*) in *Harrington v. Mayor, &c. of N. Y.*, 10 *Hun.* 248, 253. With decision in 68 *N. Y.* see also *Bigler v. Mayor, &c. of N. Y.*, 5 *Abb. N. C.* 51, and *Id.* 65, n.; *People ex rel. Murphy v. Kelly*, *Id.* 383, 392. Collated with other cases in *Id.* 49, n. Compared with right to recover back money wrongfully paid, and disting'd (Implied promise to pay for goods received) in *People v. Denison*, 19 *Hun.* 137, 149.
- **v. Walgrave**, 1 *Sandf. Ch.* 274. Collated with other cases (Enlarging devise into fee) in *Sharsw. & B. Cas. on Real Prop.* 64.
- **v. Walter**, 40 *N. Y.* 551. Disting'd (New trial for insufficient damages) in *Wavle v. Wavle*, 9 *Hun.* 125. Explained and followed in *Platz v. City of Cohoes*, 8 *Abb. N. C.* 392, 395. See *Code Civ. Pro.* 1881, § 999, n.
- **v. Western R. R. Corporation**, 34 *N. Y.* 497. See *Fenner v. Buffalo, &c. R. R. Co.*; *Gould v. Chapin*; *Smith v. N. Y. Central R. R. Co.*; *Weed v. Saratoga & Schenectady R. R. Co.* Applied (Liability of intermediate carrier) in *Lamb v. Camden & Amboy R. R. &c. Co.*, 2 *Daly*, 491. Followed and approved in *Irish v. Milwaukee & St. Paul R'y Co.*, 19 *Minn.* 376; s. c., 13 *Am. R.* 340, 342. Applied with *Rawson v. Holland*, 59 *N. Y.* 611, in *Bancroft v. Merchants' Transportation Co.*, 47 *Iowa*, 262; s. c., 29 *Am. R.* 482. Explained (Termination of carrier's liability) in *Northrop v. Syracuse, &c. R. R. Co.*, 3 *Abb. Ct. App. Dec.* 390; *Fenner v. Buffalo & State Line R. R. Co.*, 44 *N. Y.* 508. Relied on with *Goold v. Chapin*, 20 *Id.* 259; *Van Santvoord v. St. John*, 6 *Hill*, 167; *Blossom v. Griffin*, 13 *N. Y.* 569; *Miller v. Steam Navigation Co.*, 10 *Id.* 431; *Ladue v. Griffith*, 25 *Id.* 364, in *Hooper v. Chicago & North Western R. R. Co.*, 27 *Wis.* 81; s. c., 9 *Am. R.* 439, 444. All these cases except *Van Santvoord v. St. John*, are cited on a point nearly identical, in *Wood v. Milwaukee & St. Paul R'y Co.*, 27 *Wis.* 541; s. c., 9 *Am. R.* 465, 470. Approved with *Mills v. Mich. Cent. R. R. Co.*, 45 *N. Y.* 622, in *Condon v. Marquette, II. & O. R. Co.*, 55 *Mich.* 220, where the same doctrine is said to be laid down in *Wis.*, *Minn.*, *Ohio*, *Ark.*, *Tenn.* and the *U. S. Sup'm. Ct.* Said in *Rice v. Hart*, 118 *Mass.* 201; s. c., 19 *Am. R.* 433, 440, to be in conflict with *Denny v. N. Y. Central R. R.*, 13 *Gray (Mass.)* 481, 487; *Judson v. Western R. R.*, 4 *Allen (Mass.)* 520, 523. Cited with *Van Santvoord v. St. John*, 6 *Hill*, 157, in *Lawrence v. Winona & St. Peter R. R. Co.*, 15 *Minn.* 390; s. c., 2 *Am. R.* 130, 138, with note collating cases.
- McDonnell v. Banendahl**, 4 *Hun.* 265; s. c., more fully, 6 *Sup'm. Ct. (T. & C.)* 546. Aff'd, it seems, in 64 *N. Y.* 638, but without opinion. See *Kline v. Same*.
- **v. Baffum**, 31 *How. Pr.* 154. Applied (Damages for false return by justice) in *Brooks v. St. John*, 25 *Hun.* 541.
- McDonough v. Loughlin**, 20 *Barb.* 238. Followed (Signature by witness to will after attestation clause) in *Williamson v. Williamson*, 2 *Redf.* 449, 451. Followed (Executor as competent attesting witness) in *Stewart v. Harriman*, 56 *N. H.* 25; s. c., 22 *Am. R.* 408, 413; *Burritt v. Silliman*, 16 *Barb.* 198, being referred to as overruled by *McDonough v. Loughlin*.
- McDougal v. Walling**, 48 *Barb.* 364. With this case, and *Meech v. Stoner*, 19 *N. Y.* 26, see (Right to recover money lost in betting) *Brown v. Thompson*, 14 *Bush. (Ky.)* 538; s. c., 29 *Am. R.* 416, and note. See also (What claims may be assigned) *Code Civ. Pro.* 1381, § 1910, n.
- McDougal v. Sitcher**. See *Willard v. Warren*.
- McDowell v. Second Ave. R. R. Co.**, 4 *Bosw.* 670. Examined with *Rasquin v. Knickerbocker Stage Co.*, 12 *Abb. Pr.* 324; *Owen v. Mason*, 18 *How. Pr.* 156 (Effect of settlement of suit between parties on right of attorney) in *Pulver v. Harris*, 62 *Barb.* 500, 507, where the first case is approved as carefully examining the question; but all are criticised as decided without allusion to *Benedict v. Harlow*, 5 *How. Pr.* 347; *People ex rel. Stanton v. Tioga Common Pleas*, 19 *Wend.* 73, reliance being also had on *Shank v. Shoemaker*, 18 *N. Y.* 489. Collated with *Bildersee v. Aden*, 12 *Abb. Pr.* 325; *Keenan v. Dorfinger*, 19 *How. Pr.* 153; *Lorrillard v. Robinson*, 2 *Paige*, 276; *Matter of Southwick*, 1 *Johns. Ch.* 22; *Wiggins v. Armstrong*, 2 *Id.* 145 (Attorney's lien) in *Stewart v. Flowers*, 44 *Miss.* 513; s. c., 7 *Am. R.* 707, 713, 717.
- McDowl v. Charles**, 6 *Johns. Ch.* 132. Collated with *Jenkins v. Freyer*, 4 *Paige*, 51; *Woodin v. Bagley*, 13 *Wend.* 453; *Beecher v. Crouse*, 19 *Id.* 306; *Black's Estate*, *Tuck.* 145; as showing a well-established doctrine (Suits by heirs, devisees, or legatees in their own names to recover personal property) in 23 *Am. Dec.* 202, n.
- McDowle, Matter of**, 8 *Johns.* 328. Compare *Matter of Waldron*. Followed as according with the weight of authority (Validity of



agreement by parent to surrender custody of infant child) in *Bonnett v. Bonnett*, 61 *Iowa*, 198; s. c., 47 *Am. R.* 810. Cited with *People ex rel. Barbour v. Gates*, 43 *N. Y.* 40; in *Tyler on Inf. & Cov.* § 97.

**McEachron v. Randles**, 34 *Barb.* 301. Overruled (Necessity of notice of time and place of sale by vendor on vendee's default) in *Pollen v. LeRoy*, 30 *N. Y.* 549. Denied in *McGibbon v. Schlessinger*, 18 *Hun*, 225, as overruled by *Pollen v. LeRoy*.

**Macedon & Bristol Plank Road Co. v. Lapham**, 18 *Barb.* 312. See other authorities collected (When amendment of charter releases subscriber for stock) in 16 *Am. L. Rev.* 101, 115.

**McElroy v. Mancius**, 13 *Johns.* 121. See *Jackson v. Bartlett*. Cited as authority with *Littlefield v. Brown*, 1 *Wend.* 398; *Rawson v. Turner*, 4 *Johns.* 469 (Effect of action by creditor against sheriff, for escape of prisoner in execution) and *Jackson v. Bartlett*, 8 *Johns.* 361, disting'd in *Ex parte Voltz*, 37 *Ind.* 175; s. c., 10 *Am. R.* 86.

**McElvey v. Lewis**. See *McKelvey v. Lewis*.

**McElwain v. Corning**, 19 *Abb. Pr.* 16. Applied (Amendment by substitution of party) in *N. Y., &c. Milk Pan Co. v. Remington's Agric. Works*, 25 *Hun*, 475, 477, and see dissenting opinion, p. 480.

— **v. Willis**, 3 *Paige*, 505. Aff'd in 9 *Wend.* 548. See *Stoors v. Kelsey*. Applied (Proceedings on execution as basis of creditor's proceedings in equity) in *Fenton v. Flagg*, 24 *How. Pr.* 501; *Heye v. Bolles*, 2 *Daly*, 235. Reconciled in *Gross v. Daly*, 5 *Id.* 542. Disting'd in *Adee v. Bigler*, 81 *N. Y.* 349. Approved in *Crippen v. Hudson*, 13 *Id.* 165. Explained in *No. Am. Fire Ins. Co. v. Graham*, 5 *Sandf.* 202. Followed in *McKibben v. Barton*, 1 *Mich.* 214. Reviewed at length with *Mechanics' Bank v. Dakin*, 51 *N. Y.* 519, 522; *Adsit v. Butler*, 87 *Id.* 585; *Genessee River Nat. Bank v. Mead*, 13 *Weekly Dig.* 356; 18 *Hun*, 303; *Buswell v. Lincks*, 8 *Daly*, 518; *Shaw v. Dwight*, 27 *N. Y.* 244, 249; *Fox v. Moyer*, 54 *Id.* 125; *Geery v. Geery*, 63 *Id.* 252, 256; *Pardee v. De Cala*, 7 *Paige*, 132; in *Royer Wheel Co. v. Fielding*, 31 *Hun*, 274.

**McEnroe v. Decker**, 58 *How. Pr.* 251. Questioned (Form denial in pleading) in *Haines v. Herrick*, 9 *Abb. N. C.* 379, 384. Opposed in *Smith v. Gratz*, 59 *How. Pr.* 274.

**McEntee v. N. J. Steamboat Co.**, 45 *N. Y.* 34; s. c., *Am. R.* 28, with note. Approved (Common carriers deliver goods at their peril) in *Houston, &c. Ry. Co. v. Adams*, 49 *Tex.* 748; s. c., 30 *Am. R.* 116, 119.

**McEteere v. Little**, 8 *Daly*, 167; s. c., 7 *Abb. N. C.* 374. Approved and followed (Power to review Marine Court decisions) in *Farley v. Lyddy*, 8 *Daly*, 514, 517. Compare *Code Civ. Pro.* §§ 3188-3195.

**McEvers v. Lawrence**, *Hoffm.* 171. Aff'd but without opinion in 2 *Ch. Sent.* 25.

— **v. Mason**, 10 *Johns.* 207. Relied on

(What amounts to acceptance of bill of exchange) in *Kennedy v. Geddes*, 8 *Port. (Ala.)* 263; s. c., 33 *Am. Dec.* 289. Collated with other cases in *Redf. & B. Lead. Cas. on B. of Exch.* 49; *Bigel. on B. & N.* 2 ed. 50.

**McEwen v. Brewster**, 17 *Hun*, 223. Further decision in 19 *Id.* 337. With decision in 17 *Id.* compare (Reaching trust income) *Code Civ. Pro.* § 1879.

— **v. Montgomery County Mut. Ins. Co.**, 5 *Hill*, 101. See *Rowley v. Empire Ins. Co.* Explained and followed (Notice of subsequent insurance) in *Hamilton v. Aurora F. & M. Ins. Co.*, 15 *Mo. App.* 59, 67.

**McFadden v. Kingsbury**, 11 *Wend.* 667. Doubt'd (Parol proof of contents of paper relating to collateral fact) in *Frank v. Manny*, 1 *Daly*, 92.

**McFarlan v. Triton Ins. Co.**, 4 *Den.* 392. Disting'd (Effect of irregularity in case of stock subscriptions) in *Excelsior Grain Binding Co. v. Stayner*, 25 *Hun*, 91, 97. Approved (Regularity of organization of corporation, when only to be questioned) in *Swartwout v. Michigan, &c. R. R. Co.*, 24 *Mich.* 389, 394.

— **v. Watson**, 4 *How. Pr.* 128. Explained (Remittitur on dismissal of appeal) in *Langley v. Warner*, 2 *Code R.* 97.

**McFarland v. Crary**, 3 *Cow.* 253. Aff'd in 6 *Wend.* 297. Both decisions followed (Right of officer to double costs) in *Wheeler v. McFarland*, 2 *Den.* 188.

— **v. Wheeler**. See *Wheeler v. McFarland*.

**McFarren v. St. John**, 14 *Hun*, 387. Followed (Defective offer of judgment) in *Riggs v. Waydell*, 17 *Hun*, 515. Followed with *Riggs v. Waydell*, and *Eagan v. Moore*, 2 *Civ. Pro. R. (Brown)* 300, disapproved, in *Werbolowsky v. Greenwich Ins. Co.*, 14 *Abb. N. C.* 96.

**McFeeleys, Matter of**. See *Estate of Kelly*.

**McGaffin v. City of Cohoes**, 74 *N. Y.* 387; s. c., 30 *Am. R.* 307. Aff'g *McGuffin v. City of Cohoes*, 11 *Hun*, 531.

**McGahay v. Williams**, 12 *Johns.* 293. Said not to be authority (Liability of husband after wife's return for necessities furnished during desertion) in *Oinson v. Heritage*, 45 *Ind.* 73; s. c., 15 *Am. R.* 258. See, however, 2 *Kent. Com.* 147.

**McGarry v. Loomis**, 63 *N. Y.* 104. Collated with other cases (Contributory negligence of parent in case of injury to child) in 2 *Thomp. on Negl.* 1187.

— **v. People**. See *McGary v. People*.

**McGary v. People**, 45 *N. Y.* 153. Rev'g *McGarry v. People*, 2 *Lans.* 227. See *Brandon v. People*. Decision in 45 *N. Y.* disting'd (Proof respecting existence of corporation) in *Carnecross v. People*, 1 *N. Y. Crim. R.* 518. Decision in 2 *Lans.* collated with *Stover v. People*, 56 *N. Y.* 315; *Crandall v. People*, 2 *Lans.* 309; *Ruloff v. People*, 45 *N. Y.* 213, and other cases (Rights of accused person testifying in his own behalf) in 10 *Am. R.* 348, n.

- **v. Supervisors of N. Y.**, 7 *Robt.* 464. Further proceeding in 1 *Sweeny*, 217.
- McGiffert v. McGiffert**, 31 *Barb.* 69. See *Bradshaw v. Heath*; *Kinnier v. Kinnier*. Doctrine discussed and cases cited (Validity of foreign divorce) in 3 *Am. L. Reg. N. S.* 214. Commented in 2 *Bish. on Mar. & D.* § 163, n. a, 6 ed.
- McGinity v. Mayor, &c. of N. Y.**, 5 *Duer*, 674. Followed (Liability of town for injuries from street excavations) in *Parker v. City of Cohoes*, 10 *Hun.* 531. Collated with *Davenport v. Ruckman*, 16 *Abb. Pr.* 341; 37 *N. Y.* 568; *Garrison v. Mayor, &c. of N. Y.*, 5 *Bosw.* 497 (Necessity of giving notice to municipal corporation) in 7 *Am. R.* 43, n.
- McGuinness v. Mayor, &c. of N. Y.**, 26 *Hun.* 142; s. c., as *McGuinness v. Mayor, &c. of N. Y.*, 13 *Weekly Dig.* 522. Overruling in effect previous decision, in 52 *Hov. Pr.* 450.
- McGivney v. Phenix Ins. Co.**, 1 *Wend.* 85. Collated with other cases (What is insurable interest) in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 808.
- McGlashan v. Tallmadge**. See *Dyett v. Pendleton*
- McGovern v. N. Y. Central R. R. Co.**, 67 *N. Y.* 421. See *Oldfield v. N. Y. & Harlem R. R. Co.* Explained and followed (Contributory negligence of infant) in *Casey v. N. Y. Central, &c. R. R. Co.*, 8 *Daly*, 220, 227. Explained in 8 *South. L. Rev.* 68, 70.
- **v. Payn**, 32 *Barb.* 83. Followed (Arrest in action arising from fraud) in *Mallory v. Leach*, 14 *Abb. Pr.* 453. Applied (Right to enforce provisional remedy, when lost by uniting claim with others) in *Hickox v. Fay*, 36 *Barb.* 14; *Union Consol. Mining Co. v. Raht*, 9 *Hun.* 211. Relied on in *Madge v. Puig*, 71 *N. Y.* 608. Disting'd in *Niver v. Niver*, 19 *Abb. Pr.* 15; *Redfield v. Frear*, 9 *Abb. Pr. N. S.* 452. Disting'd (Imposing condition not to sue, on vacating process) in *Faulkner v. Morey*, 22 *Hun.* 385.
- McGowan v. Deyo**, 8 *Barb.* 340. Applied (Bond, when not invalid as taken *colore officii*) in *People ex rel. Commrs. of Charities, &c. of N. Y. v. Lyons*, 7 *Daly*, 182, 186.
- **v. McGowan**, 2 *Duer*, 57. Collated with other cases (Suspension of power of alienation) in *Gerard Titles to Real Est.* 2 ed. 231. Discussed in 1 *Jarm. on Wills*, Rand. & T. ed. 512, n.
- **v. Newman**, 4 *Abb. N. C.* 80. See (Referee's oath) *Exchange Fire Ins. Co. v. Early*, *Id.* 78; *Browning v. Marvin*, 5 *Id.* 285; *Code Civ. Pro.* 1881, § 1016, n.
- McGrath v. Bell**, 33 *Super. Ct. (J. & S.)* 195. Applied (Effect of retention of employee by employer after breach of contract) in *Bast v. Byrne*, 51 *Wis.* 531; s. c., 37 *Am. R.* 841.
- **v. Clark**, 56 *N. Y.* 34; s. c., 15 *Am. R.* 372. See *Redlich v. Doll*. Applied (Effect of alteration of note) in *Reeves v. Pierson*, 23 *Hun.* 185, 187. Followed and approved in *Jones v. Bangs*, 40 *Ohio St.* 139; s. c., 48 *Am. R.* 664, with note, wherein are collated *Weyerhauser v. Dun*, 29 *N. Y.* 479, and other cases. Included in 1 *Ames Cas. on B. & N.* 584. Criticised in 17 *Am. R.* 99. Examined with other cases in 15 *Abb. L. J.* 116.
- **v. Hudson River R. R. Co.**, 32 *Barb.* 144; s. c., 19 *Hov. Pr.* 214. See *Jetter v. N. Y. & Harlem R. R. Co.* Approved (Negligence, as question for jury) in *Phillips v. Rensselaer & Saratoga R. R. Co.*, 57 *Barb.* 644, 651.
- **v. N. Y. Central, &c. R. R. Co.**, 1 *Sup'm. Ct. (T. & C.)* 243. Re-aff'd on further decision, mem. of which is in *Id.* 776, and 1 *Hun.* 437; but latter decision rev'd in 59 *N. Y.* 468; s. c., 17 *Am. R.* 359, with note. Further decision on third trial in 63 *N. Y.* 522. See *Grippen v. N. Y. Central, &c. R. R. Co.*; *Johnson v. Hudson River R. R. Co.* Decisions in 59 and 63 *N. Y.* explained (Effect of absence of flagman at railroad crossing) in *Casey v. N. Y. Central, &c. R. R. Co.*, 6 *Abb. N. C.* 125, which was aff'd in 78 *N. Y.* 518, 524, which see. Approved in *Pittsburg, Cincinnati, &c. R'y Co. v. Yundt*, 78 *Ind.* 373; s. c., 41 *Am. R.* 380. Decision in 63 *N. Y.* applied to failure to ring bell of engine,—in *Cosgrove v. N. Y. Central, &c. R. R. Co.*, 13 *Hun.* 330. Compare (Violation of municipal ordinance as affecting question of negligence) *Massoth v. Delaware & Hudson Canal Co.*, 64 *N. Y.* 532. Examined with other cases in *Knupfle v. Knickerbocker Life Ins. Co.*, 84 *Id.* 488, 491. Followed with *Massoth v. Delaware & Hudson Canal Co.*, 64 *Id.* 524; *Knupfle v. Knickerbocker Ice Co.*, 84 *Id.* 488; *Hoffman v. Union Ferry Co.*, 68 *Id.* 385 (Liability for injuries caused by one doing lawful act in manner forbidden by law) in *Burbank v. Bethel Steam Mill Co.*, 75 *Me.* 373; s. c., 46 *Am. R.* 400. Applied (Liability of company operating trains on road of another) in *N. Y. Central, &c. R. R. Co.*, 42 *Super. Ct. (J. & S.)* 233. Cited with other cases (Admissions may be by acts as well as by words) in 2 *Whart. Com. on Ev.* § 1081.
- McGraw v. Godfrey**, 14 *Abb. Pr. N. S.* 397. Aff'd in 16 *Abb. Pr. N. S.* 358; mem. s. c., 56 *N. Y.* 610.
- **v. Morgan**, 5 *Daly*, 493. Appeal dismissed it seems in 63 *N. Y.* 642, but without opinion.
- McGregor v. Brown**, 10 *N. Y.* 114. See *Bank of Lansingburgh v. Crary*. Explained (Waste as question of law and fact) in *Agate v. Lowenhein*, 57 *N. Y.* 604, 611. See cases cited (What is parcel of the realty) in 5 *Abb. N. C.* 174, n.
- **v. Buell**, 1 *Keyes*, 153. See *Eldridge v. Strenz*. Compare (Practice on return of *remittitur*) in *Eldridge v. Strenz*, 39 *Super. Ct. (J. & S.)* 295.
- **v. Comstock**, 16 *Barb.* 427. Aff'd in 17 *N. Y.* 162.

- *v.* —, 28 *N. Y.* 237. Cited with *Haight v. Holcomb*, 16 *How. Pr.* 173; *Leshar v. Roessner*, 3 *Hun.* 217 (Record as notice of attorney's claim in case of judgment for costs) in *Whart. Com. on Ag.* § 627.
- McGregory v. Willett**, 17 *How. Pr.* 439. See (Rights, &c. of sheriff when liable as bail) *Code Civ. Pro.* 1881, § 595, *n.*
- McGrill v. Lake Shore & M. R. R. Co.**, 1 *Sup'm. Ct. (T. & C.)* Add. 18. Judgment of appeal on subsequent trial, *aff'd*, it seems, in 66 *N. Y.* 617, but without opinion.
- McGuckin v. Coulter**, 33 *Super. Ct. (J. & S.)* 324; *s. c.*, 10 *Abb. Pr. N. S.* 128. Further decision in 33 *Super. Ct. (J. & S.)* 328.
- McGuffin v. City of Cohoes.** See *McGaffin v. Same.*
- McGuinness v. Mayor, &c. of N. Y.** See *McGuinness v. Same.*
- McGuinty v. Herriek.** See *Earl v. Camp.*
- McGuire v. O'Halloran**, *Hill & D.* 85. Explained (Partnership liability) in 1 *Collyer on Partn.* § 416, *n.* 1, *Wood's Am. ed.*
- *v. People*, 5 *Sup'm. Ct. (T. & C.)* 682; *s. c.*, 3 *Hun.* 213. Reported in 48 *How. Pr.* 517.
- *v.* —, 2 *Park.* 148. Reviewed (Necessity of issuance of precept by district attorney to sheriff) in *People v. Cummings*, 3 *Id.* 343, 347.
- McHarg v. Eastman**, 35 *How. Pr.* 205; *s. c.*, 7 *Robt.* 137. Earlier decision in 4 *Id.* 635. Decision in 35 *How. Pr.* disting'd (Liability of trustee of corporation) in *Duckworth v. Roach*, 8 *Daly*, 159, 161. Followed, in *Weymouth v. Dimock*, 41 *How. Pr.* 92. Explained (Judicial notice of statute) in 1 *Bent on Ev.* § 33, *n. a.*, *Wood's ed.*
- McHenry v. Hazard**, 45 *Barb.* 657. Overruled in effect as to maintaining the action, in subsequent decision, in 45 *N. Y.* 580.
- Machin v. Geortener**, 14 *Wend.* 239. Followed (Possession, without enclosure, as sufficient for maintaining trespass) in *Chandler v. Walker*, 21 *N. H.* 282; *s. c.*, 53 *Am. Dec.* 202, with note. Compare, as to possession of note, *Lowmore v. Berry*, 19 *Ala.* 130; *s. c.*, 54 *Am. Dec.* 188.
- Macino v. People**, 12 *Hun.* 127. Disting'd (What constitutes larceny) in *Thorn v. Turck*, 13 *Weekly Dig.* 550.
- McInstry v. Tanner.** See *Parker v. Baker*; *People v. Collins*; *People v. Dean.*
- McIntosh v. Lown**, 49 *Barb.* 550. See *Guernsey v. Carver.* Disapproved (Separate actions on demands that constitute but one cause of action) in *Jex v. Jacob*, 7 *Abb. N. C.* 452.
- *v. McIntosh*, 12 *How. Pr.* 289. Doubted (Joinder of causes of action for divorce) in *Doc v. Roe*, 23 *Hun.* 19, 22.
- McIntyre v. Barnard**, 1 *Sandf. Ch.* 52. Applied (Effect of agreement giving right to remove timber) in *Kellam v. McKenstry*, 6 *Iun.* 381, 383. Applied to agreement respecting removal of soil,—in *Lacustrine, &c. Co. v. Lake Guano, &c. Co.*, 82 *N. Y.* 476, 482.
- *v. Bowne*, 1 *Johns.* 229. Approved (Liability of owner of vessel) in *First Nat. B'k of Marquette v. Stewart*, 26 *Mich.* 83. Cited in 3 *Kent Com.* 137, as a case in which this subject was much discussed.
- *v. Mancius*, 3 *Johns. Ch.* 45. Rev'd in 16 *Johns.* 552.
- *v. N. Y. Central R. R. Co.*, 47 *Barb.* 515. *Aff'd* in 37 *N. Y.* 287; *s. c.*, 35 *How. Pr.* 36. Previous decision in 43 *Barb.* 532. See *Tilley v. Hudson River R. R. Co.* Decision in 37 *N. Y.* applied (Proof of damages caused by death) in *Mitchell v. N. Y. Central, &c. R. R. Co.*, 2 *Hun.* 539. Applied (Negligence in passenger leaving car by direction of employee) in *Filer v. N. Y. Central R. R. Co.*, 49 *N. Y.* 54. Decision in 43 *Barb.* applied (Question of negligence in railway passenger, as affected by infirmity of his nature) in *Mowrey v. Central City Ry.*, 66 *Id.* 57.
- *v. Rowan*, 3 *Johns.* 144. Applied (When error in process does not render it void) in *People ex rel. Brown v. Van Hoesen*, 62 *How. Pr.* 77. Followed with *Bissell v. Kip*, 5 *Johns.* 100; *Cramer v. Van Alstyne*, 9 *Id.* 386; *Jones v. Cook*, 1 *Cov.* 309, in *Bank of Whitehall v. Pettes*, 13 *Verm.* 395; *s. c.*, 37 *Am. Dec.* 600.
- *v. Trumbull*, 7 *Johns.* 35. Relied on in dissenting opinion of *HALL, J.* (Action against deputy for breach of official duty) in *Coltraine v. McCaine*, 3 *Dev. L. (N. C.)* 308; *s. c.*, 24 *Am. Dec.* 256, 262, with note.
- Mack v. Burt**, 5 *Hun.* 28. Result of *Schuyler v. Smith*, 51 *N. Y.* 309 (Effect of holding over by tenant) said in *Worthington v. Globe Rolling Mill*, 9 *Am. L. Rec.* 693; *s. c.*, 6 *Cin. L. Bul.* 235, to be incorrectly stated herein, but to be correctly stated in *Smith v. Allt*, 4 *Abb. N. C.* 205.
- *v. Patchin*, 1 *Buff. Super. Ct. (Sheldon)* 67; *s. c.*, 29 *How. Pr.* 20. *Aff'd* in 42 *N. Y.* 167; *s. c.*, 1 *Am. R.* 506. Decision in *Id.* disting'd (Breach of covenant of quiet enjoyment in lease) in *McKinney v. Holt*, 8 *Hun.* 339. Explained (Implication of such covenant) in *Gallup v. Albany Ry.*, 7 *Lans.* 478. Explained, as not changing rule (Damages for breach of covenant of warranty of title) in *Burr v. Stenton*, 43 *N. Y.* 467. Disting'd in *Atkins v. Hosley*, *Sup'm. Ct. (T. & C.)* 322, 328. Followed in *Lanigan v. Kille*, 97 *Penn. St.* 120; *s. c.*, 39 *Am. R.* 797. Applied (Damages for eviction) in *Denison v. Ford*, 10 *Daly*, 412.
- Mackay v. Bloodgood**, 9 *Johns.* 285. See *Ludlow v. Simond.* Followed with *Ludlow v. Simonds*, 2 *Cai. Cas.* 1 (One seal serving for two or more obligors in sealed instrument) in *Pequawckett Bridge v. Mathes*, 7 *N. H.* 230; *s. c.*, 26 *Am. Dec.* 737; *Davis v. Burton*, 3 *Seam. (Ill.)* 41; *s. c.*, 36 *Am. Dec.* 511, 513, with note.
- *v. Lewis*, 54 *How. Pr.* 503. Another decision in 73 *N. Y.* 382. Decision in *Id.* collated with other cases (Stipulation for judgment absolute) in 8 *Abb. N. C.* 147, *n.*

- **v. N. Y. Central, &c. R. R. Co.**, 35 *N. Y.* 75. Explained (Negligence in one crossing railroad track) in *Wilcox v. Rome*, Watertown, &c. R. R. Co., 39 *Id.* 365. Applied in *Richardson v. N. Y. Central R. R. Co.*, 45 *Id.* 851; *Ingersoll v. Same*, 6 *Sup'm. Ct. (T. & C.)* 419. Disting'd in *Cordell v. N. Y. Central, &c. R. R. Co.*, 70 *N. Y.* 123.
- **v. Rhinelander**, 1 *Johns. Cas.* 408; s. c., 1 *N. Y. Com. L. Law. ed.* 370, with brief note on the materiality of representations, in marine insurance.
- McKay v. City of Buffalo**, 9 *Hun*, 401. Aff'd, it seems, in 74 *N. Y.* 619, but without opinion. Decision in 9 *Hun* applied with *Maximilian v. Mayor, &c. of N. Y.*, 62 *N. Y.* 160; *Ham v. Mayor, &c. of N. Y.*, 10 *Id.* 459; *Tone v. Mayor, &c. of N. Y.*, 12 *Hun*, 542 disting'd in *Bamber v. City of Rochester*, 26 *Id.* 587.
- **v. Harrower**, 27 *Barb.* 463. See (Execution to issue to sheriff who has levied under attachment) *Code Civ. Pro.* 1881, §§ 644, n. 706, n.
- **v. Laidlaw**, 13 *How. Pr.* 129. See (Demand of copy of complaint) *Code Civ. Pro.* 1881, § 479, n.
- McKeage v. Hanover Fire Ins. Co.**, 16 *Hun*, 239. Aff'd in 81 *N. Y.* 38; s. c., 37 *Am. R.* 471, with note. See *Voorhees v. McGinnis*. Decision in 81 *N. Y.* disting'd (What are fixtures) in *Ward v. Kilpatrick*, 85 *Id.* 413, 420. Examined with conflicting authorities in *Fratt v. Whittier*, 58 *Cal.* 128. Collated with other cases in 34 *Am. R.* 354, n.
- McKecknie v. Ward**, 58 *N. Y.* 541. Explained and followed (Liability of surety as affected by forbearance extended to principal) in *Howe Machine Co. v. Farrington*, 82 *Id.* 121, 128.
- McKee v. Judd**, 12 *N. Y.* 622; s. c., 64 *Am. Dec.* 515, with note. See *Scribner v. Kelley*. Followed (Assignability of right of action) in *Smith v. N. Y. & New Haven R. R. Co.*, 28 *Barb.* 606; *Whittaker v. Merrill*, 30 *Id.* 390; *Weissenstein v. Elias*, 14 *Hun*, 533; *Byxbie v. Wood*, 24 *N. Y.* 612; *Fulton Fire Ins. Co. v. Baldwin*, 37 *Id.* 650. Disting'd in *Duell v. Cudlipp*, 1 *Hill.* 168; *Zabriskie v. Smith*, 13 *N. Y.* 332. Explained in *Genet v. Howland*, 45 *Barb.* 566; *Sheldon v. Wood*, 2 *Bosw.* 277. Explained in *Burrill on Assign.* § 100, n. 3, 4 ed.
- **v. Nelson**, 4 *Cow.* 355; s. c., 15 *Am. Dec.* 384, with note, wherein it is said to be generally admitted by the N. Y. courts to be a sound decision, and to be often referred to as a recognized exception to the general rule (Opinions as evidence). See *DeWitt v. Barley*. Disting'd in *Hardenburgh v. Cockcroft*, 5 *Daly*, 79, 83. Relied on in *Clark v. State*, 12 *Ohio*, 483; s. c., 40 *Am. Dec.* 479, 487, with note. Reviewed in *Robertson v. Stark*, 15 *N. H.* 109. Collated with *People v. Eastwood*, 14 *N. Y.* 562, and other cases, in *Commonwealth v. Sturtivant*, 117 *Mass.* 122; s. c., 19 *Am. R.* 401, 406, with note collating cases.
- **v. People**, 32 *N. Y.* 239. Approved in further decision in 36 *Id.* 113; s. c., 3 *Abb. Pr. N. S.* 216; 34 *How. Pr.* 230. Decision in *Id.* collated with other cases (Declarations of defendant in criminal case as part of *res gestæ*) in 10 *Am. E.* 28, n.
- McKelvey v. Lewis**. See *McKelvey v. Lewis*. **McKelvey v. Lewis**, 44 *Super. Ct. (J. & S.)* 561. Another proceeding as *McElvey v. Lewis* in 76 *N. Y.* 373. Also as *McKelvey v. Lewis*, 3 *Abb. N. C.* 61.
- McKenna v. People**, 18 *Hun*, 580. Rev'd in 81 *N. Y.* 360.
- McKinsie v. Farrell**, 4 *Bosw.* 204. Followed (Under agreement of suretyship for rent, no demand necessary) in *Turnure v. Hohenthal*, 36 *Super. Ct. (J. & S.)* 79.
- McKenzie v. McKenzie**, 21 *How. Pr.* 467. Rev'd, as *McKenzie v. Rhodes*, in 13 *Abb. Pr.* 337.
- **v. Smith**, 27 *How. Pr.* 20. Aff'd in 48 *N. Y.* 143.
- McKeon v. Caherty**. See *Dudley v. Mayhew*; *Yates v. Foot*.
- **v. Lee**. See *McKeon v. See*.
- **v. See**, 4 *Robt.* 449. Aff'd in 51 *N. Y.* 300; s. c., 10 *Am. R.* 659. Modifying *McKeon v. Lee*, 28 *How. Pr.* 238. Decision in 51 *N. Y.* applied (Waiver of trial by jury) to case of referee's oath,—in *Nason v. Ludington*, 8 *Daly*, 149, 152. Decision in 4 *Robt.* collated with other cases (Nuisance as caused by dangerous works upon one's land) in *Bigel. Cas. on Torts*, 499. Discussed in *Wood on Nuis.* 2 ed. §§ 548, 634, 642, 713.
- McKernan v. Frazer**. See *McKernan v. Robinson*.
- **v. Robinson**, 84 *N. Y.* 105; s. c., as *McKernan v. Frazer*, 23 *Alb. L. J.* 255. Aff'g 23 *Iun.* 289.
- McKerras v. Gardner**, 3 *Johns.* 137. Discussed (Effect of statute of limitations as to torts *quasi ex contractu*) in *Ang. on Limit.* § 136, 6 ed.
- Mackey v. Auer**, 8 *Hun*, 180. See (Demurrer) *Code Civ. Pro.* 1881, § 488, n.
- McKibbin v. Peck**, 39 *N. Y.* 262. See additional opinion by *MILLER, J.*, in 6 *Transc. App.* 69, 73.
- Mackie v. Cairns**, *Hopk.* 373. Rev'd in 5 *Cow.* 547; s. c., 15 *Am. Dec.* 477, with note, wherein it is said to have been frequently cited and approved in *N. Y.* See *Austin v. Bell*; *Bayard v. Hoffman*; *De Caters v. Le Ray De Chaumont*; *Grover v. Wakeman*; *Van Dyck v. Van Beuren*. Disting'd (Validity of assignment for benefit of creditors) in *Bishop v. Halsey*, 3 *Abb. Pr.* 403; *Wilson v. Forsyth*, 24 *Barb.* 126; *Wintringham v. Lafay*, 7 *Cow.* 738; *Hastings v. Belknap*, 1 *Den.* 197; *Beck v. Burdett*, 1 *Paige*, 310. Applied in *Burdick v. Post*, 17

- Barb.* 178; *D'Invernois v. Leavitt*, 23 *Id.* 81; *Goodrich v. Downs*, 6 *Hill*, 440; in opinions in *Grover v. Wakeman*, 11 *Wend.* 187. Explained in *Curtis v. Leavitt*, 15 *N. Y.* 116. Relied on in *McClurg v. Lecky*, 3 *Penr. & W. (Pa.)* 83; s. c., 23 *Am. Dec.* 64, 70, with note. Explained in *Burrill on Assign.* § 199, 4 ed.; *Id.* § 200. Disting'd (Effect of assignment for creditors) in *Pillsbury v. Kingon*, 33 *N. J. Eq. (6 Stew.)* 287; s. c., 36 *Am. R.* 556, 564. Explained (Extent to which fraudulent conveyance is invalid) in *Henriques v. Hone*, 2 *Edw.* 124. Applied in *Storm v. Davenport*, 1 *Sandf. Ch.* 138. Disting'd (Effect of reservation to grantor) in *Seward v. Jackson*, 8 *Cov.* 433. Disting'd (Validity of confession of judgment, as affected by fraud in assignment) in *Lansing v. Woodworth*, 1 *Sandf. Ch.* 45. Discussed in *Id.* § 356. Disting'd (Costs on appeal) in *Murray v. Blatchford*, 2 *Wend.* 224.
- McKillop v. Burhans.** See *McKillop v. Burhans*.
- *v. McKillop*, 8 *Barb.* 552. Disting'd and explained with *Hawley v. Morton*, 23 *Id.* 255; *Loomis v. Loomis*, 35 *Id.* 624 (Agreements for maintenance) in *Cornell v. Cornell*, 96 *N. Y.* 108. Disting'd in *Loomis v. Loomis*, 35 *Id.* 624, 627. Disting'd (Action in name of committee of lunatic) in *Fields v. Fowler*, 2 *Hun.* 400. Quoted in *Sedgw. & W. on Tr. of Tit. to Land*, § 203.
- McKillop v. Burhans**, 24 *Hun.* 140. Abridg't s. c., as *McKillop v. Burhans*, in 12 *Weekly Dig.* 185.
- McKinnon v. Bliss**, 31 *Barb.* 180. Aff'd as *McKinnon v. Bliss*, in 21 *N. Y.* 206.
- McKinley v. Lamb**, 56 *Barb.* 284. Further proceeding in is 64 *Id.* 199.
- *v. Tucker*, 59 *Barb.* 93. Overruled, in further decision, in 6 *Lans.* 214.
- McKinnon v. Bliss**, 21 *N. Y.* 206. Disting'd (Presumption of grant) in *McKinnon v. Barnes*, 66 *Barb.* 91, 101. Cited (Books of history as evidence of facts recited therein) in 1 *Whart. Com. on Ev.* § 664.
- *v. Thompson*, 3 *Johns. Ch.* 307. Followed with *Livingston v. Newkirk*, *Id.* 312 (Effect of devise of after-acquired lands) in *Meador v. Sorsby*, 2 *Ala.* 712; s. c., 36 *Am. Dec.* 432. Followed with *Jackson v. Potter*, 9 *Johns.* 312, in *Bruen v. Bragaw*, 3 *Green. Ch. (N. J.)* 261; s. c., 38 *Am. Dec.* 519.
- McKinster v. Babcock**, 37 *Barb.* 265. Rev'd in 26 *N. Y.* 378. Decision in *Id.* applied (Proof of consideration of mortgage) in *Youngs v. Wilson*, 27 *Id.* 356.
- *v. Bank of Utica*, 9 *Wend.* 46. Aff'd in 11 *Id.* 473. Decision in *Id.* cited as authority (Duty of bank with which negotiable paper is left for collection) in *Blanc v. Mut. Nat. Bank of Orleans*, 28 *La. Ann.* 621; s. c., 26 *Am. R.* 119.
- McKinstry v. Davis**, 3 *Cov.* 339; s. c., 15 *Am. Dec.* 269. Corrected (Liability of married woman to arrest) in *Hovey v. Starr*, 42 *Barb.* 435.
- *v. Pearsall*, 3 *Johns.* 319; s. c., 3 *N. Y. Com. L. Law. ed.* 619, with brief note of other cases.
- *v. Sanders*, 2 *Sup'm. Ct. (T. & C.)* 181. Aff'd, it seems, in 58 *N. Y.* 662, on opinion below.
- *v. Solomons*, 2 *Johns.* 57. Aff'd, in 13 *Id.* 27.
- Macklin v. N. J. Steamboat Co.**, 7 *Abb. Pr. N. S.* 229. See *Weeks v. N. Y., New Haven & H. R. R. Co.* Approved but disting'd with *Mudgett v. Bay State Steamboat Co.*, 1 *Daly*, 151; *Gore v. Norwich & N. Y. Transportation Co.*, 2 *Id.* 254 (Regulations by carrier as to passenger's baggage) in *Gleason v. Goodrich Trans. Co.*, 32 *Wis.* 85; s. c., 14 *Am. R.* 716. Commented on in 2 *Redf. Am. Railw. Cas.* 141.
- McKnight v. Devlin**, 52 *N. Y.* 399. Followed (What constitutes breach of warranty of title on sale of chattel) in *Atkins v. Hosley*, 3 *Sup'm. Ct. (T. & C.)* 322, 327. Explained in 2 *Benj. on Sales*, § 948, n. 18 (*Corbin's* 4 *Am. ed.*).
- *v. Dunlop*, 5 *N. Y.* 537; s. c., 55 *Am. Dec.* 370, with note containing citations of the case. Previous decision in 4 *Barb.* 36. See *Seymour v. Davis*. Decision in 4 *Barb.* questioned (Defendant's pleadings in replevin) in *Stowell v. Otis*, 71 *N. Y.* 36, 38. Decision in 5 *Id.* followed (Acceptance required by statute of frauds) in *Thompson v. Menck*, 4 *Abb. Ct. App. Dec.* 404; *Clapin v. Potter*, 1 *Hilt.* 369; *Sale v. Darragh*, 2 *Id.* 201; *Van Woert v. Albany & Susquebanna R. R. Co.*, 1 *Sup'm. Ct. (T. & C.)* 255. Explained in *Flanagan v. Demarest*, 3 *Robt.* 183. Applied to subsequent payment,—in *Allis v. Read*, 45 *N. Y.* 150, but see cases collated and discussed in *Hunter v. Wetsell*, 57 *Id.* 379. Quoted in *Benj. on Sales*, § 160, n. 11 (*Corbin's* 4 *Am. ed.*) Disting'd (Effect of delivery of part of goods sold) in *Avery v. Willson*, 81 *N. Y.* 346. Applied (Right of action, when not to be destroyed) in *Whiting v. Gearty*, 14 *Hun.* 502. Disting'd in *McCormick v. Penn. Cent. R. R. Co.*, 80 *N. Y.* 362. Explained (Reservation of decision of admissibility of evidence) in *Kerslake v. Schoonmaker*, 3 *Sup'm. Ct. (T. & C.)* 524, 527. Disting'd in *Lathrop v. Bramhall*, 5 *Id.* 680.
- McKown v. Hunter**, 30 *N. Y.* 625. Followed (Evidence of intent) in *Kerrains v. People*, 60 *Id.* 221, 229. Limited in *Dillon v. Anderson*, 43 *Id.* 236.
- McKyring v. Bull**, 16 *N. Y.* 297, 352. Applied (Defense, when to be specially pleaded) in *Kissam v. Roberts*, 6 *Bow.* 165; *Wehle v. Haviland*, 42 *How. Pr.* 407; *Kniffen v. McConnell*, 30 *N. Y.* 290; *Morrell v. Irving Fire Ins. Co.*, 33 *Id.* 443; *Wehle v. Butler*, 12 *Abb. Pr. N. S.* 149; *Harter v. Crill*, 33 *Barb.* 284. Applied in *Foland v. Johnson*, 16 *Abb. Pr.* 405 which was cited as settling the law in *Beckett v. Lawrence*,

- 7 *Abb. Pr. N. S.* 405. Disting'd in *Quin v. Lloyd*, 41 *N. Y.* 352; *Eoomer v. Koon*, 6 *Hun.* 647. Approved as frequently confirmed in subsequent decisions,—in opinion of DWIGHT, Referee, in *Marie v. Garrison*. Relied on in *Atchison & Nebraska R. R. Co. v. Washburn*, 5 *Neb.* 117. Approved in *Pomeroy on Rem.* § 659.
- McLain v. Mayor, &c. of N. Y.**, 3 *Daly*, 32. Overruled in effect as to question of constitutionality, by later decisions of Ct. of App.
- **v. Van Zandt**, 48 *Hov. Pr.* 80. Aff'd in 39 *Super. Ct. (J. & S.)* 347.
- McLaren v. Charrier.** See *Pierce v. Delamater*.
- **v. Hartford Fire Ins. Co.**, 4 *N. Y. Leg. Obs.* 137; s. c., 1 *Edm.* 210. Aff'd in 5 *N. Y.* 151. Decision in 5 *Id.* disting'd (Rights of purchaser at foreclosure sale) in *Cheney v. Woodruff*, 45 *Id.* 99. Regarded as substantially overruled,—in *Mutual Life Ins. Co. v. Balch*, 4 *Abb. N. C.* 202. Examined, as to contracts for sale of land,—in *Wicks v. Bowman*, 5 *Daly*, 229.
- **v. Mayor, &c. of N. Y.**, 1 *Daly*, 243. Rev'd as *Gregory v. Mayor, &c. of N. Y.*, in 40 *N. Y.* 273.
- **v. Pennington**, 1 *Paige*, 102. Followed (Power of legislature to modify, etc., corporate franchise) in *Crease v. Babcock*, 23 *Pick. (Mass.)* 334; s. c., 34 *Am. Dec.* 61, 65, with note. Followed with approval in *Greenwood v. Union Freight R. R. Co.*, 105 *U. S.* 13, 21.
- **v. Watson.** See *Watson v. McLaren*.
- McLaughlin v. McDevitt**, 63 *N. Y.* 213. Disting'd (Undue influence on testator, how shown) in *Mairs v. Freeman*, 3 *Redf.* 190. Quoted in 1 *Jarm. on Wills*, Rand. and T. ed. 140.
- **v. Smith**, 52 *N. Y.* 647. See *Suydam v. Smith*, *Id.* 333.
- **v. Waite**, 9 *Cow.* 670. Aff'd in 5 *Wend.* 404; s. c., 21 *Am. Dec.* 232. Decision in 9 *Cow.* collated with *People v. McGarren*, 17 *Wend.* 460 (Rights and liabilities of finder of lost articles) in 16 *Chic. L. N.* 344. Doubted and disting'd in *Tancil v. Seaton*, 28 *Gratt. (Va.)* 601; s. c., 26 *Am. R.* 332. Relied on in *Livermore v. White*, 74 *Me.* 455; 27 *Alb. L. J.* 414. Examined with other cases in 18 *Am. Dec.* 57, *n.*
- McLean v. East River Ins. Co.**, 8 *Bow.* 700. Explained (Reference in insurance cases) in *Batchelor v. Albany City Ins. Co.*, 6 *Abb. Pr. N. S.* 240, 250.
- **v. Freeman**, 9 *Hun.* 246. Aff'd on substantially same grounds in 70 *N. Y.* 81.
- **v. Macdonald**, 2 *Barb.* 534. Explained (Ejectment by trustee) in *Sedgwick & W. on Tr. of Title to Land.* § 223.
- **v. McLean**, 3 *Hun.* 395. Aff'd, it seems, in 62 *N. Y.* 627, but without opinion.
- **v. Stewart**, 14 *Hun.* 472. Applied (Correction of judgment) in *Rockwell v. Carpenter*, 25 *Id.* 529, 532, and see dissenting opinion, 536. Disting'd in *Rogers v. Ives*, 23 *Id.* 424, 428.
- **v. Tompkins**, 18 *Abb. Pr.* 24. Disting'd (Necessity of notice of motion for subrogation in foreclosure proceedings) in *Twombly v. Cassidy*, 82 *N. Y.* 155, 160.
- **v. Maher**, 17 *Hun.* 215. See numerous other cases cited (Contracts as to contingent interests) in 20 *Am. L. Reg. N. S.* 101.
- McMahon v. Allen**, 12 *Hov. Pr.* 39. Aff'd in 1 *Hilt.* 103; s. c., 3 *Abb. Pr.* 89. See *Tiffany v. Bowerman*. Decision in *Id.* disting'd (Misjoinder of causes of action) in *Day v. Stone*, 5 *Daly*, 353.
- **v. —**, 14 *Abb. Pr.* 220. Criticised as contrary to authority (Authority of receiver pending appeal) in *Fellows v. Heermans*, 13 *Abb. Pr. N. S.* 1, 9.
- **v. —**, 34 *Barb.* 56; s. c., 12 *Abb. Pr.* 275. Rev'd on the merits, in 32 *Hov. Pr.* 313; s. c., less fully, 35 *N. Y.* 403; 3 *Abb. Pr. N. S.* 74. Decision in *Id.* disting'd (Right of creditors, &c., to assail fraudulent conveyance) in *Graham v. Railroad Co.*, 102 *U. S.* 148, 159. Discussed in *Burrill on Assign.* § 395, *n.* 1, 4 ed. Collated with other cases in *Bishop on Assign.* § 170. Collated with *Marvin v. Inglis*, 39 *Hov. Pr.* 329, and other cases (Assignability of mere right to file bill in equity) in 56 *Am. Dec.* 449, *n.*
- **v. Harrison**, 10 *Barb.* 659. Rev'g 1 *Bradf.* 283. Aff'd in 6 *N. Y.* 448. Decision in *Id.* explained (Professional gambler incompetent to act as executor) in *Willard on Executors*, 136.
- **v. Macy**, 51 *N. Y.* 155. See *Miller v. White*. Disting'd (Judgment against corporation, as evidence against stockholder) in *Hastings v. Drew*, 76 *N. Y.* 9, 15; *Stephens v. Fox*, 83 *Id.* 313, 317. See also *Lewis v. Armstrong*, 8 *Abb. N. C.* 385, 389. See authorities cited in *Abb. Tr. Ev.* 769, *n.* 1. Followed with approval (Proof that assignment of stock was intended as security) in *Burgess v. Seligman*, 107 *U. S.* 29, 31. Criticised in *Griswold v. Seligman*, 72 *Mo.* 124.
- **v. Mayor, &c. of N. Y.**, 33 *N. Y.* 642. Compared (Infant, when *sui juris*) in *Mangam v. Brooklyn R. R. Co.*, 38 *Id.* 459.
- **v. Mutual Benefit Life Ins. Co.**, 3 *Bow.* 664; s. c., 8 *Abb. Pr.* 297. See *Humiston v. Ballard*. Approved (Costs on dismissal for want of jurisdiction) in *King v. Poole*, 36 *Barb.* 248. Approved and followed in *Harriott v. New Jersey R. R. Co.*, 1 *Daly*, 377.
- **v. N. Y. & Erie R. R. Co.**, 20 *N. Y.* 463. See *Peters v. Newkirk*; *Van Rensselaer v. Jewett*. Applied (Effect of arbitrator's decision) in *Collins v. Vanderbilt*, 8 *Bow.* 320; *Delaware & Hudson Canal Co. v. Penn. Coal Co.*, 50 *N. Y.* 264. Disting'd in *Dustan v. McAndrew*, 10 *Bow.* 137, which was aff'd, as it seems, in 44 *N. Y.* 77, which *sed.* Questioned in *Norton v. Gale*, 95 *Ill.* 533; s. c., 35 *Am. R.* 173, 176. Explained and applied (Interest on unliquidated demands) in *Smith v. Velie*, 60 *N. Y.* 111. Collated

- and discussed with other cases in *White v. Miller*, 78 *Id.* 396. Discussed with other cases in 2 *Sedgw. on Meas. of Dama*. 7 ed. 183, *n.* Applied (Sufficiency of objection to allowance of interest) in *Graham v. Chrystal*, 2 *Abb. Ct. App. Dec.* 265, which aff'd 1 *Abb. Pr. N. S.* 124, which see.
- *v. Ranhr*, 3 *Daly*, 116. Rev'd in 47 *N. Y.* 67. Decision in *Id.* disting'd (Proceedings between members of voluntary association) in *Strebe v. Albert*, 1 *City Ct.* 376. Examined with other cases in 4 *Abb. N. C.* 307, *n.* Cited as authority (Voluntary associations as partnerships) in *Laford v. Deems*, 8 *Abb. N. C.* 344, 350. Applied (Case when appeal lies) in *Delaney v. Brett*, 51 *N. Y.* 78, 83.
- *v. Second Avenue R. R. Co.*, 11 *Hun*, 347. Aff'd in 75 *N. Y.* 231.
- *v. Tenth Ward School Officers*, 12 *Abb. Pr.* 129. Explained (Mechanics' lien on public school building) in *Brinckerhoff v. Board of Education of N. Y.*, 6 *Abb. Pr. N. S.* 428.
- *v. Walsh*, 43 *Super. Ct. (J. & S.)* 36. Aff'd, it seems, in 74 *N. Y.* 602, but without opinion.
- McMannis v. Butler**, 49 *Barb.* 176. Further decision in 51 *Id.* 436. Decision in 49 *Id.* disting'd (Effect of *L. 1861, c. 143, § 156*, respecting public ways in Rochester) in *Regna v. City of Rochester*, 45 *N. Y.* 129.
- McManus v. Gavin**, 8 *Daly*, 371. Aff'd in 77 *N. Y.* 36.
- McMaster v. Booth**, 4 *How. Pr.* 428; *s. c.*, 3 *Code R.*, 111. Disting'd (Power to order compulsory reference) in *Batchelor v. Albany City Ins. Co.*, 6 *Abb. Pr. N. S.* 240, 244.
- *v. Ins. Co. of North America*, 55 *N. Y.* 222; *s. c.*, 14 *Am. R.* 239. Aff'g 64 *Barb.* 536. Decision in 55 *N. Y.* followed (Correction of misstatement in proof of loss) in *Neill v. American Pop. Life Ins. Co.*, 42 *Super. Ct. (J. & S.)* 259. Approved in *Waldeck v. Springfield Ins. Co.*, 53 *Wis.* 132. Applied (Extrinsic evidence to show property covered by policy) in *Richardson v. Home Ins. Co.*, 47 *Super. Ct. (J. & S.)* 138, 156. Followed in *Bk. of California v. White*, 14 *Nev.* 373, 376, as applicable to case of building contract.
- McMasters v. Westchester Mut. Ins. Co.**, 25 *Wend.* 379; *s. c.*, 14 *N. Y. Com. L. Law.* ed. 879, with brief note. See *Inman v. Western Fire Ins. Co.* Explained and disting'd (Transfer of policy as between partners) in *Hoffman v. Ætna Ins. Co.*, 32 *N. Y.* 405.
- McMenomy v. Ferrers**. See *Cowperthwait v. Sheffield*; *Hutter v. Ellwanger*; *Peyton v. Hallet*; *Weston v. Barker*.
- *v. Murray*, 3 *Johns. Ch.* 435. Examined (Effect of insolvent's discharge on foreign contracts) in *Ritchie v. Garrison*, 10 *Abb. Pr.* 246, 252. Considered with *Murray v. De Rottenham*, 6 *Johns. Ch.* 52; *Hicks v. Hotchkiss*, 7 *Id.* 312; *Penniman v. Meigs*, 1, —30
- 9 *Johns.* 325; *Soule v. Chase*, 39 *N. Y.* 342, in *McDougall v. Page*, 55 *Vt.* 187; *s. c.*, 45 *Am. R.* 602, 607. Reviewed with other cases (Right of debtor in failing circumstances to give preferences) in *Crawford v. Kirksey*, 55 *Ala.* 282; *s. c.*, 28 *Am. R.* 704, 714.
- McMichael v. Kilmer**, 12 *Hun*, 336. Rev'd in 76 *N. Y.* 36. Further proceeding in 20 *Hun*, 176.
- McMillan v. Cronin**, 13 *Hun*, 68. Appeal dismissed in 75 *N. Y.* 474; *s. c.*, as *McMillen v. Cronin*, 57 *How. Pr.* 53. See *Roberts v. Roberts*.
- *v. Saratoga & Washington R. R. Co.* See *Wright v. N. Y. Central R. R. Co.*
- *v. Seneca Lake Grape & W. Co.*, 5 *Hun*, 12. Rev'd as *Rodbourn v. Seneca Lake, &c. Co.*, 67 *N. Y.* 215, on the ground that the expenditures were not "payments."
- *v. Vanderlip*, 12 *Johns.* 165; *s. c.*, 7 *Am. Dec.* 299, with note; 5 *N. Y. Com. L. Law.* ed. 343, with brief note. Criticised and explained with *Jennings v. Camp*, 13 *Johns.* 94; *Reab v. Moor*, 19 *Id.* 337; *Cunningham v. Morrell*, 10 *Id.* 203; *Lantry v. Parks*, 8 *Cov.* 63; *Monell v. Burns*, 4 *Den.* 121; *Wolf v. Howes*, 20 *N. Y.* 197 (Entirety of contract for services, &c.) in *Tipton v. Feitner*, *Id.* 423, 429. Cited with *Webb v. Duckingfield*, 13 *N. Y.* 390; *Sickels v. Pattison*, 14 *Wend.* 257; *Lantry v. Parks*, 8 *Cov.* 63; *Jennings v. Camp*, 13 *Johns.* 94; *Reab v. Moor*, 19 *Id.* 337, as leading cases, but explained in *Wolf v. Howes*, 20 *N. Y.* 197, 200. Approved with *Reab v. Moor*, 19 *Johns.* 337; *Smith v. Brady*, 17 *N. Y.* 173, in *Cunningham v. Jones*, 20 *Id.* 486. Cited as containing an elaborate review of English authorities, in *Jenkins v. Wheeler*, 3 *Keyes*, 645. Followed in *Moses v. Banker*, 2 *Sweeny*, 267. Followed with *Reab v. Moor*, 19 *Johns.* 337, in *Hutchinson v. Wetmore*, 2 *Cul.* 310; *s. c.*, 56 *Am. Dec.* 337. Followed with *Jennings v. Camp*, 13 *Johns.* 94; *Reab v. Moor*, 19 *Johns.* 337, in *Stark v. Parker*, 2 *Pick.* 267, 274; *s. c.*, 13 *Am. Dec.* 425, 429, with note; *Thorpe v. White*, 13 *Johns.* 53, being disting'd. Referred to in 7 *Am. Dec.* 302, *n.*, as having been particularly noticed; *Tipton v. Feitner*, 20 *N. Y.* 429, being also referred to as well stating the principle of the decisions. Explained in 2 *Chitty on Contr.* 847, *n. d.*, 11 *Am. ed.*
- McMorris v. Simpson**, 21 *Wend.* 610. Cited (Right of factor to transfer his authority) in *Whart. Com. on Ag.* § 756.
- McMurray v. McMurray**, 9 *Abb. Pr. N. S.* 315; *s. c.*, 41 *How. Pr.* 41; 60 *Barb.* 117. Compare further proceeding in 66 *N. Y.* 175. See *Jackson v. Carpenter*. Decision in 9 *Abb. Pr. N. S.* applied (Remedy in case of proceedings against infant) in *Jesurun v. Mackie*, 24 *Hun*, 626. Approved in *Matter of Becker*, 28 *Id.* 207. See (When motion may be made to set aside

- judgment) *Code Civ. Pro.* 1881, §§ 1283, n., 1290, n. Disting'd (Service of amended complaint) in *Weil v. Martin*, 1 *Civ. Pro. R.* 133, 141.
- *v. Noyes*, 72 *N. Y.* 523. Discussed (Guaranties of payment and collection) in 17 *Alb. L. J.* 360.
- *v. Rawson*, 3 *Hill*, 59. Overruled (Account as between others than mercantile partners) in *Kelly v. Kelly*, 3 *Barb.* 419.
- McNair v. Gilbert.** See *Pintard v. Tackington*.
- McNamara v. Dwyer**, 7 *Paige*, 239; s. c., 32 *Am. Dec.* 627, with note citing cases and wherein it is shown to hold what is the settled doctrine in *N. Y.* (Liability of executors in foreign jurisdiction for property of decedent) and is thought to rest on sound principle, though doubted in *Story on Conf. of L.* 7 ed. §§ 504 (a.), 513, and there thought to be at variance with the view adopted by the U. S. Supreme Court. See 35 *Am. Dec.* 484, n. See *Williams v. Ayrault*. Approved as irresistible in its conclusion, but head note criticised in *Cureton v. Mills*, 13 *So. Car.* 409; s. c., 36 *Am. R.* 700, 711.
- *v. McNamara*, 2 *Hill*, 547; s. c., 9 *Abb. Pr.* 18. Superseded (Counter-claim in matrimonial action) by *L.* 1881, p. 939, c. 702. Amd'g *Code Civ. Pro.* § 1770.
- McNamee v. Wilson**, 74 *N. Y.* 597. Aff'd in 102 *U. S.* 572.
- McNaughton v. Chave**, 5 *Abb. N. C.* 225. See (Power of surrogate to complete work of predecessor) *Code Civ. Pro.* 1881, § 2481, subd. 9, n.
- *v. McNaughton*, 41 *Barb.* 50. Aff'd in 34 *N. Y.* 201.
- McNeil v. Tenth National Bank**, 55 *Barb.* 59. Modified on appeal in 46 *N. Y.* 325; s. c., 7 *Am. R.* 341. See *Bush v. Lathrop*; *Kortright v. Buffalo Commercial Bank*; *N. Y. & New Haven R. R. Co. v. Schuyler*. Followed (Estoppel to assert title to stock certificates) in *Zulick v. Markham*, 6 *Daly*, 131; *Holbrook v. N. J. Zinc Co.*, 57 *N. Y.* 622. Disting'd in *Merchants' Bank v. Livingston*, 74 *Id.* 226. Applied to assignment of mortgage,—in *First Nat. Bank of Corry v. Styles*, 22 *Hun.* 346, but disting'd in case of mortgage, in *Davis v. Bechstein*, 69 *N. Y.* 442. To certificate of indebtedness, in *Moore v. Miller*, 6 *Lans.* 400. Applied to certificate of deposit in *International Bank v. German Bank*, 71 *Mo.* 183; s. c., 36 *Am. R.* 468, 475, 479. Approved in *Cherry v. Frost*, 7 *Lea (Tenn.)* 1, 10; s. c., 21 *Am. L. Reg. N. S.* 62, to which is subjoined note discussing many authorities. Approved in *Barstow v. Savage Min. Co.*, 64 *Cal.* 383, 393. Followed in *Arnold v. Johnson*, *Sup'm. Ct. Cal. Feb.* 1885, 4 *Pac. Rep.* 196. Applied with *Moore v. Metropolitan Nat. Bank*, 55 *N. Y.* 48 (Owner of property, when estopped to set up title) and *Ballard v. Burgett*, 40 *Id.* 314, disting'd in *Allien v. Wotherspoon*, 50 *Super. Ct. (J. & S.)* 417. Approved in
- Cowdrey v. Vandenburg*, 101 *U. S.* 572. Disting'd in *Hamilton v. Kingsbury*, 17 *Blatchf. C. Ct.* 460, 465. Reaff'd (Rights of assignee of non-negotiable chose in action) in *Moore v. Metropolitan Nat. Bank*, 55 *N. Y.* 49. Explained in 2 *Pomeroy on Eq. Jur.* 163, 164, n. Discussed in *Pomeroy on Rem.* § 160, n. 1. Quoted in 1 *Benj. on Sales*, § 450 (Corbin's 4 *Am. ed.*) Followed (Effect of delivery of stock certificate signed in blank to pass title) in *Smith v. Am. Coal Co. of Alleghany*, 7 *Lans.* 321. See also *Brisbaue v. Delaware, L. & W. R. R. Co.*, 25 *Hun.* 438, 440. Conflicting cases in several States collected in 10 *Am. L. Rec.* 276. Quoted and explained in *Morawetz on Corp.* § 329.
- McNeilly v. Richardson**, 4 *Cow.* 610. Explained (Effect of discharge of insolvent) in *Anonymous*, 1 *Edm.* 188.
- McNulty v. Hurd**, 11 *Hun.* 339. Modified on appeal in 72 *N. Y.* 518. Further proceeding in 18 *Hun.* 339; and that aff'd in 86 *N. Y.* 547. With decision in 72 *Id.* compare (Jurisdiction of surrogate on application for payment of claim) *Code Civ. Pro.* § 2718.
- Macomb v. Miller**, 9 *Paige*, 265. Aff'd in 26 *Wend.* 229.
- Macomber v. Dunham**, 8 *Wend.* 550. See *Miller v. Burroughs*. Dissented from (Rate of interest after maturity of obligation, wherein rate is fixed) in *Overton v. Bolton*, 9 *Heisk. (Tenn.)* 762; s. c., 24 *Am. R.* 367, 371. Approved with *U. S. Bank v. Chapin*, 9 *Wend.* 471 in *Brewster v. Wakefield*, 22 *How. (U. S.)* 118.
- *v. Mayor, &c. of N. Y.*, 17 *Abb. Pr.* 35; s. c., 1 *Buff. Super. Ct. (Sheld.)* 377. Disapproved (Judgment on voluntary appearance) in *Schwinger v. Hickox*, 46 *How. Pr.* 114.
- Macondray v. Wardle**, 7 *Abb. Pr.* 3; s. c., erroneously reported as motion at Special Term, in 26 *Barb.* 612. Decision in 7 *Abb. Pr.* opposed with *Smith v. Smith*, 15 *How. Pr.* 165; *Sweet v. Sweet*, *Id.* 169 (Husband and wife as witnesses) in *Shoemaker v. McKee*, 19 *Id.* 86, 91. Followed in *Chamberlain v. Dempsey*, 36 *N. Y.* 144. See, however, 2 *L.* 1867, c. 887.
- McPadden v. N. Y. Central R. R. Co.**, 47 *Barb.* 247. Rev'd 44 *N. Y.* 478. Compare (Liability for injury resulting from condition of railroad track) *Deyo v. The Same*, 34 *Id.* 9. Decision in 47 *Barb.* collated with other cases in 1 *Redf. Am. Railw. Cas.* 433; 2 *Id.* 420. Questioned in 1 *Alb. L. J.* 7.
- McParlin v. Boynton**, 8 *Hun.* 449. Aff'd, it seems, in 71 *N. Y.* 604, but without opinion.
- McPherson v. Clark**, 3 *Bradf.* 92. See *Jackson v. Holloway*. Overruled (Partial revocation of will), and *Quinn v. Quinn*, 1 *Sup'm. Ct. (T. & C.)* 437; *Matter of Prescott*, 4 *Redf.* 178, approved, in *Lovell v. Quitman*, 88 *N. Y.* 377, which aff'd 25 *Hun.* 537, which see. Opposed in *Estate*



- of Gallagher, 19 *N. Y. Daily Reg.* No. 25; s. c., *Gould's Ann. Dig. N. Y. Rep.* 1881, p. 353.
- *v. Cox*, 21 *Hun*, 493. Rev'd in 86 *N. Y.* 472.
- *v. Rathbone*. See *Halliday v. McDougall*; *Whitney v. Sterling*.
- McQueen v. Babcock**, 41 *Barb.* 337; s. c., 13 *Abb. Pr.* 268; 22 *How. Pr.* 229. Aff'd in 3 *Keyes*, 428; s. c., 3 *Abb. Ct. App. Dec.* 129. See *Allen v. Mapes*. Decision in 3 *Keyes* followed (Amendment of answer) in *Barnett v. Meyer*, 10 *Hun*, 109. Decision in 41 *Barb.* disting'd (Injunction against interfering with property, when violated by bringing action) in *Fincke v. Funke*, 25 *Hun*, 617.
- *v. Middletown Manuf. Co.*, 16 *Johns.* 5. See *Faulkner v. Delaware & Raritan Canal Co.* Applied (Jurisdiction over foreign corporation) in *St. Clair v. Cox*, 106 *U. S.* 350, 354. Doubted in *North Missouri R. R. Co. v. Akers*, 4 *Kans.* 453, 469. Quoted and discussed in *Ang. & A. on Corp.* § 403, 11 ed.
- McRea v. Central Nat. Bank of Troy**, 50 *How. Pr.* 51. Aff'd in 66 *N. Y.* 489. Decision in *Id.* followed (What are fixtures) in *Ward v. Kilpatrick*, 85 *Id.* 413, 419. Disting'd in *Wells v. Maples*, 15 *Hun*, 90. Critically considered in *Hinkley, &c. Iron Co. v. Black*, 70 *Me.* 473; s. c., 35 *Am. R.* 346, 348.
- McSorley v. McSorley**, 4 *Sandf. Ch.* 414. Followed (Jurisdiction of surrogate over testamentary trustees) in *Savage v. Olmstead*, 2 *Redf.* 478, where the case is wrongly cited from 2 *Bradf.* 188.
- McSpedon v. Mayor, &c. of N. Y.**, 15 *How. Pr.* 462. Aff'd in 7 *Bow.* 601; s. c., 20 *How. Pr.* 395. Decision in *Id.* commented on and doubted (Recovery on *quantum meruit*, where there is no valid contract) in *Harlem Gaslight Co. v. Mayor, &c. of N. Y.*, 3 *Robt.* 100. Decision in 15 *How. Pr.* disting'd (Power of common council to incur expense) in *Jones v. Mayor, &c. of N. Y.*, 7 *Robt.* 209.
- *v. Troy City Bank*, 33 *Barb.* 81. Aff'd in 3 *Abb. Ct. App. Dec.* 133.
- McStea v. Matthews**, 3 *Daly*, 349. Aff'd in 50 *N. Y.* 166, and that aff'd as *Matthews v. McStea*, in 91 *U. S.* 7. Motion to dismiss appeal denied in 20 *Wall.* 646. Decision in 50 *N. Y.* followed (When war of rebellion commenced so as to affect commercial interests) in *Burnside v. Matthews*, 54 *Id.* 78, 81.
- Mactier v. Frith**, 1 *Paige*, 434. Rev'd in 6 *Wend.* 103; s. c., 21 *Am. Dec.* 262, with note; 10 *N. Y. Com. L. Law. ed.* 1033, with brief note citing other cases. See *Trevor v. Wood*. Decision in 6 *Wend.* followed (Effect of acceptance of offer by letter) in *Vassar v. Camp*, 14 *Barb.* 354, which was aff'd in 11 *N. Y.* 447, which see; *Butterfield v. Spencer*, 1 *Bow.* 25. Applied in *Myers v. Smith*, 48 *Barb.* 631. Applied to telegraphic despatch,—in *Trevor v. Wood*, 36 *N. Y.* 309, which rev'd 41 *Barb.* 255, 269, which see. Followed in *Wheat v. Cross*, 31 *Md.* 99; s. c., 1 *Am. R.* 28. Collated with numerous other cases in 16 *West. Jur.* 337. See, also, 29 *Moak's Eng.* 347, n. Included in 1 *Langdell's Cas. on Contr.* 2 ed. 77. Explained in 1 *Benj. on Sales*, § 63 (Corbin's 4 *Am. ed.*). Criticised in *Pomeroy on Sp. Perf.* § 65, n. Applied (Sale as consummated by acceptance of offer to sell) in *Berly v. Taylor*, 5 *Hill*, 587.
- McVean v. Scott**, 46 *Barb.* 379. See *Chapel v. Spencer*; *Partridge v. Colby*. Opposed (What is material alteration in note) in *Card v. Miller*, 1 *Hun*, 504, 506.
- McVeany v. Mayor, &c. of N. Y.**, 1 *Hun*, 35; s. c., 3 *Sup'm. Ct. (T. & C.)* 131. Rev'd in 80 *N. Y.* 185; s. c., 59 *How. Pr.* 106. See *Conner v. Mayor, &c. of N. Y.* Decision in 1 *Hun* disting'd (Jurisdiction of court to determine right to office of alderman) in *People ex rel. Hatzel v. Hall*, 80 *N. Y.* 117, 126. Compare *Code Civ. Pro.* § 1948.
- McVey v. Cantrell**, 6 *Hun*, 528. Aff'd in 70 *N. Y.* 295; s. c., 26 *Am. R.* 605. Further proceeding in 8 *Hun*, 522. Decision in 70 *N. Y.* disting'd (Proof that debt was contracted for benefit of married woman's separate estate) in *Nash v. Mitchell*, 71 *Id.* 199, 203. Applied in *Scott v. Otis*, 25 *Hun*, 33. With decision in 8 *Hun*, see (Irrelevant, etc., matter in pleading) *Code Civ. Pro.* 1881, § 545, n.
- McVicar v. Alden**, 1 *Cai.* 58. Overruled (Preference of causes in which public officers are concerned) in *Anonymous*, 2 *Id.* 246.
- McVickar v. Greenleaf**, 1 *Abb. Pr. N. S.* 452; s. c., 30 *How. Pr.* 61; 4 *Robt.* 657. Approved (Examination of adverse party before issue joined) in *Hadley v. Fowler*, 12 *Abb. Pr. N. S.* 244. Followed in *Glenney v. World Mut. Life Ins. Co.*, 40 *Super. Ct. (J. & S.)* 92, 95.
- *v. Ketchum*, 19 *Abb. Pr.* 24. Aff'd in 1 *Abb. Pr. N. S.* 452. Decision in *Id.* disapproved (Examination of adverse party before issue joined) in *Bell v. Richmond*, 50 *Barb.* 572.
- *v. Wolcott*, 4 *Johns.* 510. Quoted (Appeal in case of injunction) in 2 *High on Inj.* 2 ed. § 1694, n. 3.
- McWhorter v. Agnew**, 6 *Paige*, 111. Followed (Extinguishing of trust created for benefit of married woman) and *Douglass v. Cruger*, 80 *N. Y.* 15, disting'd, in *Theband v. Schermerhorn*, 30 *Hun*, 332, which rev'd 10 *Abb. N. C.* 72, 76, which see.
- *v. Benson*, *Hopk.* 42. Applied (Basis for calculation of compensation of trustees, etc.) in *Phoenix v. Phoenix*, 28 *Hun*, 629. Disting'd in *Matter of Colah*, 6 *Daly*, 51, 63, 67. Approved and applied in *Matter of Hulbert*, 9 *Abb. N. C.* 1:2, 135.
- *v. McMahen, Clarke*, 400. Aff'd in 10 *Paige*, 386. See *Dykens v. Townsend*. Decision in 10 *Paige* applied (Existence of incumbrance, when not sufficient to justify

- refusal to take title) in *Pangburn v. Miles*, 10 *Abb. N. C.* 42, 46.
- McWilliams v. Mason**, 6 *Duer*, 276. Subsequent decision in 1 *Robt.* 576; s. c., 2 *Abb. Pr. N. S.* 211; and that aff'd in 31 *N. Y.* 294. Decision in *Id.* applied (Liability to innocent third person of one signing note under misapprehension) in *Carey v. Miller*, 25 *Hun*, 28, 31.
- Madan v. Covert**, 42 *Super. Ct. (J. & S.)* 135. Decision on second trial in 45 *Id.* 245; which was aff'd it seems, in 81 *N. Y.* 629, but without opinion. See Vol. 526 *Ct. App. Cas. Law Inst. Libr. N. Y. City.*
- **v. Sherrard**, 42 *Super. Ct. (J. & S.)* 353. Aff'd in 73 *N. Y.* 329; s. c., 29 *Am. R.* 153.
- Madge v. Puig**, 12 *Hun*, 15. Rev'd in 71 *N. Y.* 608.
- Madison Ave. Baptist Church v. Baptist Church in Oliver Street**, 19 *Abb. Pr.* 105. Rev'd in 3 *Robt.* 570; s. c., 1 *Abb. Pr. N. S.* 214; 30 *How. Pr.* 455. Decision, after second trial, in 1 *Sweeny*, 109, which was rev'd in 11 *Abb. Pr. N. S.* 132; s. c., 46 *N. Y.* 131. Subsequent decision in 41 *Super. Ct. (J. & S.)* 369; which was aff'd in part and rev'd in part in 73 *N. Y.* 82. Further proceeding in 43 *Super. Ct. (J. & S.)* 151. See *Phyfe v. Riley*. Decision in 30 *How. Pr.* with *Pratt v. Short*, 53 *Id.* 510; *Whitney Arms Co. v. Barlow*, 63 *N. Y.* 71; *Town of Verona v. Peckham*, 66 *Barb.* 113; *Steam Navigation Co. v. Weed*, 17 *Id.* 381; *Cheever v. Gilbert Elevated R'y Co.*, 43 *Super. Ct. (J. & S.)* 84, to be scarcely reconcilable with *N. Y. State Loan, &c. Co. v. Helmer*, 77 *N. Y.* 71 (Right to enforce contracts of a corporation *ultra vires*) in 40 *Am. Dec.* 381, *n.* Rule in decision in 73 *N. Y.* applied (Relief in equity) in *Henderson v. N. Y. Central R. R. Co.*, 78 *Id.* 423, 438. Commented on (Ejectment as distinguished from action to redeem and foreclose mortgages) in *Sedg. & W. on Tr. of Tit. to Land*, § 180.
- Madison County B'k v. Gould**, 5 *Hill*, 309. Applied (Liability as special partner) in *Bell v. Merrifield*, 28 *Hun*, 219; *Levy v. Lock*, 5 *Daly*, 46, 49. Disting'd in *Van Ingen v. Whitman*, 62 *N. Y.* 513.
- Magee v. Badger**, 30 *Barb.* 246. Aff'd, in 34 *N. Y.* 247. See *Baker v. Bliss*. Decision in 34 *N. Y.* followed (Purchaser of note, when put upon inquiry) in *Heard v. Dubuque County B'k*, 8 *Neb.* 10; s. c., 30 *Am. R.* 811.
- **v. Cutler**. See *Hartwell v. Armstrong*.
- **v. Osborn**. See *Magie v. Osborn*.
- **v. Vedder**. See *Bank of Poughkeepsie v. Hasbrouck; Tucker v. Tucker*.
- Maggrath v. Church**, 1 *Cai.* 196; s. c., 2 *Am. Dec.* 173, with note, wherein it is shown to be a leading case. See *Le Roy v. Gouverneur*. Cited (Liability of insurers for jettison loss) in *Griswold v. Union Mut. Ins. Co.*, 3 *Blatchf. C. Ct.* 231, 234, 236. Followed with *Vandenheuvel v. United Ins. Co.*, 1 *Johns.* 412 (When right of insured to recover for loss to which others are bound to contribute, is complete) in *Faulkner v. Augusta Ins. Co.*, 2 *McMull (So. Car.)* 158; s. c., 89 *Am. Dec.* 119. Collated with other cases (When recovery may be had as for total loss) in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 732.
- Maghee v. Camden, &c., R. R. Transp. Co.**, 45 *N. Y.* 514. See *Root v. Great Western Ry. Co.*; *Van Santvoord v. St. John*. Applied (Liability of carrier receiving goods for point beyond its line) in *King v. Macon & Western R. R. Co.*, 62 *Barb.* 174; *Babcock v. Lake Shore & M. S. R'y Co.*, 49 *N. Y.* 497. Disting'd in *Ætna Ins. Co. v. Wheeler*, *Id.* 620; *Rogers v. Wheeler*, 6 *Lana.* 422. Explained (Effect of deviation by carrier) in *Cochran v. Dinsmore*, 49 *N. Y.* 254. Applied in *Hinckley v. N. Y. Central, &c. R. R. Co.*, 56 *Id.* 434.
- Magie v. Baker**. See *Hall v. Wilson*.
- **v. Osborn**, 1 *Robt.* 689. Rev'd, as *Magee v. Osborn*, in 32 *N. Y.* 669. Decision in *Id.* explained (Proof of handwriting) in 1 *Best on Ev.* § 234 *n. a*, *Wood's ed.*
- Magnin v. Dinsmore**, 35 *Super. Ct. (J. & S.)* 182. Rev'd in 53 *N. Y.* 652, but without opinion. Decision in 56 *Id.* 168, is on appeal from second trial not reported below. See interlocutory judgment as to extra allowance to defendant after second trial, in 47 *How. Pr.* 11, and as to costs in 15 *Abb. Pr. N. S.* 331; s. c., 46 *How. Pr.* 297. Decision on appeal from judgment on the third trial is in 38 *Super. Ct. (J. & S.)* 248; which was rev'd in 62 *N. Y.* 35; s. c., 20 *Am. R.* 442. Decision on appeal from judgment on fourth trial is in 40 *Super. Ct. (J. & S.)* 512; which was confirmed in 42 *Id.* 16, which was on appeal from judgment rendered at Special Term in pursuance of decision in 40 *Id.* 512, and aff'd in 70 *N. Y.* 410; s. c., 26 *Am. R.* 608. See *Belger v. Dinsmore; Cole v. Goodwin; Magnin v. Adam's Express Co.; Smith v. N. Y. Central R. R. Co.* Decision in 56 *N. Y.* followed (Requisites of contract limiting carrier's liability for negligence) in *Westcott v. Fargo*, 61 *Id.* 554; *Mynard v. Syracuse, &c. R. R. Co.*, 71 *Id.* 185. Decision in 62 *Id.* disting'd (Necessity of proving gross negligence on part of carrier) in *Curtis v. Delaware, Lackawanna, &c. R. R. Co.*, 74 *Id.* 123. Disting'd (Fraud on part of shipper) in *Baldwin v. Liverpool & Gt. Western S. S. Co.*, *Id.* 131, which aff'd 11 *Hun*, 499, which see. See contrary to decision in 40 *Super. Ct. (J. & S.)* *Little v. Boston & Me. R. R. Co.*, 4 *Law & Eq. R.* 136. See, also, *Abb. Tr. Ev.* 575. Decision in 70 *N. Y.* examined in 19 *Abb. L. J.* 44. Followed (Defense in action against carrier for conversion) in *Hirschberg v. Dinsmore*, 67 *How. Pr.* 103.
- Magoffen v. Patton**, 3 *Edw.* 65. Followed (Executrix, when excluded from being trustee) in *Matter of Moke*, 2 *Redf.* 429, 433.

- Magown v. Sinclair**, 5 *Daly*, 63. Collated with other cases (What cases are referable) in 1 *Abb. N. C.* 110, *n.*
- Maguire v. Woodside**, 2 *Hilt.* 59. Followed (Damages for breach of contract of employment) in *Everson v. Powers*, 60 *How. Pr.* 166.
- Mahan, Matter of**, 20 *Hun*, 301. Aff'd, it seems, in 81 *N. Y.* 621, but without opinion. See *Matter of Merriam*. Decision in 20 *Hun* followed (Validity of assessment, as affected by partial withdrawal from competition of prices for work done) in *Matter of Metropolitan Gas Light Co.*, 23 *Id.* 329, which was modified in 85 *N. Y.* 523, which see; *Matter of Manhattan Sav'gs Inst.*, 82 *Id.* 144. Explained in *Matter of Merriam*, 84 *Id.* 603. Followed in several cases in 22 *Hun*, 614, which were, however, modified in 84 *N. Y.* 672.
- Mahan v. Brown**, 13 *Wend.* 261; *s. c.*, 28 *Am. Dec.* 461, with note. See *Parker v. Foote*; *Pickard v. Collins*. Referred to in *Gerber v. Grabel*, 16 *Ill.* 220, and *Banks v. American Tract Society*, 4 *Sandf. Ch.* 464, as an authority to the effect that the English doctrine of ancient lights, is in force in *N. Y.*, though, as appears from citations in 28 *Am. Dec.* 463, *n.*, that doctrine does not prevail there; see also citations on other points. Quoted (What is actionable nuisance) in *Wood on Nuis.* 2 ed. § 7; 1 *Add. on Torts*, 3, *n.* 1, Wood's ed.
- Mahaney v. Penman**, 4 *Duer*, 603; *s. c.*, 1 *Abb. Pr.* 34. Cited as authority (Judgment as contract) in *Lewis v. Armstrong*, 8 *Abb. N. C.* 385, 390.
- Maher v. Central Park, &c. R. R. Co.**, 39 *Super. Ct. (J. & S.)* 155. Aff'd in 67 *N. Y.* 52. Decision in *Id.* followed (Negligence in getting on or off front platform of street car) in *Lax v. Forty-second St. &c. R. R. Co.*, 46 *Super. Ct. (J. & S.)* 448, 454.
- **v. Hibernia Ins. Co.**, 6 *Hun*, 353. Aff'd in 67 *N. Y.* 283. See *Jennings v. Chenango Mut. Ins. Co.*
- Mahler v. Norwich & N. Y. Transportation Co.**, 45 *Barb.* 226; *s. c.*, 30 *How. Pr.* 237. Rev'd in 35 *N. Y.* 352. Decision in *Id.* disting'd (Construction of the boundary act) in *Keyser v. Coc*, 9 *Blatchf. C. Ct.* 32, 48.
- Mahon v. Hall**, 2 *Hun*, 154. Reported in 4 *Sup'm. Ct. (T. & C.)* 390.
- **v. N. Y. Central R. R. Co.**, 24 *N. Y.* 658. See *Presbyterian Society in Waterloo v. Auburn & Rochester R. R. Co.* Explained (Right of landowner injured by building of railroad, to recover prospective damages) in *Plate v. N. Y. Central R. R. Co.*, 37 *N. Y.* 472. Disting'd in *Henderson v. N. Y. Central R. R. Co.*, 78 *Id.* 423, 435. Collated with other cases in *Cook Highw. L.* 4 ed. 18.
- Mahoney v. Decker**. See *Thayer v. Van Vleet*.
- **v. People**, 3 *Hun*, 202; *s. c.*, 5 *Sup'm. Ct. (T. & C.)* 329; 48 *How. Pr.* 185. Aff'd, it seems, in 59 *N. Y.* 659, but without opinion. Decision in 3 *Hun* followed (Presumption indulged by appellate court, in absence of all of evidence given at trial) in *Howard v. Hayes*, 47 *Super. Ct. (J. & S.)* 89, 102. Compared (Force sufficient to constitute offense of robbery) in *People v. McGirt*, 24 *Hun*, 62, 64.
- Maigley v. Hauer**, 7 *Johns*, 341. See *Schemerhorn v. Vanderheyden*. Applied (Proving consideration not expressed in deed) in *Betts v. Union Bank*, 1 *Harr. & G. (Md.)* 175; *s. c.*, 18 *Am. Dec.* 283. Compare *Marsh v. Shattuck*, 4 *N. H.* 229; *s. c.*, 17 *Am. Dec.* 419. See also 17 *Am. Dec.* 523, *n.*; 2 *Co.* 76a, with learned note (G. 1), and references; 4 *Co.* 36; *Conn. Dig.* tit. Covenant, G. 3, collating contrasting cases.
- Maier v. Hoffman**, 4 *Daly*, 168. See *Curtis v. Gokey*. Collated with *Curtis v. Gokey*, 68 *N. Y.* 300; 5 *Hun*, 555; *Lawrence v. Kidder*, 10 *Barb.* 641; *Chappel v. Brockway*, 21 *Wend.* 157; *Murray v. Vanderbilt*, 39 *Barb.* 140; *Saratoga Co. B'k v. King*, 44 *N. Y.* 87, and many other authorities (Contract void as in restraint of trade) in 19 *Cent. L. J.* 62.
- Main v. Cooper**, 26 *Barb.* 468. Aff'd in 25 *N. Y.* 180.
- **v. Feathers**, 21 *Barb.* 646. See (Effect of covenant to pay rent, reserved on grant in fee) *Van Rensselaer v. Hays*, 19 *N. Y.* 78, 93.
- **v. Green**, 32 *Barb.* 448. Further opinion to same effect, in 33 *Id.* 136.
- **v. Schwarzwaelder**, 4 *E. D. Smith*, 273. See *Goodrich v. Jones*. Applied with *Freeland v. Southworth*, 24 *Wend.* 191 (What constitutes a fixture) in *Rahway Sav'gs Inst. v. Baptist Church*, 9 *Stew. (N. J.)* 61. See, also, *N. Y.* cases cited, in *Hendy v. Dinkerhoff*, 57 *Cal.* 3; *s. c.*, 40 *Am. R.* 107; also in 21 *Am. L. Reg. N. S.* 56, *n.*
- Mairs v. Remsen**, 3 *Code R.* 138. See (Change of venue) *Code Civ. Pro.* 1881, § 986, *n.*
- Major & Knapp M'fg. &c. Co. v. Werner**, 25 *Hun*, 118. Abridg't, *s. c.*, 12 *Weekly Dig.* 468.
- Malcolm v. Rogers**, 5 *Cow.* 188; *s. c.*, 15 *Am. Dec.* 464, with note, wherein it is said to be in accordance with settled law (Meaning of "may" in construction of statutes). See *Newburgh Turnpike Co. v. Miller*.
- Mali v. Lord**, 39 *N. Y.* 384. Applied (Extent of master's liability for servant's acts) in *Lynch v. Metrop. Elev. R'y Co.*, 24 *Hun*, 506, 508; *Carter v. Howe Machine Co.*, 51 *Id.* 290; *s. c.*, 34 *Am. R.* 311, 315. Disting'd in *Garretzen v. Duenckel*, 50 *Mo.* 104; *s. c.*, 11 *Am. R.* 405, 409; also disting'd in 23 *Am. L. Reg. N. S.* 452, *n.*
- Malins v. Brown**, 4 *N. Y.* 403. See *Hess v. Fox*. Applied (Enforcing agreement void by statute of frauds) in *Bennett v. Abrams*, 41 *Barb.* 625; *Pope v. O'Hara*, 48 *N. Y.* 453; *Green v. Green*, 2 *Redf.* 411. Approved with *Lowry v. Tew*, 3 *Barb. Ch.* 413,

- in *Dygart v. Remerschnider*, 32 *N. Y.* 629, 643.
- Mallard, Ex parte.** See *Ex parte Davis*.
- Malloney v. Horan.** See *Maloney v. Horan*.
- Mallory v. Burrett.** See *Travis v. Thompson*.
- **v. Commercial Ins. Co.**, 18 *How. Pr.* 395. Rev'd in 9 *Bosw.* 101.
- **v. Gillett**, 23 *Barb.* 610. Aff'd in 21 *N. Y.* 412. See *Chapin v. Merrill*; *Church v. Brown*; *Farley v. Cleveland*; *Kingsley v. Balcome*; *Leonard v. Vredenburg*; *Watson v. Randall*. Decision in 21 *N. Y.* applied (Promise to pay debt of another, when within statute of frauds) in *Sanders v. Gillespie*, 64 *Barb.* 634, which was aff'd in 59 *N. Y.* 252, which see; *Bausinger v. Guenther*, 66 *Barb.* 188; *Benedict v. Dunning*, 1 *Daly*, 241; *Prime v. Koehler*, 7 *Id.* 351, which was aff'd in 77 *N. Y.* 95, which see; *Watson v. Parker*, 1 *Hun.* 618; *May v. National B'k of Malone*, 9 *Id.* 111; *McCafferty v. Decker*, 12 *Id.* 459; *Cock v. Moore*, 18 *Id.* 32; *Duffy v. Wunsch*, 42 *N. Y.* 245; *Meriden Britannia Co. v. Zingsen*, 4 *Robt.* 320, which was aff'd in 48 *N. Y.* 250, which see. Disting'd in *Fowler v. Moller*, 10 *Bosw.* 380; *Booth v. Eighmie*, 60 *N. Y.* 241. Limited in *Belknap v. Bender*, 75 *Id.* 451, which aff'd 6 *Sup'm. Ct. (T. & C.)* 613, which see. Explained in *Connor v. Williams*, 2 *Robt.* 53. Much of the opinion disapproved, as dictum, in *Baker v. Dillman*, 12 *Abb. Pr.* 313. Explained in *Hoile v. Bailey*, 58 *Wis.* 434, 450. Cited as authority with *Cardell v. McNeil*, 21 *N. Y.* 336; *Barker v. Bucklin*, 2 *Den.* 45, in *Putnam v. Farnham*, 27 *Wis.* 187; s. c., 9 *Am. R.* 459. Thought in 5 *Am. Dec.* 324, n.—adopting the view in *Arnold v. Stedman*, 45 *Pa. St.* 189,—not to conflict with the rule in *Leonard v. Vredenburg*. 8 *Johns.* 29; *Farley v. Cleveland*, 4 *Cow.* 439, since in *Mallory v. Gillett*, the promising party derived no benefit from his promise; *Wills v. Brown*, 118 *Mass.* 138, holding that the consideration must move from the creditor to the promisor is shown, in same note, to conflict with *Mallory v. Gillett*. Approved as containing a most satisfactory exposition of the subject,—in *Wyman v. Goodrich*, 26 *Wis.* 21. Decision in 23 *Barb.* disting'd in *Quintard v. De Wolf*, 34 *Id.* 102.
- **v. Leach**, 14 *Abb. Pr.* 449, n.; s. c., 23 *How. Pr.* 507. See *McButt v. Hirsch*. See (Effect of foreign judgment on right of arrest) *Code Civ. Pro.* 1881, § 552, n.
- **v. Norton**, 21 *Barb.* 424. Explained (Equitable jurisdiction of Supreme Court) in *Marsh v. Benson*, 11 *Abb. Pr.* 241, 249, 251. See to the contrary (Judgment for interfering with exempt property) *Andrews v. Rowan*, 28 *How. Pr.* 126.
- **v. Tioga R. R. Co.**, 39 *Barb.* 483. Aff'd in 3 *Abb. Ct. App. Dec.* 139; s. c., 36 *How. Pr.* 202; 3 *Keyes*, 354; 5 *Abb. Pr. N. S.* 420. Decision in 39 *Barb.* followed (Liability for injury to railroad cars) as applica-

- ble to case of oil tanks,—in *Spears v. Lake Shore, &c. R. R. Co.*, 67 *Id.* 513, 518. Approved in *Peoria, &c. R. R. Co. v. Chicago, &c. R. R. Co.*, 109 *Ill.* 135, 142; s. c., 19 *Cent. L. J.* 111, with note wherein are collated *Spears v. Lake Shore, &c. R. R. Co.*, 67 *Barb.* 518, and other authorities. With decision in 3 *Abb. Ct. App. Dec.* compare (Limitations no defense for foreign corporations) discussion in 18 *Abb. L. J.* 223.
- **v. Travelers' Ins. Co.**, 47 *N. Y.* 52. Followed, but point not indicated, in *Same v. Same*, 54 *Id.* 651.
- **v. Vanderbilt**, 4 *Abb. N. C.* 127. Followed (Presumption of payment from lapse of time) in *Pangburn v. Miles*, 10 *Id.* 42, 47. See *Code Civ. Pro.* 1881, § 376, n.
- **v. Vanderheyden**, 3 *Barb. Ch.* 9. Rev'd in 1 *N. Y.* 452.
- **v. Willis**, 4 *N. Y.* 76. Quoted (Sale as distinguished from bailment) in 1 *Benj. on Sales*, § 2, n. 4, (Corbin's 4 *Am. ed.*) Quoted and explained in 2 *Pars. on Contr.* 133, n. v.
- **v. Wood**, 6 *Duer*, 657; s. c., 14 *How. Pr.* 67; and more fully, as *Malloy v. Wood*, in 3 *Abb. Pr.* 369. See (Verdict subject to opinion of court) *Code Civ. Pro.* 1881, § 1184, n.
- Maloney v. Clark**, 2 *Hill*, 657. Cited as authority with *Woods v. Randall*, 5 *Id.* 264 (What may be considered on appeal from justice's decision) in *Shaw v. Moser*, 3 *Mich.* 75.
- **v. Hathaway**, 6 *Sup'm. Ct. (T. & C.)* 1; mem. s. c., 3 *Hun.* 553. Rev'd in 64 *N. Y.* 5; s. c., 21 *Am. R.* 573, with note. See mem. of former decision in 2 *Sup'm. Ct. (T. & C.)* 664. See *Flike v. Boston & Albany R. R. Co.* Decision in 64 *N. Y.* followed (Liability for negligence of co-employee) in *Fort v. Whipple*, 11 *Hun.* 591; *Stevenson v. Jewett*, 16 *Id.* 212. Approved in *Fuller v. Jewett*, 80 *N. Y.* 53. Compared in *Barringer v. Delaware & Hudson Canal Co.*, 19 *Hun.* 219. Cited with *Corcoran v. Holbrook*, 59 *N. Y.* 517; *Booth v. Boston & A. R. R. Co.*, 73 *Id.* 38, in *Brown v. Minneapolis & St. L. R. R. Co.*, 31 *Minn.* 555. Applied in *State v. Malster*, 57 *Id.* 287, 308. Though said in *Smith v. Oxford Iron Co.*, 13 *Vroom. (N. J.)* 467; s. c., 36 *Am. R.* 535, 539, on the authority of *Whart. Com. on Negl.* § 229, to be in harmony with the American cases, yet also said not to be assented to by the English courts. Approved in dissenting opinion in *Tierney v. Minneapolis & St. L. Ry. Co.*, 33 *Minn.* 322. Disting'd with *Devlin v. Smith*, 89 *N. Y.* 470 (Liability for injury caused by defects in machinery, etc.) in *Delaney v. Hilton*, 50 *Super. Ct. (J. & S.)* 341, 354.
- **v. Stilwell**, 15 *Abb. Pr.* 425. Sustained (Joint demurrer) in *Hoffman v. Wheelock*, 62 *Wis.* 434, 441. Compare (Action by or against married woman) *Code Civ. Pro.* § 450.
- Maloney v. Horan**, 53 *Barb.* 29; s. c., 36

- How, Pr.* 260. Rev'd as *Malloney v. Horan*, in 49 *N. Y.* 111; s. c. as *Malony v. Horan*, 12 *Abb. Pr. N. S.* 289; 10 *Am. R.* 335. Decision in *Id.* explained (Release of dower) in *Elmendorf v. Lockwood*, 57 *N. Y.* 329. Compare *Ridgway v. Masting*, 23 *Ohio St.* 294; s. c., 13 *Am. R.* 251. See also *Morton v. Noble*, 57 *Ill.* 176; s. c., 11 *Am. R.* 7. Followed (Doctrine of merger, when not applicable) in *Richardson v. Wyman*, 62 *Me.* 280; s. c., 16 *Am. R.* 459. Commented on (Mode of transfer of title, after deed has been set aside as fraudulent) in *Dawley v. Brown*, 65 *Barb.* 107, 128. Explained (Judgment as estoppel) in *Bloomer v. Sturges*, 58 *N. Y.* 176. Cited in 2 *Whart. Com. on Ev.* § 786. Decision in 53 *Barb.* followed (Extinguishment of dower by wife joining husband in conveyance) in *Elmendorf v. Lockwood*, 4 *Lans.* 393, 398. Quoted and collated with other cases in *Sharsw. & B. Cas. on Real Prop.* 382.
- Malony v. Horan.** See *Maloney v. Horan*.
- Maloy v. N. Y. Central R. R. Co.**, 58 *Barb.* 182. Collated with *Rector v. Pierce*, 3 *Sup'm. Ct. (T. & C.)* 416; *Vale v. Bliss*, 50 *Barb.* 358, and other cases (What is negligence in one traveling in dark) in 45 *Am. R.* 648, n.
- Maltby v. Greene**, 3 *Abb. Ct. App. Dec.* 144; s. c., 1 *Keyes*, 548. Explained (Personal judgment in case of mechanics' lien) in *Barton v. Herman*, 8 *Abb. Pr. N. S.* 403; *Donnelly v. Libby*, 1 *Sweeny*, 270, 288. Applied in *Schaettler v. Gardiner*, 4 *Daly*, 59. See (Appeal from judgment) *Code Civ. Pro.* 1881, § 1294, n.
- **v. Harwood**, 12 *Barb.* 473. Explained (Liability for board or services among family) in *Van Schoeyck v. Backus*, 9 *Hun.* 63, 70. Reviewed with other cases (What operation an imperfect contract of apprenticeship may have) in 34 *Am. Dec.* 539, n.
- Manahan v. Gibbons**, 19 *Johns.* 109. Aff'd in *Id.* 427. Both decisions disting'd (Liability as among those jointly liable) in *Bates v. Underhill*, 3 *Redf.* 372.
- Manchester Iron Mfg. Co. v. Sweeting**, 10 *Wend.* 162. Explained (Discharge of accommodation party, as surety) in *Converse v. Cook*, 25 *Hun.* 44, 47.
- Mandell v. Barry**, 9 *Johns.* 234. Rev'd in 10 *Id.* 563.
- Manerville v. Guernsey**, 38 *Barb.* 225. Explained (Privileged communication between attorney and client) in 1 *Best on Ev.* § 184, n. a, Wood's ed.
- **v. Mandeville**, 8 *Paige*, 475. See *Wood v. Wood*. Followed (Revocation of letters testamentary for disqualification, &c.) in *Martin v. Duke*, 5 *Redf.* 597, 600. See *Code Civ. Pro.* 1881, § 2685, n.
- **v. Reed**, 13 *Abb. Pr.* 173. Compare (Mechanics' lien) *L.* 1863, c. 500, repealing *L.* 1830, c. 330.
- **v. Reynolds**, 5 *Hun.* 338. Aff'd in 68 *N. Y.* 528. Decision in *Id.* disting'd (Questioning regularity of satisfaction of judgment) in *Bennett v. Bagley*, 22 *Hun.* 411, a case of an execution sale. See to the contrary (Impeaching judicial record for fraud, &c.) *Krekeler v. Ritter*, 62 *N. Y.* 372; *Mattingly v. Nye*, 8 *Wall.* 370. See also *Abb. Tr. Ev.* 741, 834. Collated with other cases, and contrasted with the English rule (Power of attorney to compromise) in *Whipple v. Whitman*, 13 *R. I.* 514.
- Mangam v. Brooklyn City R. R. Co.**, 36 *Barb.* 230. Aff'd in 38 *N. Y.* 455. See *Hartfield v. Roper*. Decision in 38 *N. Y.* applied (Negligence in those having care of children) in *Mullaney v. Spence*, 15 *Abb. Pr. N. S.* 328; *Ihl v. Forty-Second St., &c. R. R. Co.*, 47 *N. Y.* 322; *Fallon v. Central Park, &c. R. R. Co.*, 64 *Id.* 13, 18. Commented on with *Mullaney v. Spence*, 15 *Abb. Pr. N. S.* 319; *McAlpin v. Powell*, 55 *How. Pr.* 163, and other conflicting cases, and disapproved in 22 *Am. L. Reg. N. S.* 453, 464. Quoted and commented on in 2 *Thomps. on Negl.* 1180. Applied (Infantile negligence) in *Pendril v. Second Ave. R. R. Co.*, 43 *How. Pr.* 410. Decision in 36 *Barb.* explained in *Mowrey v. Central City Railw.*, 66 *Id.* 43, 56. Followed (Effect of contributory negligence) in *Parrott v. Knickerbocker Ice Co.*, 2 *Sweeny*, 93.
- Manhattan Brass Manufg. Co. v. Sears**, 1 *Sweeny*, 426. Rev'd in 45 *N. Y.* 797; s. c., 6 *Am. R.* 177. Decision in *Id.* applied (Liability as partner, as determined by participation in profits) in *Ilaas v. Roat*, 16 *Hun.* 527; *Leggett v. Henneberger*, 1 *Sup'm. Ct. (T. & C.)* 413, which was aff'd in 58 *N. Y.* 278, which see. Disting'd in *Butler v. Finck*, 21 *Hun.* 212, 215; *Burnett v. Snyder*, 76 *N. Y.* 351; *Smith v. Bodine*, 74 *Id.* 30, 33. Cited with *Leggett v. Henneberger*, 1 *Sup'm. Ct. (T. & C.)* 418; *Tournade v. Hagedorn*, 5 *Id.* 288; *Greenwood v. Brink*, 1 *Hun.* 227, and other cases in *Story on Partn.* 7 ed. § 33, n. Quoted and explained in 1 *Collyer on Partn.* § 18, n. 4, Wood's Am. ed.
- **v. Thompson**, 53 *N. Y.* 80. See *Yale v. Dederer*. Decision in 53 *N. Y.* applied (Married woman's liability) in *Nash v. Mitchell*, 8 *Hun.* 473; *Woolsey v. Brown*, 11 *Hun.* 52, 54; which was aff'd in 74 *N. Y.* 82, which see. Approved and dissenting judges said to have intended to overrule *Yale v. Dederer*, 23 *Id.* 450,—in *Yale v. Dederer*, 68 *Id.* 329. Discussed in 1 *Benj. on Sales*, § 36, n. 39 (Corbin, 4 Am. ed.).
- Manhattan Co. v. Evertson**, 6 *Paige*, 457. Followed (Extinguishment of dower in conveyance in which wife joined) in *Elmendorf v. Lockwood*, 4 *Lans.* 396. Compare *Maloney v. Horan*, 12 *Abb. Pr. N. S.* 289; which rev'd 53 *Barb.* 29, which see. Disting'd in *Dawson v. Bank of Whitehaven (Chan. Div. Apr. 1877.)* 34 *Law Times R. N. S.* 310. Collated with other cases in *Sharsw. & B. Cas. on Real Prop.* 382.

- **v. Greenwich Bank**, 4 *Edw.* 315. Discussed (Powers of assignee for benefit of creditors) in *Burrill on Assign.* § 315, 4 ed.
- **v. Lydig**, 4 *Johns.* 377; s. c., 4 *Am. Dec.* 289; 3 *N. Y. Com. L. Law. ed.* 853, with brief note. Disting'd (When payment to bank's officer is payment to bank) in *East River Nat. B'k v. Gove*, 57 *N. Y.* 597, 602. Quoted and explained in *Ang. & A. on Corp.* § 244, 11 ed.; *Id.* § 247. Approved with *Weisser v. Denison*, 10 *N. Y.* 68 (When the fraudulent acts of agent are not binding upon principal) in *Hardy v. Chesapeake Bank*, 51 *Md.* 562; s. c., 34 *Am. R.* 325, 330. Followed (Bank when concluded as to amount of deposit, by entry in depositor's bank book) in *Hepburn v. Citizens' B'k of La.*; 2 *La. Ann.* 1007; s. c., 46 *Am. Dec.* 564.
- **v. Osgood**, 15 *Johns.* 162. Rev'd in 3 *Cow.* 612. Another decision in 1 *Id.* 65. See *Anthoine v. Coit*. See (Withdrawal of assignment of errors) *Powell v. Waters*, 8 *Cow.* 756.
- Manhattan Oil Co. v. Camden, &c. Transp. Co.**, 52 *Barb.* 72; s. c., 5 *Abb. Pr. N. S.* 289. Aff'd in 54 *N. Y.* 197. Decision in 52 *Barb.* limited (Liability of connecting carrier) in *Packard v. Taylor*, 35 *Ark.* 402; s. c., 37 *Am. R.* 374.
- Manhattan Savings Inst., Matter of**, 82 *N. Y.* 142. See *Matter of Merriam*. Reaff'd (Validity of assessment, as affected by partial withdrawal from competition, of prices for work done) in *Matter of Merriam*, 84 *N. Y.* 596, 603.
- Manice v. Manice**, 1 *Lans.* 348. Modified in 43 *N. Y.* 303. See *Haxtun v. Corse*; *Van Schuyver v. Mulford*. Decision in 45 *N. Y.* applied (Application to personality, of rules respecting estate in land) in *Lane v. Brown*, 20 *Hun.* 387. Applied (Bequest to foreign corporation) in *Draper v. Pres't, &c. of Harvard College*, 57 *How. Pr.* 270. Applied (When executors, &c. take no estate in trust) in *Matteson v. Armstrong*, 11 *Hun.* 248. See *Bennett v. Garlock*, 79 *N. Y.* 302, and dissenting opinion of RAPALLO, J. (p. 324). Applied (Estate when vested) in *McKinstry v. Sanders*, 2 *Sup'm. Ct. (T. & C.)* 186; *Chapman v. Nichols*, 61 *How. Pr.* 275, 279. Applied (Who entitled to income under 1 *R. S.* 726, § 40) in *Grant v. Grant*, 2 *Redf.* 296; *Van Emburgh v. Ackerman*, *Id.* 501. Applied (Gift by will to officer of corporation, when gift to corporation) in *Currin v. Fanning*, 13 *Hun.* 467, which aff'd 2 *Redf.* 533, which see; *Effray v. Foundling Asylum*, 5 *Id.* 557, 560. Approved, but disting'd (Separation of void provision from valid provisions in will) in *Knox v. Jones*, 47 *N. Y.* 398, and see *Van Schuyver v. Mulford*, 59 *Id.* 432. Applied in *Woodgate v. Fleet*, 64 *Id.* 574. Disting'd in *Richards v. Moore*, 5 *Redf.* 278, 282. Disting'd (Suspension of power of alienation) and *Colton v. Fox*, 67 *N. Y.* 348; *Everitt v. Everitt*, 29 *Id.* 39; *Warner v. Durant*, 76 *Id.* 136; *Smith v. Edwards*, 88 *Id.* 92, followed in *Hobson v. Hale*, 94 *Id.* 588, 613. Explained and disting'd in *Beardsley v. Hotchkiss*, 96 *Id.* 201, 215.
- **v. Mayor, &c. of N. Y.**, 8 *N. Y.* 120. Examined and followed (Authority of corporation of N. Y. to make assessment for street improvements) *Matter of Petition of Roberts*, 81 *Id.* 62.
- Maniort v. Roberts**, 4 *E. D. Smith*, 83. Explained (Effect of note payable to fictitious person) in *Merchant's L. & T. Co. v. B'k of Metropolis*, 7 *Daly*, 137, 141.
- Manke v. People**, 17 *Hun.* 410. Aff'd in *People v. Manke*, 78 *N. Y.* 611. Previous decision as *Manke v. People*, in 74 *Id.* 415. Decision in 17 *Hun* disting'd (Admissibility of opinion of expert) in *People v. Schewe*, 29 *Id.* 122. Compare (Challenge to juror) *Points of Law in Guiteau's Case*, p. 83 (Boston: Little, Brown & Co., 1881.)
- Manley v. Patterson**, 3 *Code R.* 89. Followed (Effect of excepting to sureties, in replevin action) in *Cullen v. Miller*, 5 *Abb. N. C.* 282.
- **v. People**, 7 *N. Y.* 295. Error in report corrected (In what county indictment may be found for larceny) in *Haskins v. People*, 16 *Id.* 344. Followed as decisive (Construction of State boundary act) in *Mahler v. Transportation Co.*, 35 *Id.* 352. Applied in *Keyser v. Coe*, 9 *Blatchf. C. Ct.* 32, 47.
- Mana v. Butler**, 2 *Barb. Ch.* 362. See, also (Voluntary associations) *Ebbinghausen v. Worth Club*, 4 *Abb. N. C.* 300.
- **v. Currie**, 2 *Barb.* 294. See *Alderly v. Storm*. Compared (Who liable for amount unpaid on stock) in *Wintringham v. Rosenthal*, 25 *Hun.* 580, 582. Disting'd and limited in *Cutting v. Damerel*, 88 *N. Y.* 416.
- **v. Delaware & Hudson Canal Co.**, 12 *Weekly Dig.* 7. Followed (Liability for accident resulting from insufficiency of track system) in *Dwyer v. Delaware & Hudson Canal Co.*, 13 *Id.* 98.
- **v. Eckford**, 15 *Wend.* 502. See *Swift v. Beers*. Explained (Want of consideration in sealed instrument) in *Anthony v. Harrison*, 14 *Hun.* 198, 207. Applied with *Parker v. Parmalee*, 20 *Johns.* 134; *Vrooman v. Phelps*, 2 *Id.* 177 (Basis of rule excluding parol evidence) in *Donley v. Tindall*, 32 *Tex.* 43; s. c., 5 *Am. R.* 234, 239, with note collating cases.
- **v. Fairchild**, 5 *Barb.* 108. Overruled (Buying demands for suit) in subsequent decision arising from same transactions in 14 *Id.* 548. Further decision in 2 *Keyes*, 106; s. c., 3 *Abb. Ct. App. Dec.* 152. Decision in *Id.* applied (Judgment of non-suit, when not proper) in *Gescheidt v. Quirk*, 5 *Civ. Pro. R. (Browne)* 88.
- **v. Lawrence**, 3 *Bradf.* 424. See *Valentine v. Valentine*; *Westerfield v. Westerfield*. Compared with other cases (Double commissions to executors) in *Hall v. Hall*, 73 *N. Y.* 535, 539.

- **v. Mann**, 75 *N. Y.* 614. Examined (What will justify allowance of alimony, &c.) in *Collins v. Collins*, 80 *Id.* 1, 7.
- **v. —**, 1 *Johns. Ch.* 231. Aff'd in 14 *Johns.* 1; s. c., 7 *Am. Dec.* 416. See *Roman Catholic Orphan Asylum v. Emmons*. Decision in 1 *Johns. Ch.* explained and applied (Parol evidence to explain will) in *Reynolds v. Robinson*, 82 *N. Y.* 103, 106. Followed and approved, citing *Gillespie v. Moon*, 2 *Johns. Ch.* 535,—in *Avery v. Chapel*, 6 *Conn.* 270; s. c., 16 *Am. Dec.* 53, with note. Followed in *Iddings v. Iddings*, 7 *Serg. & R. (Pa.)* 111; s. c., 10 *Am. Dec.* 450; *Pickering v. Pickering*, 50 *N. H.* 349; s. c., 46 *Am. R.* 74, n. Applied in *Dunham v. Averill*, 45 *Conn.* 61; s. c., 29 *Am. R.* 642, 649; *Grimes Ex'rs v. Harmon*, 35 *Ind.* 198; s. c., 9 *Am. R.* 690, 696. Commented on in 4 *Am. Dec.* 663, n. See also 3 *Id.* 395, n.; 9 *Id.* 636, n. Included with notes in *Redf. Lead. Cas. on Wills*, 527.
- **v. Marsh**, 35 *Barb.* 68. Disting'd (Demurrer to joint action) in *Bates v. Merrick*, 2 *Hun*, 568, 572.
- **v. Pearson**, 2 *Johns.* 37; s. c., 3 *N. Y. Com. L. Law. ed.* 291, with brief note. See *Jackson v. Barringer*. Examined and disting'd with *Jackson v. Moore*, 6 *Cov.* 706; *Morris Canal Co. v. Emmett*, 9 *Paige*. 168 (Relief against land contract, in case of deficiency) in *Belknap v. Sealey*, 14 *N. Y.* 143. Cited with approval in *Smith v. Evans*, 6 *Binn. (Pa.)* 102; s. c., 6 *Am. Dec.* 436, with note. Followed (Known and visible monuments in deed prevail as against measurements) in *Howe v. Bass*, 2 *Mass.* 380; s. c., 3 *Am. Dec.* 59.
- **v. Pentz**, 2 *Sandf. Ch.* 257. Rev'd in 3 *N. Y.* 415. Decision in *Id.* applied (Lien on assets of insolvent corporation) in *Angell v. Silsbury*, 19 *How. Pr.* 49; *Tinkham v. Borst*, 31 *Barb.* 411; *Graham v. Hoy*, 38 *Super. Ct. (J. & S.)* 515. Compare *McDonough v. Phelps*, 15 *How. Pr.* 380. Reviewed and contrasted with *Dayton v. Borst*, 31 *N. Y.* 435,—in *Winans v. McKeon R. R., &c. Co.*, 6 *Blatchf. Ct. Ct.* 215. Compare *Code Civ. Pro.* § 1785. Decision in 2 *Sandf. Ch.* cited approvingly in 2 *Kent Com.* 314, n. b. Decision in 3 *N. Y.* applied (Nature of liability of stockholders) in *Chase v. Lord*, 77 *N. Y.* 21; *Griffith v. Mangam*, 73 *Id.* 612, which aff'd 42 *Super. Ct. (J. & S.)* 374, which see.
- **v. People**, 15 *Hun*, 155. Aff'd as *People v. Mann*, 75 *N. Y.* 484; s. c., 31 *Am. R.* 482. Decision in 15 *Hun* followed (Signing without authority not forgery) in *State v. Willson*, 28 *Minn.* 55. See *Penal Code*, § 509.
- **v. Swann**, 14 *Johns.* 270. Compare (Party to promissory note, as witness to prove usury) in *Stafford v. Rice*, 5 *Cov.* 23.
- **v. Whitbeck**, 17 *Barb.* 388. Discussed (Terms of sale under assignment for benefit of creditors) in *Burrill on Assign.* § 224, 4 ed.
- Manning v. Manning**, 1 *Johns. Ch.* 527. See *Green v. Winter*. Applied (Effect here of principle established in English courts of equity) in *Walker v. Walker*, 8 *Abb. N. C.* 436, 440. Commented on (Compensation to trustees for time and trouble) in 2 *Perry on Trusts*, 3 ed. § 916.
- **v. Monaghan**, 1 *Bosw.* 459. Rev'd in 23 *N. Y.* 539. Further decision in 10 *Bosw.* 231; which was rev'd in 28 *N. Y.* 585. The statement in *Id.* that judgment was aff'd is an error. Decision in 23 *Id.* disting'd (Finding by jury of specific questions of fact) in *Jones v. Brooklyn Life Ins. Co.*, 61 *Id.* 79, 83.
- **v. Moscow Presbyterian Society**, 27 *Barb.* 52. See (Mortgage by religious corporation) *Moore v. Rector, &c.*, of *St. Thomas*, 4 *Abb. N. C.* 51.
- **v. Quicksilver Mining Co.**, 24 *Hun*, 360. See *Boardman v. Lake Shore & M. S. R. R. Co.* Applied (Right to dividends, &c.) in *Brisbane v. Delaware, L. & W. R. R. Co.*, 25 *Hun*, 438, 440.
- **v. Tyler**, 21 *N. Y.* 567. Disting'd (Sufficiency of answer setting up usury) in *Dagal v. Simmons*, 23 *N. Y.* 491, 494.
- Manning, Bowman & Co. v. Keenan**, 9 *Hun*, 686. Aff'd in 73 *N. Y.* 45.
- Manny v. Harris**, 2 *Johns.* 24; s. c., 3 *Am. Dec.* 386; 3 *N. Y. Com. L. Law. ed.* 286, with brief note. Followed, and *Rice v. King*, 7 *Johns.* 20; *Johnson v. Smith*, 8 *Id.* 383, disting'd (Conclusiveness of record of former trial) in *Smith v. Sherwood*, 4 *Conn.* 276; s. c., 19 *Am. Dec.* 143. Cited with *Jackson v. Wood*, 3 *Wend.* 27, in 2 *Whart. Com. on Ev.* § 785. Cited with approval in *Standish v. Parker*, 2 *Pick. (Mass.)* 20; s. c., 13 *Am. Dec.* 393, with note.
- Manrow v. Durham**, 3 *Hill*, 584; s. c., 15 *N. Y. Com. L. Law. ed.* 692, with brief note. Aff'd in 2 *N. Y.* 533. See *Hough v. Gray*; *Packer v. Willson*. Decision in 3 *Hill*, commented on and disapproved (Liability on guaranty of note) in *Brewster v. Silence*, 8 *N. Y.* 207, 214. Referred to with *Luquer v. Prosser*, 4 *Id.* 420, as overruled,—in *Draper v. Snow*, 20 *N. Y.* 331, 337. Commented on in *Bigel. on B. & N.* 2 ed. 139. Collated with other cases in *Redf. & B. Lead. Cas. on B. of Ech.* 111.
- Manton v. Cabot**, 4 *Hun*, 73. Reported in 6 *Sup'm Ct. (T. & C.)* 203.
- **v. Pool**, 67 *Barb.* 330; mem. s. c., 4 *Hun*, 638. Said in 5 *Id.* VI. to have been aff'd Oct. 5, 1875.
- Mannel v. People**, 48 *Barb.* 548. Disting'd (New trial in criminal cases) in *Buel v. People*, 78 *N. Y.* 492, 502.
- Manufacturers' & Builders' Bank v. Kiersted**, 6 *Daly*, 160. Applied (Appeal from General Term of marine court) in *Merceron v. Fcwlcr*, 8 *Id.* 536. Compare *Code Civ. Pro.* § 3191.
- Manufacturers' & Mechanics' Bank v. Boyd**. See *Same v. St. John*.
- **v. Cowden**, 3 *Hill*, 461. See (*Functus*

- officio*) **Bigler v. Mayor, &c. of N. Y.**, 5 *Abb. N. C.* 51 and 52, *n.* Disting'd and limited (Venue of affidavit) in *People ex rel. Mosher v. Stowell*, 9 *Id.* 456, 461.
- **v. St. John**, 5 *Hill*, 497. Re-aff'd (Foreign warrant of attorney will not uphold judgment here) in *Manufacturers' & Mechanics' Bank v. Boyd*, 3 *Den.* 257.
- Manufacturers' & Traders' Bank v. Hazard**, 30 *N. Y.* 226. Cited as not having been disputed or questioned in this State (Not necessary to equitable estoppel that party should design to mislead) in *Continental Nat. B'k v. Nat. B'k of Commonwealth*, 50 *Id.* 582. Explained in *Victor v. Internat. Nav. Co.*, 45 *Super. Ct. (J. & S.)* 143. Disting'd with *Petrie v. Feeter*, 21 *Wend.* 172, in *Hefner v. Vandolah* 57 *Ill.* 520; *s. c.*, 11 *Am. R.* 39, 44.
- Manufacturers' & Tra. B'k of Buffalo v. Farmers' & Mech. Nat. B'k**, 2 *Sup'm. Ct. (T. & C.)* 395. Modified in 60 *N. Y.* 40.
- Manufacturers' Bank of Rochester v. Hitchcock**, 14 *How. Pr.* 406. Examined with other cases (Striking out defense as sham) in *McCarty v. O'Donnell*, 7 *Robt.* 634.
- Manufacturers' Nat. Bank of Troy v. Cox**, 2 *Hun.* 572; *s. c.*, 5 *Sup'm. Ct. (T. & C.)* 126; *s. c.*, 2 *Hun.* 572. Aff'd, it seems, in 59 *N. Y.* 659, but without opinion.
- Many v. Noyes**, 5 *Hill*, 34. Disting'd (Demand against vessel) in *King v. Greenway*, 71 *N. Y.* 413, 417.
- Mapes v. Snyder**, 2 *Sup'm. Ct. (T. & C.)* 318. Aff'd in 59 *N. Y.* 450.
- **v. Weeks**, 4 *Wend.* 659. See *Matson v. Buck*. Collated with *Root v. King*, 7 *Cow.* 613, and other cases (What facts, &c., may be shown in mitigation of damages in action of slander) in 11 *Am. Dec.* 130, *n.*, as showing a great preponderance of authority in support of the rule. Examined with *Gilman v. Lowell*, 8 *Wend.* 573; *Purple v. Horton*, 13 *Id.* 25, in *Thompson v. Bowers*, 1 *Doug. (Mich.)* 327.
- **v. West**, 25 *Hun.* 118. Abridg't *s. c.*, 12 *Weekly Dig.* 574.
- Maples v. Mackey**, 15 *Hun.* 533. Further decision in 22 *Id.* 228; and that aff'd in 82 *N. Y.* 146. With decision in 15 *Hun.* see (Service of summons) *Code Civ. Pro.* 1881, § 434, *n.*
- Marble v. Lewis**, 53 *Barb.* 432. See *Shaw v. White*. Collated with other cases (Valuation of land for dower) in *Sharsw. & B. Cas. on Real Prop.* 399.
- **v. Whitney**, 28 *N. Y.* 297. Disting'd (Effect of 1 *R. S.* 521, § 99, respecting laying out of highways) in *Beckwith v. Whalen*, 70 *Id.* 430.
- Marcellus v. Countryman**, 65 *Barb.* 201. Compare (Estoppel created by former judgment) *Morss v. Osborn*, 64 *Id.* 548; *Reynolds v. Garner*, 66 *Id.* 310.
- **v. First Nat. Bank of Mobile**, 4 *Hun.* 466. Aff'd, it seems, in 64 *N. Y.* 645, but without opinion.
- Marchant v. Langworthy**, 6 *Hill*, 646. Aff'd in 3 *Den.* 526, but without opinion.
- Marcy v. Shults**, 29 *N. Y.* 346. See *Russell v. Hudson River R. R. Co.* Disting'd (Right to maintain height of dam) in *Adams v. Conover*, 22 *Hun.* 426. Applied (Memoranda as evidence) in *Driggs v. Smith*, 45 *How. Pr.* 451; *Wilcox Silver Plate Co. v. Green*, 9 *Hun.* 348; *Kennedy v. Crandell*, 3 *Lans.* 5. Explained in *Reed v. U. S. Express Co.*, 48 *N. Y.* 463. Disting'd in *Squires v. Abbott*, 61 *Id.* 535.
- Marcus v. St. Louis Mut. Life Ins. Co.**, 7 *Hun.* 5. Rev'd in 68 *N. Y.* 625. See *Kitts v. Massasoit Ins. Co.* Decision in 68 *N. Y.* collated with *St. John v. Am. Mut. Life Ins. Co.*, 13 *Id.* 31; *Earl v. Shaw*, 1 *Johns. Cas.* 314 (Consent of insurers to assignment of policy) in 56 *Am. Dec.* 748, *n.*
- Marcy v. Dunlap**, 5 *Lans.* 365. Followed (Effect of material alteration in mortgage) in *Smith v. Fellows*, 41 *Super. Ct. (J. & S.)* 36, 51.
- Martezek v. Cauldwell**, 2 *Abb. Pr. N. S.* 407; *s. c.*, 5 *Robt.* 660. Prior decision in 19 *Abb. Pr.* 35; *s. c.*, 2 *Robt.* 715. Decision in 2 *Abb. Pr. N. S.* disting'd (Juror disqualified by prejudice against profession to which defendant belonged) in *U. S. v. Noelke*, 17 *Blatchf. C. Ct.* 554, 563. Decision in 2 *Robt.* disting'd (Motion in libel to make answer more definite, &c.) as inapplicable to motion for bill of particulars in action for slander, in *Daniel v. Daniel*, 2 *Civ. Pro. R. (Browne)* 238, with note.
- Marfield v. Douglass**, 1 *Sandf.* 360. Rev'd in 3 *N. Y.* 62.
- **v. Goodhue**, 3 *N. Y.* 62. Cited as settled law (Duty of factor under advances, as to sales) in *Hilton v. Vanderbilt*, 82 *Id.* 591, 593, 597.
- Margraf v. Muir**, 57 *N. Y.* 155. Disting'd (Damages for breach of contract for sale of lands) in *Timby v. Kinsey*, 18 *Hun.* 255. Discussed in *Sedgw. Cas. on Dam.* 86. Approved in *Waterman on Sp. Perf.* § 579, *n.*
- Marie v. Garrison**, 45 *Super. Ct. (J. & S.)* 157. Rev'd in 83 *N. Y.* 14. See *L'Amoureux v. Gould*. Decision in 83 *N. Y.* followed (Implications from averments) in *De Silver v. Holden*, 50 *Super. Ct. (J. & S.)* 236. Disting'd (Contracts, when not void as against public policy) in *Munson v. Syracuse, &c. R'y Co.*, 29 *Hun.* 76.
- Marine Bank v. Clements**, 3 *Bosw.* 600. Further decision in 6 *Id.* 166; and that aff'd in 31 *N. Y.* 33. Decision in *Id.* collated with other cases (Negotiable paper made void by statute) in *Reidf. & B. Lead. Cas. on B. of Exch.* 234.
- **v. Fiske**, 9 *Hun.* 363. Aff'd in 71 *N. Y.* 333. Decision in *Id.* followed (Owner when not estopped from reclaiming property tortiously disposed of) in *Hazard v. Fiske*, 18 *Hun.* 277.
- **v. Van Brunt**, 61 *Barb.* 361. Aff'd in 49 *N. Y.* 160. Further proceeding in 11



*Hun*, 379. See *Alden v. Clark*. See (Execution against property of decedent) *Code Civ. Pro.* 1881, § 1880, *n.* As to the application of this provision, see *Code Civ. Pro.* § 3347, subd. 10. See also *Id.* §§ 1825-6.

— *v. Wright*, 46 *Barb.* 45. Aff'd in 48 *N. Y.* 1. Decision in *Id.* followed (Consignee without title to goods if he refuses to accept consignor's draft) in *Dodge v. Johnson*, 3 *Sup'm. Ct. (T. & C.)* 237, 239. Explained (Rights of one discounting draft with bill of lading attached) in *Security B'k of Minn. v. Lutgren*, 29 *Minn.* 365, citing *Farmers' & Mech. Nat. B'k v. Logan*, 74 *N. Y.* 568.

**Marine Nat. Bank v. National City Bank**, 36 *Super. Ct. (J. & S.)* 470. Rev'd in 59 *N. Y.* 67; *s. c.*, 17 *Am. R.* 305. Decision in *Id.* referred to in 39 *Am. Dec.* 523, *n.* as well expressing reason of doctrine established in *N. Y.* (Effect of certifying check) which doctrine is said to prevail in the *U. S. Sup'm. Ct.*; see *Espy v. Bank of Cincinnati*, 18 *Wall.* 604. Collated with *Farmers' Bank v. Butchers' Bank*, 16 *N. Y.* 125; *Cooke v. State Nat. Bank of Boston*, 52 *Id.* 96; *First Nat. Bank of Jersey City v. Leach*, *Id.* 350; *Nat. Bank of Commerce v. Nat. Mechanics' Bank'g Assoc. of N. Y.*, 55 *Id.* 211, and other cases in *Louisiana Nat. Bank of New Orleans v. Citizens' Bank of Louisiana*, 28 *La. Ann.* 189; *s. c.*, 26 *Am. R.* 92, 97, and note, the decision in the *Louisiana* case that the bank is estopped to deny the amount certified, being contrary to the *N. Y.* rule. Followed in *Parke v. Roser*, 67 *Ind.* 500. Included in 1 *Ames Cas. on B. & N.* 587. Applied (Liability in case of raised check) in *Susquehanna Valley Nat. Bank v. Loomis*, 85 *N. Y.* 207, 213. Disting'd with *National Bank of Commerce v. National Mech. Bank'g Assoc. of N. Y.*, 55 *Id.* 211; *White v. Continental Bank*, 64 *Id.* 317, in *Crawford v. West Side Bank*, 49 *Super. Ct. (J. & S.)* 68. Followed (Grounds for re-argument) in *Auburn City Nat. Bk. v. Hunsiker*, 72 *N. Y.* 252-259.

**Marine & Fire Ins. Bank v. Jauncey**, 1 *Barb.* 486. See *Hutter v. Ellwanger*. See (Pleading corporate existence) as to private or foreign charter, *Hahnemannian Life Ins. Co. v. Beebe*, 48 *Ill.* 87; *s. c.*, 1 *Withr. Corp. Cas.* 420. See also *Abb. Tr. Ev.* 18.

**Marine Ins. Co. v. United Ins. Co.** See *Scott v. Libby*.

**Mark v. Hudson River Bridge Co.**, 56 *How. Pr.* 108. See *Hayes v. Forty-second St. & C. R. Co.* Collated with *Weed v. Village of Balston Spa*, 76 *N. Y.* 329; *Eckert v. Long Island R. Co.*, 43 *Id.* 502; and many other cases (Contributory negligence) in 55 *Am. Dec.* 666, *n.*

**Markey v. Brewster**, 10 *Hun*, 16. Aff'd on opinion below, in 70 *N. Y.* 607.

**Markham v. Jandon**, 49 *Barb.* 462; *s. c.*, 3 *Abb. Pr. N. S.* 286. Rev'd in 41 *N. Y.* 235. See *Cortelyou v. Lansing*; *Kingsbury v. Kirwan*. Decision in 41 *N. Y.* criti-

cised (Damages for conversion of securities) in *Read v. Lambert*, 10 *Abb. Pr. N. S.* 436. Overruled in *Baker v. Drake*, 53 *N. Y.* 211, but reaff'd on other points in *Same v. Same*, 66 *Id.* 522. See *Gruman v. Smith*, 81 *Id.* 27. Applied in *Morgan v. Jaudon*, 40 *How. Pr.* 383. Referred to in *Devlin v. Pike*, 5 *Daly*, 86, as overruled by *Baker v. Drake*. Disting'd in *Hopper v. Smith*, 63 *How. Pr.* 34, 37. Cited as a leading case in 2 *Sedgw. on Meas. of Duma.* 7 ed. 384, *n.* Applied (Liability for selling stock without notice) in *Upton v. Bedlow*, 4 *Daly*, 216, 218; *Stenton v. Jerome*, 54 *N. Y.* 483. Disting'd in *Stewart v. Drake*, 46 *Id.* 452; *Bryan v. Baldwin*, 52 *Id.* 236. Dissented from with *Stenton v. Jerome*, 54 *Id.* 480; *Baker v. Drake*, 66 *Id.* 518; *Gruman v. Smith*, 81 *Id.* 25, in *Covell v. Lond*, 135 *Mass.* 41; *s. c.*, 46 *Am. R.* 446. Disting'd in *Corbett v. Underwood*, 82 *Ill.* 324; *s. c.*, 25 *Am. R.* 392. Cited as a leading case, in 7 *Am. Dec.* 296, *n.* Commented on in 1 *Add. on Contr.* 60, *n.* *Abb. ed.* Followed (Rights of broker buying stocks in his own name for customers) in *Northrup v. Shook*, 10 *Blatchf. C. Ct.* 243, 251. Approved in *Patterson v. Keys*, 1 *Cinc. (Ohio)* 94. Disting'd (Damages for conversion) in *Whelan v. Lynch*, 65 *Barb.* 329, which was aff'd in 60 *N. Y.* 472, which see. Applied in *Lobdell v. Stowell*, 51 *Id.* 76. Examined with other cases (Effect of usage) in 7 *South. L. J. N. S.* 35.

— *v. Stowe*. See *Garwood v. N. Y. Central, & C. R. Co.*

**Markle v. Hatfield**, 2 *Johns.* 455; *s. c.*, 3 *Am. Dec.* 446; 3 *N. Y. Com. L. Lav. ed.* 448, with brief note. See *Lightbody v. Ontario Bank*; *Roget v. Menitt*. Cited as authority (Validity of payment in worthless money) in *Gilman v. Peck*, 11 *Vt.* 516; *s. c.*, 34 *Am. Dec.* 702, with note. Approved in *Pope v. Nance*, 1 *Stew. (N. J.)* 351; *s. c.*, 18 *Am. Dec.* 60, 65. Disting'd in *Scruggs v. Gass*, 8 *Yerg. (Tenn.)* 175; *s. c.*, 29 *Am. Dec.* 114, with note. Followed in *Boyd v. Mexico Southern Bank*, 67 *Mo.* 537; *s. c.*, 29 *Am. R.* 515, 517; *Burrill v. Watertown Bank, &c.* 51 *Barb.* 105, being followed (What is reasonable time in which to return money so paid, is a question for a jury.) Dicta herein criticised in *Atwood v. Cornwall*, 28 *Mich.* 336; *s. c.*, 15 *Am. R.* 219. Followed (Warranty on transfer of note) in *Thrall v. Newell*, 19 *Vt.* 202; *s. c.*, 47 *Am. Dec.* 682, with note. Applied with *Hughes v. Wheeler*, 8 *Cow.* 77, in *Goodrich v. Tracy*, 43 *Vt.* 314; *s. c.*, 5 *Am. R.* 281.

**Marks v. King**, 67 *Barb.* 225; *mem. s. c.*, 1 *Hun*, 435; 3 *Sup'm. Ct. (3 T. & C.)* 778. Aff'd in 64 *N. Y.* 628. Decision in *Id.* applied (Discretion of court as to retaining evidence not objected to) in *Pontius v. People*, 82 *Id.* 339, 347.

— *v. Pell*, 1 *Johns. Ch.* 594. Quoted and discussed (Time as bar to redemption of mortgage) in *Ang. on Limit.* § 459, 6 ed.

- **v. Reynolds**, 20 *How. Pr.* 338. Rev'd in 12 *Abb. Pr.* 403.
- Marlett v. Marlett**, 14 *Hun*, 313. Followed (Jurisdiction of action for construction of will) in *Wager v. Wager*, 21 *Id.* 93, 95.
- Marquand v. N. Y. Manuf. Co.**, 17 *Johns.* 525. See *Ketcham v. Clark*; *Smith v. Mullock*. Disting'd (Dissolution of partnership by transfer of one partner's interest) in *Sistare v. Cushing*, 4 *Hun*, 503, 505. Explained in 1 *Paras. on Contr.* 195, n. l. Cited with *Morss v. Gleason*, 64 *N. Y.* 204, in *Story on Partn.* 7 ed. § 308, n.
- **v. Webb**, 16 *Johns.* 89. See *Anthoine v. Coit*. Reconsidered and applied (Co-partner as witness against firm) in *Pierce v. Kenny*, 5 *Hill*, 82. With *Osgood v. Manhattan Co.*, 3 *Cov.* 612; *People v. Wiley*, 3 *Hill*, 214, held, to be modified by later decisions (New trial for improperly receiving evidence which might not have had controlling influence upon jury) in *People v. Gonzalez*, 35 *N. Y.* 49.
- Marquart v. LaFarge**, 5 *Duer*, 559. Explained (Damages for loss of profits) in *Mitchell v. Cornell*, 54 *Super. Ct. (J. & S.)* 401, 405. Disting'd in *Denison v. Ford*, 10 *Daly*, 412.
- Marquat v. Marquat**, 7 *How. Pr.* 417. Rev'd in 12 *N. Y.* 336. See *Reubens v. Joel*. Decision in 12 *N. Y.* explained with *Astor v. L'Amoureux*, 8 *Id.* 107 (Power of General Term as to judgment) in *Crittenden v. Empire Stone Dressing Co.*, 3 *Abb. Pr.* 74. Disting'd in *Cuff v. Dorland*, 57 *N. Y.* 565. Applied in *Meyer v. City of Louisville*, 7 *Abb. Pr.* 7; *Irwin v. Lawrence*, 1 *Hill*, 352. Examined with other cases (Relief as embraced with scope of complaint) in *Denman v. Prince*, 40 *Barb.* 218; *Genet v. Howland*, 45 *Id.* 569. Applied in *Davis v. Grove*, 2 *Robt.* 641; *Caswell v. West*, 3 *Sup'm. Ct. (T. & C.)* 385. Commented on in *N. Y. Ice Co. v. North Western Ins. Co.*, 31 *Barb.* 75. Disting'd in *Lewis v. Mott*, 36 *N. Y.* 398; *Sinclair v. Fitch*, 3 *E. D. Smith*, 690. Decision in 7 *How. Pr.* applied in *Herrington v. Robertson*, 7 *Hun*, 368, 371.
- Marschultz v. McGreery**, 21 *Hun*, 409. See *Marshuetz v. McGreevy*, 23 *Id.* 408.
- Marsden v. Cornell**, 2 *Hun*, 449; s. c., 5 *Sup'm. Ct. (T. & C.)* 27. Aff'd in 62 *N. Y.* 215. See *Thurst v. West*.
- Marsellis v. Thalhimer**, 2 *Paige*, 35; s. c., 21 *Am. Dec.* 66. Cited with approval with *Jenkins v. Freyer*, 4 *Paige*, 47; *Bowman v. Tallman*, 27 *How. Pr.* 212; *Mason v. Jones*, 2 *Barb.* 229; *Hone v. Van Schaick*, 3 *Barb. Ch.* 488 (Status of unborn child) in *Gillespie v. Nabors*, 59 *Ala.* 441; s. c., 31 *Am. R.* 20. Cited (Estate by curtesy, as determined by birth of child after death of mother) in 1 *Washb. on Real Prop.* 4 ed. 179, n. 5. Criticised in *Tyler on Inf. & Cov.* 2 ed. § 281.
- Marsh, Matter of**, 10 *Hun*, 49. Rev'd in 71 *N. Y.* 315.
- , 21 *Hun*, 582. Aff'd in 83 *N. Y.* 431.
- Marsh v. Benson**, 11 *Abb. Pr.* 241; s. c., 19 *How. Pr.* 415. Rev'd in 84 *N. Y.* 358. Decision in 11 *Abb. Pr.* followed (Jurisdiction of court of equity as affected by amount in controversy) in *Hyatt v. Bates*, 35 *Barb.* 308, 315. But see *Sarsfield v. Van Vaughaner*, 15 *Abb. Pr.* 65; *L.* 1863, c. 392, § 2.
- **v. City of Brooklyn**, 2 *Hun*, 142; s. c., 4 *Sup'm. Ct. (T. & C.)* 413. Rev'd in 59 *N. Y.* 280. See *Peyser v. Mayor, &c. of N. Y.* Applied (Proceedings to remove cloud on title, when maintainable) in *Smith v. Mayor, &c. of N. Y.*, 6 *Daly*, 402; *Boyle v. City of Brooklyn*, 8 *Hun*, 33; *Washburn v. Burnham*, 63 *N. Y.* 134; *Guest v. City of Brooklyn*, 69 *Id.* 514. Disting'd in *N. Y. & Harlem R. R. Co. v. Trustees of Morrisania*, 7 *Hun*, 654; *Mayor, &c. of N. Y. v. North Shore Staten Island Ferry Co.*, 9 *Id.* 620, 622. Followed in *Briggs v. Johnson*, 71 *Me.* 235.
- **v. Dodge**, 5 *Lans.* 541. Further decision in 4 *Hun*, 278; s. c., 6 *Sup'm. Ct. (T. & C.)* 568; and that rev'd in 66 *N. Y.* 533. Decision in 4 *Hun* followed with *Marston v. Swett*, 66 *N. Y.* 206 (Invalidity of patent as defense to action for royalty) in *Jones v. Burnham*, 67 *Me.* 93; s. c., 24 *Am. R.* 10, 13; *Saxton v. Dodge*, 57 *Barb.* 84, being referred to as overruled by *Marston v. Swett*.
- **v. Ellsworth**, 36 *How. Pr.* 532; s. c., more fully, 1 *Sweeny*, 52. Further decision as *Marsh v. Ellsworth*, in 2 *Id.* 589, and that aff'd in 50 *N. Y.* 309. See *Perkins v. Mitchell*. Decision in 50 *N. Y.* referred to in 2 *Am. Dec.* 431, n., as clearly stating the doctrine (Privileged expressions in judicial proceedings). Applied in *Aylesworth v. St. John*, 23 *Hun*, 156.
- **v. Falker**, 40 *N. Y.* 562. Followed (Liability for fraudulent representations) in *Brown v. Ashbough*, 40 *How. Pr.* 238; *Van Vliet v. McLean*, 23 *Hun*, 208; *Meyer v. Amidon*, 45 *N. Y.* 170; *Wakeman v. Dalley*, 51 *Id.* 31, 34. Disting'd in *Westcott v. Ainsworth*, 9 *Hun*, 57; *Dudley v. Scranton*, 57 *N. Y.* 428. Examined with other cases in *Livingston v. Keech*, 34 *Super. Ct. (J. & S.)* 553; *Morehouse v. Yeager*, 41 *Id.* 146. Approved and followed in *Lynch v. Mercantile Trust Co.*, *U. S. Cir. Ct. E. D. Minn.* 17 *Reporter*, 71; s. c., 18 *Fed. Rep.* 489. Cited as authority with *Chester v. Comstock*, 40 *N. Y.* 575; *Meyer v. Amidon*, 45 *Id.* 169; *Oberlander v. Spiess*, *Id.* 175, in *Humphrey v. Merriam*, 32 *Minn.* 198. Reviewed with *Addington v. Allen*, 11 *Wend.* 374, and other cases in *Einstein v. Marshall*, 58 *Ala.* 153; s. c., 29 *Am. R.* 729. Quoted and explained in 2 *Add. on Torts*, 405, n. 1, *Wood's ed.*
- **v. Holbrook**, 3 *Abb. Ct. App. Dec.* 176. Compare (Attorney's fees in case of settlement by client) *Bryon v. Durrie*, 6 *Abb. N. C.* 135.
- **v. Howe**, 36 *Barb.* 649. Discussed

- (Privileged communication between attorney and client) in 1 *Best on Ev.* § 184, n. a, Wood's ed.
- **v. Lawrence**, 4 *Cow.* 461. Collated with *Sandford v. Roosa*, 12 *Johns.* 163; *Hotchkiss v. McVickar*, *Id.* 403; *Wells v. Marshall*, 4 *Cow.* 411; *Champenois v. White*, 1 *Wend.* 92; *Lambert v. Paulding*, 18 *Johns.* 311, and other cases (Priority of execution liens) in *Rogers v. Dickey*, 1 *Gilm. (Ill.)* 636; s. c., 41 *Am. Dec.* 204, 207, with note.
- **v. Lowry**, 26 *Barb.* 197; s. c., 16 *How.* *Pr.* 41. See (Change of venue) *Code Civ. Pro.* 1881, § 986, n.
- **v. N. Y. & Erie R. R. Co.**, 14 *Barb.* 364. Disapproved (Liability for injury to cattle straying on railroad track) in *Corwin v. N. Y. & Erie R. R. Co.*, 13 *N. Y.* 42.
- **v. Oneida Central B'k**, 34 *Barb.* 298. Collated with *Ætna National B'k v. Fourth National B'k*, 46 *N. Y.* 82, and many other cases, as indicating a settled rule of the law of banking (Effect of general deposit) in 19 *Am. Dec.* 418, n. Compared (Application of payments) in 5 *Am. L. Reg. N. S.* 263.
- **v. Pike**, 1 *Sandf. Ch.* 210. Aff'd in 10 *Paige*, 595. Subsequent decision respecting same mortgage in *McLean v. Towle*, 3 *Sandf. Ch.* 118. See *Burr v. Beers*. Decision in 10 *Paige* applied (Liability created by assumption of mortgage) in *Cornell v. Prescott*, 2 *Barb.* 19. Explained in *Stebbins v. Hall*, 29 *Id.* 530, 536; *Garnsey v. Rogers*, 47 *N. Y.* 236; *Marshall v. Davies*, 78 *Id.* 421. Reviewed with *Garnsey v. Rogers*, 47 *Id.* 239; *Rubens v. Prindle*, 44 *Barb.* 336; *Mills v. Watson*, 1 *Sweeny*, 374; *Torrey v. Bank of Orleans*, 9 *Paige*, 649; 7 *Hill*, 260, in *Snyder v. Summers*, 1 *Lea (Tenn.)* 534; s. c., 27 *Am. R.* 778. Criticised and disting'd (Rights of sureties) in *Slauson v. Watkins*, 86 *N. Y.* 597, 602. Applied in *Woodruff v. Erie R'y Co.*, 93 *Id.* 609, 626.
- **v. Potter**, 30 *Barb.* 506. Approved (Husband and wife, as witnesses) in *Chambelain v. People*, 23 *N. Y.* 85, 88; *Hooper v. Hooper*, 43 *Barb.* 292.
- **v. Rouse**, 44 *N. Y.* 643. Explained (Delivery and acceptance required by statute of frauds) in 1 *Benj. on Sales*, § 174, 2, n. 21, (Corbin's 4 *Am. ed.*); *Id.* § 179. Quoted in *Id.* § 179 (Bennett's 4 *Am. ed.*).
- **v. Russell**, 2 *Lans.* 340. Rev'd in 66 *N. Y.* 288. Decision in *Id.* reviewed with other cases (What is illegal contract of partnership) in *Story on Partn.* 7 ed. § 6, n.
- **v. Titus**, 3 *Hun.* 550; s. c., reported fully, 6 *Sup'm. Ct. (T. & C.)* 20.
- **v. Town of Little Valley**, 1 *Hun.* 554; s. c., 4 *Sup'm. Ct. (T. & C.)* 116. Aff'd in 64 *N. Y.* 112.
- **v. Wickam**, 14 *Johns.* 167. Disting'd with *Hurd v. West*, 7 *Cow.* 752 (Distinction between sale and bailment) in *Blood v. Palmer*, 11 *Me.* 414; s. c., 26 *Am. Dec.* 547, 550, with note.
- **v. Wyckoff**, 10 *Bosw.* 202. Disting'd (Effect of inability of vendor of land to perform contract) in *Hinckley v. Smith*, 51 *N. Y.* 21, 26.
- **Marshall v. Davies**, 16 *Hun.* 606. Rev'd in 78 *N. Y.* 414; s. c., 58 *How. Pr.* 231. Decision in *Id.* followed (Liability created by assumption of mortgage) in *Fleishhauer v. Doellner*, 9 *Abb. N. C.* 372, 374.
- **v. Davis**, 1 *Wend.* 109; s. c., 19 *Am. Dec.* 463, with note. See *Hoffman v. Carow*; *Pangburn v. Patridge*. Limited (Vendor, etc. of personal property, as witness for vendee) in *Fuller v. Townsend*, 5 *Den.* 184.
- **v. Guion**, 4 *Den.* 581. Overruled in subsequent decision in 11 *N. Y.* 461. See *Whitney v. Mayor, &c.* of *N. Y.* Decision in 4 *Den.* explained (Right to wharfage) in *Whitney v. Mayor, &c.* of *N. Y.*, 6 *Abb. N. C.* 329, 341. Decision in 11 *N. Y.* applied with *Voorhees v. Burchard*, 55 *Id.* 98; *Huttemeier v. Albro*, 18 *Id.* 48; *Lansing v. Smith*, 8 *Cow.* 146; 4 *Wend.* 9, 22, 24; *Gould v. Hudson River R. Co.*, 6 *N. Y.* 522 (Incorporeal hereditaments, how derived) in *Turner v. Peoples' Ferry Co.*, *U. S. Cir. Ct. S. D. N. Y.*, 31 *Fed. Rep.* 90, a case of riparian rights.
- **v. Hitchcock**, 3 *Redf.* 461. Further decision as *People v. Marshall* in 7 *Abb. N. C.* 380, 389. With decision in 3 *Redf.* see (Power of surrogate to punish for contempt) *Code Civ. Pro.* 1881, § 2555, n.
- **v. Marshall**, 2 *Hun.* 238. Followed on principle of *stare decisis* (Validity of marriage in evasion of divorce) in *Van Voorhis v. Brintnall*, 23 *Hun.* 260, 263, which was rev'd in 86 *N. Y.* 27. Questioned in *Kerrison v. Kerrison*, 8 *Abb. N. C.* 444. Followed in *Thorp v. Thorp*, 60 *How. Pr.* 295. Approved as a well considered case in 8 *Am. Dec.* 134, n. Collated with other cases in 18 *Am. R.* 521, n.
- **v. Meech**, 51 *N. Y.* 140. See *Rooney v. Second Ave. R. Co.* Followed (Attorney's lien on judgment for costs) in *Matter of Bailey*, 31 *Hun.* 608. Disting'd in *Murray v. Jibson*, 22 *Id.* 386, 388. Disapproved in *Horton v. Champlin*, 12 *R. I.* 550; s. c., 34 *Am. R.* 723.
- **v. Moseley**, 21 *N. Y.* 290. Approved (Apportionment of rent) in *Fay v. Hollaran*, 35 *Barb.* 295. Disting'd in *Betts v. Betts*, 4 *Abb. N. C.* 317, 416.
- **v. N. Y. Central R. R. Co.**, 45 *Barb.* 502. Aff'd, it seems, in 48 *N. Y.* 660; but without opinion. See *Place v. Union Express Co.*
- **v. Peters**, 12 *How. Pr.* 218. See *Ward v. People*. Disapproved (Right to ice) in *Myer v. Whitaker*, 5 *Abb. N. C.* 172, 177. Collated with *Myer v. Whitaker*; *Beals v. Stewart*, 6 *Lans.* 408, and other cases in 57 *Am. Dec.* 692, n.
- **v. Vultee**, 1 *E. D. Smith*, 294. Overruled, in subsequent decision in *Marshall v. Guion*, 11 *N. Y.* 461.

- Marshuetz v. McGreevy**, 23 *Hun*, 408. See *Marshultz v. McGreevy*. Quoted and explained (Sale by sample) in *Benj. on Sales*, § 977, n. 29 (Corbin's 4 Am. ed.)
- Marston v. Haggerty**. See *Forrest v. Forrest*.
- **v. Swett**, 4 *Hun*, 153; s. c., less fully, 6 *Sup'm. Ct. (T. & C.)* 534. Rev'd in 66 *N. Y.* 206; s. c., 23 *Am. R.* 43. Further proceeding in 82 *N. Y.* 526. See *Marsh v. Dodge*. Decision in 82 *N. Y.* followed (Licensee of patent, when estopped from asserting its invalidity) in *Hyatt v. Ingalls*, 49 *Super. Ct. (J. & S.)* 375. Decisions in 66 *N. Y.* and 82 *Id.* cited with approval in *White v. Lee*, *U. S. Cir. Ct. D. Mass.* 14 *Fed. Rep.* 789. Decision in 66 *N. Y.* applied in *Jones v. Burnham*, 67 *Me.* 93, 98. Examined in 13 *Alb. L. J.* 410.
- **v. Vultee**. See *Russell v. Winne*.
- Martin v. Black**, 9 *Paige*, 641. Applied (Receiver's liability for rent) in *People v. Nat. Trust Co.*, 82 *N. Y.* 283, 288. Relied on with *Cotes v. Marquand*, 2 *Hill*, 447; *Hastings v. Belknap*, 1 *Den.* 190 (Removal of goods from demised premises, when good as against landlord, afterward distraining for rent) in *Hadden v. Knickerbocker*, 70 *Ill.* 677; s. c., 22 *Am. R.* 80.
- **v. Cope**. See *Wilbur v. Selden*.
- **v. Dwelly**, 6 *Wend.* 9; s. c., 21 *Am. Dec.* 245, with note, wherein it is said to be a leading case (Effect of instruments defectively executed or acknowledged by married women). Applied in *Carr v. Williams*, 10 *Ohio*, 805; s. c., 36 *Am. Dec.* 87, 89, with note. Reviewed, with other cases, in 19 *Am. Dec.* 230, n. Included in *Excell Lead Cas. on Inf.*, &c. 298.
- **v. Farnsworth**, 33 *Super. Ct. (J. & S.)* 246; s. c., 41 *How. Pr.* 59. Aff'd in 49 *N. Y.* 555, without determining questions of law.
- **v. Franklin**, 4 *Johns.* 124; s. c., 3 *N. Y. Com. L. Law. ed.* 766, with brief note. See *Scofield v. Day*. Followed (Allowance of rate of exchange, as damages) in *Ladd v. Arkell*, 40 *Super. Ct. (J. & S.)* 150, 155.
- **v. Funk**, 75 *N. Y.* 134; s. c., 31 *Am. R.* 446, with note. Followed (Trust as created by deposit in bank) in *Mabie v. Bailey*, 95 *N. Y.* 206; *Willis v. Smyth*, 91 *Id.* 297; *Gerrish v. New Bedf. Inst. for Savgs*, 128 *Mass.* 159; s. c., 35 *Am. R.* 365, 370. Explained in *Piereson v. Drexell*, 11 *Abb. N. C.* 150. Disting'd in *Boone v. Citizens' Savgs. B'k of N. Y.*, 84 *N. Y.* 83, 86; *Pope v. Burlington Savgs. Bank*, 56 *Vt.* 284; s. c., 48 *Am. R.* 781. Applied (Trust when created) in *Watts v. Shipman*, 21 *Hun*, 598, 606. Disting'd in *Young v. Young*, 80 *N. Y.* 422, 440. Applied with *Matter of Le Blanc*, 14 *Hun*, 8; *Rogers' Locomotive Works v. Kelly*, 19 *Id.* 399, and *Kelly v. Roberts*, 40 *N. Y.* 432; *Kelly v. Babcock*, 49 *Id.* 318, disting'd in *Hurd v. Farmers' Loan & Trust Co.*, 63 *How. Pr.* 314.
- **v. Hawks**, 15 *Johns.* 405. See *Pinder v. Morris*. Disting'd (Attorney's lien and remedy) in *Murray v. Jibson*, 22 *Hun*, 386, 388. Relied on in *Hobson v. Watson*, 34 *Me.* 20; s. c., 56 *Am. Dec.* 632.
- **v. Hicks**, 6 *Hun*, 238; s. c., more fully, 1 *Abb. N. C.* 341.
- **v. Hill**, 12 *Barb.* 631. Applied (Law of place as determining title to personality) in *Egerly v. Bush*, 81 *N. Y.* 199, 205; *Nichols v. Mase*, 25 *Hun*, 640.
- **v. Kunzmüller**, 10 *Bosw.* 16. Aff'd in 37 *N. Y.* 396. See *Bradley v. Angel*; *Myers v. Davis*. Decision in 37 *N. Y.* approved in dissenting opinion of *Bockes, J.* (When demand not due may be set-off against assignee of insolvent) in *Seymour v. Dunham*, 24 *Hun*, 93, 98. Explained in *Burrill on Assign.* § 403, n. 4, 4 ed.
- **v. McCormick**, 4 *Sandf.* 366. Rev'd in 8 *N. Y.* 331. See *Schwinger v. Hickock*. Decision in 8 *N. Y.* disting'd (Relief against contract for sale for land, in case of mistake as to title) in *Granger v. Olcott*, 1 *Lans.* 169.
- **v. Martin**, 43 *Barb.* 172. Pronounced unsound (Power to sell as terminated on infant reaching majority) in *Hetzl v. Eastery*, 66 *Barb.* 443, 451.
- **v. Mayor, &c. of Brooklyn**, 1 *Hill*, 545. See *Pack v. Mayor, &c. of N. Y.* Applied (Liability of municipal corporation for omission of duty by officer) in dissenting opinion of *Daly, F. J.*, in *Stilwell v. Mayor, &c. of N. Y.*, 19 *Abb. Pr.* 390. Applied in *Lorillard v. Town of Monroe*, 12 *Barb.* 166, which was aff'd in 11 *N. Y.* 396, which see; *Hickok v. Trustees of Plattsburgh*, 15 *Barb.* 439; *Maximilian v. Mayor, &c. of N. Y.*, 4 *Sup'm. Ct. (T. & C.)* 495; 62 *N. Y.* 164; *McKay v. City of Buffalo*, 9 *Hun*, 406; *N. Y., &c. Saw-mill Co. v. City of Brooklyn*, 71 *N. Y.* 587, which aff'd 8 *Hun*, 37, which see. Disting'd in *Rochester White Lead Co. v. City of Rochester*, 3 *N. Y.* 467. Followed in *Prather v. City of Lexington*, 13 *B. Monr. (Ky.)* 559; s. c., 56 *Am. Dec.* 585, with note collating cases. Compare (Effect of confirmation of report, in proceedings to acquire land for public use) *Matter of Rhinebeck & Conn. R. R. Co.*, 67 *N. Y.* 246. Applied in *Matter of Comm'rs of Washington Park*, 56 *Id.* 156.
- **v. Mayor, &c. of N. Y.**, 11 *Abb. Pr.* 295; s. c., 20 *How. Pr.* 86. Aff'd in 12 *Abb. Pr.* 243.
- **v. O'Conner**, 43 *Barb.* 514. Questioned (Distinction between assignment and sublease) in *Woodhull v. Rosenthal*, 61 *N. Y.* 382, 391. Explained in connection with *People v. Robertson*, 39 *Barb.* 9, in *Constantine v. Wake*, 1 *Sweeny*, 239, 250. See authority reviewed in 16 *Am. L. Rev.* 30. Discussed in 1 *Washb. on Real Prop.* 4 ed. 513.
- **v. Payne**, 9 *Johns.* 387; s. c., 6 *Am. Dec.* 288. See *Bartley v. Richtmyer*. Approved (Right of action for seduction as determined by existence of relation of mas-

- ter and servant) in *Nickleson v. Stryker*, 10 *Johns.* 115. Followed in *Mulvehall v. Millward*, 11 *N. Y.* 343. Followed and approved with *Nickleson v. Stryker*, 10 *Johns.* 115, in *Boyd v. Byrd*, 8 *Blackf. (Ind.)* 113; s. c., 44 *Am. Dec.* 740, with note. Applied in *Lavery v. Crooke*, 52 *Wis.* 618. Followed as according with the weight of authority, in *Emery v. Gowen*, 4 *Greenl. (Me.)* 33; s. c., 16 *Am. Dec.* 233, with note. Followed in *Fernser v. Moyer*, 3 *Watts & S. (Pa.)* 416; s. c., 39 *Am. Dec.* 33. Included with notes in *Bigel. Cas. on Torts.* 286. See 4 *Am. Dec.* 403, n. Followed with *Nickleson v. Stryker*, 10 *Johns.* 115; *Clark v. Fitch*, 2 *Wend.* 459; *Bartley v. Richtmyer*, 4 *N. Y.* 38; *Mulvehall v. Millward*, 11 *Id.* 343, in *Kennedy v. Shea*, 110 *Mass.* 147; s. c., 14 *Am. R.* 584.
- *v. Smith*, 1 *Sup'm. Ct. (T. & C.)* 20. Aff'd in 58 *N. Y.* 672.
- *v. Stillwell*, 13 *Johns.* 275; s. c., 1 *Am. Dec.* 374. Collated with other cases (Charge of crime involving moral turpitude) in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 99.
- *v. Supervisors of Greene*, 29 *N. Y.* 645. Examined with other cases (Right of action against towns or counties) in dissenting opinion in *Brown v. Town of Canton*, 4 *Lans.* 417.
- *v. Van Schaick*, 4 *Paige*, 479. See *Law v. Ford*; *Williams v. Wilson*. Quoted and discussed (Appointment of receiver of partnership property) in 1 *Collyer on Partn.* § 375, *Wood's Am. ed.* Commented on in *Id.* § 385, n. 1.
- *v. Wagener*, 60 *Barb.* 435. Further decision in 1 *Sup'm. Ct. (T. & C.)*, 509.
- *v. Williams*, 17 *Johns.* 330. See *Mooers v. White*. Explained (Running of statute of limitations as affected by acknowledgment by agents, executors, &c.) in *Ang. on Limit.* § 268, 6 ed.
- *v. Windsor Hotel Co.*, 10 *Hun.* 304. Appeal dismissed in 70 *N. Y.* 101; s. c., 53 *How. Pr.* 422.
- *v. Wood*, 7 *Wend.* 132. Disting'd (Writ of habeas corpus, when sustainable) in *Matter of Lampert*, 21 *Hun.* 154, 157.
- *v. Wright*, 13 *Wend.* 460; s. c., 28 *Am. Dec.* 468. Approved (Effect of understanding as to compensation, to be made by will) in *Shakespeare v. Markham*, 10 *Hun.* 311, 326, which was aff'd in 72 *N. Y.* 400, 406, which see.
- Martine v. International Life Assur. Soc. of London**, 5 *Lans.* 535; s. c., more fully 62 *Barb.* 181. Rev'd in 53 *N. Y.* 339; s. c., 13 *Am. R.* 529. See *Griswold v. Wadlington*. See contrary to decision in 53 *N. Y.* (Payment of premium on life policy excused during war of rebellion) *N. Y. Life Ins. Co. v. Statham*, 93 *U. S.* 24. Cited as authority (Agency of firm, as determined by death of member of firm) in *Whart. Com. on Ag.* § 109; where *Story on Bailm.* § 202, is, however, referred to as intimating a contrary opinion.
- *v. Lowenstein*, 6 *Hun.* 225; s. c., 51 *How. Pr.* 353. Confirmed, and appeal dismissed, in 68 *N. Y.* 456. With decision in *Id.* see (Notice to defendant in default) *Code Civ. Pro.* 1881, § 1219, n.
- Martinkhoff, Matter of**, 4 *Redf.* 286. I am informed by counsel that the order was aff'd in *Sup'm. Ct.*, and also in *Ct. of App.*
- Marvin v. Bennett**, 8 *Paige*, 312. Aff'd in 26 *Wend.* 169; s. c., 14 *N. Y. Com. L. Law. ed.* 1047, with brief note. See *Penny v. Martin*. Decision in 26 *Wend.* disting'd and limited (Relief against mistake in conveyance of lands, in respect to quantity) in *Paine v. Upton*, 21 *Hun.* 306, 311. Decision in 8 *Paige*, collated with other cases in *Pomeroy on Sp. Perf.* § 250, n.
- **Brewster Iron Mining Co.**, 55 *N. Y.* 538; s. c., 14 *Am. R.* 322. Re-argument denied in 56 *N. Y.* 671. Decision in 55 *Id.* cited as maintaining the principle applied (Duty of mine owner to surface-owner) in *Yandes v. Wright*, 66 *Ind.* 319; s. c., 32 *Am. R.* 109, 114. See 12 *Abb. L. J.* 182. Commented on in *Wood on Nuis.* 2 ed. § 204.
- *v. Buchanan*, 62 *Barb.* 468. Cited (Principal as bound for fraudulent outlays by agent) in *Whart. Com. on Ag.* § 318.
- *v. Ellwood*, 11 *Paige*, 365. Commented on (Liability of attorney as to moneys collected for his client) in *Suris v. Brown*, 6 *Sup'm. Ct. (T. & C.)* 5, 8. Approved and followed (Bailee estopped to deny bailor's title) in *Nudd v. Montanye*, 38 *Wis.* 511; s. c., 20 *Am. R.* 23, 27.
- *v. Inglis*. See *McMahon v. Allen*.
- *v. Lewis*, 61 *Barb.* 49. Discussed (Allowance to occupant for taxes and assessments) in *Sedgw. & W. on Tr. of Tit. to Land*, § 688.
- *v. Marvin*, 52 *How. Pr.* 97; s. c., 1 *Abb. N. C.* 372. Former proceeding in 11 *Abb. Pr. N. S.* 102, and other proceedings in 75 *N. Y.* 240; 78 *Id.* 541; *Id.* 610. Decision in 11 *Abb. Pr. N. S.* commented on (New trial in ejectment) in *Sedgw. & W. on Tr. of Tit. to Land*, § 595.
- *v. Prentice*, 49 *How. Pr.* 385. Subsequent decision, opinion on which is not reported, was aff'd in 79 *N. Y.* 622. See Vol. 527, *Cas. in Ct. of App.*, *Law Inst. Libr. N. Y. City.*
- *v. Smith*, 56 *Barb.* 600. Aff'd in 46 *N. Y.* 571. Decision in 56 *Barb.* disting'd (Limitation of absolute gift to life estate) in *Colt v. Heard*, 10 *Hun.* 189, 193. Decision in 46 *N. Y.* followed (Effect of married woman's deed to release dower) in *Wilber v. Wilber*, 52 *Wis.* 301.
- *v. Universal Life Ins. Co.*, 16 *Hun.* 494. Aff'd in 85 *N. Y.* 298; s. c., 89 *Am. R.* 657. See *Walsh v. Hartford Fire Ins. Co.* Decision in 85 *N. Y.* disting'd (What constitutes payment of premium) in *Matter of Booth*, 11 *Abb. N. C.* 145; s. c., as *People v. Globe Mutual Life Ins. Co.*, 65 *How. Pr.* 239. Disting'd (Authority of general

- agent of insurance company to waive condition) in *Steen v. Niagara Fire Ins. Co.*, 89 *N. Y.* 327.
- *v. Wilber*, 52 *N. Y.* 270. *Rev'g* 3 *Abb. L. J.* 211. Decision in 52 *N. Y.* followed (Effect of representations of assumed agent) in *Scott v. Stevenson*, 5 *Sup'm. Ct. (T. & C.)* 705.
- Marvine v. Hymers**, 12 *N. Y.* 223. Followed (Usury in discount by banks) in *Oliver Lee & Co.'s Bk. v. Walbridge*, 19 *N. Y.* 143; *International Bk. v. Bradley*, *Id.* 254. Applied to discount by individual, in *Mosher v. Randall*, 52 *Id.* 649. Rule said to obtain in most of the States, in 1 *Abb. L. J.* 433.
- Marx, Matter of**, 5 *Abb. N. C.* 224. Cited with *Freeman v. Coit*, 27 *Hun.* 447 as opposed to the general rule (Liability of father for support of minor children) in 57 *Am. Dec.* 226, *n.*; *Harring v. Coles*, 2 *Bradf.* 349, being also cited as furnishing an exception to the rule. See (Costs in surrogates' courts) *Code Civ. Pro.* 1881, § 2562, *n.*
- *v. People*, 63 *Barb.* 618. Applied (Inadmissibility of irrelevant statement of witness to contradict his testimony) in *Stape v. People*, 21 *Hun.* 399.
- Maryott v. Thayer**, 39 *Super. Ct. (J. & S.)* 417. Applied to equitable defense (What cases are referable) in *Blackstone Bank of Boston v. Bogart*, 41 *Id.* 292, 294. Colated with other cases in 1 *Abb. N. C.* 109, *n.*
- Mason, Matter of**, 1 *Barb.* 436. See (Appointment of committee of lunatic, &c.) *Code Civ. Pro.* 1881, § 2322, *n.*
- Mason v. Alston**, 9 *N. Y.* 58. Cited (Effect of admitting in pleading due execution of will) in 2 *Whart. Com. on Ev.* § 837.
- *v. Anthony*, 3 *Abb. Ct. App. Dec.* 207; *s. c.*, 35 *How. Pr.* 477; 3 *Keyes*, 609. Followed (Estoppel to set up usury) in *Smyth v. Lombardo*, 15 *Hun.* 417. Cited as settled law, in *Payne v. Burnham*, 62 *N. Y.* 72. Explained in *Shapley v. Abbott*, 42 *Id.* 450.
- *v. Brown*, 6 *How. Pr.* 481. Disting'd (Convenience of witnesses as ground for opposition to motion for change of venue) in *Gifford v. Town of Gravesend*, 8 *Abb. N. C.* 246, 248. Considered *sui generis* in *Park v. Carnley*, 7 *How. Pr.* 355.
- *v. Decker*, 42 *Super. Ct. (J. & S.)* 115. Aff'd in 72 *N. Y.* 595. Decision in *Id.* quoted (Note or memorandum in writing on sale of personal property) in 1 *Benj. on Sales*, § 254, *n.* 49 (Corbin's 4 *Am. ed.*). Quoted and explained (Sale of specific chattels unconditionally) in *Id.* § 339.
- *v. Denison*, 15 *Wend.* 64. Aff'g 11 *Id.* 612. Decision in 15 *Id.* explained at length (Effect of judgment against infant) in *Phillips v. Dusenberry*, 8 *Hun.* 348. Compare *Castledine v. Mundy*, 1 *Nev. & M.* 635; 4 *B. & Adolph.* 90; *Burgess v. Merrill*, 4 *Taunt.* 463; *Gibbs v. Same*, 3 *Id.* 307. Explained and cases cited to the contrary in *Ewell Leud. Cas. on Inf. &c.* 235, *n.*
- *v. Franklin*, 3 *Johns.* 202. See *Weldon v. Buck*. Compared (Acceptance of bill of exchange) in *Bigel. on B. & N.* 2 ed. 250.
- *v. Jones*, 2 *Barb.* 229. Aff'g *Mason v. Mason*, 2 *Sandf. Ch.* 432, and, as appears from 4 *Id.* 623, *n.* itself aff'd in *Ct. of App.* by a divided court, as to which, see decision in 3 *N. Y.* 375. Another proceeding as *Mason v. Mason* in 4 *Id.* 623, which was aff'd as *Mason v. Jones*, in 13 *Barb.* 461. Still further proceeding in 2 *Bradf.* 325. See *Marsellis v. Thalheimer*. See collection of cases, briefs, &c. at State Libr. in Albany. Decision in 2 *Bradf.* explained (Who may avail himself of revocation of probate) in *Willard on Executors*, 233.
- *v. Libbey*, 51 *How. Pr.* 436; *s. c.*, 1 *Abb. N. C.* 334. Further proceeding in 2 *Id.* 137; and as *Mason v. Libby* in 54 *How. Pr.* 104; and that aff'd as *Mason v. Libbey*, in 19 *Hun.* 119.
- *v. Lord*, 40 *N. Y.* 476. See *Bush v. Lathrop*; *Dix v. Van Wyck*. Applied (Right to avoid mortgage for usury) in *Knickerbocker Life Ins. Co. v. Hill*, 16 *Abb. Pr. N. S.* 328. Followed in *Carow v. Kelly*, 59 *Barb.* 239. Applied (Remedy for omission to find material fact that is supported by evidence) in *People v. Albany & Susquehanna R. R. Co.*, 57 *Id.* 210. Disting'd (Finding of fact without evidence, how to be reviewed) in *Carpenter v. Beare*, 4 *Hun.* 510, a case of inadequate damages.
- *v. Mason*, 2 *Sandf. Ch.* 432. See *Mason v. Jones*.
- *v. —*, 1 *Edw.* 279. Examined with *Barrere v. Barrere*, 4 *Johns. Ch.* 187 (Divorce on ground of cruelty) in *Johnson v. Johnson*, 4 *Wisc.* 141.
- *v. Moore*, 2 *How. Pr.* 70. Applied (Affidavit of merits) in *State B'k of Syracuse v. Gill*, 23 *Hun.* 406.
- *v. Partridge*, 4 *Hun.* 621. Aff'd in 66 *N. Y.* 633.
- *v. People*, 26 *N. Y.* 200. Applied (Defect in indictment, when cured by statute of jeofails) in *Case v. People*, 6 *Abb. N. C.* 151, 157. Applied (What is a dwelling) in *Levy v. People*, 80 *N. Y.* 327, 334.
- *v. White*, 11 *Barb.* 173. Questioned and limited (Reformation of sheriff's deed) in *Bartlett v. Judd*, 31 *N. Y.* 200.
- *v. Whitely*, 4 *Duer.* 611; *s. c.*, 1 *Abb. Pr.* 85. Applied (Extent of right to amend pleading) in *Robertson v. Bennett*, 1 *Abb. N. C.* 476.
- Mason & H. Organ Co. v. Baneroff**, 1 *Abb. N. C.* 415. Followed (Discharge of one partner) in *Hill v. Trainer*, 49 *Wis.* 537, 546.
- Massachusetts Mut. Life Ins. Co. v. Carpenter**, 2 *Sweeny*, 734. Aff'd in 49 *N. Y.* 668, but without opinion.
- Masson v. Bovet**, 1 *Den.* 69; *s. c.*, 43 *Am. Dec.* 651, with note, wherein are collected citations of the case. See *Roth v. Palmer*.

- Applied (Duty of one seeking to rescind contract) in *King v. Fitch*, 2 *Abb. Ct. App. Dec.* 518; *Moyer v. Shoemaker*, 5 *Barb.* 323; *Bliss v. Cottle*, 32 *Id.* 324; *Royce v. Watrous*, 7 *Daly*, 91; *Rich v. Niagara Sav'gs B'k*, 3 *Hun*, 484; *Ladd v. Moore*, 3 *Sandf.* 592; *Fisher v. Conant*, 3 *E. D. Smith*, 199, 203. Explained in *Wheaton v. Baker*, 14 *Barb.* 598. Examined with other cases in *Tallman v. Turck*, 26 *Id.* 171. *Stevens v. Hyde*, 32 *Id.* 175, 177. Cited at length and approved, in *Hammond v. Pen-nock*, 61 *N. Y.* 153. Cited as authority with *Mattiwan Co. v. Bentley*, 13 *Barb.* 641; *Wheaton v. Baker*, 14 *Id.* 594, in *Negley v. Lindsay*, 67 *Pa. St.* 217; s. c., 5 *Am. R.* 427, 431. Disting'd with *Fisher v. Fredenhall*, 21 *Barb.* 82, in *Hoopes v. Strasburger*, 37 *Md.* 390; s. c., 11 *Am. R.* 538. Cited in 2 *Pars. on Contr.* 680, n. a; *Id.* 781.
- Massoth v. Delaware & Hudson Canal Co.**, 6 *Hun*, 314. Aff'd in 64 *N. Y.* 524. See *McGrath v. N. Y. Central, &c. R. R. Co.* Both decisions applied (Contributory negligence, as question for court of jury) in *Hawley v. Northern Cent. R'y Co.*, 17 *Hun*, 117; *O'Mara v. Delaware & Hudson Canal Co.*, 18 *Id.* 192, 195. Decision in 64 *N. Y.* applied (Negligence in one crossing railroad track) in *Lowrey v. Brooklyn City, &c. R. R. Co.*, 4 *Abb. N. C.* 39. Examined with other cases (Effect of contributory negligence of third person) in dissenting opinion of *Bockes, J.*, in *Perry v. Lansing*, 17 *Hun*, 42. Applied (Municipal ordinance as bearing on question of negligence) in *City of Rochester v. Montgomery*, 72 *N. Y.* 69. Examined with other cases in *Knuffle v. Knickerbocker Ice Co.*, 84 *Id.* 488, 491.
- Masten v. Deyo**, 2 *Wend.* 424. Followed (Probable cause as question for jury) in *Heyne v. Blair*, 62 *N. Y.* 19, 22. Approved in *Besson v. Southard*, 10 *Ill.* 236.
- **v. Olcott**, 60 *How. Pr.* 105. Rev'd in 24 *Hun*, 587.
- **v. Webb**, 19 *Hun*, 172. Further decision in 60 *How. Pr.* 302; and that rev'd in 24 *Hun*, 90.
- Masters v. Madison County Mut. Ins. Co.**, 11 *Barb.* 624. See *Conover v. Mutual Ins. Co. of Albany*; *Rowley v. Empire Ins. Co.* Followed (Effect of mortgage of insured premises as change of title) in *Commercial Ins. Co. v. Spankneble*, 52 *Ill.* 53; s. c., 4 *Am. R.* 582, 583. Cited as authority with *Rowley v. Empire Ins. Co.*, 36 *N. Y.* 550; *Ames v. N. Y. Union Ins. Co.*, 14 *Id.* 253; *Plumb v. Cattaraugus Ins. Co.*, 18 *Id.* 302 (Extent of authority of insurance agent) in *Miner v. Phoenix Ins. Co.*, 27 *Wis.* 693; s. c., 9 *Am. R.* 479, 484.
- Master Stevedores' Association v. Walsh**, 2 *Daly*, 1. Compare (Conspiracies of workmen to control wages, &c.) 1 *L.* 1870, c. 19, amending provision of *R. S.* here referred to. Referred to in 28 *Am. Dec.* 511, n., as a very elaborately considered case, and dis-ting'd from *State v. Donaldson*, 32 *N. J. L.* (3 *Vr.*) 151.
- Masterson v. N. Y. Central, &c. R. R. Co.**, 84 *N. Y.* 247. Followed (Imputing negligence of driver of conveyance) in *Callaghan v. Rome, W. & O. R. R. Co.*, 13 *Weekly Dig.* 395.
- **v. Short**, 3 *Abb. Pr. N. S.* 154; s. c., 33 *How. Pr.* 481; 7 *Robt.* 241. Subsequent decision in 35 *How. Pr.* 299; s. c., 7 *Robt.* 299. Both decisions disregarded as inconsistent (Nuisance as created by municipal ordinance) in *Trenor v. Jackson*, 15 *Abb. Pr. N. S.* 115, 128.
- Masterton v. Mayor, &c. of Brooklyn**, 7 *Hill*, 61; s. c., 42 *Am. Dec.* 38, with note, wherein it is shown to have been frequently approved and applied in *N. Y.* and elsewhere. See *Clark v. Marsiglia*; *Griffin v. Colver*; *Staats v. Ex'rs of Ten Eyck*. Applied (Recovery for speculative profits) in *Horner v. Wood*, 16 *Barb.* 389; *Wibert v. N. Y. & Erie R. R. Co.*, 19 *Id.* 40, 48 (and see *Noyes v. Burton*, 29 *Id.* 631); *Lacour v. Mayor, &c. of N. Y.*, 3 *Duer*, 420. Disting'd in *Allamon v. Mayor, &c. of Albany*, 43 *Barb.* 39. Explained in *Kent v. Hudson River R. R. Co.*, 22 *Id.* 278, 294. Examined with other cases in *Griffin v. Colver*, *Id.* 591, which was aff'd in 16 *N. Y.* 494, which see. Explained and applied in *Davis v. Talcott*, 14 *Barb.* 624. Commented on in *Wolcott v. Mount*, 36 *N. J.* (7 *Vroom*), 262; s. c., 13 *Am. R.* 438, 445. Explained in *U. S. v. Behan*, 110 *U. S.* 333, 344. Approved in *Pittsburgh Bessemer Steel Rail Co. v. Hinckley*, *U. S. Cir. Ct. N. D. Ill.* 17 *Fed. Rep.* 284, 288. Referred to as the leading case on this subject in this country,—in *U. S. v. Speed*, 8 *Wall.* 77. Discussed and disting'd in *Missouri Furnace Co. v. Cochran*, *U. S. Cir. Ct. W. D. Pa.* 24 *Alb. L. J.* 389. Quoted and explained in 3 *Pars. on Cont.* 184, n. y. Included in *Sedgw. Cas. on Dama.* 247. Applied (Cause of action for breach of contract, when complete) in *Taylor v. Bradley*, 4 *Abb. Ct. App. Dec.* 365. Explained and applied in *Shaffer v. Lee*, 8 *Barb.* 417. Examined in *Atwood v. Norton*, 27 *Id.* 648. Approved and followed in *Dugan v. Anderson*, 36 *Md.* 567; s. c., 11 *Am. R.* 509, 513. Approved and followed (Sub-contract not to be considered in estimating damages for breach of principal) in *Story v. N. Y. & Harlem R. R. Co.*, 6 *N. Y.* 90. Approved and followed with *Story v. N. Y. & Harlem R. R. Co.*, in *Dunn v. Johnson*, 33 *Ind.* 54; s. c., 5 *Am. R.* 177, 180.
- **v. Village of Mount Vernon**, 58 *N. Y.* 391. See *Wilson v. Mayor, &c. of N. Y.* Disting'd (Loss of profits resulting from personal injury) in *Ehrgott v. Mayor, &c. of N. Y.*, 93 *N. Y.* 264. Approved as a sound exposition of the law in *Bierbach v. Goodyear Rubber Co.*, 54 *Wis.* 208; s. c., 41 *Am. R.* 19. Applied in *Clifford v. Dam*, 44 *Super. Ct. (J. & S.)* 391. Disting'd

- (Liability of municipal corporation for injury caused by defect in street) in *McDermett v. City of Kingston*, 6 *Abb. N. C.* 246, 248, which was rev'd in 19 *Hun*, 198, which see. Collated with other cases in 2 *Thomp. on Negl.* 767, n.
- Mather v. Bush**, 16 *Johns.* 283; s. c., 8 *Am. Dec.* 313, with note. See *Roosevelt v. Cebra*. Followed with *Hicks v. Hotchkiss*, 7 *Johns. Ch.* 297 (Effect of discharge of contract by law of country where it was made and to be performed) in *May v. Breed*, 7 *Cush. (Mass.)* 15; s. c., 54 *Am. Dec.* 700, 710, with note; *Holmes v. Remsen*, 4 *Johns. Ch.* 460; 20 *Johns.* 229, and other cases being disting'd (p. 713), and 2 *Kent. Com.* 405, also referred to as contrary to opinion in *Holmes v. Remsen*, 4 *Johns. Ch.* 460. Disting'd (Presumption that contract made made in reference to law in force at time) in *Smith v. Mead*, 3 *Conn.* 253; s. c., 8 *Am. Dec.* 183, as inapplicable to an unconstitutional law. Discussed in 1 *Kent Com.* 421.
- Mathews v. Aikin**, 1 *N. Y.* 595. Applied (Right of surety to benefit of creditors remedies) in *Goodyear v. Watson*, 14 *Barb.* 485. Explained (Right of surety to compel creditor to proceed against principal debtor) in *First Nat. B'k v. Wood*, 71 *N. Y.* 411.
- **v. Daly**, 7 *Abb. Pr. N. S.* 379; s. c., 37 *How. Pr.* 382; 3 *Daly*, 214, n. Followed in *Barton v. Herman*, 8 *Abb. Pr. N. S.* 399, as having been aff'd at General Term.
- **v. Duryee**, 45 *Barb.* 69; s. c., 17 *Abb. Pr.* 256. Aff'd in 3 *Abb. Ct. App. Dec.* 220. Decision in 45 *Barb.* approved (Dower in surplus) in *Taylor v. Bentley*, 3 *Redf.* 34.
- **v. Harsell**, 1 *E. D. Smith*, 393. Explained (Right of finder of lost property) in *Hamaker v. Blanchard*, 90 *Penn. St.* 377; s. c., 35 *Am. R.* 664. Collated with other cases, in 30 *Am. R.* 180, n.
- **v. Howard Ins. Co.**, 13 *Barb.* 234. Aff'g 11 *N. Y. Leg. Obs.* 171, but rev'd, in 11 *N. Y.* 9. See *Hynds v. Schenectady County Mut. Ins. Co.* Decision in 13 *Barb.* collated with other cases (Liability of insurer for injuries caused by insured vessel to another) in 54 *Am. Dec.* 786, n. Decision in 11 *N. Y.* cited with other cases, 13 *Am. L. Reg. N. S.* 17.
- **v. Poultney**. See *Seymour v. Wilson*.
- Matsell v. Flanagan**, 2 *Abb. Pr. N. S.* 459. See *Messerole v. Tynberg*. Cited as authority with *Amoskeag Manuf'g Co. v. Spear*, 2 *Sandf.* 599; *Lea v. Wolf*, 15 *Abb. Pr. N. S.* 1; *Gillott v. Esterbrook*, 47 *Barb.* 455; *Howard v. Henriques*, 3 *Sandf.* 725 (Protection of trademarks) in *Robertson v. Berry*, 50 *Md.* 591; s. c., 33 *Am. R.* 328 (a case of a name of a publication), with note summarizing cases taken from *Solicitor's Journal*. Explained in 2 *Pars. on Contr.* 257 bj., n. l.
- Matson v. Back**, 5 *Cow.* 499. Followed with *Root v. King*, 7 *Id.* 613; *Cole v. Perry*, 8 *Id.* 214; *Mapes v. Weeks*, 4 *Wend.* 659; *Inman v. Foster*, 3 *Id.* 602 (Evidence of general reports in slander) in *Pease v. Shippen*, 80 *Penn. St.* 513; s. c., 21 *Am. R.* 116.
- **v. Farm Building Ins. Co.**, 9 *Hun*, 415. Rev'd in 73 *N. Y.* 310; s. c., 29 *Am. R.* 149. See *Harper v. Albany Mut. Ins. Co.*
- Matteawan Co. v. Bentley**, 13 *Barb.* 641. See *Masson v. Bovet*. Applied (Duty of one seeking rescission of contract) in *Gould v. Cayuga, &c. Nat. Bk.*, 21 *Hun*, 293, 302. Disting'd in *Newbery v. Garland*, 31 *Barb.* 121, 128.
- Matter of** —. See name of party in its alphabetical place in this table.
- Matteson, Matter of**. Reported under *Thompson v. Taylor*, 72 *N. Y.* 32. Aff'g 11 *Lun*, 274.
- Matteson v. Moulton**, 11 *Hun*, 268. Aff'd in 79 *N. Y.* 627.
- **v. N. Y. Central, &c. R. R. Co.**, 76 *N. Y.* 381. See *Mattison v. Same*.
- **v. —**, 35 *N. Y.* 487. Compare decision in second action by both husband and wife in 62 *Barb.* 364. Decision in *Id.* seems doubted (Husband and wife as witnesses for and against each other) in *Finn v. Finn*, 12 *Hun*, 339. See to the contrary (Damages for mental suffering) *Covington St. Ry. Co. v. Packer*, 9 *Bush. (Ky.)* 455; s. c., 15 *Am. R.* 725. See also *Abb. Tr. Ev.* 599. Decision in 35 *N. Y.* collated with *Brown v. N. Y. Central R. R. Co.*, 32 *Id.* 597; *Caldwell v. Murphy*, 11 *Id.* 416; *Werely v. Persons*, 28 *Id.* 344, and other cases (Admissibility of complaints, &c. of injured party) in 33 *Am. R.* 828, n.
- Matthews v. Beach**, 5 *Sandf.* 256. Rev'd in 8 *N. Y.* 173. See *Newman v. Otto*.
- **v. Chicopee M'fg Co.**, 3 *Robt.* 711. Explained (Effect of release of joint wrongdoer) in *Mitchell v. Allen*, 25 *Hun*, 543. See *Code Civ. Pro.* 1881, § 1942 n.
- **v. Coe**, 56 *Barb.* 430. Rev'd in 49 *N. Y.* 57. Further decision in 70 *Id.* 239; s. c., 26 *Am. R.* 533. Decision in 49 *N. Y.* commented on (Damages for conversion) in *Price v. Keyes*, 1 *Hun*, 192. Compare *Baker v. Drake*, 53 *N. Y.* 213, 224; *Whelan v. Lynch*, 60 *Id.* 472. Disting'd and limited in *Lobdell v. Stowell*, 51 *Id.* 77. Cited with approval with *Suydam v. Jenkins*, 3 *Sandf.* 614, in *Boylan v. Ilguet*, 8 *Nov.* 345.
- **v. Delaware & Hudson Canal Co.**, 20 *Hun*, 427. Explained (Private nuisances affecting realty) in *Moak's Underhill's Torts*, 1 *Am. ed.* 455, 495.
- **v. Duryee**, 45 *Barb.* 69; s. c., 17 *Abb. Pr.* 256. Aff'd in 4 *Keyes*, 525. Decision in *Id.* collated with other cases (Exceptions to referee's report as to surplus moneys on foreclosure) in *Colby on Forecl.* 33. Collated with other cases (Inchoate dower right) in *Id.* 54.
- **v. Matthews**, 1 *Edw.* 565. Applied (Decedent's debts not a lien on his real estate) in *Fonda v. Chapman* 23 *Hun*, 119, 121. Referred to in *Tyler on Inf. & Cov.*



- 2 ed. § 393, as overruled by later N. Y. cases (Inchoate right of dower not barred by sale of land in partition suit).
- **v. Mayor, &c. of N. Y.**, 1 *Sandf.* 132. Followed (Liability of N. Y. city for acts and omissions of public administrator) in *Glover v. Mayor, &c. of N. Y.*, 7 *Hun.* 232.
- **v. Meyberg**, 4 *Hun.* 78. Aff'd in 63 *N. Y.* 656. Decision in *Id.* followed (Questions raised on exception to denial of motion for new trial on minutes) in *Fay v. Lynch*, *N. Y. Daily Reg.* Aug. 21, 1883.
- **v. Sheehan**, 69 *N. Y.* 585. Said in 50 *Am. Dec.* 197, *n.*, not to be necessarily in conflict with *Henly v. Hotaling*, 41 *Cal.* 22, and similar cases (Construing contract to be mortgage rather than conditional sale).
- **v. Stone**, 1 *Hill*, 565. Rev'd in 7 *Id.* 428.
- **v. Wood**, 10 *Abb. Pr. N. S.* 328. See *Van Allen v. American Nat. Bank*. See (Costs in case of refusal of new trial) *Code Civ. Pro.* 1881, § 3239, *n.*
- Matthewson v. Johnson**. See *Boal v. Mix*.
- **v. Weller**, 3 *Den.* 52. Overruled (Exempt property, when to be taken on execution) in *Cole v. Stevens*, 9 *Barb.* 676. Compare *Danks v. Quackenbush*, 1 *N. Y.* 129, 137; *Morse v. Gould*, 11 *Id.* 281.
- Mattie v. Allen**, 33 *Barb.* 543. Rev'd in 3 *Abb. Ct. App. Dec.* 248; *s. c.*, 3 *Keyes*, 492. Decision in *Id.* quoted (Earnest in case of sale of goods over fifty dollars) in *Benj. on Sales*, § 192, *n.* 2 (Corbin's 4 *Am. ed.*).
- **v. Gifford**, 16 *Abb. Pr.* 246. Compare (Injunction where right depends on nature of action) *Code Civ. Pro.* § 608.
- **v. Lillie**, 24 *How. Pr.* 264. Explained (Liability of wife's separate estate for debts fraudulently contracted by husband) in *Corning v. Lewis*, 36 *Id.* 425.
- Mattison v. Baucus**, 1 *N. Y.* 295. Followed (Leviable interest of mortgagor) in *Galen v. Brown*, 22 *Id.* 37, 39.
- **v. N. Y. Central, &c. R. R. Co.**, 57 *N. Y.* 552. Further decision as *Mattison v. N. Y. Central, &c. R. R. Co.*, 76 *Id.* 381.
- **v. Smith**, 19 *Abb. Pr.* 288. See (Answer, when too indefinite) *Hammond v. Earle*, 5 *Abb. N. C.* 105, 110.
- Mattocks v. Tremain**, 3 *Johns. Ch.* 75. See (Right to writ of *ne exeat*) *Code Civ. Pro.* 1881, § 549, *n.*
- Mattoon v. Baker**. See *Leavenworth v. Packer*.
- **v. Young**, 45 *N. Y.* 696. Further decision in 5 *Sup'm. Ct. (T. & C.)* 109; *s. c.*, 2 *Hun.* 559. See *Hatch v. Peugnet*.
- Matze v. N. Y. Central, &c. R. R. Co.**, 1 *Hun.* 417. Collated with other cases (Liability of railroad company for negligence injuring trespasser) in 6 *Abb. N. C.* 118, *n.*
- Mauran v. Lamb**, 7 *Cow.* 174. Cited with approval with Overseers of Plattekill v. Overseers of New Paltz, 15 *Johns.* 305; *Frear v. Evertson*, 20 *Id.* 142 (Party to record not to be compelled to become witness against his consent) in *Tenney v. Evans*, 14 *N. H.* 343; *s. c.*, 40 *Am. Dec.* 194, with note.
- Maurer v. People**, 43 *N. Y.* 1. See *People v. Perkins*. Disting'd (Waiver in criminal cases) in *Wightman v. People*, 67 *Barb.* 45. Disting'd (Necessity of personal presence of prisoner at trial) in *People v. Bragle*, 88 *N. Y.* 590.
- Maximilian v. Mayor, &c. of N. Y.**, 2 *Hun.* 262; *s. c.*, 4 *Sup'm. Ct. (T. & C.)* 491. Aff'd in 62 *N. Y.* 160; *s. c.*, 20 *Am. R.* 468. See *McKay v. City of Buffalo*; *Mayor, &c. of N. Y. v. Bailey*; *Smith v. City of Rochester*; *Weet v. Trustees of Brockport*. Decision in 62 *N. Y.* followed (Liability of municipal corporation for neglect of duty by department, &c.) in *Connors v. Mayor, &c. of N. Y.*, 11 *Hun.* 439; *Smith v. City of Rochester*, 12 *Id.* 217; *Ham v. Mayor, &c. of N. Y.*, 70 *N. Y.* 464; *N. Y. & Brooklyn Saw-mill, &c. Co. v. City of Brooklyn*, 71 *Id.* 534. Disting'd in *Donovan v. Board of Education*, 55 *How. Pr.* 183; *Tormey v. Mayor, &c. of N. Y.*, 12 *Hun.* 547; *McAvoy v. Mayor, &c. of N. Y.*, 54 *How. Pr.* 247; *Swift v. Mayor, &c. of N. Y.*, 83 *N. Y.* 528, 534. Followed with *Smith v. City of Rochester*, 76 *N. Y.* 513, in *Wilcox v. City of Chicago*, 107 *Ill.* 334; *s. c.*, 47 *Am. R.* 434. Followed, and *Bailey v. Mayor, &c. of N. Y.*, 3 *Hill*, 531; *Rochester White Lead Co. v. City of Rochester*, 3 *N. Y.* 463, disting'd, in *Bryant v. City of St. Paul*, 33 *Minn.* 291; *s. c.*, with note, 21 *Cent. L. J.* 33. Decision in 2 *Hun.* said not to be applicable to acts of temporary commission, in *Wood v. Mayor, &c. of N. Y.*, 7 *Id.* 164.
- Maxon v. Hall**, 25 *Hun.* 59. Abridgt. *s. c.*, 12 *Weekly Dig.* 519.
- **v. Scott**, 55 *N. Y.* 247. See *Yale v. Dederer*. Applied (Charging separate estate of married woman) in *Weir v. Groat*, 4 *Hun.* 193, 195. Applied in *Williamson v. Dodge*, 5 *Id.* 497, 499.
- Maxson v. Annas**, 1 *Den.* 204. Explained in *Marks v. Wilson*, 11 *Abb. Pr.* 87, as decided under a statute that has been repealed (Effect of legal proceedings had on Saturday).
- Maxwell, Estate of**, 2 *Month. L. Bul.* 68; *s. c.* more fully, as *Wood v. Seward*, 4 *Redf.* 271.
- Maxwell v. East River Bank**, 3 *Bosw.* 124. Collated with other cases (Covenant in lease against erections) in *McAdam on Landl. & T.* 2 ed. § 98. Quoted (Party-wall and mutual support) in *Wood on Nuis.* 2 ed. § 231.
- **v. Farnam**, 7 *How. Pr.* 236. Disapproved (Uniting demand to recover possession of chattel, with claim for damages for taking the same) in *Pomerooy on Rem.* § 503.
- **v. Palmerton**. See *Putnam v. Payne*.
- **v. Robinson**, 1 *Johns.* 333. Followed (Effect of provision in marine policy that risk is to continue until vessel reaches mar-

- ket) in *Deblois v. Ocean Ins. Co.*, 16 *Pick. (Mass.)* 303; s. c., 28 *Am. Dec.* 245, 247, with note.
- May v. National Bank of Malone**, 9 *Hun*, 108. Aff'd, it seems, in 73 *N. Y.* 599, but without opinion.
- Maybee v. Avery**, 18 *Johns.* 352. Explained (Record of judgment in criminal case, how far conclusive in civil action) in *Sims v. Sims*, 75 *N. Y.* 473. Disting'd (Evidence in mitigation of damages, in action for slander) in *Treat v. Browning*, 4 *Conn.* 408; s. c., 10 *Am. Dec.* 156.
- **v. Sniffen**, 2 *E. D. Smith*, 1; s. c., more fully, 10 *N. Y. Leg. Obs.* 18. Aff'd in 16 *N. Y.* 560. Decision in 2 *E. D. Smith* collated with *Taylor v. Crowninshield*, 5 *N. Y. Leg. Obs.* 209, and other cases (Presumptions from alterations of instruments) in 30 *Abb. L. J.* 245. See authorities cited in *Abb. Tr. Ev.* 406, n. 9.
- Mayell v. Potter**, 2 *Johns. Cas.* 371; s. c., 1 *N. Y. Com. L. Law. ed.* 547, with brief note.
- Mayenborg v. Haynes**, 50 *N. Y.* 675. Cited with approval (Estoppel from declarations not intended to be public) in *Kinney v. Whiton*, 44 *Conn.* 262; s. c., 26 *Am. R.* 462, 468.
- Mayer, Matter of**, 50 *N. Y.* 504. See *Matter of Volkening*; *People ex rel. City of Rochester v. Briggs*. Applied (Sufficiency of title of local act) in *Hurlburt v. Banks*, 1 *Abb. N. C.* 194, which was aff'd in 67 *N. Y.* 573, which see; *People v. Morgan*, 5 *Daly*, 186; *Neuendorf v. Duryea*, 6 *Id.* 282; *People ex rel. N. Y. & Harlem R. R. Co. v. Havemeyer*, 47 *How. Pr.* 509; *Faulkner v. Trustees of Dansville*, 1 *Hun*, 594; *Village of Gloversville v. Howell*, 7 *Id.* 347; *Wenzler v. People*, 58 *N. Y.* 527. Followed in *Tift v. City of Buffalo*, 82 *Id.* 211. Applied (Assessment, when not vacated for irregularity &c.) in *Williamson v. Mayor, &c. of N. Y.*, 3 *Hun*, 69; *Matter of Agnew*, 4 *Id.* 440; *Matter of N. Y. Prot. Epis. Public School*, 8 *Id.* 458; *Matter of Auchmuty*, 11 *Id.* 80; *Astor v. Mayor, &c. of N. Y.*, 62 *N. Y.* 590. Disting'd in *Matter of Van Buren*, 17 *Hun*, 533; *Matter of N. Y. Prot. Epis. Public School*, 75 *N. Y.* 328.
- Mayer v. Friedman**, 7 *Hun*, 218. Aff'd, in 69 *N. Y.* 608, without further opinion.
- **v. Mayor, &c. of N. Y.**, 2 *Hun*, 306; c. c., 4 *Sup'm Ct. (T. & C.)* 488. Re-aff'd in 67 *Barb.* 323; mem. s. c., 4 *Hun*, 673; and that aff'd in 63 *N. Y.* 455. Decision in *Id.* applied (Effect of payment of assessment by mistake) in *Curnen v. Mayor, &c. of N. Y.*, 7 *Daly*, 544, 546, which was rev'd in 79 *N. Y.* 511, which see. Applied (Recovery of money paid by mistake) in *U. S. v. Nat. Park Bk. U. S. Dist. Ct. S. D. N. Y.* 6 *Fed. Rep.* 854. Decision in 2 *Hun* applied in *Dietrich v. Mayor, &c. of N. Y.*, 5 *Id.* 422.
- **v. Mode**, 14 *Hun*, 155. Followed (Defense to action on check) in *Frazier v. Trow's Printing, &c. Co.*, 24 *Id.* 281, 284.
- **v. Moller**, 1 *Hill.* 491. See to the contrary (Oral evidence to vary lease) *Mann v. Munn*, *L. J.* 43 *C. P.* 241. But see *Abb. Tr. Ev.* 524.
- **v. People**, 80 *N. Y.* 364. Applied (Evidence of similar transactions competent to show intent) in *Shipply v. People*, 86 *Id.* 375, 380.
- Maynard v. Downer**, 13 *Wend.* 575. Judgment herein said in *Camp v. Bennett*, 16 *Wend.* 51, to have been recalled, and judgment of reversal entered.
- **v. Thompson**, 8 *Wend.* 393. See (Transcript by justice after expiration of term) *Code Civ. Pro.* 1881, § 3023, n.
- Mayne v. Griswold**, 3 *Sandf.* 463; s. c., 9 *N. Y. Leg. Obs.* 25. Rule herein thought in *Foot v. Farrington*, 41 *N. Y.* 164, to have been changed by the Code (Time within which to seek relief on ground of fraud).
- Mayor, &c. of Albany v. Cunliff**, 2 *Barb.* 190. Rev'd in 2 *N. Y.* 165. See *Blunt v. Aiken*. Decision in 2 *N. Y.* disting'd (Liability of corporation for negligence in performance of public work) in *Hickok v. Trustees of Plattsburgh*, 15 *Barb.* 442; *Sewell v. City of Cohoes*, 75 *N. Y.* 50. Examined with other cases (Liability for injury resulting from neglect of duty) in *Cook v. Pres't, &c. of N. Y. Floating Dry Dock Co.*, 1 *Hill.* 444. Applied in *Losee v. Clute*, 51 *N. Y.* 496. Applied with *Wilink v. Vanderveer*, 1 *Barb.* 599, in *Hammond v. Hussey*, 51 *N. H.* 40; s. c., 12 *Am. R.* 41. Applied (Liability for continuance of nuisance) in *Walsh v. Mead*, 8 *Hun*, 391. Explained in *Hanse v. Cowing*, 1 *Lans.* 288, 293. Severely criticised with *Hanse v. Cowing*, 1 *Lans.* 288; *Cheango Bridge Co. v. Lewis*, 63 *Barb.* 111, in 14 *Am. Dec.* 337, n. Explained (Liability of builder of structure for injury caused by defect therein) in *Devlin v. Smith*, 89 *N. Y.* 477. Applied (Powers of common council) in *Hunt v. City of Utica*, 23 *Barb.* 395. Applied (Right of judge to act or seek redress in court of which he is a member) in *People v. Edmonds*, 15 *Barb.* 531.
- **v. Trowbridge**, 5 *Hill.* 71. Aff'd in 7 *Id.* 429.
- Mayor, &c. of Brooklyn v. Meserole**, 26 *Wend.* 132; s. c., 14 *N. Y. Com. L. Law. ed.* 1036, with analytic list of cases citing this one. Applied (Equitable relief against illegal assessment, &c.) in *Wilson v. Mayor, &c. of N. Y.*, 1 *Abb. Pr.* 30; *N. Y. Life Ins. Co. v. Supervisors of N. Y.*, *Id.* 253; *Howell v. City of Buffalo*, 2 *Abb. Ct. App. Dec.* 415; *Bouton v. City of Brooklyn*, 15 *Barb.* 386, 397; *Woodruff v. Fisher*, 17 *Id.* 235; *Blake v. City of Brooklyn*, 26 *Id.* 301, 304; *Douglas v. Mayor, &c. of N. Y.*, 2 *Duer*, 115; *Mace v. Trustees of Newburgh*, 15 *How. Pr.* 162; *Heywood v. City of Buffalo*, 14 *N. Y.* 538; *Guest v. City of Brooklyn*, 69 *Id.* 512. Disting'd in *Johnson v. Stevens*, 13 *How. Pr.* 133; *Astor v. Mayor, &c. of N. Y.*, 37 *Super. Ct. (J. & S.)* 580.

- Applied (Proceedings of subordinate tribunals, when not reviewable by court of equity) in *Ilyatt v. Bates*, 35 *Barb.* 317, which was aff'd in 40 *N. Y.* 166, which see. Disting'd (Restraining acts of municipal corporations) in *Matthews v. Mayor, &c. of N. Y.*, 14 *Abb. Pr.* 212. Explained in *Baldwin v. City of Buffalo*, 29 *Barb.* 399.
- Mayor, &c. of Hudson v. Thorne**, 7 *Paige*, 261. See *City of Troy v. Winters*. Disting'd (Right of city to establish fire limits) in *City of Troy v. Winters*, 2 *Hun.* 63, 65. Applied in *Rye v. Peterson*, 45 *Tex.* 312; s. c., 23 *Am. R.* 608, 611. Cited with approval with *Schuster v. Metropolitan Board of Health*, 49 *Barb.* 450 (Aiding by injunction, enforcement of municipal ordinances) in *Waupun v. Moore*, 34 *Wis.* 450; s. c., 17 *Am. R.* 446.
- Mayor, &c. of N. Y., Matter of**, 49 *N. Y.* 150. See *Outwater v. Mayor, &c. of N. Y.* Followed (Power of court to set aside report of commissioner of estimate and assessment) in *Garrison v. City of N. Y.*, 21 *Wall.* 196, 202. Disting'd in *Matter of Prospect Park & C. I. R. R. Co.*, 85 *N. Y.* 439, 494.
- , 11 *Johns.* 77. Applied with *Buffalo City Cemetery v. City of Buffalo*, 46 *N. Y.* 506; *Chegaray v. Mayor, &c. of N. Y.*, 13 *Id.* 220 (Statutes, when not so construed as to exempt from taxation) in *People ex rel. Westchester Fire Ins. Co. v. Davenport*, 91 *Id.* 574. Deemed overruled (Assessment of church property for local improvements) in *People v. Mayor of Syracuse*, 2 *Hun.* 433. Citing *Matter of Furman Street*, 17 *Wend.* 649; *Matter of William & Anthony Streets*, 19 *Id.* 690; *Troy & Boston R. R. Co. v. Lee*, 13 *Barb.* 169. Followed (Assessment, when not regarded as tax) in *Roosevelt Hospital v. Mayor, &c. of N. Y.*, 84 *N. Y.* 108, 112. Relied on in *Broadway Baptist Church v. McAtee*, 8 *Bush. (Ky.)* 508; s. c., 8 *Am. R.* 480, 487. Cited with approval with *People ex rel. Griffing v. Mayor of Brooklyn*, 4 *N. Y.* 419; *Bleeker v. Ballou*, 3 *Wend.* 263; *Sharp v. Speir*, 4 *Hill.* 76, in *Boston Seamen's Friend Society v. Mayor, &c. of Boston*, 116 *Mass.* 181; s. c., 17 *Am. R.* 153, 157. Followed in *Sheehan v. Good Samaritan Hospital*, 50 *Mo.* 155; s. c., 11 *Am. R.* 412. Approved and applied in *Worsley v. New Orleans*, 9 *Rob. (La.)* 324; s. c., 41 *Am. Dec.* 333, 337, a case involving question of right to levy wharfage. Discussed at length with *People v. Mayor of Brooklyn*, 6 *Barb.* 209; 4 *N. Y.* 419; *People ex rel. Crowell v. Lawrence*, 41 *Id.* 123 (Constitutionality of assessments for local improvements) in *Town of Macon v. Patty*, 57 *Miss.* 378; s. c., 34 *Am. R.* 451, 453, 455, 457. Followed in *Alexander v. Mayor*, 5 *Gill (Md.)* 383; s. c., 46 *Am. Dec.* 630, 635. Disting'd with *Matter of Albany St.*, 11 *Wend.* 150 (Basis of valuation, in making assessments for local improvements) and *Matter of William & Anthony Sts.*, 19 *Wend.* 678, cited with approval in *State v. Mayor, &c. Newark*, 35 *N. J.* 157; s. c., 10 *Am. R.* 223, 231.
- Mayor, &c. of N. Y. v. Bailey**, 2 *Den.* 433. Aff'g 3 *Hill.* 531. See *Mayor, &c. of N. Y. v. Farze*. Decision in 2 *Den.* applied (Liability for injury resulting from construction of public work) in *Moshier v. Utica, &c. R. R. Co.*, 8 *Barb.* 434; *Lacour v. Mayor, &c. of N. Y.*, 3 *Duer.* 415; *Rochester White Lead Co. v. City of Rochester*, 3 *N. Y.* 468. Explained in *Robinson v. N. Y. & Erie R. R. Co.*, 28 *Barb.* 523; *Garrison v. Mayor, &c. of N. Y.*, 5 *Bosw.* 503. Commented on by *Strong, J.*, in *Mayor, &c. of N. Y. v. Cunliff*, 2 *N. Y.* 179. Approved in *City of Madison v. Ross*, 3 *Ind.* 236; s. c., 54 *Am. Dec.* 481, with note. Applied in *Browning v. Springfield*, 17 *Ill.* 143. Approved and applied (Doctrine of *respondent superior*) in *City of Buffalo v. Holloway*, 14 *Barb.* 111. Questioned in *Gilbert v. Beach*, 5 *Bosw.* 455. Examined with other cases in dissenting opinion of *Dwight, C.*, in *McCafferty v. Spuyten Duyvil, &c. R. R. Co.*, 61 *N. Y.* 199. Explained in *Norton v. Wiswall*, 26 *Barb.* 624; *Blake v. Ferris*, 5 *N. Y.* 64. Disapproved in *Wright v. Holbrook*, 52 *N. H.* 120; s. c., 13 *Am. R.* 12, 15, where, however, *Blake v. Ferris*, 5 *N. Y.* 48; *Stevens v. Armstrong*, 6 *Id.* 435, were, with other cases, referred to as maintaining a different doctrine. Collated with *Gardner v. Heartt*, 2 *Barb.* 165, and conflicting cases in 23 *Am. L. Reg. N. S.* 602, *n.* Applied (Municipal corporation, when to be regarded as private in respect to its property) in *Milbau v. Sharp*, 15 *Barb.* 238. Applied (Power of legislature to determine what powers shall be conferred on municipal corporations) in *Clarke v. City of Rochester*, 5 *Abb. Pr.* 126. Explained (Liability of municipal corporation for injury resulting from misfeasance, &c. of officer) in *Hickok v. Trustees of Plattsburgh*, 15 *Barb.* 435; *Maximilian v. Mayor, &c. of N. Y.*, 2 *Hun.* 267; *Smith v. City of Rochester*, 13 *Id.* 217, which was aff'd in 76 *N. Y.* 512, which see. Applied with *Richards v. Mayor, &c. of N. Y.*, 48 *Super. Ct. (J. & S.)* 315, and *Maximilian v. Mayor, &c. of N. Y.*, 62 *N. Y.* 160; *Ham v. Mayor, &c.*, 70 *Id.* 459; *N. Y. &c. Sawmill Co. v. City of Brooklyn*, 71 *Id.* 580, disting'd in *Ehrgott v. Mayor, &c. of N. Y.*, 96 *Id.* 264. Followed in *Ross v. City of Madison*, 1 *Ind.* 281; s. c., 48 *Am. Dec.* 361, 363, with note. Disting'd with *Delmonico v. Mayor, &c. of N. Y.*, 1 *Sandf.* 223; *Lloyd v. Mayor, &c. of N. Y.*, 5 *N. Y.* 369; *Rochester White Lead Co. v. City of Rochester*, 3 *N. Y.* 463, in *Elliott v. City of Philadelphia*, 75 *Penn. St.* 342; s. c., 15 *Am. R.* 591, 594. Disting'd (Liability of riparian proprietor, resulting from use of water-course) in *Pixley v. Clark*, 35 *N. Y.* 524. Followed in *Gray v. Harris*, 107 *Mass.* 492; s. c., 9 *Am. R.* 61. Discussed in *Wood on Nuis.* 2 ed. 345, *n.* 2. Applied (Liability on claim arising from construction of Croton

- aqueduct) in *People ex rel. Baldwin v. Haws*, 15 *Abb. Pr.* 117.
- *v. Board of Health*. See *Metropolitan Board of Health v. Heister*.
- *v. Britton*, 12 *Abb. Pr.* 367, *n.*; *s. c.*, 21 *How. Pr.* 251. Explained and limited (Private character of property of municipal corporation) in *Darlington v. Mayor, &c.* of N. Y., 31 *N. Y.* 164, 201. Referred to in *Whitney v. Mayor, &c.* of N. Y., 6 *Abb. N. C.* 342, *n.*, as in *MSS*. Applied in *Whitney v. Mayor, &c.* of N. Y., 6 *Id.* 329, 338, *n.*
- *v. Broadway & Seventh Ave. R. R. Co.*, 12 *Hun.* 571; *s. c.*, 54 *How. Pr.* 323. Decision on the merits in 17 *Hun.* 242.
- *v. Brooklyn Fire Ins. Co.*, 41 *Barb.* 231. Aff'd in 4 *Keyes*, 465; *s. c.*, 3 *Abb. Ct. App. Dec.* 251. Decision in 41 *Barb.* followed (Parol evidence to vary contract of insurance) in *Pohalski v. Mutual Life Ins. Co.*, 36 *Super. Ct. (J. & S.)* 234, 250.
- *v. Butler*, 1 *Barb.* 325. See *Keating v. Price*. See also (*Functus officio*) *Ligler v. Mayor, &c.* of N. Y., 5 *Abb. N. C.* 51, and cases cited in *Id.* 52, *n.* Cited in 1 *Whart. Com. on Ev.* § 599, as showing a concurrence of high authority in support of the position (Examination of arbitrators as witnesses).
- *v. Colgate*, 2 *Duer*, 1. Aff'd in 12 *N. Y.* 140. Decision in *Id.* applied (Remedies for collection of assessment, &c.) in *Litchfield v. McComber*, 42 *Barb.* 293; *Fisher v. Mayor, &c.* of N. Y., 3 *Hun.* 652. Approved in *Rector, &c. of Trinity Church v. Higgins*, 48 *N. Y.* 539. Disting'd (Statute of limitation as bar to enforcement of lien on land) in *Borst v. Corey*, 15 *Id.* 511. Followed as decisive, in *Fisher v. Mayor, &c.* of N. Y., 67 *Id.* 78.
- *v. Cornell*, 9 *Hun.* 215. Compare (Review of taxation of costs) *Code Civ. Pro.* § 3265.
- *v. Erben*, 10 *Bosw.* 189; *s. c.*, 24 *How. Pr.* 358. Aff'd in 3 *Abb. Ct. App. Dec.* 255. Opinion published in 38 *N. Y.* 305, was a dissenting opinion. So stated in *Matter of N. Y. Central, &c. R. R. Co.*, 64 *N. Y.* 63; *Matter of Kingsbridge Road*, 4 *Hun.* 599, 605. See *Bowery Extension case*. Decision in 3 *Abb. Ct. App. Dec.* disting'd with *Southwick v. First Nat. B'k of Memphis*, 84 *N. Y.* 420 (Demand as condition precedent to liability for money paid or received by mistake) in *Sharkey v. Mansfield*, 90 *Id.* 227. See to the contrary *Calais v. Whidden*, 64 *Me.* 249; *Utica Bank v. Van Geisen*, 18 *Johns.* 485. But see *Abb. Tr. Ev.* 281. Decision in 38 *N. Y.* applied (Conclusiveness of confirmation by Supreme Court, of report of commissioner in proceedings for opening streets, &c.) in *Matter of Commissioners of Cent. Park*, 50 *Id.* 493.
- *v. Flagg*, 6 *Abb. Pr.* 296. Applied (Rights of officer *de facto*) in *People ex rel. Steinert v. Anthony*, 6 *Hun.* 142, 147. Followed (Injunction against rival claimants of office) in *Palmer v. Foley*, 36 *Super. Ct. (J. & S.)* 14, 24.
- *v. Furze*, 3 *Hill.* 612; *s. c.*, 15 *N. Y. Com. L. Lav. ed.* 702, with brief note. See *Bailey v. Mayor, &c.* of N. Y.; *Bartlett v. Crozier*; *Mills v. City of Brooklyn*; *Rochester White Lead Co. v. City of Rochester*. Applied (Authority conferred by statute, when mandatory) in *People ex rel. Raymond v. Connolly*, 4 *Abb. Pr. N. S.* 376; *Hogan v. Devlin*, 2 *Daly*, 185; *Pacey v. Mayor, &c.* of Brooklyn, 3 *N. Y. Leg. Obs.* 104; *People v. Supervisors of Otsego*, 51 *N. Y.* 407. Disting'd in *Cole v. Trustees of Medina*, 27 *Barb.* 220; *Bennett v. Matthews*, 40 *How. Pr.* 430. Explained in *Peck v. Village of Batavia*, 32 *Barb.* 644. Applied (Municipal liability for injury resulting from defect in public work) in *Barton v. City of Syracuse*, 37 *Id.* 295, which was aff'd in 36 *N. Y.* 55, which see; *Lewenthal v. Mayor, &c.* of N. Y., 61 *Barb.* 520; *Lloyd v. Same*, 5 *N. Y.* 370; *Nims v. Mayor, &c.* of Troy, 51 *Id.* 508. Applied to platform in thoroughfare, in *Weet v. Trustees of Brockport*, 16 *Id.* 162, 171, *n.*; to vault, in *Delmonico v. Mayor, &c.* of N. Y., 1 *Sandf.* 225. Applied to case of culvert, in *Rochester White Lead Co. v. City of Rochester*, 3 *N. Y.* 468. Followed as settled law in *Hutson v. Mayor, &c.* of N. Y., 9 *Id.* 168, which aff'd 5 *Sandf.* 301, which see, a case of street excavation; also in *Conrad v. Trustees of Utica*, 16 *N. Y.* 173, a case of a bridge. Disting'd in *Mills v. City of Brooklyn*, 32 *Id.* 499. Explained in *Garrison v. Mayor, &c.* of N. Y., 5 *Bosw.* 503, a case of a defective pier; *Wilson v. Mayor, &c.* of N. Y., 1 *Den.* 600, a case of defective grading. Approved with *Conrad v. Trustees of Ithaca*, 16 *N. Y.* 158; *Requa v. City of Rochester*, 45 *Id.* 129; *Hutson v. Mayor, &c.* of N. Y., 9 *Id.* 163; *Davenport v. Ruckman*, 37 *Id.* 568; *Hume v. Mayor, &c.* of N. Y., 74 *Id.* 264, in *Ehrgott v. Mayor, &c.* of N. Y., 96 *Id.* 264. Disapproved in *City of Navasota v. Pearce*, 46 *Tex.* 525; *s. c.*, 26 *Am. R.* 280. Applied with *Rochester White Lead Co. v. Rochester*, 3 *N. Y.* 463; *Barton v. City of Syracuse*, 36 *Id.* 54, in *Gillison v. City of Charlestown*, 16 *W. Va.* 282; *s. c.*, 37 *Am. R.* 763. Reviewed with *Bailey v. Mayor, &c.* of N. Y., 3 *Hill.* 531; 2 *Den.* 433; *Rochester White Lead Co. v. City of Rochester*, 3 *N. Y.* 463; *Hume v. Mayor, &c.* of N. Y., 47 *Id.* 639, in *Rowe v. Portsmouth*, 56 *N. H.* 291; *s. c.*, 22 *Am. R.* 464, 467, 463. Reviewed with *Rochester White Lead Co. v. City of Rochester*, 3 *N. Y.* 463; *Lloyd v. Mayor, &c.* of N. Y., 5 *Id.* 369; *Bailey v. Mayor, &c.* of N. Y., 3 *Hill.* 531, in *Aldrich v. Tripp*, 11 *R. I.* 141; *s. c.*, 23 *Am. R.* 434, 437. Explained (Liability of municipal corporation for misfeasance, &c., of officer) in *Lorillard v. Town of Monroe*, 12 *Barb.* 166, which was aff'd in 11 *N. Y.* 396, which see. Disting'd in *Howell v. City of Buffalo*, 15 *Id.* 522. Disapproved with

- Adsit v. Brady*, 4 *Hill*, 632; *Robinson v. Chamberlain*, 34 *N. Y.* 389 (Liability of public officer in private action for negligence) in *McConnell v. Dewey*, 5 *Neb.* 385, as laying down a doctrine contrary to that of the earlier *N. Y.* cases. Explained (Negligence as test of liability) in *Congreve v. Morgan*, 4 *Duer*, 446. Applied in *Mayor, &c. of Albany v. Cunliff*, 2 *N. Y.* 173. Compared (Negligence of contractor) in 3 *Am. L. Reg. N. S.* 359.
- *v. Genet*, 4 *Hun*, 487; Aff'd in 63 *N. Y.* 646. Decision in 4 *Hun* collated with other cases (What cases are referable) in 1 *Abb. N. C.* 109, *n.*
- *v. Hamilton Fire Ins. Co.*, 10 *Bosw.* 537. Aff'd in 39 *N. Y.* 45. See *Ames v. N. Y. Union Ins. Co.* Decision in 39 *N. Y.* followed (Limitation of action on policy) in *Steen v. Niagara Fire Ins. Co.*, 61 *How. Pr.* 144, 146. Examined with other cases in *Barber v. F. & M. Ins. Co.*, 16 *W. Va.* 676. Approved with *Hay v. Star Fire Ins. Co.*, 77 *N. Y.* 241; *Steen v. Niagara Fire Ins. Co.*, 89 *Id.* 315, in *Spare v. Home Mut. Ins. Co.*, *U. S. Cir. Ct. D. Oreg.* 17 *Fed. Rep.* 568, 570. Applied in *Chandler v. St. Paul Fire & Marine Ins. Co.*, 21 *Minn.* 85; *s. c.*, 18 *Am. R.* 385, 388. Collated with *Ames v. N. Y. Union Ins. Co.*, 14 *N. Y.* 253; *Ripley v. Aetna Ins. Co.*, 30 *Id.* 136; *Wilkinson v. First National Fire Ins. Co. of Worcester*, 72 *N. Y.* 499; and other cases in 25 *Am. R.* 104, *n.* Disting'd (Amount of loss, when payable) in *Hastings v. Westchester Fire Ins. Co.*, 73 *N. Y.* 141, 152.
- *v. Lord*, 17 *Wend.* 285. Aff'd in 18 *Id.* 126. See *Russell v. Mayor, &c. of N. Y.* Decision in 17 *Wend.* explained and applied (Liability for loss of property destroyed to prevent spread of fire) in *Russell v. Mayor, &c. of N. Y.*, 2 *Den.* 477. Cited as conclusive, in *People ex rel. Brisbane v. Common Council of Buffalo*, 76 *N. Y.* 562. Followed in *Bishop v. Mayor, &c. of Macon*, 7 *Ga.* 200; *s. c.*, 50 *Am. Dec.* 400, with note. Cited with approval in *Field v. City of Des Moines*, 39 *Iowa*, 575; *s. c.*, 18 *Am. R.* 46. Followed and approved in *American Print Works v. Lawrence*, 3 *Zabr. (N. J.)* 590; *s. c.*, 57 *Am. Dec.* 420, with note. Decision in 18 *Wend.* explained by *EDWARDS*, Senator, in *Stone v. Mayor, &c. of N. Y.*, 25 *Id.* 159. See, also, *Id.* 177. Applied in *Struve v. Droge*, 10 *Abb. N. C.* 142, 146. Applied (Equitable construction of statutes) in *Ayers v. Lawrence*, 59 *N. Y.* 199.
- *v. Mable*, 2 *Duer*, 401. Rev'd in 13 *N. Y.* 151. Decision in *Id.* disting'd (Implied covenant in lease) in *Schermerhorn v. Gouge*, 13 *Abb. Pr.* 316. Applied in *Mofat v. Strong*, 9 *Bosw.* 76; *Mack v. Patchin*, 29 *How. Pr.* 28; *Vernam v. Smith*, 15 *N. Y.* 333. Explained (Liability on covenant in lease) in *Doupe v. Gennin*, 37 *How. Pr.* 8; *Edgerton v. Page*, 20 *N. Y.* 286. Disting'd (Estates for years, when regarded as "real estate") in *Wilmont v. Meserole*, 41 *Super. Ct. (J. & S.)* 277, a case of "real property." Also disting'd in *Olendorf v. Cook*, 1 *Lans.* 39. Examined with other cases (Counter-claims under the Code) in *Xenia Branch B'k v. Lee*, 7 *Abb. Pr.* 377.
- *v. Marrener*, 49 *How. Pr.* 36. Compare (Bill of particulars in case of fraud) *People v. Tweed*, 5 *Hun*, 353.
- *v. Mason*, 4 *E. D. Smith*, 142; *s. c.*, more fully, 1 *Abb. Pr.* 344.
- *v. N. Y. & Staten Island Ferry Co.*, 49 *How. Pr.* 250. Aff'd in 40 *Super. Ct. (J. & S.)* 232. Further proceeding in *Id.* 300; and that aff'd in 64 *N. Y.* 622. Decision in *Id.* approved and followed (Evasive disobedience a contempt) in *Morton v. Superior Ct. Tulare Co.*, 65 *Cal.* 496.
- *v. Nichols*. See *Dunham v. Trustees of Rochester*.
- *v. North Shore Staten Island Ferry Co.*, 55 *How. Pr.* 154; Aff'd in 9 *Hun*, 620.
- *v. Parker Vein S. S. Co.*, 21 *How. Pr.* 289. Disting'd (Counterclaim in action for rent) in *Walker v. Shoemaker*, 4 *Hun*, 580.
- *v. Pentz*. See *Norman v. Wells*.
- *v. Price*, 5 *Sandf.* 542. See to the contrary (Oral evidence to vary lease) *Mann v. Munn*, *L. J.* 43, *C. P.* 241. But see *Abb. Tr. Ec.* 424.
- *v. Schermerhorn*, 1 *N. Y.* 423. Aff'g 6 *N. Y. Leg. Obs.* 232.
- *v. Second Avenue R. R. Co.*, 34 *Barb.* 41; *s. c.*, 12 *Abb. Pr.* 364; 21 *How. Pr.* 257. Aff'd in 32 *N. Y.* 261. See *Dunham v. Trustees of Rochester*. Decision in *Id.* opposed (Validity of municipal license tax) in *Frankford, &c. R. R. Co. v. Philadelphia*, 58 *Penn. St.* 119, 125; *Allerton v. City of Chicago*, *U. S. Cir. Ct. D. Ill.* 20 *Am. L. Reg. N. S.* 473, 475, with note collating cases. Followed in *Stein v. Mayor, &c. of Mobile*, 49 *Ala.* 362; *s. c.*, 20 *Am. R.* 283.
- *v. Stone*, 20 *Wend.* 139. Aff'd in 25 *Id.* 157.
- *v. Stuyvesant*, 10 *How. Pr.* 76. Judgment subsequently had was aff'd in 17 *N. Y.* 34.
- *v. Walker*, 4 *E. D. Smith*, 258. Cited (Repeal by implication) in *Peck v. Peck*, 8 *Abb. N. C.* 400, 402.
- *v. Williams*, 4 *E. D. Smith*, 516. Aff'd in 15 *N. Y.* 502.
- Mayor, &c. of Troy v. Troy & Lansingburgh R. R. Co.**, 3 *Lans.* 270. Aff'd in 49 *N. Y.* 657, but without opinion.
- Meacham v. Sternes**, 9 *Paige*, 398. See *Barney v. Griffen*. Followed (Commissions of trustees, &c.) in *Matter of Roosevelt*, 5 *Redf.* 601, 614. Examined with other cases in *Ward v. Ford*, 4 *Id.* 34, 42. Approved in *Matter of Mount*, 2 *Id.* 405. Applied in *Secor v. Sentis*, 5 *Id.* 570, 573; *Stephens v. Marshall*, 23 *Hun*, 641, 643. Discussed and applied to assignment for benefit of creditors, in *Durrill on Assign.* § 418, 4 ed. Quoted and explained (Terms of sale) in *Id.* § 221, *n.* 5. Explained

- (Assignee's authority) in *Id.* § 315. Collated with other cases (Assignee selling on credit) in *Bishop on Assign.* § 211.
- Mead, Matter of**, 13 *Hun*, 349. Aff'd in 74 *N. Y.* 216.
- Mead v. Billings**, 10 *Johns.* 99. Commented on (Liability of one not party to deed) in 1 *Add. on Contr.* 33, n. 1, Abb. ed.
- **v. Bunn**, 32 *N. Y.* 275. Cited as not authority with *Bennett v. Judson*, 21 *Id.* 238; *Sharp v. Mayor, &c. of N. Y.*, 40 *Barb.* 256; *Craig v. Ward*, 36 *Id.* 377; *Yates v. Alden*, 41 *Id.* 172; *Galoupeau v. Ketchum*, 3 *E. D. Smith*, 175 (Mere falsity without fraud as ground of recovery) in *Chester v. Comstock*, 6 *Robt.* 1.
- **v. Case**, 33 *Barb.* 202. See *Bennett v. Hall*. Doubted (What is contract of sale, under statute of frauds) in *Cooke v. Millard*, 65 *N. Y.* 363; *Bates v. Coster*, 1 *Hun*, 400, 402. Explained in *Flint v. Corbitt*, 6 *Daly*, 430.
- **v. Degolyer**, 16 *Wend.* 632. See *Bailey v. Johnson*. Applied (Remedy in case of part performance of contract) in *Pullman v. Corning*, 14 *Barb.* 176, which was aff'd in 9 *N. Y.* 96, which see. Followed, as conclusive, in *Paige v. Ott*, 5 *Den.* 408. Disting'd in *Tipton v. Feitner*, 20 *N. Y.* 429; *Avery v. Willson*, 81 *Id.* 346; *Talmage v. White*, 35 *Super. Ct. (J. & S.)* 222. Opposed, in *Hayden v. Madison*, 7 *Greenl. (Me.)* 76. See also *Brinley v. Tibbets*, 7 *Id.* 70; *Oxendale v. Wetherell*, 9 *B. & C.* 386; *Shipton v. Casson*, 5 *Id.* 378.
- **v. Engs**, 5 *Cov.* 303. Followed (Notice to and by holder for collection) in *Ogden v. Dobbin*, 2 *Hall*, 112; *West River Bank v. Taylor*, 7 *Bosw.* 466, 475; citing, also, *Howard v. Ives*, 1 *Hill*, 264. Collated with *Howard v. Ives*; *State B'k of Troy v. B'k of the Capitol*, 41 *Barb.* 343; *Farmers' B'k v. Vail*, 21 *N. Y.* 485, in 34 *Am. Dec.* 311, n., as showing a decided preponderance of authority in favor of the position taken. Collated with other cases in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 488.
- **v. Jenkins**, 4 *Redf.* 369. See *Ferguson v. Broome*. Compare (Petition for sale of decedent's real estate) *Code Civ. Pro.* § 2750.
- **v. Keeler**. See *Baker v. Braman*.
- **v. Mali**, 15 *How. Pr.* 347. Aff'd as *Cazeaux v. Mali* in 25 *Barb.* 578.
- **v. Merritt**, 2 *Paige*, 402. Approved (Avoiding conflict of jurisdiction) in *Harlington v. Libby*, 6 *Daly*, 259, 264. Followed with *Bicknell v. Field*, 8 *Paige*, 443 (Restraining prosecution of proceedings commenced in another jurisdiction) in *Harris v. Pullman*, 84 *Ill.* 20; s. c., 25 *Am. R.* 416. Disting'd in *Hines v. Rawson*, 40 *Ga.* 356; s. c., 2 *Am. R.* 581, 583; *Engel v. Scheurman*, 40 *Ga.* 206; s. c., 2 *Am. R.* 573. Commented upon in 1 *High. on Inj.* 2 ed. § 105, n. 1.
- **v. Mitchell**, 5 *Abb. Pr.* 92. Aff'd in 17 *N. Y.* 210. Decision in *Id.* disting'd (Power to sell contingent interests of unborn persons) in *Bowman v. Tallman*, 27 *How. Pr.* 225. Cited as settled law in *Clemens v. Clemens*, 37 *N. Y.* 70. Applied in *Brevoort v. Grace*, 53 *Id.* 253. Followed in *Brevoort v. Brevoort*, 70 *Id.* 140. Disting'd (Who may maintain partition suit) in *Harris v. Larkins*, 22 *Hun*, 490. Examined with other cases (What are vested interests) in *Moore v. Littel*, 41 *N. Y.* 82.
- **v. Northwestern Ins. Co.** See *Harper v. Albany Mut. Ins. Co.*
- **v. Phillips**, 1 *Sandf. Ch.* 83. Explained (Power of assignee for benefit of creditors to defend suits) in *Burrill on Assign.* § 230, 4 ed.
- **v. Shepard**, 54 *Barb.* 474. Commented on (Partner's implied powers) in 1 *Collyer on Partn.* § 412, *Wood's Am. ed.*; *Id.* 414, n. 3.
- **v. Stratton**. See *Aldrich v. Sager*; *Hill v. Berry*.
- **v. Westchester Fire Ins. Co.**, 3 *Hun*, 608. Aff'd in 64 *N. Y.* 453. Decision in *Id.* followed (Reformation of written instrument) in *Heelas v. Slevin*, 53 *How. Pr.* 356.
- **v. York**, 6 *N. Y.* 449; s. c., 57 *Am. Dec.* 467, with note. Disting'd with *Truscott v. King*, 6 *N. Y.* 147 (Mortgage when extinguished) in dissenting opinion of *Hoffman, J.*, in *Thompson v. Van Vechten*, 6 *Bosw.* 373, 406.
- Meads v. Gleason**. See *Stannard v. Mattice*.
- **v. Lansingh**, *Hopk.* 124. Cited (When mortgagor cannot set up falsity of consideration of mortgage) in 2 *Whart. Com. on Ev.* § 1056.
- **v. Merchants' Bank of Albany**. See *Willets v. Phoenix Bank*.
- **v. Walker**. See *Slee v. Bloom*.
- Meakings v. Cromwell**, 2 *Sandf.* 512; s. c., 8 *N. Y. Leg. Obs.* 140. Aff'd in 5 *N. Y.* 136; s. c., 10 *N. Y. Leg. Obs.* 201,—where points of counsel in *Ct. of App.* will be found.
- Mears v. Kearney**, 1 *Abb. N. C.* 303. Compare (Note charging separate estate, foreclosed as a mortgage) *Third Nat. Bk. v. Blake*, 73 *N. Y.* 260; s. c., 2 *Browne's Nat. Bk. Cas.* 300.
- Mechanics' & Farmers' Bank v. Capron**, 15 *Johns.* 467. See *Buel v. Gordon*. Applied (When insolvent not discharged) *Rome Exchange Bank v. Eames*, 4 *Abb. Ct. App. Dec.* 83, 93.
- **v. Rider**, 5 *How. Pr.* 401. Commented on as superseded by Code amendment of 1851 (Defendant as witness for co-defendant) in *Beal v. Finch*, 11 *N. Y.* 128.
- **v. Smith**, 19 *Johns.* 115. Explained (Remedy in case of accounts kept with bank) in *Ang. & A. on Corp.* § 244, 11 ed.
- **v. Schuyler**, 7 *Cov.* 337. Applied (Liability to bona fide holder, of one who indorses paper in blank) in *Spitler v. James*, 32 *Ind.* 202; s. c., 2 *Am. R.* 334, with note.
- Mechanics' & Farmers' Bank of Albany v. Wixon**, 46 *Barb.* 218. Aff'd in 42 *N. Y.* 438.

**Mechanics' & Traders' B'k v. Crow**, 5 *Daly*, 191. Aff'd in 60 *N. Y.* 85. Decision in *Id.* explained (Limit of protection to *bona fide* purchaser) in *Dows v. Kidder*, 84 *Id.* 121, 135. Examined with other cases (Effect of surrender of paper to constitute holder for value) in *Phenix Ins. Co. v. Church*, 81 *Id.* 213, 225. With decision in 5 *Daly*, see to same effect (Deposit of notice of protest in lamp-post box) *Greenwich Bank v. De Groot*, 7 *Hun*, 210.

**Mechanics' & Traders' B'k of Buffalo v. Farmers' & Mechanics' Nat. B'k**, 60 *N. Y.* 40. Modifying 2 *Sup'm. Ct. (T. & C.)* 395. See *Baker v. Drake*; *Thayer v. Manley*. Subsequent decision based on transactions here involved,—in *Farmers' & Mech. B'k v. Erie R'y Co.*, 72 *N. Y.* 188. Explained (Construction of factor's act) in *Bates v. Cunningham*, 12 *Hun*, 29, 33.

**Mechanics' & Traders' Bank of Jersey City v. Dakin**, 28 *How. Pr.* 502. Aff'd in 50 *Barb.* 587; s. c., 33 *How. Pr.* 316, and the latter rev'd in 51 *N. Y.* 519. Further decisions in 54 *N. Y.* 681; 8 *Hun*, 431. See *McElwain v. Willis*; *Thurber v. Blanck*. Examined and disting'd (Equitable assets as affected by lien acquired by service of attachment) in *Gross v. Daly*, 5 *Daly*, 541, 543, 555. See *Thurber v. Blanck*, 50 *N. Y.* 80, followed in preference, in *Conner v. Weber*, 12 *Hun*, 583; *Smith v. Longmire*, 24 *Id.* 259. Applied in *Bills v. National Park B'k of N. Y.*, 47 *Super. Ct. (J. & S.)* 302, 309. Discussed in *Wait on Fraud. Conv.* § 86. Decision in 50 *Barb.* examined with other cases (Who may bring action upon choses in action levied upon) in *Lupton v. Smith*, 3 *Hun*, 2.

**Mechanics' & Traders' Savgs. Inst. v. Roberts**, 1 *Abb. Pr.* 381. Disting'd (Who are bound by decree of foreclosure) in *Payn v. Grant*, 23 *Hun*, 134, 137.

**Mechanics' Bank v. Bank of Niagara**, 9 *Wend.* 410. Disting'd (Assignee of mortgage not subject to equity on favor of assignor) in *Granger v. Crouch*, 86 *N. Y.* 494, 499.

— **v. Edwards**, 1 *Barb.* 271. Aff'd in 2 *Id.* 545; s. c., more fully, as *Cotheal v. Mechanics' B'k*, 6 *N. Y. Leg. Obs.* 159. See *Ohio v. Mississippi R. R. Co. v. Kasson*. Decision in 1 *Barb.* disapproved (Usury as a personal defense) in *Morris v. Floyd*, 5 *Id.* 130, 133. Approved in *Sands v. Church*, 6 *N. Y.* 347, 351. Disting'd in *Fish v. De Wolf*, 4 *Bosw.* 573, 582. Collated with other cases in *Colby on Forecl.* 41.

— **v. Griswold**, 7 *Wend.* 165. See *Sice v. Cunningham*. Compared with other cases (Liability of indorser without notice) in *Susquehanna Val. Nat. B'k v. Loomis*, 85 *N. Y.* 207, 213. Explained (Right to demand and notice, as affected by taking security) in *Seacord v. Miller*, 13 *Id.* 55. Followed in *Stephenson v. Primrose*, 8 *Port. (Ala.)* 155; s. c., 33 *Am. Dec.* 281, 286, with note. Disting'd with *Leffingwell v.*

*White*, 1 *Johns. Cas.* 99, in *Kramer v. Sandford*, 4 *Watts & S. (Pa.)* 328; s. c., 36 *Am. Dec.* 92, 94, with note. Quoted and collated with other cases in *Holcombe Lead. Cas. on Com. L.* 325.

— **v. Levy**, 3 *Paige*, 606. Limited (Following money obtained by fraud) in *Justh v. Nat. B'k of Commonwealth*, 56 *N. Y.* 478, 484.

— **v. Minthorne**, 19 *Johns.* 244. See *Miller v. Burroughs*. Applied (Amendment of judgment, &c.) to amendment of complaint after satisfaction of judgment, in *Hatch v. Central National Bank*, 78 *N. Y.* 487, 489. See, also, *Rockwell v. Carpenter*, 25 *Hun*, 529, 531, and see dissenting opinion, p. 535. Relied on with *Chichester v. Cande*, 3 *Cow.* 39; *Hart v. Reynolds*, 3 *Id.* 42, n. a. in *Lewis v. Ross*, 37 *Me.* 230; s. c., 59 *Am. Dec.* 49.

— **N. Y. & New Haven R. R. Co.**, 4 *Duer*, 480. Rev'd in 13 *N. Y.* 599. See *Bank of Utica v. Smalley*; *Stebbins v. Phenix Fire Ins. Co.* See subsequent decisions arising out of transactions here involved,—in *N. Y. & New Haven R. R. Co. v. Schuyler*, 17 *How. Pr.* 464; 17 *N. Y.* 592; 34 *Id.* 30; *Woodruff v. N. Y. & New Haven R. R. Co.*, 18 *How. Pr.* 419. Decision in 13 *N. Y.* disting'd (Liability in case of stock fraudulently issued) in *Cross v. Sackett*, 6 *Abb. Pr.* 270. Applied in *Seizer v. Mali*, 11 *Id.* 131. Approved and applied as conclusive, in dissenting opinion of *Strong, J.*, in *Ketchum v. Bank of Commerce*, 19 *N. Y.* 513. Applied to drafts made by agent, in *Exchange Bk. v. Monteath*, 24 *Barb.* 374; and see *Same v. Same*, 26 *N. Y.* 509. Applied, also to draft by agent, in *Bank of Deer Lodge v. Hope Mining Co.*, 3 *Mont.* 146; s. c., 34 *Am. R.* 458, 460. Applied to bill of lading obtained by fraud, in *Dows v. Perrin*, 16 *N. Y.* 335. Explained in *N. Y. & New Haven R. R. Co. v. Schuyler*, 33 *Barb.* 546. Disting'd in *Farmers' & Mech. B'k v. Butchers' & Drovers' B'k*, 14 *N. Y.* 633; 16 *Id.* 140; 28 *Id.* 436, a case of a check certified without authority. Followed with *N. Y. & New Haven R. R. Co. v. Schuyler*, 34 *N. Y.* 30; *Lathrop v. Kneeland*, 46 *Barb.* 432; in *Scovil v. Thayer*, 105 *U. S.* 143, 148. Followed (Negotiability of certificates of corporate stock) in *Barstow v. Savage Min. Co.*, 64 *Cal.* 392. Cited, with approval, in *Sherwood v. Meadow Valley Mining Co.*, 50 *Cal.* 412. Compared with *N. Y. & New Haven R. R. Co. v. Schuyler*, 34 *N. Y.* 30, in *Moore v. Citizens' Nat. Bk. of Piqua, Ohio*, *U. S. Cir. Ct. S. D. Ohio*, 15 *Fed. Rep.* 141. Applied (Office of certificates of stock) in *Atkins v. Gamble*, 42 *Cal.* 86; s. c., 10 *Am. R.* 282, 290. Followed (Rights of assignee of stock certificate) in *McCready v. Rumsey*, 6 *Duer*, 580-2. Relied on in dissenting opinion of *Allen, J.*, in *Bank of Attica v. Manuf'rs' & Traders' B'k*, 20 *N. Y.* 512. Sought to be harmonized in 9 *Weekly Cin. L. Bul.* 1, where cases from other States are also discussed. Quoted in *Ang.*

- & *A. on Corp.* § 560, n., 11 ed. Explained at length and limited (Liability for representations made by agent) in *Griswold v. Haven*, 25 *N. Y.* 595. Regarded in 2 *Pomeroy on Eq. Jur.* 401, n., as entirely overruled by subsequent cases. Disting'd in 1 *Am. L. Reg. N. S.* 303. Discussed in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 692. Language of Comstock, J., quoted approvingly (Distinction between general and special agent) in 1 *Pars. on Contr.* 44, n. g.
- *v. Straiton*, 3 *Keyes*, 365; s. c., 5 *Abb. Pr. N. S.* 11. Included (Check payable to fictitious payee) in 1 *Ames Cas. on B. & N.* 574.
- Mechanics' Bank of Brooklyn v. Townsend**, 29 *Barb.* 569. See *Chamberlain v. Townsend*. Followed (Estoppel to set up usury) in *Weyh v. Boylan*, 85 *N. Y.* 394, 401.
- Mechanics' Banking Assoc. v. Kiersted**, 10 *How. Pr.* 400. Followed (Motion for new trial as carrying costs) in *Muller v. Higgins*, 13 *Abb. Pr. N. S.* 297.
- *v. N. Y. & Saugerties White Lead Co.*, 23 *How. Pr.* 74; s. c., less fully, 20 *Id.* 509. Aff'd in 35 *N. Y.* 505.
- *v. Spring Valley Shot & Lead Co.*, 13 *How. Pr.* 227. Rev'd in 25 *Barb.* 419.
- Medbury v. Rochester, &c. Stone Co.**, 19 *Hun.* 493. Disting'd (Who may maintain action for dissolution of corporation) in *Byrne v. N. Y. Brick & Cement Co.*, 16 *Weekly Dig.* 139. Followed in *Kittredge v. Kellogg Bridge Co.*, 8 *Abb. N. C.* 168, 171. See *Code Civ. Pro.* 1881, § 1786, n.
- *v. Swan*, 46 *N. Y.* 200. Followed (Allowance of supplemental pleading) in *Barstow v. Hausen*, 2 *Hun.* 333, 336; *Beach v. Reynolds*, 53 *N. Y.* 7, 9. Explained in *Holyoke v. Adams*, 59 *Id.* 233, 237. Applied in *Clark v. Spencer*, 14 *Kan.* 398; s. c., 19 *Am. R.* 96. Compare *Code Civ. Pro.* § 544.
- *v. Watrous*, 7 *Hill*, 110. Followed (Rights of infant who repudiates contract) in *Shurtleff v. Millard*, 12 *R. I.* 273; s. c., 34 *Am. R.* 640, 642. Followed with *Whitmarsh v. Hall*, 3 *Den.* 375, in *Derocher v. Continental Mills*, 58 *Me.* 217; s. c., 4 *Am. R.* 286, where *Medbury v. Watrous* is said to overrule *McCoy v. Huffman*, 8 *Cov.* 84. Included in *Ewell Lead. Cas. on Inf. &c.* 102.
- Meddaugh v. Bigelow**, 3 *Sup'm. Ct. (T. & C.)* 775; s. c., more fully, 67 *Barb.* 106.
- Medical Institution of Geneva College v. Patterson**, 1 *Den.* 61. Aff'd in 5 *Id.* 618. Compare (Medical institution as corporation) *People ex rel. Swinburne v. Albany Med. Coll.*, 10 *Abb. N. C.* 123.
- Meech v. Allen**, 17 *N. Y.* 300. Relied on and approved with *Wilder v. Keller*, 3 *Paige*, 171; *Mower v. Kip*, 6 *Paige*, 88; *Averill v. Loucks*, 6 *Barb.* 470 (Liens that will be enforced in equity) in *Louden v. Ball*, 93 *Ind.* 236.
- *v. Calkins*, 4 *Hill*, 534. Applied (Sufficiency of affidavit of merits) in *State B'k of Syracuse v. Gill*, 23 *Hun.* 406.
- *v. Loomis*, 23 *How. Pr.* 484; s. c., 28 *Id.* 209; also, more fully, in 14 *Abb. Pr.* 428.
- *v. Patchin*, 14 *N. Y.* 71. Explained with *Gregory v. Thomas*, 20 *Wend.* 17 (Effect of filing chattel mortgage, as recording) in *Vail v. Knapp*, 49 *Barb.* 299. Cited as authority with *Dillingham v. Bolt*, 37 *N. Y.* 198; *Ely v. Caruley*, 19 *Id.* 496; *Porter v. Parnley*, 52 *Id.* 185 (Necessity of refiling chattel mortgage) in *Frank v. Playter*, 73 *Mo.* 676.
- *v. Smith*, 7 *Wend.* 315. See *Dusenbury v. Ellis*. Explained (Liability of agent contracting without authority) in *Dung v. Parker*, 52 *N. Y.* 494, 501. Disting'd as a case where the contract was not in writing, in *Hegerman v. Johnson*, 35 *Barb.* 200, 205.
- *v. Stoner*, 19 *N. Y.* 261. See *McDougall v. Walling*. Followed (Assignability of right of action for money lost in betting or gaming) in *McDougall v. Walling*, 48 *Barb.* 364. See *Code Civ. Pro.* 1881, § 1910, n.
- Meehan v. Forrester**, 52 *N. Y.* 277. Cited (When person ratifying act of agent will be presumed to be cognizant of facts) in *Whart. Com. on Ag.* § 65. See it also cited in § 89, n.
- *v. Williams*, 2 *Daly*, 367; s. c., 36 *How. Pr.* 73. Disting'd (Effect of permitting performance of contract after time therefor has expired) in *Ruff v. Rinaldo*, 55 *N. Y.* 664. Re-aff'd (Effect of filing mechanics' lien on right to have fraudulent conveyance set aside) in *Gross v. Daly*, 5 *Daly*, 540, 544. Disting'd (Rights of sub-contractors) in *Schneider v. Hobein*, 41 *How. Pr.* 232.
- Meeker v. Claghorn**, 44 *N. Y.* 349. See *Myers v. Davis*. Disting'd (Judgment against one, as precluding action against another) in *Maple v. Cincinnati, Hamilton, &c. R. R. Co.*, 40 *Ohio St.* 313; s. c., 48 *Am. R.* 685; 17 *Reporter*, 182. Quoted (Agent contracting in writing as principal) in 1 *Benj. on Sales*, § 238, n. 88 (Corbin's 4 *Am. ed.*).
- *v. Rensselaer*, 15 *Wend.* 397. See *Moody v. Supervisors of Niagara*. Questioned (Abatement of public nuisance) in *Moody v. Board of Supervisors of Niagara Co.*, 46 *Barb.* 659. Discussed in *Wood on Nuis.* 2 ed. §§ 735, 743.
- *v. Wright*, 11 *Hun.* 533. Rev'd in 76 *N. Y.* 262; s. c., 7 *Abb. N. C.* 299. See *Goclet v. Gori*; *Miller v. Miller*; *Rawson v. Pennsylvania R. R. Co.* Decision in 76 *N. Y.* followed (Contracts between husband and wife) in *Sherman v. Butts*, 13 *Abb. N. C.* 20, n.
- Meeks v. Bowerman**, 1 *Daly*, 99. See *Staples v. Anderson*. Collated with other cases (Lease, how affected by fraud) in *McAdam on Landl. & T.* 2 ed. § 73.
- Mehan v. Syracuse, B. & N. Y. R. R.**, 73 *N. Y.* 585. Applied (Contributory negligence in servant injured, as a question of fact) in *McMahon v. Port Henry Iron Ore Co.*, 24



- Hun.* 48. Followed as decisive (Liability for injury to servant) in *Fuller v. Jewett*, 80 *N. Y.* 46, 52.
- Mehle v. Von Der Wulbeke**, 2 *Lans.* 267. Aff'd in 46 *N. Y.* 539.
- Mellen v. Hamilton Fire Ins. Co.**, 5 *Duer*, 101. Aff'd in 17 *N. Y.* 609. With decision in *Id.* compare (Notice of subsequent insurance) *Bigler v. N. Y. Central Ins. Co.*, 22 *Id.* 400, 412. Explained and followed in *Hamilton v. Aurora F. & M. Ins. Co.*, 15 *Mo. App.* 66.
- Menagh v. Whitwell**, 52 *N. Y.* 146; s. c., 11 *Am. R.* 683. See *Dimon v. Hazard*; *Wilson v. Robertson*. Examined and other decisions collected (Rights of creditors as to partnership assets) in 20 *Am. L. Reg. N. S.* 466, n. Followed as decisive in *Osborn v. McBride*, 16 *Bankr. Reg.* 22. Cited upon the *N. Y.* doctrine, voiced by Chancellor KENT, in *Johnson v. Hersey*, 70 *Me.* 74; s. c., 35 *Am. R.* 303, with note collating cases. Cited as fully sustaining the general principle, in *Fiske v. Gould*, *U. S. Cir. Ct. N. D. Ill.* 14 *Reporter*, 2; s. c., 12 *Fed. Rep.* 372. Collated with *Aitkins v. Saxtun*, 17 *N. Y.* 146, in 14 *Fed. Rep.* 617, n. Approved, in preference to Pennsylvania cases, in 19 *Am. L. Rev.* 45. Collated with other cases in *Story on Partn.* 7 ed. § 358, n., 360, n.
- Mendenhall v. Klineck**, 50 *Barb.* 634. Aff'd on other grounds in 51 *N. Y.* 246.
- Meneely v. Meneely**, 1 *Hun.* 367; s. c., 3 *Sup'm. Ct. (T. & C.)* 540. Aff'd in 62 *N. Y.* 427; s. c., 20 *Am. R.* 489. See *Caswell v. Davis*; *Clark v. Clark*. Decision in 62 *N. Y.* applied (Restraining use of person's own name as trademark) in *Decker v. Decker*, 52 *How. Pr.* 218. Approved in a similar case *Marshall v. Pinkham*, 52 *Wis.* 585. Included with note in *Lawson's Lead. Cas. in Eq. Simplified*, 175.
- Menges v. City of Albany**, 56 *N. Y.* 374. Disting'd (Mode of ascertaining compensation for land taken for public use) in *People ex rel. Kilmer v. McDonald*, 69 *Id.* 362, 368.
- Mentz v. Second Ave. R. R. Co.**, 2 *Robt.* 356. Aff'd in 3 *Abb. Ct. App. Dec.* 274. Decision in *Id.* applied (Prudence required in one crossing street in which cars are running) in *O'Donnell v. N. Y. & Harlem R. R. Co.*, 8 *Daly*, 409, 412.
- Mercantile Mut. Ins. Co. v. Calebs**, 20 *N. Y.* 173. Cited as authority (Rights and liabilities of carrier in respect to insurance effected by shipper of goods) in *Rintoul v. N. Y. Central, &c. R. R. Co.*, *U. S. Cir. Ct. S. D. N. Y.* 13 *Ins. L. J.* 544; *Castairs v. Mechanics' & F. Ins. Co.*, *U. S. Cir. Ct. D. Md.* 18 *Fed. Rep.* 473. Disting'd in *Dick v. Franklin*, 10 *Mo. App.* 376, 391, a case of mortgaged premises.
- *v. Chase*, 1 *E. D. Smith*, 121. Approved (Distinction between carriers and forwarders) in *Read v. Spaulding*, 5 *Bosw.* 395, 404. See cases collected in 5 *Am. L. Reg. N. S.* 453.
- Mercein v. Andrus**, 10 *Wend.* 461. See *Ellwood v. Monk*; *Leonard v. Vredenburgh*. Explained and limited (Consideration for promise to pay debt of another) in *Mallory v. Gillett*, 21 *N. Y.* 412, 424, 445. Disting'd (Liability of firm on firm note) in *Osgood v. Glover*, 7 *Daly*, 367, 371.
- *v. People*, 25 *Wend.* 64; s. c., 35 *Am. Dec.* 653, 668, with note wherein it is shown to have been frequently cited, both in *N. Y.* and elsewhere, on the various points decided. Subsequent decision in 3 *Hill*, 399. See *Ahrenfeldt v. Ahrenfeldt*; *Case of Yates*. Decision in 25 *Wend.* followed (Decision on habeas corpus proceeding, as *res adjudicata*) in *People v. Burtnett*, 18 *Abb. Pr.* 8, 10; *Matter of Price*, 12 *Hun.* 511; *Matter of Jose Da Costa*, 1 *Park.* 136. Disting'd in *People ex rel. Eldridge v. Fancher*, 1 *Hun.* 27; *People ex rel. Lawrence v. Brady*, 56 *N. Y.* 182, 192; *Ex parte Kaine*, 3 *Blatchf. Ct.* 1, 4, which was followed in *Matter of Reynolds*, 6 *Park.* 321. Applied to proceedings for discharge of debtor,—in *Matter of Thomas*, 13 *Abb. Pr. N. S.* 116. Remarks of the chancellor explained (Review of habeas corpus proceedings on certiorari) in *People v. Kling*, 6 *Barb.* 366, 370. See (Custody of infants) *People v. Cooper*, 1 *Duer*, 723; 8 *How. Pr.* 293. Shown with *Matter of Waldron*, 13 *Johns.* 418, in 20 *Am. Dec.* 333–4, n. to lay down a doctrine which is supported by a long line of American authorities. Discussed with many authorities in 1 *Kent Com.* 195, n. c.
- Mercer Street, Matter of**, 4 *Cow.* 542. Overruled with *Matter of Seventeenth street*, 1 *Wend.* 262; *Matter of Lewis street*, 2 *Id.* 472; *Livingston v. Mayor, &c. of N. Y.*, 8 *Id.* 85; *Wyman v. Mayor, &c. of N. Y.*, 11 *Id.* 486; *Matter of Furman street*, 17 *Id.* 650; *Champlin v. Laytin*, 18 *Id.* 407; *Matter of Thirty-second street*, 19 *Id.* 128; *Matter of Twenty-ninth street*, 1 *Hill*, 189; (Construction of deed of land bounded by street) in *Bissell v. N. Y. Central R. R. Co.*, 23 *N. Y.* 61, 66. Commented on with reference to later decisions in *Hammond v. McLachlan*, 1 *Sandf.* 323.
- Mercer v. Vose**, 40 *Super. Ct. (J. & S.)* 218. Aff'd in 66 *N. Y.* 56. Decision in *Id.* explained and compared with other cases (Interest as damages) in *White v. Miller*, 78 *Id.* 393, 397. Collated with other cases (Opinion of value) in 36 *Am. R.* 437, 438, n.
- Merchant's Estate**. See *Kowing v. Manly*.
- Merchant v. Belding**, 4 *Hun.* 671; s. c., more fully, in 49 *How. Pr.* 344.
- *v. Merchant*, 2 *Bradf.* 432. Included with notes (*Gifts causa mortis*) in *Redf. Lead. Cas. on Wills*, 713.
- *v. N. Y. Life Ins. Co.*, 2 *Code R.* 66, 87. See better report, in 2 *Sandf.* 669.
- Merehants' Bank v. Birch**, 17 *Johns.* 25; s. c., 8 *Am. Dec.* 367. Applied, and *Cayuga County Bank v. Bennett*, 5 *Hill*, 235, cited as authority (Notice sufficient to charge in-

- dorser's estate) in *Goodnow v. Warren*, 122 *Mass.* 79; s. c., 23 *Am. R.* 289. Included in 2 *Ames Cas. on B. & N.* 426.
- *v. Bliss*, 1 *Robt.* 391; s. c., 13 *Abb. Pr.* 225; 21 *How. Pr.* 365. Aff'd in 35 *N. Y.* 412. See *Corning v. McCullough*; *Harger v. McCullough*; *Wiles v. Suydam*. Decision in 35 *N. Y.* disting'd (Liability of trustees for debts of association, when a penalty) in *Glen's Falls Paper Co. v. White*, 58 *How. Pr.* 172; *Eastly v. Barber*, 65 *Barb.* 255. Applied in *Bank of California v. Collins*, 5 *Hun.* 210. Followed in *Wiles v. Suydam*, 64 *N. Y.* 177. Doubted in *Pier v. George*, 14 *Hun.* 571. Explained (Limitation of action against trustees) in *Jones v. Barlow*, 62 *N. Y.* 607, which rev'd 38 *Super. Ct. (J. & S.)* 147, which see.
- *v. Elderkiu*, 25 *N. Y.* 178. Explained (Demand of payment of note) in 2 *Greenl. on Ev.* 14 ed. § 178, n. b.
- *v. Griswold*, 9 *Hun.* 561. Aff'd in 72 *N. Y.* 472; s. c., 28 *Am. R.* 159.
- *v. Holland*, 4 *Hun.* 420. Aff'd in 66 *N. Y.* 648, on opinion of referee, and of General Term, without further opinion.
- *v. Livingston*, 17 *Hun.* 321. Aff'd, it seems, in 79 *N. Y.* 618, but without opinion. Previous decision in 74 *Id.* 223. See *N. Y. & New Haven R. R. Co. v. Schuyler*.
- *v. McIntyre*, 2 *Sandf.* 431. Referred to in 39 *Am. Dec.* 522, n., as similar in facts and conclusions to *National B'k of North America v. Bangs*, 106 *Mass.* 441; s. c., 8 *Am. R.* 349 (When bank may recover money paid on forged check).
- *v. Spalding*, 12 *Barb.* 302. Aff'd in 9 *N. Y.* 53. *L.* 1830, c. 295, here referred to (Circulation of notes of banks of other States) has been repealed by *L.* 1885, c. 93.
- *v. Thompson*, 55 *N. Y.* 7. See *Hubbell v. Von Schoening*. Explained and followed (Prior lien of dower not affected by decree in foreclosure) in *Payn v. Grant*, 23 *Hun.* 134, 136.
- *v. Union R. R. & Transp. Co.*, 8 *Hun.* 249. Aff'd in 69 *N. Y.* 373. Compare (Effect of duplicate bills of lading adversely held) *Glyn v. East India Dock Co.*, 29 *Weekly Rep.* 316; s. c., 43 *L. T. R. N. S.* 584.
- *v. Woodruff*. See *Woodruff v. Merchants' Bk. of N. Y.*
- Merchants' Exchange Nat. Bank v. Commercial Warehouse Co.**, 33 *Super. Ct. (J. & S.)* 317. Rev'd in 40 *N. Y.* 635. Another proceeding in 35 *Super. Ct. (J. & S.)* 214. See *Ohio & Mississippi R. R. Co. v. Kasson*. Opinion of *Jones, J.*, at Special Term approved (Who may set up defense of usury) in *Knickerbocker Life Ins. Co. v. Nelson*, 78 *N. Y.* 150, which aff'd 13 *Hun.* 323, which see. Followed in *More v. Deyoe*, 22 *Id.* 218. Decision in 49 *N. Y.* applied (Question of usury, how determined) in *Tyng v. Com. Warehouse Co.*, 58 *Id.* 314. Followed (Sufficiency of plea of usury) in *National Bk. of Auburn v. Lewis*, 75 *Id.* 520. Followed (Corporation, when allowed to set up usury) in *Strong v. N. Y. Laundry Manuf'g Co.*, 37 *Super. Ct. (J. & S.)* 283, 286. Disting'd as to indorser of paper of corporation, in *Union Nat. Bank of Pittsburgh v. Wheeler*, 60 *N. Y.* 613.
- Merchants' Fire Ins. Co. v. Grant**, 2 *Edw.* 544. Doubted (Effect of clause in will directing payment of debts, to confirm mortgage executed by testator while an infant) in *Tyler on Inf. & Cov.* 2 ed. § 45; *Smith v. Mayo*, 9 *Mass.* 62, being referred to as laying down a different doctrine.
- Merchants' Ins. Co. v. Hinman**, 15 *How. Pr.* 182. Disting'd (Who are included as "next of kin") in *Murdock v. Ward*, 67 *N. Y.* 387, 390.
- Merchants' Nat. Bank v. Macnaughton**, 1 *Abb. N. C.* 293, n. Superseded (National bank not a foreign corporation) by *Code Civ. Pro.* § 3343, subd. 18.
- Merchants' Nat. Bk. of N. Y. v. Supervisors of N. Y.**, 3 *Hun.* 156; s. c., more fully, 5 *Sup'm. Ct. (T. & C.)* 393. Aff'd, it seems, in 62 *N. Y.* 629, but without opinion.
- Merchants' Nat. B'k of Whitehall v. Hall**, 18 *Hun.* 176. Aff'd in 83 *N. Y.* 388; s. c., 33 *Am. R.* 434. See *Yale v. Dederer*.
- Meredith v. Hinsdale**, 2 *Cal.* 362. Overruled (Remedy on instrument executed with scroll seal, as determined by law of place) in *Andrews v. Herriot*, 4 *Cov.* 508.
- Meriam v. Harsen**, 4 *Edw.* 70. Aff'd in 2 *Barb. Ch.* 232. Decision in *Id.* followed with *Dennis v. Tarpenny*, 20 *Barb.* 376 (Sufficiency of certificate of acknowledgment by married woman) in *Belcher v. Weaver*, 46 *Tex.* 293; s. c., 26 *Am. R.* 267, 270.
- Merian v. Funck**, 4 *Den.* 110. Aff'd, but without opinion, in *How. App. Cas.* 659. Cited as settled law (Liability of assignee of bill of lading, for freight) in *N. Y. & Havre Steam Nav. Co. v. Young*, 3 *E. D. Smith*, 192, and see *Id. n.*
- Meriden Britannia Co. v. Zingsen**, 4 *Robt.* 312. Aff'd in 48 *N. Y.* 247.
- Meriden Tool Co. v. Morgan**, 1 *Abb. N. C.* 125. See to same effect (Effect of failure to file duplicate certificate of incorporation) *Raisbeck v. Oesterricher*, 4 *Abb. N. C.* 444.
- Merriam, Matter of**, 84 *N. Y.* 596. Followed with *Matter of Pelton*, 85 *Id.* 651 (Including surveyor's fees in expenses of assessment) in *Matter of Lowden*, 89 *Id.* 548, 553, which modified 25 *Hun.* 434, which see. Disting'd (Assessment, when to be vacated in part) in *Matter of Stephens*, 26 *Id.* 22. Applied with *Matter of Mahan*, 81 *N. Y.* 621; 20 *Hun.* 301; *Matter of Manhattan Savings Bank*, 82 *N. Y.* 142 (Effect of withdrawing from competition an item in expense of local improvement) in *Matter of Paine*, 26 *Hun.* 431. Followed in *Matter of Pelton*, 85 *N. Y.* 651. Applied in *Matter of Metropolitan Gas Light Co.*, *Id.* 526, 529.
- Merrick v. Bartholick**, 47 *Barb.* 253. Aff'd in 36 *N. Y.* 44; s. c., 34 *How. Pr.* 129.

- **v. Brainard**, 38 *Barb.* 574. Aff'd in part, and rev'd in part, as Merrick v. Van Santvoord, in 34 *N. Y.* 208. See *Abbey v. Steamboat "R. L. Stevens."* Decision in 38 *Barb.* followed (Deduction for loss covered by insurance, in action for loss caused by negligence) in *Carpenter v. Eastern Transp. Line*, 67 *Id.* 573, which was aff'd in 71 *N. Y.* 579, which see. Followed, but criticised, in *Collins v. N. Y. Central, &c. R. R. Co.*, 5 *Hun.* 506. Explained (Validity of acts of foreign corporation done in this State) in *Smith v. Alvord*, 63 *Barb.* 423. Compare (Effect of transfer of partner's interest) *Troy Iron & Nail Factory v. Corning*, 45 *Id.* 242, a case of an association.
- **v. Gordon**. See *Champion v. Bostwick*.
- **v. Van Santvoord**. See *Abbey v. Steamboat "R. L. Stevens;" Merrick v. Brainard*.
- Merrill v. Agricultural Ins. Co.**, 10 *Hun.* 428. Aff'd in 73 *N. Y.* 452; s. c., 29 *Am. R.* 184. Decision in *Id.* applied conversely (Separable breach of contract of insurance) in *Herrman v. Adriatic Fire Ins. Co.*, 85 *N. Y.* 162, 171. Followed in *Sunderlin v. Aetna Ins. Co.*, 18 *Hun.* 522. See also *Dacey v. Agricultural Ins. Co.*, 21 *Id.* 83. Cited, with other cases, in *Baldwin v. Hartford Fire Ins. Co.*, 60 *N. H.* 424.
- **v. Anderson**, 10 *Hun.* 604. Rev'd as Attorney General v. Continental Life Ins. Co., 71 *N. Y.* 325; s. c., 27 *Am. R.* 55. Compare (What amounts to equitable assignment of fund) *Matter of LeBlanc*, 4 *Abb. N. C.* 221.
- **v. Calkins**, 10 *Hun.* 495. Aff'd in 74 *N. Y.* 1.
- **v. George**. See *Hopkins v. Coburn*.
- **v. Green**, 66 *Barb.* 582. Aff'd in 55 *N. Y.* 582. Decision in *Id.* followed (Right of action on agreement to pay debts of firm) in *Hinman v. Bowen* 3 *Hun.* 194. Disting'd in *Arnold v. Nichols*, 64 *N. Y.* 117, 119. Applied (Right of action of promise made for benefit of another) in *Pardee v. Treat*, 82 *Id.* 385, 393. Examined in connection with *Claffin v. Ostrom*, 54 *Id.* 81, in *Real Estate Trust Co. v. Balch*, 45 *Super. Ct. (J. & S.)* 535. See 11 *Abb. L. J.* 121; 13 *Id.* 362.
- **v. Grinnell**, 30 *N. Y.* 594. Approved (Liberal rule as to what is passenger's baggage) in *Dexter v. Syracuse, Binghamton, &c. R. R. Co.*, 42 *N. Y.* 326. Collated with other cases (Opinion of value) in 36 *Am. R.* 438, *n.*
- **v. —**, 10 *How. Pr.* 31. See (What complaint must contain) *Code Civ. Pro.* § 481, *n.*
- **v. Ithaca & Owego R. R. Co.**, 16 *Wend.* 586; s. c., 30 *Am. Dec.* 130, with note, wherein it is said to have been frequently recognized as authority. See *Bank of Monroe v. Culver*; *Lawrence v. Barker*. Followed (Memoranda, &c. as evidence) in *Bank of Monroe v. Culver*, 2 *Hill*, 535; *Cole v. Jessup*, 10 *N. Y.* 100. Examined with other cases in *Guy v. Mead*, 22 *Id.* 465. See also *Union Bank v. Knapp*, 3 *Pick. (Mass.)* 96; *Elms v. Chevis*, 2 *McCord (So. Car.)* 349; *Philadelphia Bank v. Officers, &c.*, 12 *Serg. & R. (Pa.)* 49; and *Welsh v. Barrett*, 15 *Mass.* 384. See to the contrary, *Cummings v. Nichols*, 13 *N. H.* 420. But see *Abb. Tr. Ev.* 323. Followed with *Brewster v. Doane*, 2 *Hill*, 537; *Sickels v. Mather*, 20 *Wend.* 72; *Bank of Monroe v. Culver*, 2 *Hill*, 532, in *Spann v. Baltzell*, 1 *Fla.* 301; s. c., 46 *Am. Dec.* 346, 360, with note. Followed with *Guy v. Mead*, 22 *N. Y.* 465, in *Ins. Co. v. Weide*, 9 *Wall.* 677.
- **v. Townsend**, 5 *Paige*, 80. Disting'd with *Ex parte Beatty*, 12 *Wend.* 229; *Prince v. Camman*, 3 *Edw.* 413; *Bull v. Mellis*, 13 *Abb. Pr.* 243, and *Parker v. Spear*, 62 *How. Pr.* 394 approved (Imprisonment for non-payment of costs) in *Ex parte Bergman*, 18 *Nev.* 342.
- Merrills v. Law**, 9 *Cow.* 65. Rev'd in 6 *Wend.* 268.
- Merrimack Manuf. Co. v. Garner**, 4 *E. D. Smith*, 387; s. c., more fully, 2 *Abb. Pr.* 318. Approved (Right to imitate and sell style of goods made by another, unless label used deceives purchasers as to their true character) in *Wolfe v. Goulard*, 18 *How. Pr.* 69; *Congress & Empire Spring Co. v. High Rock Congress Spring Co.*, 57 *Barb.* 526; which was, however, rev'd in 10 *Abb. Pr.* *N. S.* 348. Opposed in *Falkenburg v. Lucy*, 35 *Cal.* 52. Collated with other cases in *Thomp. on Prov. Rem.* 261.
- Merritt, Matter of**, 5 *Paige*, 125. Aff'd in *Merritt v. Lyon*, 16 *Wend.* 405.
- Merritt v. Benton**, 10 *Wend.* 116; s. c., 11 *N. Y. Com. L. Law. ed.* 799, with brief note of cases on usury. Included in 2 *Ames Cas. on B. & N.* 206.
- **v. Briggs**. See *Richmondville Union Seminary v. McDonald*; *Sweet v. Tuttle*.
- **v. Brinkerhoff**, 17 *Johns.* 306, 321; s. c., 8 *Am. Dec.* 404. Applied (Rights of owners of land on stream) in *Dumont v. Kellogg*, 29 *Mich.* 420; s. c., 18 *Am. R.* 102, 106; *Arnold v. Foot*, 12 *Wend.* 331, being disting'd.
- **v. Carpenter**, 30 *Barb.* 61. Rev'd in 3 *Abb. Ct. App. Dec.* 285; s. c., 2 *Keyes*, 462; 3 *Id.* 142; 33 *How. Pr.* 428. Decision in 30 *Barb.* disting'd (Arrest in action to recover possession of real property) in *Brush v. Mullen*, 12 *Abb. Pr.* 242. Decision in 3 *Keyes* disting'd in *Bruce v. Kelly*, 5 *Hun.* 231. See *Code Civ. Pro.* 1881, § 549, *n.*
- **v. Clason**, 13 *Johns.* 102; s. c., 7 *Am. Dec.* 286, with note. Aff'd as *Clason v. Bailey*, 14 *Johns.* 484. Both decisions explained, and decision in 14 *Id.* cited as authority (Memorandum of sale signed by one party, as within requirements of statute of frauds) in *Justice v. Lang*, 42 *N. Y.* 493, 505. Both decisions explained in 3 *Pars. on Contr.* 6, *n. e.* Followed (Validity of pencil writing) in *Closson v. Stearns*, 4

- Verm.* 11; s. c., 23 *Am. Dec.* 245. Followed with *Brown v. Butchers' & Drovers' B'k*, 6 *Hill*, 443, in *Myers v. Vanderbelt*, 84 *Penn. St.* 510; s. c., 24 *Am. R.* 227.
- *v. Cole*, 9 *Hun*, 98. Further decision in 14 *Id.* 324.
- *v. Earle*, 31 *Barb.* 38. Aff'd in 29 *N. Y.* 115. Decision in *Id.* approved and followed with *Wood v. Eric R'y Co.*, 72 *Id.* 196; *Carroll v. Staten Island R. R. Co.*, 58 *Id.* 126 (Liability for injury received by one acting in violation of statute) in *Platz v. City of Cohoes*, 89 *Id.* 219. Followed in *Sutton v. Town of Wanwatosa*, 29 *Wis.* 21; s. c., 9 *Am. R.* 534, 537. Explained (Extent of carrier's liability) in *Ang. on Carr.* § 197, n. a. 5 ed.
- *v. Johnson*, 7 *Johns.* 473; s. c., 5 *Am. Dec.* 289. Disting'd with *Betts v. Lee*, 5 *Johns.* 347; *Curtis v. Groat*, 6 *Id.* 169; (Right of owner of personal property to claim it in an altered state) in *Lampton's Ex'rs v. Preston's Ex'rs*, 1 *J. J. Marsh (Ky.)* 454; s. c., 19 *Am. Dec.* 104, 107, 114, with note. Cited in 2 *Kent Com.* 362, as acknowledging the Roman and English law.
- *v. Lambert*, 7 *Paige*, 344. Subsequent proceeding in *Hoffm.* 166. See *Kortright v. Cady*. Decision in 7 *Paige* overruled (Effect of tender of mortgage debt after default) in *Farmers' Fire Ins. Co. v. Edwards*, 26 *Wend.* 241; *Kortright v. Cady*, 21 *N. Y. 343*. But see *Post v. Arnot*, 2 *Den.* 344.
- *v. —*, 10 *Paige*, 352. Aff'd as *Wallis v. Loubat*, 2 *Den.* 607. Decision in 10 *Paige* disting'd (Contracts between attorney and client) *Hall v. Crouse*, 13 *Hun*, 557, 561. Cited in *Whart. Com. on Ag.* § 618.
- *v. Millard*, 5 *Bosw.* 645. Further decision in 10 *Id.* 309; and the latter aff'd in 4 *Keyes* 208; s. c., 3 *Abb. Ct. App. Dec.* 291. See *Woodworth v. Bennett*. Decision in 4 *Keyes* disting'd (Recovery of money paid on illegal contract) and *Staples v. Gould*, 9 *N. Y.* 520; *Bettinger v. Bridenbecker*, 63 *Barb.* 395, applied in *English v. Rumsey*, 32 *Hun*, 486. Applied in *Spring Co. v. Knowlton*, 103 *U. S.* 49, 60.
- *v. Sawyer*, 6 *Sup'm. Ct. (T. & C.)* 160; s. c., as *Merritt v. Scott*, 3 *Hun*, 657.
- *v. Seaman*, 6 *Barb.* 330. Rev'd in 6 *N. Y.* 168. See *Austin v. Munro*. Decision in 6 *N. Y.* followed (*App'e'x*, when *descriptio personæ*) in *Gould v. Glass*, 19 *Barb.* 184; *Murray v. Church*, 1 *Hun*, 50. Applied in *Sheldon v. Hoy*, 11 *How. Pr.* 14. Applied (Right of executor to maintain action in representative capacity) in *Eagle v. Fox*, 28 *Barb.* 475. Disting'd in *Beers v. Shannon*, 12 *Hun*, 163. Superseded by *Code Civ. Pro.* § 1814. Followed (Set-off against executor) in *Patterson v. Patterson*, 47 *How. Pr.* 242, which was aff'd in part in 59 *N. Y.* 577, which see.
- *v. Thompson*, 3 *E. D. Smith*, 283. Subsequent decision in *Id.* 599; s. c., 1 *Abb.*
- Pr.* 223; 10 *How. Pr.* 428; also in 27 *N. Y.* 225; also, as it seems, in 1 *Hill*, 550. See *Meyers v. Trimble*. Decision in 1 *Hill*, followed (Presumption of death) in *Matter of Ackerman*, 2 *Redf.* 521, 523. Decision in 27 *N. Y.* disting'd (Power of court as to confirmation of award) in *Matter of Kings Co. Elev. R'y Co.*, 82 *Id.* 95, 101, a case of report of commissioners. Disting'd (Costs against executors, &c.) in *Burnham v. Harrison*, 3 *Redf.* 345.
- *v. Todd*, 23 *N. Y.* 28. Explained (Liability on note, &c., payable on demand) in *Sand v. St. John*, 36 *Barb.* 637; *Hirst v. Brooks*, 50 *Id.* 334; *Herrick v. Woolverton*, 41 *N. Y.* 587, which rev'd 42 *Barb.* 50, which see. Explained in *Bartholomew v. Seaman*, 25 *Hun*, 619, 620. Disting'd in *Eisenlord v. Dillenback*, 15 *Id.* 25; *Wheeler v. Warner*, 47 *N. Y.* 520; *Alexander v. Parsons*, 3 *Lans.* 334; *McMullen v. Rafferty*, 24 *Hun*, 364; *Parker v. Stroud*, 31 *Id.* 578. Reconciled with *Howland v. Edmonds*, 23 *How. Pr.* 152, in *Payne v. Slate*, 39 *Barb.* 640. Applied in *Payne v. Gardiner*, 29 *N. Y.* 172. Referred to as shaken by subsequent decisions,—in *Pardee v. Fish*, 67 *Barb.* 407, which was aff'd in 60 *N. Y.* 271, which see. Disting'd with *Pardee v. Fish*, 60 *Id.* 265, and *Wethey v. Andrews*, 3 *Hill*, 582, applied in *Crim v. Starkweather*, 88 *N. Y.* 342. Disapproved as contrary to entire current of authority, in *Thielman v. Gueble*, 32 *La. Ann.* 260; s. c., 36 *Am. R.* 267. Explained in 2 *Ames Cas. on B. & N.* 303. Quoted and explained in 1 *Pars. on Contr.* 260, n. 2 (Keller's ed.).
- *v. Village of Portchester*, 3 *Hun*, 40. Rev'd in 71 *N. Y.* 309; s. c., 27 *Am. R.* 47. See *Peyser v. Mayor, &c. of N. Y.* Decision in 71 *N. Y.* applied with *People ex rel. Gillies v. Suffern*, 68 *Id.* 321; *Bradley v. Ward*, 58 *Id.* 401; *Bellinger v. Gray*, 51 *Id.* 610; *Westfall v. Preston*, 49 *Id.* 349; *Van Rensselaer v. Whitbeck*, 7 *Id.* 517 (Affidavits, &c. in assessment proceedings, when defective) *Buffalo & State Line R. R. Co. v. Supervisors of Erie*, 48 *Id.* 93; *Parish v. Golden*, 35 *Id.* 462, being disting'd in *Brevort v. City of Brooklyn*, 89 *Id.* 128. Explained and reconciled with *Matter of Kendal*, 85 *Id.* 302 (Assessments by officers *de facto*) in *Dows v. Village of Irvington*, 13 *Abb. N. C.* 162.
- Merry *v. Hallett*. See *Putnam v. Westcott*.
- *v. Sweet*, 43 *Barb.* 475. Aff'd as *Hale v. Sweet* in 40 *N. Y.* 97.
- Merserau *v. Phoenix Mut. Life Ins. Co.*, 66 *N. Y.* 274. Disting'd (Waiver by agent of condition in policy) in *Goodwin v. Massachusetts Mut. Life Ins. Co.*, 73 *Id.* 491.
- Mersereau *v. Lewis*, 25 *Wend.* 243. Approved with *Barker v. Bucklin*, 2 *Den.* 45, 60 (Promise to answer for debt, &c. of another, to whom to be made) in *Green v. Brookins*, 23 *Mich.* 48; s. c., 9 *Am. R.* 74.
- *v. Norton*, 15 *Johns.* 179. See *White v.*

- Osborn; *Wilson v. Reed*. Followed with *Hyde v. Stone*, 7 *Wend.* 354; *Gilbert v. Dickerson*, *Id.* 449 (Action by one tenant in common against co-tenant for destruction of property held in common) in *Herrin v. Eaton*, 13 *Me.* 193; s. c., 29 *Am. Dec.* 499; *Sheldon v. Skinner*, 4 *Wend.* 525, being applied to show what is sufficient evidence of such destruction.
- *v. Pearsall*, 19 *N. Y.* 108. Disting'd (Judgment as estoppel) in *Bush v. Knox*, 2 *Hun.* 576, 579.
- *v. Ryerss*, 3 *N. Y.* 261. Applied (Proof required in action by creditor against heirs) in *Blossom v. Hatfield*, 24 *Hun.* 276.
- Mervin v. Kumbel**, 23 *Wend.* 293. See *Starbuck v. Murray*. Cited as illustrating the rule in *N. Y.* (Action on judgment against all of joint debtors, only part of whom have been served) in *Wood v. Watkinson*, 7 *Conn.* 500; s. c., 44 *Am. Dec.* 562, 568, with extended note.
- Merwin v. Hamilton**, 6 *Duer.* 249. Followed (Broker's right of action against principal) in *Whitehouse v. Moore*, 13 *Abb. Pr.* 142, 145.
- *v. Star Fire Ins. Co.*, 7 *Hun.* 659. Aff'd, it seems, in 72 *N. Y.* 603, but without opinion.
- Meserole v. Archer**, 3 *Bow.* 376. Collated with other cases (Waiver of tender) in *McAdam on Landl. & T.* 2 ed. § 154.
- *v. Mayor of Brooklyn*, 8 *Paige*, 198. Rev'd in 26 *Wend.* 132.
- Messenger v. City of Buffalo**, 21 *N. Y.* 196. Collated with other cases (Changes of plan in case of municipal contract) in 5 *Abb. N. C.* 1, 45, n.
- *v. Fourth Nat. Bank*, 48 *How. Pr.* 542. Aff'd in 6 *Daly*, 190.
- *v. Holmes*. See *Bowman v. Ely*.
- Messerole v. Tynberg**, 4 *Abb. Pr. (N. S.)* 410; s. c., 36 *How. Pr.* 14. Reviewed with *Matsell v. Flanagan*, 2 *Abb. Pr. N. S.* 459; *Hier v. Abrahams*, 82 *N. Y.* 519; *Morgan Sons v. Troxell*, 11 *Abb. N. C.* 86; *Wolfe v. Goulard*, 18 *How. Pr.* 64; *Town v. Stetson*, 3 *Daly*, 53; *Godillot v. Harris*, 81 *N. Y.* 263; *Caswell v. Davis*, 58 *Id.* 223 (Words that may be used as trademarks) in *Electro-Silicon Co. v. Hazard*, 29 *Hun.* 369. Approved, but disting'd, in *Town v. Stetson*, 5 *Abb. Pr. N. S.* 218. Quoted in 2 *Pars. on Contr.* 257bm, n. n.
- Messmore v. N. Y. Shot & Lead Co.**, 40 *N. Y.* 422. See *Davis v. Talcott*; *Pechner v. Phoenix Ins. Co.* Explained (Damages for breach of contract for delivery of merchandise) in *Kemp v. Knickerbocker Ice Co.*, 51 *How. Pr.* 43. Applied in *Booth v. Spuyten Duyvil Rolling Mill Co.*, 60 *N. Y.* 493, 497, which aff'd 3 *Sup'm. Ct. (T. & C.)* 372, which see; *Parks v. Morris Ax & Tool Co.*, 54 *N. Y.* 592. Disting'd in *Cassidy v. Le Fevre*, 45 *Id.* 568. Explained in 2 *Benj. on Sales*, § 1337 (Corbin's 4 *Am. ed.*). Explained in *Id.* § 882a, (Bennett's 4 *Am. ed.*) Included in *Sedg. Cas. on Dama.* 303.
- Messner v. People**, 45 *N. Y.* 1. Applied (Practice on writ of error in criminal cases) in *Dent v. People*, 46 *How. Pr.* 265; *Graham v. People*, 63 *Barb.* 478, 480. Examined with other cases in *Manke v. People*, 74 *N. Y.* 424. Referred to in *Whart. Com. on Ev.* § 268, as an extreme illustration of the principle (Effect of declarations of person given in evidence to show character of injury received by him).
- Messonier v. Kauman**, 3 *Johns. Ch.* 3. Discussed (Revocation of assignment for benefit of creditors) in *Burrill on Assign.* § 362, 4 ed.
- Metcalf v. Baker**, 34 *Super. Ct. (J. & S.)* 10; s. c., 11 *Abb. Pr. N. S.* 431. Aff'd, it seems, in 52 *N. Y.* 649, but without opinion. Further decision on the merits in 57 *Id.* 662. See *Chapman v. New Haven R. R. Co.*
- *v. Clark*, 5 *Johns.* 361. Overruled (Requisites of affidavit, on motion to change venue) in *Swartwout v. Hoage*, 16 *Id.* 3.
- *v. Stryker*, 31 *Barb.* 62; s. c., more fully, 10 *Abb. Pr.* 12. Aff'd in 31 *N. Y.* 255. See *Gallarati v. Orser*. With decision in 10 *Abb. Pr.* see (Rights, &c. of sheriff when liable as bail) *Code Civ. Pro.* 1881, § 595, n.
- *v. Van Brunt*, 37 *Barb.* 621. Disting'd (Revocation of assignment) in *Whitcomb v. Fowle*, *N. Y. Com. Pl.*, 1 *Am. Insolv. R.* 160, 162.
- Methodist Churches of N. Y. v. Barker**. See *Carpenter v. Wright*.
- Methodist Episcopal Church v. Jacques**, 1 *Johns. Ch.* 65. Subsequent decisions in *Id.* 450; 2 *Id.* 543; 3 *Id.* 1; *Id.* 77; 17 *Johns.* 548; *Hopk.* 453. See *Yale v. Dederer*. Decision in 3 *Johns. Ch.* 77, examined (Capacity of married women to contract) in *Yale v. Dederer*, 22 *N. Y.* 450. Followed (Wife's power over her separate estate) in *Lancaster v. Dolan*, 1 *Rawle (Pa.)* 231; s. c., 18 *Am. Dec.* 625, 631, with note. Discussed in 2 *Perry on Trusts*, 3 ed. §§ 660, 661. Decision in 1 *Johns. Ch.* relied on in *Smyley v. Reese*, 53 *Ala.* 89; s. c. 25 *Am. R.* 598.
- *v. Tryron*, 1 *Den.* 451. Examined (Proof of existence of corporation plaintiff) in *Smith v. Village of Adrian*, 1 *Mch.* 498.
- Methodist Episcopal Union Church v. Pickett**, 23 *Barb.* 436. Aff'd in 19 *N. Y.* 482. Decision in *Id.* applied (What is necessary to establish existence of a corporation *de facto*) in *Van Buren v. Reformed Church of Gansevoort*, 62 *Barb.* 497; *Bank of Toledo v. Internat. B'k*, 21 *N. Y.* 543; *De Witt v. Hastings*, 40 *Super. Ct. (J. & S.)* 474. Quoted in *Morawetz on Corp.* § 139. See cases collected in 12 *Am. L. Reg. N. S.* 548.
- Metraz v. Pearsall**, 5 *Abb. N. C.* 90. See *Stent v. Continental Nat. B'k*. See (Allegations in verified pleading) *Code Civ. Pro.* 1881, § 524, n.
- Metropolitan Bank v. Lord**, 1 *Abb. Pr.* 185. Disting'd (Denial of plaintiff's title to note)

- in *Hays v. Southgate*, 10 *Hun*, 511, 513; which was, however, rev'd in *Hays v. Hathorn*, 74 *N. Y.* 486.
- *v. Van Dyke*, 27 *N. Y.* 400. Argument of ex-Judge PORTER is reported in *Snyder's Great Sp.* 421.
- Metropolitan Board of Excise v. Barrie**, 34 *N. Y.* 657. See *People ex rel. Beller v. Wright*; *Wynehamer v. People*. Applied (Nature of liquor license) in *People ex rel. Beller v. Wright*, 3 *Hun*, 308. Cited as authority (Legislature not to bargain away police power of State) in *Stone v. Mississippi*, 101 *U. S.* 814, 818.
- Metropolitan B'd of Health v. Heister**, 37 *N. Y.* 661. See *Milhau v. Sharp*. Followed (Legislative power to give authority to enact ordinances) in *People ex rel. Cox v. Special Sessions*, 7 *Hun*, 216. Re-aff'd (Power to make police regulations) in *Health Department v. Knoll*, 70 *N. Y.* 536. Applied in *Cronin v. People*, 20 *Hun*, 137, 140. Collated with *Mayor, &c. of N. Y. v. Board of Health*, 31 *How. Pr.* 385; *Polinsky v. People*, 73 *N. Y.* 65, and other cases in 23 *Am. R.* 212, *n.*
- Metropolitan Gas Light Co. v. Mayor, &c. of N. Y.**, 9 *Hun*, 706. Compare (Practice on exception to findings of fact) *Code Civ. Pro.* § 992.
- Metz v. Buffalo, &c. R. R. Co.**, 53 *N. Y.* 61. Cited as authority (Liability of railroad company while property is in hands of receiver) in *Davis v. Duncan*, *U. S. Cir. Ct. S. D. Miss.* 19 *Fed. Rep.* 481. Cited in *Whart. Com. on Ag.* § 482.
- Metzger, Matter of**, 1 *Barb.* 248; *s. c.*, 1 *Park.* 108, where petition for writ is given. In consequence of this decision the act of Congress, August 12, 1848, was passed, giving effect to certain treaty stipulations.
- Meyer v. Amidon**, 45 *N. Y.* 169. Subsequent decision in 23 *Hun*, 553. See *Case v. Boughton*; *Marsh v. Falker*. Disting'd (Liability for false representations) in *Westcott v. Ainsworth*, 9 *Hun*, 57; *Salisbury v. Howe*, 87 *N. Y.* 135. Applied in *N. Y. Kingston, &c. R. R. Co.*, 10 *Hun*, 297; *Wakeman v. Dalley*, 51 *N. Y.* 35; *Still v. Little*, 63 *Id.* 432. Compared in *Morehouse v. Yeager*, 41 *Super. Ct. (J. & S.)* 135, 146.
- *v. City of Louisville*, 7 *Abb. Pr.* 6; *s. c.*, erroneously reported as decision at Special Term, in 26 *Barb.* 609.
- *v. Clark*, 2 *Daly*, 497. Rev'd in 45 *N. Y.* 285. Decision in *Id.* disting'd and applied (Curing error in charge) in *People v. Greenfield*, 23 *Hun*, 454, 472, which was aff'd as *Greenfield v. People*, in 85 *N. Y.* 75, which see.
- *v. Hibsher*. See *Moore v. Cross*.
- *v. Huneke*, 65 *Barb.* 304. Rev'd in 55 *N. Y.* 412.
- *v. Knickerbocker Life Ins. Co.*, 51 *How. Pr.* 263. Aff'd in effect in 73 *N. Y.* 516; *s. c.*, 29 *Am. R.* 200.
- *v. Lathrop*, 10 *Hun*, 66. Aff'd in 73 *N. Y.* 315. Decision in 10 *Hun*, over-
- ruled (Grantor as surety of grantee assuming mortgage) in *Paine v. Jones*, 14 *Id.* 577. See cases cited in 5 *Abb. N. C.* 230, *n.*
- *v. Lent*, 16 *Barb.* 538. Rev'd in 7 *Abb. Pr.* 225. Compare *Code Pro.* § 401 as am'd in 1862, giving power to appoint referee to take affidavit for purposes of motion.
- *v. Meyer*, 7 *Weekly Dig.* 535. Referee's opinion in 49 *How. Pr.* 311. See *Williams v. Fitch*. Decision in 7 *Weekly Dig.* examined with other cases (Setting aside referee's report in divorce case) in 30 *Hun*, 154, 156, *n.* Decision in 49 *How. Pr.* collated with other cases (Divorce for fraud) in 8 *Abb. N. C.* 204, *n.*
- *v. Mayor, &c. of N. Y.*, 63 *N. Y.* 455. Extended and applied (Effect of negligence in making payment of money) in *U. S. v. Nat. Park B'k, U. S. Dist. Ct. S. D. N. Y.* 6 *Fed. Rep.* 854.
- *v. Mohr*, 1 *Robt.* 333; *s. c.*, 19 *Abb. Pr.* 299. Followed (Fraudulent conveyance to which wife is party operates as extinguishment of dower) in *Elmendorf v. Lockwood*, 4 *Lans.* 393, 398. But compare *Maloney v. Horan*, 12 *Abb. Pr. N. S.* 289, which rev'd 26 *How. Pr.* 260, which see. Collated with other cases in *Sharsw. & B. Cas. on Real Prop.* 382.
- *v. Peck*, 33 *Barb.* 532. Aff'd in 28 *N. Y.* 590. Decision in *Id.* applied (Estoppel created by bill of lading) in *Miller v. Hannibal & St. Jo. R. R. Co.*, 24 *Hun*, 607, 610. Explained and followed (Effect of stipulation in bill of lading, respecting deficiency in quantity) in *Abbe v. Eaton*, 51 *N. Y.* 410, 413. Explained in *Bissel v. Campbell*, 54 *Id.* 356.
- *v. Schultz*, 4 *Sandf.* 664. Overruled (Pleading mitigating circumstances in action for slander) in *Bush v. Prosser*, 11 *N. Y.* 347.
- *v. Van Collem*, 7 *Abb. Pr.* 222. Approved (Remedy for superfluous matter in complaint) in *Ward v. Ward*, 5 *Abb. Pr. N. S.* 147.
- Meyers v. Trimble**, 1 *Abb. Pr.* 220. Disapproved with *Merritt v. Thompson*, *Id.* 223 (Enforcing order for payment of money admitted to be due) in *Dusenberry v. Woodward*, *Id.* 443.
- Miaghan v. Hartford Fire Ins. Co.**, 12 *Hun*, 321. Plaintiff subsequently recovered on policy without reformation.
- Michaels v. N. Y. Central R. R. Co.**, 30 *N. Y.* 564. Followed (Liability of railroad receiving goods from connecting company) in *Dunham v. Boston & Maine R. R. Co.*, 70 *Me.* 164; *s. c.*, 35 *Am. R.* 314, 317. See cases collected (Proof of excepted loss in carrier's contract) in 10 *Am. L. Reg. N. S.* 365. Discussed (Act of God) in 1 *Add. on Torts*, 714, *n.* 1, Wood's ed.
- Mick v. Mick**, 10 *Wend.* 379. Disting'd with *Sutliff v. Forgey*, 1 *Cow.* 89; 5 *Id.* 713; *Priest v. Cummings*, 20 *Wend.* 338; *Curriu v. Finn*, 3 *Den.* 229 (Alienage as affecting capacity to take lands) in *Wright v. Saddler*, 20 *N. Y.* 320.

**Mickles v. Dillaye**, 17 *N. Y.* 80. See *Mickles v. Townsend*; *Phyfe v. Riley*. Discussed (Allowance to mortgagee in possession for improvements) in *Sedgw. & W. on Tr. of Tit. to Land*, § 710.

— **v. Hart**, 1 *Den.* 548. Explained and disting'd (Effect of acts of plaintiff in execution, on liability of sheriff for neglect by deputy) in *McKinley v. Tucker*, 59 *Barb.* 93, 102.

— **v. Rochester City B'k**, 11 *Paige*, 118; s. c., 42 *Am. Dec.* 103, with note, wherein are collected citations of the case. See *City of Utica v. Churchill*. Followed (Proceedings by stockholders for dissolution of corporation) in *Kittredge v. Kellogg Bridge Co.*, 8 *Abb. N. C.* 168; *Masters v. Eclectic Life Ins. Co.*, 6 *Daly*, 455, 457.

— **v. Townsend**, 18 *N. Y.* 575. Other decisions arising out of transactions here involved in *Mickles v. Dillaye*, 17 *N. Y.* 80; 15 *Hun.* 296. See *Kellogg v. Ames*; *Phyfe v. Riley*. Decision in 18 *N. Y.* followed (Mortgage, when extinguished by covenant of warranty) in *Stoddard v. Rotton*, 5 *Bosw.* 388. Doctrine said to be one that ought not to be extended,—in 3 *Am. L. Reg. N. S.* 149. Examined with other cases (Rights of assignee of mortgage) in dissenting opinion of *Hoffman, J.*, in *Thompson v. Van Vechten*, 6 *Bosw.* 410. Examined with other cases (Interest of mortgagee) in *Hubbell v. Moulson*, 53 *N. Y.* 227; also in dissenting opinion of *Gray, C.*, in *Trimm v. Marsh*, 54 *Id.* 624. Quoted in 2 *Washb. on Real Prop.* 4 ed. 108. Approved as very clearly stating the principle (Merger as arising from union of legal and equitable estates) in *Champney v. Coope*, 32 *N. Y.* 549.

**Middlebrook v. Broadbent**, 47 *N. Y.* 443. See *Cross v. Huntley*. Disting'd (Jurisdiction of State courts in action involving validity of patent) in *Hovey v. Rub. Tip Pencil Co.*, 57 *N. Y.* 119, 124.

— **v. Corwin**, 15 *Wend.* 169. Followed (Right to manure, in case of lease for agricultural purposes) in *Lewis v. Jones*, 17 *Pa. St.* 262; s. c., 55 *Am. Dec.* 550.

— **v. Merchants' Bank**, 14 *Abb. Pr.* 462, n.; s. c., 24 *How. Pr.* 267. Aff'd in 41 *Barb.* 481; s. c., 18 *Abb. Pr.* 109; 27 *How. Pr.* 474; and that aff'd in 3 *Keyes*, 135; s. c., 3 *Abb. Ct. App. Dec.* 295. Decision in 27 *How. Pr.* approved (Enforcing right derived from foreign executor) in *Petersen v. Chemical Bank*, 32 *N. Y.* 21. Decisions in 41 *Barb.*, 27 *How. Pr.* and 3 *Abb. Ct. App. Dec.* applied (Right to maintain action to compel transfer of stock) in *Cushman v. Thayer M'fg Jewelry Co.*, 76 *N. Y.* 365, 368, which aff'd 7 *Daly*, 330, which see. Decision in 3 *Keyes* explained in *Ang. & A. on Corp.* § 587, n. a, 11 ed.

**Middle District Bank, Matter of**, 1 *Paige*, 585; s. c., 19 *Am. Dec.* 452. See *Niagara Bank v. Roosevelt*. Followed, but a statement corrected (Set-off against insolvent bank) in *Diven v. Phelps*, 34 *Barb.* 224, 230.

**Midgeley v. Slocomb**, 2 *Abb. Pr. N. S.* 275. Collated with other cases (Paying dividends under assignment for benefit of creditors) in *Bishop on Assign.* § 399.

**Mier v. Cartledge**, 7 *N. Y. Leg. Obs.* 371; s. c., 4 *How. Pr.* 115. Rev'd in 8 *Barb.* 75.

**Milbank v. Denistoun**, 1 *Bosw.* 246. Rev'd in 21 *N. Y.* 386; s. c., 19 *How. Pr.* 126; Further decision in 10 *Bosw.* 382.

**Milburn v. Belloni**, 34 *Barb.* 607; s. c., 12 *Abb. Pr.* 454; 22 *How. Pr.* 18. Rev'd in 39 *N. Y.* 53. See *Passinger v. Thornburn*. Decision in 39 *N. Y.* followed (Liability for defects in personal property sold) in *White v. Miller*, 7 *Hun.* 427, 439, which was rev'd in 71 *N. Y.* 118, 133, which see.

**Miles v. Clark**, 2 *Bosw.* 709. Aff'd in 4 *Id.* 632.

— **v. Loomis**, 10 *Hun.* 372. Aff'd in 75

*N. Y.* 288; s. c., 31 *Am. R.* 470.

**Milhan v. Sharp**, 15 *Barb.* 193. Further decisions in 17 *Id.* 435; s. c., 9 *How. Pr.* 102, which was aff'd in 7 *Abb. Pr.* 220; s. c., 28 *Barb.* 228, and that again aff'd in 27 *N. Y.* 611. See *Adriance v. Mayor, &c. of N. Y.*; *Christopher v. Mayor, &c. of N. Y.*; *Story v. N. Y. Elevated R. R. Co.* Decision in 27 *N. Y.* explained (Presumption of finding, in aid of judgment) in *Meyer v. Amidon*, 45 *Id.* 173. Applied (Joinder by separate owners in action to restrain nuisance) in *Gillespie v. Forrest*, 18 *Hun.* 112. Applied (Damages for construction of railroad on highway) in *Henderson v. N. Y. Central, &c. R. R. Co.*, 78 *N. Y.* 431. In *Story v. N. Y. Elevated R. R. Co.*, 90 *Id.* 122; *Milhan v. Sharp*, and the following cases are to a greater or less extent limited on this and kindred points; *Kelsey v. King*, 33 *How.* 39, 46; *Baldwin v. Mayor, &c. of N. Y.*, 2 *Keyes*, 387, 417; *N. Y. & Harlem R. R. Co. v. Forty-second St. &c. R. R. Co.*, 32 *How. Pr.* 481, 497; *Knox v. Mayor, &c. of N. Y.*, 38 *How. Pr.* 67, 72; *Metropolitan Board of Health v. Heister*, 37 *N. Y.* 661, 672; *Craig v. Rochester City & Brighton R. R. Co.*, 39 *Id.* 404, 412; *Coster v. Mayor, &c. of Albany*, 43 *Id.* 399, 414; *Matter of Boston & Albany R. R. Co.*, 53 *N. Y.* 574, 577; *Tompkins v. Hodgson*, 2 *Hun.* 146, 148; *Wallack v. Mayor, &c. of N. Y.*, 3 *Id.* 97, 104; *Fearing v. Irwin*, 55 *N. Y.* 486, 490; *People ex rel. N. Y. & Harlem R. R. Co. v. Havemeyer*, 16 *Abb. Pr. N. S.* 219; *Haight v. N. Y. Elevated R. R. Co.*, 49 *How. Pr.* 20; *Matter of Main & Hamburg St. Canal*, 50 *How. Pr.* 70, 73; *Matter of N. Y. Elevated R'y Co.*, 7 *Hun.* 239, 241; *Matter of City of Buffalo*, 68 *N. Y.* 167, 171; *Washington Cemetery v. P. P. & C. I. R. R. Co.*, *Id.* 591, 593; *Sixth Ave. R. R. Co. v. Gilbert Elevated R. R. Co.*, 43 *Super. Ct. (J. & S.)* 292, 318.

**Military Parade Ground, Matter of**, 48 *How. Pr.* 285; mem. s. c., 2 *Hun.* 374; 4 *Sup'm. Ct. (T. & C.)* 671. Aff'd in 60 *N. Y.* 319.

**Milk v. Christie**. See *Franklin v. Talmadge*.

- Milks v. Rich**, 15 *Hun.* 178. Aff'd in 80 *N. Y.* 269; s. c., 36 *Am. R.* 615. Decision in *Id.* disting'd with *Bruce v. Burr*, 67 *Id.* 237; *Cardell v. McNiel*, 21 *Id.* 336 (Effect of oral guaranty of note of another) in *Dow v. Swett*, 134 *Mass.* 140; s. c., 45 *Am. R.* 310.
- Millar v. Thompson**, 1 *Wend.* 447. Disapproved (Right of action for seduction) in *Parker v. Meek*, 3 *Sneed (Tenn.)* 29, 38.
- Millard v. Brown**, 35 *N. Y.* 297. Disting'd (Exemplary damages, when to be allowed) in *Thompson v. Lumley*, 7 *Daly*, 74, 84.
- **v. Jenkins**, 9 *Wend.* 298. Disting'd (Action for false return to certiorari) in *Rector v. Clark*, 78 *N. Y.* 21, 29. Limited in *Brooks v. St. John*, 25 *Hun.* 540, a case of return by justice.
- **v. McMullin**, 5 *Hun.* 572. Modified as to rents and profits, and aff'd in 68 *N. Y.* 345.
- **v. Missouri, K. & T. R. R. Co.**, 86 *N. Y.* 441. Aff'g 20 *Hun.* 191.
- **v. Thorn**. See *Arnold v. Camp*.
- Millbank v. Broadway Bank**, 3 *Abb. Pr. N. S.* 223. Explained as not bearing on the point (Action in name of attaching creditor) in *Lupton v. Smith*, 5 *Sup'm. Ct. (T. & C.)* 274.
- Miller's Case**. See *People v. Morrisette*.
- Miller v. Adams**, 7 *Lans.* 131. Aff'd in 52 *N. Y.* 409.
- **v. Adsit**, 16 *Wend.* 335. Explained (Costs against party in interest defending in name of another) in *Farmers' Loan & Trust Co.*, 5 *N. Y.* 558. To the contrary (Keplevin lies by receiptor of goods, which have been taken in execution) *Norton v. People*, 8 *Cow.* 137; *Dillenback v. Jerome*, 7 *Id.* 294; *Mitchell v. Hinman*, 8 *Wend.* 667; *Phillips v. Hall*, 8 *Id.* 614; *Collins v. Butts*, 10 *Id.* 399; *Waterman v. Robinson*, 5 *Mass.* 303; *Ludden v. Leavitt*, 9 *Id.* 104; *Perley v. Foster*, 9 *Id.* 112; *Warren v. Leland*, *Id.* 265; *Commonwealth v. Moor*, 14 *Id.* 217; *Bond v. Paddleford*, 13 *Id.* 394; *Prownell v. Manchester*, 1 *Pick. (Mass.)* 232. See, also, *Story on Bailm.* 72-93; *Fisher v. Bartlett*, 8 *Greenl. (Me.)* 122; *Johns v. Church*, 12 *Pick. (Mass.)* 557; *Bursley v. Hamilton*, 15 *Id.* 40; *Collins v. Evans*, 15 *Id.* 63; and see *Parr v. Farley*, 3 *Fairf. (Me.)* 328; *Woodman v. Trafton*, 7 *Greenl. (Me.)* 178.
- **v. Auburn & Syracuse R. R. Co.**, 6 *Hill*, 61. See *Sayles v. Smith*; *Thompson v. Gregory*. Applied (What is revocable license) in *Hobbs v. Wetherwax*, 38 *How. Pr.* 385, 388. Explained and applied in *Eggleston v. N. Y. & Harlem R. R. Co.*, 35 *Barb.* 162, 169, 174. Examined with other cases in *Babcock v. Utter*, 1 *Abb. Ct. App. Dec.* 27, 49. Disting'd in *Wiseman v. Lucksinger*, 84 *N. Y.* 31, 41. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 565; *Id.* 576. Quoted and discussed in *Wood on Nuis.* 2 ed. § 361.
- **v. Barber**, 4 *Hun.* 802. Aff'd in 66 *N. Y.* 558. Decision in *Id.* cited (Measure of damages on sale of property induced by fraudulent representations) in *Herfort v. Cramer*, 7 *Col.* 491, 493. Explained in 1 *Benj. on Sales*, § 641, n. 8 (Corbin's 4 *Am. ed.* vol. 1).
- **v. Bear**. See *Kane v. Bloodgood*.
- **v. Bowles**, 58 *N. Y.* 253. Rev'g decision under *Appleton v. Bowles*, 2 *Sup'm. Ct. (T. & C.)* 568. Decision in 58 *N. Y.* followed (Effect of assignment in bankruptcy on attachment) in *Duffield v. Horton*, 10 *Hun.* 140, 143; which was aff'd in 73 *N. Y.* 218, which see.
- **v. Brenham**, 7 *Hun.* 330. Aff'd in 68 *N. Y.* 83. With decision in *Id.* compare (Foreign statute of limitations no bar here) *Code Civ. Pro.* § 390.
- **v. Brinkerhoff**, 4 *Den.* 118 (Protection afforded by affidavit presented to obtain attachment) in *Decker v. Bryant*, 7 *Barb.* 190. Applied to warrant for arrest in *Pratt v. Bogardus*, 49 *Id.* 94.
- **v. Burke**, 6 *Daly*, 171. Aff'd, it seems, in 68 *N. Y.* 615, but without opinion.
- **v. Burroughs**, 4 *Johns. Ch.* 436. Collated with *Van Buren v. Van Gaasbeck*, 4 *Cow.* 496; *U. S. Bank v. Chapin* 9 *Wend.* 471; *Mechanic's Bank v. Minthorn*, 19 *Johns.* 244; *Macomber v. Dunham*, 8 *Wend.* 550; *Ritter v. Phillips*, 53 *N. Y.* 590, and other cases (Rate of interest payable after maturity of contract) in 30 *Am. R.* 47, n. Followed in *Wernwag v. Brown*, 3 *Blackf. (Ind.)* 457; s. c., 26 *Am. Dec.* 433.
- **v. Church**, 2 *Sup'm. Ct. (T. & C.)* 259. Followed on further decision in 5 *Hun.* 342. See *Conhoben Stone Road Co. v. Buffalo, &c. R. Co.*
- **v. Coates**, 4 *Sup'm. Ct. (T. & C.)* 429; mem. s. c., 2 *Hun.* 156. Rev'd in 66 *N. Y.* 609. Decision in 2 *Hun.* 668; s. c., 5 *Sup'm. Ct. (T. & C.)* 690, is different proceeding.
- **v. Collyer**, 36 *Barb.* 250. Cited at length (Enforcement of judicial sale) in *Willets v. Van Alst*, 26 *How. Pr.* 325. Collated with *Willets v. Van Alst*, 26 *How. Pr.* 325; *Riggs v. Purcell*, 66 *N. Y.* 193; *Goodwin v. Simonson*, 74 *Id.* 133, and other cases, in 27 *Alb. L. J.* 508.
- **v. Crayton**, 3 *Sup'm. Ct. (T. & C.)* 360. Included (Transfer of overdue negotiable paper) in 1 *Ames Cas. on B. & N.* 888.
- **v. Drake**, 1 *Cai.* 45. Overruled, it seems (Sufficiency of offer to perform contract for conveyance of land) in *Williams v. Healey*, 3 *Den.* 363. Cited as sustaining the doctrine (Action on contract for benefit of third person) in 1 *Add. on Contr.* 7, n. 1, *Abb. ed.*
- **v. Eagle Life & Health Ins. Co.**, 2 *E. D. Smith*, 268. Approved (Insurable interest) in *Lloyd v. N. Y. Life Ins. Co.*, 3 *Boro.* 440, 447. Compare *Freeman v. Fulton Fire Ins. Co.*, 14 *Abb. Pr.* 393. Qualified with *Pierce v. Thomas*, 4 *E. D. Smith*, 354



- (Effect of second judgment on prior judgment that has been allowed to stand as security) in *Heineman v. Waterbury*, 5 *Dow*. 686, 689.
- *v. Earle*, 24 *N. Y.* 110. Followed (What is valid confession of judgment) in *Roraback v. Stebbins*, 4 *Abb. Ct. App. Dec.* 100, 104.
- *v. Emans*, 19 *N. Y.* 384. Disting'd (Nature of contingent interest given by will) in *Kingsland v. Leonard*, 65 *How. Pr.* 7. Explained and followed (Effect of release on contingent interest) in *Wilson v. Wilson*, 32 *Barb.* 328. Disting'd in 3 *Am. L. Reg. N. S.* 152.
- *v. Fenton*, 11 *Paige*, 18. See *Cunningham v. Pell*; *Peck v. Ellis*. Cited with *Peck v. Ellis*, 2 *Johns. Ch.* 131; *Andrews v. Murray*, 33 *Barb.* 354; *Wehle v. Haviland*, 42 *How. Pr.* 399, 410 (No contribution among tort feorsors) as authority for the rule, and the rule limited, in *The "Hudson," U. S. Dist. Ct. S. D. N. Y.* 15 *Fed. Rep.* 162. Disting'd and limited in *Armstrong County v. Clarion County*, 66 *Pa. St.* 218; s. c., 5 *Am. R.* 368. Followed in *Boyd v. Gill*, *U. S. Cir. Ct. S. D. N. Y.* 17 *Reporter*, 132.
- *v. Franklin*, 20 *Wend.* 680. Disting'd and approved (Liability of assignee of claim for costs) in *Peck v. Yorks*, 75 *N. Y.* 424. Dictum herein overruled in *Taylor v. Bolmer*, 2 *Den.* 193.
- *v. Gable*, 2 *Den.* 492. Rev'd in 10 *Paige*, 627. See *Baptist Church in Hartford v. Witherell*; *Field v. Field*. Approved with *Kniskern v. Churches of St. John, &c.*, 1 *Sandf. Ch.* 439 (Diversion of charitable fund to religious purposes other than those intended) in the *Dublin Case*, 38 *N. H.* 459, 511. See cases collected in 13 *Am. L. Reg. N. S.* 80.
- *v. Garlock*, 8 *Barb.* 153. Quoted (Easements by prescription through adverse enjoyment) in 2 *Washb. on Real Prop.* 4 ed. 323.
- *v. Gaston*, 2 *Hill*, 188. See *Packer v. Willson*. Re-aff'd (Guarantor of note, not liable as indorser) in *Brown v. Curtiss*, 2 *N. Y.* 225.
- *v. Hackley*, 5 *Johns.* 375; s. c., 4 *Am. Dec.* 372, with note, wherein it is said to have in its syllabus a statement which has been overruled (Bill drawn in one State upon another place in the United States, but not within that State, is an inland bill). See *Duryee v. Dennison*. Overruled in *Bruckner v. Finley*, 2 *Pet.* 586. See *Halliday v. McDougall*, 20 *Wend.* 81; 22 *Id.* 264. Disapproved in *Hatch v. Spofford*, 22 *Conn.* 485, 499; s. c., 58 *Am. Dec.* 433. Shown in 43 *Am. Dec.* 218, n., to have been everywhere overruled. Approved (What is sufficient and competent evidence of notice of dishonor of a bill) in *Bell v. Perkins*, *Peck. (Tenn.)* 261; s. c., 14 *Am. Dec.* 745. Collated with many other cases in 23 *Alb. L. J.* 328.
- *v. Hall*, 40 *Super Ct. (J. & S.)* 262. Aff'd in 70 *N. Y.* 250. Decision in *Id.* explained (Parties' defendant in creditor's actions) in *Wait on Fraud. Conv.* § 128.
- *v. Hooker*. See *Swift v. Wells*.
- *v. Hooper*, 19 *Hun.* 394. Followed (Exemption of earnings from execution) in *Zimmerman v. Coon*, 23 *Id.* 532. For present statute see *Code Civ. Pro.* § 2463.
- *v. Illinois Cent. R. R.*, 24 *Barb.* 312. Applied (Stock dividends) in *Williams v. Western Union Tel. Co.*, 9 *Abb. N. C.* 437, 446.
- *v. Irish*, 67 *Barb.* 256; mem. s. c., 5 *Sup'm. Ct. (T. & C.)* 707; 3 *Hun.* 352. Aff'd in 63 *N. Y.* 652.
- *v. Johnson*, 12 *Wend.* 197. Overruled, it seems (Right of plaintiff to question form of notice of rent due under 1 *R. S.* 746, § 12) in *Olcott v. Frazer*, 5 *Hill*, 562.
- *v. Kent*, 21 *Hun.* 617. Fully reported in 59 *How. Pr.* 321. Other proceedings in 60 *Id.* 388; mem. s. c., 23 *Hun.* 657. Also in 60 *How. Pr.* 451.
- *v. Levi*, 44 *N. Y.* 289. Disting'd (Condition subsequent and conditional limitation in lease) in *Penoyer v. Brown*, 13 *Abb. N. C.* 82. Collated with other cases in *McAdam on Landl. & Ten.* 2 ed. § 27. Collated with other cases (Summary proceedings) in *Id.* § 260.
- *v. Lewis*, 4 *N. Y.* 554. Compare (Right to redeem real property sold on execution, when not prejudiced) *Code Civ. Pro.* § 1440.
- *v. Lockwood*, 32 *N. Y.* 293. See *Ford v. Williams*. Approved (Effect of possession by mortgagor under chattel mortgage) in *Southard v. Pinckney*, 5 *Abb. N. C.* 190. Explained in *Russell v. Winne*, 37 *N. Y.* 595. Applied in *Frost v. Warren*, 42 *Id.* 207, and see dissenting opinion (p. 210).
- *v. Loeb*, 64 *Barb.* 454. Disting'd (Effect of discharge of receiver) in *Davis v. Duncan*, *U. S. Cir. Ct. D. Miss.* 19 *Fed. Rep.* 481. Cited as authority in *High. on Receiv.* §§ 263, 848.
- *v. Long Island R. R. Co.*, 9 *Hun.* 194. Rev'd in 71 *N. Y.* 380. Decision in *Id.* quoted (Requisites of possession unaccompanied by title) in *Sedgw. & W. on Tr. of Tit. to Land*, § 719. Explained (Adverse possession) in *Id.* § 733.
- *v. McCan*, 7 *Paige*, 451. Explained (Principal debtor, as party to proceedings by surety against creditor) in *Vilas v. Jones*, 1 *N. Y.* 274.
- *v. McComb*, 26 *Wend.* 229; s. c., 14 *N. Y. Com. L. Law. ed.* 1067, with brief note.
- *v. Manice*, 6 *Hill*, 114. Followed with *Young v. Rummell*, 2 *Id.* 480 (Former recovery may be given in evidence under general issue) in *Wann v. McNulty*, 2 *Gilm. (Ill.)* 355; s. c., 43 *Am. Dec.* 60. Cited (Party stopped by former adjudication, notwithstanding his failure to submit sufficient proof to jury) in 2 *Whart. Com. on Ev.* § 788. Quoted and explained (Liability of partnership for money borrowed by partner) in 1 *Pars. on Contr.* 183, n. h.

- **v. Miller**, 8 *Johns.* 74. See *Fox v. Vanderbeck*. Applied (Statement, when slanderous, though not direct and positive) in *Waters v. Jones*, 3 *Port. (Ala.)* 442; s. c., 29 *Am. Dec.* 261, 263, with note. Followed as conclusive in *Treat v. Browning*, 4 *Conn.* 408; s. c., 10 *Am. Dec.* 156. Applied (Not necessary, in action for slander, to prove precise words averred) in *Desmond v. Brown*, 29 *Iowa*, 53; s. c., 4 *Am. R.* 194.
- **v. —**, 9 *Abb. Pr. N. S.* 444. See *Beach v. Hollister*; *Goelet v. Gori*. Disapproved (Effect of conveyance to husband and wife) in *Meeker v. Wright*, 76 *N. Y.* 262, 269. Discussed and classified with *Farmers' & M. Nat. B'k v. Gregory*, 49 *Barb.* 155; *Goelet v. Geri*, 31 *Id.* 314; *Meeker v. Wright*, 76 *N. Y.* 262; *Beach v. Hollister*, 3 *Hun.* 519, and other cases in 18 *Cent. L. J.* 326.
- **v. —**, 7 *Hun.* 208. Further decision in 1 *Abb. N. C.* 30. See cases cited (Necessity of judgment before commencing creditor's action) in 5 *Id.* 184, n. See (Reaching surplus income by creditor's action) *Code Civ. Pro.* 1881, § 1879, n.
- **v. —**, 18 *Hun.* 507. Rev'd in 91 *N. Y.* 315. Decision in 18 *Hun.* followed (Who is an illegitimate child) in *Matter of Mericlo*, 63 *Hov. Pr.* 62, 64; *Bollermann v. Blake*, 24 *Hun.* 187, 190. Decision in 91 *N. Y.* collated with other cases (Rights of inheritance of bastard) in 56 *Am. Dec.* 261, n.
- **v. Montgomery**, 78 *N. Y.* 282. Aff'd in effect *Montgomery v. Miller*, 3 *Redf.* 154.
- **v. Mostyn**, 2 *Hun.* 157, reported as *Miller v. Coates*, in 4 *Sup'm. Ct. (T. & U)* 429.
- **v. N. Y. & Erie R. R. Co.**, 21 *Barb.* 513. Disapproved (Power of legislature to authorize construction of highway across railroad track) in *Albany Northern R. R. Co. v. Brownell*, 24 *N. Y.* 345, 351. Applied to statute forbidding change of gauge, in *State v. Richmond & Danville R. R. Co.*, 73 *N. C.* 527; s. c., 21 *Am. R.* 473, 477.
- **v. —**, 18 *Hov. Pr.* 374; s. c., more fully, 8 *Abb. Pr.* 431.
- **v. O'Kain**, 5 *Hun.* 39. Further decision in 13 *Id.* 594.
- **v. People**, 5 *Barb.* 203. Collated with other cases (Exposing person) in 1 *Bennett & H. Cas. on Crim. L.* 8, 456. Commented on in *Wood on Nuis.* 2 ed. §§ 62, 63.
- **v. Platt**, 5 *Duer*, 272. Limited (Effect of estoppel to create transfer of title to real estate) in *Tilton v. Nelson*, 27 *Barb.* 595, 608.
- **v. Plumb**, 6 *Cow.* 665; s. c., 16 *Am. Dec.* 456, with note. Disting'd (Fixtures) as a case between grantor and grantee,—in *Cross v. Marston*, 17 *Verm.* 533; s. c., 44 *Am. Dec.* 353, 355.
- **v. President, &c. of Junction Canal Co.**, 53 *Barb.* 590. Aff'd in 41 *N. Y.* 98.
- **v. Rossmann**. See *Cushman v. Johnson*.
- **v. Schnyler**, 20 *N. Y.* 522. Explained with reference to amendment of *Code Pro.* § 268, in 1860 (Practice on appeal from order of General Term granting new trial) in *Wright v. Hunter*, 46 *Id.* 409, 412.
- **v. Smith**, 16 *Wend.* 425. See *Daby v. Ericsson*. Disting'd (Evidence of pecuniary ability, to show payment of judgment) in *Daby v. Ericsson*, 45 *N. Y.* 786.
- **v. Steam Navigation Co.**, 13 *Barb.* 361. Aff'd in 10 *N. Y.* 431. See *McDonald v. Western R. R. Co.* Decision in 10 *N. Y.* disting'd (Loss of goods by carrier before storage or delivery) in *Goold v. Chapin*, 20 *N. Y.* 259, 265. Limited in *Fenner v. Buffalo & State Line R. R. Co.*, 44 *Id.* 505. Explained in *Ang. on Carr.* § 156, n. a, 5 ed. Decision in 13 *Barb.* quoted and explained in 2 *Pars. on Contr.* 197, n. g. Quoted in 2 *Story on Contr.* 5 ed., § 943, n. 2.
- **v. Talcott**, 46 *Barb.* 167. Aff'd in 54 *N. Y.* 114. See *Winchell v. Hicks*.
- **v. Van Anken**, 1 *Wend.* 516. See *Camp v. Root*. Examined with *Larkin v. Robbins*, 2 *Id.* 505; *Towns v. Wilcox*, 12 *Id.* 503; *Van Slyke v. Lettice*, 6 *Hill*, 610; *Exp. Wright*, 6 *Cow.* 399 (Effect of submission to arbitration) in *Mackey v. Pierce*, 3 *Wis.* 309. Disting'd in *Van Slyke v. Lettice*, 6 *Hill*, 610. Disting'd (Effect of appeal from justices' judgment) in *Burns v. Howard*, 9 *Abb. N. C.* 321, 325.
- **v. White**, 8 *Abb. Pr. N. S.* 46; s. c., less fully, 57 *Barb.* 504. Further decision in 10 *Abb. Pr. N. S.* 385; s. c., 59 *Barb.* 434; which was rev'd in 50 *N. Y.* 137; s. c., 13 *Abb. Pr. N. S.* 185, n. Also in 4 *Hun.* 62; s. c., 6 *Sup'm. Ct. (T. & C.)* 255. See *Hall v. Sigel*; *Krekeler v. Ritter*; *Wiles v. Suydam*. Decision in 50 *N. Y.* disting'd (Proof of judgment against corporation, as evidence against trustees, &c.) in *Lewis v. Armstrong*, 8 *Abb. N. C.* 386; *Jones v. Barlow*, 62 *N. Y.* 207, which rev'd 38 *Super. Ct. (J. & S.)* 145, which see. Followed in *Esmond v. Bullard*, 16 *Hun.* 67; *Reed v. Keese*, 37 *Super. Ct. (J. & S.)* 274. Disting'd in *Hastings v. Drew*, 76 *N. Y.* 15; which aff'd 50 *Hov. Pr.* 259, which see; *Stephens v. Fox*, 17 *Hun.* 438, which was aff'd in 83 *N. Y.* 317, which see; *Schenck v. Andrews*, 57 *Id.* 148. A different rule applied in *Grand Rapids Sav. Bank v. Warren*, 52 *Mich.* 561. Relied on with *McMahon v. Macy*, 51 *N. Y.* 162; and the latter approved as giving a lucid recapitulation of the *N. Y.* authorities, in 2 *Whart. Com. on Ev.* § 761. Decision in 59 *Barb.* followed as an authority until reversed in *Hall v. Sigel*, 7 *Lans.* 20. See to the contrary (Sufficient proof of judgment) authorities cited in *Abb. Tr. Ev.* 537, n. 2.
- **v. Winchell**, 3 *Sup'm. Ct. (T. & C.)* 795. Aff'd in 70 *N. Y.* 437.
- Millerd v. Thorn**, 56 *N. Y.* 402. Applied (Liability of retiring partner) in *Dodd v. Dreyfus*, 57 *Hov. Pr.* 320. Approved in *Smith v. Sheldon*, 35 *Mich.* 42; s. c., 24 *Am. R.* 529, 534. Approved in *Vary v.*

- Norton, T. S.** *Cir. Ct. W. D. Mich.* 6 *Feb. Rep.* 811, citing other cases. See cases cited in 20 *Am. L. Reg. (N. Y.)* 470, n. Examined with other cases in 18 *Alb. L. J.* 304.
- Milllett v. Baker**, 42 *Barb.* 215. Approved and followed (Seal upon justice's commitment unnecessary) in *Gano v. Hall*, 42 *N. Y.* 67.
- Milligan v. Brophy**, 2 *Code R.* 118. See (Change of venue) *Code Civ. Pro.* 1881, § 986, n.
- **v. Robinson**, 58 *How. Pr.* 380. Followed (Costs, in case of two or more defendants) in *Royce v. Jones*, 23 *Hun.* 453. Disting'd in *Williams v. Cassidy*, 22 *Id.* 180, 186.
- Milligan & Welchmans' Case.** See *Williams' case.*
- Milliken v. Dehon**, 27 *N. Y.* 364. Followed (Sale of pledge without notice) in *Genet v. Howland*, 45 *Barb.* 563; *Wicks v. Hatch*, 38 *Super. Ct. (J. & S.)* 113, 116, which was aff'd in 62 *N. Y.* 535, which see. Commented on in *Hanks v. Drake*, 49 *Barb.* 188, 200. Examined with other cases in *Taylor v. Ketchum*, 35 *How. Pr.* 300. Disting'd in *Markham v. Jaudon*, 41 *N. Y.* 243. Applied in *Durant v. Einstein*, 35 *How. Pr.* 244.
- Milliman v. Neher**, 20 *Barb.* 37. Limited (Effect of mortgage, &c., of property not in existence) in *Stover v. Eycleshimer*, 3 *Keyes.* 620. Approved, but limited, in *Conderman v. Smith*, 41 *Barb.* 404. Disting'd in *McCaffrey v. Wooden*, 65 *N. Y.* 467, which rev'd 60 *Barb.* 316, 323, which see. Followed with *Bank of Lansingburgh v. Crary*, 1 *Barb.* 542; *Otis v. Sill*, 8 *Id.* 102, in *Hutchinson v. Ford*, 9 *Bush. (Ky.)* 318; s. c., 15 *Am. R.* 711, 713. Reviewed with *Bank of Lansingburgh v. Crary*, 1 *Barb.* 542; *Van Hooker v. Cory*, 34 *Id.* 9, in *Huling v. Cabell*, 9 *W. Va.* 522; s. c., 27 *Am. R.* 562. Collated with *Bank of Lansingburgh v. Crary*, 1 *Barb.* 542; *Edgell v. Hart*, 9 *N. Y.* 213; *Gardner v. McEwen*, 19 *Id.* 123; *Yates v. Olmstead*, 56 *Id.* 623; 65 *Barb.* 43; *Otis v. Sill*, 8 *Id.* 102, and the subject discussed in 1 *Am. L. J.* 355.
- **v. N. Y. Central, & C. R. Co.**, 6 *Supm. Ct. (T. & C.)* 585; mem. s. c., 4 *Hun.* 409. Aff'd in 66 *N. Y.* 642. See other cases collected (Contributory negligence of disabled, &c., person) in 6 *Abb. N. C.* 116, n.
- Millius v. Shafer**, 3 *Den.* 60. See *Jackson v. Virgil*. Approved (Sufficiency of execution of undertaking) in *Weisbrod v. Marquardt*, 8 *Abb. N. C.* 243, 246.
- Mills' Case.** See *Williams' case.*
- Mills v. Argall**, 6 *Paige*, 577, 582. Correctness conceded (Rights of special partners) in *Hayes v. Bement*, 3 *Sandf.* 394; *White v. Hackett*, 20 *N. Y.* 178, 180. Compare *Bowen v. Argall*, 24 *Wend.* 496. Disting'd (Revocation of assignment for creditors) in *Whitcomb v. Fowle*, 1 *Am. Insolt. R.* 160, 162.
- **v. Bliss**, 55 *N. Y.* 139. Disting'd (Vendor's lien, as affected by fraud) in *Hiscock v. Norton*, 42 *Mich.* 324. Compare (Filing and canceling *lis pendens*) *Code Civ. Pro.* §§ 1670, 1674.
- **v. City of Brooklyn**, 32 *N. Y.* 489; s. c., 5 *Am. L. Reg. N. J.* 33, with note. See *Bartlett v. Crozier*; *Hutson v. Mayor, &c. of N. Y.*; *Weet v. Trustees of Brookport*; *Wilson v. Mayor, &c. of N. Y.* Disting'd (Liability of municipal corporation for injury resulting from defect in public work) in *Lewenthal v. Mayor, &c. of N. Y.*, 61 *Barb.* 520; *Beach v. City of Elmira*, 22 *Hun.* 163; *Clemence v. City of Auburn*, 66 *N. Y.* 339. Approved and explained in *Brastable v. City of Syracuse*, 8 *Hun.* 592. Applied in *Hartford & N. Y. S'b't Co. v. Mayor, &c. of N. Y.*, 78 *N. Y.* 5. Approved and applied with *Smith v. Mayor, &c. of N. Y.*, 66 *N. Y.* 293, in *Fair v. City of Philadelphia*, 88 *Penn. St.* 309; s. c., 32 *Am. R.* 455, 457; *Mayor, &c. of N. Y. v. Furze*, 3 *Hill.* 612, being disting'd. Approved in *Allen v. City of Chippewa Falls*, 52 *Wis.* 430; s. c., 38 *Am. R.* 748. Approved and applied in *Horton v. Mayor and City Council*, 4 *Lea (Tenn.)* 39; s. c., 40 *Am. R.* 1. Disapproved with *Urbiquart v. City of Ogdenburg*, 91 *N. Y.* 67, in *Gould v. City of Topeka*, 32 *Kan.* 490; citing also *Clemens v. City of Auburn*, 66 *N. Y.* 334. Applied in *Hoyt v. City of Hudson*, 27 *Wis.* 656; s. c., 9 *Am. R.* 473, 478. Collated with *Rochester White Lead Co. v. City of Rochester*, 3 *N. Y.* 463; *Mayor, &c. of N. Y. v. Furze*, 3 *Hill.* 612; *Barton v. City of Syracuse*, 36 *N. Y.* 54; *Lewenthal v. Mayor, &c. of N. Y.*, 61 *Barb.* 511; *McCarthy v. City of Syracuse*, 46 *N. Y.* 194; and other cases in *Van Pelt v. City of Davenport*, 42 *Iowa*, 308; s. c., 20 *Am. R.* 622, 626. Denied in *Gillison v. City of Charleston*, 16 *W. Va.* 782; s. c., 37 *Am. R.* 765.
- **v. Comstock**, 3 *Johns. Ch.* 214. See *Gardner v. Astor*. Followed (Defeasance of recorded title) in *Stoddard v. Rotton*, 5 *Bosw.* 378, 384.
- **v. Davis**, 35 *Super. Ct. (J. & S.)* 355. Appeal dismissed in 53 *N. Y.* 349.
- **v. Dennis**, 3 *Johns. Ch.* 367. With this case, and *Harris v. Truman*, *Hoffm.* 178, see to the contrary (Effect of decree obtained against defendant by default) *Shields v. Powers*, 29 *Mo.* 315, cited in *Tyler on Inf. & Cor.* 2 ed. § 119. Included in *Excell Lead. Cas. on Inf. &c.* 229. Language of *KENT, C.*, quoted (Change by guardian of ward's estate) in 1 *Pars. on Contr.* 134, n. b.
- **v. Garrison**, 3 *Keyes*, 40. Disting'd (Waiver of right to rely on judgment as defence) in *Jex v. Jacob*, 19 *Hun.* 105, 108; *Burritt v. Belfy*, 47 *Conn.* 323; s. c., 36 *Am. R.* 85.
- **v. Gould**, 1 *Abb. N. C.* 93. Further decision in 42 *Super. Ct. (J. & S.)* 119.
- **v. Hall**, 9 *Wend.* 315; s. c., 24 *Am. Dec.* 160, with note, wherein it is said to

- have been frequently referred to as authority. Followed (Prescriptive right to maintain public nuisance) in *Lewis v. Stein*, 16 *Ala.* 214; s. c., 50 *Am. Dec.* 177, 180, with note. Cited as authority with *Renwick v. Morris*, 3 *Hill*, 621; *People v. Cunningham*, 1 *Den.* 524, in *State v. Franklin Falls Co.*, 49 *N. H.* 240; s. c., 6 *Am. E.* 513, 520. Approved as an authority in *Woodruff v. Northern B. G. Min. Co.*, *U. S. Cir. Ct. D. Cal.* 18 *Fed. Rep.* 753, 788. Quoted and explained in *Wood on Nuis.* 2 ed. § 727. Commented on (Private actions for such nuisance) in *Id.* § 677.
- *v. Hildreth*, 7 *Hun.* 298. Appeal dismissed in 81 *N. Y.* 91. Another proceeding in 5 *Hun.* 364. See other proceedings as *Mills v. Rodewald*, 13 *Id.* 439, and 17 *Id.* 297. Decision in 81 *N. Y.* followed (Appealability of order) in *Douglass v. Haberstro*, 82 *Id.* 572, 574.
- *v. Hoag*, 7 *Paige*, 18; s. c., 31 *Am. Dec.* 271, with note, wherein it is referred to as having been frequently cited as authority (What is final decree). Cited as authority in *Stovall v. Banks*, 10 *Wall.* 587; *Beebe v. Russell*, 19 *How. (U. S.)* 285.
- *v. Hunt*, 17 *Wend.* 333. Aff'd in 20 *Id.* 431. See *Bush v. Cole*; *Van Eps v. Mayor of Schenectady*. Decision in 20 *Wend.* distinguishing and applied (Contract to be executed distributively, when entire) in *Aldrich v. Pyatt*, 64 *Barb.* 391, 395. Quoted and explained in 1 *Benj. on Sales*, § 135, n. 2 (Corbin's 4 *Am. ed.*). Decision in 17 *Wend.* followed in *Coffman v. Hampton*, 2 *Watts & S. (Pa.)* 377; s. c., 37 *Am. Dec.* 513. Collated with *Bush v. Cole*, 28 *N. Y.* 261, and other cases (Auctioneer's personal responsibility to buyer to fulfil sale) in 22 *Am. L. Reg. N. S.* 20. Decision in 20 *Wend.* distinguishing (Individual liability of agent, &c.) in *Adams v. Ives*, 63 *N. Y.* 651.
- *v. Levy*, 2 *Edw.* 183. Discussed (Releases in case of assignment for benefit of creditors) in *Burrill on Assign.* § 192, 4 ed.
- *v. Lewis*, 55 *Barb.* 179. Explained (Reformation of assignment) in *O'Donnell v. Harmon*, 3 *Daly*, 424.
- *v. Martin*, 19 *Johns.* 7. See *Foot v. Stevens*; *Wheeler v. Raymond*. Language explained (Right to set up want of jurisdiction against judgment) in *Sheldon v. Wright*, 5 *N. Y.* 517. Followed with *Holmes v. Broughton*, 10 *Wend.* 75; *Wheeler v. Raymond*, 8 *Cow.* 311, in *Gay v. Lloyd*, 1 *G. Greene (Iowa)* 78; s. c., 46 *Am. Dec.* 499, 504, with note. Applied (Sufficiency of avowry in replevin) in *Cleveland v. Rogers*, 6 *Wend.* 442. Overruled (Amenability of militia to U. S. court martial) in *Martin v. Mott*, 12 *Wheat.* 19.
- *v. Michigan Central R. Co.*, 45 *N. Y.* 622. See *Fenner v. Buffalo & State Line R. R. Co.*; *McDonald v. Western R. R. Co.* Followed and approved (Liability of intermediate carrier) in *Illinois Cent. R. R. Co. v. Mitchell*, 58 *Ill.* 471; s. c., 18 *Am. R.* 564, 567.
- *v. Mills*, 36 *Barb.* 474. Aff'd in 40 *N. Y.* 543. Decision on motion for injunction is in 21 *How. Pr.* 437. Decision in 40 *N. Y.* quoted and collated with other cases (Contracts to influence legislation) in *Field on Ultra Vires*, 60.
- *v. N. Y. & Harlem R. R. Co.*, 2 *Robt.* 326. Said in 41 *N. Y.* 619, to have been aff'd by Ct. of App. in Sept. 1869.
- *v. Porter*, 2 *Hun.* 524; s. c., reported 5 *Sup'm. Ct. (T. & C.)* 63.
- *v. Rodewald*. See *Mills v. Hildreth*.
- *v. Shult*, 2 *E. D. Smith*, 139. Doubted (Action against owner of steamship for breach of condition set forth in hand-bill) in 1 *Parson on Maritime Law*, 131, n.
- *v. Stewart*, 41 *N. Y.* 384. Aff'g in effect 62 *Barb.* 444. Decision in 41 *N. Y.* distinguishing with *Tracy v. Yates*, 13 *Barb.* 152; *Seymour v. Sturgess*, 26 *N. Y.* 134; *Hamilton & Deansville Plank Road Co. v. Rice*, 7 *Barb.* 159 (What constitutes liability as stockholder) in *Wheeler v. Millar*, 90 *N. Y.* 353.
- *v. Thursby*, 11 *How. Pr.* 113. Examined (Power to refer in case of long account) in *Cameron v. Freeman*, 10 *Abb. Pr.* 333, 335.
- *v. Van Voorhis*, 23 *Barb.* 125. Rev'd in 20 *N. Y.* 412; s. c., 10 *Abb. Pr.* 152. Decision in *Id.* applied (Effect of foreclosure on dower interest if wife is not made a party) in *Ross v. Boardman*, 22 *Hun.* 527, 529. Distinguishing in *Brackett v. Baum*, 50 *N. Y.* 8, 11. Commented on (Seisin requisite for dower) in *Sharpe & B. Cas. on Real Prop.* 325.
- *v. Watson*, 1 *Sweeney*, 374. See *Marsh v. Pike*. See to the contrary (Evidence of payment) *Mills v. Hyde*, 19 *Vt.* 59. See also *Abb. Tr. Ev.* 261.
- *v. Young*, 23 *Wend.* 314. Applied (Deputy sheriff not to execute process for or against himself) in *Holbrook v. Brennan*, 6 *Daly*, 46, 48.
- Millsbaugh v. McBride**, 7 *Paige*, 509; s. c., 34 *Am. Dec.* 360, with note, wherein it is shown to have been frequently approved in *N. Y.* (Merger of mortgage and equity of redemption). See *Baxter v. Lansing*.
- *v. Putnam*, 16 *Abb. Pr.* 380. Approved and followed (When deposit in bank in trust constitutes a gift) in *Martin v. Funk*, 75 *N. Y.* 138. Approved in *Minor v. Rogers*, 40 *Conn.* 512; s. c., 16 *Am. R.* 69, 73. Collated with *Geary v. Page*, 9 *Bosw.* 290; *Fiero v. Fiero*, 5 *Sup'm. Ct. (T. & C.)* 151; *Champney v. Blanchard*, 39 *N. Y.* 111; *Cooper v. Burr*, 45 *Barb.* 9; *Allerton v. Lang*, 10 *Bosw.* 362, and other cases in 23 *Am. R.* 451, n.
- Miln v. Spinola**, 4 *Hill*, 177. Aff'd in 6 *Id.* 218.
- Milner v. Milner**, 2 *Edw.* 114. Distinguishing with *Prouty v. Lake Shore R. R. Co.*, 85 *N. Y.* 292 (What may be set up in supple-

- mental complaint) in *Cornwall v. Cornwall*, 30 *Hun*, 573. Disting'd in *Prouty v. Lake Shore & M. S. R. R. Co.*, 85 *N. Y.* 272, 275.
- Milnor v. N. Y. & New Haven R. R. Co.**, 4 *Daly*, 355. Aff'd in 53 *N. Y.* 363. See *Bostwick v. Champion*. Discussed, compared and applied with *Hart v. Rensselaer & S. R. R. Co.*, 8 *N. Y.* 37 (Liability of connecting carrier for loss of baggage) in *Louisville & N. R. R. Co. v. Weaver*, 9 *Lea (Tenn.)* 53.
- Milton v. Hudson River Steamboat Co.**, 37 *N. Y.* 210. See opinion by Grover, J., in 4 *Trans. App.* 252. Judgment not given for defendants, as suggested by opinion in 37 *N. Y.*, but new trial ordered. Subsequent decision after second trial in 4 *Lans.* 76. See *Arctic Fire Ins. Co. v. Austin*; *Hamilton v. McPherson*.
- Milward v. Hallett**, 2 *Cui.* 77; s. c., 2 *N. Y. Com. L. Law. ed.* 326, with brief note.
- Minard v. Mead**, 7 *Wend.* 68. Disting'd (Sufficiency of admission of making of note) in *Barden v. Stevenson*, 75 *N. Y.* 164, 168. See, in connection therewith, *Lindus v. Bradwell*, 5 *C. B.* 583 (cited in *Whart. Com. on Ag.* § 294), (Power of married woman to bind husband by her signature, as party to negotiable paper). See, also, citations in § 523.
- Minchin v. Merrill**, 2 *Edw.* 333. Applied (Evidence of gift *inter vivos*) in *Trow v. Shannon*, 8 *Daly*, 239, 242. Examined with *Witzel v. Chapin*, 3 *Bradf.* 386, and other cases in *Bradbrook v. Boston Five Cents' Savings' B'k*, 104 *Mass.* 228; s. c., 6 *Am. R.* 222.
- Miner v. Beekman**, 33 *Super. Ct. (J. & S.)* 67; s. c., 11 *Abb. Pr. N. S.* 147; 42 *Hov. Pr.* 33. Rev'd in 50 *N. Y.* 337; s. c., 14 *Abb. Pr. N. S.* 1. Decision in *Id.* disting'd (Limitation of action to recover realty in favor of mortgagee in possession) in *Shriver v. Shriver*, 86 *N. Y.* 575, 580. Compare *Hubbell v. Sibley*, 50 *Id.* 468. See *Code Civ. Pro.* 1881, §§ 365, n., 379, n. Disting'd and explained (Laches as barring relief against cloud on title) in *Matter of Lord*, 78 *N. Y.* 109, 113.
- **v. Burling**, 32 *Barb.* 540. Superseded (Summoning talesmen in summary proceedings) by *L.* 1862, p. 621, c. 368.
- **v. Clark**, 15 *Wend.* 425. Followed with hesitation (Sufficiency of verbal notice to warrantor to defend) in *Somers v. Schmidt*, 24 *Wis.* 417; s. c., 1 *Am. L.* 191. Referred to as the leading case on the question,—in 43 *Am. Dec.* 572, n. where however, the views maintained in the dissenting opinion of *Bronson, J.*, is commented on with approval.
- **v. Gardiner**, 4 *Hun*, 132. Reported in 6 *Sup'm. Ct. (T. & C.)* 343.
- **v. Hoyt**, 4 *Hill*, 193. Aff'd in 7 *Id.* 525. Decision in 4 *Id.* collated with rulings in other States (Set-offs in action on negotiable paper) in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 426.
- **v. Judson**, 2 *Lans.* 300. Further decision in 2 *Hun*, 441.
- **v. Mayor, &c. of N. Y.**, 37 *Super. Ct. (J. & S.)* 171. Revived as *Walbridge v. Same*, and again as *Stevens v. Same*, 46 *Super. Ct. (J. & S.)* 274.
- Minick v. City of Troy**, 19 *Hun*, 253. Aff'd in 83 *N. Y.* 514.
- Minier v. Minier**, 4 *Lans.* 421. Dictum opposed (Right of husband to sue wife) in *Perkins v. Perkins*, 62 *Barb.* 531, 540, as in conflict with *White v. Wager*, 25 *N. Y.* 328; *Hunt v. Johnson*, 44 *Id.* 27. Doubtful (Ejectment by wife against husband) in *Manning v. Manning*, 79 *N. C.* 293; s. c., 28 *Am. R.* 327. Criticised and contrasted with *Gould v. Gould*, 29 *Hov. Pr.* 441, in *Pomeroy on Rem.* § 240, n. 1.
- Minton v. Woodworth**, 11 *Johns.* 474. Denied (Plea of *nil debet* on action on bond, for escape) in *Allen v. Smith*, 7 *Halst. (N. J.)* 162.
- Minturn v. Allen**, 3 *Sandf.* 50. Aff'd as *Minturn v. Main* in 7 *N. Y.* 220. Decision in *Id.* collated with *Hulse v. Young*, 16 *Johns.* 1, and other cases, in support of the rule (Auctioneer may sue in his own name for purchase price) in 22 *Am. L. Reg. N. S.* 19.
- **v. Columbian Ins. Co.**, 10 *Johns.* 75; s. c., 4 *N. Y. Com. L. Law. ed.* 941, with brief note.
- **v. Farmers' Loan & Trust Co.**, 3 *N. Y.* 498. Applied (Action on promissory note, when not to be enjoined) in *Davis v. Life Ins. & Trust Co.*, 4 *Id.* 312.
- **v. Main**. See *Minturn v. Allen*.
- **v. Seymour**, 4 *Johns. Ch.* 497. Followed (Enforcing voluntary agreement for conveyance of land from father to son) in *Anderson v. Green*, 7 *J. J. Marsh (Ky.)* 448; s. c., 23 *Am. Dec.* 417, 423, with note.
- Minuse v. Cox**, 5 *Johns. Ch.* 441; s. c., 9 *Am. Dec.* 313. Discussed (Notice of sale by assignee for creditors) in *Burrill on Assign.* § 412, 4 ed.
- Misland v. Boynton**, 14 *Hun*, 625. Aff'd in 79 *N. Y.* 630.
- Mitchells' Case**, 12 *Abb. Pr.* 249. Collated with *People v. Sturtevant*, 9 *N. Y.* 263; *People ex rel. Hackley v. Kelly*, 24 *Id.* 74; *People v. Fancher*, 4 *Sup'm. Ct. (T. & C.)* 467; *Kearney's Case*, 13 *Abb. Pr.* 459, in 12 *Am. Dec.* 184, n. as showing a great weight of authority against allowing judgment for contempt to be reviewed in any other court, unless by virtue of some statute.
- Mitchell v. Bartlett**, 52 *Barb.* 319. Aff'd in 51 *N. Y.* 447. Decision in 52 *Barb.* criticised (Rights of purchaser on foreclosure sale) in *Mutual Life Ins. Co. v. Balch*, 4 *Abb. N. C.* 200, 203.
- **v. Blain**, 5 *Paige*, 588. Explained and applied (Right to realty of post testamentary child unprovided for in will) in *Smith v. Robertson*, 24 *Hun*, 210, 214.
- **v. Borden**. See *Fry v. Bennett*.

- **v. Bristol**, 10 *Wend.* 492. Followed with *Caines v. Brisban*, 13 *Johns.* 9 (Set-off by a purchaser from an agent, in an action against such purchaser) in *Gardner v. Allen's Ex'rs*, 6 *Ala.* 187; s. c., 41 *Am. Dec.* 45, with note.
- **v. Bunch**, 2 *Paige*, 606; s. c., 22 *Am. Dec.* 669, with note containing citations thereof on subject of *ne exeat*, and other points. See *Bowne v. Joy*. Applied (Effect on proceedings in State court, of proceedings commenced in U. S. court) in *Lorillard Fire Ins. Co. v. Meshural*, 7 *Robt.* 309. Applied (Decree in equity may affect property situated in a foreign jurisdiction) in *Winaus v. McKean R. R. & Nav. Co.*, 6 *Blatchf. C. Ct.* 215, 221. Quoted in 1 *Collyer on Partner.* § 385, n. 1, Wood's *Am. ed.*
- **v. Carter**, 14 *Hun*, 448. See *People v. Hartung*. Disting'd (Setting aside verdict for use of: unauthorized paper by jury) in *Dolan v. Aetna Ins. Co.*, 22 *Hun*, 396, 404. Compare numerous citations in 13 *Cent. L. J.* 61.
- **v. Cook**, 7 *N. Y.* 538. Further decision in 17 *How. Pr.* 110; which was aff'd in 29 *Barb.* 243.
- **v. Culver**, 7 *Cow.* 336; s. c., 9 *N. Y. Com. L. Law. ed.* 144, with brief note. Disting'd (Liability of one signing in blank) in *McGrath v. Clark*, 56 *N. Y.* 34, 37. Approved and collated with *Redlich v. Doll*, 54 *Id.* 238, and other cases in *Snyder v. Van Doren*, 46 *Wis.* 602; s. c., 32 *Am. R.* 739. Followed with *Dean v. Hall*, 17 *Wend.* 214, in *Davis v. Lee*, 26 *Miss.* 505; s. c., 59 *Am. Dec.* 267. Cited in *Roberts v. Adams*, 8 *Port. (Ala.)* 297; s. c., 33 *Am. Dec.* 291, with note, as showing the rule to be settled. See cases collected in 9 *Am. L. Reg. N. S.* 617. Cited with other cases in 12 *Id.* 628. Included in 1 *Ames Cas. on B. & N.* 733. Relied on with *Boyd v. Brotherson*, 10 *Wend.* 93 (Parol evidence of time when note is payable) in *Boykin v. Bank of Mobile*, 72 *Ala.* 262; s. c., 47 *Am. R.* 408. Collated with *Page v. Morrell*, 3 *Abb. Ct. App. Dec.* 433, and other cases (Materiality of insertion or alteration of date in bill or note) in 17 *Am. R.* 101, n.
- **v. Mitchell**, 16 *Hun*, 97. Aff'd, it seems, in 77 *N. Y.* 596, but without opinion. See *Lewis v. Lewis*; *Remsen v. Brinkerhoff*.
- **v. —**, 61 *N. Y.* 398. Disting'd (Sufficiency of pleadings in action for adultery) in *Gardinier v. Knox*, 27 *Hun*, 398, an action for slander. Quoted and explained in 2 *Bish. on Mar. & Div.* § 605, 6 ed.
- **v. Mount**, 17 *Abb. Pr.* 265. Rev'd in 19 *Abb. Pr.* 1; s. c., as *Mount v. Mitchell*, 31 *N. Y.* 356. See *Mount v. Mitchell*.
- **v. N. Y. Central, &c. R. R. Co.**, 2 *Hun*, 535; s. c., 5 *Sup'm. Ct. (T. & C.)* 122. Aff'd in 64 *N. Y.* 655. Unreported opinion of *EARL, J.*; explained (Damages in action for death) in *Gorham v. N. Y. Central, &c. R. R. Co.*, 23 *Hun*, 449, 451.
- **v. Read**, 61 *Barb.* 310. Rev'd in 61 *N. Y.* 123; s. c., 19 *Am. R.* 252. Further decision in 19 *Hun*, 418; and that aff'd in 84 *N. Y.* 556. Decision in 61 *Id.* applied (Effect of renewal, &c., of lease by partner) to continuance by administrator,—in *Green v. Green*, 2 *Redf.* 408, 411. Qualified by *COOLEY, J.*, in *Chittenden v. Witbeck*, 50 *Mich.* 417. Quoted and discussed in 1 *Collyer on Partn.* § 116, n. 1. Approved as fully sustained by the cases,—in 2 *Pomeroy on Eq. Jur.* 624, n.
- **v. Thorp**, 5 *Wend.* 287. Disting'd (Liability on recognizance given on suing out tort of error) in *Post v. Doremus*, 60 *N. Y.* 371, 377,—a case of an undertaking on appeal.
- **v. Van Buren**, 27 *N. Y.* 300. Disting'd with *Ingram v. Robbins*, 33 *Id.* 409 (Requisites of statement on confession of judgment) in *Marrin v. Marrin*, 27 *Hun*, 601, which was rev'd, it seems, in 92 *N. Y.* 644. Followed (Amendment after judgment) in *Tasker v. Wallace*, 6 *Daly*, 364, 366.
- **v. Vermont Copper Mining Co.**, 47 *How. Pr.* 218. Aff'd in 40 *Super. Ct. (J. & S.)* 406, and the latter aff'd in 67 *N. Y.* 280.
- **v. West**, 35 *Super. Ct. (J. & S.)* 565. Aff'd, it seems, in 55 *N. Y.* 107. See *Smith v. Acker*. Decision in 55 *N. Y.* discussed (Effect of seller not parting with possession) in 1 *Benj. on Sales*, § 738, n. 58 (*Corbin's* 4 *Am. ed.*). Commented on in *Wait on Fraud. Conv.* § 263.
- **v. Westervelt**, 20 *Barb.* 253. See *Boyce v. Bates*. Applied (Effect of concealment by purchaser, of his insolvent condition) in *Chaffee v. Fort*, 2 *Lans.* 81, 87.
- Mittnacht v. Kelly**, 5 *Abb. Pr. N. S.* 442; s. c., 3 *Keyes*, 407; 3 *Abb. Ct. App. Dec.* 301. Followed (Invalidity of chattel mortgage providing for possession by mortgagor) in *Wagner v. Jones*, 7 *Daly*, 375, 378. Quoted in *Wait on Fraud. Conv.* § 349.
- Mix v. Andes Ins. Co.**, 9 *Hun*, 397. Rev'd in 74 *N. Y.* 53; s. c., 30 *Am. R.* 260. Decision in *Id.* disting'd (Affidavit by corporation as "citizen") as inapplicable to examination of corporation as "party," in *People v. Mutual Gas Light Co. of Brooklyn*, 74 *Id.* 434, 436.
- **v. Mix**, 1 *Johns. Ch.* 108. Examined with *Denton v. Denton*, *Id.* 364; *Wood v. Wood*, 2 *Paige*, 109 (Alimony, when allowed) in *Story v. Story*, *Walk. Ch. (Mich.)* 422.
- Moadinger v. Mechanics' Fire Ins. Co.** See *Unger v. Peoples' Fire Ins. Co.*
- Moak v. Coats**, 33 *Barb.* 498. Said in 33 *How. Pr.* 618, to have been aff'd by Ct. of App. See *Tompkins v. Fonda*. Followed (Title of receiver in supplementary proceedings to debtor's real estate) in *Scott v. Elmore*, 10 *Hun*, 68, 72. Disting'd in *Wing v. Disse*, 15 *Id.* 190, 194; *Payne v. Becker*, 87 *N. Y.* 158. Examined at considerable

- length in *Hayes v. Buckley*, 53 *How. Pr.* 173. See *Code Civ. Pro.* § 2469. Commented on in *High on Receiv.* § 447, n. 4.
- *v. De Forrest*, 5 *Hill*, 605. Followed (Priority of creditor procuring assignment) in *Spear v. Wardell*, 1 *N. Y.* 144, 160.
- Moakeley v. Riggs**, 19 *Johns.* 69; s. c., 10 *Am. Dec.* 196. Disting'd (Liability of guarantor of note) in Board of Supervisors of *Monroe v. Otis*, 62 *N. Y.* 88, 94, a case of sureties on official bond. Disting'd in *Thomas v. Woods*, 4 *Cow.* 184, a case of a mortgage. Approved with *Thomas v. Woods*, 4 *Cow.* 173; *Taylor v. Bullen*, 6 *Id.* 624; *Morris v. Wadsworth*, 11 *Wend.* 100; *White v. Case*, 13 *Id.* 543; *Curtis v. Smallman*, 14 *Id.* 231; *Loveland v. Shepard*, 2 *Hill*, 139; *Craig v. Parkis*, 40 *N. Y.* 181, in support of the *N. Y.* doctrine (which is also said to have been applied in *Dwight v. Williams*, 4 *McLean*, 581), in *Bosman v. Akeley*, 39 *Mich.* 710; s. c., 33 *Am. R.* 448. Disting'd with *Stafford v. Low*, 16 *Johns.* 67; *Beekman v. Hale*, 17 *Id.* 134; *Tilghman v. Wheeler*, *Id.* 326, in *Cobb v. Little*, 2 *Greenl. (Me.)* 261; s. c., 11 *Am. Dec.* 72. Cited with *Thomas v. Woods*, 4 *Cow.* 173; *Taylor v. Bullen*, 6 *Id.* 624; *Cumpston v. McNair*, 1 *Wend.* 457; *White v. Case*, 13 *Id.* 543; *Loveland v. Shepard*, 2 *Hill*, 139; *Vanderveer v. Wright*, 6 *Barb.* 547; *Newell v. Fowler*, 23 *Id.* 623; *Gallagher v. White*, 31 *Id.* 92; *Mosier v. Waful*, 56 *Id.* 80; *Craig v. Parkis*, 40 *N. Y.* 181, in *Allen v. Rundle*, 50 *Conn.* 9; s. c., 47 *Am. R.* 599, where the authorities are reviewed, the *N. Y.* doctrine being criticised and disapproved. Questioned with *Cumpston v. McNair*, 1 *Wend.* 457; *Craig v. Parkis*, 40 *N. Y.* 181, as against the weight of authority, in *Brackett v. Rich*, 23 *Minn.* 485; s. c., 23 *Am. R.* 703. Explained (Enforcing engagement to perform act on previous performance of another act) in *Baldwin v. N. Y. Life Ins. & Trust Co.*, 3 *Bosw.* 530, 543.
- Mockey v. Grey**, 2 *Johns.* 192. Approved (Authority of justice to appoint guardian *ad litem* for infant) in *Bullard v. Spoor*, 2 *Cow.* 430. Applied to surrogate in *Brick's Case*, 15 *Abb. Pr.* 12, 40. Followed (Effect of appearance of infant without guardian) in *McMurray v. McMurray*, 60 *Barb.* 117, 121.
- Mochring v. Mitchell**, 1 *Barb. Ch.* 264. Aff'd as *Mochring v. Mitchell*, in *How. App. Cas.* 502. See *Newell v. Nichols*. Decision in 1 *Barb. Ch.* disregarded as *obiter dictum* (Power of married woman to make will) in *Wadhams v. American Home Missionary Soc.*, 12 *N. Y.* 415. Criticised (Presumption of survivorship) in *Newell v. Nichols*, 12 *Hun.* 604, 617. Explained in 2 *Best on Ev.* § 410, n. a, *Wood's* ed. Applied (Right of husband, on wife's death, to policy for her benefit) in *Olmsted v. Keyes*, 85 *N. Y.* 593, 602.
- Moeller v. Bailey**, 14 *How. Pr.* 359. See
- Roy v. Thompson*. Explained with reference to Rule 27 of 1858 (Right to move to dismiss complaint) in *Bowles v. Van Horne*, 11 *Abb. Pr.* 85.
- Moett v. People**, 85 *N. Y.* 373. Aff'g *People v. Moett*, 23 *Hun.* 60. Previous decision in 58 *How. Pr.* 467. See newspaper slips, statements, points and error-book in *Law Inst. Libr. N. Y. city*. Decision in 85 *N. Y.* collated with *People v. McCann*, 16 *Id.* 58, and other authorities (Necessary evidence of insanity) in 22 *Am. L. Reg. N. S.* 194, n.
- Moffat v. Mount**, 17 *Abb. Pr.* 4; s. c., fully reported, as *Moffat v. Moffat*, 10 *Bosw.* 468. Cited (Evidence of notes of deceased counsel made in relation to office business) in 1 *Whart. Com. on Ev.* § 249.
- Moffatt v. Ford**. See *Dodd v. Curry*.
- *v. Strong*, 10 *Johns.* 12; s. c., 4 *N. Y. Com. L. Law. ed.* 914, with brief note. See *Jackson v. Blanshan*; *Jackson v. Staats*.
- *v. Wood*, *Seld. Notes*, No. 5, 14. Qualified (Right to sue on tort or contract) in *Roth v. Palmer*, 27 *Barb.* 652.
- Moffet v. Sackett**, 18 *N. Y.* 522. See *Sears v. Conover*. Applied (Power of General Term to alter amount of judgment) in *Burling v. Gunther*, 63 *How. Pr.* 68, 71. Disting'd in *Boyd v. Foot*, 5 *Bosw.* 110, 121.
- Mohawk & Hudson River R. R. Co., Matter of**, 19 *Wend.* 135. Disting'd (Effect of failure to take prescribed oath in statutory form) in *Merritt v. Village of Portchester*, 71 *N. Y.* 309, 313.
- Mohawk & Hudson River R. Co. v. Artcher**, 6 *Paige*, 83. See *Livingston v. Livingston*. Applied with *People v. Canal Board*, 55 *N. Y.* 390; *Western R. R. Co. v. Nolan*, 48 *Id.* 513; *Matter of Kelly*, 3 *Hun.* 636; 62 *N. Y.* 198; *Stage Horse Cases*, 15 *Abb. Pr. N. S.* 51; *Tribune Ass'n v. Sun Ass'n*, 7 *Hun.* 175 (Enjoining public authorities) in *Manhattan Iron Works Co. v. French*, 12 *Abb. N. C.* 446.
- *v. Clute*, 4 *Paige*, 384. See *Thomson v. Ebbets*. Approved (Mode of taxation of railroad companies) in *People v. Fredericks*, 48 *Barb.* 185; *People v. Cassity*, 2 *Lans.* 298, which was aff'd in 46 *N. Y.* 53, which see. Discussed in *Ang. & A. on Pri. Corp.* § 446, 11 ed. Followed (Interpleader in case of double taxation) in *Dorn v. Fox*, 6 *Lans.* 164, which was rev'd in 61 *N. Y.* 268, which see. Disting'd (Equitable relief against assessment) in *Wilson v. Mayor of N. Y.*, 1 *Abb. Pr.* 29; *Van Rensselaer v. Kidd*, 4 *Barb.* 18. Applied in *Hanlon v. Supervisors of Westchester*, 8 *Abb. Pr. N. S.* 269.
- *v. Niles*, 3 *Hill*, 162. Cited (Liability of connecting carriers as co-partners) in *Story on Partn.* 7 ed. § 58, a. Discussed in *Ang. on Carr.* § 586, 5 ed.
- Mohawk Bank v. Atwater**, 2 *Paige*, 54. See *Clarkson v. Depeyster*. Applied (Effect of fraudulent conveyance, where grantee is not party to fraud) in *Rathbun v. Platner*, 18

- Barb.* 274; *Smart v. Haring*, 52 *How. Pr.* 507. Disting'd in *Dart v. Farmers' B'k of Bridgeport*, 27 *Barb.* 345. Dictum explained (Suing out execution, as condition precedent to maintaining creditor's action) in *McCullough v. Colby*, 5 *Bosw.* 496.
- *v. Broderick*, 10 *Wend.* 304. Aff'd in 13 *Id.* 133; s. c., 12 *N. Y. Com. L. Law. ed.* 321, with brief note; and 27 *Am. Dec.* 192, with citations of the case respecting time when check is to be presented for payment. See *Gough v. Staats*.
- *v. Corey*, 1 *Hill*, 513. See *Schepp v. Carpenter*. Explained and followed (Parting with value, that constitutes holder for value) in *Bank of the State of N. Y. v. Vanderhorst*, 32 *N. Y.* 553; which aff'd 1 *Robt.* 211, which see. Sustained in 5 *Ky. L. Rep.* & *J.* 412. Included with note in *Redf. & B. Lead. Cas. on B. of Exch.* 267.
- Mohawk Bridge Co. v. Utica & Schenectady R. R. Co.**, 6 *Paige*, 554. Quoted and explained (Injunction against nuisance) in 1 *High on Inj.* 2 ed. § 742, n. 4.
- Mohl v. Von Der Wulbeke**, 2 *Lans.* 267. Approved as to last point, and appeal dismissed, in 46 *N. Y.* 539.
- Moir v. Brown**, 14 *Barb.* 39. See *Wilkes v. Ferris*. Disting'd (Effect of omission of annex schedule to assignment for creditors) in *Hegeman v. Hegeman*, 8 *Daly*, 1, 8, in case of failure to specify certain property in schedule. Explained in *Burrill on Assign.* § 139, 4 ed. Commented on (Delivery) in *Id.* § 260, n. 1. Discussed (Terms of sale) in *Id.* § 224. Collated with other cases in *Bishop on Assign.* § 211.
- Mojarrietta v. Saeuz**, 80 *N. Y.* 548. Applied (Jurisdiction to grant attachment) in *Blossom v. Estes*, 84 *Id.* 614, 618.
- Moke, Matter of**, 2 *Redf.* 429. Modified in *Moke v. Norrie*, 14 *Hun*, 128.
- Molony v. Dows**, 8 *Abb. Pr.* 316. Disting'd (Jurisdiction of action for personal injury) in dissenting opinion of *BRADY, J.*, in *Trubee v. Alden*, 6 *Hun*, 75, 78. Said in *Dewitt v. Buchanan*, 54 *Barb.* 32, not to be regarded as authority in Supreme Court, and said to overlook U. S. Const. Art. IV. § 2; *Dewitt v. Buchanan* being followed in preference to *Malone v. Dows* in *Newman v. Goddard*, 3 *Hun*, 71. See *Farley v. De Waters*, 2 *Daly*, 192.
- Monarque v. Monarque**, 19 *Hun*, 332. Rev'd in 80 *N. Y.* 320; s. c., 8 *Abb. N. C.* 102; 1 *Am. Prob. R.* 494, with note. See *Savage v. Burnham*. Decision in 80 *N. Y.* disting'd (Protection of contingent interests by decree in partition) in *Rockwell v. Decker*, 5 *Civ. Pro. R. (Broune)* 62. Compare *Code Civ. Pro.* §§ 1557, 1542, 1538, 1540. Applied (Gift of income to four persons for life, equivalent to devise for life of one-fourth the property in severalty) in *Dickie v. Van Vleck*, 5 *Redf.* 284, 296.
- *v. Requa*, 53 *How. Pr.* 438. Overruled in subsequent proceeding in *Monarque v. Monarque*, 80 *N. Y.* 320.
- Monerief v. Ely**, 19 *Wend.* 405. Disting'd with *Birdsall v. Edgerton*, 25 *Id.* 619 (Liability of putative father of bastard for its support) in *Todd v. Weber*, 95 *N. Y.* 181. Cited in *Good v. Towns*, 56 *Vt.* 410; s. c., 48 *Am. R.* 799, as stating the result of the cases, both English and American. Followed in *Simmons v. Bulb*, 21 *Ala.* 501; s. c., 56 *Am. Dec.* 257.
- *v. Monerief*, 10 *Abb. Pr.* 315. Opposed (Appeal from order granting alimony) in *Leslie v. Leslie*, 6 *Abb. Pr. N. S.* 193.
- *v. Ross*, 50 *N. Y.* 431. Applied (Right to income and profits of real estate directed to be sold by will) in *Betts v. Betts*, 4 *Abb. N. C.* 317, 417; *Kearney v. Missionary Socy. of St. Paul*, 10 *Id.* 274, 278. Followed in *Shumway v. Harman*, 4 *Hun*, 411.
- *v. Ward*. See *Brittin v. Wilder*.
- Monell v. Burns**. See *McMillan v. Vanderlip*.
- *v. Colden*, 13 *Johns.* 395; s. c., 7 *Am. Dec.* 390. Approved (Action for deceit) in *Whitney v. Allaire*, 1 *N. Y.* 305, 308, 314. Followed in *Brown v. Castles*, 11 *Cush. (Mass.)* 350. Cited as authority with *Calver v. Avery*, 7 *Wend.* 380, in *Gwinther v. Gerding*, 3 *Heul. (Tenn.)* 197.
- *v. Lawrence*, 12 *Johns.* 521. Dictum overruled (Constructive notice of decrees in chancery) in *Holbrook v. N. J. Zinc Co.*, 57 *N. Y.* 616, 628.
- *v. Monell*, 5 *Johns. Ch.* 283; s. c., 9 *Am. Dec.* 298. See *Bates v. Underhill*. See cases collected (Liability for acts of co-trustee) in 15 *Am. L. Rev.* 175. Followed and approved in *Deaderick v. Cantrell*, 10 *Yerg. (Tenn.)* 263; s. c., 31 *Am. Dec.* 576, 578, with note. Followed in *Johnson v. Johnson*, 2 *Hill Ch. (So. Car.)* 277; s. c., 29 *Am. Dec.* 72, 84, with note. Discussed in *Burrill on Assign.* § 463, 4 ed.
- *v. Northern Cent. R. R. Co.*, 67 *Barb.* 531. Aff'd in 16 *Hun*, 585.
- Mongeon v. People**, 2 *Sup'm. Ct. (T. & C.)* 128. Aff'd, but overruled in 55 *N. Y.* 613.
- Monnell v. Weller**, 2 *Johns.* 8. Explained and limited (Conclusiveness of justice's judgment given without costs) in *Blum v. Hartman*, 3 *Daly*, 47.
- Monnot v. Ibert**, 33 *Barb.* 24. Cited as a prevailing authority (Limit of extent of security, in case of mortgage for future advances) in *Jones on Chat. M.* § 96, n.
- Monroe v. Douglas**, 4 *Sandf. Ch.* 126. Aff'd in 5 *N. Y.* 447. See *Cummings v. Banks*. Decision in 4 *Sandf. Ch.* approved with *Cummings v. Banks*, 2 *Barb.* 601 (Conclusiveness of foreign judgment) in *Lazier v. Westcott*, 26 *N. Y.* 146. Cited in 2 *Par. on Contr.* 609, n. y, as a case in which the whole doctrine is examined with great ability. Referred to in *Waples Proc. in Rem.* § 111, as clearly stating the doctrine (Conclusiveness of a decree in proceedings in rem). See cases collected in 6 *Am. L. Reg. N. S.* 4.
- *v. Hoff*, 5 *Den.* 360. Dicta herein and



- in *Porter v. Talcott*, 1 *Cow.* 383, disregarded (Effect of note or bill taken for debt) in *Noel v. Murray*, 1 *Duer*, 885, 890. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 300.
- **v. Monroe.** See *Carter v. Werner*; *Simmons v. Sherman*.
- **v. Upton**, 6 *Lans.* 255. Aff'd in 50 *N. Y.* 579. Decision in *Id.* disting'd with *Clark v. Rowling*, 3 *Id.* 216 (Discharge in bankruptcy, when bar to action on judgment) in *Revere Copper Co. v. Dimock*, 90 *Id.* 33.
- Monroe Savings Bank v. City of Rochester**, 37 *N. Y.* 365. Cited with other authorities, State and Federal (State tax on Federal operations) in 1 *Kent Com.* 429, n. 1, Holmes ed.
- Montejo v. Owen**, 5 *Abb. N. C.* 110; s. c., 56 *How. Pr.* 202. Compare (Equitable defenses not available in common law action) *Kirk v. Hamilton*, 102 *U. S.* 68.
- Monterey, &c. R. R. Co. v. Chamberlain**, 32 *N. Y.* 659. Followed in another similar case nearly identical in name in 33 *N. Y.* 46.
- Montgomery v. City of Rochester**, 4 *Weekly Dig.* 146. Fully reported under its proper title, *City of Rochester v. Montgomery*, 9 *Hun*, 394, and aff'd in 72 *N. Y.* 65.
- **v. Ivers**, 17 *Johns.* 83. Explained (Stat-ing an account) in 2 *Chitty on Contr.* 962, n. *titl*, 11 *Am. ed.*
- **v. Miller**, 3 *Redf.* 154. Aff'd in effect in *Miller v. Montgomery*, 78 *N. Y.* 282.
- Montgomery County B'k v. Albany City B'k**, 8 *Barb.* 896. Rev'd in 7 *N. Y.* 459. See *Allen v. Merchants' B'k*. Decision in 7 *N. Y.* approved (Liability of bank receiving notes, &c., for collection, for default of its agents and correspondents) in *Commercial B'k of Penn. v. Union B'k of N. Y.*, 11 *N. Y.* 203; *Reeves v. State Bank*, 8 *Ohio (N. S.)* 465. Cited as establishing the doctrine, in *Exchange Nat. B'k v. Third Nat. B'k*, 112 *U. S.* 276, 282. See to the contrary, citing many cases, *Guelick v. Nat. State Bank of Burlington*, 56 *Iowa*, 436. Approved in 12 *Cent. L. J.* 151. Disting'd (Title to paper deposited with bank) in *Metropolitan Nat. B'k v. Loyd*, 25 *Hun*, 101, 104.
- Montrose v. Clark**, 2 *Sandf.* 115. Collated with other cases (Consideration for negotiable papers) in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 423.
- Moody v. Andrews**, 39 *Super. Ct. (J. & S.)* 802. Aff'd, it seems, in 64 *N. Y.* 641, but without opinion.
- **v. Baker**, 5 *Cow.* 351. Relied on (When misrepresentations are actionable) in *Paull v. Halferty*, 63 *Pa. St.* 46; s. c., 3 *Am. R.* 518. Collated with other cases (Special damages for slander) in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 120.
- **v. Buck**: See *Wilson v. Reed*.
- **v. Leverich**, 4 *Daly*, 401. See *Howard v. Daly*. Applied (Damages in action by servant for wrongful discharge) in *Everson v. Powers*, 60 *How. Pr.* 166. Included in *Sedg. Cas. on Dam.* 407. Explained (Former judgment, as bar to recovery of compensation) in *Perry v. Dickerson*, 7 *Abb. N. C.* 466, 471.
- **v. Mayor, &c.**, 34 *How. Pr.* 288; s. c., more fully, 43 *Barb.* 282.
- **v. Osgood**, 50 *Barb.* 628. Subsequent decision in 60 *Id.* 644; and that aff'd in 54 *N. Y.* 488. Decision in 50 *Barb.* applied (Damages in action for personal injury) in *Drinkwater v. Dinsmore*, 80 *N. Y.* 390, 393. Decision in 54 *Id.* applied (Right to decline to give further instructions to jury) in *People v. O'Connell*, 62 *How. Pr.* 436, 444.
- **v. Payne**, 2 *Johns. Ch.* 548. Compare (Restraining levy of execution on partnership property) *Turner v. Smith*, 1 *Abb. Pr. N. S.* 307; *Cropper v. Coburn*, 2 *Curt. Ct.* 465. Criticised and disapproved in *Story on Partn.* 7 ed. § 264, n. Quoted, and cases cited, in 2 *High. on Inf.* 2 ed. § 1334, n. 1.
- **v. Supervisors of Niagara**, 46 *Barb.* 659. Aff'd, as *Ely v. Supervisors, &c.*, in 36 *N. Y.* 297. Decision in 46 *Barb.* explained and approved (Nuisance consisting in unlawful use of structure, does not justify its destruction) in *Chenango Bridge Co. v. Paige*, 83 *N. Y.* 178, 189. Both decisions approved and followed in *Brightman v. Inhabitants of Bristol*, 65 *Me.* 426; s. c., 20 *Am. R.* 711, 714, 716; *Meeker v. Van Rensselaer*, 15 *Wend.* 397, being questioned.
- **v. Townsend**, 3 *Abb. Pr.* 375. See *Freligh v. Brink*; *Lanning v. Carpenter*. Approved with *Stebbins v. Meth. Epis. Church*, 12 *How. Pr.* 410; *Gandal v. Finn*, 13 *Id.* 418; *Boekman v. Kirk*, 15 *Id.* 228; *Freligh v. Brink*, 16 *Id.* 272; *Davies v. Morris*, 21 *Barb.* 152 (Sufficiency of statement in confession of judgment) approved in *Clafin v. Sanger*, 31 *Barb.* 36.
- Mooers v. Allen**, 2 *Wend.* 247. Disting'd (Single and double or treble damages under same count) in *Hitchcock v. Pratt*, 51 *Mich.* 271.
- **v. Smedley**, 6 *Johns. Ch.* 28. See *Hartwell v. Armstrong*. Applied (Action of supervisors, when not subject to review) in *Brennan v. Mayor, &c. of N. Y.*, 8 *Daly*, 426, 429. Followed (Equitable relief against illegal tax) in *Killbourne v. St. John*, 59 *N. Y.* 21, 25. Quoted in 2 *High on Inf.* 2 ed. § 1311, n. 2.
- **v. Wait**, 3 *Wend.* 104; s. c., 20 *Am. Dec.* 667, with note. Disting'd (Right to maintain trover, &c. for what has been severed from realty) in *American Union Tel. Co. v. Middleton*, 80 *N. Y.* 408, 412. Followed in *Harlan v. Harlan*, 15 *Pa. St.* 507; s. c., 53 *Am. Dec.* 612, 616, with note.
- **v. White**, 6 *Johns. Ct.* 360. See *Johnson v. Beardslee*. Applied (Title to land in case of alienism) in *Ettenheimer v. Heffer-*

- nan, 66 *Barb.* 379, notwithstanding Jackson v. Adams, 7 *Wend.* 367. Cited with approval with Jackson v. Beach, 1 *Johns. Cas.* 399; Johnson v. Hart, 3 *Id.* 322, in Sands v. Lynham, 27 *Gratt. (Va.)* 291; s. c., 21 *Am. R.* 348. Cited as clearly stating the rule in Crane v. Reeder, 21 *Mich.* 24; s. c., 4 *Am. R.* 430, 448. Followed (Effect of admission by executor, &c.) in Osgood v. Manhattan Co., 3 *Cow.* 622. Disting'd in Bloodgood v. Bruen, 4 *Sandf.* 440. Cited as in point, Johnson v. Beardslee, 15 *Johns.* 4; Martin v. Williams, 17 *Id.* 330; being disting'd in Peck v. Botsford, 7 *Conn.* 172; s. c., 18 *Am. Dec.* 92-97, with note. Followed in Steele v. Steele's Adm'r, 64 *Ala.* 438; s. c., 38 *Am. R.* 15, 19. Discussed in *Ang. on Limit.* § 263, 6 ed. Applied (Right of judge to act or seek relief in court of which he is member) in People v. Edmunds, 15 *Barb.* 531; Matter of Leefer, 2 *Barb. Ch.* 39. Approved (Time of application for sale of lands of deceased debtor) in Slocum v. English, 62 *N. Y.* 497. Applied in Gilchrist v. Rea, 9 *Paige*, 73. Examined with other cases, in Liddel v. McVickar, 6 *Ilalst. (N. J.)* 44; s. c., 19 *Am. Dec.* 369, 381. Applied (Order for sale of real estate, when not to be impeached collaterally) in Wyman v. Campbell, 6 *Port. (Ala.)* 219; s. c., 31 *Am. Dec.* 677, 688. Disting'd (Effect of codicil as republication of will) in Matter of Tonnele, 5 *N. Y. Leg. Obs.* 259. Cited as authority with Van Cortlandt v. Kip, 1 *Hill*, 593, in Harvey v. Chouteau, 14 *Mo.* 587; s. c., 55 *Am. Dec.* 120, with note collating cases.
- Mooney v. Elder**, 56 *N. Y.* 238. See Knapp v. Wallace. Discussed (Verbal contract, how far valid) in *Broune on Stat. of Frauds*, § 135, a, 4 ed. Cited at length (When broker has earned his commissions) in *Whart. Com. on Ag.* § 328; Briggs v. Royd, 56 *N. Y.* 289, being also cited in *Id.* n., and Redfield v. Tegg, 38 *N. Y.* 212, in § 336, n.
- **v. Hudson River R. R. Co.**, 5 *Robt.* 548. Further decision in 1 *Sweeny*, 325. See Button v. Hudson River R. R. Co.
- Moore, Matter of**, 8 *Hun.* 513. Appeal dismissed in 67 *N. Y.* 555. Decision in 8 *Hun* followed (Effect of assessment, as against subsequent purchaser of property) in Matter of Conley, 22 *Id.* 603. Compare Matter of Gantz, 85 *N. Y.* 536, 538.
- Moore v. Brink**, 6 *Sup'm. Ct. (T. & C.)* 22. See numerous cases cited (Voluntary associations) in 4 *Abb. N. C.* 308, n.
- **v. Burrows**, 34 *Barb.* 173. Followed (Contract for sale of lands is personal estate) in Adams v. Green, 34 *Barb.* 179. Cited as authority with Clark v. Hall, 7 *Paige*, 382 (Lien of vendor of real estate, who has executed only a bond to convey) in Stevens v. Chadwick, 10 *Kans.* 406; s. c., 15 *Am. R.* 348.
- **v. Cable**, 1 *Johns. Ch.* 385. See to the contrary (Right of mortgagee in possession to commissions) Green v. Lamb, 24 *Hun.* 87, 89. Approved (Right of mortgagee to allowance for improvements) in *Thomas on Mort.* 83, confirmed by Mickles v. Dillaye, 17 *N. Y.* 80.
- **v. Cross**, 23 *Barb.* 534. Aff'd in 19 *N. Y.* 227. See Hauck v. Hund; Herrick v. Carman. Decision in 19 *N. Y.* followed (Liability of one indorsing note to give maker credit with payee) in Luft v. Graham, 13 *Abb. Pr. N. S.* 175, 178; Haviland v. Haviland, 14 *Hun.* 627; Meyer v. Hibsher, 47 *N. Y.* 270; Clothier v. Adriance, 51 *Id.* 325. Explained and head-note criticised in Lester v. Paine, 39 *Barb.* 619. Explained in Phelps v. Vischer, 50 *N. Y.* 73. See note to Cromwell v. Hewitt, 40 *Id.* 492. Disting'd (Parol evidence to vary contract of indorsement) in Lewis v. Jones, 7 *Bosw.* 371. Applied in Coulter v. Richmond, 59 *N. Y.* 481; Burkhalter v. Pratt, 1 *City Ct.* 22. Explained and applied (Sufficiency of complaint against indorser) in Woodruff v. Leonard, 1 *Hun.* 633, which was disting'd in Lynch v. Levy, 11 *Id.* 146, where Moore v. Cross was applied. Collated with Bacon v. Burnham, 37 *N. Y.* 616; Meyer v. Hibsher, 47 *Id.* 265; Phelps v. Vischer, 50 *Id.* 69; Clothier v. Adriance, 51 *Id.* 322; Griswold v. Slocum, 10 *Barb.* 402; Richards v. Warring, 39 *Id.* 42; Cromwell v. Hewitt, 40 *N. Y.* 491 (Effect of indorsement of note by stranger thereto) in 27 *Am. R.* 580, n. Referred to as a leading case in 3 *Am. Dec.* 572, n., collating other cases. Included in 1 *Ames Cas. on B. & N.* 264.
- **v. Des Arts**, 2 *Barb. Ch.* 636. Aff'd in 1 *N. Y.* 359.
- **v. Eastman**, 1 *Hun.* 578. Applied (Infant's liability for tort) in Hewitt v. Warren, 10 *Id.* 560, 563.
- **v. Evans**, 14 *Barb.* 524. See Cole v. Goodwin; Welles v. N. Y. Central R. R. Co. Examined with other cases (Right of carrier to limit liability) in Railroad Co. v. Lockwood, 17 *Wall.* 357, 364. Commented on in *Ang. on Carr.* § 239a, 5 ed. Denied as against authority (Burden of proof on owner of goods to prove want of care in carrier) in Indianapolis & Cincinnati R. R. Co. v. Cox, 29 *Ind.* 360.
- **v. Fox**, 10 *Johns.* 244; s. c., 6 *Am. Dec.* 338. Followed with Crookshank v. Burrell, 18 *Johns.* 58 (Statute of frauds as affecting agreement to be performed on contingency that may not happen within one year) in Gadsden v. Lance, 1 *McMull Eq. (So. Car.)* 87; s. c., 37 *Am. Dec.* 548. Cited in 3 *Pars. on Contr.* 36, n. g.
- **v. Gardner**, 5 *Hov. Pr.* 243. Applied (Change of venue, on ground of convenience of witnesses) in Gifford v. Town of Gravesend, 8 *Abb. N. C.* 246, 248.
- **v. Goedel**, 7 *Bosw.* 591. Aff'd in 34 *N. Y.* 527. See Casey v. Mann; Losee v. Buchanan; Willy v. Mulledy.
- **v. Hamilton**, 48 *Barb.* 120. Aff'd in 44 *N. Y.* 666. Decision in *Id.* disting'd and

- explained (Effect of revival of action) in *Crogin v. Brooklyn Cross-town R. R. Co.*, 83 *Id.* 595, 598.
- *v. Hegeman*, 6 *Hun.* 290. Further proceeding in 72 *N. Y.* 376. See *Leggett v. Perkins*.
- *v. Hitchcock*, 4 *Wend.* 292; s. c., 10 *N. Y. Com. L. Law. ed.* 613, with brief note on bailee's lien. Explained (*Mechanic's lien*) in 3 *Pars. on Contr.* 254, n. p.
- *v. Hudson River R. R. Co.*, 12 *Barb.* 156. Doctrine discussed (*Contracts payable in depreciated paper*) in 4 *Am. L. Reg. N. S.* 349.
- *v. Jackson*, 4 *Wend.* 58. Explained (*Disabilities with respect to real property*) in *Ang. on Limit.* § 483, 6 ed.
- *v. Littell*, 40 *Barb.* 488; s. c., 3 *Am. R. Reg. N. S.* 144, with note. Further decision in 41 *N. Y.* 66. Other decisions affecting estate here involved, as *House v. Jackson*, 50 *N. Y.* 161; *Jackson v. Sheridan*, *Id.* 660; *Jackson v. Littell*, 56 *Id.* 108; *House v. McCormick*, 57 *Id.* 310. Decision in 41 *Id.* followed (*Creation of vested interest by grant, &c. to one and his heirs*) in *Chism v. Keith*, 1 *Hun.* 590; *Drake v. Lawrence*, 19 *Id.* 114. Disting'd in *Livingston v. Greene*, 52 *N. Y.* 123, which aff'd 6 *Lans.* 55, which see; *Smith v. Scholtz*, 68 *N. Y.* 61. Explained in *Hennessy v. Patterson*, 85 *Id.* 91, 104. Compared with other cases in 2 *Jarm. on Wills*, *Rand. & T. ed.* 617, n. 17. Commented on in 2 *Washb. on Real Prop.* 4 ed. 550, n.
- *v. Lyons*, 25 *Wend.* 119. Followed (*Words of survivorship in will, to what period referred*) in *Meyer's Will*, 6 *Abb. N. C.* 442; *Hopkins v. Hopkins*, 1 *Hun.* 355; *Weed v. Aldrich*, 2 *Id.* 534; *Livingston v. Greene*, 52 *N. Y.* 123; *Embury v. Sheldon*, 68 *Id.* 235; *Johnson v. Valentine*, 4 *Sandf.* 44. Disting'd in *Kelso v. Lorillard*, 8 *Daly*, 302, which was aff'd in 85 *N. Y.* 181, which see. Cited as according with the weight of authority, in *Branson v. Hill*, 31 *Id.* 181; s. c., 1 *Am. R.* 40, 43. Explained in 4 *Kent Com.* 202, n. a. Applied (*Remainder, when vested*) in *Williamson v. Field*, 2 *Sandf. Ch.* 551. Applied to vesting of legacies in *McKinstry v. Sanders*, 2 *Sup'm. Ct. (T. & C.)* 186.
- *v. McCarthy*, 4 *Hun.* 261; s. c., reported in 6 *Sup'm. Ct. (T. & C.)* 451.
- *v. Mansert*, 5 *Lans.* 173. Aff'd in 49 *N. Y.* 332.
- *v. Mayor, &c. of N. Y.*, 4 *Sandf.* 456. Aff'd in 8 *N. Y.* 110; s. c., 59 *Am. Dec.* 473, with notes on various points. See *Doughty v. Hope*. Decision in 8 *N. Y.* limited (*Inchoate right of dower, when cut off*) in *Simar v. Canaday*, 53 *Id.* 298, 303. As to how far limited in *Simar v. Canaday*, see *Doty v. Baker*, 11 *Hun.* 224. Commented on and collated with other cases in *Sharsw. & B. Cas. on Real Prop.* 333.
- *v. —*, 4 *Hun.* 545. Rev'd in 73 *N. Y.* 288; s. c., 29 *Am. R.* 134.
- *v. Meacham*, 10 *N. Y.* 207. Applied (*Request to charge, when insufficient*) in *Van Akin v. Caler*, 48 *Barb.* 58, 61. Explained (*Account-book entry as evidence*) in *Peck v. Von Keller*, 15 *Hun.* 471. Disting'd (*Evidence of extrinsic facts to explain contract*) in *Levy v. Burgess*, 38 *Super. Ct. (J. & S.)* 438.
- *v. Metropolitan Nat. Bank*, 55 *N. Y.* 41. See *Bush v. Lathrop*; *Kortright v. Buffalo Commercial B'k*; *McNeil v. Tenth Nat. B'k*; *N. Y. & New Haven R. R. Co. v. Schuyler*. Followed (*Estoppel to assert title to non-negotiable chose in action*) in *Zulick v. Markham*, 6 *Daly*, 133. Applied in *First Nat. B'k of Corry v. Stiles*, 22 *Hun.* 347; *Armour v. Mich. Cent. R. R. Co.*, 65 *N. Y.* 123. Disting'd in *Trustees of Union Coll. v. Wheeler*, 61 *Id.* 114; *Greene v. Warnick*, 64 *Id.* 224; *Davis v. Bechstein*, 69 *Id.* 442; *Hamilton v. Kingsbury*, 17 *Blatchf. C. Ct.* 460, 465. Explained in *International Bank v. German Bank*, 71 *Mo.* 183; s. c., 36 *Am. R.* 468, 470, 480. Opposed in *Pomeroy on Rem.* § 161, n. 1; 2 *Pomeroy on Eq. Jur.* 165, 166, n. Compare (*Presumption of payment of consideration named in instrument*) in *Wood v. McClughan*, 2 *Hun.* 150, and reporter's note thereto.
- *v. Moore*, 4 *Sandf. Ch.* 37. Aff'd in 5 *N. Y.* 256. Decision in *Id.* followed (*Trustee, &c. not to purchase trust property*) in *Terwilliger v. Brown*, 59 *Barb.* 9, 13.
- *v. —*, 2 *Bradf.* 261. See *Rutherford v. Rutherford*. Disting'd (*Sufficient publication of will in Neugent v. Neugent*, 2 *Redf.* 369, 372. Followed in *Burk's Will*, *Id.* 239, 242. Included with note in *Redf. Lead. Cas. on Wills*, 181.
- *v. —*, 21 *How. Pr.* 211. Applied (*Implied promise to pay for services*) in *Ross v. Ross*, 6 *Hun.* 182, 185.
- *v. —*, 47 *N. Y.* 467. See *Peeple v. Gates*. Applied (*Partition in equity*) in *Green v. Arnold*, 11 *R. I.* 364; s. c., 23 *Am. R.* 466, 472. Cited with other authorities (*State tax on Federal operations*) in 1 *Kent Com.* 429, n. 1, *Holmes' ed.* See (*Unstamped instruments as evidence*) 7 *Alb. L. J.* 49.
- *v. —*, 8 *Abb. N. C.* 171. See (*Remarriage after divorce*) *Green's Case*, 8 *Abb. N. C.* 450. See, also, *Brenner v. Brenner*, 48 *Ind.* 262. See *Code Civ. Pro.* § 1761.
- *v. Noble*, 53 *Barb.* 425. Referred to as overruling *Quintard v. Newton*, 5 *Robt.* 72 (*Sufficiency of complaint in action for deceit on sale of horse*) in *Pomeroy on Rem.* § 560, n. 2.
- *v. Paine*, 12 *Wend.* 123. Followed (*Surety who has been indemnified, when not discharged*) in *Chilton v. Robbins*, 4 *Ala.* 223; s. c., 37 *Am. Dec.* 741. Applied in *Smith v. Estate of Steele*, 25 *Verm.* 427; s. c., 60 *Am. Dec.* 276, with note.
- *v. People*, 53 *N. Y.* 639. Brief note of decision below in 7 *Alb. L. J.* 94.

- **v. Ryder**. See *Padgett v. Lawrence*; *Stalker v. McDonald*.
- **v. Shaw**, 15 *Hun*, 428. Appeal dismissed in 77 *N. Y.* 512.
- **v. Sloan**, 50 *Barb.* 442. Disapproved (Sufficiency of record of assignment of mortgage) in *Viele v. Judson*, 82 *N. Y.* 22, 38.
- **v. Tracy**, 7 *Wend.* 229. Disting'd (Fraudulent conduct in transfer of property, when ground for action) in *Moody v. Burion*, 27 *Me.* 427; s. c., 46 *Am. Dec.* 612, 616.
- **v. Westervelt**, 1 *Posw.* 357. Rev'd in 21 *N. Y.* 103. Further proceeding in 9 *Bosw.* 558, which was aff'd in 27 *N. Y.* 234; s. c., less fully, 25 *How. Pr.* 277.
- **v. Willett**, 35 *Barb.* 663. Disting'd (Effect of statutory transfer of personal property, on title to vessel at sea) in *Kelly v. Crapo*, 45 *N. Y.* 86. Cited as authority respecting personal property generally, in *Johnson v. Sharp*, 31 *Ohio St.* 611; s. c., 27 *Am. R.* 529. Collated with other cases in *Bishop on Assign.* § 261.
- **v. Wood**, 19 *How. Pr.* 405. Followed (Remedy in case of too small verdict in one's own favor) in *Carpenter v. Besre*, 4 *Hun*, 509.
- **v. —**, 12 *Abb. Pr.* 393. Collated with other cases (Removal of fixtures upon expiration of lease) in *McAdam on Landl. & T.* 2 ed. §§ 102, 122, 247.
- Moore v. Lunt**, 13 *Abb. Pr. N. S.* 166. Rev'd in 1 *Hun*, 650; s. c., 4 *Sup'm. Ct. (T. & C.)* 154, and that aff'd, it seems, in 60 *N. Y.* 649, but without opinion. Decision in 4 *Sup'm. Ct. (T. & C.)* approved with *Brookman v. Hamill*, 43 *N. Y.* 554 (Remedy by State law for enforcement of lien on vessel) in *Re Petition of Ins. Co. of State of Pa., U. S. Dist. Ct. N. D. N. Y.* 21 *Fed. Rep.* 114.
- Mootrie v. Hunt**, 4 *Bradf.* 173. Approved (Appointment of special administrator) in *Crandall v. Shaw*, 2 *Redf.* 100, 105.
- Mora v. Sun Mut. Ins. Co.**, 13 *Abb. Pr.* 304; s. c., 22 *How. Pr.* 60. Disting'd (Right to precept for costs of demurrer) in *Henderson v. Jackson*, 2 *Sweeny*, 603.
- Moran v. Bogert**, 3 *Hun*, 603. Reported in full in 16 *Abb. Pr. N. S.* 303. Compare (Hearing before umpire) *Code Civ. Pro.* § 2367.
- **v. Chase**, 52 *N. Y.* 346. Followed (Expense of constructing sidewalk, as lien on premises of abutting owner) in *Kenney v. Apgar*, 93 *N. Y.* 539, 549. Explained (Personal judgment in proceeding to enforce mechanics' lien) in *Barroughs v. Fosteran*, 2 *Abb. N. C.* 333, 341.
- **v. Darrin**, 1 *Hun*, 490; mem. s. c., 3 *Sup'm. Ct. (T. & C.)* 761. Aff'd, it seems, in 60 *N. Y.* 637, but without opinion.
- **v. Dawes**, *Hopk.* 365; s. c., 14 *Am. Dec.* 550. Subsequent decision in 4 *Cow.* 412. Decision in *Id.* followed (Proof of loss of service in action for seduction) in *Davidson v. Abbott*, 52 *Vt.* 573. Criticised (Recovery of medical expenses incidental to loss of service) in 8 *South. L. Rev. N. S.* 85.
- **v. McClearn**, 60 *Barb.* 388; s. c., 4 *Lans.* 288; 41 *How. Pr.* 289. Further decision on the merits in 63 *Barb.* 185. Decision in *Id.* disting'd (Liability for drainage) in *Gould v. Booth*, 66 *N. Y.* 65.
- **v. —**, 43 *How. Pr.* 77. See (Notice of appeal from justice's decision) *Code Civ. Pro.* 1881, § 3070, n.
- **v. McLarty**, 11 *Hun*, 66. Aff'd in 75 *N. Y.* 25.
- **v. Morrissey**, 28 *How. Pr.* 100; s. c., more fully, 18 *Abb. Pr.* 131.
- **v. N. Y. Central, &c. R. R. Co.**, 3 *Sup'm. Ct. (T. & C.)* 770; s. c., more fully, 67 *Barb.* 96.
- Morange v. Morris**, 32 *Barb.* 650; s. c., 12 *Abb. Pr.* 164; 20 *How. Pr.* 257. Further decision, as it seems, in 34 *Barb.* 311, which was aff'd in 3 *Abb. Ct. App. Dec.* 314; s. c., 3 *Keyes*, 48; 32 *How. Pr.* 178. Decision in *Id.* approved and followed as a decisive and controlling authority (Necessity of tender of bond and mortgage by purchaser in contract for sale of real estate) in *Karker v. Haverly*, 50 *Barb.* 79, 84. Applied (Recovery of money paid on contract for sale of land) in *Hartley v. James*, 50 *N. Y.* 44. Disting'd in *Bigler v. Morgan*, 77 *Id.* 318. Questioned (Duty of vendor to have liens discharged at time of conveyance) in *Rinaldo v. Housmann*, 52 *How. Pr.* 191. Applied in *Wood v. Squires*, 1 *Hun*, 483. Shown in 49 *Am. Dec.* 531, n., to have been modified in later decisions; but see *Hinkley v. Smith*, 51 *N. Y.* 21.
- **v. Mudge**, 6 *Abb. Pr.* 243. Overruled (Liability of sureties on statutory bonds, whether several or joint) in *Wood v. Fisk*, 63 *N. Y.* 245. Disapproved in *Tannenbaum v. Cristalar*, 5 *Daly*, 141, 143.
- More v. Bennett**, 48 *Barb.* 229; s. c., 33 *How. Pr.* 177. Rev'd in 48 *N. Y.* 472.
- **v. Howland**, 4 *Den.* 264. See decision at circuit in 1 *Edm.* 371.
- **v. Smedburgh**, 8 *Paige*, 600. Aff'd in 26 *Wend.* 238.
- Morehouse v. Crilley**, 8 *How. Pr.* 431. Approved (Pleading in actions for statute penalties) in *Abbott v. N. Y. Central, &c. R. R. Co.*, 12 *Abb. Pr. N. S.* 465, 467.
- **v. Mathews**, 2 *N. Y.* 514. Explained (Opinions of witnesses) in *De Witt v. Barly*, 17 *Id.* 344. Disting'd in *Townsend v. Brundage*, 4 *Hun*, 264.
- **v. Yeager**, 38 *Super. Ct. (J. & S.)* 50. Other proceedings in 41 *Id.* 306, and 71 *N. Y.* 594.
- Morel v. Garrelly**, 16 *Abb. Pr.* 269. Explained and disting'd (Leave to amend answer, when refused) in *Hughes v. Heath*, 9 *Abb. Pr. N. S.* 275.
- Morewood v. Hollister**, 6 *N. Y.* 309. Collated with other cases (Petitioning creditors under two-thirds act) in *Bishop on Assign.* § 21.

- Morey v. Farmers' Loan & Trust Co.**, 18 *Barb.* 401. Rev'd in 14 *N. Y.* 302. Approved and applied (Presumption of payment of money due under sealed instrument) in *N. Y. Life Ins. & Co. v. Covert*, 3 *Abb. Ct. App. Dec.* 353. Followed in *Lawrence v. Ball*, 14 *N. Y.* 480. Disting'd in *Townshend v. Townshend*, 1 *Abb. N. C.* 86. Applied to presumption of payment of stock, in *Johnson v. Albany, & Co. R. R. Co.*, 5 *Lans.* 226, which was aff'd in 54 *N. Y.* 425, which see.
- **v. Medbury.** See *Morey v. Smith*.
- **v. Safe Deposit Co.**, 7 *Abb. Pr. N. S.* 199; s. c., 39 *How. Pr.* 124. Different proceeding from 84 *Super. Ct.* (2 *J. & S.*) 154.
- **v. Smith**, 4 *Weekly Dig.* 447. Reported as *Morey v. Medbury*, in 10 *Hun.* 645.
- **v. Town of Newfane**, 8 *Barb.* 640. See *Bartlett v. Crozier*; *Pack v. Mayor, & Co. of N. Y.* Explained (Municipal liability as to condition of highway) in *Davenport v. Ruckman*, 16 *Abb. Pr.* 346. Followed in *Hickok v. Trustees of Plattsburgh*, 15 *Barb.* 440; *Town of Fishkill v. Fishkill, & Co. Plank Road Co.*, 22 *Id.* 646; *Ensign v. Supervisors of Livingston*, 25 *Hun.* 20, 22. Approved in *People v. Auditors of Esopus*, 74 *N. Y.* 316. Examined with *Hickok v. Trustees of Plattsburgh*, 15 *Barb.* 427, in *Commissioners v. Martin*, 4 *Mich.* 561. Compare *Dean v. New Milford Township*, 5 *Watts & S. (Pa.)* 542; *Henly v. Mayor, & Co.*, 5 *Bing.* 91. Applied (Void claim, as consideration for promise) in *Sherman v. Barnard*, 19 *Barb.* 303.
- **v. Webb**, 65 *Barb.* 22. Aff'd in 58 *N. Y.* 350.
- Morford v. Farmers' Bank of Saratoga Co.**, 26 *Barb.* 568. Compare (Liability of corporation on accommodation indorsement) in *Mechanics' Banking Association v. N. Y. & Saugerties White Lead Co.*, 23 *How. Pr.* 74.
- Morgan, Matter of**, 63 *Barb.* 621. Aff'd, it seems, in 66 *N. Y.* 618, but without opinion. Decision in 63 *Barb.* disting'd (Removal of trustee) in *Blake v. Sands*, 3 *Redf.* 173.
- , 7 *Paige*, 236. Followed (Unsoundness of mind as distinguished from lunacy) in *Matter of Shaul*, 40 *How. Pr.* 204.
- , 56 *N. Y.* 629. Explained (Accounting of assignee) in 1 *Abb. N. C.* 177, *n.*
- Morgan v. Avery**, 2 *Code R.* 91. Aff'd in 2 *Id.* 121; s. c., 7 *Barb.* 656, but without opinion.
- **v. Bank of State of N. Y.**, 1 *Duer*, 494. Aff'd in 11 *N. Y.* 404. See *Graves v. American Exch. B'k.* Decision in 11 *N. Y.* disting'd (Effect of forged endorsement) in *Susquehanna Val. Nat. B'k v. Loomis*, 85 *N. Y.* 207, 212.
- **v. Bruce**, 1 *Code R. N. S.* 364. Approved and followed (Nature of motion for new trial) in *Molony v. Dows*, 9 *Abb. Pr.* 86, 88.
- **v. Crocker**, 3 *Sup'm. Ct. (T. & C.)* 301. Rev'd in 62 *N. Y.* 626.
- **v. Dyer.** See *Philips v. Hawley*.
- **v. Gregg**, 46 *Barb.* 183. Referred to in 54 *Am. Dec.* 591, *n.* as going farther than the majority of cases (Tenancy in common in case of admixture of goods of equal quality and value).
- **v. Groff**, 5 *Den.* 364. Overruled in further decision in 4 *Barb.* 524. Decision in *Id.* applied (Recovery of money paid on illegal contract) in *Spring Co. v. Knowlton*, 103 *N. S.* 49, 59.
- **v. Hannas.** See *Morgan v. Morgan*.
- **v. Holladay**, 38 *Super. Ct. (J. & S.)* 53; s. c., 48 *How. Pr.* 86. Aff'd in 38 *Super. Ct. (J. & S.)* 117.
- **v. King**, 18 *Barb.* 277. Decision on the merits in 30 *Barb.* 9, which was rev'd in 35 *N. Y.* 454. See *Shaw v. Crawford*. Decision in 18 *Barb.* followed (Stream having capacity for floatage, when to be considered public) in *Shaw v. Oswego Iron Co.*, 10 *Oreg.* 371; s. c., 45 *Am. R.* 146. Disting'd and explained with *Browe v. Scofield*, 8 *Barb.* 239; *Shaw v. Crawford*, 10 *Johns.* 238; *Munson v. Hungerford*, 6 *Barb.* 265, in *Hubbard v. Bell*, 54 *Ill.* 110; s. c., 5 *Am. R.* 98, 105, with note collating cases. Decision in 35 *N. Y.* approved with *People v. Canal Appraisers*, 33 *Id.* 472 (Test of navigability) in *Weise v. Smith*, 3 *Oreg.* 445; s. c., 8 *Am. R.* 621. Collated with other cases in *Mills Thomps. on Highw.* 3 ed. 51. Decision in 30 *Barb.* collated with other cases, in 21 *Am. L. Reg. N. S.* 560, and recognized as a learned discussion of the rule (Adoption of the common law in this country). See (Exceptions) *Code Civ. Pro.* 1881, § 992, *n.*
- **v. Morgan**, 39 *Barb.* 20; s. c., 1 *Abb. Pr. N. S.* 40. Rev'd as *Morgan v. Hannas*, 49 *N. Y.* 667; s. c., more fully, 13 *Abb. Pr. N. S.* 361. See *Valentine v. Valentine*. Decision in 1 *Abb. Pr. N. S.* approved (Costs on appeal from surrogate) in *Gilman v. Redington*, 67 *Barb.* 321. Decision in 13 *Abb. Pr. N. S.* followed (Annual vests in accounts) in *Fisher v. Britton*, 2 *Redf.* 524. Applied (Compensation of trustee for personal services) in *Winn v. Crosby*, 52 *How. Pr.* 176. See cases cited in 20 *Am. L. Reg. N. S.* 264, *n.* See (Surrogate's power to direct as to infant's maintenance) *Code Civ. Pro.* 1881, § 2846, *n.*
- **v. N. Y. & Albany R. R. Co.**, 10 *Paige*, 290; s. c., 40 *Am. Dec.* 244, with note, containing citations on points decided, respecting insolvent corporations. Cited with *Sherman v. Buffalo, & Co. R. R. Co.*, 12 *How. Pr.* 136; *Hinds v. Canandaigua, & Co. R. R. Co.*, 10 *Id.* 487; *Courtois v. Harrison*, 12 *Id.* 359, to the *N. Y.* rule and contrasted with the general equity rule (Creditor's action, for whose benefit) in 10 *Am. L. Rev.* 293.
- **v. Quackenbush**, 22 *Barb.* 72. Quoted and collated with other cases (Canvasers of elections) in *Brightly Cas. on Elect.* 305. Compare (Injunction, where

- right depends on nature of action) *Code Civ. Pro.* § 603.
- **v. Schuyler**, 79 *N. Y.* 490; s. c., 35 *Am. R.* 543, with note. Cited (Right to use of firm name on dissolution of partnership) in *Story on Partn.* 7 ed. § 700, *n.*
- **v. Skiddy**, 36 *Super. Ct. (J. & S.)* 152. Aff'd in part, and rev'd in part, in 62 *N. Y.* 319.
- **v. Skidmore**, 55 *Barb.* 263. Aff'd in effect in 3 *Abb. N. C.* 92. Decision in 55 *Barb.* followed (Recovery of judgment against firm, when not bar to action against individual member for fraud) in *Goldberg v. Dougherty*, 39 *Super. Ct. (J. & S.)* 189.
- **Approved** (Rights of partnership creditors as to individual property) in *Davis v. Howell*, 6 *Stew. (N. J.)* 74, where Wilder v. Keeler, 3 *Paige*, 167, was recognized.
- **v. Smith**, 5 *Hun.* 220. Further decision in 7 *Id.* 244, which was aff'd in 70 *N. Y.* 537. With decision in *Id.* see (Composition by joint debtors) *Code Civ. Pro.* 1881, § 1942, *n.*
- **v. Van Ingen**, 2 *Johns.* 204. Cited (Notary's liability in protesting note) in 1 *Whart. Com. on Ev.* § 123, *n.*
- **v. Varick**, 8 *Wend.* 587. See *Jackson v. Stone*. Followed (Liability of disseisor or his tenant to disseisee for mesne profits, on restitution) in *Trubee v. Miller*, 48 *Conn.* 358. Disapproved in *Brothers v. Hurdle*, 10 *Ired. (N. C.)* 490; s. c., 51 *Am. Dec.* 400, 402, with note.
- **v. Whittaker**, 14 *Abb. Pr. N. S.* 127. Said, in 1 *Civ. Pro. R.* 84, *n.* to have been overruled (Examination before trial).
- Morgan's Sons & Co. v. Schwachofer**, 5 *Abb. N. C.* 265. Followed (What is imitation of trademark) in *Electro Silicon Co. v. Trask*, 59 *How. Pr.* 189, 192. Compare *Morgan Sons Co. v. Troxell*, 11 *Abb. N. C.* 86.
- **v. Troxell**, 57 *How. Pr.* 121. Aff'd in 23 *Hun.* 632; and that rev'd in 11 *Abb. N. C.* 86; s. c., 89 *N. Y.* 292. See *Messerole v. Tynberg*. Decision in 89 *N. Y.* disting'd (Infringement of trademark) in *MacKinnon Pen Co. v. Fountain Ink Co.*, 48 *Super. Ct. (J. & S.)* 442, as inapplicable to case of breach of covenant in restraint of trade.
- Moritz v. Peebles**, 4 *E. D. Smith*, 135. Applied (Liability to account as between partners) in *Marsh's Appeal*, 69 *Penn. St.* 80; s. c., 8 *Am. R.* 206, with note collating cases.
- Morningside Park Case**. See *Matter of Commissioners of Central Park*.
- Morrell v. Cawley**, 17 *Abb. Pr.* 76. Cited (Effect of admissions in sealed instrument executed by agent who has only parol authority) in 2 *Whart. Com. on Ev.* § 1124.
- **v. Dickey**, 1 *Johns. Ch.* 153. Followed (Authority of guardian appointed in another jurisdiction) in *Kraft v. Wickey*, 4 *Gill. & J. (Md.)* 332; s. c., 23 *Am. Dec.* 569, with note; *Curtis v. Smith*, 6 *Blatchf. C. Ct.* 537, 546. Cited in *Leonard v. Putnam*, 51 *N. H.* 247; s. c., 12 *Am. R.* 106. Criticised in 1 *Am. L. J.* 169.
- **v. Irving Fire Ins. Co.**, 33 *N. Y.* 429; s. c., 3 *Am. L. Reg. N. S.* 404, with note. Applied (Damages for failure to perform building contract) in *Kidd v. McCormick*, 83 *N. Y.* 391, 396.
- **v. Morrell**, 1 *Barb.* 318. Modified on further decision in 3 *Id.* 236. Decision; in 1 *Id.* commented on at length (Pleadings in actions for divorce) in *Mitchell v. Mitchell*, 61 *N. Y.* 398, 407. Decision in 3 *Barb.* quoted in 2 *Bish. on Mar. & D.* § 99, *n.* 7, 6 ed.
- Morris v. Badloug**, 16 *Hun.* 570. Rev'd in 78 *N. Y.* 543.
- **v. De Witt**, 5 *Wend.* 71. See *Johnson v. Hunt*. Disting'd (When property that has been levied on may be levied on again) in *First Nat. B'k of Oswego v. Dunj*, 29 *Hun.* 529.
- **v. Floyd**, 5 *Barb.* 130. See *Shufelt v. Shufelt*. Overruled (Right of one acquiring equity of redemption to set up usury in mortgage) in *Sands v. Church*, 6 *N. Y.* 347, 351.
- **v. Husson**, 4 *Sandf.* 93. Aff'd in 8 *N. Y.* 204. Decision in *Id.* doubted (When exceptions to referee's report may be filed) in *Edwards v. Cottrell*, 43 *Iowa*, 194, 203.
- **v. Keyes**, 1 *Hill*, 540. Cited (Registry of deed as evidence of authenticity of original) in 1 *Whart. Com. on Ev.* § 111.
- **v. Morange**, 38 *N. Y.* 172; s. c., more fully, 4 *Abb. Pr. N. S.* 451. Other proceeding in 17 *Abb. Pr.* 86; s. c., 26 *How. Pr.* 247, and that aff'd in 31 *Id.* 639. Decision in 17 *Abb. Pr.* disapproved (Amendment to perfect appeal) in *Zinsser v. Seiler*, 7 *Daly*, 464. See *Code Civ. Pro.* 1881, § 1303, *n.* With decision in 4 *Abb. Pr. N. S.* see (Judgment, when final) *Produce Bank v. Morton*, 1 *Abb. N. C.* 174.
- **v. Morris**, 25 *Hun.* 59. Abridg't s. c., 12 *Weekly Dig.* 551.
- **v. Mowatt**, 2 *Paige*, 586; s. c., 22 *Am. Dec.* 661, with note containing citations. Limited (Who to bear loss resulting from re-sale of premises sold on foreclosure) in *Raynor v. Selmes*, 52 *N. Y.* 579, 581.
- **v. People**, 3 *Den.* 381. See *People v. Collins*; *People v. Dean*. Disting'd (Discretion of auditing officer) in *Matter of Murphy*, 24 *Hun.* 592, 595.
- **v. —**, 1 *Park.* 441. Approved (Extent of power of review, on certiorari) in *Cases of Lynch and Burns*, 9 *Abb. N. C.* 69, 74.
- **v. —**, 2 *Sup'm. Ct. (T. & C.)* 219. Overruled (Discretion as to imposition of penalty for violation of excise law) in *Foot v. People*, 56 *N. Y.* 321.
- **v. Phelps**, 5 *Johns.* 49; s. c., 4 *Am. Dec.* 323. Explained (Rights of parties to action for covenant of seisin, as determined by condition of things at commencement of action) in *McCarty v. Leggett*, 3 *Hill*, 134. Explained and limited in *Westbrook v. McMillan*, 1 *Hill (So. Car.)* 317; s. c., 26 *Am.*

- Dec.* 187. Quoted and explained in 3 *Pars. on Contr.* 227, *n. r* and *s*. Included in *Sedgw. Cas. on Dama.* 28.
- *v. Rexford*, 18 *N. Y.* 557. See *Bank of Beloit v. Beale*; *Lloyd v. Brewster*. Explained and applied (Effect of disaffirmance of contract, as bar to action on contract) in *Kinney v. Kiernan*, 2 *Lans.* 494, which was *rev'd* in 49 *N. Y.* 168. Disting'd in *Witty v. Campbell*, 44 *Id.* 413; *White v. Whiting*, 8 *Daly*, 23.
- *v. Scott*, 21 *Wend.* 281. Compared with other cases (What will support action for malicious prosecution) in *Shaul v. Brown*, 28 *Iowa*, 37; *s. c.*, 4 *Am. R.* 151.
- *v. Third Avenue R. R. Co.*, 1 *Daly*, 202. Collated with other cases (Carrier's responsibility for baggage lost or left inadvertently in his charge) in *Thomps. on Carr. of Pass.* 521, *n. 3*.
- *v. Van Voast*, 19 *Wend.* 283. See (Limitation of action against officer) *Code Civ. Pro.* 1881, § 385, *n*.
- *v. Wadsworth*, 17 *Wend.* 103. Said in *Ontario Bank v. Schermerhorn*, 10 *Paige*, 109, to have been, though *aff'd* in *Ct.* of Errors by only a tie vote, yet approved by a majority of the court (Application of statute regarding nuisances). See *Moakeley v. Riggs*. Applied (Discretion of trial judge as to admission of proof) in *McCarney v. People*, 83 *N. Y.* 408, 415.
- *v. Whitcher*, 20 *N. Y.* 41. Approved (Effect of conveyance on executory contract in pursuance of which it was given) in *Davis v. Lottich*, 46 *Id.* 393, 398. Applied in *Smith v. Holbrook*, 82 *Id.* 562, 567.
- Morris Canal, &c. Banking Co. v. Townsend**, 24 *Barb.* 658. Cited as sustaining the doctrine (Exercise of power of eminent domain in favor of foreign corporations) in 2 *Add. on Torts*, 265, *n.* Wood's ed.
- Morris Canal Co. v. Emmett**, 9 *Paige*, 168; *s. c.*, 37 *Am. Dec.* 388. See *Mann v. Pearson*. Approved (Relief to purchaser of land against fraud or misrepresentation) in *Noble v. Googins*, 99 *Mass.* 235; *Board of Comm'rs v. Younger*, 29 *Cal.* 179.
- Morrison v. Atwell**, 9 *Bosw.* 503. Explained (Preferences in assignment for benefit of creditors) in *Burrill on Assign.* § 211, *n. 1*, 4 ed.
- *v. Brand*, 5 *Daly*, 40. *Aff'd*, it seems, in 56 *N. Y.* 657, but without opinion.
- *v. Erie R'y Co.*, 56 *N. Y.* 302. See *Harty v. Central R. R. Co.* Followed (Contributory negligence in one alighting from car) in *Burrows v. Erie R'y Co.*, 63 *N. Y.* 560. Applied to one getting on car, in *Halpin v. Third Ave. R. R. Co.*, 40 *Super. Ct. (J. & S.)* 182, and see *Id.* 175, *n*. Collated with *Filer v. N. Y. Central R. R. Co.*, 49 *N. Y.* 47, and other cases for and against the doctrine in *Cumberland Valley R. Co. v. Mangans*, 61 *Md.* 53; *s. c.*, 29 *Abb. L. J.* 422, with note citing authorities. See other cases collated (Contributory negligence of parent, &c.) in 6 *Abb. N. C.* 115, *n*.
- *v. Lester*, 11 *Hun.* 618. Further decision in 15 *Id.* 538. See (Liability of assignee of cause of action for costs) *Code Civ. Pro.* 1881, § 3247, *n*.
- *v. N. Y. Central, &c. R. R. Co.*, 4 *Hun.* 424. *Aff'd* in 63 *N. Y.* 643. Decision in *Id.* collated with *Letts v. Brooks*, *Hill & D.* 36; *Duke of Cumberland v. Graves*, 9 *Barb.* 608, and many other cases (Presumption of continuance of life) in 29 *Abb. L. J.* 347.
- Morrow v. Freeman**, 61 *N. Y.* 515. Collated with other cases (Number of creditors necessary under two-thirds act) in *Bishop on Assign.* § 12.
- *v. Morrow*, 12 *Hun.* 386. Followed (Effect, under statute of limitations, of inserting debt in inventory) in *Clark v. Van Amburgh*, 14 *Id.* 557.
- Mors v. Stanton**, 51 *N. Y.* 649. Disting'd (Supplying defect in jurisdiction by proof) in *Archer v. Furniss*, 4 *Redf.* 88, 94.
- Morse v. Auburn & Syracuse R. R. Co.** See *Ransom v. N. Y. & Erie R. R. Co.*
- *v. Bogert*, 4 *Den.* 108. *Aff'd* as *Bogert v. Morse*, in 1 *N. Y.* 377. Decision in 4 *Den.* disting'd (Evidence of loan) in *Sayles v. Olmstead*, 66 *Barb.* 590.
- *v. Brockett*, 67 *Barb.* 234; *mem. s. c.*, 3 *Sup'm. Ct. (T. & C.)* 773. *Aff'd*, it seems, in 64 *N. Y.* 645, but without opinion. With decision in 67 *Barb.* see (Simultaneous mortgages) 2 *Pomeroy on Eq. Jur.* 174. See cases cited (Liability created by assumption of mortgage) in 5 *Abb. N. C.* 230, *n*.
- *v. Cloyes*, 11 *Barb.* 100. *Rev'd* in *Seld. Notes*, No. 5, 12. See *Morse v. Hovey*.
- *v. Gould*, 11 *N. Y.* 281. Disapproved (Constitutional provisions relative to contracts) in *Hamilton v. Knickerbocker Life Ins. Co.*, *N. Y. Daily Reg.* *Dec.* 15, 1883. Cited with approval in 45 *Am. Dec.* 251, *n*. Doubted in *Deering v. Boyle*, 8 *Kans.* 525; *s. c.*, 12 *Am. R.* 480. See other cases cited in 5 *Am. L. Reg. N. S.* 91. Disting'd (Time within which execution may issue) in *Winebrenner v. Johnson*, 7 *Abb. Pr. N. S.* 202, 205.
- *v. Hovey*, 1 *Sanlf. Ch.* 197. *Aff'd* in 1 *Barb. Ch.* 404. See *Morse v. Cloyes*.
- *v. —*, 9 *Paige*, 197. Disting'd (Relief against usurious contract) in *Allerton v. Belden*, 49 *N. Y.* 373, 376.
- *v. Keyes*, 6 *Hov. Pr.* 18. Disapproved (Property exempt from execution) in *Dains v. Prosser*, 32 *Barb.* 291. Collated with *Dains v. Prosser*; *Sammis v. Smith*, 1 *Sup'm. Ct. (T. & C.)* 444; *Willson v. Ellis*, 1 *Den.* 462; *Van Sickler v. Jacobs*, 14 *Johns.* 434; *Bitting v. Vanderburgh*, 17 *Hov. Pr.* 80, in *Richards v. Hubbard*, 59 *N. H.* 158; *s. c.*, 47 *Am. R.* 188, with note.
- *v. Pesant*, 7 *Bosw.* 199. *Aff'd* in 3 *Abb. Ct. App. Dec.* 321; *s. c.*, 2 *Keyes*, 16.
- Morss v. Elmendorf**, 11 *Paige*, 277. Followed (Complaint that will not enable recovery for damages) in *Van Zandt v. Mayor, &c. of N. Y.*, 8 *Bosw.* 395.

- **v. Gleason**, 2 *Hun*, 31; s. c., 4 *Sup'm. Ct.* (T. & C.) 274. Aff'd in 64 *N. Y.* 204. See *Marquand v. N. Y. Manuf. Co.*
- **v. Jacobs**, 35 *How. Pr.* 90. Aff'd as *Morss v. Salisbury* in 48 *N. Y.* 636.
- **v. Osborn**. See *Marcellus v. Countryman*.
- **v. Purvis**, 2 *Hun*, 542; s. c., 5 *Sup'm. Ct.* (T. & C.) 140. Aff'd in 68 *N. Y.* 225.
- **v. Salisbury**. See *Morss v. Jacobs*.
- **v. Sherrill**, 63 *Barb.* 21. Disting'd (Jurisdiction of appellate tribunal on appeal from order granting new trial) in *Clark v. Mechanics' Nat. B'k of N. Y.*, 8 *Daly*, 481, 503.
- **v. Stone**, 5 *Barb.* 516. Disting'd (Effect of transfer of goods with agreement to sell and account) in *Handley v. Pfister*, 39 *Cal.* 283; s. c., 2 *Am. R.* 449.
- Morten v. Domestic Tel. Co.**, 1 *Abb. N. C.* 290. Compare (Security for costs because of removal from jurisdiction) *Code Civ. Pro.* § 3269.
- Morton v. Campbell**, 37 *Barb.* 179; s. c., more fully, 14 *Abb. Pr.* 410.
- **v. Ludlow**, 1 *Edw.* 639. Aff'd in 5 *Paige*, 519.
- **v. Morton**, 8 *Barb.* 18. Discussed (Perpetuities) in 1 *Jarm. on Wills*, Rand. & T. ed. 512, n.
- **v. Naylor**, 1 *Hill*, 583; s. c., 15 *N. Y. Com. L. Law. ed.* 234, with brief note on equitable assignment.
- **v. Rogers**. See *Bank of Orleans v. Barry*; *Barry v. Coddington*.
- **v. Weil**, 33 *Barb.* 30. Commented on (Multifarious pleadings in creditor's actions) in *Wait on Fraud. Con.* § 151.
- **v. Weir**, 5 *Hun*, 177. Aff'd in 70 *N. Y.* 247. Decision in *Id.* collated with other cases (Distinction between estate upon condition and conditional limitation) in *McAdam on Landl. & T.* 2 ed. § 27.
- Mosely v. Marshall**, 27 *Barb.* 42. Rev'd in 22 *N. Y.* 200.
- **v. Moseley**, 15 *N. Y.* 334. Subsequent decision, as it seems, in 11 *Abb. Pr.* 105. See *Nellis v. Clark*; *Osborne v. Moss*. With decision in 11 *Abb. Pr.* see (Abatement of action) *Code Civ. Pro.* 1881, § 1521, n.
- Moses v. Bierling**, 31 *N. Y.* 462. Disting'd (Broker, when entitled to compensation) in *Briggs v. Rowe*, 1 *Abb. Ct. App. Dec.* 194; *McClave v. Paine*, 41 *How. Pr.* 143, which was aff'd in 49 *N. Y.* 561, 564, which see. Examined with other cases, in dissenting opinion of GROVER, J., in *Lyon v. Mitchell*, 36 *Id.* 685. Applied in *Sibbald v. Bethlehem Iron Co.*, 83 *Id.* 378, 381.
- **v. Mead**, 1 *Den.* 378; s. c., 43 *Am. Dec.* 676, with note, wherein are collected citations of the case. Aff'g 3 *N. Y. Leg. Obs.* 69, and aff'd in 5 *Den.* 617. See *Hart v. Wright*; *Van Bracklin v. Fonda*. Decision in 1 *Den.* opposed (Warranty on sale of provisions) in *Divine v. McCormick*, 50 *Barb.* 117. Applied in *Burch v. Spencer*, 15 *Hun*, 508. Reviewed and collated with

- other cases, and disapproved in 22 *Am. L. Reg. N. S.* 232, criticising *Burch v. Spencer*, 22 *N. Y.* 504; *Hart v. Wright*, 17 *Wend.* 267; *Van Bracklin v. Fonda*, 12 *Johns.* 468. Explained in 2 *Benj. on Sales*, § 1012, n. 44 (Corbin's 4 *Am. ed.*). Examined (Basis of doctrine of implied warranty) in *Hoe v. Sanborn*, 21 *N. Y.* 561.
- **v. Margatroyd**, 1 *Johns. Ch.* 119; s. c., 7 *Am. Dec.* 478, with note containing citations. Explained (Creditor's right to benefit of security) in *Marine & Fire Ins. B'k v. Jauncey*, 3 *Sandf.* 261. Applied with *Phillips v. Thompson*, 2 *Johns. Ch.* 418, in *King v. Harman*, 6 *La.* 607; s. c., 26 *Am. Dec.* 485, 489, with note. Applied (Following trust funds) in *Matter of Van Duzer*, 51 *How. Pr.* 411. Disting'd in *Ferris v. Van Vechten*, 73 *N. Y.* 121. Applied (Parol evidence respecting instrument given as security) in *Averill v. Loucks*, 6 *Id.* 24. Examined with other cases in *Cook v. Eaton*, 16 *Barb.* 450. Explained and criticised in *Pattison v. Hull*, 9 *Cow.* 754. See to the contrary, *Walker v. Crawford*, 56 *Ill.* 444; s. c., 8 *Am. R.* 701. But see *Abb. Tr. Ev.* 412. Applied (Surplus arising from sale of mortgaged premises, when regarded as real estate) in *Sweezy v. Thayer*, 1 *Duer*, 304. Disting'd (Surplus money as equitable assets) in *Freedman's Savings & Trust Co. v. Earle*, 110 *U. S.* 710, 718.
- **v. Sun Mut. Ins. Co.**, 1 *Duer*, 159; s. c., 11 *N. Y. Leg. Obs.* 78. Explained and limited (Presumption of seaworthiness) in *Hathaway v. Sun Mut. Ins. Co.*, 8 *Bosw.* 33, 64. Explained in *Rogers v. Sun Mut. Ins. Co.*, 46 *Super. Ct. (J. & S.)* 65, 74. See to the contrary, *Paddock v. Franklin Ins. Co.*, 11 *Pick. (Mass.)* 227; *Rose. N. P.* 411. See *Abb. Tr. Ev.* 497. Collated with *Barnwell v. Church*, 1 *Caines*, and other cases, in *The Titania*, *U. S. Dist. Ct., D. N. Y.* 19 *Fed. Rep.* 105.
- **v. Waterbury Button Co.**, 15 *Abb. Pr.* *N. S.* 205; s. c., 46 *How. Pr.* 528. Explained (Discharge of attachment) in *Ellsworth v. Scott*, 3 *Abb. N. C.* 10.
- Mosey v. City of Troy**, 61 *Barb.* 580. Aff'd as *Todd v. City of Troy*, 61 *N. Y.* 506. Decision in 61 *Barb.* collated with *Durkin v. City of Troy*, *Id.* 487, and other cases (Liability of municipal corporation for injuries caused by snow or ice on sidewalk) in 7 *Am. R.* 208, n.
- Mosher v. Hotchkiss**, 3 *Keyes*, 161. Followed (Guarantor not entitled to credit of costs of action by him against principal, as against creditor) in *Hurd v. Callahan*, 9 *Abb. N. C.* 374, 378. Followed (Necessity of requesting referee to find) in *Kemple v. Darrow*, 39 *Super. Ct. (J. & S.)* 447, 451.
- **v. People**, 5 *Barb.* 575. Disting'd (Sufficiency of affidavit to obtain warrant for arrest of debtor) in *Wheaton v. Fay*, 62 *N. Y.* 280.
- Moshier v. Utica, &c. R. R. Co.**, 8 *Barb.* 427. Referred to in *Lafferty v. Hannibal*,



- &c. R. R. Co., 44 *Mo.* 291, as completely overruled (Liability for animals killed by railroad train) by *Coy v. Utica, &c. R. R. Co.*, 23 *Barb.* 643. Quoted and discussed (Nuisance obstructing highway) in *Wood on Nuis.* 2 ed. § 302.
- Mosier v. Hilton**, 15 *Barb.* 657. Explained (What may be embraced in title of law) in *Cooley on Const. Limit.* 5 ed. 177, n.
- **v. Waful**. See *Moakley v. Riggs*.
- Moss v. Averill**, 10 *N. Y.* 449. See *Slee v. Bloom*. Disting'd (Liability of stockholders as sureties) in *Coburn v. Wheelock*, 34 *N. Y.* 443. Quoted (Negotiable obligations issued by private corporations) in *Morawetz on Corp.* § 176. Quoted and collated with other cases (Exercise of reasonably implied powers, not *ultra vires*) in *Field on Ultra Vires*, 70.
- **v. Jerome**, 10 *Bosw.* 220. Explained (Sharing profits creating partnership liability) in 1 *Collyer on Partn.* § 2, n. 9, *Wood's Am. ed.*
- **v. Livingston**, 4 *N. Y.* 208. See *Barcker v. Mechanics' Fire Ins. Co.* Followed (Personal obligation of corporate officer) in *Wing v. Glick*, 56 *Iowa*, 475.
- **v. McCullough**, 5 *Hill*, 279. Decision to the contrary in 7 *Barb.* 279. Also another decision as *McCullough v. Moss*, 5 *Den.* 567. See *McCullough v. Moss*; *Slee v. Bloom*. Both decisions examined with others (Judgment against corporation as evidence against stockholder) in *Miller v. White*, 8 *Abb. Pr. N. S.* 52; *Belmont v. Coleman*, 1 *Bosw.* 200, which was aff'd in 21 *N. Y.* 99, which see; by *GRAY, C.*, in *McMahon v. Macy*, 51 *N. Y.* 162. Decision in 7 *Barb.* followed in preference to that in 5 *Hill*, in *Peckham v. Smith*, 9 *How. Pr.* 438. Applied in *Miller v. White*, 10 *Abb. Pr. N. S.* 391, which was rev'd in 50 *N. Y.* 141, which see. Approved in *Moss v. Averell*, 10 *Id.* 452. Decision in 5 *Hill* followed in preference to that in 7 *Barb.*—in *Strong v. Wheaton*, 38 *Id.* 619. Reviewed with other cases (Nature of stockholder's liability) in *Lowry v. Inman*, 2 *Sweeny*, 139. Followed in *Brooks v. Hill*, 1 *Mich.* 124.
- **v. Oakley**, 2 *Hill*, 268. See *Corning v. McCullough*; *Slee v. Bloom*. Explained and applied (When liability of stockholders, &c. attaches) in *Squires v. Brown*, 22 *How. Pr.* 46. Followed in *Judson v. Rossie Galena Co.*, 9 *Paige*, 603. Disting'd with *Freeland v. McCullough*, 1 *Den.* 426; *Tracy v. Yates*, 18 *Barb.* 152 and *Garrison v. Howe*, 17 *N. Y.* 465, disting'd in *McMaster v. Davidson*, 29 *Iun.* 542. Reviewed with other cases (Nature of stockholder's liability) in *Lowry v. Inman*, 2 *Sweeny*, 138. See cases cited in 6 *Abb. N. C.* 258, n. Followed (Indorsee of note, as creditor of corporation) in *Moss v. Averell*, 10 *N. Y.* 459. Examined with other cases (Judgment against corporation, as evidence against stockholder) in *Miller v. White*, 8 *Abb. Pr. N. S.* 52; *Belmont v. Coleman*, 1 *Bosw.* 200, which was aff'd in 21 *N. Y.* 99, which see. Explained in *Moss v. McCullough*, 5 *Hill*, 132, 136. Applied in *Miller v. White*, 10 *Abb. Pr. N. S.* 391. Examined with other cases (Power of corporation to incur obligations) in *Barry v. Merchants' Exchange Co.*, 1 *Sandf. Ch.* 290.
- **v. Priest**, 19 *Abb. Pr.* 314. Disting'd (Withdrawal of special questions from jury) in *Ebersole v. Northern Cent. Ry. Co.*, 23 *Iun.* 114, 116.
- **v. Rainey**. See *Jewell v. Wright*.
- **v. Rossie Lead Mining Co.**, 5 *Hill*, 137. Subsequent decisions arising out same transactions, as *Moss v. McCullough*, 7 *Barb.* 279, 292; *McCullough v. Moss*, 5 *Den.* 567, 576; *Moss v. Averell*, 10 *N. Y.* 449. See *Hankins v. Baker*. Reviewed with other cases (Liability on contract entered into by corporation without authority) in *Town of Verona v. Peckham*, 66 *Barb.* 112. Applied in *Pratt v. Short*, 53 *How. Pr.* 510; *Whitney Arms Co. v. Barlow*, 38 *Super. Ct. (J. & S.)* 564. Followed in *State of Indiana v. Woram*, 6 *Hill*, 37. Quoted and collated with other cases in *Field on Ultra Vires*, 188. Thought in 40 *Am. Dec.* 381, n., to have been overruled by *McCullough v. Moss*, 5 *Den.* 567, the latter decision being thought to lay down the true rule. Followed (Rule as to effect of subsequent confirmation or consent applies to corporations) in *Planter's Bank v. Sharp*, 4 *Smedes & M. (Miss.)* 75; s. c., 43 *Am. Dec.* 470, with note.
- Mosselman v. Caen**, 34 *Barb.* 66. Subsequent decision in 4 *Sup'm. Ct. (T. & C.)* 171. See *Barelay v. Quicksilver Mining Co.* Decision in 34 *Barb.* disting'd and criticised (Right of foreign assignee in bankruptcy to sue in courts of this State) in *Hunt v. Jackson*, 5 *Blatchf. C. Ct.* 349, 351. With decision in 4 *Sup'm. Ct. (T. & C.)* compare *Barelay v. Quicksilver Mining Co.*, 6 *Lans.* 25.
- Mott v. Burnett**, 1 *Cods R. N. S.* 225. Rev'd, because order was broader than motion, in 2 *E. D. Smith*, 50.
- **v. Connolly**, 50 *Barb.* 516. Compared (Right of *de facto* officer to salary) in 10 *Am. L. Reg. N. S.* 448.
- **v. Consumer's Ice Co.**, 2 *Abb. N. C.* 143; s. c., 52 *How. Pr.* 148. Aff'd in *Id.* 244. Further proceedings in 73 *N. Y.* 543, and 8 *Daly*, 244. See *Higgins v. Water-vliet Turnpike Co.*; *Isaacs v. Third Av. R. R. Co.*; *Union Trust Co. v. Whiton*. Decision in 73 *N. Y.* applied (Master's liability for servant's acts) in *Poucher v. Blanchard*, 86 *Id.* 256, 260. Commented on in *Moak's Underhill's Torts*, 1 *Am. ed.* 32.
- **v. Boughy**, 1 *Johns. Cas.* 230; s. c., 1 *N. Y. Com. L. Law. ed.* 307, with brief note (Proof of handwriting of subscribing witness). Approved with *Sluby v. Champ-lin*, 4 *Johns.* 461; *Kimball v. Davis*, 19 *Wend.* 437, in *Lyons v. Holmes*, 11 *So. Car.* 429; s. c., 32 *Am. R.* 483, 494.

- **v. Dunn**, 10 *How. Pr.* 225. Disapproved (Distinction between law and equity abolished) in *Reubens v. Joel*, 13 *N. Y.* 488.
- **v. Havana Nat. B'k**, 22 *Hun.* 354. Explained (Sales of specific chattels conditionally) in 1 *Benj. on Sales*, § 435 (Corbin's 4 Am. ed.).
- **v. Hicks**, 1 *Cow.* 513; s. c., 13 *Am. Dec.* 550, with note containing citations of many cases from N. Y. and elsewhere, where it has been followed and regarded as a leading case. See *Hills v. Bannister*. Followed in *Babcock v. Beman*, 11 *N. Y.* 201 (Liability of one contracting as agent) as having been followed in principle in *Brockway v. Allen*, 17 *Wend.* 41; *Hicks v. Hinde*, 9 *Barb.* 528. Followed in *Davis v. Henderson*, 25 *Miss.* 549; s. c., 59 *Am. Dec.* 229. Applied with *Taft v. Brewster*, 9 *Johns.* 334, in *Gillespie v. Wesson*, 7 *Port. (Ala.)* 454; s. c., 31 *Am. Dec.* 715, 719. Cited as authority with *Brockway v. Allen*, 17 *Wend.* 40, in *Gottfried v. Miller*, 104 *U. S.* 521, 527. Thought in 1 *Daniel on Neg. Inst.* § 302, not to be an authority to the extent that it is relied on in *Babcock v. Beman*, 11 *N. Y.* 200. Explained in *Ang. & A. on Corp.* § 271, 11 ed.
- **v. Hudson River R. R. Co.**, 8 *Bosw.* 345. Further decision in 1 *Robt.* 585. See *Chapman v. New Haven R. R. Co.* Cited (Testimony of brakeman as to time required to stop train) in 1 *Whart. Com. on Ev.* § 344; *Hamilton v. R. R.*, 36 *Iowa*, 31; *Muldowney v. R. R.*, *Id.* 402, being cited to the contrary.
- **v. Kip**. See *Crary v. Turner*.
- **v. Lansing**, 5 *Lans.* 516. Further decision on the merits in 57 *N. Y.* 112. Decision in *Id.* followed (Lien upon canal boat) in *King v. Greenway*, 71 *Id.* 413, 416. Decision in 5 *Lans.* disting'd with *Bouton v. Bouton*, 40 *How. Pr.* 217; 42 *Id.* 11 (Enlarging time to appeal) in *Lavalle v. Skelly*, 90 *N. Y.* 546.
- **v. Mott**, 8 *Hun.* 474. Modified in 68 *N. Y.* 246. See *Barnes v. McAllister*; *Dakin v. Williams*; *Nobles v. Bates*.
- **v. Palmer**, 1 *N. Y.* 564. Followed (Things annexed to the freehold, that are part of realty) in *Richtmyer v. Morss*, 4 *Abb. Ct. App. Dec.* 57. Applied in *Green v. Collins*, 20 *Hun.* 476, which was rev'd in 86 *N. Y.* 251, which see; *Ford v. Cobb*, 20 *Id.* 350, 352. Cited as authority in *Godard v. Gould*, 14 *Barb.* 666. Disting'd in *Burke v. Nichols*, 34 *Id.* 432.
- **v. Small**, 20 *Wend.* 212. Rev'd in 22 *Id.* 403.
- **v. Union Bank**, 8 *Bosw.* 591. Aff'd in 38 *N. Y.* 18; s. c., 4 *Abb. Pr. N. S.* 270; 35 *How. Pr.* 332.
- Mottram v. Heyer**, 2 *N. Y. Leg. Obs.* 25. Aff'd in 1 *Den.* 488; and that aff'd in 5 *Id.* 629. Decision in 1 *Den.* said (Right of stoppage in transitu, as ended by goods reaching custody of custom-house authorities) in *Frascheris v. Henriques*, 6 *Abb. Pr. N. S.* 251, 258, not to have been rev'd in Ct. of Errors, as assumed in *Harris v. Pratt*, 5 *Duer*, 606, 626; 17 *N. Y.* 252, but thought, nevertheless, to have been practically rev'd by approval given in *Harris v. Pratt* to the chancellor's opinion. Decision in 5 *Den.* cited as an important case, and explained in 1 *Pars. on Contr.* 603, n. c.
- **v. Mills**, 2 *Sandf.* 189. Approved (Liability of consignee on acceptance) in *Gihon v. Stanton*, 9 *N. Y.* 476, 483.
- Moulton v. Beecher**, 1 *Abb. N. C.* 193. Rev'd in *Id.* 204, 233; mem. s. c., 8 *Hun.* 100. Further proceedings to change venue in 1 *Abb. N. C.* 235; *Id.* 237; s. c., 52 *How. Pr.* 182. Also motion for extra allowance in 1 *Abb. N. C.* 245; s. c., 52 *How. Pr.* 230; which was aff'd in 53 *Id.* 86; mem. s. c., 11 *Hun.* 192. Decision in 8 *Id.* approved (Sufficient termination of proceeding to be basis of action for malicious prosecution) in *Woodworth v. Mills*, 61 *Wis.* 49, an action for false imprisonment. Compare *Redway v. McAndrew*, *L. R.* 9 *Q. B.* 74; s. c., 7 *Moak's Eng.* 126. With decisions in 1 *Abb. N. C.* 193 and 237, see (Effect of order to change place of trial) *Code Civ. Pro.* § 989.
- **v. Norton**, 5 *Barb.* 286. See *Waterbury v. Westervelt*. Disapproved (Joint action against sheriff and deputy) in *Waterbury v. Westervelt*, 9 *N. Y.* 598, 605.
- Moultrie v. Hunt**, 3 *Bradf.* 322. Aff'd in 26 *Barb.* 252; which was rev'd, in 23 *N. Y.* 394; s. c., with note, 1 *Am. L. Reg. N. S.* 148, 162. Decision in 23 *N. Y.* disting'd (Sufficiency of attestation of will) in *Matter of Griswold*, 15 *Abb. Pr.* 300. Followed (Validity of execution of will, by what law governed) in *Dupuy v. Wurtz*, 53 *N. Y.* 560. See (Probate of foreign will of personal property) *Code Civ. Pro.* 1881, § 2625, n. Reviewed at length in 2 *Am. Dec.* 454, n., as a case of much importance (Validity of disposition of personal property by will, by what law governed). Approved in 1 *Redf. on Wills*, 403.
- Mounsey v. Drake**, 10 *Johns.* 27. Approved (Performance, when not excused) in *Jones v. Judd*, 4 *N. Y.* 411. See *Beebe v. Johnson*, 19 *Wend.* 502; *Wolf v. Howes*, 20 *N. Y.* 197. Collated with other cases in 2 *Hare & N. Am. Lead. Cas.* 5 ed. 117.
- Mount, Matter of**, 2 *Redf.* 405. Explained (Commissions of negligent executors) in *Ward v. Ford*, 4 *Id.* 34, 39.
- Mount v. Mitchell**, 31 *N. Y.* 356; s. c., as *Mitchell v. Mount*, 19 *Abb. Pr.* 1; which rev'd, 17 *Abb. Pr.* 265. Decision on motion for re-argument herein, as it seems, in 32 *N. Y.* 702. Decision in *Id.* followed (Basis of motion for re-argument) in *Curley v. Tomlinson*, 5 *Daly*, 233; *Marine Nat. B'k v. Nat. City B'k*, 59 *N. Y.* 67, 73. With decision in 31 *N. Y.* see (Appeal from surrogate's order) *Code Civ. Pro.* 1881, § 2552, n.
- **v. Morton**, 20 *Barb.* 123. Followed

- (Estoppel created by partition) in *Garner v. Boyd*, 57 *Id.* 277, 289.
- *v. Waite*, 7 *Johns.* 434. With this case and *Campbell v. Richardson*, 10 *Id.* 406, see (Validity of wagering contract) *Juhel v. Church*, and citations thereunder.
- Mount Morris Square, Matter of**, 2 *Hill*, 14. Disapproved (Certiorari only allowed to review judicial decisions) in *Camden v. Mulford*, 2 *Dutch.* (N. J.) 49.
- Mowatt v. Carow**, 7 *Paige*, 328; s. c., 32 *Am. Dec.* 641, with note containing citations of the case on the points decided respecting wills, &c. See *Collins v. Hoxie*; *Cromer v. Pinckney*.
- *v. Wright*, 1 *Wend.* 355; s. c., 19 *Am. Dec.* 508, with note, wherein it is said to have been frequently cited in N. Y. as authority. See *Clarke v. Dutcher*; *Shotwell v. Murray*. Applied (Recovery of money paid under mistake of fact) in *Barker v. Clark*, 12 *Abb. Pr. N. S.* 113; *Granger v. Olcott*, 1 *Lans.* 171; *Rheel v. Hicks*, 25 *N. Y.* 291. Collated with *Clark v. Dutcher*, 9 *Cow.* 674, and other cases in 17 *Cent. L. J.* 22, 25. Quoted (Sale as implied by recovery in trover and payment of judgment) in *Benj. on Sales*, § 49, n. 14 (Corbin's 4 *Am. ed.*).
- Mower v. Kip**, 2 *Edw.* 165. Rev'd in part in 6 *Paige*, 88; s. c., 29 *Am. Dec.* 748, with note collating citations of the case. See *Little v. Harvey*; *Meech v. Allen*. Decision in 6 *Paige* approved (Liability of principal in bond beyond penalty) in *Tasewell v. Saunders*, 18 *Gratt. (Va.)* 354, 366. Disting'd in *Fraser v. Little*, 13 *Mich.* 195.
- Mowers v. Fethers**, 6 *Lans.* 112. Rev'd in 61 *N. Y.* 34; s. c., 19 *Am. R.* 244. Decision in *Id.* followed with *Grinnell v. Cook*, 3 *Hill*, 485; *Ingallsbee v. Wood*, 36 *Barb.* 455; 33 *N. Y.* 577 (When common-law liability of innkeeper does not arise) in *Healey v. Gray*, 68 *Me.* 489; s. c., 28 *Am. R.* 80.
- Mowrey v. Central City Railway**, 66 *Barb.* 43. Aff'd in effect in 51 *N. Y.* 666. Decision in *Id.* explained and followed (Contributory negligence) in *Casey v. N. Y. Central, &c. R. R. Co.*, 6 *Abb. N. C.* 104, 123, with note, collating cases.
- *v. Walsh*, 8 *Cow.* 238. Examined with other cases (Rights of one deriving title to personal property from wrong-doer) in *Tallman v. Turck*, 26 *Barb.* 170. Disting'd in *Farrington v. Park B'k*, 39 *Id.* 648; *Saltus v. Everett*, 20 *Wend.* 272, 279. Explained and re-aff'd with *Saltus v. Everett*, 20 *Wend.* 275, in *Stevens v. Hyde*, 32 *Barb.* 171, 178. Criticised at length and disting'd in *Ash v. Putnam*, 1 *Hill*, 306. Followed in *Keyser v. Harbeck*, 3 *Duer*, 388. Cited as authority, but explained as an exception to the general rule, in *Lewis v. Palmer*, *Hill & D.* 68. Reviewed with *Cary v. Hotailing*, *Hill*, 306; *Lloyd v. Brewster*, 4 *Paige*, 537; *Hitchcock v. Covill*, 20 *Wend.* 167, in *Thompson v. Rose*, 16 *Conn.* 71; s. c., 41 *Am. Dec.* 121, 124, with note. Cited as authority in *Jennings v. Gage*, 13 *Ill.* 610; s. c., 56 *Am. Dec.* 476. Followed (Fraudulent purchaser, &c. not guilty of larceny) in *Ross v. People*, 5 *Hill*, 294; *Zink v. People*, 77 *N. Y.* 127. Rule herein said in *Fassett v. Smith*, 23 *Id.* 257, not to have been changed by R. S. (thus overruling *Andrew v. Dietrich*, 14 *Wend.* 35). Criticised in 15 *Am. L. Rev.* 367.
- Mowry v. Bishop**, 5 *Paige*, 98. Disapproved (Agreement to pay interest on interest when usurious) in *Stewart v. Petree*, 55 *N. Y.* 621, 623. Explained in *Young v. Hill*, 67 *Id.* 169.
- *v. Sanborn*, 62 *Barb.* 223. Rev'd in 65 *N. Y.* 581. Further decision in 68 *Id.* 153; rev'g 7 *Hun.* 380. Also in 72 *N. Y.* 534; rev'g 11 *Hun.* 545. With decision in 72 *N. Y.* see (Passing of title on foreclosure by advertisement, as affected by failure to record affidavits) *Code Civ. Pro.* 1881, § 2400, n.
- *v. Silber*, 2 *Bradf.* 133. Disting'd (Proof of undue influence on testator) in *Booth v. Kitchen*, 3 *Redf.* 52, 62.
- Moyer v. Hinman**, 17 *Barb.* 137. Modified in 13 *N. Y.* 180. Decision in *Id.* applied (Right of judgment creditor as affected by contract for sale of land) to case of such right as affected by foreclosure sale,—in *Warner v. Blakeman*, 4 *Abb. Ct. App. Dec.* 539. Applied to case of mortgagee as affected by such contract,—in *Young v. Guy*, 12 *Hun.* 327; *Trustees of Union College v. Wheeler*, 61 *N. Y.* 107. Decision in 17 *Barb.* questioned in *Smith v. Gage*, 41 *Id.* 60, 72. Decision in 13 *N. Y.* disting'd (Possession of land as constructive notice) in *Brown v. Volkening*, 64 *Id.* 83.
- Muber v. Held**, 3 *Abb. Pr.* 110. See (Notice of appeal from justice's decision) *Code Civ. Pro.* 1881, § 3064, n.
- Muckey v. Howenstine**, 3 *Sup'm. Ct. (T. & C.)* 28. Explained (Delivery in case of sale) in 2 *Benj. on Sales*, § 1018, n. 7 (Corbin's 4 *Am. ed.*).
- Mudgett v. Bay State Steamboat Co.** See *Macklin v. New Jersey Steamboat Co.*; *Weeks v. N. Y., New Haven, &c. R. R. Co.*
- Muir v. Demaree**, 12 *Wend.* 468. See *Partridge v. Colby*. Cited with approval with *McCaughy v. Smith*, 27 *N. Y.* 39; *Brownell v. Winnie*, 29 *Id.* 400 (Addition of signature to note, when material alteration) in *Miller v. Finley*, 26 *Mich.* 249; s. c., 12 *Am. R.* 306, 308.
- *v. Schenck*, 3 *Hill*, 228; s. c., 38 *Am. Dec.* 633, with note. Followed (Priority of right, as between assignees of non-negotiable chose in action) in *Parks v. Innes*, 33 *Barb.* 42. Examined and approved in *Bush v. Lathrop*, 22 *N. Y.* 546. Disting'd in *Moore v. Metropolitan Nat. Bk.*, 55 *Id.* 41, 49. Followed (Effect of assignment of chose in action without notice to obligor) in *Richardson v. Ainsworth*, 20 *How. Pr.* 530. Criticised in 36 *Am. Dec.* 477, n., and said to be opposed to *Murdock v. Fin-*

- ney, 21 *Mo.* 138, and a dictum in *Pellman v. Hart*, 1 *Pa. St.* 265. Referred to in 38 *Am. Dec.* 636, *n.*, as opposed to *Vanbuskirk v. Hartford Fire Ins. Co.*, 14 *Conn.* 141; *s. c.*, 36 *Am. Dec.* 473.
- *v. Trustees of Leake & Watts Orphan House.* See *Humbert v. Trinity Church.*
- *v. United Ins. Co.*, 1 *Cui.* 49. Applied (Charges that may be included in loss to be borne by marine insurer) in *Lamar Ins. Co. v. McGlashon*, 54 *Ill.* 513; *s. c.*, 5 *Am. R.* 162, 166.
- Muldon v. Whitlock**, 1 *Cow.* 290. Disting'd (Effect of note taken for debt) in *Ranken v. De Forest*, 18 *Barb.* 143, 149; *Ferdon v. Jones*, 2 *E. D. Smith*, 111. Followed in *King v. Lowry*, 20 *Barb.* 539. Applied in *Rathbone v. Tucker*, 15 *Wend.* 501. Followed in *Barque Chusan*, 2 *Story*, 455, 470. See to the contrary *Palmer v. Priest*, 1 *Sprague*, 512. See also *Abb. Tr. Ev.* 806. Thought in 1 *Am. Dec.* 5, *n.*, to confirm *Pateshall v. Aphthorp, Quincy (Mass.)* 3, the later cases in *Mass.*, however, being said to settle the rule differently. Collated with other cases in *McAdam on Landl. & T.* 2 ed. § 153.
- Muldoon v. Blackwell**, 45 *Super. Ct. (J. & S.)* 635. Aff'd in 84 *N. Y.* 646.
- *v. Pitt*, 4 *Daly*, 105. Aff'd in 54 *N. Y.* 269. Decision in *Id.* disting'd (Mechanic's lien under contract with lessee) in *Burkitt v. Harper*, 79 *Id.* 273, 277.
- Muldorney v. Corney.** See *Silverman v. Henant.*
- Mulhado v. Brooklyn City R. R. Co.**, 30 *N. Y.* 370. Explained (Negligence in alighting from car) in *Mettlestadt v. Ninth Ave. R. R. Co.*, 4 *Robt.* 383. Cited (Exhibiting injured part to court and jury in case of personal injury) in 1 *Whart. Com. on Ev.* § 346.
- Mullaley v. People**, 12 *Weekly Dig.* 236; *mem. s. c.*, 24 *Hun.* 656. Aff'd as *Mullaly v. People*, 86 *N. Y.* 365. Decision in *Id.* cited with approval (Animal, when subject of larceny) in *Haywood v. State*, 41 *Ark.* 479; *s. c.*, 47 *Am. R.* 765, *n.* Doctrine adopted in *State v. Brown*, 9 *Dart. (Tenn.)* 53; *s. c.*, 40 *Am. R.* 81, with note.
- Mullaly v. Mayor, &c. of N. Y.**, 3 *Hun.* 661; *s. c.*, 6 *Sup'm. Ct. (T. & C.)* 168. Aff'd, it seems, in 62 *N. Y.* 636, but without opinion.
- *v. People.* See *Mullaley v. People.*
- Mullaney v. Spence**, 15 *Abb. Pr. N. S.* 319. See *McAlpin v. Powell*; *Mangam v. Brook-R. R. Co.* Applied (Liability of one having dangerous structure on his premises) in *McAlpin v. Powell*, 1 *Abb. N. C.* 427, 432; which was, however, rev'd in 70 *N. Y.* 126. Compare *Ryan v. Wilson*, 45 *Super. Ct. (J. & S.)* 273. Collated with other cases (Liability for negligence injuring trespasser) in 6 *Abb. N. C.* 119, *n.* Followed (Liability for injury to child) in *Bransom's Adm'r. v. Labrot*, 81 *Ky.* 644.
- Mullen v. St. John**, 57 *N. Y.* 567. Followed with *Lyons v. Rosenthal*, 11 *Hun.* 46; *Edgerton v. N. Y. & Harlem R. R. Co.*, 39 *N. Y.* 227 (Presumption of negligence) in *Cummins v. National Furnace Co., Sup'm Ct. Wis. Mar.* 1884, 18 *Reporter*, 126. Considered in *Rose v. Stephens Transp. Co., U. S. Cir. Ct. S. D. N. Y.*, 21 *Am. L. Reg.* 524, with note at p. 525, discussing and collating various cases on explosions. Collated with other cases in *Bigel. Cas. on Torts*, 599.
- Muller v. Eno**, 3 *Duer.* 421, Rev'd in 14 *N. Y.* 597. Decision in *Id.* applied (Damages for breach of warranty on sale) in *Wells v. Selwood*, 61 *Barb.* 245; *Passinger v. Thorburn*, 34 *N. Y.* 639. Followed (Right to recover on warranty, without return of goods sold) in *Messenger v. Pratt*, 3 *Lans.* 236; *Parks v. Morris Ax & Tool Co.*, 54 *N. Y.* 591 (also on question of damages, in *Id.* 593). For rule in case of executory contract, see cases cited in *Abb. Tr. Ev.* 348, *n.* 5.
- *v. Higgins*, 13 *Abb. Pr. N. S.* 297; *s. c.*, 44 *How. Pr.* 224. Disregarded (Costs of motion for new trial) in *Naugatuck Cutlery Co. v. Rowe*, 5 *Abb. N. C.* 142.
- *v. McKesson*, 10 *Hun.* 44. Aff'd in 73 *N. Y.* 195; *s. c.*, 29 *Am. R.* 123. Decision in *Id.* followed (Negligence in case of injuries from vicious dog) in *Lynch v. McNally, Id.* 349.
- *v. Mayor, &c. of N. Y.*, 5 *Hun.* 282. Rev'd in 63 *N. Y.* 353. Decision in *Id.* followed (Municipal contract *ultra vires*) in *Bleecker v. Mayor, &c. of N. Y.*, 7 *Daly*, 439.
- *v. Pondir*, 6 *Lans.* 472. Aff'd in 55 *N. Y.* 325; *s. c.*, 14 *Am. R.* 259. See *Hoy v. Reade*. Decision in 6 *Lans.* relied on (Incidental authority of agent) in *Whart. Com. on Ag.* § 135. Decision in 55 *N. Y.* quoted and explained (Stoppage in transitu) in 2 *Benj. on Sales*, § 1231, *n.* 2 (Corbin's 4 *Am. ed.*).
- *v. Santler.* See *Calhoun v. Lee.*
- *v. Struppmann*, 55 *How. Pr.* 521; *s. c.*, more fully, 6 *Abb. N. C.* 343 (Sale of infants' lands not allowed, when it would defeat instrument under which title would be acquired) *Code Civ. Pro.* 1881, § 2357, *n.*
- Mulligan v. Elias**, 12 *Abb. Pr. N. S.* 259. Quoted (Nuisances causing bodily injuries) in *Moak's Underhill's Torts*, 1 *Am. ed.* 243.
- Mulliner v. Guardian Mut. Life Ins. Co.**, 1 *Sup'm. Ct. (T. & C.)* 448. Disting'd (Admissibility of statements of insured) in *Swift v. Mass. Mut. L. Ins. Co.*, 63 *N. Y.* 186, 192.
- Mullins v. People**, 24 *N. Y.* 399. Applied (What may not be reviewed on certiorari in criminal cases) in *Cases of Lynch and Burns*, 9 *Abb. N. C.* 69, 75.
- Mulock v. Mulock**, 1 *Edw.* 14. Quoted and explained (Evidence in action of divorce for adultery) in 2 *Bish on Mar. & D.* § 624, 6 *ed.*

- Mulvehall v. Millward**, 11 *N. Y.* 343. See *Bartley v. Richtmyer*; *Martin v. Payne*. Applied (Right to maintain action for seduction) to grandfather, in *Hoyt v. Cantwell*, 6 *Hun.* 575, 577; to mother, in *Gray v. Durland*, 51 *N. Y.* 424, 428. Followed in *Lavery v. Crooke*, 52 *Wis.* 619.
- Mumford v. American Life Ins. & Trust Co.**, 4 *N. Y.* 463. See *Carroll v. Farmer's Loan & Trust Co.*; *Farmers' Loan & Trust Co. v. Carroll*. Disting'd (Effect of voluntary payment of usurious loan, &c.) in *Smith v. Marvin*, 27 *N. Y.* 137, 142.
- **v. Brown**, 6 *Cov.* 475; s. c., 16 *Am. Dec.* 440, with note (containing citations) wherein it is said to have been approved in a number of subsequent cases in *N. Y.* and elsewhere. Followed (Co-tenants liability for repairs and improvements made without his assent) in *Kidder v. Rixford*, 16 *Verm.* 169; s. c., 42 *Am. Dec.* 504, 507. Criticised as containing dicta, in *Calvert v. Aldrich*, 99 *Mass.* 74, 77, where a contrary doctrine was maintained.
- **v. Church**, 1 *Johns. Cas.* 147; s. c., 1 *N. Y. Com. L. Law. ed.* 278, with note citing cases. Criticised (Right to abandonment, as determined by information had by assured at time) in *Hallett v. Peyton*, 1 *Cai. Cas.* 38. See to the contrary, *Rhinclander v. Pennsylvania Ins. Co.*, 4 *Cranch*, 29; *Peele v. Merchants' Ins. Co.*, 3 *Mason*, 27, and cases cited; *Humphrey v. Union Ins. Co.*, *Id.* 429; *Dickey v. American Ins. Co.*, 3 *Wend.* 658; 4 *Cov.* 222; *Queen v. Union Ins. Co.*, 2 *Wash. C. C.* 335; *Maryland Ins. Co. v. Bathurst*, 3 *Gill. & J. (Md.)* 159.
- **v. Commercial Ins. Co.**, 5 *Johns.* 262. Explained (Common carrier's right to freight) in *Ang. on Carr.* § 403, 5 ed.
- **v. Hallett**, 1 *Johns.* 433. Commented on (Policy on profits) in 3 *Kent Com.* 273.
- **v. McKay**, 8 *Wend.* 442; s. c., 24 *Am. Dec.* 34. Commented on (Evidence in actions of trover) in 2 *Greenl. on Ev.* 14 ed. § 646, n. 1.
- **v. McPherson**, 1 *Johns.* 414; s. c., 3 *Am. Dec.* 339; 3 *N. Y. Com. L. Law. ed.* 193, with brief note. See *Vandervoort v. Smith*. Disting'd with *Bayard v. Malcom*, 1 *Johns.* 452; *Van Ostrand v. Reed*, 1 *Wend.* 424; *Filkins v. Whyland*, 24 *N. Y.* 338 (Evidence of parol agreement, in case of written contract of sale) in *Silliman v. Tuttle*, 45 *Barb.* 171. Applied in *Smith v. McCall*, 1 *McCord (So. Car.)* 223; s. c., 10 *Am. Dec.* 666. See, also, for limitation of doctrine (Sound price as implying warranty of soundness) notes to 1 *Am. Dec.* 84; *Id.* 621; *Id.* 652; 2 *Id.* 669.
- **v. Murray**, 6 *Johns. Ch.* 1. Compared (Liability of trustees) in 15 *Am. L. Rev.* 179.
- **v. Nicoll**. See *Nicoll v. Mumford*.
- **v. Stocker**, 1 *Cov.* 178. Applied (Effect of judgment recovered on judgment) to judgment on bond given on appeal from judgment; in *Planter's Bank v. Calvit*, 3 *Smedes & M. (Miss.)* 143; s. c., 41 *Am. Dec.* 616, with note.
- **v. Whitney**, 15 *Wend.* 380; s. c., 30 *Am. Dec.* 60, with note, wherein it is said to be a leading authority, and is shown to have been frequently followed in *N. Y.* See *Pierrepont v. Barnard*; *Thompson v. Gregory*. Reviewed with other cases (Effect of parol authority to do acts on land) in 1 *Washb. on Real Prop.* 400, n. (which was approved and adopted in *Babcock v. Utter*, 1 *Abb. Ct App. Dec.* 35). Explained in *Dubois v. Kelly*, 10 *Barb.* 507; *Rathbone v. McConnell*, 20 *Id.* 320. Approved in dissenting opinion in *Rathbone v. McConnell*, 21 *N. Y.* 472. Followed in *Eggleston v. N. Y. & Harlem R. R. Co.*, 35 *Barb.* 174; *Brown v. Galley*, *Hill & D.* 310. Approved and applied in *Pierrepont v. Barnard*, 6 *N. Y.* 287 (and see dissenting opinion, p. 300). Applied in *Wolfe v. Frost*, 4 *Sandf. Ch.* 91. Referred to in *Stevens v. Stevens*, 11 *Metc. (Mass.)* 251; s. c., 45 *Am. Dec.* 203, with note, as ably reviewing and discussing the cases. Collated with other cases in *Hazleton v. Putnam*, 3 *Pinn. (Wisc.)* 107; s. c., 3 *Chand.* 117; s. c., 54 *Am. Dec.* 158, with note. See cases cited in 5 *Abb. N. C.* 174, n. Explained (Statement, &c. of party, when to be taken as a whole) in *Rouse v. Whited*, 25 *N. Y.* 175.
- Mamper v. Rushmore**, 14 *Hun.* 591. Aff'd in 79 *N. Y.* 19. Decision in 14 *Hun.* quoted (Delivery in case of sale) in *Benj. on Sales*, § 696, n. b (Bennett's 4 *Am. ed.*).
- Munch v. N. Y. Central R. R. Co.** See *Corwin v. N. Y. & Erie R. R. Co.*
- Mundorff v. Mundorff**, 1 *Hun.* 41; s. c., 3 *Sup'm Ct. (T. & C.)* 171. Appeal dismissed in 59 *N. Y.* 635.
- Munger v. Baker**, 1 *Sup'm Ct. (T. & C.)* 122; s. c., with points of counsel, 65 *Barb.* 539.
- **v. Shannon**, 61 *N. Y.* 251. See *Cook v. Satterlee*. Followed (Effect of order payable out of special fund) in *Ehrichs v. De Mill*, 75 *N. Y.* 373.
- **v. Tonawanda R. R. Co.** See *Tonawanda R. R. Co. v. Munger*.
- Munn's Estate**, *Tuck.* 136. Aff'd as *Collier v. Munn*, 7 *Abb. Pr. N. S.* 193; s. c., 41 *N. Y.* 143.
- Munn v. Commission Co.**, 15 *Johns.* 44; s. c., 8 *Am. Dec.* 219, with note, wherein it is shown to have been frequently approved in *N. Y.* and Federal decisions. See *Aeby v. Rapelye*; *Powell v. Waters*. Applied (Transfer of bill or note, when usurious) in *Powell v. Waters*, 8 *Cov.* 686, 706; Same *r.* Same, 17 *Johns.* 181; *Bennet v. Smith*, 15 *Id.* 357; *Cobb v. Titus*, 10 *N. Y.* 200; *Eastman v. Shaw*, 65 *Id.* 527; *Rice v. Mather*, 3 *Wend.* 65. Applied to bond and mortgage, — in *Rapelye v. Anderson*, 4 *Hill*, 482. Explained in *Holford v. Blatchford*, 2 *Sandf. Ch.* 154, as inapplicable to sale of foreign exchange. Followed with *Powell v. Waters*, 17 *Johns.* 176, in *Ruffin v. Arm-*

- strong, 2 *Hawks* (N. C.) 411; s. c., 11 *Am. Dec.* 774, with note. Doctrine herein recognized and explained in *Nichols v. Fearson*, 7 *Pet.* 107. Followed (Limit of recovery on note transferred at discount greater than legal rate) in *Cook v. Clark*, 4 *E. D. Smith*, 214; *Cram v. Hendricks*, 7 *Wend.* 596. Limited in *Oakley v. Boorman*, 21 *Id.* 593. Collated with other cases (Agency implied from course of dealing) in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 689.
- Munro's Estate**, 15 *Abb. Pr.* 363. Applied (Practice with respect to signing surrogate's decrees) in *McNaughton v. Chave*, 5 *Abb. N. C.* 225, 228.
- Munro v. Merchant**, 26 *Barb.* 383. Rev'd in 28 *N. Y.* 9. Decision in *Id.* limited (Adverse possession of portion of tract, when constructive possession of whole) in *Thompson v. Burhans*, 61 *Id.* 52, 69. Discussed in *Sedgwick & W. on Tr. of Tit. to Land*, § 774. With decision in 26 *Barb.* see *Code Civ. Pro.* 1881, § 370, n. Followed with *Belden v. Meeker*, 47 *N. Y.* 307 (Proof of death) in *Carroll v. Carroll*, 2 *Hun.* 609.
- Munroe v. Guillaume**, 3 *Keyes*, 30. Cited (What is proof of foreign statutes) in 1 *Whart. Com. on Ev.* § 309.
- Munsell v. Lewis**, 4 *Hill*, 635. Rev'd in 2 *Den.* 224. See *Danforth v. Suydam*. Decision in 4 *Hill* denied (Assignability of simple expectancy) in *Stover v. Eycleshimer*, 3 *Keyes*, 620, as overruled in *Field v. Mayor, &c. of N. Y.*, 6 *N. Y.* 179. Explained in *Burrill on Assign.* § 100, n. 1, 4 ed. Decision in 2 *Den.* applied (Assignability of public contract for work) in *Devlin v. Mayor, &c. of N. Y.*, 63 *N. Y.* 8, 19. Disting'd (Validity of law providing for extra allowance to canal contractor) in dissenting opinion in *People ex rel. Williams v. Dayton*, 55 *Id.* 367, 390.
- Munson v. Hegeman**, 10 *Barb.* 112; s. c., less fully, as *Munson v. Hagerman*, 5 *How. Pr.* 223. Rev'd in *Seld. Notes*, No. 2, 26.
- **v. Hungerford**, 6 *Barb.* 265. See *Morgan v. King*. Disting'd (Capacity of stream for floatage, as criterion of public right of servitude) in *Moore v. Sanborne*, 2 *Mich.* 519; s. c., 59 *Am. Dec.* 209.
- Murdock v. Aiken**, 29 *Barb.* 59. Said in 25 *How. Pr.* 594, to have been aff'd with deduction in Ct. of App. Sept. 1863. See *Starin v. Town of Genoa*. Latter decision followed (Town officer, when not to question legality of town bonds) in *Ross v. Curtiss*, 31 *N. Y.* 609. Decision in 29 *Barb.* disting'd in *Shepherd's Fold v. Mayor, &c. of N. Y.*, 13 *Weekly Dig.* 572, a case of moneys levied under invalid law.
- **v. Chenango Ins. Co.**, 2 *N. Y.* 210. See *Babcock v. Bonnell*; *Roberts v. Chenango Ins. Co.* Explained (Rights under policy, as affected by transfer of interest between insured) in *Hoffman v. Aetna Fire Ins. Co.*, 19 *Abb. Pr.* 340; which was aff'd in 32 *N. Y.* 407, which see. Followed as decisive in *Tillou v. Kingston Mut. Ins. Co.*, 5 *Id.* 407; but see *Grosvenor v. Atlantic Fire Ins. Co.*, 17 *Id.* 398. Explained, as decided under the old system respecting parties to actions, and without reference to the Code,—in *Manley v. Ins. Co. of N. A.*, 1 *Lans.* 80. Disapproved in *State v. McLoughlin*, 27 *Ohio St.* 1; s. c., 22 *Am. R.* 301. Applied (Necessity of showing interest in assured to enable recovery on policy) in *Fowler v. N. Y. Indemnity Ins. Co.*, 26 *N. Y.* 424. Examined and applied (Effect of promissory representation in policy) in *Bilbrough v. Metropolis Ins. Co.*, 5 *Duer*, 592. Limited (Insurance policy, as affected by extrinsic documents) in *Ruse v. Mut. Benefit Life Ins. Co.*, 23 *N. Y.* 519. Cited as authority (Increase of risk that avoids policy) in *Dittmer v. Germania Ins. Co.*, 23 *La. Ann.* 458; s. c., 8 *Am. R.* 600. Explained (Continuing warranty) in 2 *Para. on Contr.* 430, n. b.
- Murdock v. Gifford**, 18 *N. Y.* 28. Rev'd *Murdock v. Harris*, 20 *Barb.* 407. See *House v. House*. Decision in 18 *N. Y.* followed (What are fixtures) in *Beardsley v. Ontario B'k*, 31 *Barb.* 619. Applied in *O'Dougherty v. Felt*, 65 *Id.* 225; *Wells v. Maples*, 15 *Hun.* 92. Explained in *Bement v. Plattsburgh, &c. R. R. Co.*, 47 *Barb.* 104, 116; which was aff'd in *Hoyle v. Same*, 51 *Id.* 62; which was rev'd in 54 *N. Y.* 322, which see; *Ford v. Cobb*, 20 *Id.* 347. Disting'd in *McRea v. Central Nat. B'k*, 50 *How. Pr.* 54; which was aff'd in 66 *N. Y.* 497, which see; *Potter v. Cromwell*, 40 *Id.* 292. Examined with other cases in dissenting opinion of GRAY, C., in *Voorhees v. McGinnis*, 48 *Id.* 287. Collated with *Walker v. Sherman*, 20 *Wend.* 656; *Potter v. Cromwell*, 40 *N. Y.* 287, and other cases in *Ottumwa Woolen Mill Co. v. Hawley*, 44 *Iowa*, 57; s. c., 24 *Am. R.* 719, with note collating cases. Approved in *Thomas on Mort.* 48. See cases collected in 5 *Am. L. Reg. N. S.* 325.
- **v. Gilchrist**, 52 *N. Y.* 242. Brief note of decision below in 1 *Alb. L. J.* 124.
- **v. Harris**. See *Murdock v. Gifford*.
- **v. Prospect Park & C. I. R. R. Co.**, 10 *Hun.* 598. Rev'd in 73 *N. Y.* 579. Decision in *Id.* followed (Right to construct railroad over premises without having made compensation) in *Jamaica & B. Plank. Co. v. N. Y. & Manhattan Beach Ry. Co.*, 25 *Hun.* 585.
- **v. Ward**, 8 *Hun.* 9. Rev'd in 67 *N. Y.* 387. See *Wright v. Trustees of Meth. Epis. Church*. Decision in 67 *N. Y.* disting'd with *Luce v. Dunham*, 69 *Id.* 36; *Keteltas v. Keteltas*, 72 *Id.* 312 (Words "next of kin" when inclusive of widow) in *Betsinger v. Chapman*, 88 *Id.* 487; which aff'd 24 *Hun.* 15, which see. Followed in *Keteltas v. Keteltas*, 72 *N. Y.* 312, 316.
- Murphy, Matter of**, 60 *How. Pr.* 258. Rev'd in 24 *Hun.* 592; and that aff'd, it seems, in 86 *N. Y.* 627.

- , 12 *How. Pr.* 513. Referred to with approval (When parent has lost right to claim custody of child) in *Tyler on Inf. & Cov.* 2 ed. § 187, cases to the contrary being, however, cited.
- , 7 *Cow.* 153. Applied (Proof sufficient to invalidate election) in *People ex rel. Bush v. Thornton*, 25 *Hun.* 456, 460; *Prince v. Skillin*, 71 *Me.* 361; s. c., 36 *Am. R.* 325, 333. Quoted and discussed in *Ang. & A. on Corp.* § 136, 11 ed.
- Murphy v. Bell**, 8 *How. Pr.* 468. See *Woodburn v. Mosher*. Overruled with *Woodburn v. Mosher*, 9 *Barb.* 255 (Provision in assignment for benefit of creditors as to time of sale) in *Benedict v. Huntington*, 32 *N. Y.* 219. Collated with other cases in *Bishop on Assign.* § 209. Collated with other cases (Compounding debts) in *Id.* § 214.
- **v. Boston & Albany R. R. Co.**, 11 *Weekly Dig.* 566; mem. s. c., 24 *Hun.* 142. Aff'g, it seems, 8 *Abb. N. C.* 41; s. c., 50 *How. Pr.* 197; and aff'd in 83 *N. Y.* 146. Decision in 8 *Abb. N. C.* collated with *Manning v. Hogan*, 78 *N. Y.* 615; *Ellis v. N. Y. Lake Shore, &c. Ry. Co.*, 95 *Id.* 546 (Liability of employer for defective machinery) in *Peschel v. Chicago, M. & St. P. Ry. Co.*, *Sup'm. Ct. Wis.* Nov. 1884, 21 *Northw. Rep.* 209. Decision in 88 *N. Y.* explained at length and disting'd (Liability for negligence of fellow-servant) in *Wilson v. Willimantic Linen Co.*, 50 *Conn.* 433; s. c., 47 *Am. R.* 653, 661.
- **v. Commissioners of Emigration**, 28 *N. Y.* 234. Disting'd (Liability of public officers) in *Connors v. Adams*, 13 *Hun.* 427, 430.
- **v. Keyes**, 2 *Hun.* 375; s. c., reported in 4 *Sup'm. Ct. (T. & C.)* 561, and 48 *How. Pr.* 118. Decision in *Super. Ct.* between same parties, in 39 *Super. Ct. (J. & S.)* 18. Decision in *Id.* disting'd and criticised (Liability of maker of note, as affected by evidence of oral agreement) in *Grocers' Bank v. Murphy*, 9 *Daly*, 510.
- **v. N. Y. Central R. R. Co.** See *Reed v. Same*.
- **v. Norton**, 61 *How. Pr.* 197. Discussed (Title to land swallowed by sea) in *Sedgw. & W. on Tr. of Tit. to Land*, § 123.
- **v. People**, 4 *Hun.* 102; s. c., 6 *Sup'm. Ct. (T. & C.)* 369. Aff'd in 63 *N. Y.* 590, which is erroneously said, in 20 *Hun.* xlv, to reverse 3 *Id.* 114.
- **v. —**, 2 *Cow.* 815. Followed (Trial at special sessions without jury) in *People v. Goodwin*, 5 *Wend.* 251. See 2 *R. S.* 712, § 9.
- **v. Simmons**, 3 *Sup'm. Ct. (T. & C.)* 794. Said in *Jones v. Cook*, 11 *Hun.* 231, not to have been overruled (Notice of appeal from justice's court) by *Bigsby v. Warden*, 62 *N. Y.* 27.
- Murray, Ex parte**, 6 *Paige*, 204. Followed (Allowance of interest to creditors of insolvent) in *Matter of Duncan*, 10 *Daly*, 95.
- Explained and applied in *Matter of Shipman*, 61 *How. Pr.* 515, 518.
- **v. Ballou**, 1 *Johns. Ch.* 566. Applied (Notice of pendency of action, when effectual) in *Tate v. Jordan*, 3 *Abb. Pr.* 394; *Murray v. Lylburn*, 2 *Johns. Ch.* 445; *Green v. Slayter*, 4 *Id.* 43; *Hayden v. Bucklin*, 9 *Paige*, 516; *Jackson v. Andrews*, 7 *Wend.* 155. Disting'd, as inapplicable to commercial paper, in *Lindsley v. Diefendorf*, 43 *How. Pr.* 359. Disting'd in *Parks v. Jackson*, 11 *Wend.* 465. Examined with other cases in *Griffith v. Griffith*, *Hoffm.* 159. Examined in *White v. Carpenter*, 2 *Paige*, 253. Reviewed with other cases in *Fox v. Reeder*, 28 *Ohio St.* 181; s. c., 22 *Am. R.* 370, 374. Relied on in *Miller v. Kershaw*, 1 *Bailey Eq. (So. Car.)* 479; s. c., 23 *Am. Dec.* 183, with note. Followed with *Murray v. Lylburn*, 2 *Johns. Ch.* 445; *Murray v. Blatchford*, 1 *Wend.* 593, in *Meux v. Anthony*, 11 *Ark.* 411; s. c., 52 *Am. Dec.* 274, with note. Followed and approved with *Murray v. Lylburn*, 2 *Johns. Ch.* 444, in *Norton v. Birge*, 35 *Conn.* 250, 259. Applied to conveyance entitled to be recorded,—in *Edwards v. McKernan*, 55 *Mich.* 526. Referred to in 14 *Am. Dec.* 775, n., as a leading case. Doctrine discussed in 17 *Am. L. Rev.* 849, 888.
- **v. Barney**. See *Townsend v. Masterton Stone Dressing Co.*
- **v. Blatchford**, 1 *Wend.* 583; s. c., 19 *Am. Dec.* 537. See *Same v. Ballou*. See other cases collated (Trustee's compromises) in 5 *Abb. N. C.* 349, n. Followed (Acts of one of several administrators, when to be deemed acts of all) in *Dean v. Duffield*, 8 *Tex.* 235; s. c., 58 *Am. Dec.* 108.
- **v. Bogert**, 14 *Johns.* 318; s. c., 7 *Am. Dec.* 466. Discussed (Contribution against co-defendant, in action *ex contractu*) in 1 *Purs. on Contr. n. l.*
- **v. Burling**, 10 *Johns.* 172. See *Bristol v. Burt*; *Spencer v. Blackman*. Disting'd (Liability for conversion of note made by plaintiff) in *Thayer v. Manley*, 8 *Hun.* 551. Followed in *Decker v. Mathews*, 12 *N. Y.* 319, 322; which aff'd 5 *Sandf.* 444, which see. Applied to action by indorser, in *Comstock v. Hier*, 73 *N. Y.* 278. To action by payee, in *Keutgen v. Parks*, 2 *Sandf.* 66. Followed in *Buck v. Kent*, 3 *Verm.* 99; s. c., 21 *Am. Dec.* 576. Disting'd (Evidence of conversion) in *Eldridge v. Adams*, 54 *How. Pr.* 422; *Salt Springs Nat. B'k v. Wheeler*, 48 *N. Y.* 497. Applied in *Woodworth v. Kissam*, 15 *Johns.* 187; *Covell v. Hill*, 6 *N. Y.* 382; *Spencer v. Blackman*, 9 *Wend.* 169.
- **v. Church**, 1 *Hun.* 49; s. c., 3 *Sup'm. Ct. (T. & C.)* 145. Aff'd, it seems, in 58 *N. Y.* 621, without further opinion, upon opinion of LAWRENCE, J., at Special Term, which has not been reported. See *Merritt v. Seaman*.
- **v. Clark**, 4 *Daly*, 468. Aff'd, it seems, in 58 *N. Y.* 684, but without opinion.

- **v. Columbian Ins. Co.**, 11 *Johns.* 302. Followed with *Lawrence v. Sebor*, 2 *Cai.* 203 (Insurable interest in partner) in *Manhattan Ins. Co. v. Webster*, 59 *Pa. St.* 227, 230; s. c., 20 *Am. Dec.* 517, n.
- **v. Coster**, 29 *Johns.* 576; s. c., 11 *Am. Dec.* 333. Aff'd 5 *Johns. Ch.* 522. Another decision in 7 *Id.* 157; which was aff'd in 4 *Cow.* 617. See *Kane v. Bloodgood*. Decision in 20 *Johns.* followed (Application of statutes of limitation to cases of account) in *Didier v. Davison*, 2 *Barb. Ch.* 484; *Atwater v. Fowler*, 1 *Edw.* 426. Cited in *Green v. Disbrow*, 79 *N. Y.* 6, as supported by most of the modern cases. Both decisions explained in *Ogden v. Astor*, 4 *Sandf.* 328. See *Code Civ. Pro.* 1881, § 410, n. Decision in 20 *Johns.* applied (Effect of plea of statute of limitations in equity) in *McCrea v. Purmort*, 16 *Wend.* 476. Recognized as authority and explained with *Kane v. Bloodgood*, 7 *Johns. Ch.* 121 in *Dugan v. Gittings*, 3 *Gill. (Md.)* 138; s. c., 43 *Am. Dec.* 306, with note. Disting'd (Sufficiency of acknowledgment of debt) in *Hancock v. Bliss*, 7 *Wend.* 269. Decision in 4 *Cow.* cited (Effect of admissions made in connection with arrangements for compromise) in 1 *Taylor on Ev.* 696, as appearing to go farther than the English cases.
- **v. De Rottenham**, 6 *Johns. Ch.* 52. See *McMenomy v. Murray*. Examined (Effect of discharge in bankruptcy on foreign debts) in *Ritchie v. Garrison*, 10 *Abb. Pr.* 246, 251. Denied with *Penniman v. Meigs*, 9 *Johns.* 325, as contrary to the current of authority, in *McDougall v. Page*, 55 *Vt.* 187; s. c., 45 *Am. R.* 602; *Pratt v. Chase*, 44 *N. Y.* 597; *Soule v. Chase*, 39 *Id.* 342, being cited with approval as maintaining a contrary view, *Soule v. Chase* being also followed (Waiver of such extra-territorial immunity). Followed (Claims not provable in bankruptcy) in *Bush v. Cooper*, 26 *Miss.* 599; s. c., 59 *Am. Dec.* 270.
- **v. Gouverneur**, 2 *Johns. Cas.* 438; s. c., 1 *Am. Dec.* 177; 1 *N. Y. Com. L. Law. ed.* 569, with brief note. See *Jackson v. Loomis*. Denied (Damages in action for real profits) in 2 *Kent Com.* 234, 235, as containing "extra-judicial dicta." See *Jackson v. Loomis*, 4 *Cow.* 168; *Nelson v. Allen*, 1 *Yerg. (Tenn.)* 360. Quoted in *Sedgw. & W. on Tr. of Tit. to Land*, § 648.
- **v. Graham**, 6 *Paige*, 622. Rev'd in 22 *Wend.* 559.
- **v. House**, 11 *Johns.* 464. Followed (Attorney's authority to release witness who is liable to client) in *Ball v. Bank of Alabama*, 8 *Ala.* 590; s. c., 42 *Am. Dec.* 649, with note.
- **v. Hudson River R. R. Co.**, 47 *Barb.* 196. Aff'd, it seems, in 48 *N. Y.* 655, but without opinion. See *Hegeman v. Western R. R. Co.* Decision in 47 *Barb.* cited as authority (Measure of damages in action for personal injury. Granting new trials in such cases) in *Goodno v. City of Oshkosh*, 23 *Wis.* 300.
- **v. Jibson**, 22 *Hun.* 386. Disting'd (Attorney's right to proceed for costs) in *Wilbur v. Baker*, 24 *Id.* 24, 26.
- **v. Judah**, 6 *Cow.* 484. Disting'd (Effect of check as assignment of fund) in *Attorney-General v. Continental Life Ins. Co.*, 71 *N. Y.* 325, 329. Applied (Necessity of presenting check for payment) to case of omission to give notice of dishonor,—in *Pack v. Thomas*, 3 *Smedes & M. (Miss.)* 11; s. c., 51 *Am. Dec.* 135, 139, with note. Followed with *Brown v. Mott*, 7 *Johns.* 361 (Liability to contribution between accommodation indorsers) in *Aiken v. Barkley*, 2 *Speer (So. Car.)* 747; s. c., 42 *Am. Dec.* 397, 400, with note. Approved with *Shaver v. Ehle*, 16 *Johns.* 201 (Responsibility of seller of note, &c., for its genuineness) in *Terry v. Bissell*, 26 *Conn.* 23, 35.
- **v. Judson**, 9 *N. Y.* 73; s. c., 59 *Am. Dec.* 73, with note. Applied with *Pratt v. Adams*, 7 *Paige*, 615 (Provision in general assignment, &c., for payment of usurious debt) and *Green v. Morse*, 4 *Barb.* 284; *Strong v. Strickland*, 32 *Id.* 284; *Morse v. Crofoot*, 4 *N. Y.* 114; *Matter of Lewis*, 81 *Id.* 421, explained in *Chapin v. Thompson*, 89 *Id.* 270. Explained in *Burrill on Assign.* § 118, 4 cd.
- **v. Long**, 1 *Wend.* 140. Applied (Proof necessary to sustain action for malicious prosecution) in *Yocum v. Polly*, 1 *B. Mon. (Ky.)* 358; s. c., 36 *Am. Dec.* 583, with note.
- **v. Lylburn**, 2 *Johns. Ch.* 441. See *Beebe v. Bank of N. Y.*; *Murray v. Ballou*; *Stafford v. Van Rensselaer*. Applied (Effect of notice of pendency of action) in *Leitch v. Wells*, 48 *Barb.* 649, which was rev'd in 48 *N. Y.* 594, 608, which see; *Hopkins v. McLaren*, 4 *Cow.* 678; *Green v. Slayter*, 4 *Johns. Ch.* 43. Disting'd in *Parks v. Jackson*, 11 *Wend.* 457. Examined with other cases in *Griffith v. Griffith, Hoffm.* 159. Collated with other cases in *Holbrook v. N. J. Zinc Co.*, 57 *N. Y.* 629. Reviewed with *Scudder v. Van Amburgh*, 4 *Edw.* 29 (Application of doctrine to personal property) in *Winston v. Westfeldt*, 22 *Ala.* 760; s. c., 58 *Am. Dec.* 278. Followed in *Dovey's Appeal*, 97 *Pa. St.* 162. Cited as the leading case in 2 *Pomeroy on Eq. Jur.* 77, n. Applied (Rights of assignee of chose in action) in *Corning v. Murray*, 3 *Barb.* 654; *Westfall v. Jones*, 23 *Id.* 12; *James v. Morey*, 2 *Cow.* 298; *Livingston v. Dean*, 2 *Jones. Ch.* 480. Dicta herein disapproved in *Muir v. Schenck*, 3 *Hill*, 230; *Bush v. Lathrop*, 22 *N. Y.* 540. See *U. S. v. Sturges*, 1 *Paine*, 534. Limited in *Mott v. Clark*, 9 *Pa. St.* 399; s. c., 49 *Am. Dec.* 566, 569, with note. Disting'd in *Greenwell v. Haydon*, 78 *Ky.* 332; s. c., 38 *Am. R.* 234. Followed with *Livingston v. Dean*, 2 *Johns. Ch.* 479, in *Moore v. Holcombe*, 3 *Leigh (Va.)* 597; s. c., 24 *Am.*



- Dec.* 683, with note. Disapproved in *Thomas on Mort.* 106, citing *Bush v. Lathrop*, 22 *N. Y.* 535. Referred to in 2 *Pomeroy on Eq. Jur.* 170, *n.*, as overruled.
- *v. Mumford*, 6 *Cow.* 441. Trial at *nisi prius* reported in *Anth. N. P.* 294. See *Van Keuren v. Parmelee*. Decision in 6 *Cow.* explained (Surviving partner's rights) in 2 *Collyer on Partn.* § 623, *n.* 1, Wood's *Am. ed.*
- *v. Murray*, 5 *Johns. Ch.* 60. See *Jenkins v. De Groot*. Recognized as authority (Parties to action affecting assets of insolvent partnership) in *Halsey v. Norton*, 45 *Miss.* 703; *s. c.*, 7 *Am. E.* 745. Cited (Rights of joint and separate partnership creditors) in 3 *Kent Com.* 63, *n. b.* for history of the rule and its fluctuations. Cited as containing a review of the history of the English rule, in 1 *Pars. on Contr.* 211, *n. l.* Collated with other cases in *Story on Partn.* 7 *ed.* § 363, *n.*
- *v. N. Y. Life Ins. Co.*, 19 *Hun.* 350. Rev'd in 85 *N. Y.* 236; *s. c.*, 9 *Abb. N. C.* 309. Decision in *Id.* collated with *Jones v. Brooklyn Life Ins. Co.*, 61 *N. Y.* 79; *Van Valkenburg v. Am. Popular Life Ins. Co.*, 9 *Hun.* 583; 70 *N. Y.* 605 (Burden of proof as to suicide, in insurance cases) in 16 *Cent. L. J.* 367.
- *v. Richards*, 1 *Wend.* 58. Applied (Who to bear loss happening between sale and delivery) in *Aspinwall v. Balch*, 4 *Abb. N. C.* 193, 198.
- *v. Riggs*, 2 *Johns. Ch.* 565. Rev'd in 15 *Johns.* 571. See *Hyslop v. Clarke*. Both decisions considered at length and explained (Effect of reservation contained in assignment for creditors) in *Mackie v. Cairns*, 5 *Cow.* 555. Decision in 15 *Johns.* considered at length in *Austin v. Bell*, 20 *Id.* 447; *Grover v. Wakeman*, 11 *Wend.* 187. Referred to as overruled, in *Goodrich v. Downs*, 6 *Hill*, 439. Cited disapprovingly, discussed, and compared, in 2 *Kent Com.* 536, *n. a.* Followed (Void deed as incapable of confirmation) in *Chess v. Chess*, 1 *Pen. & W. (Penn.)* 32; *s. c.*, 21 *Am. Dec.* 350, 357, with note. Compare *Co. Litt.* 295 *b.* § 515. Qualified with *Duncan v. Lyon*, 3 *Johns. Ch.* 359 (Right of equitable set-off) in *Lane v. Bailey*, 47 *Barb.* 403.
- *v. Smith*, 1 *Duer*, 412. Subsequent decision, as it seems, in 9 *Bosw.* 689. See *Bingham v. Weiderwax*; *Fellows v. Prentiss*; *Hess v. Fox*; *Jumel v. Jumel*; *McCrea v. Purmort*. Decision in 1 *Duer* explained with *Fellows v. Prentiss*, 3 *Den.* 512; *McCrea v. Purmort*, 16 *Wend.* 460; *Bingham v. Weiderwax*, 1 *N. Y.* 509 (Evidence to show actual consideration of deed, &c.) as applying only to inquiries between parties to instrument in *Halliday v. Hart*, 30 *N. Y.* 474, 493. Decision in 9 *Bosw.* superseded (Costs against executor and administrator) by *Code Civ. Pro.* § 1835.
- *v. Starbuck*, 5 *Wend.* 148. Explained (Inquiry into jurisdictional facts respecting judgments of other States) in *Logansport Gas. Co. v. Knowles*, 2 *Dill.* 421, as resting on peculiarities of *N. Y.* practice. Criticized and disapproved in *Lincoln v. Tower*, 2 *McLean*, 473; *Wilcox v. Kassick*, 2 *Mich.* 165.
- *v. Toland*, 3 *Johns. Ch.* 569. Followed with *Wilde v. Jenkins*, 4 *Paige*, 481; *Leacycraft v. Dempsey*, 15 *Wend.* 83; *Phillips v. Belden*, 2 *Edw.* 1 (When settlement of account is not to be impeached) in *Langdon v. Roane's Adm'r*, 6 *Ala.* 518; *s. c.*, 40 *Am. Dec.* 60, 62, with note. Considered with *Lockwood v. Thorne*, 11 *N. Y.* 170; *Stenton v. Jerome*, 54 *Id.* 480; *Case v. Hotchkiss*, 1 *Abb. Ct. App. Dec.* 324; *Towsley v. Denison*, 45 *Barb.* 490, as to the application of the rule to others than merchants—in *Anding v. Levy*, 57 *Miss.* 51; *s. c.*, 34 *Am. E.* 435, with note containing comments on cases.
- *v. United Ins. Co.*, 2 *Johns. Cas.* 168; *s. c.*, 1 *N. Y. Com. L. Law. ed.* 476, with brief note (Warranties of nationality).
- *v. —*, 2 *Johns. Cas.* 263. See *Mumford v. Church*.
- *v. Vanderbilt*, 39 *Barb.* 140. See *Curtis v. Gokey*; *Hoyt v. Thompson*; *Maier v. Homan*. Collated with *Saratoga Co. B'k. v. King*, 44 *N. Y.* 87, and other cases (Covenants in restraint of trade) as illustrations of when such contracts are considerations for other contracts, in 19 *Cent. L. J.* 87. Included with notes (Parties in *pari delicto*) in *Zinn's Lead. Cas. on Trusts*, 103.
- *v. Vanderveer*, 6 *Hun.* 302. Rule said to be changed by *Code Civ. Pro.* (Exceptions to rulings on trial in county court, where heard) in *Kilmer v. O'Brien*, 13 *Hun.* 224.
- *v. Woodin*, 17 *Wend.* 531. See *Goodell v. Jackson*.
- Muscott v. Woolworth**, 13 *How. Pr.* 336. Rev'd in 14 *Id.* 477. Decision in *Id.* approved (Levy on money in hands of officer on execution against party in whose favor it was collected) in *Baker v. Kenworthy*, 41 *N. Y.* 215.
- Musgrave v. Sherwood**, 53 *How. Pr.* 311. Further proceeding in 76 *N. Y.* 194. Also in 54 *How. Pr.* 338; *s. c.*, less fully, 23 *Hun.* 674, *n.*, which was rev'd in *Id.* 669; *s. c.*, 60 *How. Pr.* 339. Decision in 76 *N. Y.* disting'd (Proceedings when suspended by appeal) in *Storrs v. Plump*, 30 *Hun.* 319. Followed (Reference to assess damages upon injunction, after appeal) in *Howard v. Park*, 59 *How. Pr.* 344.
- Musgrove v. N. Y. Common Pleas**, 9 *Wend.* 429. Doubted (Compelling further return to alternative mandamus) in *People v. Ovenshire*, 41 *How. Pr.* 164, 166.
- Musier v. Trumbour**, 5 *Wend.* 274. Explained (Formation of partnership) in 1 *Collyer on Partn.* § 20, *n.* 1, Wood's *Am. ed.*
- Mussina v. Belden**, 6 *Abb. Pr.* 165. Approved and followed (Jurisdiction of actions

- for torts committed out of the State) in *Latourette v. Clarke*, 45 *Barb.* 327. But see *Dewitt v. Buchanan*, 54 *Id.* 31; *Farley v. Dewaters*, 2 *Dalb.* 192. See (Jurisdiction of actions affecting lands situated out of the State) *Code Civ. Pro.* 1881, § 982, n.
- *v. Clark*, 17 *Abb. Pr.* 188. See (Irrelevant, &c. matter in pleading) *Code Civ. Pro.* 1881, § 545, n.
- Mutual Benefit Life Ins. Co. v. Supervisors of N. Y.**, 33 *Barb.* 322; s. c., 20 *How. Pr.* 416. Aff'd in 2 *Abb. Pr. N. S.* 233; s. c., 3 *Keyes*, 182; 32 *How. Pr.* 359; 3 *Abb. Ct. App. Dec.* 344, which also aff'd 8 *Bosw.* 683.
- Mutual Life Ins. Co. v. Bigler**, 18 *Hun*, 371. Modified in 79 *N. Y.* 568.
- *v. Bowen*, 47 *Barb.* 618. See *Ohio & Mississippi R. R. Co. v. Kasson*. Cited as authority (Practice on reference as to surplus moneys on foreclosure sale) in *Bergen v. Carman*, 79 *N. Y.* 146, 152. Collated with other cases in *Colly on Forec.* 41. Examined with other cases in *Thomas on Mort.* 380; citing also *King v. West*, 10 *How. Pr.* 333; *Husted v. Dakin*, 17 *Abb. Pr.* 187.
- *v. Dake*, 1 *Abb. N. C.* 381. Aff'd in 87 *N. Y.* 257. Decision in 87 *Id.* followed with *Simonson v. Falihee*, 25 *Hun*, 570 (Effect of mistakes by recording officer) in *Bedford v. Tupper*, 30 *Id.* 174. With decision in 1 *Abb. N. C.* see other cases *pro* and *con* (Index, as part of record) in 2 *Pomeroy on Eq. Jur.* 95, n.
- *v. Davies*, 44 *Super. Ct. (J. & S.)* 172. Followed (Liability of one assuming payment of mortgage) in *Fleishhauer v. Doellner*, 9 *Abb. N. C.* 372, 374.
- *v. Hoyt*, 10 *Weekly Dig.* 275. Rev'd in 86 *N. Y.* 615.
- *v. Hunt*, 79 *N. Y.* 541. Explained (Contract of lunatic) in *Riggs v. American Tract Soc'y*, 84 *Id.* 330, 337. Followed in *Shoulters v. Allen*, 51 *Mich.* 531.
- *v. Ross*, 10 *Abb. Pr.* 260, n. Followed and approved (Printed subscription) in *Barnard v. Heydrick*, 49 *Barb.* 62.
- *v. Salem*, 5 *Sup'm. Ct. (T. & C.)* 246; s. c., 3 *Hun*, 117. Examined with other cases (Practice on reference as to surplus moneys on foreclosure sale) in *Thomas on Mort.* 391. Compare *Bergen v. Carman*, 79 *N. Y.* 146.
- *v. Wager*, 27 *Barb.* 354. Applied (Waiver by insurer) in *Nat. Life Ins. Co. v. Minch*, 53 *N. Y.* 151. Collated with other cases in 35 *Am. R.* 775, n. Applied (Effect of false representation, to avoid policy) in *Foot v. Aetna Life Ins. Co.*, 61 *N. Y.* 577, which rev'd 4 *Dalb.* 293, which see. Thought with *Clarke v. Dutcher*, 9 *Cow.* 674, in 45 *Am. Dec.* 633, n.,—though followed in *Story on Eq.* §§ 146-148; *Snell on Eq.* 376,—to state a rule broader than is sustained by authority (Relief against mistake of fact). Dicta herein referred to in 2 *Pomeroy on Eq. Jur.* 322, n., as inconsistent with other decisions, and as having been expressly overruled.
- Mutual Safety Ins. Co. v. Hone**, 2 *N. Y.* 235. Followed (Construction of words, "parties interested," in insurance policies) in *Acer v. Merchants' Ins. Co.*, 57 *Barb.* 68, 82.
- Muzzy v. Shattuck**, 1 *Den.* 233. Aff'd in 7 *Hill*, 584, n. See *Bartlett v. Crozier*; *Looney v. Hughes*; *Supervisors of Albany v. Dorr*; *Swartwout v. Mechanics' B'k of N. Y.* Decision in 1 *Den.* approved (Liability of public officer who receives moneys) in *State of Missouri v. Gratzweiler*, 49 *Mo.* 17; s. c., 8 *Am. R.* 119. Disting'd in *York County v. Watson*, 15 *So. Car.* 1; s. c., 40 *Am. R.* 675. Followed in *State ex rel. Township v. Powell*, 67 *Mo.* 935; s. c., 29 *Am. R.* 512.
- *v. Whitney*, 10 *Johns.* 226. Disting'd and explained (Partnership, as created by participation in profits) in *Simpson v. Feltz*, 1 *McCord's Ch. (So. Car.)* 213; s. c., 16 *Am. Dec.* 602, with note. Approved in *Hazard v. Hazard*, 1 *Story*, 371, 375. See, also, *Story on Partn.* 7 ed. § 32, n., also *Id.* 43, n., as to liability in such case to third persons. Discussed in 1 *Collyer on Partn.* § 39, Wood's *Am. ed.*
- Myer v. Cole**, 12 *Johns.* 349. Denied (Joinder of action arising after testator's death with one arising in his lifetime) in *Hapgood v. Houghton*, 10 *Pick. (Mass.)* 154. Compare *Austin v. Monroe*, 47 *N. Y.* 360. Rule herein said to have been changed by statute (Executor's liability as to funeral expenses) in *Patterson v. Patterson*, 59 *N. Y.* 574, 585. Rule said to be well settled (Personal liability of executor, administrator, &c.) in 15 *Am. L. J. R.* 449.
- *v. Fisher*, 15 *Johns.* 504. Followed (Recovery of money paid on contract void by statute of frauds) in *Allen v. Booker*, 2 *Stew. (Ala.)* 21; s. c., 19 *Am. Dec.* 33, 36, with note.
- *v. Whitaker*, 5 *Abb. N. C.* 172. See *Marshall v. Peters*; *Ward v. People*. Criticised (Property in ice forming on mill-pond) in *Dodge v. Berry*, 26 *Hun*, 246. Explained in 21 *Am. L. Reg. N. S.* 320, n. Compare (Artificial water-courses) *Roberts v. Richards*, 50 *L. J. Chanc. Div.* 297; 51 *Id.* 944.
- Myers v. Burns**, 33 *Barb.* 401. Aff'd in 35 *N. Y.* 269. Decision in *Id.* disting'd (Effect of clause in lease, as covenant respecting condition of premises) in *Johnson v. Oppenheim*, 12 *Abb. Pr. N. S.* 454; *White v. Albany R'y*, 17 *Hun*, 100. Followed in *Ward v. Kelsey*, 38 *N. Y.* 81. Followed (Damages for breach of lessor's covenant to keep premises in repair) in *Mack v. Patchin*, 42 *Id.* 176; *Cook v. Soule*, 56 *Id.* 423; *Ilextr v. Knox*, 63 *Id.* 565, 568; which aff'd 39 *Super. Ct. (J. & S.)* 109, 117, which see. Followed (Damages for loss of profits) in *Cassidy v. LeFevre*, 45 *N. Y.* 562, 568.
- *v. Davis*, 26 *Barb.* 367. Rev'd in 22 *N. Y.* 489. Decision in *Id.* disting'd (Set-off against assignee for creditors) in

- Schieffelin v. Hawkins, 14 *Abb. Pr.* 112, 116. Applied in dissenting opinion in Seymour v. Dunham, 24 *Hun.* 93, 98. Cited with Martin v. Kunzmüller, 37 *N. Y.* 396; Roberts v. Carter, 38 *Id.* 107; as according with the law of Ohio, in Fuller v. Steiglitz, 27 *Ohio St.* 355; s. c., 22 *Am. R.* 312, 316. Explained in *Burrill on Assign.* § 403, n. 4, 4 ed. Explained (What is such condition of claims as to enable set-off) in Taylor v. Mayor, &c. of N. Y., 82 *N. Y.* 10, 17. Reviewed with Bush v. Lathrop, 22 *Id.* 547; Cummings v. Norris, 25 *Id.* 625; Hooker v. Eagle B'k of Rochester, 30 *Id.* 87; Petersen v. Chemical Bank, 32 *Id.* 45; Allen v. Brown, 44 *Id.* 228; Meeker v. Claghorn, *Id.* 349 (Effect of assignment of chose in action under N. Y. Code) in Levy v. Levy, 78 *Penn. St.* 507; s. c., 21 *Am. R.* 35, 38.
- v. De Mier, 4 *Daly*, 343. Aff'd in 52 *N. Y.* 647. Decision in 4 *Daly* cited as authority (Time as essence of contract to sell land) in Emerson v. Roof, 13 *Abb. N. C.* 358, 361.
- v. Dixon. See Freeman v. Adams.
- v. Eddy, 47 *Barb.* 263. See Lupton v. Lupton; Reynolds v. Reynolds. Explained (Legacy, when a charge on realty) in Hoyt v. Hoyt, 85 *N. Y.* 142, 149. Explained as turning on extrinsic circumstances, in Manson v. Manson, 8 *Abb. N. C.* 123, 127. Explained (Parol evidence to explain will) in 1 *Jarm. on Wills*, Rand. & T. ed. 727, n.
- v. Feeter. See Barnard v. Wheeler; Beardsley v. Dickinson.
- v. Gemmel, 10 *Barb.* 537; s. c., more fully, 9 *N. Y. Leg. Obs.* 173, where decision at Special Term is also given. See Dyett v. Pendleton; Lampman v. Milks; Palmer v. Wetmore; Parker v. Foote. Fully recognized as authority (Easements in light and air) in Doyle v. Lord, 64 *N. Y.* 439, which rev'd 39 *Super. Ct. (J. & S.)* 421, 433, which see. Relied on with Palmer v. Wetmore, 2 *Sandf.* 316, in Mullen v. Stricker, 19 *Ohio*, 135; s. c., 2 *Am. R.* 379. Cited with Parker v. Foot, 19 *Wenyl.* 309, as indicating what is the manifest tendency,—in Powell v. Sims, 5 *W. Va.* 1; s. c., 13 *Am. R.* 629, 634. Commented on in 2 *Washb. on Real Prop.* 4 ed. 345, n. 7. Explained in *Wood on Nuis.* 2 ed. 155.
- v. Malcolm, 6 *Hill*, 292; s. c., 41 *Am. Dec.* 744, with note, wherein are collected citations. Explained (Evidence of pecuniary circumstances of defendant) in Lewis v. Chapman, 19 *Barb.* 256. Limited in Kniffen v. McConnell, 30 *N. Y.* 289. Followed (Keeping gunpowder, when a nuisance) in Bradley v. People, 56 *Barb.* 73. Applied in Heeg v. Licht, 80 *N. Y.* 579, 584; s. c., 8 *Abb. N. C.* 355, 361, which rev'd 16 *Hun.* 259, which see.
- v. Overton, 4 *E. D. Smith*, 428; s. c., more fully, 2 *Abb. Pr.* 344. Followed (Service by party a mere irregularity) in Hunter v. Lester, 10 *Id.* 260, 263. Disapproved with Hunter v. Lester, 18 *Hov.* 347, in Toenniges v. Drake, 7 *Col.* 474.
- v. Smith, 48 *Barb.* 614. Disapproved (Who may apply to cure defect in instrument not properly stamped) in Schermhorn v. Burgess, 55 *Id.* 422, 426. Explained (Effect of omission of stamp) in New Haven & Northampton Co. v. Quintard, 6 *Abb. Pr. N. S.* 128. Discussed and followed (What constitutes acceptance by letter) in Martin v. Northwestern Fuel Co., *U. S. Cir. Ct. D. Minn.* 22 *Fed. Rep.* 599.
- v. Trimble, 3 *E. D. Smith*, 607; s. c., 1 *Abb. Pr.* 220. Followed (Contempt, when excused by inability to pay money) in Russell v. Kelly, 44 *Cal.* 475; s. c., 12 *Am. R.* 167. See (Severance of action) *Code Civ. Pro.* § 511.
- v. Welles, 5 *Hill*, 463. Applied (Effect of taking note, as an extension of credit) in Hart v. Hudson, 6 *Duer*, 304. Denied and Elwood v. Diefendorf, 5 *Barb.* 298, applied, in Shaw v. Associated Ref'd Presb'n Church, 39 *Pa. St.* 234; s. c., 30 *Am. Dec.* 258, n. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 277.
- v. White, 37 *Hov. Pr.* 393. See (Notice of appeal from justice's decision) *Code Civ. Pro.* 1881, § 3070, n.
- Mygatt v. N. Y. Protection Ins. Co., 21 *N. Y.* 52. Followed (Power of mutual companies to issue policies for cash premiums) in White v. Havens, 4 *Abb. Ct. App. Dec.* 582.
- v. Washburn, 15 *N. Y.* 316. See People ex rel. Mygatt v. Supervisors of Chenango. Disting'd (Jurisdiction of assessors) in Bell v. Pierce, 48 *Barb.* 52, which was aff'd in 51 *N. Y.* 16, which see; Dorn v. Backer, 61 *Barb.* 610; Boyd v. Gray, 34 *Hov. Pr.* 332; Stewart v. Fonda, 19 *Hun.* 195. Followed in Clark v. Norton, 58 *Barb.* 437, which was aff'd in 49 *N. Y.* 246, which see; Palmer v. Lawrence, 6 *Lans.* 292; Nat. B'k of Chemung v. City of Elmira, 53 *N. Y.* 53; Dorwin v. Strickland, 57 *Id.* 495. Explained in Overing v. Foote, 65 *N. Y.* 270, 273. Disting'd (Personal liability of assessor) in Barhyte v. Shepherd, 35 *Id.* 244, 254. Followed with Barhyte v. Shepherd, in Wade v. Matheson, 4 *Lans.* 158, 163.
- v. Wilcox, 1 *Luns.* 55. Aff'd in 45 *N. Y.* 306. Decision in *Id.* explained (Interest on attorney's account) in Gallup v. Perue, 10 *Hun.* 527; White v. Miller, 78 *N. Y.* 396. Applied (Running of statute of limitations against attorney's claim) in Gustine v. Stoddard, 23 *Hun.* 101. See 6 *Abb. L. J.* 258. Applied (Interest on unliquidated demand) in McCollum v. Seward, 62 *N. Y.* 318. Examined with other cases in White v. Miller, 78 *Id.* 396.
- Mynard v. Syracuse, Binghamton & C. R. R. Co., 7 *Hun.* 399. Rev'd in 71 *N. Y.* 180; s. c., 27 *Am. R.* 28. See Gould v. Hill; Place v. Union Express Co.; Poucher v. N. Y. Central R. R. Co.; Smith v. N. Y. Central R. R. Co.; Wells v. Steam Nav. Co. Decision in 71 *N. Y.* followed (Con-

tract exempting carrier from liability for negligence in *Holsapple v. Rome*, Water-town & O. R. R. Co., 86 *Id.* 275, 278. Disting'd in *Potter v. Sharp*, 24 *Hun.* 180. See 19 *Abb. L. J.* 308. Disting'd as inapplicable to telegraph companies in *Schwartz v. At. & Pac. Tel. Co.*, 18 *Hun.* 157, 159.

**Mynderse v. Snook**, 1 *Lans.* 488. Approved as containing an elaborate discussion (Joint and separate demands and judgments) in *Pomeroy on Rem.* § 754, n. 6.

## N.

**Nagle v. Taggart**, 4 *Abb. N. C.* 144. See (Effect of service of summons on husband, as service on wife) *Code Civ. Pro.* 1881, § 450, n.

**Napier v. McLeod**, 9 *Wend.* 120. See *Gram v. Cadwell*. Explained and disting'd (Partner's authority over factor on dissolution of co-partnership) in *Hilton v. Vanderbilt*, 82 *N. Y.* 590, 595 599.

**Nase v. Peck**, 3 *Johns. Cas.* 128. Discussed (Statute of limitations in case of real actions) in *Ang. on Limit.* § 346, 6 ed.

**Nash, Matter of**. See *Yates v. Lansing*.

**Nash v. Kemp**, 49 *How. Pr.* 522. Aff'd in 12 *Hun.* 592.

— **v. Manufacturers' & Trad. Bk. of Buffalo**, 5 *Hun.* 568. Rev'd in 68 *N. Y.* 396.

— **v. Mitchell**, 8 *Hun.* 471. Rev'd in 71 *N. Y.* 199; s. c., 27 *Am. R.* 38; 3 *Abb. N. C.* 171, with note. See *Yale v. Dederer*. Decision in 3 *Abb. N. C.* disting'd (Liability of married woman on contract made with husband) in *Treman v. Allen*, 15 *Hun.* 48. See cases cited in 5 *Abb. N. C.* 230, n.

— **v. Mosher**, 19 *Wend.* 431. See *Hoffman v. Carow*. Followed (Trove against lien-holder) in *Whitlock v. Heard*, 13 *Ala.* 776; s. c., 48 *Am. Dec.* 73, with note. Colated with other cases and compared (Essentials of trespass upon property) in *Bigel. Cas. on Torts*, 385.

— **v. People**, 33 *How. Pr.* 384; s. c., more fully, 36 *N. Y.* 607. Disting'd (Jurisdiction of city judge of N. Y.) in *Marry v. James*, 37 *How. Pr.* 52.

— **v. Russell**, 5 *Barb.* 556. See *Geer v. Archer*; *Ingraham v. Gilbert*. Disapproved with *Geer v. Archer*, 2 *Barb.* 420; *Ingraham v. Gilbert*, 20 *Id.* 151; and *Doty v. Wilson*, 14 *Johns.* 378, approved (Previous obligation as consideration for promise) in *Goulding v. Davidson*, 26 *N. Y.* 605. Relied on with *Geer v. Archer*, 2 *Barb.* 420; *Smith v. Warde*, 13 *Johns.* 257; *Ehle v. Judson*, 24 *Wend.* 97; *Watkins v. Halstead*, 2 *Sandf.* 311; in *Porterfield v. Butler*, 47 *Miss.* 165; s. c., 12 *Am. R.* 329, 333, where *Goulding v. Davidson*, 26 *N. Y.* 604, was disting'd as exceptional.

— **v. Tupper**, 1 *Chi.* 402; s. c., 2 *N. Y. Com. L. Law. ed.* 202, with brief note; and 2 *Am. Dec.* 197, with note, wherein it is shown

to have been cited as authority by *Kent*, *Parsons*, and *Story*. Followed (Effect of *lex fori* and *lex loci* as to limitation of action) in *Graves v. Graves*, 2 *Bibb. (Ky.)* 207; s. c., 4 *Am. Dec.* 697. Followed with *Ruggles v. Keeler*, 3 *Johns.* 261, in *Levy v. Boas*, 2 *Bailey (So. Car.)* 217; s. c., 23 *Am. Dec.* 134, with note. Discussed in *Ang. on Limit.* § 66, 6 ed.

— **v. White's B'k of Buffalo**, 5 *Hun.* 568. Rev'd in 68 *N. Y.* 396. See *Cram v. Hendricks*. To same effect (*Usury* by National banks) see *National Bank v. Johnson*, 104 *U. S.* 271, 275; which aff'd 74 *N. Y.* 329, which see.

**Nason v. Luddington**, 55 *How. Pr.* 342. Aff'd in 56 *Id.* 172; s. c., 8 *Daly*, 149.

**Nathan v. Whitlock**, 3 *Edw.* 215. Aff'd in 9 *Paige*, 152. Decision in *Id.* explained (Liability of members of private corporation) in *Ang. & A. on Corp.* § 603, 11 ed. Decision in 3 *Edw.* reviewed at length with *Barry v. Merchants' Exchange Co.*, 1 *Sandf. Ch.* 280, and other cases (What is included in capital stock of corporation, as to creditors) in *Hightower v. Thornton*, 8 *Ga.* 486; s. c., 52 *Am. Dec.* 412, 418, 421.

**National B'k v. Norton**, 1 *Hill*, 572. See *Baker v. Stackpoole*; *Ketcham v. Clark*; *Vernon v. Manhattan Co.*; *Welsh v. German American Bank*. Disting'd (Authority of officer of corporation) in *Jellinghaus v. N. Y. Ins. Co.*, 6 *Duer*, 5. Disapproved (Effect of notice to bank director) in *Westfield B'k v. Cornen*, 37 *N. Y.* 323. Applied to knowledge by president, in *Getman v. Second Nat. B'k*, 23 *Hun.* 498, 503. Followed (Power of partner after dissolution) in *Gale v. Miller*, 1 *Lans.* 456; which was aff'd in 54 *N. Y.* 539, which see; *Van Keuren v. Parmelee*, 2 *Id.* 531.

**National B'k of Auburn v. Lewis**, 10 *Hun.* 468. Rev'd in 75 *N. Y.* 516; s. c., 31 *Am. R.* 484; 2 *Brown's Nat. B'k Cas.* 305. Upon re-argument, ordered in consequence of decision in *Barnet v. Muncie*, 98 *U. S.* 555, decision in 75 *N. Y.* was overruled in 81 *Id.* 15. Decision in *Id.* disting'd (Application of partial payment on security drawing interest) in *Morehouse v. Second Nat. B'k of Oswego*, 30 *Hun.* 628. Applied conversely (*Usurious discount* as offset against national bank) in *Id.*; also in *Nash v. White's Bank of Buffalo*, 13 *Weekly Dig.* 141. Also followed in *Farmers' Nat. Gold B'k v. Stover*, 60 *Cal.* 393. Compare *First Nat. B'k of Peterborough v. Childs*, 130 *Mass.* 519. See criticisms in 24 *Abb. L. J.* 103.

**National B'k of Baltimore v. Sackett**, 2 *Daly*, 395; s. c., 2 *Abb. Pr. N. S.* 286. See *Robinson v. McIntosh*. Commented on (Power of partners to make assignment for benefit of creditors) in *Burrill on Assign.* § 85, 4 ed.

**National B'k of Chemung v. City of Elmira**, 6 *Lans.* 116. Rev'd in 53 *N. Y.* 49. Previous decision on another point in 39 *How.*

- Pr.* 373. Decision in 53 *N. Y.* followed (Jurisdiction of assessors) in *Matter of N. Y. Catholic Protectory*, 8 *Hun.* 95, which was aff'd in 77 *N. Y.* 342, which see; *Matter of Ulster Co. Sav'gs B'k*, 20 *Hun.* 484. Applied in *Williams v. Weaver*, 75 *N. Y.* 34. Disting'd in *People v. Supervisors of Ulster*, 10 *Hun.* 546; *Stewart v. Fonda*, 19 *Id.* 195; *Robinson v. Howland*, 26 *Id.* 501; *Hilton v. Fonda*, 86 *N. Y.* 339, 348. Applied to inspectors of election, in *Goetcheus v. Matthewson*, 61 *Id.* 429; to case of insolvent discharge, in *Morrow v. Freeman*, *Id.* 517. Disting'd (Recovery of money illegally collected by municipal corporation) in *Dewey v. Supervisors of Niagara*, 2 *Hun.* 394; *City of Rochester v. Town of Rush*, 80 *N. Y.* 311. Applied in *Union St'b't Co. v. City of Buffalo*, 82 *Id.* 351, 357.
- National B'k of Commerce v. National Mechanics' B'k Assoc.**, 46 *How. Pr.* 374; s. c., 35 *Super. Ct. (J. & S.)* 282. Aff'd in 55 *N. Y.* 211; s. c., 14 *Am. R.* 232, with note. See *Marine Nat. B'k v. National City B'k*. Decision in 35 *Super. Ct. (J. & S.)* followed (Recovery by bank for payment on raised certified check) in *Marine Nat. Bank v. Nat. City Bank*, 36 *Id.* 459, 477. Decision in 55 *N. Y.* applied to payment on altered note, in *Fraker v. Little*, 24 *Kans.* 599; to payment on forged draft,—in *U. S. v. Nat. Park B'k, U. S. Dist. Ct. S. D. N. Y.*, 6 *Fed. Rep.* 854.
- National B'k of Ft. Edward v. Washington Co. Nat. B'k**, 5 *Hun.* 605. Appeal dismissed, it seems, in 72 *N. Y.* 606, but without opinion. See *Willets v. Phoenix Bank*. Decision in 5 *Hun.* doubted (*Bona fide* holder of a certificate of deposit) in *Tripp v. Curtenius*, 36 *Mich.* 494; s. c., 24 *Am. R.* 613. Included in 1 *Ames Cas. on B. & N.* 799.
- National B'k of Gloversville v. Wells**, 15 *Hun.* 51; s. c., less fully, 2 *Brown's Nat. B'k Cas.* 333. Rev'd in 79 *N. Y.* 498. Decision in 15 *Hun.* collated with other cases (Discounting of note by national bank) in *Field on Ultra Vires*, 100.
- National B'k of Newburgh v. Bigler**, 18 *Hun.* 400. Aff'd in 83 *N. Y.* 51.
- *v. Smith*, 5 *Hun.* 183. Aff'd in 66 *N. Y.* 271; s. c., 23 *Am. R.* 48, with note. Decision in *Id.* followed (Application by bank of moneys deposited, to payment of note) in *Peoples' Bank of Wilkesbarre v. Legrand*, 103 *Pa. St.* 315.
- National B'k of Norwalk v. Lanier**, 7 *Hun.* 623. Cited as authority with *Wadsworth v. Wendell*, 5 *Johns. Ch.* 224; *Schenck v. Ellingwood*, 3 *Edw.* 175 (Supplying defective execution of mortgage) as applicable to mortgage taken by foreign corporation in *Lebanon Sav'g B'k v. Hallenbeck*, 29 *Minn.* 325.
- National B'k of Salem v. Thomas.** See *Jaques v. Marquand*.
- National B'k of Schuylerville v. Lasher**, 1 *Sup'm. Ct. (T. & C.)* 313. Subsequent decision as *Nat. B'k of Schuylerville v. Vanderwerker*, 74 *N. Y.* 234.
- *v. Vanderwerker.* See *Nat. B'k. of Schuylerville v. Lasher*.
- National B'k of Watertown v. Lanson**, 45 *N. Y.* 440. Disting'd (Liability of stockholders as partners after expiration of charter) in *Central City Savings B'k v. Walker*, 66 *Id.* 429.
- National Exch. B'k of Lansingburgh v. Silliman**, 65 *N. Y.* 475. Further proceeding in 4 *Abb. N. C.* 224.
- National Fire Ins. Co. v. Loomis**, 11 *Paige*, 431. Reviewed (Effect of by-bidding at auction sales) in *Towle v. Leavitt*, 23 *N. H.* 360; s. c., 55 *Am. Dec.* 195, 200.
- *v. McKay*, 21 *N. Y.* 191. See *Leavenworth v. Packer*. Applied (Counter claim in foreclosure) in *Lathrop v. Godfrey*, 6 *Sup'm. Ct. (T. & C.)* 96, 100. Disting'd in *Smith v. Hathorn*, 25 *Hun.* 159, 162. Approvingly quoted (Definition of counterclaim) in *Dietrich v. Koch*, 35 *Wis.* 618, 626; *Heckman v. Swartz*, 55 *Id.* 174. See *Code Civ. Pro.* 1881, § 501, n.
- National Life Ins. Co. v. Jones**, 1 *Sup'm. Ct. (T. & C.)* 466. Aff'd, it seems, on opinion below, in 59 *N. Y.* 649, without further opinion.
- *v. Minch*, 6 *Lans.* 100. Rev'd in 53 *N. Y.* 144. Further decision in 5 *Sup'm. Ct. (T. & C.)* 545; mem. s. c., 3 *Hun.* 354. See *Smith v. Glens Falls Ins. Co.* Decision in 53 *N. Y.* cited (When notice to agent is notice to principal) in *Whart. Com. on Ag.* § 180.
- National Park B'k v. Fourth Nat. B'k**, 7 *Abb. Pr. N. S.* 138. Rev'd in 46 *N. Y.* 77.
- *v. Ninth Nat. B'k*, 7 *Abb. Pr. N. S.* 120; s. c., 55 *Barb.* 87. Rev'd in 46 *N. Y.* 77. See *Bank of Commerce v. Union Bank*. Decision in 46 *N. Y.* disting'd (Recovery of money paid on forged check) in *Nat'l B'k of Commerce v. Nat'l B'k'g Ass'n*, 55 *Id.* 211, 214.
- National State B'k of Troy v. Hibbard**, 45 *How. Pr.* 280. Followed (Object of exceptions) in *Roberts v. White*, 43 *Super. Ct. (J. & S.)* 455, 460.
- National Trust Co. v. Gleason**, 77 *N. Y.* 400; s. c., 33 *Am. R.* 632, with note on disqualification of witness.
- Naylor v. Hoffman.** See *Rock River Bank v. Same*.
- Nazro v. Fuller**, 24 *Wend.* 374. See *Bank of America v. Woodworth*; *Redlich v. Doll*; *Woodworth v. Bank of America*. Disting'd (Effect of alteration of note, &c.) in *Griggs v. Howe*, 31 *Barb.* 100, 104. Applied in *Morehead v. Parkersburg Nat'l B'k*, 5 *W. Va.* 74; s. c., 13 *Am. R.* 636.
- Neely v. Onondaga Co. Mut. Ins. Co.**, 7 *Hill*, 49. Disting'd (Liability of member of mutual aid association to assessment) in *McDonald v. Ross-Lewin*, 29 *Hun.* 87. Relied on and applied to insurance com-

- pany—in *Columbia Ins. Co. v. Buckley*, 83 *Penn. St.* 293; s. c., 24 *Am. R.* 172.
- Neff v. Clute.** See *Olcott v. Rathbone*.
- Neffel v. Lightstone**, 77 *N. Y.* 96. Applied (Cause of action, when on contract) in *Sparman v. Keim*, 9 *Abb. N. C.* 1, 6. Disting'd and explained in *Salisbury v. Howe*, 87 *N. Y.* 135. Rule said in *Rowe v. Patterson*, 48 *Super. Ct. (J. & S.)* 249, to have been changed by *Code Civ. Pro.* § 549, subd. 4.
- Negley v. Devlin**, 12 *Abb. Pr. N. S.* 210. Applied (Illegality of foreign lotteries) in *Kohn v. Koehler*, 21 *Hun.* 466.
- Negus, Matter of**, 7 *Wend.* 499. See *Rector, &c. of Trinity Church v. Higgins*. Applied. (When contract of indemnity may be enforced) in *Lathrop v. Atwood*, 21 *Conn.* 125. Explained with *Thomas v. Allen*, 1 *Hill*, 145; *Churchill v. Hunt*, 3 *Den.* 321; *Douglass v. Clark*, 14 *Johns.* 177, in *Forbes v. McCoy*, 15 *Neb.* 636. Applied with *Port v. Jackson*, 17 *Johns.* 239; *Thomas v. Allen*, 1 *Hill*, 145; *Churchill v. Hunt*, 3 *Den.* 321, in *Stout v. Folger*, 34 *Iowa*, 71; s. c., 11 *Am. R.* 138.
- Neidig v. Eifler.** See *Steelyards v. Singer*.
- Nelson v. Columbian Ins. Co.**, 3 *Cal.* 108. See *Le Roy v. Gouverneur*; *Saltus v. Ocean Ins. Co.* Collated with other cases (Terms of memorandum of insurance) in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 732.
- **v. Commercial Mut. Ins. Co.**, 3 *Duer*, 455. Followed (Liability under policy for leakage) in *Borland v. Merc. Mut. Ins. Co.*, 46 *Super. Ct. (J. & S.)* 433, 446.
- **v. McDonald**, 6 *Johns. Ch.* 201. Rev'd in 2 *Cow.* 141. Decision in 6 *Johns. Ch.* followed (Sheriff's sale, when void for fraud) in *Farr v. Sims*, *Rich. Eq. (So. Car.)* 122; s. c., 23 *Am. Dec.* 396, 401, with note. Also followed at p. 399 (When defendant in equity may be witness).
- **v. Neilson** See *Harrison v. Stevens*.
- Neimcewicz v. Gahn**, 3 *Paige*, 614. Aff'd in 11 *Wend.* 312. See *Hubbard v. Gurney*. Decision in 3 *Paige* disting'd (Parol evidence of suretyship) in *Campbell v. Tate*, 7 *Lans.* 371. Approved (Effect of taking new security) in *Cary v. White*, 52 *N. Y.* 145. Referred to (Effect of extension of time) as unimpaired on this point, in *Thomas on Mort.* 74, where the decision is erroneously said to have been rev'd. Applied (Rights of wife as surety) in *Van Horne v. Everson*, 13 *Barb.* 530. Disting'd in *Re Williams*, 1 *Redf.* 212.
- Nellis v. Bellinger**, 6 *Hun.* 560. Explained and applied (Mechanic's lien against owner for erections made with his assent) in *Otis v. Dodd*, 24 *Id.* 538.
- **v. Bradley**, 1 *Sandf.* 560. Explained (Duty of one seeking rescission of contract of sale) in *Wheaton v. Baker*, 14 *Barb.* 594. Approved with *Nicholas v. Michael*, 23 *N. Y.* 264; *Ladd v. Moore*, 3 *Sandf.* 539; *Fraschieris v. Henriques*, 36 *Barb.* 276; *Wheaton v. Baker*, 14 *Id.* 594, in *Warner v. Vallity*, 13 *R. I.* 487.
- **v. Clark**, 20 *Wend.* 24. Subsequent decision in 4 *Hill*, 424. See *Osborne v. Moss*; *Thalhimer v. Brinkerhoff*. Both decisions applied (Contract in fraud of creditors, not enforceable) in *Chamberlain v. Barnes*, 26 *Barb.* 162; *Briggs v. Merrill*, 58 *Id.* 399. Disting'd in *Haynes v. Rudd*, 17 *Hun.* 480. Disting'd as to executed contracts, in *Moseley v. Moseley*, 15 *N. Y.* 335. Disapproved in *Gary v. Jacobson*, 55 *Mass.* 204; s. c., 30 *Am. R.* 515. Followed with approval in *McCausland v. Ralston*, 12 *Nev.* 195; s. c., 28 *Am. R.* 781, 785, 790, the distinction sought to be drawn in dissenting opinion of *NELSON, C. J.*, being disapproved. Decision in 4 *Hill* considered a conclusive authority, in *Merrick v. Butler*, 2 *Lans.* 103, 105. Followed in *Johnson v. Morley*, *Lalor*, 29. Disapproved in *Springer v. Drosch*, 32 *Ind.* 486; s. c., 2 *Am. R.* 357. Collated with *Moseley v. Moseley*, 15 *N. Y.* 335, and other cases in 30 *Am. R.* 517, n. Decision in 20 *Wend.* said in 34 *Am. Dec.* 766, n., to be opposed by a dictum in *James v. Bird*, 8 *Leigh (Va.)* 510; s. c., 31 *Am. Dec.* 668. Followed in *Goudy v. Gebhart*, 1 *Ohio St.* 266. Disting'd (Right of action based on illegal contract) in *Morgan v. Groff*, 4 *Barb.* 529; *Merritt v. Millard*, 5 *Bosw.* 650. Criticised in *Marie v. Garrison*, 13 *Abb. N. C.* 328, n. See cases collected in 6 *Am. L. Reg. N. S.* 209.
- **v. Lathrop**. See *Jackson v. Rowland*; *Thomas v. Crofut*.
- **v. McCarn**, 35 *Barb.* 115. Disapproved (Opinions of witnesses as to damages) in *Armstrong v. Smith*, 44 *Id.* 120, as contrary to numerous cases there cited.
- **v. N. Y. Central R. Co.**, 30 *N. Y.* 505. Compared (Exaction of illegal fares) in *Bordeaux v. Erie R'y Co.*, 8 *Hun.* 579, 581. Contrasted with contrary decisions in 16 *Am. L. Rev.* 818, 828.
- Nelson v. Belmont**, 5 *Duer*, 310. Aff'd in 21 *N. Y.* 36. Decision in *Id.* discussed (General average) in 3 *Kent Com.* 234, n., *Holmes' ed.*
- **v. Bostwick**, 5 *Hill*, 37; s. c., 40 *Am. Dec.* 310, with note, wherein are collected citations. Applied (Necessity of demand before suit) in *Gillett v. Balcom*, 6 *Barb.* 370, 373. Explained (Liability on bond for security for costs) in *Smith v. Norval*, 2 *Code R.* 14. *Dicta* explained (Entry of judgment against joint debtor) in *Orleans Co. Nat. B'k v. Spencer*, 19 *Hun.* 573.
- **v. Cowing**, 6 *Hill*, 336; s. c., 16 *N. Y. Com. L. Law.* ed. 379, with brief note. See *Nixon v. Hyserott*; *Tice v. Gallup*. Followed (Authority to warrant, when included in authority to sell) in *Tice v. Gallup*, 2 *Hun.* 446. Disapproved in *Cooley v. Perrine*, 12 *Vroom, N. J.* 322; s. c., 32 *Am. R.* 216. Regarded with *Smith v. Tracy*, 36 *N. Y.* 79; *Ahern v. Goodspeed*, 72 *Id.* 108, as not applicable in *McCormick v. Kelley*, 28 *Minn.* 125, 139. Opinion of *Bronson, J.*, referred to in 2 *Denj. on Sales*, § 945, n.

- 16 (Corbin's 4 Am. ed.). Dictum explained (Burden of proof as to consideration of note) in *Catlin v. Hansen*, 1 *Duer*, 309, 324.
- **v. Du Bois**, 13 *Johns*. 175. See *Herrick v. Carman*. Questioned (Parol evidence to explain indorsement) in *Seabury v. Hungerford*, 2 *Hill*, 80. Overruled in *Hall v. Newcomb*, 7 *Id.* 416; *Moore v. Cross*, 19 *N. Y.* 227. Followed with *Turnbull v. Trout*, 1 *Hall*, 336, in *Perkins v. Catlin*, 11 *Conn.* 213; s. c., 29 *Am. Dec.* 282, 295, with note. Applied with approval in *Barrows v. Lane*, 5 *Verm.* 161; s. c., 26 *Am. Dec.* 293, 296. Cited with other cases in 12 *Am. L. Reg. N. S.* 22.
- **v. Eaton**, 15 *How. Pr.* 305. Rev'd in 7 *Abb. Pr.* 305, but latter rev'd, and former aff'd, in 26 *N. Y.* 410; s. c., with points of counsel, 16 *Abb. Pr.* 113. Decision in *Id.* followed (Power of pledgee of note to collect same) in *Farwell v. Importers*, &c. *Nat. Bank*, 13 *Weekly Dig.* 36.
- **v. Ingersoll**, 27 *How. Pr.* 1. Applied (Necessity of special findings) in *Empire Trans. Co.*, 37 *Super. Ct. (J. & S.)* 12, 15.
- **v. Kerr**, 2 *Sup'm. Ct. (T. & C.)* 299. Aff'd in 59 *N. Y.* 224.
- **v. Luling**, 36 *Super. Ct. (J. & S.)* 544; s. c., 46 *How. Pr.* 355. Aff'd in 62 *N. Y.* 645. Decision in 46 *How. Pr.* discussed (Quality of fraudulent misrepresentations) in 2 *Add. on Torts*, 405, n. 1, *Wood's ed.*
- **v. McGiffert**, 3 *Barb. Ch.* 158; s. c., 49 *Am. Dec.* 170, with note, wherein are collected citations of the case on the points decided. See *Jauncey v. Thorne*; *Smith v. Wait*; *Tarrant v. Ware*. Reviewed with *Simmons v. Simmons*, 26 *Barb.* 68, and other cases (When cancellation of subsequent will operates to revive former one) in *Pickens v. Davis*, 134 *Mass.* 252; s. c., 45 *Am. R.* 322, with note. See, also, *Matter of Simpson's Will*, 56 *How. Pr.* 125.
- **v. Mayor, &c. of N. Y.**, 5 *Hun*, 190. Rev'd in 63 *N. Y.* 535. Decision in *Id.* disting'd (Liability of municipal corporation on void contract) in *Bigler v. Mayor, &c. of N. Y.*, 5 *Abb. N. C.* 51, 70. See *Id.* 65, n. Limited in *McDonald v. Mayor, &c. of N. Y.*, 68 *N. Y.* 23, 27. Disting'd in *Smith v. City of Newburgh*, 77 *Id.* 130, 137. Applied to the State, in *People v. Denison*, 19 *Hun*, 137, 149. Collated with other cases in 5 *Abb. N. C.* 49, n.
- **v. People**, 5 *Park.* 39. Aff'd in 23 *N. Y.* 293. See *Hamlin v. Dingman*; *People v. Bush*.
- **v. Plimpton Fire-proof Elevating Co.**, 8 *Abb. L. J.* 29. Rev'd in 55 *N. Y.* 480.
- **v. Recknagel**, 3 *Dowd.* 459. We are informed that decision mentioned in *Id.* 474, n., was rev'd in Ct. of App. in June, 1863.
- **v. Sun Mutual Ins. Co.**, 40 *Super. Ct. (J. & S.)* 417. Aff'd in 71 *N. Y.* 453. Decision in *Id.* followed (Expert testimony to define words in written contract) in *Hatch*
- v. Douglass*, 48 *Conn.* 116; s. c., 12 *Rep.* 744.
- Nesmith v. Clinton Fire Ins. Co.**, 8 *Abb. Pr.* 141. Followed (Review of trial for irregularity, before what judge to be had) in *Plunkett v. Appleton*, 41 *Super. Ct. (J. & S.)* 159, 171. Applied with *Reynolds v. Champlain Transp. Co.*, 9 *How. Pr.* 7 (Setting aside verdict for improper influences on jury) in *Bradbury v. Cony*, 62 *Me.* 223; s. c., 16 *Am. R.* 449, with note collating cases.
- Nessle v. Reese**, 19 *Abb. Pr.* 240; s. c., 29 *How. Pr.* 382. Further decision on the merits, in 49 *Barb.* 374. See *Barnes v. McAllister*. See (Refusal of injunction in case of provision for remedy in damages) *Phenix Ins. Co. v. Continental Ins. Co.*, 14 *Abb. Pr. N. S.* 266, 273.
- Nestle v. Jones**. See *Barber v. Crossett*.
- **v. Van Slyck**, 2 *Hill*, 282. See (Proof of precise words) *Townshend on Slander & Libel*, 622 § 365. See, also, *Abb. Tr. Ev.* 660.
- Neudecker v. Kohlberg**, 3 *Daly*, 407. Discussed (Partnership accounting) in 1 *Collager on Partn.* § 334, n. 3, *Wood's Am. ed.*
- Neuendorff v. Duryea**, 6 *Daly*, 276. Aff'd in 69 *N. Y.* 557; s. c., 25 *Am. R.* 235, with note.
- Neufville v. Thompson**, 3 *Edw.* 92. See *Shepherd v. Shepherd*. Approved with *Latourette v. Williams*, 1 *Barb.* 9 (Gift or alienation from husband to wife is good in equity) in *Dening v. Williams*, 26 *Conn.* 226.
- Newman v. Goddard**, 48 *How. Pr.* 363; s. c. as *Newman v. Goddard*, 3 *Hun*, 70; 5 *Sup'm. Ct. (T. & C.)* 299. Further proceeding in 20 *Hun*, 563.
- Neusbaum v. Keim**, 1 *Hilt.* 520; s. c., 7 *Abb. Pr.* 23. Rev'd in 24 *N. Y.* 325. Decision in *Id.* examined and disting'd (Sufficiency of confession of judgment) in *Thompson v. Van Vechten*, 27 *Id.* 568, 584. Re-aff'd in *Acker v. Acker*, 1 *Abb. Ct. App. Dec.* 1.
- Neustadt v. Joel**, 2 *Duer*, 530. Aff'd as *Reubens v. Joel*, in 13 *N. Y.* 488.
- Neville v. Neville**, 22 *How. Pr.* 500. See *Forrest v. Forrest*; *Fuller v. Emerie*. See (*Ne exeat*) *Code Civ. Pro.* 1881, § 548, n.
- Nevin v. Ladue**, 3 *Den.* 43. Rev'd in part, in *Id.* 437. Decision on p. 43 cited as authority, and that on p. 437 explained (What are spirituous liquors) in *Commissioners of Tompkins v. Taylor*, 21 *N. Y.* 173. Decision on p. 437 followed with *People v. Wheelock*, 3 *Park.* 9; *Comm'rs of Excise v. Taylor*, 21 *N. Y.* 173; *Rau v. People*, 63 *Id.* 277, in *Briffitt v. State*, 58 *Wis.* 39; s. c., 46 *Am. R.* 621. Explained in *State v. Adams*, 51 *N. H.* 568.
- Nevins v. Bay State Steamboat Co.**, 4 *Bosw.* 225. Explained (Common carrier, how long liable for passenger's baggage) in *Ang. on Carr.* § 114, n. a, 5 ed.
- Nevius v. Dunlap**, 33 *N. Y.* 676. Applied

- (Reformation of contract) in *Moran v. McLarty*, 11 *Hun.* 68. Applied in *Berringer v. Schaefer*, 52 *How. Pr.* 69. Disting'd in *O'Donnell v. Harmon*, 3 *Daly*, 428; *Whittemore v. Farrington*, 7 *Hun.* 895.
- New v. Nicoll**, 12 *Hun.* 431. Aff'd in 73 *N. Y.* 127; s. c., 29 *Am. R.* 111. Decision in *Id.* followed (Personal liability of trustees, &c.) in *Goepper v. Pfau*, *Super. Ct. Cin. 6 Weekly Cin. L. Bul.* 17. See cases cited in 15 *Am. L. Rev.* 449, 450, 451 456, where (at p. 456) decision in 73 *N. Y.* is reconciled with *Cater v. Everleigh*, 4 *Desaus (So. Car.)* 19.
- New Amsterdam Savings B'k v. Tartter**. See *Lawrence v. Nelson*.
- Newark India Rubber Co. v. Bishop**, 3 *E. D. Smith*, 48. Explained and applied (Presentment and demand) in *Salt Springs Nat. Bank v. Burton*, 58 *N. Y.* 430, 435.
- Newberry v. Fumival**, 46 *How. Pr.* 139. Aff'd in 56 *N. Y.* 638.
- **v. Lee**, 3 *Hill*, 523. Disting'd (Liability of client for attorney's acts) in *Clark v. Woodruff*, 83 *N. Y.* 518, 526. Cited with approval in *Foster v. Wiley*, 27 *Mich.* 244; s. c., 15 *Am. R.* 185, 188; *Averill v. Williams*, 1 *Den.* 501; 4 *Id.* 295, being disting'd as a case of process sued out irregularly.
- **v. Mayor, &c. of N. Y.**, 1 *Sweeney*, 369. Followed with *Davidson v. Mayor, &c. of N. Y.*, 2 *Robt.* 230; *Darlington v. Same*, 31 *N. Y.* 164 (Liability of municipal corporation for damage caused by riot) in *County of Allegheny v. Gibson*, 90 *Penn. St.* 397; s. c., 35 *Am. R.* 670, with note, citing *Solomon v. City of Kingston*, 24 *Hun.* 562.
- **v. Wall**, 46 *Super. Ct. (J. & S.)* 576. Rev'd in 84 *N. Y.* 576. Another decision in 35 *Super. Ct. (J. & S.)* 106, aff'd in 65 *N. Y.* 484. Decision in *Id.* cited as sustaining English doctrine (Expression of consideration in memorandum required by statute of frauds) in *Benj. on Sales* (Bennett's 4 *Am. ed.*) § 232, n. v. Explained (For whom brokers can sign) in *Id.* § 272, n. 12 (Corbin's 4 *Am. ed.*); *Id.* § 297, n. 15.
- Newburgh & Cocheaton Turnpike Road v. Miller**, 5 *Johns. Ch.* 101; s. c., 9 *Am. Dec.* 274. See *Croton Turnpike Co. v. Ryder*; *Ogden v. Gibbons*. Followed (Remedy for invasion of exclusive franchise) in *Smith v. Harkins*, 3 *Ired. Eq. (N. C.)* 618; s. c., 14 *Am. Dec.* 83, 86, with note. Approved in dissenting opinion of *Storv, J.*, in *Charles River Bridge v. Warren Bridge*, 11 *Pet.* 627. Approved (When "may" may be taken as "shall") in *Mason v. Fearson*, 9 *How. (U. S.)* 259; *Supervisors v. United States*, 4 *Wall.* 446. Approved with *Malcolm v. Rogers*, 5 *Cow.* 193, in *Steines v. Franklin County*, 48 *Mo.* 167; s. c., 8 *Am. R.* 87. Cited with approval in *Kellogg v. Page*, 44 *Vt.* 356; s. c., 8 *Am. R.* 383. Approved and applied in *Ex parte Simonton*, 9 *Port. (Ala.)* 390; s. c., 33 *Am. Dec.* 320, 323.
- Newcomb v. Butterfield**, 8 *Johns.* 264. See (Double, &c. damages) *Code Civ. Pro.* 1881, § 1184, n.
- **v. Clark**, 1 *Den.* 227. See *Leonard v. Vredenberg*. Collated with other cases (Right of action on contract, in person with whom it was made) in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 775. Explained (Signature of agent) in 1 *Par. on Contr.* 56, n. 2.
- **v. Griswold**, 24 *N. Y.* 298. See *Speyer v. Stern*. Applied (Impeaching witness by proof of conviction) in *People v. Satterlee*, 5 *Hun.* 168. Applied (Conclusiveness of record proof of conviction of witness) in *Gardner v. Bartholomew*, 40 *Barb.* 330. Disting'd in *Sims v. Sims*, 75 *N. Y.* 473. Applied (Inadmissibility of parol proof of such conviction) in *Rathbun v. Ross*, 46 *Barb.* 138. Approved in *La Beau v. People*, 33 *How. Pr.* 75. Disting'd in *Brandon v. People*, 42 *N. Y.* 268. Disting'd in *Perry v. People*, 86 *Id.* 353, 359, which rev'd 8 *Weekly Dig.* 445, which see. Disting'd (Mode of impeaching witness by proof of inconsistent written statement) in *Romertze v. East River Nat. B'k*, 49 *N. Y.* 581, which rev'd 2 *Sweeney*, 91, which see. Reconciled (Questions calling for answers tending to degrade character of witness) in *Real v. People*, 8 *Abb. Pr. N. S.* 322; which was aff'd in 42 *N. Y.* 280, which see. Commented on in 1 *Best on Ev.* § 130, n. a, *Wood's ed.*
- **v. Keteltas**, 19 *Barb.* 608. Further decision in 17 *N. Y.* 491.
- **v. Ramer**, 2 *Johns.* 421, n. See *Foot v. Colvin*. Relied on with *Frear v. Hardenbergh*, 5 *Johns.* 271 (Validity of verbal contracts for sale of growing crops, timber, &c.) in *Erskine v. Plummer*, 7 *Greenl. (Me.)* 447; s. c., 22 *Am. Dec.* 216.
- **v. Rayner**, 21 *Wend.* 108. Disting'd with *Deck v. Works*, 18 *Hun.* 266; *Vose v. Florida R. R. Co.*, 50 *N. Y.* 369 (Party liable on negotiable paper, when discharged) in *Phelps v. Borland* (No. 2), 30 *Hun.* 366. Included in *Redf. & B. Lead. Cas. on B. of Exch.* 568; *Bigel. on B. & N.* 2 ed. 597.
- Newell v. Fowler**. See *Moakley v. Riggs*.
- **v. Gregg**, 51 *Barb.* 263. Followed (Promissory note dishonored by non-payment of interest) in *Hart v. Stickney*, 41 *Wis.* 630; s. c., 23 *Am. R.* 728. Collated with other cases in 30 *Am. R.* 701, n.
- **v. Griswold**, 6 *Johns.* 46; s. c., 4 *N. Y. Com. L. Law. ed.* 47, with brief note as to when interest is allowable.
- **v. Newell**, 9 *Paige*, 25. See cases cited (Divorce for impotence) in 8 *Abb. N. C.* 194, n.
- **v. Nichols**, 12 *Hun.* 604. Aff'd in 75 *N. Y.* 78; s. c., 31 *Am. R.* 424. Decision in *Id.* approved (Presumption of survivorship in case of death of two or more persons, caused by same catastrophe) in *Russel v. Hallett*, 23 *Kan.* 276, 278. Cited at length in 41 *Am. Dec.* 524, n., as con-



- taining an able presentation of the doctrine. Collated with *Moehring v. Mitchell*, 1 *Barb. Ch.* 265; *Stinde v. Goodrich*, 3 *Redf.* 87; *Re Ridgway*, 4 *Id.* 226, and other cases in 30 *Alb. L. J.* 45.
- *v. People*, 7 *N. Y.* 9. Approved (Construction of constitution) in *People v. N. Y. Central R. R. Co.*, 24 *Id.* 487; *Metropolitan B'k v. Van Dyck*, 27 *Id.* 411. Applied to statute, in *Meeker v. Cromwell*, 11 *Id.* 602.
- *v. Warner*, 44 *Barb.* 258. Rev'd as *Newell v. Warren*, in 44 *N. Y.* 244. See *Swift v. Hart*. Decision in 44 *Barb.* approved (Exception of articles may make mortgage void for uncertainty) in *Jones on Chat. M.* § 57. Decision in 44 *N. Y.* superseded by *L.* 1873, c. 501; *L.* 1879, c. 418 (Refiling chattel mortgage). See *Thomas on Mort.* 499.
- *v. Wheeler*, 4 *Robt.* 247. Aff'd in 36 *N. Y.* 244.
- Newfield v. Copperman*, 15 *Abb. Pr. N. S.* 360; s. c., 47 *How. Pr.* 87. Aff'd in 42 *Super. Ct. (J. & S.)* 302.
- New Haven & Northampton Co. v. Quintard*, 6 *Abb. Pr.* 128. See *Beebe v. Hutton*. Cited with *Beebe v. Hutton*, 47 *Barb.* 187 (Unstamped instruments) in *Morris v. McMorris*, 44 *Miss.* 441; s. c., 7 *Am. R.* 695.
- New Hope Bridge Co. v. Poughkeepsie Silk Co.*, 25 *Wend.* 648. Discussed (Suits by private corporations) in *Ang. & A. on Corp.* § 374, 11 ed.; *Id.* n. 2.
- N. J. Protection & Lombard Bank v. Thorp*, 6 *Cow.* 46. Approved (Rights of foreign assignees in bankruptcy) in *Hoyt v. Thompson*, 5 *N. Y.* 341.
- Newkirk v. Newkirk*, 2 *Cri.* 345. Applied (Words in devise sufficient to pass fee) in *Merritt v. Abendroth*, 24 *Hun.* 218, 220. Quoted and collated with other cases (Restraints on alienation) in *Sharsw. & B. Cas. on Real Prop.* 135. Discussed in 4 *Kent Com.* 132.
- Newkirk v. Sabler*, 9 *Barb.* 652. See *Holmes v. Seely*. Collated with other cases (Essentials of trespass upon property) in *Bigel. Cas. on Torts*, 380.
- Newlin v. Lyon*, 49 *N. Y.* 661. See facts stated in report of decision below, in 4 *Alb. L. J.* 90.
- Newman v. Alvord*, 49 *Barb.* 588. Aff'd in 35 *How. Pr.* 108, and that aff'd in 51 *N. Y.* 189; s. c., 10 *Am. R.* 588. Decision in *Id.* applied (Infringement of trademark) in *Ilier v. Abrahams*, 82 *Id.* 519, 524. Commented on in *Bigel. Cas. on Torts*, 70. Explained in *Moak's Underhill's Torts*, 1 *Am. ed.* 620. Decision in 49 *Barb.* approved, but disting'd, in *Town v. Stetson*, 5 *Abb. Pr. N. S.* 218. Cited with other cases in 10 *Am. L. Reg. N. S.* 707. Decision in 35 *How. Pr.* quoted and discussed in 2 *Pars. on Contr.* 257 *bi*, n. k; *Id.* 257 *bm*, n. n.
- *v. Beckwith*, 5 *Lans.* 80. Rev'd in 61 *N. Y.* 205.
- *v. Goddard*. See *Neuman v. Goddard*.
- *v. Harrison*. See *Newman v. Otto*.
- *v. Otto*, 4 *Sandf.* 668; s. c., 10 *N. Y. Leg. Obs.* 14, and as *Newman v. Harrison*, 1 *Code R. N. S.* 184, n. See *Graham v. Stone*. Disapproved with *Matthews v. Beach*, 5 *Sandf.* 256 (Requisites of answer setting up mitigating circumstances) in *Gorton v. Keeler*, 51 *Barb.* 473, 483. Compare *Code Civ. Pro.* § 508.
- *v. People*, 6 *Lans.* 460; s. c., more fully, 63 *Barb.* 630.
- *v. Supervisors of Livingston*, 1 *Lans.* 476. Modified in 45 *N. Y.* 676. See *Peyser v. Mayor, &c. of N. Y.* *v. Van Rensselaer v. Witbeck*. Decision in 45 *N. Y.* disting'd (Recovery of moneys illegally assessed) in *Dewey v. Supervisors of Niagara*, 2 *Hun.* 392; *Nash v. Mayor, &c. of N. Y.*, 9 *Id.* 220; *City of Rochester v. Town of Rush*, 80 *N. Y.* 311; *Strusburgh v. Mayor, &c. of N. Y.*, 45 *Super. Ct. (J. & S.)* 511. Applied in *Merchants' Nat. B'k of N. Y. v. Supervisors of N. Y.*, 5 *Sup'm. Ct. (T. & C.)* 393, 399; *Nat. B'k of Chemung v. City of Elmira*, 53 *N. Y.* 54. Disting'd (Liability of county for misfeasance of officer) in *De Grauw v. Sup'rs of Queens*, 13 *Hun.* 384. Disting'd (Supervisors as parties to proceedings to recover moneys illegally obtained) in *People v. Tweed*, 13 *Abb. Pr. N. S.* 80, which was overruled in *People v. Ingersoll*, 67 *Barb.* 476, which see.
- New Orleans Gas Co. v. Dudley*. See *Vroom v. Ditmas*.
- Newton v. Bronson*, 13 *N. Y.* 587. Explained (Exercising power under will, before having qualified as executor) in *Humbert v. Wurster*, 22 *Hun.* 405, 407. Followed (Enforcing conveyance of land in another State) in *Myres v. De Mier*, 4 *Daly*, 350; *Gardner v. Ogden*, 22 *N. Y.* 339. Explained (Parol ratification of contract) in 1 *Benj. on Sales*, 291, n. (Corbin's 4 *Am. ed.*) See (Place of trial) *Code Civ. Pro.* 1881, § 982, n.
- *v. Galbraith*, 5 *Johns.* 119. Relied on with *Slingerland v. Morse*, 8 *Id.* 474 (What is sufficient tender in property) in *Bates v. Bates*, *Walk. (Miss.)* 401; s. c., 12 *Am. Dec.* 572. Applied with *Barns v. Graham*, 4 *Cow.* 452, in *Wyman v. Winslow*, 11 *Me.* 398; s. c., 26 *Am. Dec.* 542, with note. Discussed in 2 *Chitty on Contr.* 1211, n. k, 11 *Am. ed.* Explained in 2 *Pars. on Contr.* 647, n. i.
- *v. Harris*, 12 *N. Y.* 345. Followed (Effect of objection to testimony on specific ground) in *Briggs v. Smith*, 20 *Barb.* 418. Explained (What is material evidence, as to which witness may be impeached) in *Knight v. Forward*, 63 *Id.* 320.
- *v. Hook*, 48 *N. Y.* 676. Cited (Judgment in action to recover interest on note as affecting issue of usury, in action on principal) in 2 *Whart. Com. on Ev.* § 784.
- *v. Millville Hig. Co.*, 17 *Abb. Pr.* 318, n. Applied (Amendment by substituting individual not party, for corporation de-

- fendant) in *N. Y. & Milk Pan Co. v. Remington's Agric. Works*, 25 *Hun.* 475, 477 (and see dissenting opinion. *Id.* 480).
- *v. Mutual Ben. Life Ins. Co.*, 15 *Hun.* 595. *Aff'd* in 76 *N. Y.* 426; s. c., 32 *Am. R.* 335.
- *v. Pope*, 1 *Cow.* 109. Qualified (Effect of uncontradicted testimony) in *Hodge v. City of Buffalo*, 1 *Abb. N. C.* 360; *Nicholson v. Conner*, 8 *Daly*, 212, 215; *Elwood v. Western Union Tel. Co.*, 45 *N. Y.* 553. Examined with other cases (Burden of proof as to bailee's negligence) in *Coleman v. Livingston*, 36 *Super. Ct. (J. & S.)* 39.
- *v. Porter*, 69 *N. Y.* 133; s. c., 25 *Am. R.* 152. Previous decision in 5 *Lans.* 416. Compare (Following proceeds of sale of stolen securities) *Warren v. Haight*, 65 *N. Y.* 171; *Porter v. Knapp*, 6 *Lans.* 125. Decision in 69 *N. Y.* distinguishing in *Howell v. Earp*, 21 *Hun.* 395. Followed (Time for objecting to depositions) in *Mason and Hamlin Organ Co. v. Pugsley*, 19 *Hun.* 282.
- *v. Sweet*. See *Belding v. Conklin*.
- N. Y. African Socy. v. Varick*, 13 *Johns.* 38. Applied (Effect of obligation to trustees) to will in *Curran v. Sears*, 2 *Redf.* 526, 532. Cited with *Bank of Genesee v. Patchin*, 19 *N. Y.* 312; *Bank of N. Y. v. Bank of Ohio*, 29 *Id.* 619; *First Nat. Bk. of Angelica v. Hall*, 44 *Id.* 395, in 12 *Am. Dec.* 715, n., as fully sustaining the doctrine (Suits by corporations on obligations given to agents). Followed (Suing on obligation in different name from that mentioned therein) in *McKinney v. Harter*, 7 *Blackf. (Ind.)* 385; s. c., 43 *Am. Dec.* 96, with note. Applied in *Nicholas v. Kay*, 6 *Ark.* 59; s. c., 42 *Am. Dec.* 680, with note collating cases.
- N. Y. & Boston R. R. Co. v. Godwin*, 12 *Abb. Pr. N. S.* 21. Approved (Sufficiency of map filed in proceedings to condemn land) in *Matter of Boston, Hoosac T. & W. R. R. Co.*, 10 *Abb. N. C.* 104, 107.
- N. Y. & Brooklyn Saw Mill Co. v. City of Brooklyn*, 8 *Hun.* 37. *Aff'd* in 71 *N. Y.* 580. See *Mayor, &c. of N. Y. v. Bailey*. Collated with other cases (When officers act for State, and not for municipal corporation) in 8 *Abb. N. C.* 282, n.
- N. Y. & Harlem R. R. Co., Matter of*, 11 *Abb. Pr. N. S.* 90. *Aff'd* as *N. Y. & Harlem R. R. Co. v. Kip*, in 46 *N. Y.* 546.
- N. Y. & Harlem R. R. Co. v. Forty-second Street, &c. R. R. Co.*, 50 *Barb.* 285; s. c., 26 *How. Pr.* 68. *Aff'd* in 50 *Barb.* 309; s. c., 32 *How. Pr.* 481. See *Milbau v. Sharp*.
- *v. Haws*, 35 *Super. Ct. (J. & S.)* 572. *Rev'd* in 56 *N. Y.* 175. Decision in *Id.* approved (Rights of finder of lost property) in *Tancil v. Seaton*, 28 *Gratt. (Va.)* 601; s. c., 26 *Am. R.* 380. Collated with other cases in 23 *Am. R.* 531, n. Compare *Hammaker v. Blanchard*, 90 *Penn. St.* 379.
- *v. Kip*, 46 *N. Y.* 546. Subsequent proceeding as *Kip v. N. Y. & H. R. Co.*, 6 *Hun.* 24, which was *aff'd* in 67 *N. Y.* 227.
- See *Matter of N. Y. & Harlem R. R. Co.* Decision in 46 *N. Y.* applied (Limits of right of acquisition of land by railroads) in *Matter of N. Y. Central, &c. R. R. Co.*, 67 *Barb.* 429; *N. Y. & Canada R. R. Co. v. Gunnison*, 1 *Hun.* 497; *N. Y. Central, &c. R. R. Co. v. Met. Gaslight Co.*, 5 *Id.* 206, which was *aff'd* in 63 *N. Y.* 330, which see. Disting'd in *Strong v. City of Brooklyn*, 68 *Id.* 9.
- *v. Marsh*, 12 *N. Y.* 308. See *Forrest v. Mayor, &c. of N. Y.* Disting'd (Recovery of money paid on illegal assessment) in *Peyser v. Mayor, &c.*, 70 *N. Y.* 497, 502.
- *v. Story*, 6 *Barb.* 419. *Rev'd* in 6 *N. Y.* 85.
- *v. Trustees of Morrisania*, 7 *Hun.* 652. Compare (Assessment of railroad property for local improvement) *People ex rel. Troy Union R. R. Co. v. Assessors of Troy*, 2 *Abb. Pr. N. C.* 86.
- N. Y. & New Haven R. R. Co. v. Ketchum*; 3 *Keyes*, 24. See *Batterman v. Finn*; *N. Y. & New Haven R. R. Co. v. Schuyler*. Reviewed with *Pitt v. Davison*, 37 *N. Y.* 235; *Batterman v. Finn*, 40 *Id.* 340; *Sudlow v. Knox*, 7 *Abb. Pr. N. S.* 411; *Erie R'y Co. v. Ramsay*, 45 *N. Y.* 637 (Appealability of order adjudging contempt, and prescribing punishment therefor) in *Brinkley v. Brinkley*, 47 *Id.* 40; *Sudlow v. Knox* being followed and approved.
- *v. Lyon*, 16 *Barb.* 651. Explained (Assessment of non resident) in *Hoyt v. Commissioners of Taxes*, 23 *N. Y.* 224, 237. Disapproved (Assessment on railroad company) in *People ex rel. Buffalo & State Line R. R. Co. v. Fredericks*, 48 *Barb.* 173.
- *v. Schuyler*, 1 *Abb. Pr.* 417. *Rev'd* in 17 *N. Y.* 592; s. c., more fully, 7 *Abb. Pr.* 41. Subsequent decision in 38 *Barb.* 534; which was *aff'd* in part, and *rev'd* in part, in 34 *N. Y.* 30. Decision in *Id.* reasserted on second appeal, as *N. Y. & N. H. R. R. Co. v. Ketchum*, in 3 *Keyes*, 363; s. c., 34 *How. Pr.* 302. Another proceeding in 28 *Id.* 187. See *Bank of Utica v. Smalley*; *Mechanics' B'k v. N. Y. & New Haven R. R. Co.* Decision in 17 *N. Y.* explained (Personal liability of directors of corporation) in *Gardiner v. Pollard*, 10 *Bosw.* 692. Followed (Demurrer for misjoinder of parties defendant) in *Richtmyer v. Richtmyer*, 50 *Barb.* 59. Applied (Cancellation of spurious stock, as cloud on title) to setting aside ferry lease, in *Mayor, &c. of N. Y. v. Union Ferry Co.*, 55 *How. Pr.* 144; to enjoining proceedings to enforce dower right, in *Wood v. Seely*, 32 *N. Y.* 113; to deed, in *Fonda v. Sage*, 48 *Id.* 186. Decision in 34 *Id.* distinguishing (Estoppel created by apparent authority given to agent of corporation) in *Dabney v. Stevens*, 10 *Abb. Pr. N. S.* 51; in *People v. Bank of No. Am.*, 75 *N. Y.* 562, a case of an agent of the State. Disting'd in *Pollard v. Vinton*, 105 *U. S.* 7, 11. Applied to agent of individual, in *Merchants' B'k v. Griswold*, 72 *N. Y.*

478. Cited in *Whart. Com. on Ag.* § 157, n. Decision in 17 *N. Y.* explained in 2 *Add. on Torts*, 410, n. 1, Wood's ed. Decision in 34 *N. Y.* applied (Liability on spurious stock) in *Titus v. Great Western Turnpike Road*, 5 *Lans.* 253; which was aff'd in 61 *N. Y.* 245, which see; *Bruff v. Mali*, 36 *Id.* 205. Disting'd with *Titus v. Great Western Turnpike Road*, 61 *N. Y.* 237; *Bruff v. Mali*, 36 *Id.* 200; *McNeil v. Tenth Nat. B'k*, 46 *Id.* 325; *Moore v. Metropolitan B'k*, 55 *Id.* 41; *Holbrook v. N. J. Zinc Co.*, 57 *Id.* 616; *Merchants' B'k v. Livingston*, 74 *Id.* 223, in *Moore v. Citizens' Nat. B'k of Piqua*, 111 *U. S.* 161. Followed and approved with *Titus v. Great Western Turnpike Road*, 5 *Lans.* 250, 255, in *Tome v. Parkersburg R. R. Co.*, 39 *Md.* 36; s. c., 17 *Am. R.* 540, 553; *U. S. v. Davis*, 2 *Hill*, 461, being also relied on as analogous. Explained as turning on ratification by the corporation, in *Citizens' Nat. B'k v. Cincinnati, New Orleans, &c. Ry. Co.*, *Super. Ct. Cin.* 11 *Weekly L. Bul.* 86. Followed (Rights of transferee of stock) in *Cady v. Potter*, 55 *Barb.* 463, 468; *McNeil v. Tenth Nat. B'k*, 46 *N. Y.* 331. Approved with *McNeil v. Tenth Nat. B'k*, *Id.* 325, in *Scott v. Pequonnock Nat. B'k of Bridgeport*, *U. S. Cir. Ct. S. D. N. Y.*, 15 *Reporter*, 137. See also *Sibley v. Quinsigamond Nat. B'k*, 133 *Mass.* 515. See conflicting cases in several States, collected in 12 *Cent. L. J.* 199; same article in 10 *Am. L. Rec.* 276. Explained with other cases (Jurisdiction of equity, where remedy may be had at law) in *Genet v. Howland*, 45 *Barb.* 570. Applied (Joinder of defendants in proceedings for cancellation of stock) to town bonds, in *Town of Venice v. Breed*, 65 *Id.* 603. Both decisions disting'd (Maintaining action to prevent multiplicity of suits) in *Supervisors of Saratoga v. Deyoe*, 15 *Hun.* 532, which was rev'd in 77 *N. Y.* 525, which see. Disting'd in *Town of Venice v. Woodruff*, 62 *Id.* 470. Decision in 17 *Id.* disting'd in *McHenry v. Hazard*, 45 *Barb.* 662. Explained with Third Avenue R. R. Co. v. Mayor, &c. of N. Y., 54 *N. Y.* 159, in *Manhattan Ry. Co. v. N. Y. Elevated Ry. Co.*, 29 *Hun.* 309. Applied in *Erie Ry. Co. v. Ramsey*, 45 *N. Y.* 648. Cited as containing an elaborate opinion in 1 *Pomeroy on Eq. Jur.* § 261, n. 1. Decision in 34 *N. Y.* disting'd in *Buffalo Grape Sugar Co. v. Alberger*, 22 *Hun.* 352. Decision in 28 *How. Pr.* collated with *Paddock v. Wells*, 2 *Barb. Ch.* 331; *Ex parte Hopper*, 5 *Paige*, 489; *Underhill v. Dennis*, 9 *Id.* 202; *Bank v. McKee*, 7 *How. Pr.* 360 (Disqualification of judges by affinity) in 12 *Weekly L. Bul.* 4. Decision in 24 *N. Y.* quoted and collated with other cases (*Ultra vires*) in *Field on Ultra Vires*, 166; *Id.* 546. Quoted and commented on in *Morawetz on Corp.* § 62. Explained in *Id.* §§ 67, 88.

**N. Y. & Oswego Midland R. R. Co. v. Van Horn**, 57 *N. Y.* 473. Applied (When law

does not operate prospectively) in *Carpen-ter v. Shimer*, 24 *Hun.* 464. Commented on (Municipal powers) in *Cooley on Const. Limit.* 5 ed. 287, n.

**N. Y. & Sharon Canal Co. v. Fulton Bank**, 7 *Wend.* 412. Collated with *Catskill Bank v. Gray*, 14 *Barb.* 471 (Corporation as member of partnership) in *Story on Partn.* 7 ed. § 14, n.

**N. Y. & Virginia State Stock Bank v. Gibson**, 5 *Duer*, 574. Disting'd (Promise to accept draft, when conditional) in *Mer-chant's B'k v. Griswold*, 72 *N. Y.* 472, 479. See to the contrary, dissenting opinion of *Dwight, C.*, in *Shaver v. Western Union Tel. Co.*, 57 *N. Y.* 467. But see *Abb. Tr. Ev.* 420.

**N. Y. Balance Dock Co. v. Mayor, &c. of N. Y.**, 8 *Hun.* 247. See also (Remedy against municipal board) *Swift v. Mayor, &c. of N. Y.*, 83 *N. Y.* 528, 535.

**N. Y. Bowery Fire Ins. Co. v. N. Y. Fire Ins. Co.**, 17 *Wend.* 359. Relied on (Effect of omission by insured to disclose risk) in *Sun Mut. Ins. Co. v. Ocean Ins. Co.*, 107 *U. S.* 485, 510. Disting'd in *Hill v. Lafayette Ins. Co.*, 2 *Mich.* 476.

**N. Y. Bridge Co., Matter of**, 4 *Hun.* 635; s. c. reported in 67 *Barb.* 295.

**N. Y. Catholic Protectory, Matter of**, 8 *Hun.* 91. Aff'd in 77 *N. Y.* 342. Decision in 8 *Hun.* cited (When county court may order illegal tax refunded) in *People ex rel. Hermance v. Supervisors of Ulster*, 10 *Hun.* 546; which was aff'd in 71 *N. Y.* 481, which see. Decision in 27 *Id.* disting'd (Assessors not liable for erroneous decision as to jurisdictional facts) in *Hilton v. Fonda*, 86 *Id.* 339, 348.

**N. Y. Central Ins. Co. v. National Protection Ins. Co.**, 20 *Barb.* 468. Rev'd in 14 *N. Y.* 85. See *Howard Ins. Co. v. Halsey*. Both decisions followed (Incapacity of agent to act for his own interest) in *Conkey v. Bond*, 34 *Barb.* 287; *Claffin v. Farmer's, &c. B'k*, 25 *N. Y.* 297. Decision in 14 *Id.* followed in *Pratt v. Union Mut. Ins. Co.*, 9 *Bosw.* 100; *Bentley v. Columbia Ins. Co.*, 17 *N. Y.* 423. Disting'd in dissenting opinion in *Fellows v. Northrup*, 39 *Id.* 125. Applied in *Marie v. Garrison*, 13 *Abb. N. C.* 214, 229. Disting'd (Effect of admission of evidence outside of issue made by pleadings) in *Williams v. Mech. & Trad. Fire Ins. Co.*, 54 *N. Y.* 577, 581. Considered a peculiar case,—in *Pomeroy on Rem.* § 96, n. 3. Dictum in 20 *Barb.* explained (Estoppel created by acknowledgment of receipt of premium) in *Sheldon v. Atlantic Fire & Marine Ins. Co.*, 26 *N. Y.* 462. Thought in *Robert v. New England Mut. Ins. Co.*, 2 *Disn. (Ohio)* 106, 113, not to be supported by the authorities cited. Approved in *Hallock v. Ins. Co.*, 2 *Dutch. (N. J.)* 268, 277, 283.

— *v. Safford*, 10 *How. Pr.* 344. See (Undertaking on injunction) *Code Civ. Pro.* 1881, § 625, n.

N. Y. Central, &c. R. R. Co., *Matter of*, 15 *Hun*, 63. See *Matter of Utica, &c. R. R. Co.*

—, 63 *N. Y.* 326. *Aff'd* 5 *Hun*, 201. Decision in 63 *N. Y.* collated with *Matter of Rochester Water Commissioners*, 66 *Id.* 413, and other cases (Right of legislature to cause property of corporation to be appropriated in exercise of right of eminent domain) in 24 *Am. R.* 551, *n.*

—, 4 *Hun*, 380; s. c., as *N. Y. Central, &c. R. R. Co. v. Sweeney*, 6 *Sup'm. Ct. (T. & C.)* 669.

—, 5 *Hun*, 86. *Aff'd* in 66 *N. Y.* 407. Another proceeding in 60 *Id.* 112. Also in 2 *Hun*, 482; s. c., 5 *Sup'm. Ct. (T. & C.)* 84; which was *aff'd* in 60 *N. Y.* 116. Decision in 5 *Hun* followed (Requisites of petition in proceedings to acquire lands) in *Matter of Marsh*, 10 *Id.* 49, 52; which was *rev'd* in 71 *N. Y.* 315.

—, 5 *Hun*, 105. Appeal dismissed in 64 *N. Y.* 60. Decision in *Id.* followed (Power to set aside report of commissioners appointed to appraise land taken for railroad purposes) in *Matter of N. Y., Lackawanna, &c. R'y Co.*, 29 *Hun*, 602; which was *aff'd* in 93 *N. Y.* 385, which see. Explained and applied in *Matter of Kings Co. Elev. Ry. Co.*, 82 *Id.* 95, 100.

N. Y. Central R. R. Co. v. Marvin, 11 *N. Y.* 276. Followed as having been re-*aff'd* in *People v. Betts*, 55 *Id.* 600 (Conclusiveness of determination of Supreme Court in land condemnation proceedings) in *Matter of Delaware & Hudson Canal Co.*, 69 *Id.* 209. Followed in *King v. Mayor, &c. of N. Y.*, 36 *Id.* 186. Followed in *Matter of Comm'rs of Central Park*, 50 *Id.* 497. Approved in *Matter of Prospect Park & C. I. R. R. Co.*, 85 *Id.* 489, 497. Applied to decision at Special Term, in *Bowery Extension Case*, 2 *Abb. Pr.* 372; but see *Albany, &c. R. R. Co. v. Dayton*, 10 *Abb. Pr. N. S.* 183; *Matter of Comm'rs of Central Park*, 61 *Barb.* 46. Applied (Effect of statutes providing for appeals) in *Matter of Dodd*, 27 *N. Y.* 632.

N. Y. Central, &c. R. R. Co. v. Metropolitan Gas Light Co., 5 *Hun*, 201. *Aff'd* in 63 *N. Y.* 326. Another proceeding in 6 *Hun*, 149.

— v. *People*, 12 *Hun*, 195. Modified in *People v. N. Y. Central, &c. R. R. Co.*, 74 *N. Y.* 302.

— v. *Sweeney*, 6 *Sup'm. Ct. (T. & C.)* 669; s. c. as *Matter of N. Y. Central, &c. R. R. Co.*, 4 *Hun*, 381.

N. Y. Cordwainer's Case, printed by J. Riley, N. Y., 1810. Approved (Legality of combinations among workmen to influence rate of wages) in *Master Stevedores' Association v. Walsh*, 2 *Daly*, 1, 3, 8.

N. Y. Dry Dock Co. v. Am. Life Ins. & Trust Co., 3 *Sandf. Ch.* 215. *Aff'd* in 3 *N. Y.* 344.

— v. *Stillman*, 30 *N. Y.* 174. Explained (Trust, when deemed power in trust) in

*Ford v. Belmont*, 7 *Robt.* 97. Applied in *Randall v. Constans*, 33 *Minn.* 334.

N. Y. Elevated R. R. Co., *Matter of*, 7 *Hun*, 239. *Aff'd* in 70 *N. Y.* 327; s. c., 3 *Abb. N. C.* 401. See *Milbau v. Sharp*. Decision in 70 *N. Y.* followed (Distinction between general and local act) in *Matter of Church*, 92 *Id.* 1. Followed (Authority given to N. Y. Elevated R. R. Co., by *L.* 1875, c. 595) in *Mattlage v. N. Y. Elevated R. R. Co.*, 67 *How. Pr.* 232, 237. Applied with *Matter of Gilbert Elevated R'y Co.*, 70 *N. Y.* 361; *Matter of Brooklyn, &c. R. R. Co.*, 75 *Id.* 335 (Constitutionality of amendments of private or local bills) in *People v. Petrea*, 92 *Id.* 123, 140. Applied in *Negus v. City of Brooklyn*, 10 *Abb. N. C.* 180, 186. Disting'd (Ability of legislature to waive corporate forfeiture since constitution of 1874) in *Matter of Brooklyn, W. & N. R. R. Co.*, 75 *N. Y.* 339. Explained (Damages to abutting owners) in *Caro v. Metrop. Elev. R'y Co.*, 46 *Super. Ct. (J. & S.)* 123, 161. Compare *Washington Cemetery v. Prospect Park, &c. R. R. Co.*, 4 *Abb. N. C.* 15. Explained (Conclusiveness of determination of commissioners in land condemnation proceedings) in *Matter of Kings Co. Elev. R'y Co.*, 82 *N. Y.* 95, 101. See cases cited (*Ultra vires*) in 4 *Abb. N. C.* 59, *n.* Quoted and explained (Dissolution of private corporations) in *Morawetz on Corp.* §§ 654, 655.

N. Y. Equitable Ins. Co. v. Langdon, 6 *Wend.* 623. *Aff'd* in 1 *Hall*, 226. See *Gates v. Madison Co. Mut. Ins. Co.* Decision in 6 *Wend.* followed (Effect of provision in fire policy against storing, &c. hazardous articles) in *Moore v. Protection Ins. Co.*, 29 *Me.* 97; s. c., 48 *Am. Dec.* 514, 518, with note. Quoted in 2 *Pars. on Contr.* 423 *n. n.* Explained in *Id.* 425, *n. s.*

N. Y. Exchange Co. v. De Wolf, 3 *Bosw.* 86. Further decision in 5 *Id.* 593; which was *rev'd* in 31 *N. Y.* 273.

N. Y. Firemen Ins. Co. v. Ely, 2 *Cow.* 678; s. c., 7 *N. Y. Com. L. Law. ed.* 928, with brief note. See *People ex rel. Attorney General v. Utica Ins. Co.* Disting'd (Authority of corporation to make loans, &c.) in *Utica Ins. Co. v. Scott*, 8 *Cow.* 718; *Farmers' Loan & Trust Co. v. Clowes*, 3 *N. Y.* 473; *Barry v. Merchants' Exchange Co.*, 1 *Sandf. Ch.* 291. Applied in *Pratt v. Short*, 79 *N. Y.* 442. Followed with *Wilmarth v. Crawford*, 10 *Wend.* 341, in *McIntire v. Preston*, 5 *Gilm. (Ill.)* 48; s. c., 48 *Am. Dec.* 321, 324, with note. Approved with *N. Y. Firemen Ins. Co. v. Sturges* 2 *Cow.* 664 (Powers of corporations, derived by implication) in *McMaster v. Reed*, 1 *Grant's (Penn.) Cas.* 36, 48. Explained (Extent of corporate powers) in *Ketchum v. City of Buffalo*, 21 *Barb.* 300. Explained (Usury in discount) in *Hurd v. Hunt*, 14 *Id.* 576. Collated with other cases in *Holcombe Lead. Cas. on Com. L.* 174. Compared in 4 *Am. L. Reg. N. S.* 326.

- Quoted and explained in 3 *Par's. on Contr.* 130, n. y; *Id.* 132, n. b.
- *v. Sturges*, 2 *Cow.* 664. See Same *v. Ely*; *People v. Utica Ins. Co.* Discussed (Contracts by private corporation) in *Ang. & A. on Corp.* § 260, 11 ed.; *Id.* 266.
- *v. Walden*, 12 *Johns.* 513. Cited approvingly (Necessity of communicating information to underwriter) in 3 *Kent Com.* 285.
- N. Y. Floating Derrick Co. v. N. J. Oil Co.**, 3 *Duer*, 648. For a stricter rule, see (Burden of proof of corporate acts) *People ex rel. Town of Rochester v. Deyoe*, 2 *Sup'm. Ct. (T. & C.)* 142. See, also, *Abb. Tr. Ev.* 36.
- N. Y. Guaranty & Ind. Co. v. Flynn**, 65 *Barb.* 365. Aff'd in 55 *N. Y.* 653. With decision in *Id.* see (Contents of verdict in action for chattel) *Code Civ. Pro.* 1881, § 1726, n.
- *v. Gleason*, 53 *How. Pr.* 122. Other proceedings in 43 *Super. Ct. (J. & S.)* 551; and in 78 *N. Y.* 503; s. c., 7 *Abb. N. C.* 334. See *Gleason's Case*; *People ex rel. Roberts v. Bowe*; *Robert's Case*.
- N. Y. Ice Co. v. North Western Ins. Co.**, 32 *Barb.* 534; s. c., 20 *How. Pr.* 255; 11 *Abb. Pr.* 419. Appeal dismissed in 23 *N. Y.* 357; s. c., 12 *Abb. Pr.* 414; 21 *How. Pr.* 296. Previous decision in 31 *Barb.* 72; s. c., 10 *Abb. Pr.* 34; 20 *How. Pr.* 424. Further decision in 23 *N. Y.* 357. See *Reubens v. Joel*. Decision in 23 *N. Y.* followed (Orders, when not reviewable in Court of Appeals) in *Birdsall v. Birdsall*, 41 *How. Pr.* 397, 399. Followed (Orders, when not appealable to General Term) in *Schreyer v. Mayor, &c. of N. Y.*, 39 *Super. Ct. (J. & S.)* 282. Explained (Granting relief consistent with complaint) in *Stevenson v. Buxton*, 15 *Barb.* 356. Explained as not a controlling decision, in *Genet v. Howland*, 45 *Id.* 570. Approved in *Pomeroy on Rem.* § 71, n. 2. Relied on with other cases (Union of legal and equitable causes of action) in *Lattin v. McCarty*, 41 *N. Y.* 111. Applied (Amendment of judgment) in *Hatch v. Central Nat. Bank*, 78 *Id.* 487, 490; *Butler v. Niles*, 28 *How. Pr.* 183. Disregarded as obiter, in *Rockwell v. Carpenter*, 25 *Hun*, 529, 532. Decisions in 23 *N. Y.* and 32 *Barb.* examined in *McLean v. Stewart*, 14 *Hun*, 475. Decision in 32 *Barb.* cited as authority in *Bullard v. Sherwood*, 85 *N. Y.* 253, 257.
- N. Y. Ins. Co. v. Thomas**, 3 *Johns. Cas.* 1; s. c., 1 *N. Y. Com. L. Law. ed.* 597, with brief note.
- N. Y. Inst. for the Blind v. How**, 10 *N. Y.* 84. Applied (Legal effect of bequest to trustees) in *Efray v. Fouling Asylum*, 5 *Redf.* 557, 560; *Curran v. Sears*, 2 *Id.* 526, 532.
- N. Y. Juvenile Guard'n Socy. v. Roosevelt**, 7 *Daly*, 188. See, also (Cruelty to children) *Cowley v. People*, 8 *Abb. N. C.* 1.
- N. Y. Life Ins. Co. v. Beebe**, 7 *N. Y.* 364. See *Ahern v. Goodspeed*. Disting'd (Liability for unauthorized acts of agent) in *Talmage v. Nevins*, 2 *Sweeny*, 38, 46.
- *v. White*, 17, *N. Y.* 469. See *Frost v. Beekman*. Disting'd (Effect of mistake in recording deed) in *Mut. Life Ins. Co. v. Dako*, 1 *Abb. N. C.* 381, 391. With *Sawyer v. Adams*, 8 *Verm.* 172; s. c., 30 *Am. Dec.* 459, thought in *Id.* 465, n., to furnish a correct exposition of the law.
- N. Y. Life Ins. & Trust Co. v. Covert**, 29 *Barb.* 435. Rev'd (Presumption of payment from lapse of time) in 3 *Abb. Ct. App. Dec.* 350; s. c., 6 *Abb. Pr. N. S.* 154; 3 *Transc. App.* 21.
- N. Y. Marbled Iron Works v. Smith**, 4. *Duer*, 362. See *White v. Springfield Bank* Followed (Dissolution of corporation, how only effected) in *Kincaid v. Dwinelle*, 37 *Super. Ct. (J. & S.)* 326, 332. Explained with *Robbins v. Richardson*, 2 *Bosw.* 248 (Power to let in new defense by amendment at trial) in *Woodruff v. Dickie*, 5 *Redt.* 619. Compare (Form of affidavit of verification) *Code Civ. Pro.* § 526.
- N. Y. Piano Co. v. New Haven Steamboat Co.**, 2 *Abb. Pr. N. S.* 357. See *Stevens v. Phoenix Ins. Co.* Overruled (Removal of causes) in *Stevens v. Phoenix Ins. Co.*, 41 *N. Y.* 149.
- N. Y. Printing, &c. Estab. v. Fitch**, 1 *Paige*, 97. Cited (When injunction will be granted) in *Troy & Boston R. R. Co. v. Boston & Hoosac T. & Western R'y Co.*, 86 *N. Y.* 107, 126. Cited as authority (Use of preliminary, as distinguished from final injunction) in *Hudenreid v. Phila. & Reading R. R. Co.*, 68 *Penn. St.* 370; s. c., 8 *Am. R.* 195.
- N. Y. Protestant Episc. Public School, Matter of**, 8 *Hun*, 457. Aff'd in 63 *N. Y.* 609, on opinion of *FOLGER, J.*, in *Matter of Zoborowski*, *Id.* 88.
- , 24 *Hun*, 367. Aff'd in 86 *N. Y.* 396. Other proceedings, as it seems, in 82 *Id.* 606. See *Howell v. Van Siclen*.
- , 75 *N. Y.* 324. Disting'd (Assessment, when to be corrected and not vacated) in *Matter of Auchmuty*, 90 *Id.* 685. Remarks of *CURRICH, Ch. J.*, limited (Validity of assessment as affected by withdrawal from competition of portion of items in contract) in *Matter of Merriam*, 84 *Id.* 596, 605.
- , 31 *N. Y.* 574. See *Williams v. Williams*. Explained (Charitable uses) in *Bascom v. Albertson*, 34 *Id.* 584, 599. See numerous cases cited by counsel in *Sowers v. Cyrenius*, 39 *Ohio St.* 29, 33.
- N. Y. State Bank v. Fletcher**. See *Coddington v. Bay*.
- N. Y. State Life Ins. Co., Matter of**, 13 *Hun*, 115. Aff'd, it seems, in 74 *N. Y.* 617.
- N. Y. State Loan & T. Co. v. Helmer**, 12 *Hun*, 35. Aff'd in 77 *N. Y.* 64.
- Nexsen v. Lyell**, 5 *Hill*, 466. Collated with other cases (Surety's liability as affected by extending or discharging security) in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 404.
- *v. Nexsen*, 2 *Keyes*, 229. Followed

- (Publication of will) in *Norton v. Norton*, 2 *Redf.* 6, 17.
- Niagara Bank v. Roosevelt**, 9 *Cow.* 409. Authority of this case, and Matter of Middle District Bank, 1 *Paige*, 585, doubted, but principle approved (Set-off against insolvent bank) in *Diven v. Phelps*, 34 *Barb.* 224, 230. Apparently disting'd (Application of payments) in *Putnam v. Russell*, 17 *Vt.* 54; s. c., 42 *Am. Dec.* 478.
- Niagara District Bank v. Fairman, & Co. Machine Tool M'fg Co.**, 31 *Barb.* 403. Included (Presentment of draft for payment, when excused) in 2 *Ames Cas. on B. & N.* 346.
- Niagara Elevating Co. v. McNamara**, 50 *N. Y.* 653. Further decision in 1 *Buff. Super. Ct. (Sheldon)* 360. Aff'd in 2 *Hun.* 416; s. c., 4 *Sup'm. Ct. (T. & C.)* 604. Compare (Replevin against tax collector) *Code Civ. Pro.* § 1695.
- Niagara Falls Internat. Bridge Co. v. Great Western R. R. Co.**, 39 *Barb.* 212. Disting'd (Injunction to enforce agreement) in *Troy & Boston R. R. Co. v. Boston & Hoosac T. & Western R'y Co.*, 86 *N. Y.* 107, 127.
- Niagara Falls & L. Ontario R. R. Co. v. Hotchkiss**, 16 *Barb.* 270. Explained with reference to *L. 1854*, c. 282 (Putting railroad company into possession of lands) in *Armstrong v. N. Y. Central, & Co. R. R. Co.*, 2 *Hun.* 482, 484.
- Niblo v. Binsse**, 44 *Barb.* 54. Rev'd in *Niblo v. Binsse*, 9 *Abb. Ct. App. Dec.* 375; s. c., 1 *Keyes*, 476. Another decision in 31 *How. Pr.* 476; s. c., more fully, 47 *Barb.* 435. Decision in 44 *Id.* explained (Excuse for non-performance of contract) in *First Nat. B'k of Ballston Spa v. Ins. Co. of No. Am.*, 5 *Lans.* 205. See (Act of God as excuse for non-performance) dissenting opinion of CLERKE, J., in *Dexter v. Norton*, 55 *Barb.* 272, 287. Decision in 3 *Abb. Ct. App. Dec.* approved and applied in *Cook v. McCabe*, 53 *Wis.* 150; s. c., 40 *Am. R.* 765. See, also (Implied warranty of condition of premises) *Kellogg Bridge Co. v. Hamilton*, 110 *U. S.* 108.
- **v. Clark**, 3 *Wend.* 24. Aff'd in 6 *Id.* 236.
- **v. Post**, 25 *Wend.* 280. See *Simpson v. Rhineland*. Explained with *Prindle v. Anderson*, 23 *Wend.* 616 (Questions arising on certiorari) in *Haviland v. White*, 7 *How. Pr.* 154; *Morewood v. Hollister*, 6 *N. Y.* 309, 315. See, also, *Benjamin v. Benjamin*, 5 *Id.* 383.
- Nicholas v. N. Y. Central, & Co. Co.**, 4 *Hun.* 327; s. c., 6 *Sup'm. Ct. (T. & C.)* 606. In case of this name, re-argument ordered in Ct. of App. Nov. 29, 1881. Disregarded (Power of carrier to contract against its own negligence) in *McKinney v. Jewett*, 24 *Hun.* 19. Criticised in *Lawson's Contr. of Carr.* §§ 28, 136.
- Nicholls v. Van Valkenburgh**, 15 *Hun.* 230. Disting'd (Evidence of pecuniary means) in *Gorham v. Price*, 25 *Id.* 11. Cited with other cases in *Pontius v. People*, 21 *Id.* 328, 331.
- Nichols, Matter of**, 4 *Redf.* 288. Disting'd (Presumption from award of costs against administrator or executor) in *Matter of Miller, Id.* 302.
- , 54 *N. Y.* 62. Applied with *Bell v. Pierce*, 51 *Id.* 12 (Presumption of continuance of domicile until satisfactory evidence of abandonment) in *Nugent v. Bates*, 51 *Iowa*, 77; s. c., 33 *Am. R.* 118.
- Nichols v. Chapman**, 9 *Wend.* 455. Criticised and disapproved (Entry of judgment after defendant's death) in *Livingston v. Rendall*, 59 *Barb.* 493. Superseded by statute as to which see *Grant v. Griswold*, 21 *Hun.* 509, 512. Followed in *Matter of Dun*, 5 *Redf.* 27, 30. Discussed in *Willard on Executors*, 282.
- **v. Drew**, 19 *Hun.* 490. Mem. granting re-argument, as it seems, in 21 *Id.* 109.
- **v. Dusenbury**. See *Batterman v. Pierce*.
- **v. Goldsmith**. See *Butler v. Wright*.
- **v. Ketcham**, 19 *Johns.* 84. Followed with *Russell v. Gibbs*, 5 *Cow.* 396 (One who bids at sale under his own execution cannot be required to advance money on his bid) in *Fowler v. Pearce*, 2 *Eng. (Ark.)* 28; s. c., 44 *Am. Dec.* 526, 529.
- **v. Kingdom Iron Ore Co.**, 56 *N. Y.* 618. See *Richmondville Union Seminary v. McDonald*; *Sweet v. Tuttle*. Disting'd (Question calling for witness' opinion) in *Murray v. Deyo*, 10 *Hun.* 3, 6. Followed in *Dennan v. Campbell*, 7 *Id.* 88.
- **v. McEwen**, 21 *Barb.* 65. Aff'd in 17 *N. Y.* 22. Decision in *Id.* explained and limited (Provision for counsel fees to assignee for creditors) in *Campbell v. Woodworth*, 24 *Id.* 304. Quoted and discussed in *Wait on Fraud. Conv.* § 335. Explained in *Durrill on Assign.* § 232, 4 ed.; *Id.* § 424.
- **v. McLean**, 25 *Hun.* 118. Abridg't s. c., 12 *Weekly Dig.* 461.
- **v. Mead**, 2 *Lans.* 222. Aff'd, but without opinion, in 47 *N. Y.* 653.
- **v. Michael**, 23 *N. Y.* 264. Prior decision as *Nichols v. Pinner*, 18 *Id.* 295. See *Nellis v. Bradley*. Decision in 23 *N. Y.* followed (Liability in detinue, &c., of one who has parted with possession) in *Dunham v. Troy Union R. R. Co.*, 1 *Abb. Ct. App. Dec.* 568; *Latimer v. Wheeler*, 3 *Id.* 38; *Ellis v. Lersner*, 48 *Barb.* 546; *Ross v. Cassidy*, 27 *How. Pr.* 416, 422; *Barnett v. Selling*, 70 *N. Y.* 494, which modified 9 *Hun.* 237, which see. Disting'd in *Christie v. Corbett*, 34 *How. Pr.* 25. Approved in *McBrian v. Morrison*, 55 *Mich.* 351, 354. Followed (Sufficiency of production of notes at trial) in *King v. Fitch*, 2 *Abb. Ct. App. Dec.* 516. Explained in dissenting opinion in *Fraschieris v. Henriques*, 36 *Barb.* 283. Followed and approved in *Miller v. Woods*, 21 *Ohio St.* 485; s. c., 8 *Am. R.* 71. Explained (Effect of fraud in rendering sale voidable) in *Joslin v. Cowee*, 60 *Barb.* 55.

- Examined (Effect of concealment of insolvency by purchaser) in *Byrd v. Hall*, 1 *Abb. Ct. App. Dec.* 287. Decision in 18 *N. Y.* disting'd in *Brown v. Montgomery*, 20 *Id.* 292. Applied in *Peoples' B'k of N. Y. v. Bogart*, 81 *Id.* 108. Explained in *Johnson v. Monell*, 2 *Abb. Ct. App. Dec.* 477; *Hennequin v. Naylor*, 24 *N. Y.* 140. Followed in *Ellison v. Bernstein*, 60 *How. Pr.* 145, 148. Decision in 23 *N. Y.* collated with other cases in 27 *Am. R.* 504.
- *v. People*, 17 *N. Y.* 114. Rev'g 3 *Park.* 579.
- *v. Pinner*. See *Nichols v. Michael*.
- *v. Sixth Ave. R. R. Co.*, 10 *Bosw.* 260. Aff'd in 38 *N. Y.* 131. Decision in *Id.* disting'd with *Wilcox v. Rome, Watertown, &c. R. R. Co.*, 39 *Id.* 358; *Gonzalez v. N. Y. & Harlem R. R. Co.*, 38 *Id.* 440 (Question of care and diligence, when for court) in *Greenleaf v. Illinois Central R. R. Co.*, 29 *Iowa*, 14; s. c., 4 *Am. R.* 181, 185. Compared (Negligence in leaving railroad car) in 23 *Alb. L. J.* 126.
- *v. Tift*, 2 *Sup'm. Ct. (T. & C.)* 314. Rev'd in 56 *N. Y.* 644.
- *v. Voorhis*, 9 *Hun.* 171. Appeal dismissed in 74 *N. Y.* 28. Further decision in 18 *Hun.* 33. Decision in 74 *N. Y.* disting'd as not authority (Construction of *Code Pro.* § 304) in *Black v. O'Brien*, 23 *Hun.* 82.
- *v. Williams*, 8 *Cow.* 13. Approved (Necessity of notice to quit) (citing *Post v. Post*, 14 *Barb.* 253) in *Park v. Castle*, 19 *How. Pr.* 29, 32. Cited approvingly in 4 *Kent Com.* 115.
- *v. Wilson*. See *Pattison v. Hull*.
- Nicholson v. Erie R'y Co.**, 41 *N. Y.* 525. Disting'd (Liability for injury to one on private premises) in *Beck v. Carter*, 6 *Hun.* 604, 608. Reviewed with other cases in *Pittsburgh, Fort Wayne, &c. R. R. Co. v. Bingham*, 29 *Ohio St.* 364; s. c., 23 *Am. R.* 751, 755. Reviewed and disting'd with *Sutton v. N. Y. Central, &c. R. R. Co.*, 66 *N. Y.* 243, in *Davis v. Chicago & Northwestern R'y Co.*, 58 *Wis.* 646; s. c., 46 *Am. R.* 667, 673, 678; *Hoffman v. N. Y. Central, &c. R. R. Co.*, 87 *N. Y.* 25; *Rounds v. Delaware, Lackawanna, &c. R. R. Co.*, 64 *Id.* 129; *Driscoll v. Newark & Rosendale Lime, &c. Co.*, 37 *Id.* 637, being with other cases, relied on in this connection. Collated with other cases in 30 *Am. R.* 687, n. Commented on in *Moak's Underhill's Torts*, 1 *Am. ed.* 264.
- *v. Halsey*, 1 *Johns. Ch.* 417. Explained (Merger) in *De Lisle v. Herbs*, 25 *Hun.* 485, 488.
- *v. Leavitt*, 4 *Sandf.* 252. Rev'd in 6 *N. Y.* 510; s. c., 57 *Am. Dec.* 499, with note. See opinion of *Edmonds, J.*, in *Ct. of App.* in 10 *N. Y.* 591. See *Litchfield v. White*. Applied (Effect of provision in assignment, for sale on credit) in *D'Invernois v. Leavitt*, 23 *Barb.* 80; *Jessup v. Hulse*, 29 *Id.* 542; *Schufeldt v. Abernethy*, 2 *Duer*, 537. Applied, and *Kellogg v. Slauson*, 11 *N. Y.* 302, explained and qualified in *Brigham v. Tillinghast*, 13 *Id.* 218. Disting'd in *Grant v. Chapman*, 38 *Id.* 294; *Kellogg v. Slauson*, 11 *Id.* 305. Applied to provision for continuance of business by assignee, in *Dunham v. Waterman*, 17 *Id.* 17. Applied in case of trust deed given by corporation in *Curtis v. Leavitt*, 17 *Barb.* 316. Followed with *Brigham v. Tillinghast*, 13 *N. Y.* 215; *Rapalce v. Stewart*, 27 *Id.* 310, in *McCleary v. Allen*, 7 *Neb.* 21; s. c., 29 *Am. R.* 377; *Woodburn v. Mosher*, 9 *Barb.* 253, being also cited as authority. Decision in 4 *Sandf.* disapproved in *Burdick v. Post*, 12 *Barb.* 171. Decision in 6 *N. Y.* quoted and discussed in *Burrill on Assign.* § 221, n. 5, 4 ed. Collated with other cases in *Bishop on Assign.* § 211. Quoted and explained (Hindrance and delay) in *Burrill on Assign.* §§ 329, 330. Commented on (Preferences) in *Id.* § 166. Decision in 4 *Sandf.* quoted and collated with other cases in *Bishop on Assign.* § 182. Discussed in *Burrill on Assign.* § 211. Quoted and collated (Firm and individual debts) in *Bishop on Assign.* §§ 187, 188. Collated with other cases (Fraud at time of making assignment) in *Id.* § 226.
- *v. Wafel*, 6 *Hun.* 655. Rev'd in 70 *N. Y.* 604. See *Green v. Disbrow*. Decision in 70 *N. Y.* disting'd (Evidence of pecuniary condition) in *Nicholls v. Van Valkenburgh*, 15 *Hun.* 230, 233. Cited with other cases in *Pontius v. People*, 21 *Id.* 328, 331.
- Nickelson v. Wilson**, 4 *Sup'm. Ct. (T. & C.)* 105; mem. s. c., 1 *Hun.* 615. Rev'd in 60 *N. Y.* 362. Decision in *Id.* approved (Validity of agreement tending to influence result of criminal proceeding) in *Waterman on Sp. Perf.* § 217, n.
- Nickerson v. Ruger**, 43 *Super. Ct. (J. & S.)* 258. Rev'd in 76 *N. Y.* 279. Another decision in 46 *Super. Ct. (J. & S.)* 571, aff'd in 84 *N. Y.* 675; s. c., more fully, 12 *Weekly Dig.* 146. In decision in 76 *N. Y.* in fourth line of head-note for "defendant" read "plaintiff."
- Nickleson v. Stryker**, 10 *Johns.* 115; s. c., 6 *Am. Dec.* 318. See *Martin v. Payne*. Explained and disting'd (Grounds of recovery for seduction) in *Lipe v. Eisenlerd*, 32 *N. Y.* 229, 236. Disapproved, in *Parker v. Meek*, 3 *Sneed (Tenn.)*, 29, 38.
- Nicoll v. Burke**, 45 *Super. Ct. (J. & S.)* 75. Modified in 78 *N. Y.* 580; s. c., 8 *Abb. N. C.* 213. Further proceeding in 45 *Super. Ct. (J. & S.)* 526. Decision in 78 *N. Y.* explained (Execution of agreement by agent, when to be enforced by principal) in 1 *Add. on Contr.* 226, n. 1. *Abb. ed.* Compare (Reduction of rent) *U. S. v. Bostwick*, 94 *U. S.* 53; 12 *Ct. Claims*, 67.
- *v. Mumford*, 4 *Johns. Ch.* 522. Rev'd in 20 *Johns.* 611. See *Hendricks v. Robinson*. Both decisions reviewed (Lien of part owner of vessel for advances) in *McDonald v. Black's Adm'r*, 20 *Ohio*, 185; s. c., 55 *Am. Dec.* 448. Also cited in *Story on*

- Partn.* 7 ed. § 444, n., *Williams v. Lawrence*, 47 *N. Y.* 492, being cited (at end of note) (Rights of assignee of one of part-owners). Both decisions followed as establishing the principle (Nature of interest of such part-owners) in *Jones v. Pitcher*, 3 *Stew. & P. (Ala.)* 135; s. c., 24 *Am. Dec.* 716, 733. Cited with *Dunham v. Jarvis*, 8 *Barb.* 88, in *Story on Partn.* 7 ed. § 417. Decision in 4 *Johns. Ch.* followed in *Knox v. Campbell*, 1 *Penn. St.* 366; s. c., 44 *Am. Dec.* 139, with note; decision in 20 *Johns.* being disting'd (Rights between such part-owners). Decision in *Id.* explained (Sharing in profits as constituting partnership) in *Collyer on Partn.* § 47, n. 1, Wood's *Am. ed.* Cited with *Post v. Kimberly*, 9 *Johns.* 470; *Holmes v. Unit. Ins. Co.*, 2 *Johns. Cas.* 329, in *Story on Partn.* 7 ed. § 56, n. Decision in 4 *Johns. Ch.* followed (Trust created by assignment for creditors may be enforced for their benefit) in *Ingram v. Kirkpatrick*, 6 *Ired. Eq. (N. C.)* 463; s. c., 51 *Am. Dec.* 428, with note. Quoted (Right to make such assignment) in *Burrill on Assign.* § 13, n. 3, 4 ed.
- *N. Y. & Erie R. R. Co.*, 12 *Barb.* 460. Aff'd in 12 *N. Y.* 121. Decision in *Id.* disting'd (Rights of action passing by transfer of property) in *McMahon v. Allen*, 3 *Abb. Pr. N. S.* 80. Explained (Effect of dissolution of corporation on its property) in *Owen v. Smith*, 31 *Barb.* 646. Collated with other cases (Railroad taking fee in lands) in 1 *Redf. Am. Railw. Cas.* 259.
- *v. Nicoll*, 16 *Wend.* 446. See *Pinder v. Morris*. Followed (Right of set-off, as affected by attorney's lien) in *Martin v. Kanouse*, 9 *Abb. Pr.* 371, n.; *Brooks v. Hanford*, 15 *Id.* 342, 346. Followed as decisive in *Perry v. Chester*, 36 *Super. Ct. (J. & S.)* 280, which was rev'd in 53 *N. Y.* 243. Doubted, but followed, in *Ferguson v. Basset*, 4 *How. Pr.* 171. Cited at length in *Firmenich v. Bovee*, 4 *Sup'm. Ct. (T. & C.)* 98, 101. Disting'd by *DALY, F. J.*, in *Ely v. Cook*, 9 *Abb. Pr. N. S.* 377, in *Davidson v. Alfaro*, 16 *Hun*, 360; *Roberts v. Carter*, 38 *N. Y.* 110. Followed, as to cases arising on motion, in *Fitch v. Baldwin*, *Clarke*, 428. Disting'd, as to cases arising on motion, in *Hovey v. Rubber Tip Pencil Co.*, 14 *Abb. Pr. N. S.* 68. Disapproved in 1 *Am. L. Reg. N. S.* 423.
- *v. Walworth*, 4 *Den.* 385. Disting'd and explained (Powers of trustees over trust estate) in *Bennett v. Garlock*, 79 *N. Y.* 318.
- Nicolls v. Ingersoll*, 7 *Johns.* 145. Disting'd (Effect of giving bail, on sheriff's liability) in *Wemple v. Glavin*, 5 *Abb. N. C.* 360, 367. Disting'd as inapplicable to case of officer seeking to recapture prisoner arrested on civil process (Right of bail to arrest principal in another State) in *Bromley v. Hutchins*, 8 *Verm.* 194; s. c., 30 *Am. Dec.* 465.
- Niles v. Battershall*, 18 *Abb. Pr.* 161; s. c., 27 *How. Pr.* 381; s. c., with another opinion, 2 *Robt.* 146.
- *v. Culver*, 3 *Barb.* 205. See *Van Ostrand v. Reed*. Criticised as dictum, and disting'd (Joint right of action on written contract) in *Silliman v. Tuttle*, 45 *Barb.* 171.
- *v. Vanderzee*, 14 *How. Pr.* 547. Explained (Evidence authorizing granting of attachment) in *Easton v. Malavazi*, 7 *Daly*, 147, 149.
- Nimmons v. Hennion*, 2 *Sweeny*, 663. Doubted (Effect of obligation payable at subsequent date, as "existing debt" of corporation) in *Haight v. Taylor*, 5 *Daly*, 219.
- *v. Tappan*, 2 *Sweeny*, 652. See *Osborne & Cheeseman Co. v. Croome*. Deemed overruled (Limitation of action, in case of successive default by trustees of corporation in filing annual report) in *Cornell v. Roach*, 9 *Abb. N. C.* 275.
- Nims v. Mayor, &c. of Troy*, 3 *Sup'm. Ct. T. & C.* 5. Aff'd in 59 *N. Y.* 500. See *Wilson v. Mayor, &c. of N. Y.* Decision in 59 *N. Y.* disting'd (Liability of city for obstruction to sewers) in *McCaffrey v. City of Albany*, 11 *Hun*, 613, 615. Decision in 3 *Sup'm. Ct. (T. & C.)* disting'd in *Smith v. Mayor, &c. of N. Y.*, 6 *Id.* 685.
- Ninth Ave. R. R. Co. v. N. Y. Elevated R. R. Co.*, 7 *Daly*, 174; s. c., more fully, 3 *Abb. N. C.* 347. Another proceeding in *Id.* 22. Compare (Liability for consequential injuries resulting from construction of railroad in street) *Washington Cemetery v. Prospect Park, &c. R. R. Co.*, 4 *Abb. N. C.* 15.
- Nitchie v. Townsend*, 2 *Sandf.* 299. Overruled (Third filing of chattel mortgage) in *Newell v. Warren*, 44 *N. Y.* 244.
- Niven v. Belknap*, 2 *Johns.* 589. Relied on in dissenting opinion of *Husron, J.* (Estoppel to set up title to land) in *Alexander v. Kerr*, 2 *Roule (Pa.)* 83; s. c., 19 *Am. Dec.* 616, 623, with note.
- *v. Munn*, 13 *Johns.* 43. Approved with *Crookshank v. Gray*, 20 *Id.* 344 (Necessity of averment of jurisdiction in action of slander for words charging perjury) in *Gove v. Blethen*, 21 *Minn.* 80; s. c., 18 *Am. R.* 380; *Chapman v. Smith*, 13 *Johns.* 78, being also cited in this connection, and *Ayres v. Covill*, 18 *Barb.* 260, disting'd.
- *v. Spiekerman*, 12 *Johns.* 401. Disting'd (Action by agent, of unincorporated company) in *Clap v. Day*, 1 *Greenl. (Me.)* 305; s. c., 11 *Am. Dec.* 99, with note.
- Nixon v. Hyserott*, 5 *Johns.* 58. See *Gibson v. Colt*. Disting'd (What is included in authority to sell) in *Peters v. Farnsworth*, 15 *Vt.* 155; s. c., 40 *Am. Dec.* 671, 673, where *Wilson v. Troup*, 2 *Cov.* 195; *Gibson v. Colt*, 7 *Johns.* 390; *Van Eps v. Schenectady*, 12 *Id.* 436, were cited in this connection. Referred to with *Gibson v. Colt*, 7 *Johns.* 390, in *Whart. Com. on Ag.* § 190, n. as contrary to cases there cited, and also said to be overruled in *Nelson v. Cowing*, 6 *Hill*, 336. Compare *Vanada v. Hopkins*, 1 *J. J. Marsh. (Ky.)* 223.



- **v. Palmer**, 10 *Barb.* 175. Rev'd in 8 *N. Y.* 398. See *Jackson v. Potter*; *Smith v. N. Y. Central R. R. Co.* Decision in 8 *N. Y.* distinguishing (Liability, as on promise to accept drafts) in *Merchants' B'k v. Griswold*, 72 *Id.* 479. Applied (Evidence of parol authority to sign, &c. commercial paper) in *Bank of No. Am. v. Embury*, 21 *How. Pr.* 15.
- Noah's Case.** See *People v. Dutchess Oyer & Terminer*.
- Noakes v. People**, 25 *N. Y.* 380. Followed (Indictment for assault on unknown person) in *White v. People*, 32 *Id.* 465.
- Noble v. Cromwell**, 26 *Barb.* 475; s. c., 6 *Abb. Pr.* 59. Aff'd in 27 *How. Pr.* 289; s. c., 3 *Abb. Ct. App. Dec.* 382.
- **v. Holmes**, 5 *Hill*, 194. See *Warner v. Shed*. Commented on (Who may attack transfer fraudulent as to creditors) in *Gross v. Daly*, 5 *Daly*, 540, 545. Quoted in *Wait on Fraud. Conv.* § 73.
- **v. Paddock**, 19 *Wend.* 456. Cited with *U. S. Bank v. Stearns*, 15 *Id.* 314 (When agents admitted to testify) in *Williams v. Little*, 12 *N. H.* 29.
- **v. Smith**, 2 *Johns.* 52; s. c., 3 *Am. Dec.* 399. Relied on (Sufficiency of delivery of symbol, to perfect gift) in *Elam v. Keen*, 4 *Leigh (Va.)* 333; s. c., 26 *Am. Dec.* 322. Quoted in *Benj. on Sales*, § 675, n. d. (Bennett's Am. ed.)
- Nobles v. Bates**, 7 *Cow.* 307. Cited with *Webb v. Noah*, 1 *Edw.* 604; *Dakin v. Williams*, 11 *Wend.* 67; *Curtis v. Gokey*, 68 *N. Y.* 300; *Mott v. Mott*, 11 *Barb.* 127; *Niver v. Rossman*, 18 *Id.* 50; *Mullen v. Vettel*, 25 *How. Pr.* 250; *Weller v. Hersec*, 10 *Hun.* 431; *Ewing v. Johnson*, 35 *How. Pr.* 202; *Chappel v. Brockway*, 21 *Wend.* 159; *Dunlop v. Gregory*, 10 *N. Y.* 241; *Ward v. Hogan*, 10 *Abb. N. C.* 478, other cases (Contracts in restraint of trade) in 19 *Cent. L. J.* 202. Quoted and explained in 2 *Pars. on Contr.* 748, n. 2.
- Nodine v. Boherty**, 46 *Barb.* 59. Disting'd (Proof of conversion of property delivered under contract of bailment) in *Smith v. Rollins*, 11 *R. I.* 464; s. c., 23 *Am. R.* 509, 515.
- **v. Greenfield**, 7 *Paige*, 544; s. c., 34 *Am. Dec.* 363. Disting'd with *Williamson v. Field*, 2 *Sandf. Ch.* 563 (Parties in foreclosure) in *Lockman v. Reilly*, 95 *N. Y.* 64. Disting'd (Divesting of interest given by will) in *Saxton's Estate*, *Tuck.* 32. Relied on (Decree, when binding on one having a contingent interest) in *Sohier v. Williams*, 1 *Curt.* 493.
- Noc v. Christie**, 15 *Abb. Pr. N. S.* 346; s. c., 46 *How. Pr.* 496. Another proceeding in 51 *N. Y.* 270. See *Kroner v. Heim*. Decision in 51 *N. Y.* relied on as authority (Agency of person appointed by one of joint principals) in *Whart. Com. on Ag.* § 55. With decision in 15 *Abb. Pr. N. S.* see, also (Execution where debtor has been taken and is in custody) *Code Civ. Pro.* 1881, § 1491, n.
- **v. Gibson**, 7 *Paige*, 513. Followed (Liability of property held by a receiver) in *Smith v. McNamara*, 15 *Hun.* 448. Cited as authority in *People ex rel. Tremper v. Brooks*, 40 *Mich.* 333; s. c., 29 *Am. R.* 534. Disting'd in *Hills v. Parker*, 111 *Mass.* 508; s. c., 15 *Am. R.* 63; *Parker v. Browning*, 8 *Paige*, 388, being cited as authority. Disting'd (Contempt in disturbing possession of receiver) in *Albany City B'k v. Schermerhorn*, 10 *Paige*, 265.
- Noel v. Murray**, 1 *Duer*, 385. Aff'd in 13 *N. Y.* 167. Decision in *Id.* disting'd (Effect of note as payment) in *Dauber v. Blackney*, 38 *Barb.* 487. Explained in *Westcott v. Keeler*, 4 *Bow.* 572. Quoted and explained in 2 *Benj. on Sales*, § 1081, n. 17 (Corbin's 4 Am. ed.). Decision in 1 *Duer* explained, and dictum in 13 *N. Y.* explained in *Darnall v. Morehouse*, 36 *How. Pr.* 526. Both decisions explained (Effect of receipt) in *Earle v. Crane*, 6 *Duer*, 572.
- Nolton v. Moses.** See *Elliot v. Brown*.
- **v. Western R. R. Co.**, 10 *How. Pr.* 97. Aff'd in 15 *N. Y.* 444. See *Brand v. Schenectady & Troy R. R. Co.* Decision in 15 *N. Y.* explained (Liability of carrier for negligence, in case of voluntary undertaking) in *Boniface v. Relyea*, 5 *Abb. Pr. N. S.* 268. Applied by *SELDEN, J.* in *Bissell v. Mich. South, &c. R. R. Co.*, 22 *N. Y.* 807. Approved in *Perkins v. N. Y. Central R. R. Co.*, 24 *Id.* 201. Followed with *Blair v. Erie R'y Co.*, 66 *Id.* 313 (Liability of railroad company for injuries to mail agents, &c.) in *Seybolt v. Lake Erie, &c. R. R. Co.*, 95 *Id.* 562, 570. Disting'd with *Perkins v. N. Y. Central R. R. Co.*, 24 *Id.* 196, in *Flint & Pere Marquette R'y Co. v. Wier*, 37 *Mich.* 111; s. c., 26 *Am. R.* 499, 501. Relied on with *Welles v. N. Y. Central R. R. Co.*, 26 *Barb.* 641; *Bissell v. N. Y. Central R. R. Co.*, 25 *N. Y.* 442; *Perkins v. N. Y. Central R. R. Co.*, 24 *Id.* 196, in *Kinney v. Central R. R. Co. of N. J.*, 34 *N. J.* 513; s. c., 3 *Am. R.* 265. Explained in *Higley v. Gilmer*, 3 *Mont.* 90; s. c., 35 *Am. R.* 450, 456. Included with notes in *Thomps. on Carr. of Pass.* 37.
- Noonau v. City of Albany**, 79 *N. Y.* 470; s. c., 35 *Am. R.* 540, with note. Cited with approval (Right of municipal corporation to cast surface water on land of proprietor) in *Inhabitants of West Orange v. Field*, 37 *N. J. Eq.* (10 *Stew.*) 600; s. c., 45 *Am. R.* 670. Cited in 82 *Am. Dec.* 123, n. Explained in *Moak's Underhill's Torts*, 470, n. 1.
- Norman v. Wells**, 17 *Wend.* 136. See *Jefferson Ins. Co. v. Cotheal*. Approved (Opinions as evidence) in *Culver v. Haslam*, 7 *Barb.* 323; *Paige v. Hazard*, 5 *Hill*, 604; *McCard v. Keller*, 5 *N. Y. Leg. Obs.* 419. Explained in *Rochester, &c. R. R. Co. v. Budlong*, 10 *Barb.* 295; *De Witt v. Barly*, 17 *N. Y.* 345. Approved with *Lincoln v. Saratoga R. R. Co.*, 23 *Wend.* 425; opinion of *VERPLANCK, S.* in *Mayor, &c. of N. Y. v. Pentz*, 24 *Id.* 673; in *Clark v. Baird*, 9 *N. Y.*

- 183, 194. Applied (Covenants running with the land) in *Weyman's Ex'rs v. Ringold*, 1 *Bradf.* 62; *Verplanck v. Wright*, 23 *Wend.* 511. Disting'd in *Tallman v. Coffin*, 4 *N. Y.* 187. Followed with *Van Horne v. Crain*, 1 *Paige*, 455, in *Hager v. Buck*, 44 *Vt.* 285; s. c., 8 *Am. R.* 368. Doctrine limited in cases cited in 2 *Am. L. Reg. N. S.* 201. Cited in 4 *Kent Com.* 472, n. a. Explained (Subscribing witness to deed) in *Id.* 458, n. b.
- Normington v. Cook**, 2 *Sup'm. Ct. (T. & C.)* 423. Aff'd, it seems, in 59 *N. Y.* 655, but without opinion.
- Norris v. Badger**, 6 *Cow.* 449; s. c., 8 *N. Y. Com. L. Law. ed.* 967, with brief note. Followed (Presumption arising from possession of note by indorser) in *Squier v. Stockton*, 5 *La. Ann.* 120; s. c., 52 *Am. Dec.* 583, with note.
- **v. Beach**, 2 *Johns.* 294. See *Person v. Grier*. Approved (Privilege of witness absolute) in *Merrill v. George*, 23 *How. Pr.* 332, 334.
- **v. Berea**, 15 *Barb.* 416. Rev'd in 13 *N. Y.* 273. See *Tyson v. Blake*. Decision in 13 *N. Y.* disting'd (Limitation, when repugnant to bequest) in *Floyd v. Pitcher*, 38 *Barb.* 409, 413; *Cohen v. Cohen*, 4 *Redf.* 52. Applied in *Underhill v. Tripp*, 24 *Low. Pr.* 53; *Bell v. Warn*, 4 *Hun.* 408; *Tyson v. Blake*, 22 *N. Y.* 561.
- **v. Denton**, 30 *Barb.* 117. Approved (Right to impeach judgment) in *Daly v. Matthews*, 12 *Abb. Pr.* 443, 406, n.
- **v. De Wolf**, 12 *Hun.* 666. Aff'd, it seems, in 76 *N. Y.* 597, but without opinion.
- **v. Kohler**, 41 *N. Y.* 42. Rev'g 1 *Sweeny*, 39. Decision in 41 *N. Y.* followed (Evidence that one causing injury was servant of another) in *Svenson v. Atlantic Mail S. S. Co.*, 57 *Id.* 108, 111. See cases cited (Negligence in leaving horse in street unfastened) 36 *Am. R.* 612, n.
- North v. Case**, 2 *Lans.* 264. Aff'd (Gift of donor's promissory note, in view of death) as *Worth v. Case*, in 42 *N. Y.* 362.
- **v. North**, 1 *Barb. Ch.* 241. Compared (*Alimony pendente lite*) in *Kinzey v. Kinzey*, 7 *Daly*, 460, 463. Discussed with other cases and applied in *Brinkley v. Brinkley*, 50 *N. Y.* 184, 190. Commented on as a decision in 2 *Bish. on Mar. & D.* § 398, n. 5, 6 ed.
- North American Coal Co. v. Dyett**, 7 *Paige*, 9. Aff'd in 20 *Wend.* 570. Decision arising out of facts here involved, in *Warner v. Hoffman*, 4 *Elw.* 381. Decision in 7 *Paige* examined with other cases (Charging separate estate of married woman) in *Corn Exchange Ins. Co. v. Babcock*, 9 *Abb. Pr. N. S.* 172. Applied in *Chesborough v. House*, 5 *Duer*, 125, 130; *Ballin v. Dillaye*, 37 *N. Y.* 37; *Conlin v. Cautrell*, 51 *How. Pr.* 314; *Quassaic Nat. B'k v. Waddell*, 1 *Hun.* 128. Disting'd in *Curtis v. Engel*, 2 *Sandf. Ch.* 288.
- North American Fire Ins. Co. v. Graham**, 5 *Sandf.* 197. Followed and approved (Necessity of execution to sustain creditor's suit) in *McCullough v. Colby*, 5 *Bosw.* 487. Approved and explained with *McCullough v. Colby*, in *Payne v. Sheldon*, 63 *Barb.* 174, which rev'd 43 *How. Pr.* 1, 3, which see. Followed in *Geery v. Geery*, 63 *N. Y.* 256. Approved and followed (Impeachment of discharge in bankruptcy) in *Caryl v. Russell*, 18 *Barb.* 430, which was rev'd in 13 *N. Y.* 198, which see.
- North America Gutta Percha Co., Case of**, 9 *Abb. Pr.* 79. Approved and followed (Priority of judgments) in *Rich v. Loutrel*, *Id.* 356; in preference to *Rutter v. Tallis*, 5 *Sandf.* 610.
- Northern Ins. Co. v. Wright**, 13 *Hun.* 166. Aff'd in 76 *N. Y.* 445. With decision in 13 *Hun.*, see (Effect of neglect to comply with request to foreclose mortgage) *Loomis v. Balheimer*, 5 *Abb. N. C.* 263. Disting'd in *Converse v. Cook*, 25 *Hun.* 44, 48, a case of request from accommodation indorser to maker.
- Northern R. R. Co. v. Miller**, 10 *Barb.* 260. Followed (Effect of subscription to stock, as agreement to pay money) in *Buffalo & N. Y. City R. R. v. Dudley*, 14 *N. Y.* 336, 344, 348, 350.
- Northern R. R. Co. of France v. Carpentier**, 3 *Abb. Pr.* 259. Followed (What injury to property will authorize arrest of female) in *Duncan v. Katon*, 6 *Hun.* 2.
- North River B'k v. Aymar**, 3 *Hill*, 262; s. c., 15 *N. Y. Com. L. Law. ed.* 584, with brief note, and (at p. 589) analysis of subsequent cases citing this. See *Exchange Bank v. Montecath*. Applied (Notice of limitation on agent's authority) in *B'k of State of Indiana v. Bugbee*, 1 *Abb. Ct. App. Dec.* 91; *Clarke Nat. B'k v. B'k of Albion*, 52 *Barb.* 598; *Greenwood v. Spring*, 54 *Id.* 381; *Mursh v. Gilbert*, 2 *Hun.* 61; *Merchants' B'k v. Griswold*, 72 *N. Y.* 478. Followed in *Exchange B'k v. Monteith*, 17 *Barb.* 176; but see *Same v. Same*, 24 *Id.* 372, where new trial was granted because of reversal of decision in 3 *Hill*. Examined in *Mechanics' B'k v. N. Y. & N. H. R. R. Co.*, 13 *N. Y.* 599, 632, which rev'd 4 *Duer*, 480, 537, which see. Followed in *Griswold v. Haven*, 25 *N. Y.* 601. Followed notwithstanding reversal, in *Farmers' & Mech. B'k v. Butchers'*, &c. *B'k*, 14 *Id.* 631; 16 *Id.* 137; 28 *Id.* 435; *Exchange B'k v. Montecath*, 26 *Id.* 508; *N. H. & N. H. R. R. Co. v. Schuyler*, 34 *Id.* 73; *Westfield B'k v. Cornen*, 37 *Id.* 322; *Reynolds v. Kenyon*, 43 *Barb.* 601. Disting'd in *Dabney v. Stevens*, 10 *Abb. Pr. N. S.* 50; *B'k of No. Am. v. Embury*, 33 *Barb.* 325. Followed with *Farmers' & Mechanics' Bank v. Butchers' & Drovers' B'k*, 14 *N. Y.* 633, in *Houghton v. First Nat. B'k of Elkhorn*, 26 *Wis.* 663; s. c., 7 *Am. R.* 107, 110. See *Bank of Bengal v. MacLeod*; *Same v. Fagan*, 7 *Moore P. C. Cas.* 35, 61.

- North River Steamboat Co. v. Hoffman**, 5 *Johns. Ch.* 300. Overruled (Validity of State law giving exclusive right of navigation) in *North River Steamboat Co. v. Livingston*, 3 *Cow.* 713; *Gibbons v. Ogden*, 19 *Wheat.* 1.
- **v. Livingston**, *Hopk.* 149. Aff'd in 3 *Cow.* 713. Decision in *Id.* applied (What is a coasting vessel) in *Walker v. Blackwell*, 1 *Wend.* 560. Discussed and explained (Power of Congress to regulate commerce) in 1 *Kent Com.* 438.
- Northrop v. Hill**, 61 *Barb.* 136. Aff'd in 57 *N. Y.* 351; s. c., 15 *Am. R.* 501.
- **v. Syracuse, &c. R. R. Co.** See *Goold v. Chapin*.
- **v. Van Duzen**, 5 *How. Pr.* 134. Disting'd (Granting motion costs not asked for in notice of motion) *Jones v. Cook*, 11 *Hun.* 230.
- **v. Wright**, 24 *Wend.* 221. Rev'd in 7 *Hill.* 476. Contrary to decision in 24 *Wend.* see (Possession as evidence) *Delancey v. McKeen*, 1 *Wash. C. Ct.* 354, and see *Abb. Tr. Ev.* 692.
- Northrup v. Foot**, 14 *Wend.* 248. Discussed (Sales of goods on Sunday) in 2 *Chitty on Contr.* 1017, n. 2, 11 *Am. ed.*
- **v. Northrup**, 6 *Cow.* 296. Included (Independent covenants and promises in contracts) in 2 *Langdell's Cas. on Contr.* 2 ed. 721.
- **v. People**, 37 *N. Y.* 203; s. c., 4 *Abb. Pr. N. S.* 227. Rev'd *People v. Northrup*, 50 *Barb.* 147. Compare (Adjournment of court) *People v. Clews*, 4 *Abb. N. C.* 262, 267; and 17 *Abb. L. J.* 175.
- **v. Railway Passenger Assn. Co.**, 2 *Lans.* 166. Rev'd (Liability of accident insurance companies) in 43 *N. Y.* 516.
- Norton v. Abbott**, 28 *How. Pr.* 388. Examined with other cases (Examination before trial) in *Phoenix v. Dupuy*, 7 *Daly.* 238, 242.
- **v. Colt**, 2 *Wend.* 250. Explained (Power of deputy county clerk to take affidavit) in *Lucas v. Ensign*, 4 *N. Y. Leg. Obs.* 142, 145.
- **v. Coons**, 3 *Den.* 130. Confirmed by subsequent decision in 6 *N. Y.* 33. Decision in *Id.* disting'd (Right of contribution between co-sureties) in *Wells v. Miller*, 66 *Id.* 258. Doctrine of *GARDNER, J.*, doubted in *Oldham v. Brown*, 28 *Ohio St.* 41, 52. Decision in 3 *Den.* followed as not having been rev'd or questioned, in *Cornes v. Wilkin*, 14 *Hun.* 428. Both decisions explained in *Barry v. Ransom*, 12 *N. Y.* 466.
- **v. Hayes**, 4 *Den.* 245. Relied on (Sufficient entry of appearance) in dissenting opinion of *BRADY, J.*, in *Chatham Nat. Bank v. Merchants' Nat. Bank of W. Va.*, 4 *Sup'm. Ct. (T. & C.)* 190, 202. Explained with *Vandervoort v. Palmer*, 4 *Duer.* 677; *Livingston v. Gibbons*, 4 *Johns. Ch.* 94 (Necessity that all of several defendants unite in application to remove cause) in *Cooke v. State Nat. Bank*, 1 *Lans.* 494, 502.
- **v. Mallory**, 1 *Hun.* 499; s. c., 3 *Sup'm. Ct. (T. & C.)* 640. Aff'd in 63 *N. Y.* 434. See *Williams v. Fitch*. Decision in 63 *N. Y.* disapproved (Distinction between law and equity in respect to exceptions to evidence) in *Consolidated Fruit Jar Co. v. Mason*, 7 *Daly.* 64, 69.
- **v. Norton**, 2 *Sandf.* 296. Disting'd and explained (Extent of trustees' interest in trust estate) in *Bennett v. Garlock*, 79 *N. Y.* 319. Quoted in 1 *Perry on Trusts*, 3 ed. § 312.
- **v. Rhodes**, 18 *Barb.* 100. Overruled (Liability of husband for money expended for support of his wife as a pauper) in *Goodale v. Lawrence*, 88 *N. Y.* 513; which rev'd *Goodale v. Brockner*, 25 *Hun.* 621, the latter aff'g 61 *How. Pr.* 421, which see.
- **v. Wiswall**, 26 *Barb.* 618. See *Blake v. Ferris*. Disting'd (Liability of lessor of franchise) in *Abbott v. Johnstown, &c. R. R. Co.*, 80 *N. Y.* 29.
- **v. Woodruff**, 2 *N. Y.* 153. See *Pechner v. Phoenix Ins. Co.*; *Walrath v. Thompson*. Explained (Sale as distinguished from bailment) in 1 *Benj. on Sales*, § 2, n. 4 (*Corbin's* 4 *Am. ed.*).
- **v. Woods**, 5 *Paige*, 249. Further decision to the contrary, in 22 *Wend.* 520.
- Norwood v. Resolute Fire Ins. Co.**, 36 *Super. Ct. (J. & S.)* 552; s. c., more fully, 47 *How. Pr.* 43.
- Nottebohm v. Maas**, 3 *Robt.* 249. Explained (Set-off in action by pledgee against purchaser) in *Carrington v. Ward*, 71 *N. Y.* 360, 367; which aff'd 42 *Super. Ct. (J. & S.)* 571, which see.
- Nourse v. Prime**, 4 *Johns. Ch.* 490; s. c., 8 *Am. Dec.* 606. Subsequent decision in 7 *Johns. Ch.* 69; s. c., 11 *Am. Dec.* 403. See *Wilson v. Little*. Decision in 7 *Johns. Ch.* applied (Duty of one receiving stock to deliver identical shares) in *Horton v. Morgan*, 6 *Duer.* 61; which was aff'd in 19 *N. Y.* 170, 173, which see. Disting'd in *Allen v. Dykers*, 3 *Hill.* 597. Decision in 4 *Johns. Ch.* followed and approved with *Allen v. Dykers*, 3 *Hill.* 593, in *Gilpin v. Howell*, 5 *Penn. St.* 41; s. c., 45 *Am. Dec.* 720, 727, with note. Both decisions applied with *Horton v. Morgan*, 19 *N. Y.* 170; *Baker v. Drake*, 53 *Id.* 211, in *Barclay v. Culver*, 30 *Hun.* 1. Cited as authority in *Hubbell v. Drexel*, *U. S. Cir. Ct. E. D. Penn.* 21 *Am. L. Reg. N. S.* 452, 454, with note. Applied (Commissions, when usurious) in *Seymour v. Marvin*, 11 *Barb.* 84; *Smith v. Marvin*, 27 *N. Y.* 140.
- Noyes v. Blakeman**, 3 *Sandf.* 531. Aff'd in 6 *N. Y.* 567. See *Chouteau v. Suydam*. Applied (Nature of interest of married woman in property, interest of which she is to receive for life) in *Bloodgood v. Mickle*, 15 *Abb. Pr. N. S.* 107; *Embee v. Franklin*, 23 *Hun.* 205. Disting'd (Authority of trus-

tee, &c., to charge estate) in *Ferrin v. Myrick*, 41 *N. Y.* 322; which rev'd 53 *Barb.* 95, which see; *Stanton v. King*, 8 *Hun.* 5. Explained and criticised in *Fearn v. Mayers*, 53 *Miss.* 458, 466. See cases cited in 15 *Am. L. Rev.* 450, 451.

— *v. Burton*, 17 *How. Pr.* 449; s. c., 29 *Barb.* 631, in which latter the decision appears to have been at General Term. Disting'd (Necessity of commencement of proceedings to bring mechanic's lien to a close) in *McDermott v. McDonald*, 50 *Super. Ct. (J. & S.)* 153.

— *v. Butler*, 6 *Barb.* 613. Approved (Effect to be given to judgment rendered in another State) in *Judkins v. Union Mut. Ins. Co.*, 37 *N. H.* 470. Cited with numerical authorities *pro* and *con* in 1 *Kent Com.* 262, n. 1, *Holmes' ed.* Explained in 2 *Pars. on Contr.* 608, n. x. Approved (Statements in record not conclusive as to jurisdictional facts) in *Sears v. Terry*, 26 *Conn.* 273, 284.

— *v. Children's Aid Socy*, 10 *Hun.* 289; s. c., 53 *How. Pr.* 10. Aff'd in 70 *N. Y.* 481; s. c., 3 *Abb. N. C.* 36. Decision in 70 *N. Y.* applied (Limit of allowance by surrogate) in *Down v. McGourkey*, 15 *Hun.* 444. Followed with *Down v. McGourkey*; *Hurd v. Warren*, 16 *Id.* 622, in *Matter of Gray*, 91 *N. Y.* 502, 515. Followed (Allowance by surrogate to counsel) in *Matter of Lockman*, 4 *Abb. N. C.* 173, 175; *Kearney v. McKeon*, 85 *N. Y.* 136, 142. See *Code Civ. Pro.* 1881, §§ 2557, n., 2561, n.

— *v. Clark*, 7 *Paige*, 179; s. c., 32 *Am. Dec.* 620, 623, with note, wherein it is said to have been repeatedly recognized in subsequent cases (Effect of condition in mortgage as to default in payment of interest). Explained in *Asendorf v. Meyer*, 8 *Daly*, 278, 281. Disting'd in *Bennett v. Stevenson*, 53 *N. Y.* 508, 510.

— *v. Hewett*, 18 *Wend.* 141. Followed (Rule governing review of justice's judgment) in *Burnham v. Butler*, 31 *N. Y.* 480, as aff'g rule in *Stryker v. Bergen*, 15 *Wend.* 491, and as overruling *Whitney v. Sutton*, 10 *Id.* 412; *Columbia Turnpike v. Heywood*, *Id.* 425.

— *v. Phillips*. See *Bagley v. Peddie*.

## O.

**Oakey v. Bend**, 3 *Edw.* 482. Aff'd on the grounds here stated, but without opinion, in 4 *Ch. Sent.* 15.

**Oakley, Matter of**, 1 *Am. Insolv. R.* 56. See *Kerr v. Blodgett*. Not followed (Necessity for presentation of claim by creditor named in schedule filed under assignment) in *Matter of Burdick*, 10 *Daly*, 49. Opposed in *Matter of Bailey*, 58 *How. Pr.* 446. Compare *Matter of Currier*, 8 *Daly*, 119.

**Oakley v. Aspinwall**, 2 *Sandf.* 7. Rev'd by *Ct. of App.* in 8 *N. Y. Leg. Obs.* 123. On motion reversal was set aside on ground of

consanguinity of one of the judges, in 3 *N. Y.* 547; the judgment, however, being again rev'd on re-argument, in 4 *Id.* 513. Subsequent decision in 1 *Duer*, 1; s. c., 10 *N. Y. Leg. Obs.* 79, sustaining non-suit granted at new trial. Latter aff'd in 13 *N. Y.* 500, where point decided in 4 *Id.* was re-aff'd and explained. See *People v. Morrell*; *Robertson v. Smith*. Decision in 4 *N. Y.* applied (Effect of judgment against joint debtor, part only of whom were served) in *Foster v. Wood*, 1 *Abb. Pr. N. S.* 152; *Matter of Lowenstein*, 6 *How. Pr.* 102. Explained and applied in *White's B'k of Buffalo v. Ward*, 35 *Barb.* 640. Approved and applied in *Newman v. Marvin*, 12 *Hun.* 241. Explained in *Dean v. Eldridge*, 29 *How. Pr.* 222; *Lane v. Salter*, 51 *N. Y.* 5. Applied (Effect of judgment against non-resident) in *Fitzsimmons v. Marks*, 66 *Barb.* 335. Decision in 3 *N. Y.* approved (Construction of constitution) in *Thorne v. Cramer*, 15 *Barb.* 120. Quoted and commented on in *Cooley on Const. Limita.* 5 ed. 86; n. Applied (Disqualification of judge who has an interest) in *Carrington v. Andrews*, 12 *Abb. Pr. N. S.* 350; *Converse v. McArthur*, 17 *Barb.* 412; *Darling v. Pierce*, 15 *Hun.* 549. Disting'd in *People v. Wheeler*, 21 *N. Y.* 86. Disapproved in *People ex rel. Flint v. Cline*, 23 *Barb.* 197, 200. Reviewed in *Chambers v. Clearwater*, 1 *Keyes*, 310, 313. Collated with *Matter of Leefe*, 2 *Barb. Ch.* 39; *N. Y. Life Ins. Co. v. Rand*, 8 *How. Pr.* 35; *Id.* 352; *Chambers v. Clearwater*, 1 *Abb. Ct. App. Dec.* 341; 41 *Barb.* 400, in 2 *Weekly L. Bul.* 5. Applied (Court of Appeals, when without jurisdiction) in *People v. Clark*, 1 *Park.* 363.

— *v. Boorman*, 21 *Wend.* 588. See *Hall v. Newcomb*; *Packer v. Willson*. Disapproved (Effect of failure to express consideration for guaranty) in *Brewster v. Silence*, 8 *N. Y.* 207, 214. Followed in *Skofield v. Haze*, 22 *Me.* 164; s. c., 38 *Am. Dec.* 307.

— *v. Farrington*, 1 *Johns. Cas.* 130; s. c., 1 *Am. Dec.* 107. Explained (Slander against one in professional capacity) in *Moak's Underhill's Torts*, 1 *Am. ed.* 122.

— *v. Mayor, &c. of N. Y.* (Cited in *West v. Mayor, &c.*, 10 *Paige*, 540) Disting'd (Injunction to restrain prosecution of multiplicity of suits) in *Third Ave. R. R. Co. v. Mayor, &c. of N. Y.*, 54 *N. Y.* 159, 162.

— *v.*, 39 *Super. Ct. (J. & S.)* 549. Aff'd in 70 *N. Y.* 612.

— *v.*, 4 *Hun.* 72; s. c., reported in 6 *Sup'm. Ct. (T. & C.)* 221.

— *v. Morton*, 11 *N. Y.* 25. Explained (Performance of contract, when excused) in *Wolfe v. Howes*, 24 *Barb.* 666. Applied by *DAVIES, Ch. J.*, in *Jenkins v. Wheeler*, 37 *How. Pr.* 469; in dissenting opinion of *MULLIN, J.*, in *Patridge v. Gildermeister*, 1 *Keyes*, 99. Explained with *Inman v. Western Ins. Co.*, 12 *Wend.* 452; *Beebe v. Johnson*, 19 *Id.* 500, in *Baldwin v. N. Y. Life Ins. & Trust Co.*, 3 *Boso.* 530, 545.

- **v. Schoonmaker**, 15 *Wend.* 226. Approved ("Expiration of term" [2 *E. S.* 513, § 28] does not embrace forfeiture) in *Beach v. Nixon*, 9 *N. Y.* 35.
- **v. Sears**, 1 *Abb. Pr. N. S.* 368; s. c., 1 *Robt.* 73. Followed (New trial for newly discovered evidence) in *May v. Strauss*, 8 *Abb. N. C.* 274, 278.
- **v. Stanley**, 5 *Wend.* 525. Followed (Passage of water right as incident to land conveyed) in *Morgan v. Mason*, 20 *Ohio*, 401; s. c., 55 *Am. Dec.* 469; *Hathorn v. Stinson*, 10 *Me.* 224; s. c., 25 *Am. Dec.* 228.
- **v. Trustees of Williamsburgh**. See *Livingston v. Livingston*.
- **v. Van Horn**, 21 *Wend.* 305. Followed (Effect of failure to raise objection on trial before justice) in *Jencks v. Smith*, 1 *N. Y.* 90, 93.
- Oates v. Haley**, 1 *Daly*, 338. Followed (Enforcing mechanic's lien against assignee for creditors) in *Murry v. Hutcheson*, 8 *Abb. N. C.* 423, 426.
- Oaths of Attorneys, Matter of**, 20 *Johns.* 493. See *Matter of Wood*. Approved ("Officer," within meaning of provision requiring officers to take oaths) in *Wilcox v. Hemming*, 58 *Wis.* 144, 149.
- O'Beirne v. Lloyd**, 1 *Sweeney*, 19; s. c., 6 *Abb. Pr. N. S.* 387. Rev'd in 43 *N. Y.* 248. Decision in *Id.* followed (Entirety of cause of action for several breaches) in *Jex v. Jacobs*, 19 *Hun.* 105. Cited in 2 *Whart. Com. on Ev.* § 788.
- Oberlander v. Rosszog**, 4 *Hun.* 665. Rev'd as *Oberlander v. Spiess*, 63 *N. Y.* 634. Previous decision in 45 *Id.* 175. See *Marsh v. Falker*. Decision in 45 *N. Y.* followed (Liability for false representations) in *Meyer v. Amidon*, *Id.* 170. Applied in *Wakeman v. Dalley*, 51 *Id.* 35; *Stitt v. Little*, 63 *Id.* 432. Examined with other cases in *Livingston v. Keech*, 34 *Super. Ct. (J. & S.)* 556; *Morehouse v. Yeager*, 41 *Id.* 146. Disting'd (Finding, when only to be implied, to sustain judgment) in *Phillip v. Gallant*, 62 *N. Y.* 265.
- **v. Spiess**. See *Oberlander v. Rosszog*.
- Oberwarth v. M'Lean**, 2 *Abb. N. C.* 210; s. c., more fully, 7 *Daly*, 70; 52 *Hov. Pr.* 491. See also (Execution on judgment in Marine Court) *Palmer v. Clark*, 4 *Abb. N. C.* 25.
- Obregon v. De Mier**, 52 *Hov. Pr.* 356. Other proceedings in 54 *Id.* 390; and 58 *Id.* 301.
- O'Brien v. Brietenbach**, 1 *Hilt.* 304. Collated with other cases (Lease for immoral purposes) in *McAdam on Landl. & T.* 2 ed. § 76.
- **v. Browning**, 11 *Hun.* 179. Appeal dismissed, it seems, in 77 *N. Y.* 630, but without opinion. Another proceeding in 49 *Hov. Pr.* 109.
- **v. Commercial Fire Ins. Co.**, 33 *Super. Ct. (6 J. & S.)* 517. Rev'd in 63 *N. Y.* 108. Different proceeding in 38 *Super. Ct. (J. & S.)* 4, and also a further proceeding in 41 *Id.* 224. Decision in 38 *Id.* applied (Costs for drawing interrogatories) in *Johnson v. Chappell*, 7 *Daly*, 43.
- **v. Glenville Woolen Co.**, 50 *N. Y.* 128. Previous decision, allowing plaintiff's attorney to continue action after plaintiff's death, is in 11 *Abb. Pr. N. S.* 85; s. c., 60 *Barb.* 371. With decision in 50 *N. Y.* see (Execution of warrant of attachment) *Code Civ. Pro.* 1881, ch. VII. tit. III. art. 2, n.
- **v. Hagan**, 1 *Duer*, 664. Reviewed with *Bonnell v. Rome*, &c. *R. R. Co.*, 12 *Hun.* 218; *Miller v. Finkle*, 1 *Park.* 374; *Davis v. Duffie*, 8 *Bowd.* 617; 4 *Abb. Pr. N. S.* 478 (Rights of convict as party to civil proceeding) in *Bowles v. Haberman*, 95 *N. Y.* 246. Disapproved in *Bonnell v. Rome*, &c. *R. R. Co.*, 12 *Hun.* 218.
- **v. Mechanics' & Traders' Ins. Co.**, 35 *Super. Ct. (J. & S.)* 70. Subsequent proceeding in 54 *Hov. Pr.* 213, and this aff'd in 36 *Super. Ct. (J. & S.)* 110; s. c., 14 *Abb. Pr. N. S.* 314; 45 *Hov. Pr.* 453, which latter decision was rev'd in 56 *N. Y.* 52; s. c., 15 *Abb. Pr. N. S.* 222; 46 *Hov. Pr.* 429. See *Clarke v. Goodridge*. With decision in 56 *N. Y.* see (Sufficiency of notice of attachment) *Code Civ. Pro.* 1881, § 649, n. Compare (Examination of person having debtor's property) *Code Civ. Pro.* § 651.
- **v. Merchant's Ins. Co.**, 48 *Hov. Pr.* 448; s. c., fully reported in 38 *Super. Ct. (J. & S.)* 482. Another proceeding in 16 *Abb. Pr. N. S.* 212; s. c., 48 *Hov. Pr.* 13. Decision in *Id.* followed (Discontinuance of proceedings commenced by sheriff) in *Bowe v. Knickerbocker Life Ins. Co.*, 27 *Hun.* 312.
- **v. N. Y. Central, &c. R. R. Co.**, 9 *Weekly Dig.* 529. Aff'd in 80 *N. Y.* 236. Decision in *Id.* followed (Rights of person ejected from train for non-payment of fare) in *Swan v. Manchester & Lawrence R. R. Co.*, 132 *Mass.* 116, 121. Collated with *Hibbard v. N. Y. & Erie R. R. Co.*, 15 *N. Y.* 455, and other cases in 15 *Fed. Rep.* 91, n.
- **v. People**, 48 *Barb.* 274. Aff'd in 36 *N. Y.* 276; s. c., 3 *Abb. Pr. N. S.* 368. See *People v. Rogers*. Decision in 36 *N. Y.* disting'd (Opinion that disqualifies juror) in *Greenfield v. People*, 6 *Abb. N. C.* 8; which rev'd 13 *Hun.* 252, which see. Compare *Points of Law in Guiteau's Case*, 70 (Boston: Little, Brown & Co., 1881). Explained (New trials in criminal cases) in *Levy v. People*, 80 *N. Y.* 327, 337. Decision in 48 *Barb.* collated with other cases (Insanity as a defense) in 1 *Barb. on Crim. L.* 3 ed. 265, n.
- O'Callaghan v. Sawyer**, 5 *Johns.* 118. See *Ford v. Stuart*. See *Hendricks v. Judah*. Followed (Rights of transferee of overdue note) in *Ferguson v. Hill*, 3 *Stew. (Ala.)* 485; s. c., 21 *Am. Dec.* 641, 644.
- Ocean Ins. Co. v. Francis**, 2 *Wend.* 64; s. c., 19 *Am. Dec.* 549. Compare (Conclu-

- siveness of sentence of foreign court of admiralty) *Crondson v. Leonard*, 4 *Cranch*, 434; *Dempsey v. Ins. Co. of Penn.*, 1 *Binn. (Pa.)* 299, n.; *Baxter v. New England Ins. Co.*, 6 *Mass.* 277; *Stewart v. Warner*, 1 *Day (Conn.)* 143.
- Ocean Nat. Bank v. Carll**, 55 *N. Y.* 440. Subsequent proceedings in 7 *Hun*, 237, and 9 *Id.* 239. Decision in 85 *N. Y.* disting'd (Entry in account-book as evidence) in *Derham v. Lee*, 47 *Super. Ct. (J. & S.)* 174, 183; *First Nat. B'k of Whitehall v. Tisdale*, 84 *N. Y.* 655. Cited in 1 *Whart. Com. on Ev.* § 661.
- **v. Olcott**, 46 *N. Y.* 12. See *Chautauqua Co. Bank v. White*; *Estes v. Wilcox*; *McCartney v. Bostwick*. Explained (Enforcing trust in case of grant to one, consideration being paid by another) in *Chillingworth v. Freeman*, 67 *Barb.* 381. Quoted and discussed in *Wait on Fraud. Conv.* § 82. Followed (Effect of discharge in bankruptcy) in *Dusenbury v. Hoyt*, 14 *Abb. Pr. N. S.* 135; *Am. Exch. B'k v. Brandreth*, 12 *Hun*, 385. Disting'd in *Dewey v. Moyer*, 9 *Id.* 479; which was aff'd in 72 *N. Y.* 75, which see; *Poillon v. Lawrence*, 77 *Id.* 216; which rev'd 43 *Super. Ct. (J. & S.)* 388, which see; *Smith v. Tighe*, 46 *Id.* 270, 273. Followed in *Bailey v. Corruthers*, 71 *Me.* 172, 174; *Marshall v. Sumner*, 59 *N. H.* 218; s. c., 47 *Am. R.* 194; *Wiley v. Pavey*, 61 *Ind.* 457; s. c., 28 *Am. R.* 677, 679; *Way v. Howe*, 108 *Mass.* 502; s. c., 11 *Am. R.* 386, 390. To the contrary, see authorities cited in *Abb. Tr. Ev.* 820, n. Followed (Necessity of having execution issued, in order to maintain creditor's action) in *Adsit v. Sanford*, 23 *Hun*, 48; *Allyn v. Thurston*, 53 *N. Y.* 623.
- Ockerman v. Cross**, 54 *N. Y.* 29. Disting'd (Effect of assignment for creditors, made in another jurisdiction) in *Warner v. Jaffray*, 96 *Id.* 248. Followed in *Chafee v. Fourth Nat. B'k of N. Y.*, 71 *Me.* 514; s. c., 36 *Am. R.* 345, 347. Compare *Atwood v. Protection Ins. Co.*, 14 *Conn.* 555. Commented on in *Burrill on Assign.* §§ 304, 308 n. 4, 4 ed.
- O'Connor, Matter of**, 48 *Barb.* 258. Applied (Validity of act of Congress prohibiting State courts from interfering with enlistments in army) in *Re Neill*, 3 *Blatchf. C. Ct.* 156, 163.
- Oddie v. Nat. City B'k**, 45 *N. Y.* 735; s. c., 6 *Am. R.* 160. Disting'd (Demand of payment of check) in *Viets v. Union Nat. B'k of Troy*, 31 *Hun*, 484. Criticised and disting'd (Receiving checks on deposit,—as cash, or for collection) in *Nat. Gold B'k & Trust Co. v. McDonald*, 51 *Cul.* 64; s. c., 21 *Am. R.* 701.
- Odell v. Durant**, 62 *N. Y.* 524. Disting'd (Lease of agricultural land) in *Witherbee v. Stower*, 23 *Hun*, 27. See *Clark v. Barnes*, 76 *N. Y.* 301.
- **v. Montross**, 6 *Hun*, 155. Rev'd in 68 *N. Y.* 499. Decision in *Id.* discussed (Divesting of mortgagor's interest) in *Selgw. & W. on Tr. of Tit. to Land*, § 344.
- O'Donaghue v. McGovern**, 23 *Wend.* 26. Cited in 2 *Kent Com.* 22, n. d. as in conformity with the English, and what is the better and more authoritative American rule (Privileged communications in libel).
- O'Donnell v. Kelsey**, 4 *Sandf.* 202. Aff'd in 10 *N. Y.* 412. Decision in *Id.* followed (Adjoining riparian owners bound by acquiescence in line of separation) in *Stockham v. Browning*, 18 *N. J. Eq. (U. E. Green)* 390.
- **v. N. Y. & Harlem R. R. Co.**, 8 *Daly*, 409. Aff'd, it seems, in 77 *N. Y.* 625, but without opinion.
- **v. Rosenberg**. See *Bagley v. Peddie*.
- **v. Smith**, 2 *E. D. Smith*, 124. Included (Parties to negotiable paper, not guarantors within statute of frauds) in 2 *Ames Cas. on B. & N.* 712.
- O'Donohue v. Mc Govern**. See *Howard v. Thompson*.
- O'Dougherty v. Aldrich**, 5 *Den.* 385. Disting'd (Partition suit, when maintainable) in *Jordan v. Van Epps*, 85 *N. Y.* 427, 434.
- Oertel v. Wood**, 40 *How. Pr.* 10. Further proceeding dissolving injunction reported as *Oertel v. Jacoby*, in 44 *Id.* 179.
- Offinger v. De Wolf**, 40 *Super. Ct. (J. & S.)* 446. Further proceeding in 43 *Id.* 144.
- O'Gara v. Clarkin**, 2 *Sup'm. Ct. (T. & C.)* 675. Rev'd as *O'Gara v. Clearkin* in 58 *N. Y.* 663, but apparently for error in not allowing full value of services.
- **v. Eisenlohr**, 38 *N. Y.* 296. See *Fenton v. Reed*; *Starr v. Peck*. Reviewed with other cases (Presumption of marriage) in *Wright v. Wright*, 48 *How. Pr.* 7. Reviewed with other cases (Presumption of death) in *Matter of Ackerman*, 2 *Redf.* 523. See to the contrary 1 *Bish. on Mar. & D.* § 453; *Kelly v. Drew*, 12 *Allen (Mass.)*, 107. See also *Abb. Tr. Ev.* 84. Followed (Declarations, to prove marriage) in *Alexander v. Chamberlain*, 1 *Sup'm. Ct. (T. & C.)* 601.
- Ogden v. Andre**, 4 *Bosw.* 583. Said in *Ogden v. Raymond*, 1 *Keyes*, 42, to have been aff'd by *Ct. of App.*
- **v. Astor**. See *Young v. Hill*.
- **v. Columbia Ins. Co.**, 10 *Johns.* 273. Followed (When right of action on contract accrues before time contemplated by parties) in *Allegre v. Maryland Ins. Co.*, 6 *Harr. & J. (Md.)* 408; s. c., 14 *Am. Dec.* 289, 293.
- **v. Cowley**. See *Chapman v. Lipscombe*; *Stewart v. Eden*.
- **v. Des Arts**. See *Benedict v. Stuart*.
- **v. Dobbin**, 2 *Hall*, 112. Followed (Necessity of formal demand in case of note made payable at bank) in *State Bank v. Napier*, 6 *Humph. (Tenn.)* 270; s. c., 44 *Am. Dec.* 308, 310.
- **v. East River Ins. Co.** See *Hand v. Williamsburgh City Ins. Co.*
- **v. General Mut. Ins. Co.**, 2 *Duer*, 204. Disting'd (Liability as for total loss of freight) in *Robertson v. Atlantic Mut. Ins. Co.*, 37 *Super. Ct. (J. & S.)* 442, 436.

- Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 788.
- *v. Gibbons*, 4 *Johns. Ch.* 150. Aff'd in 17 *Johns.* 488, which was, however, rev'd in *Gibbons v. Ogden*, 9 *Wheat.* 1. See North River Steamboat Co. v. Livingston, 3 *Cow.* 713; *Hopk.* 149. Decision in 4 *Johns. Ch.* followed with Newburgh & Cohecton Turnpike Road v. Miller, 5 *Id.* 101-110 (Right to establish ferry, &c. to detriment of another's rights) in *Enfield T. B. Co. v. Hartford R. R. Co.*, 17 *Conn.* 40; s. c., 42 *Am. Dec.* 716, 726, with note. Quoted in 2 *Washb. on Real Prop.* 4 ed. 294. All decisions discussed (Power of Congress to regulate commerce) in 1 *Kent Com.* 435, 436.
- *v. Jennings*, 66 *Barb.* 301. Aff'd in 62 *N. Y.* 526.
- *v. Lathrop*, 35 *Super. Ct. (J. & S.)* 73. Rev'd in 65 *N. Y.* 158. Previous decision in 1 *Sweeny*, 643.
- *v. Lee*, 6 *Hill*, 546. Aff'd in *Fellows v. Lee*, 5 *Den.* 628.
- *v. Marshall*, 8 *N. Y.* 340. Limited and explained (Damages for breach of carrier's contract to receive goods to transport) in *Nelson v. Plimpton Fire-proof Elevating Co.*, 55 *Id.* 480, 485, a case of contract to receive grain for storage. Included in *Sedgw. Cas. on Dam.* 123.
- *v. N. Y. Fire Ins. Co.*, 10 *Johns.* 177. Aff'd in 12 *Id.* 25. See *Robinson v. United Ins. Co.*
- *v. N. Y. Mutual Ins. Co.*, 4 *Bosw.* 447. Further decision in 8 *Bosw.* 248; which was aff'd in 35 *N. Y.* 418.
- *v. Peters*, 15 *Barb.* 560. Aff'd, in effect, in 21 *N. Y.* 23. Decision in 15 *Barb.* quoted (Assignment by debtor supposing himself to be solvent) in *Burrill on Assign.* § 61, n. 6, 4 ed. Quoted (Other transfers in connection therewith) in *Id.* § 358, n. 3. Decision in 21 *N. Y.* quoted (Unusual provisions) in *Id.* § 183, n. 1. Collated with other cases (Directions as to time of sale) in *Bishop on Assign.* § 209. Quoted (Who may make assignment) in *Wait on Fraud. Conv.* § 340.
- *v. Raymond*, 5 *Bosw.* 16. Aff'd in 1 *Keyes*, 42.
- *v. Rollo*, 9 *Abb. Pr.* 8, n. Rev'd in 13 *Id.* 300.
- *v. Sanderson*, 3 *E. D. Smith*, 166. Collated with other cases (Eviction of lessee) in *McAdam on Landl. & T.* 2 ed § 212.
- Ogdensburgh & Champlain R. R. Co. v. Vermont & Canada R. R. Co.**, 16 *Abb. Pr. N. S.* 249. Aff'd in 4 *Hun*, 712. Motion to dismiss appeal denied in 63 *N. Y.* 176. Another proceeding in 6 *Sup'm. Ct. (T. & C.)* 488; mem. s. c., 4 *Hun*, 268. See *Hulbert v. Hona Mut. Ins. Co.*; *People v. Albany & Susquehanna R. R. Co.*; *People v. N. Y. & Staten Island Ferry Co.* Decision in 63 *N. Y.* applied (Basis of extra allowance) in *Potter v. Farrington*, 24 *Hun*, 551. Explained and applied in *Williams v. Western Union Tel. Co.*, 61 *How. Pr.* 305, 308.
- Disting'd and explained (Effect of demurrer in precluding defense of want of jurisdiction) in *Wheelock v. Lee*, 74 *N. Y.* 495, 498.
- Ogilby v. Wallace**, 2 *Hall*, 553. Applied with *Mauran v. Lamb*, 7 *Cow.* 174 (Right of action on note, &c., payable to bearer, or indorsed in blank) in *Pearce v. Austin*, 4 *Whart. (Pa.)* 489; s. c., 34 *Am. Dec.* 523.
- Ogilvie v. Hull**, 5 *Hill*, 52. Collated with other cases (Eviction of lessee) in *McAdam on Landl. & T.* 2 ed. § 212.
- O'Hagan v. Dillon**, 42 *Super. Ct. (J. & S.)* 456. Rev'd in 76 *N. Y.* 170.
- O'Hara v. Dever**, 46 *Barb.* 609; s. c., as *O'Hara v. Sullivan*, 30 *How. Pr.* 278. Aff'd in 2 *Keyes*, 558; s. c., more fully, 2 *Abb. Pr. N. S.* 418; 3 *Abb. Ct. App. Dec.* 407.
- *v. Sullivan*. See *O'Hara v. Dever*.
- Ohio, &c. R. R. Co. v. Kasson**, 37 *N. Y.* 218. Followed with *Bullard v. Raynor*, 30 *Id.* 197; *Mechanics' Bank v. Edwards*, 1 *Barb.* 271 (Usury is defense personal to borrower) in *Lee v. Feamster*, 21 *W. Va.* 108; s. c., 45 *Am. R.* 549; *Mutual Life Ins. Co. of N. Y. v. Bowen*, 47 *Barb.* 618; and *Merchants' Ex. Nat. Bank v. Com. Warehouse Co.*, 49 *N. Y.* 642; being also reviewed in this connection.
- Olcott v. Lilly**. See *Cathcart v. Cannon*.
- *v. Low*, 5 *Weekly Dig.* 108. Further decision in 8 *Id.* 176; which was aff'd in 82 *N. Y.* 621, but without opinion.
- *v. McLean*, 10 *Hun*, 277. Rev'd in 73 *N. Y.* 223. Other proceedings in 50 *How. Pr.* 455; also in 11 *Hun*, 394; appeal from which was, it seems, dismissed in 73 *N. Y.* 603, but without opinion. Decision in 10 *Hun* disting'd (Jurisdiction of State court of actions affecting bankrupt) in *Brewers' & M. Ins. Co. v. Davenport*, *Id.* 264, 269. Disapproved in *Wheelock v. Lee*, 5 *Abb. N. C.* 72, 78. Decision in 11 *Hun* said in *Tullis v. Miller*, 13 *Id.* 363, to conflict with *Wente v. Young*, 12 *Id.* 220. Compare (Costs against one in representative capacity) *Code Civ. Pro.* § 3246.
- *v. Rathbone*, 5 *Wend.* 490. Collated with *Winsted B'k v. Webb*, 39 *N. Y.* 325; *First Nat. B'k v. Morgan*, 6 *Hun*, 346; *Neff v. Clute*, 12 *Barb.* 466; *Arnold v. Camp*, 12 *Johns.* 409, and other cases (Effect of new note as payment of old one) in *Nightingale v. Chafee*, 11 *R. I.* 609; s. c., 23 *Am. R.* 531.
- *v. Robinson*, 20 *Barb.* 148. Rev'd in 21 *N. Y.* 150. See *Wood v. Moorehouse*. Decision in 21 *N. Y.* applied (Sufficiency of publication of weekly notice) in *Steinle v. Bell*, 12 *Abb. Pr. N. S.* 177; *Wood v. Terry*, 4 *Lans.* 85. See *Code Civ. Pro.* 1881, § 1434, n. Both decisions explained (Effect of irregularity in giving notice of sheriff's sale) in *Wood v. Morehouse*, 1 *Lans.* 412; which was aff'd in 45 *N. Y.* 375, which see; also in *Hackley v. Draper*, 4 *Sup'm. Ct. (T. & C.)* 622, a case of a sale by a receiver.

- **v. Tioga R. R. Co.**, 26 *Barb.* 147. Rev'd in 20 *N. Y.* 210. Subsequent decision in 40 *Barb.* 179, aff'd in 27 *N. Y.* 546. Decision in 20 *Id.* followed (Non-resident, as affected by statute of limitations) in *Power v. Hathaway*, 42 *Barb.* 217. Disting'd in *Londrigan v. N. Y. & New Haven R. R. Co.*, 12 *Abb. N. C.* 273. Followed in *Blossburg & Corning R. R. Co. v. Tioga R. R. Co.*, 5 *Blatchf. C. Ct.* 387, 390; *Tioga R. R. v. Blossburg & C. R. R. Co.*, 20 *Wall.* 137, 151. Shown in 52 *Am. Dec.* 256, *n.*, not to have been followed in other States. Compare *Penn. Co. v. Sloan*, 1 *Bradw. (Ill.)* 364, 370. See *Code Civ. Pro.* 1881, § 390, *n.* Decision in 27 *N. Y.* disting'd (Sufficiency of sealed instrument) in *Brackett v. Miller*, 24 *Hun.* 560. Examined and disting'd in *De Grau v. King*, 28 *Minn.* 119. Approved and applied (Right of mortgagee of chattels to purchase at sale thereof) in *Hall v. Ditson*, 5 *Abb. N. C.* 211. Approved in *Thomas on Mort.* 454, as in harmony with what has always been the practice in this State. Applied (Holding over by officer elected for a year) in *People ex rel. Faile v. Ferris*, 16 *Hun.* 224. Disting'd (Evidence of similar transactions, to show authority of agent) in *Smith v. Kidd*, 68 *N. Y.* 188.
- **v. Wood**, 15 *Barb.* 644. Aff'd in 14 *N. Y.* 32.
- Oldfield v. N. Y. & Harlem R. R. Co.**, 3 *E. D. Smith*, 103. Aff'd in 14 *N. Y.* 310. See *Quin v. Moore*. Decision in 14 *N. Y.* followed (Court of Appeals without power to set aside verdict as against weight of evidence) in *Young v. Davis*, 30 *Id.* 135; *Standard Oil Co. v. Amazon Ins. Co.*, 79 *Id.* 510. Followed (Action for injury causing death maintainable without proof of damage) in *Keller v. N. Y. Central R. R. Co.*, 2 *Abb. Ct. App. Dec.* 482; *Green v. Hudson River R. R. Co.*, 31 *Barb.* 263; see also *Same v. Same*, 32 *Id.* 32. Also followed in *McIntyre v. N. Y. Central R. R. Co.*, 43 *Id.* 537. Followed with *Ihl v. Forty-second Street, &c. R. R. Co.*, 47 *N. Y.* 317; *McGovern v. N. Y. Central R. R. Co.*, 67 *Id.* 417 (Power of jury to assess damages for injuries causing death of child) and *Lehman v. City of Brooklyn*, 29 *Barb.* 234; disapproved in *Hooghkirk v. Delaware & Hudson Co.*, 11 *Abb. N. C.* 72. Doctrine discussed and cases collected in 5 *Am. L. Reg. N. S.* 477. Explained in 8 *South. L. Rev.* 68, 72.
- Oleendorf v. Cook**, 1 *Lans.* 37. Discussed (Ejectment by tenant for years) in *Sedw. & W. on Tr. of Tit. to Land*, § 216. Discussed (Amending description of property) in *Id.* § 464.
- Olerly v. Brown**, 57 *How. Pr.* 92. See *White v. Brownell*. Followed (Action against president of voluntary association) in *Fritz v. Muck*, 62 *How. Pr.* 69, 73. See cases cited in 4 *Abb. N. C.* 306, *n.*
- Olipphant v. Mathews**, 16 *Barb.* 608. See *Bank of Rochester v. Monteath*. Disting'd and explained (Liability on note of partner-ship having individual name) in *Yorkshire Banking Co. v. Beatson*, 42 *L. T. R. N. S.* 445; *s. c.*, 22 *Alb. L. J.* 9, 13. Cited in *Story on Partn.* 7 ed. § 139, *n.*
- Oliver v. First Presbyterian Church.** See *Horton v. Horton*.
- **v. N. Y. & Erie R. R. Co.**, 1 *Edm.* 589. Discussed (Warranty by carrier, of sound condition of road or vehicle to passenger) in *Ang. on Carr.* § 538, and *n.* 2, 5 ed.
- Oliver Lee & Co's Bank, Matter of.** See *Matter of Lee & Co's Bank*.
- Oliver Lee & Co's Bank v. Talcott**, 19 *N. Y.* 148. Collated with other cases (Assigning only part of debtor's property) in *Bishop on Assign.* § 167. Collated with other cases (Conditional preferences) in *Id.* § 200. Quoted and commented on (Fraud in law or in facts) in *Wait on Fraud. Conn.* § 10.
- **v. Walbridge**, 19 *N. Y.* 136. Applied (Rate of exchange, when not allowed as damages) in *Ladd v. Arkell*, 40 *Super. Ct. (J. & S.)* 150, 156. Explained (Usury as determined by allowance for difference of exchange) in *Price v. Lyons Bank*, 33 *N. Y.* 55.
- Olmstead v. Webster**, 8 *N. Y.* 413. Applied (Effect of judgment against part only of joint debtors) in *Waggoner v. Walrath*, 24 *Hun.* 443, 445.
- Olmsted v. Brown**, 12 *Barb.* 657. Overruled, (Action for slanderous words spoken of wife) in *Wilson v. Goit*, 17 *N. Y.* 442. See (Proof of precise words) *Townshend on Slander & Libel*, 662, § 365. See also *Abb. Tr. Ev.* 660.
- **v. Dennis**, 77 *N. Y.* 378. For "plaintiff" in third line of statement read "defendant."
- **v. Elder**, 2 *Sandf.* 325. Rev'd in 5 *N. Y.* 144. See *Phyfe v. Riley*. Decision in 5 *N. Y.* overruled (Power of loan commissioners) by *Pell v. Ulmar*, 18 *N. Y.* 139; *White v. Lester*, 1 *Keyes*, 316.
- **v. Harvey**, 1 *Barb.* 102. Aff'd in 1 *N. Y.* 483.
- **v. Hotailing**, 1 *Hill*, 317. See *Cary v. Hotailing*. Followed (Replevin against one who has parted with possession) in *Brockway v. Burnap*, 16 *Barb.* 314. Explained in *Barrett v. Warren*, 3 *Hill*, 350; *Roberts v. Randel*, 5 *How. Pr.* 332; and see *Drake v. Wakefield*, 11 *Id.* 108. Explained (Title as affected by sale procured by fraud) in *Stevens v. Hyde*, 32 *Barb.* 175. Approved and extended in *Castle v. Bullard*, 23 *How. (U. S.)* 172.
- **v. Keyes**, 85 *N. Y.* 593. See *St. John v. Am. Mut. Fire & Marine Ins. Co.*; *St. John v. Am. Mut. Life Ins. Co.*
- **v. Loomis**, 6 *Barb.* 152. Modified in 9 *N. Y.* 423. See *Garwood v. N. Y. Central, &c. R. R. Co.* Compare (Injunction, where right depends on nature of action) *Code Civ. Pro.* § 603.
- **v. Miller**, 1 *Wend.* 506. Followed (Sufficiency of proof of speaking of words



- in action for slander) in *Slocumb v. Kuykendall*, 1 *Scam. (Ill.)* 187; s. c., 27 *Am. Dec.* 764, with note.
- Olney v. Bacon.** See *Howell v. Denniston*.
- **v. Olney**, 7 *Abb. Pr.* 350. See (Answer in matrimonial action) *Code Civ. Pro.* 1881, § 1757, n.
- **v. Wickes**, 18 *Johns.* 122. See *King v. Butler*. Followed (Who may be held to be public agent) in *Ogden v. Raymond*, 22 *Conn.* 379; s. c., 58 *Am. Dec.* 429.
- Olyphant v. Baker**, 5 *Den.* 379. Explained (Sale of specific chattels conditionally) in *Benj. on Sales*, § 348 (Bennett's 4 *Am. ed.*). Explained in 1 *Id.* § 396 (Corbin's 4 *Am. ed.*).
- **v. McNair**, 41 *Barb.* 446. Said in 41 *N. Y.* 619, to have been aff'd by *Ct. of App.* Cited (Restrictions on agent instructed to buy limited amount of goods) in *Whart. Com. on Ag.* § 186.
- Olzen v. Schierenberg**, 3 *Daly*, 100. Discussed (Jurisdiction of courts of common law, in suits between foreign seamen and masters for acts done on the high seas) in 3 *Kent Com.* 199, n. 1, Holmes' ed.
- O'Mahoney v. Belmont**, 37 *Super. Ct. (J. & S.)* 223, 380. Aff'd in 62 *N. Y.* 133. Another proceeding in 48 *How. Pr.* 29.
- O'Mara v. Hudson River R. R. Co.**, 38 *N. Y.* 445. Applied (Contributory negligence in child) in *Casey v. N. Y. Central, & C. R. R. Co.*, 6 *Abb. N. C.* 104, 128; with extended note, which see, at p. 110; *Costello v. Syracuse, & C. R. R. Co.*, 63 *Barb.* 101; *Pendril v. Second Ave. R. R. Co.*, 43 *How. Pr.* 411. Applied (Negligence in running of engine by fireman, without engineer) in *Keating v. N. Y. Central R. R. Co.*, 3 *Leans.* 473. Disting'd in *Culhane v. N. Y. Central, & C. R. R. Co.*, 60 *N. Y.* 137.
- Ombony v. Jones**, 21 *Barb.* 520. Aff'd in 19 *N. Y.* 234. Decision in *Id.* disting'd (Erections by tenant, when removable) in *Livingston v. Sulzer*, 19 *How. Pr.* 379; *Richtmyer v. Morss*, 4 *Abb. Ct. App. Dec.* 55, 58.
- O'Meara v. Commissioners, &c. of Allegany**, 3 *Sup'm. Ct. (T. & C.)* 235. Rev'd in 59 *N. Y.* 316. See *France v. Erie R'y Co.*; Petition of Freeholders of Cattaraugus County. Decision in 3 *Sup'm. Ct. (T. & C.)* applied (Power of State to construct highway on Indian reservation) in *France v. Erie R'y Co.*, 5 *Id.* 12.
- **v. Mayor, &c. of N. Y.**, 1 *Daly*, 425. Approved (Exemption of municipal corporation from liability for negligence of firemen) in *Jewett v. City of New Haven*, 38 *Conn.* 368; s. c., 9 *Am. R.* 382, 389; *Shearm. & Redf. on Negl.* § 139.
- Onderdonk v. Banlett**, 3 *Hill*, 323. Applied (Refusal of adjournment in justice's court) in *Bush v. Weeks*, 24 *Hun.* 545, 547. See (Jurisdiction of justice) *Code Civ. Pro.* 1881, § 2869, n.
- One Hundred and Thirty-eighth Street, Matter of**, 60 *How. Pr.* 290. Appeal dis-
- missed in 61 *Id.* 284. See *People ex rel. City of Rochester v. Briggs*.
- Oneida Bank v. Ontario Bank**, 21 *N. Y.* 492. Applied (Actions by assignee) in *McMahon v. Allen*, 3 *Abb. Pr. N. S.* 79; *Pilcher v. Brayton*, 17 *Hun.* 431; *Freeman v. Auld*, 44 *N. Y.* 57; *Gerwig v. Sitterly*, 56 *Id.* 218. Applied (Right of action based on illegal transaction) in *Haynes v. Rudd*, 17 *Hun.* 480; *Madison Ave. Church v. Oliver St. Ch.*, 41 *Super. Ct. (J. & S.)* 369, 385; by *HUNT, J.*, in *Mayor v. Ray*, 19 *Wall.* 484. Disting'd in *Knowlton v. Congress, &c. Spring Co.*, 57 *N. Y.* 533. Explained and disting'd in *Matter of Jaycox*, 13 *Blatchf. C. Ct.* 70, 79. Approved in *Draper v. Town of Springport*, 104 *U. S.* 501. Quoted and collated with other cases in *Field on Ultra Vires*, 349. Criticised in 51 *Am. Dec.* 342, n., where *Leavitt v. Palmer*, 3 *N. Y.* 19, and other cases are collated.
- Oneida Common Pleas v. People**, 18 *Wend.* 79. Examined (Review of exercise of discretionary authority) in *People v. Stout*, 11 *Abb. Pr.* 17, 22.
- Oneida Manuf. Soc'y v. Lawrence**, 4 *Cow.* 440. See *Chapman v. Murch*; *Howard v. Hoey*. Examined (Implied warranty on sale by sample) in dissenting opinion of *PAIGE*, Senator, in *Waring v. Mason*, 18 *Wend.* 425, 441.
- Oneida Nat. Bank v. Stokes**, 53 *Barb.* 508. Modified in 49 *N. Y.* 675, but without opinion.
- O'Neil v. Martin**, 1 *E. D. Smith*, 404. Dicta explained (Jurisdiction of marine court, in action on administrator's bond) in *Mahoney v. Gunter*, 10 *Abb. Pr.* 432, 436.
- O'Neill v. James**, 43 *N. Y.* 84. Explained (Effect of omission to request submission of question to jury) in *Stone v. Flower*, 47 *Id.* 568; *Clemence v. City of Auburn*, 66 *Id.* 338; *Trustees of East Hampton v. Kirk*, 68 *Id.* 465; *First Nat. B'k of Springfield v. Dana*, 79 *Id.* 116.
- **v. N. Y. Central, &c. R. R. Co.**, 3 *Sup'm. Ct. (T. & C.)* 399. Rev'd in 60 *N. Y.* 138. See *Dung v. Parker*. Decision in 60 *N. Y.* explained (Third parties as affected by verbal contract within statute of frauds) in *Browne on Stat. of Frauds*, § 138, f. 4 ed.
- O'Neil v. Buffalo Fire Ins. Co.**, 3 *N. Y.* 122. See *Aetna Fire Ins. Co. v. Tyler*; *Gates v. Madison County Mut. Ins. Co.*; *Smith v. Mechanics' & Traders' Ins. Co.* Followed (Effect of description in policy as warranty) in *Smith v. Mechanics' & Traders' Fire Ins. Co.*, 32 *N. Y.* 399. Applied in *Browning v. Home Ins. Co. of Columbus*, 6 *Daly*, 522, 524.
- Onondaga County Bk. v. Bates**, 3 *Hill*, 53; s. c., 15 *N. Y. Com. L. Law. ed.* 512, with brief note. Followed (Power of notary to perform by deputy duty of demanding payment of negotiable paper) in *Donegan v. Wood*, 49 *Ala.* 242; s. c., 20 *Am. L.* 275. Included with notes (Action by indorsee against indorser) in 2 *Ames Cas. on B. & N.* 548.

**Ontario Bank v. Bunnell**, 10 *Wend.* 186. Examined (Taxation of corporations) in *People v. Detroit & Pontiac R. R. Co.*, 1 *Mich.* 460. Explained in *Ang. & A. on Corp.* § 441, n. 3, 11 ed.

— **v. Hennessey**, 48 *N. Y.* 545. Disting'd (When participation in profits constitutes partnership) in *Burnett v. Snyder*, 76 *Id.* 344, 351. Followed in *Haas v. Roat*, 16 *Hun.* 527. Disting'd, and its effect as authority questioned (Name of individual, when to be regarded as name of firm) in *Williams v. Gillies*, 75 *N. Y.* 203.

— **v. Lightbody**, 13 *Wend.* 101; s. c., 27 *Am. Dec.* 179, with note, wherein it is said to have been followed in Ill., Me., N. H., Ohio, So. Car., Vt., and Wis., and to be in harmony with the doctrine maintained in England, and in *Story on Prom. Notes*, § 389 (Effect of payment in bills of insolvent bank, &c.) many respectable authorities, however, following the contrary doctrine of *Bayard v. Shunk*, 1 *Watts & S. (Pa.)* 92. Reviewed with *Whitbeck v. Vanness*, 11 *Johns.* 409; *Markle v. Hatfield*, 2 *Id.* 455; *Roget v. Merritt*, 2 *Cal.* 117; *Johnson v. Weed*, 9 *Johns.* 310; *Porter v. Talcott*, 1 *Conn.* 359, and other cases in *Corbit v. Bank of Smyrna*, 2 *Harr. (Del.)* 235; s. c., 30 *Am. Dec.* 634, 637, 639, 642. Considered and approved with *Thomas v. Todd*, 6 *Hill*, 340; *Roberts v. Fisher*, 43 *N. Y.* 159; *Baldwin v. Van Duzen*, 37 *Id.* 489; *Houghton v. Adams*, 18 *Barb.* 545; *Leger v. Bonnaface*, 2 *Id.* 475; *Stewart v. Orvis*, 47 *How. Pr.* 519, in *Harris v. Hanover Nat. Bank*, *U. S. Cir. Ct. S. D. N. Y.*, 15 *Reporter*, 390; s. c., 75 *Fed. Rep.* 786. Included in *Bigel. on B. & N.* 2 ed. 651. Included with notes in *Redf. & B. Lead. Cas. on B. of Exch.* 625.

— **v. Mumford**, 2 *Barb. Ch.* 596. Dictum criticised (Bond not to be reformed as against surety) in *Prior v. Williams*, 2 *Keyes*, 530. Cited as authority (Right of action in assignee) in *Rhoades v. Blackiston*, 106 *Mass.* 334; s. c., 8 *Am. R.* 332. Collocated with other authorities in *Haywood v. Andrews*, 106 *U. S.* 672, 677. Discussed and quoted in 1 *Pars. on Contr.* 224, n. d.

— **v. N. Y. Steamboat Co.**, 5 *Daly*, 117. Aff'd in 59 *N. Y.* 510.

— **v. Petrie**, 3 *Wend.* 457. Overruled (Operation of defective notice of dishonor) in *Ransom v. Mack*, 2 *Hill*, 593; see *Rough v. Robertson*, 11 *Smedes & M. (Miss.)* 389.

— **v. Rathburn**, 19 *Wend.* 291. Quoted and explained (Process that saves attaching of statute of limitations) in *Ang. on Limit.* § 321, 6 ed.

— **v. Root**. See *Genet v. Beckman*.

— **v. Walker**, 1 *Hill*, 652. Disting'd and questioned (Effect of judgment against several parties to bill or note) in *Corey v. White*, 3 *Barb.* 12, 15.

**Onthank v. Lake Shore, &c. R. R. Co.**, 8 *Hun.* 131. Aff'd in 71 *N. Y.* 194; s. c., 27 *Am. R.* 35. Decision in *Id.* disting'd (Ex-

tent of grant of right to draw water) in *Read v. Erie R. Co.*, 13 *Weekly Dig.* 321.

**Oothout v. Thompson**. See *Troup v. Smith*, *Opdyke v. Marble*, 18 *Abb. Pr.* 266. Order as to striking out scandalous portions of affidavits, aff'd in *Id.* 375. See (Irrelevant, &c., matter in pleading) *Code Civ. Pro.* 1881, § 545, n.

— **v. Merwin**, 13 *Hun.* 401. Applied (Usury, as determined by law of place) in *Wayne Co. Sav'gs B'k v. Low*, 6 *Abb. N. C.* 76, 88.

**Oppenheim v. Wolf**, 3 *Sandf. Ch.* 571. Followed (Presumption of death) in *Matter of Ackerman*, 2 *Redf.* 521. Cited (Judicial notice of demonstrable conclusions of science) in 1 *Whart. Com. on Ev.* §§ 335, 339.

**Orange County Bank v. Brown**, 9 *Wend.* 85; s. c., 24 *Am. Dec.* 129; with note. Previous decision in 3 *Wend.* 158. See *Hawkins v. Hoffman*; *Pardee v. Drew*. Approved (Effect of concealment from carrier, of real value of goods shipped) *Magnin v. Dinsmore*, 62 *N. Y.* 35, 42; which rev'd 38 *Super. Ct. (J. & S.)* 248, 254, which see. Disting'd in *Baldwin v. Liverpool & G. W. S. S. Co.*, 74 *N. Y.* 125, 130. Approved (Money, &c., when included in term "baggage") in *Taylor v. Monnot*, 1 *Abb. Pr.* 328. Relied on in *Chamberlain v. Western Transportation Co.*, 45 *Barb.* 223. Applied (What is baggage for loss of which a carrier is liable) in *American Contract Co. v. Cross*, 8 *Bush*, 472; s. c., 8 *Am. R.* 471. Disting'd in *Hellman v. Holladay*, 1 *Woods*, 370. Reviewed with *Hawkins v. Hoffman*, 6 *Hill*, 589; *Pardee v. Drew*, 25 *Wend.* 458, and other authorities in *Dibble v. Brown*, 12 *Ga.* 217; s. c., 56 *Am. Dec.* 460, 466. Reviewed with *Hawkins v. Hoffman*, 6 *Hill*, 586; *Cole v. Goodwin*, 19 *Wend.* 251; *Weed v. Saratoga, &c. R. Co.*, 19 *Wend.* 534, and other cases in *Woods v. Devin*, 13 *Ill.* 747; s. c., 56 *Am. Dec.* 488. Explained in *Ang. on Carr.* §§ 115, 258, 262, 264, 266, 5 ed. Explained in 2 *Pars. on Contr.* 255, n. e. Approved (General notice limiting liability of carrier, when binding on his employer) in *Oppenheimer v. U. S. Express Co.*, 69 *Ill.* 62; s. c., 18 *Am. R.* 596, 599. Discussed (Delivery of baggage, such as to create liability in carrier) in *Ang. on Carr.* § 141, 5 ed. Decision in 3 *Wend.* said in *Fern v. Vanderbilt*, 13 *Abb. Pr.* 72, 75, to have been abrogated by the Code (Numerous counts for same cause of action) but to be still an authority. (Choice of remedies against carrier). Quoted and discussed in *Ang. on Carr.* § 426, 5 ed.

**Orchard v. Binninger**, 4 *Abb. Pr. N. S.* 368. See (Suspension of judgment lien) *Code Civ. Pro.* 1881, § 1256, n.

**Orcutt v. Pettit**, 4 *Den.* 233. Doubted (Right to have verdict directed) in *Gescheidt v. Quirk*, 5 *Civ. Pro. R. (Browne)* 38. Disapproved (Necessity of examination of plaintiff, to raise question respecting pur-

- chase of chose in action by attorney) in *Mann v. Fairchild*, 2 *Keyes*, 106, 117.
- O'Reilly v. Guardian Mut. Life Ins. Co.**, 1 *Hun*, 460; s. c., 3 *Sup'm. Ct. (T. & C.)* 487. Rev'd in 60 *N. Y.* 169; s. c., 19 *Am. R.* 151.
- **v. People**, 86 *N. Y.* 154; s. c., 10 *Abb. N. C.* 53. Rev'g *People v. O'Reilly*, 9 *Id.* 83.
- Organ v. Stewart**, 1 *Hun*, 411; s. c., 3 *Sup'm. Ct. (T. & C.)* 598. Rev'd in 60 *N. Y.* 413. Decision in *Id.* commented on (Parol evidence respecting memorandum required by statute of frauds) in 1 *Benj. on Sales*, § 214, n. 17 (Corbin's 4 *Am. ed.*).
- O'Riley v. Mut. Life Ins. Co.**, 2 *Abb. Pr. N. S.* 167. Doctrine discussed (Non-payment of premium in time of war) in 1 *Abh. L. J.* 349. Cited in 9 *Am. R.* 169, n., as sustaining the decision in *Dillard v. Manhattan Life Ins. Co.*, 44 *Ga.* 119; s. c., 9 *Am. Dec.* 167.
- Orleans Co. Nat. B'k v. Spencer**, 19 *Hun*, 569. Disting'd (Effect of entry of judgment against part only of joint obligors) in *Wagoner v. Walrath*, 24 *Id.* 443, 446.
- Ormes v. Dauchy**, 45 *Super. Ct. (J. & S.)* 85. Aff'd in 82 *N. Y.* 443; s. c., 37 *Am. R.* 583, with note. Decision in *Id.* disting'd (Contracts respecting lotteries in other States, when illegal) in *People v. Noelke*, 29 *Hun*, 461; s. c., 1 *N. Y. Crim. R.* 252, which was aff'd in 1 *Id.* 496, which see; and where *Van Voorhis v. Brintnall*, 86 *N. Y.* 418, was also disting'd (Extra-territorial operation of State laws). Criticised in 24 *Abh. L. J.* 220.
- Ormiston v. Olcott**, 22 *Hun*, 270. Rev'd in 84 *N. Y.* 339.
- Ormsby v. Douglass**, 2 *Abb. Pr.* 407. Another proceeding in 5 *Duer*, 665. Decision on the merits in 37 *N. Y.* 477. Decision in *Id.* disting'd (Liability of mercantile agencies) in *Sunderlin v. Bradstreet*, 46 *Id.* 188, 192. Applied in *Jeffras v. McKillop & Sprague Co.*, 2 *Hun*, 351, 353. Collated with other cases in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 204.
- **v. Vermont Copper Mining Co.**, 65 *Barb.* 360. Rev'd, it seems, in 56 *N. Y.* 623. Another decision arising out of same transactions as *Hughes v. Saine*, 72 *Id.* 207. See *Thayer v. Manley*. Decision in 56 *N. Y.* followed (Damages for conversion) in *Mechanics' and Trad. Bank v. Farmers' & Mech. Nat. Bank*, 60 *Id.* 40, 52.
- O'Rourke v. Hart**, 7 *Bosw.* 511. Re-aff'd and followed in subsequent decision in 9 *Id.* 301.
- **v. People**, 3 *Hun*, 225; s. c., more fully 5 *Sup'm. Ct. (T. & C.)* 496.
- Orr's Case**. See *Lindsay v. Sherman*.
- Orr v. Bigelow**, 20 *Barb.* 21. Aff'd in 14 *N. Y.* 556.
- **v. Gilmore**, 7 *Lans.* 345. Discussed (Judgment in creditor's actions) in *Wait on Fraud. Conv.* § 171.
- **v. Mayor, &c. of N. Y.**, 64 *Barb.* 106. See to the contrary, cases cited (Opinion as to quality) in *Abb. Tr. Ev.* 311, n. 6.
- Orser v. Glenville Woolen Co.**, 11 *Abb. Pr. N. S.* 85. Aff'd but questioned in *O'Brien v. Same*, 50 *N. Y.* 128, 136.
- **v. Hoag**, 3 *Hill*, 79. Quoted and collected with other cases (Alien's right to take realty by descent) in *Shaww. & B. Cas. on Real. Prop.* 507.
- **v. Orser**, 24 *N. Y.* 51. Followed (Proof of execution of will) in *Norton v. Norton*, 2 *Redf.* 6, 14; *Williamson v. Williamson*, *Id.* 449, 452.
- **v. Storms**, 9 *Cow.* 687; s. c., 18 *Am. Dec.* 543, with extended note (Possession necessary to maintain trespass in cases of chattels).
- Ortley v. Messere**, 7 *Johns. Ch.* 139. Explained and applied (Action in name of committee of lunatic) in *Fields v. Fowler*, 2 *Hun*, 400.
- Orvis v. Dana**, 1 *Abb. N. C.* 268; s. c., as *Orvis v. Jennings*, 6 *Daly*, 434. Followed (Bill of particulars) in *Dwight v. Germania Ins. Co.*, 22 *Hun*, 167, 172; *Stilwell v. Hernandez*, 7 *Daly*, 485, 488.
- **v. Jennings**. See *Orvis v. Dana*.
- Osborn v. Bell**. See *Roth v. Palmer*.
- **v. Gantz**, 38 *Super. Ct. (J. & S.)* 148. Aff'd in 60 *N. Y.* 540. Decision in *Id.* applied (Delivery, whether absolute or conditional) in *Parker v. Baxter*, 86 *Id.* 586, 593. Explained in 1 *Benj. on Sales*, § 339 (Corbin's 4 *Am. ed.*). Quoted (Warranty) in 2 *Id.* § 929, n. 1.
- **v. Heyer**, 2 *Paige*, 343. Approved with *Bloodgood v. Clark*, 4 *Id.* 574; *Fitzburgh v. Everingham*, 6 *Id.* 29; *Bank of Monroe v. Schermerhorn, Clarke*, 214 (Appointment of receiver in judgment creditors' actions) in *Turnbull v. Prentiss Lumber Co.*, 55 *Mich.* 387, 393.
- **v. Keech**, 3 *Hun*, 223; s. c., 5 *Sup'm. Ct. (T. & C.)* 679. Aff'd, it seems, in 64 *N. Y.* 640, but without opinion.
- **v. Lobdell**, 2 *Code R.* 77. Disapproved (Sufficiency of affidavit on motion to vacate injunction) in *Newbury v. Newbury*, 6 *How. Pr.* 182.
- **v. McCloskey**, 55 *How. Pr.* 345. Disting'd (Effect of summons that omits name of county) in *Wallace v. Dimmick*, 24 *Hun*, 635. See to the contrary, *Wiggins v. Richmond*, 58 *How. Pr.* 376, a case of omission of attorney's address.
- **v. Merwin**, 50 *How. Pr.* 183. Rev'd in 12 *Hun*, 332. With decision in *Id.* see (Recorded affidavits, as evidence of foreclosure sale) *Code Civ. Pro.* 1881, § 2400, n.
- **v. Moncure**, 3 *Wend.* 170. See *Cornell v. Moulton*. Disapproved (When right of action accrues on bill or note, payment of which is refused) in *Staples v. Franklin B'k*, 1 *Metc. (Mass.)* 43; s. c., 35 *Am. Dec.* 345, 353, with note; *Jackson v. Richards*, 2 *Cai.* 344; *Corp v. McComb*, 1 *Johns. Cas.* 328, being, however, cited as authority (When notice of such non-payment may be given.) Included in 2 *Ames Cas. on B. & N.* 86, and with notes in *Redf. & B. Lead. Cas. on B. of Exch.* 493.

- **v. Nelson**, 59 *Barb.* 373. Followed (Right of deserted wife to sue alone) in *Phelps v. Walther*, 78 *Mo.* 320; s. c., 47 *Am. R.* 112.
- **v. Robbins**, 37 *Barb.* 481. Rev'd in 36 *N. Y.* 365; s. c., 4 *Abb. Pr. N. S.* 15. See *Kimball v. Newell*.
- **v. Schenck**, 18 *Hun.* 202. Aff'd in 83 *N. Y.* 201. Decision in *Id.* disting'd with *Van Doren v. Balty*, 11 *Hun.* 239 (Conversion as between tenants in common) in *Thomas v. Williams*, 32 *Id.* 257. Both decisions explained and applied in *Potter v. Neal*, 62 *How. Pr.* 158, 161. Explained in *Moak's Underhill's Torts*, 1 *Am. ed.* 599.
- **v. Taylor**, 5 *Paige*, 515. Explained (Effect of *lis pendens* in removing necessity for injunction) in *Cornell v. Utica, Ithaca, &c. R. R. Co.*, 61 *How. Pr.* 184, 196.
- Osborne & Cheesman Co. v. Croome**, 14 *Hun.* 164. Aff'd, it seems, in 77 *N. Y.* 629, but without opinion. Contrary to decision in 14 *Hun.* see (Necessity of proof of assent to election as trustee) *Nimmons v. Tappan*, 2 *Sweeny*, 652. See also *Abb. Tr. Ex.* 769.
- Osborne v. Betts**, 8 *How. Pr.* 31. Said in *Coates v. Goddard*, 34 *Super. Ct. (J. & S.)* 125, to be superseded (Extra allowance) by Code Pro. § 309, as amended in 1865.
- **v. Moss**, 7 *Johns.* 161; s. c., 5 *Am. Dec.* 252, with note. See *Bayard v. Hoffman*; *Henriques v. Hone*. Approved with *Jackson v. Garnsey*, 16 *Johns.* 89, though said to conflict with *Nellis v. Clark*, 20 *Wend.* 24; 4 *Hill.* 424; *Moseley v. Moseley*, 15 *N. Y.* 335 (Effect of fraudulent agreements as between parties) in *Clemens v. Clemens*, 28 *Wis.* 637; s. c., 9 *Am. R.* 520, 526. Disting'd (Rights of creditors of fraudulent grantor) in *Kent v. Lyon*, 4 *Fla.* 474; s. c., 56 *Am. Dec.* 404. Followed with *Babcock v. Booth*, 2 *Hill.* 181; *Brownell v. Curtis*, 10 *Paige*, 210 (Administrator cannot avoid voluntary deed of his intestate) in (*hoteau v. Jones*, 11 *Ill.* 300; s. c., 50 *Am. Dec.* 460, 464, with note. Also disting'd as to assignee for creditors in *Pillsbury v. Kinonon*, 33 *N. J. Eq.* (6 *Stew.*) 287; s. c., 36 *Am. R.* 556, 565.
- Osbre v. Reimer**, 49 *Barb.* 265. Modified in 51 *N. Y.* 630. Decision in 49 *Barb.* explained (Partnership profits as compensation) in 1 *Collyer on Part.* § 47, n. 1, *Wood's Am. ed.*
- Osgood v. De Groot**, 36 *N. Y.* 348. Questioned, and followed reluctantly (Set-off between insurance company and insured) in *Pardo v. Osgood*, 5 *Robt.* 348.
- **v. Franklin**, 2 *Johns. Ch.* 1; s. c., 7 *Am. Dec.* 513; with note wherein it is shown to have been frequently approved in the Federal courts. See also citations on other points. Aff'd in 14 *Johns.* 527. See *Greer v. Tweed*; *Raymond v. Squire*. Decision in 2 *Johns. Ch.* criticised (Effect of power given by will, to sell lands) in *Bloomer v. Waldron*, 3 *Hill.* 361, 365. Followed with *Thompson v. Brown*, 4 *Johns. Ch.* 619 (Executors, trustees, &c., not liable beyond what they receive, unless for gross negligence) in *Konigmacher v. Kimmel*, 1 *Penn. & W. (Penn.)* 207; s. c., 21 *Am. Dec.* 374, 378, with note. Approved as in accordance with numerous decisions in the English courts (Survivorship of powers) in *Peter v. Beverly*, 10 *Pet.* 565. Approved (Inadequate consideration as ground for rescission) in *Jenkins v. Einstein*, 3 *Biss.* 137. Approved (Application whether for rescission or for specific performance) in *Bowen v. Waters*, 2 *Paine*, 9.
- **v. Laytin**, 43 *Barb.* 463. Aff'd in 3 *Keyes*, 521; s. c., 5 *Abb. Pr. N. S.* 1; 37 *How. Pr.* 63. Decision in 3 *Keyes* approved (Recovering back dividend fraudulently paid) in *Osgood v. Ogden*, 4 *Id.* 70, 85; *Van Dyck v. McQuade*, 86 *N. Y.* 38, 46, which rev'd 45 *Super. Ct. (J. & S.)* 620, which see. Disting'd (Enforcing lien of creditors on assets of insolvent corporation) in *Bartlett v. Drew*, 60 *Barb.* 658; *McLean v. Eastman*, 21 *Hun.* 312. Applied (Right of receiver to maintain proceeding to set aside fraudulent transfer) to administrator, in *Barton v. Hosner*, 24 *Hun.* 467, 469. Quoted and explained in *High on Receiv.* § 321, n. 3.
- **v. Maguire**, 61 *Barb.* 54. Aff'd in 61 *N. Y.* 524. See (Dissolution of corporation) *Code Civ. Pro.* 1881, § 1786, n.
- **v. Manhattan Co.**, 3 *Cov.* 612; s. c., 15 *Am. Dec.* 304. Rev'd 15 *Johns.* 162. Other decisions arising out of facts here involved, — in *Wood v. Genet*, 8 *Paige*, 137; *Wood v. Jackson*, 8 *Wend.* 10. See *Anthoine v. Coit*; *Dan v. Brown*; *Marquand v. Webb*. Decision in 15 *Johns.* explained (Charging fraudulent grantee with decedent's debts) in *Loomis v. Tift*, 16 *Barb.* 546. Decision in 3 *Cov.* disting'd (Effect of admission of improper evidence) in *Murray v. Smith*, 1 *Duer*, 433. Followed in *Anthoine v. Coit*, 2 *Hill.* 50. Referred to as modified by later decisions, — in *People v. Gonzalez*, 35 *N. Y.* 59.
- **v. Osgood**, 2 *Paige*, 621. Followed (*Alimony*, in action for divorce for adultery) in *Monk v. Monk*, 7 *Robt.* 153.
- **v. Strauss**, 65 *Barb.* 383. Aff'd in 55 *N. Y.* 672.
- **v. Toole**, 1 *Hun.* 167; s. c., 3 *Sup'm. Ct. (T. & C.)* 701. Aff'd in 60 *N. Y.* 475.
- **v. Whittelsey**, 10 *Abb. Pr.* 134; s. c., 20 *How. Pr.* 72. Aff'd at General Term, 1860, but no opinion is reported.
- Ostell v. Brough**, 24 *How. Pr.* 274. Collated with other cases (*Arrest of agent*) in *Thomp. on Prov. Rem.* 31.
- Osterhout v. Roberts**, 8 *Cov.* 43. See *Curtis v. Groat*; *Livingston v. Bishop*. Disting'd (Effect of election of remedies) in *Bank of Beloit v. Beale*, 7 *Doso.* 611, 631. Followed in *Hyde v. Noble*, 13 *N. H.* 494; s. c., 38 *Am. Dec.* 528, 511, with note. Opposed with *Curtis v. Groat*, 6 *Johns.* 166 (Effect of judgment to pass title) in *Marsh*

- v. Pier**, 4 *Rawle* (Pa.) 286, citing English cases. Compare *Murrell v. Johnson's Adm.*, 1 *Henn. & M.* (Va.) 49; *White v. Philbrick*, 5 *Greenl.* (Me.) 147; *Campbell v. Phelps*, 1 *Pick.* (Mass.) 62. Followed with *Curtis v. Groat*, 6 *Johns.* 168, in *Spivey v. Morris*, 18 *Ala.* 254; s. c., 52 *Am. Dec.* 224, with note. Collated with other cases in 17 *Am. Dec.* 218, n.
- **v. Shoemaker**, 3 *Hill*, 513; s. c., 15 *N. Y. Com. L. Law. ed.* 668, with brief note, and analytic list of cases citing this case. Approved (Grantee not estopped from denying grantor's title) in *Sparrow v. Kingman*, 1 *N. Y.* 242, 254, 256. With *Sparrow v. Kingman*, declared in *Robertson v. Pickrell*, 109 *U. S.* 608, 616, to apply to a grantee of estate for life. Followed with approval in *Macklot v. Dubrenil*, 9 *Mo.* 473; s. c., 43 *Am. Dec.* 550, 554, with note.
- Ostrander v. Brown**, 15 *Johns.* 39; s. c., 5 *N. Y. Com. L. Law. ed.* 1003, with brief note; and 8 *Am. Dec.* 211, with note, wherein it is shown to have been frequently followed in *N. Y.* as a leading case. See *Van Santwood v. St. John*. Qualified (When carrier's liability terminates) in *Goold v. Chapin*, 20 *N. Y.* 259, 263. Criticised and limited, and *Packard v. Getman*, 6 *Cow.* 757, relied on in *Farmers' & Mechanics' Bank v. Champlain Transportation Co.*, 23 *Vt.* 186; s. c., 56 *Am. Dec.* 80; *Gibson v. Culver*, 17 *Wend.* 305, being also cited. Applied in *Eagle v. White*, 6 *Whart.* (Pa.) 505; s. c., 37 *Am. Dec.* 434. Disting'd in *Cope v. Cordova*, 1 *Rawle* (Pa.) 203, 212. Relied on as authority in *Ang. on Carr.* §§ 291, 300, 305, 323. Explained in 2 *Pars. on Contr.* 191, n. w.
- **v. Walter**. See *Green v. Burke*.
- O'Sullivan v. Roberts**, 39 *Super. Ct.* (J. & S.) 360. Further decision in 42 *Id.* 282.
- Oswego v. Oswego Canal Co.**, 6 *N. Y.* 257. Collated with other cases (Acceptance of highways by public) in *Mills Thomps. on Highw.* 3 ed. 64.
- Oswego Starch Factory v. Dolloway**, 21 *N. Y.* 449. Explained and followed (Place of taxation of corporation) in *Union St'b't. Co. v. City of Buffalo*, 82 *Id.* 351, 355. Followed in *Hudson River Bridge Co. v. Patterson*, 11 *Hun.* 525.
- Otis v. Jones**, 21 *Wend.* 394. See *Hanmer v. Wilsey*. Commented on (Damages for trespass) in 2 *Greenl. on Ev.* 14 ed. § 635 a, n. 3.
- **v. Ross**, 8 *How. Pr.* 193. Disting'd (Sufficiency of denial) in *Meehan v. Harlem Savings Bank*, 5 *Hun.* 440. Disting'd (Appealability of order amending pleading) in *Salters v. Genin*, 10 *Abb. Pr.* 478, 480.
- **v. Sill**, 8 *Barb.* 102. See *Millman v. Naher*. Disting'd (Mortgage of after-acquired property) in *McCaffrey v. Woodin*, 65 *N. Y.* 467. Followed in *Ross v. Wilson*, 7 *Bush* (Ky.) 29. Recognized as authority in *Apperson v. Moore*, 30 *Ark.* 56; s. c., 21 *Am. R.* 170; *Seymour v. Canandaigua, &c. R. R. Co.*, 25 *Barb.* 288, being, however, relied on (Equitable lien on property not in case). Followed (Necessity of change of possession in case of mortgage) in *Steele v. Benham*, 84 *N. Y.* 634, 640. Applied (Effect of lease taken by one member of firm) in *Chamberlin v. Chamberlin*, 44 *Super. Ct.* (J. & S.) 116, 121. See *Story on Partn.* § 98, n.
- **v. Spencer**, 8 *How. Pr.* 171. Compare (Motions and orders out of court) *Code Civ. Pro.* § 772.
- O'Toole v. Garvin**, 1 *Hun.* 92; s. c., 3 *Sup'm. Ct.* (T. & C.) 118. Further proceedings in 1 *Hun.* 313; s. c., 3 *Sup'm. Ct.* (T. & C.) 756. See *Swords v. Owen*. Decision in 1 *Hun.* 92, followed with *Honegger v. Wettstein*, 13 *Abb. N. C.* 393 (Necessity of pleading illegality of contract sued on) in *May v. Burras*, *Id.* 384. Followed in *Stoddart v. Key*, 62 *How. Pr.* 137, 146. Disting'd (Effect of contract made under fictitious firm name) in *Bull's Head B'k v. McFeeters*, 41 *Super. Ct.* (J. & S.) 218.
- Otsego Co. Bank v. Warren**, 18 *Barb.* 290. Followed and approved (Waiver of protest) in *Gawtry v. Doane*, 48 *Id.* 148.
- Ott v. Schroepel**, 3 *Barb.* 60. Further decisions as to validity of award here involved, in 4 *Id.* 250; 7 *Id.* 431, the latter being rev'd in 5 *N. Y.* 482.
- Ousterhout v. Day**, 9 *Johns.* 114. See *Adams v. Hopkins*. Disting'd (Enforcing payment of fees of officer of court) in *Geib v. Topping*, 83 *N. Y.* 46, 48.
- Outerbridge v. Phelps**, 45 *Super. Ct.* (J. & S.) 555; s. c., 58 *How. Pr.* 77. See *Lampman v. Milks*. Applied (Implied reservation of right of way) in *Schrymser v. Phelps*, 62 *How. Pr.* 1, 3, a case involving same premises.
- Outwater v. Dodge**, 6 *Wend.* 397. Applied (Evidence of acceptance, as required by statute of frauds) in *U. S. Reflector Co. v. Rushton*, 7 *Daly*, 410, 413.
- **v. Mayor, &c. of N. Y.**, 18 *How. Pr.* 572. Followed with *Matter of Mayor, &c. of N. Y.*, 49 *N. Y.* 150 (Power of courts to set aside judgments or orders for fraud, &c.) in *Matter of Hudson Avenue*, 2 *Hun.* 580. Approved (Constitutionality of *L.* 1859, c. 489, § 5) in *Joyce v. Mayor, &c. of N. Y.*, 12 *Abb. Pr.* 309.
- Ovenshire v. Adees**, 27 *How. Pr.* 368. Approved (Right to new trial in county court, as determined by amount stated in pleadings) in *Hobbs v. Wetherwax*, 38 *Id.* 385.
- Overbagh v. Patrie**, 8 *Barb.* 28. Aff'd in 6 *N. Y.* 510.
- Overing v. Foote**, 43 *N. Y.* 290. Subsequent decision in 65 *Id.* 263. Decision in *Id.* approved (Necessity of notice in proceedings for enforcement of taxes) in *Stuart v. Palmer*, 74 *Id.* 183, 193.
- Overseers of Fort Ann v. Overseers of Kingsbury**, 14 *Johns.* 365. See *Putnam v.*

- Wise; *Taylor v. Bradley*. Modified (Contract to farm on shares) in *Taylor v. Bradley*, 39 *N. Y.* 129.
- Overseers of New Berlin v. Overseers of Norwich**, 10 *Johns.* 229; s. c., 4 *N. Y. Com. L. Law. ed.* 1010, with brief note citing additional authorities. Disting'd (Estoppel of third persons to introduce parol evidence to contradict written contract) in *Reading v. Weston*, 8 *Conn.* 117; s. c., 20 *Am. Dec.* 97, with note. See 3 *Alb. L. J.* 161.
- Overseers of Pittstown v. Overseers of Plattsburgh**, 15 *Johns.* 436. Overruled (Capacity of overseers of the poor to sue) in subsequent decision in 18 *Id.* 407. Decision in *Id.* applied to action by commissioner of highways, in *Victory v. Blood*, 25 *Hun.* 515, 517.
- Overseers of Plattekill v. Overseers of New Platz**. See *Mauran v. Lamb*.
- Overseers of Stephentown v. Whitman**. See *Jackson v. Plumb*.
- Oviatt v. Hughes**, 41 *Barb.* 541. Followed (Existing debts for which trustee of corporation is liable) in *Nimmons v. Hennion*, 2 *Sweeny*, 663, 668.
- Owen v. Boerum**, 23 *Barb.* 187. Disting'd (Defenses in actions on awards) in *Knowlton v. Mickles*, 29 *Id.* 465, 470.
- **v. Cawley**, 36 *Barb.* 52; s. c., 13 *Abb. Pr.* 13; 22 *How. Pr.* 10. Subsequent proceeding in 42 *Barb.* 105; which was aff'd in 36 *N. Y.* 600. See *Yale v. Dederer*. Decision in 36 *N. Y.* applied (Charging separate estate of married woman) in *Corn Exchange Ins. Co. v. Babcock*, 9 *Abb. Pr.* *N. S.* 176; *Maxon v. Scott*, 55 *N. Y.* 251.
- **v. Dupignac**, 17 *How. Pr.* 512. Misreported. Opinion here given as that of the court, is a dissenting opinion. See correct report in 9 *Abb. Pr.* 180.
- **v. Farmers' Joint Stock Ins. Co.**, 57 *Barb.* 518. For facts, see 10 *Abb. Pr. N. S.* 166, n. Said in *Baggerly v. Farmers' Joint Stock Ins. Co.*, 72 *N. Y.* 601, to have been aff'd by Ct. of App. See *Underwood v. Same*. Applied (Waiver by agent of insurer) in *Dohn v. Farmers' Joint Stock Ins. Co.*, 5 *Lans.* 277; *Whitwell v. Putnam Fire Ins. Co.*, 6 *Id.* 168. Questioned in *Underwood v. Farmers', & Co.*, 57 *N. Y.* 500, 506. Followed in *Goodwin v. Massachusetts Mut. Life Ins. Co.*, 73 *Id.* 480, 493. For the rule where the policy requires a waiver in express terms, see *Birmingham v. Farmers' Joint Stock Ins. Co.*, 67 *Barb.* 595. Disting'd (Judgment as incumbrance on insured property) in *Bailey v. Homestead Fire Ins. Co.*, 16 *Hun.* 504.
- **v. Hudson River R. R. Co.**, 2 *Bosw.* 374. Further decision in 7 *Id.* 329; which was aff'd in 35 *N. Y.* 516. Decision in 2 *Bosw.* collated with *Button v. Hudson River R. R. Co.*, 18 *N. Y.* 256; *Silliman v. Lewis*, 49 *Id.* 379; *Tonawanda R. R. Co. v. Munger*, 5 *Den.* 255; *Brownell v. Flagler*, 5 *Hill*, 282; *Loomis v. Terry*, 17 *Wend.* 496; *Bush v. Brainard*, 1 *Cow.* 78, and other cases (When contributory negligence is not a defence) in 30 *Am. R.* 190, n.
- **v. Mason**, 18 *How. Pr.* 156. See *McDowell v. Second Ave. R. R. Co.* Doubted (Effect of settlement between parties to action, on attorney's rights) in *Christy v. Perkins*, 6 *Daly*, 237. Compare *Pulver v. Harris*, 62 *Barb.* 500, 507.
- **v. N. Y. Central R. R. Co.**, 1 *Lans.* 108. Followed (Employer's liability for injuries sustained in hazardous service) in *Clark v. St. Paul & Sioux City R. R. Co.*, 28 *Minn.* 128, 131. Approved in *Clark's Adm'r v. Richmond & D. R. Co.*, 78 *Va.* 709, 715.
- Owens, Matter of**, 47 *How. Pr.* 150; s. c., 5 *Daly*, 288. Explained and limited (Who disqualified as committee of lunatic) in *Matter of Page*, 7 *Daly*, 155, 160.
- Owens v. Holland Purchase Ins. Co.**, 1 *Sup'm. Ct. (T. & C.)* 285. Aff'd in 56 *N. Y.* 565. Decision in *Id.* disting'd (Policy, when avoided by misrepresentations) in *Graham v. Fireman's Ins. Co.*, 87 *Id.* 69.
- **v. Missionary Socy. of M. E. Church**, 14 *N. Y.* 380. See *Downing v. Marshall*; *Shotwell v. Mott*. Approved (Charitable uses) in *Sherwood v. Am. Bible Soc.*, 4 *Abb. Ct. App. Dec.* 233. Examined at length and explained in *Beckman v. Bonsor*, 23 *N. Y.* 309, as not conflicting with *Williams v. Williams*, 14 *Id.* 527. Examined at length and applied in *Bascom v. Albertson*, 34 *Id.* 590, 619. Applied in *Beekman v. People*, 27 *Barb.* 283; *Phelps v. Phelps*, 28 *Id.* 150; *Boyce v. City of St. Louis*, 29 *Id.* 656; *Atty.-Gen'l v. Ref. Prot. Dutch Church*, 33 *Id.* 314; *Betts v. Betts*, 57 *How. Pr.* 355, n.; *Power v. Cassidy*, 16 *Hun.* 296, 298, which was aff'd in 79 *N. Y.* 613, which see. Dictum disapproved in *Levy v. Levy*, 33 *Id.* 102. Collated with other cases in *Gerard Titles to Real Est.* 2 ed. 300. Disting'd (Validity of bequest to unincorporated society) in *Burrill v. Boardman*, 43 *N. Y.* 260. Compared in 4 *Am. L. Reg. N. S.* 275. See cases cited (Statutory recognition as basis of voluntary associations) in 4 *Abb. N. C.* 311, n.
- Owners of Ground v. Mayor, &c. of Albany**. See *Matter of Albany Street*.
- Oxley v. Lane**, 35 *N. Y.* 524. Explained (Effect of invalid provision for accumulations, on other provisions in will) in *McGrath v. Van Stavoren*, 8 *Daly*, 454, 457. Followed (Provision, when invalid as restraining power of alienation) in *Lovett v. Gillender*, 35 *N. Y.* 628.

## P.

- Pabodie v. King**, 12 *Johns.* 426. Explained (Contract for consideration) in 1 *Chitty on Contr.* 34, n. b, 11 *Am. ed.*
- Pacific Iron Works v. Long Island R. R. Co.**, 62 *N. Y.* 272. Explained (Delivery to

- carrier) in 2 *Benj. on Sales*, § 1040, n. 23 (Corbin's 4 Am. ed.).
- Pacific Mail S. S. Co. v. Toel**, 85 *N. Y.* 646. Followed (Discontinuance not a final adjudication) in *Benedict v. Dixon*, 47 *Super. Ct. (J. & S.)* 477, 481.
- Pacific Pneumatic Gas Co. v. Wheelock**, 44 *Super. Ct. (J. & S.)* 566. Aff'd in 80 *N. Y.* 278.
- Pack v. Mayor, &c. of N. Y.**, 3 *N. Y.* 489. Subsequent decision in 8 *Id.* 222. See *Blake v. Ferris*; *City of Buffalo v. Holloway*; *Congreve v. Smith*; *King v. N. Y. Central R. R. Co.*; *Storrs v. City of Utica*. Decision in 3 *N. Y.* disapproved (Limit of father's recovery for injury to child) in *Green v. Hudson River R. R. Co.*, 2 *Keyes*, 294; which aff'd 28 *Barb.* 9, which see. Explained, and remark of Bronson, J., questioned, in 8 *South. L. Rev.* 68, 75. Decision in 8 *N. Y.* applied (Liability for negligence of independent contractor) in *Norton v. Wiswall*, 26 *Barb.* 623; *Schular v. Hudson River R. R. Co.*, 38 *Id.* 655; *O'Rourke v. Hart*, 7 *Bosw.* 513; *Treadwell v. Mayor, &c. of N. Y.*, 1 *Daly*, 128; *Sweet v. Village of Gloversville*, 12 *Hun.* 303; *Kelly v. Mayor, &c. of N. Y.*, 11 *N. Y.* 435; *McCafferty v. Spuyten Duyvil, &c. R. R. Co.*, 61 *Id.* 182; *King v. N. Y. Central, &c. R. R. Co.*, 66 *Id.* 185; *Town of Pierrepont v. Loveless*, 72 *Id.* 214; *Gourdier v. Cormack*, 2 *E. D. Smith*, 255; *Burmeister v. N. Y. Elevated R. R. Co.*, 47 *Super. Ct. (J. & S.)* 264, 268. Disting'd in *Cotter v. Bettner*, 1 *Bosw.* 496; *Congreve v. Morgan*, 5 *Duer*, 498; *Storrs v. City of Utica*, 17 *N. Y.* 106. Decision in 8 *Id.* examined and disting'd from *Kelly v. Mayor, &c. of N. Y.*, 11 *Id.* 432, in *Lockwood v. Mayor, &c. of N. Y.*, 2 *Hill*, 66. Compared with *Blake v. Ferris*, 5 *N. Y.* 48; *Storrs v. City of Utica*, 17 *Id.* 104; *City of Buffalo v. Holloway*, 7 *Id.* 493; *Congreve v. Smith*, 18 *Id.* 79; *Kelly v. Mayor, &c. of N. Y.*, 11 *Id.* 432; in *Creed v. Hartman*, 29 *Id.* 591. Examined in *Sulzbacher v. Dickie*, 6 *Daly*, 469. Cited with *Martin v. Mayor, &c. of Brooklyn*, 1 *Hill*, 545; *Bartlett v. Crozier*, 17 *Johns.* 438; *Morey v. Town of Newfane*, 8 *Barb.* 645; *Lorillard v. Town of Monroe*, 11 *N. Y.* 392; *Levy v. Mayor, &c. of N. Y.*, 1 *Sandf.* 465; *Griffin v. Mayor, &c. of N. Y.*, 9 *N. Y.* 456, in *Detroit v. Blakeby*, 21 *Mich.* 84; s. c., 4 *Am. R.* 450, 457.
- Packard v. Getman**, 6 *Cow.* 757; s. c., 6 *Am. Dec.* 475, with note. Subsequent decision in 4 *Wend.* 613; s. c., 21 *Am. Dec.* 166. See *Anderson v. Nicholas*; *Ostrander v. Brown*. Decision in 6 *Cow.* disting'd (Sufficiency of delivery to carrier) in *Merriam v. Hartford, &c. R. R. Co.*, 20 *Conn.* 354; s. c., 52 *Am. Dec.* 344, 347. Discussed in *Ang. on Carr.* § 145, 5 ed.
- **v. Hill**, 2 *Wend.* 411. Subsequent proceeding in 7 *Cow.* 434; which was aff'd in 5 *Wend.* 375. See *Lazier v. Westcott*. Decision in 2 *Wend.* examined with *Chanoine v. Fowler*, 3 *Id.* 173; *Brush v. Wilkins*, 4 *Johns. Ch.* 506; *Matter of Robert's Will*, 8 *Paige*, 446, and other cases (What is sufficient proof of foreign laws) in *Barrows v. Downs*, 9 *R. I.* 446; s. c., 11 *Am. R.* 283.
- **v. —**, 4 *Cow.* 55. Applied (Relief against default) in *Security Bank v. Bank of Commonwealth*, 2 *Hun.* 287, 292.
- Packer v. French, Hill & D.** 103. Examined (Power of referee) in *Ayrault v. Sackett*, 9 *Abb. Pr.* 154, n.
- **v. Rochester & Syracuse R. R. Co.**, 17 *N. Y.* 283. See *Lansing v. Goelet*. Quoted (Interest of mortgagee) in 2 *Washb. on Real Prop.* 4 ed. 103. Quoted and collated with other cases in *McAdam on Landl. & T.* 2 ed. § 56. Opposing opinions of PRATT, and DENIO, JJ., explained (Purchaser of mortgaged premises, how affected by contracts made by mortgagor subsequent to mortgage) in *Thomas on Mort.* 366.
- **v. Willson**, 15 *Wend.* 343; s. c., 12 *N. Y. Com. L. Law. ed.* 887; with brief note. Reviewed with *Manrow v. Durham*, 3 *Hill*, 584; *Leggett v. Raymond*, 6 *Id.* 639; *Lequeur v. Prosser*, 1 *Id.* 256; *Dean v. Hall*, 17 *Wend.* 214; *Ketchell v. Burns*, 24 *Id.* 456; *Oakley v. Boorman*, 21 *Id.* 388; *Miller v. Gaston*, 2 *Hill*, 188 (Liability of guarantor of note) in *Hall v. Farmer*, 5 *Den.* 484; which was aff'd in 2 *N. Y.* 553, which see.
- Paddock v. Cameron**, 8 *Cow.* 212; s. c., 9 *N. Y. Com. L. Law. ed.* 363, with brief note.
- **v. Salisbury**, 2 *Cow.* 811. See *Foot v. Tracy*. Followed (Evidence of character, in action for slander) in *Lamos v. Snell*, 6 *N. H.* 413; s. c., 25 *Am. Dec.* 468; *Waters v. Jones*, 3 *Port. (Ala.)* 442; s. c., 29 *Am. Dec.* 261, 265, with note. Disapproved in 1 *Am. L. Reg. N. Y.* 173.
- **v. Symonds**, 11 *Barb.* 117. Followed (Liability created upon failure to pay county warrant) in *International B'k of St. Louis v. Franklin County*, 65 *Mo.* 105; s. c., 27 *Am. R.* 261.
- Paddon v. Taylor**, 44 *N. Y.* 371. Disting'd (Effect of surrender of dishonored note, &c. to constitute one holder for value) in *Phoenix Ins. Co. v. Church*, 81 *Id.* 218, 224.
- Padgett v. Lawrence**, 10 *Paige*, 170; s. c., 40 *Am. Dec.* 232, with note, wherein are collected citations on the various points decided. Followed (Effect of prior indebtedness to constitute one holder for value) in *Weaver v. Barden*, 49 *N. Y.* 286, 292, with *Coddington v. Bay*, 20 *Johns.* 637; *Root v. French*, 13 *Wend.* 570; *Stalker v. McDonald*, 6 *Hill*, 93; *Dickerson v. Tillinghast*, 4 *Paige*, 215; *Moore v. Ryder*, 65 *N. Y.* 441, thought in 12 *Am. Dec.* 136, n. to sustain a rule which, though supported by a slight preponderance of the authorities, is now losing ground.
- Paff v. Kinney**, 1 *Bradf.* 1. See (Limitation of action on surrogate's decree) *Code Civ. Pro.* §§ 376, 382, subd. 7.

**Page v. McDonnell**, 46 *How. Pr.* 52. Aff'd in 55 *N. Y.* 299. Decision in *Id.* explained (Refusal to perform contract) in *Davison v. Associates of the Jersey Co.*, 6 *Hun.* 470, 473.

— **v. Morrell**. See *Mitchell v. Culver*.

— **v. Waring**, 76 *N. Y.* 463. See (Purchaser not bound by record made prior to title vested in his vendor) 2 *Pomeroy on Eq. Jur.* 100, *n.*

**Pahquioque Bank v. Martin**. See *Cook v. Litchfield*; *Price v. McClave*.

**Paige v. Cagwin**, 7 *Hill*, 361; *s. c.*, 42 *Am. Dec.* 68, 80, with note, wherein it is said to have settled the rule (Admissibility of declarations of prior owner) in *N. Y.*, though thought in *Christie v. Bishop*, 1 *Barb. Ch.* 115, to be a departure from well-established legal doctrines. See *Stafford v. Rice*. Applied in *Smith v. Webb*, 1 *Barb.* 233; *Honstine v. O'Donnell*, 5 *Hun.* 473; *Booth v. Swezey*, 8 *N. Y.* 279. Reviewed with other cases in *Savage v. Murphy*, 8 *Bosw.* 87. Explained in *Johnson v. Hicks*, 1 *Lans.* 159; *Bullis v. Montgomery*, 3 *Id.* 258. Disting'd in *Jermain v. Dennison*, 6 *N. Y.* 278. Examined with *Smith v. Webb*, 1 *Barb.* 230; and *Booth v. Swezey*, 8 *N. Y.* 276; *Jermain v. Denniston*, 6 *Id.* 276; qualified and explained in *Foster v. Beals*, 21 *Id.* 247, 250. Followed as conclusive in *Tousley v. Barry*, 16 *Id.* 500. Cited as settled law, but disting'd as to real estate, in *Chadwick v. Fonner*, 69 *Id.* 407. Limited to cases of purchasers for value, in *Von Sachs v. Kretz*, 72 *Id.* 555. As to extension of the rule, see cases cited in *Abb. Tr. Ev.* 13, *n.* Explained (Possession of note, as evidence of ownership) in *James v. Chalmers*, 6 *N. Y.* 213.

— **v. Hazard**, 5 *Hill*, 603. Followed (Effect of general objection to question calling for opinion) in *Rodgers v. Fletcher*, 13 *Abb. Pr.* 299.

— **v. Ott**, 5 *Den.* 406. Disting'd (Entirety of contract of sale) in *Talmage v. White*, 35 *Super. Ct. (J. & S.)* 222; *Avery v. Willson*, 81 *N. Y.* 341, 346. Explained and commented on in 2 *Benj. on Sales*, § 1032, *n.* 19 (*Corbin's* 4 *Am. ed.*).

— **v. People**, 6 *Park.* 683. Applied (Jurisdiction to review proceedings in criminal cases) in *Hitchins v. People*, 39 *N. Y.* 457. Disting'd (Sufficiency of averment of signature, &c.) in *Bonnell v. Griswold*, 68 *Id.* 299.

— **v. Willet**, 38 *N. Y.* 28. Cited (How far judicial confession is conclusive) in 2 *Whart. Com. on Ev.* § 1110, *n.*

**Pain v. Packard**, 13 *Johns.* 174; *s. c.*, 7 *Am. Dec.* 369, with note, wherein it is said to have been followed and its principle to have been adopted with restrictions as part of the statute law in several States. See *Beardsley v. Warner*; *Gahn v. Niemcewicz*; *King v. Baldwin*; *People v. Jansen*. Disapproved (Discharge of surety by neglect of

creditor to sue debtor, on request) in *Herrick v. Borst*, 4 *Hill*, 656. Examined and re-aff'd in *King v. Baldwin*, 17 *Johns.* 390; which rev'd 2 *Johns. Ch.* 563, which see. Followed in *Colgrove v. Tallman*, 5 *Hun.* 103; which was aff'd in 67 *N. Y.* 99, which see. Disting'd in *Fulton v. Matthews*, 15 *Johns.* 434; *Wells v. Mann*, 45 *N. Y.* 330; *Ruggles v. Holden*, 3 *Wend.* 217; *Beardsley v. Warner*, 6 *Id.* 612; which was aff'd in 8 *Id.* 198, which see; *Converse v. Cook*, 25 *Hun.* 46. Disting'd with *King v. Baldwin*, 17 *Johns.* 384; *Remsen v. Beekman*, 25 *N. Y.* 552; *Colgrove v. Tallman*, 67 *Id.* 95, in *Newcomb v. Hale*, 90 *Id.* 326. Followed and approved with *King v. Baldwin*, 17 *Johns.* 381, in *Hempstead v. Watkins*, 6 *Ark.* 317; *s. c.*, 42 *Am. Dec.* 696, 699, with note. Criticised with *King v. Baldwin*, 2 *Johns. Ch.* 544, and their authority denied, in *Smith v. Freyler*, 4 *Mont.* 389; *s. c.*, 47 *Am. R.* 358; 29 *Alb. L. J.* 448; *s. c.*, 1 *Pacific Rep.* 214. Criticised with *King v. Baldwin*, 17 *Johns.* 384; *Fulton v. Matthews*, 15 *Id.* 433; *Powell v. Waters*, 17 *Id.* 176; *Ludlow v. Simond*, 2 *Cal. Cas.* 30, in *Hunt v. Bridgham*, 2 *Pick. (Mass.)* 581; *s. c.*, 13 *Am. Dec.* 458, with note. Reviewed with *King v. Baldwin*, 17 *Johns.* 384, and other cases in *Kennebec Bank v. Tuckerman*, 5 *Greenl. (Me.)* 130; *s. c.*, 17 *Am. Dec.* 209, with note. Followed in *Martin v. Skehan*, 2 *Col.* 614, 618; *Bruce v. Edwards*, 1 *Stev. (Ala.)* 11; *s. c.*, 18 *Am. Dec.* 33. Criticised and disapproved with *King v. Baldwin*, 17 *Johns.* 384, in *Page v. Webster*, 15 *Me.* 249; *s. c.*, 33 *Am. Dec.* 608, 612, with note, where they are thought to have been destroyed as authorities by *Warner v. Beardsley*, 8 *Wend.* 194. Disapproved with *King v. Baldwin*, 17 *Johns.* 384, in *Pintard v. Davis*, 1 *Zab. (N. J.)* 632; *s. c.*, 47 *Am. Dec.* 172. Declared unsound,—notwithstanding its recognition in *Hopkins v. Spurlock*, 2 *Heisk. (Tenn.)* 155,—in *Jackson v. Huey*, 10 *Lea (Tenn.)* 184; *s. c.*, 43 *Am. R.* 301. Disting'd and doubted with *King v. Baldwin*, 17 *Johns.* 403, in *Crane v. Newell*, 2 *Pick. (Mass.)* 612; *s. c.*, 13 *Am. Dec.* 461, with note. Disapproved, and *King v. Baldwin*, 2 *Johns. Ch.* 654, approved in *Dane v. Corduan*, 24 *Cal.* 157, 164, citing also *Herrick v. Borst*, 4 *Hill*, 656. Denied with *King v. Baldwin*, 17 *Johns.* 384, as contrary to authority,—in *Harris v. Newell*, 42 *Wis.* 687, 692. Included in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 362. Collated with *King v. Baldwin*, 2 *Johns. Ch.* 554; 17 *Johns.* 384; *Remsen v. Beekman*, 25 *N. Y.* 552; *Warner v. Beardsley*, 8 *Wend.* 194; *Herrick v. Borst*, 4 *Hill*, 650; *Schroepell v. Shaw*, 3 *N. Y.* 454; *Hunt v. Purdy*, 82 *Id.* 486; *Colgrove v. Tallman*, 67 *Id.* 95, in 34 *Am. R.* 580, *n.* Explained and applied (Parol evidence of suretyship on note) in *Hubbard v. Gurney*, 64 *N. Y.* 464.



- Paine v. Agricultural Ins. Co.**, 5 *Sup'm. Ct.* (T. & C.) 619. Approved (Occupancy, within meaning of insurance policy) in *Cummins v. Agr. Ins. Co.*, 5 *Hun.* 554; which was rev'd in 67 *N. Y.* 260, which see. Explained in *Herrman v. Adriatic Fire Ins. Co.*, 45 *Super. Ct. (J. & S.)* 396. Collated with *Whitney v. Black River Ins. Co.*, 9 *Hun.* 39, and other cases in *Cook v. Continental Ins. Co.*, 70 *Mo.* 610; s. c., 35 *Am. R.* 438, with note, collating *N. Y.* and other cases. Collated with other cases in 23 *Am. R.* 230, n.
- **v. Bonney**, 4 *E. D. Smith*, 734. Disting'd as inapplicable since 1363 (Expiration of mechanic's lien) in *Mathews v. Daley*, 7 *Abb. Pr. N. S.* 379.
- **v. Jones**, 14 *Hun.* 577. Aff'd in 76 *N. Y.* 274. Another decision in 75 *Id.* 593. Decision in *Id.* followed (Power of court of equity to reform contract) in *De Jarnatt v. Cooper*, *Sup'm. Ct. Cal.* 1881, 13 *Cent. L. J.* 252.
- **v. McCarthy**, 1 *Hun.* 78; mem. s. c., 3 *Sup'm. Ct. (T. & C.)* 755. In 3 *Hun.* vii; 5 *Sup'm. Ct. (T. & C.)* iv, motion to dismiss appeal said to have been granted.
- **v. Noelke**, 53 *How. Pr.* 273. Aff'd in 43 *Super. Ct. (J. & S.)* 176; s. c., 54 *How. Pr.* 333. See *Robinson v. Dauchy*.
- **v. Thatcher**, 25 *Wend.* 450; s. c., 14 *N. Y. Com. L. Law. ed.* 905, with brief note.
- Palen v. Bushnell**, 18 *Abb. Pr.* 301. Rev'd in 46 *Barb.* 24. Decision in *Id.* discussed (Creditor uniting causes of action against debtor) in *Wait on Fraud. Conv.* § 53.
- **v. Johnson**, 46 *Barb.* 21. Aff'd in 50 *N. Y.* 49. Decision in *Id.* applied (Limitation of action to recover usurious interest; taking objection thereto by demurrer) to case of national bank in *Nat. State B'k of New-ark v. Boylan*, 2 *Abb. N. C.* 216, 220.
- Palmer v. Adams**, 23 *How. Pr.* 375. Opposed (Compelling affidavit of party, to be used on motion) by *Cockey v. Hurd*, 14 *Abb. Pr. N. S.* 183, 186.
- **v. Aldridge**, 16 *Barb.* 131. Cited (Judicial notice of regulations adopted by particular branches of State service) in 1 *Whart. Com. on Ev.* § 318.
- **v. Avery**, 41 *Barb.* 290. Said in 41 *N. Y.* 619, to have been aff'd by Ct. of App. in Sept. 1869.
- **v. Bagg**, 64 *Barb.* 641. Aff'd in 56 *N. Y.* 523.
- **v. Conly**, 4 *Den.* 374. Aff'd in 2 *N. Y.* 182. Both decisions applied (Retrospective operation of statute) in *Meyer v. Roosevelt*, 25 *How. Pr.* 107. Decision in 4 *Den.* explained in *Fisher v. N. Y. Central, & C. R. Co.*, 46 *N. Y.* 644, 656. Cited in *People ex rel. Egan v. Marine Court*, 8 *Abb. N. C.* 377, 380. Both decisions explained (Vested right in penalty) in *Fisher v. N. Y. Central, & C. R. Co.*, 46 *N. Y.* 656.
- **v. Davis**, 28 *N. Y.* 242. Disting'd (Waiver of disability in plaintiff) in *Fair-weather v. Satterly*, 7 *Robt.* 547. Approved (Remedy for misjoinder of parties) in *Richtmyer v. Richtmyer*, 50 *Barb.* 61. Compare *Code Civ. Pro.* § 488, subd. 5. Disting'd (Power of married woman to make submission to arbitration) in *Keep v. Keep*, 17 *Hun.* 154. See (Submission to arbitration, of claim to real property) *Code Civ. Pro.* 1881, § 2365, n.
- **v. DeWitt**, 2 *Sweeny*, 530; s. c., 40 *How. Pr.* 293. Aff'd in 47 *N. Y.* 532. Another proceeding in 7 *Robt.* 530. See *Shook v. Daly*. Decision in 7 *Robt.* reviewed at length (Injunction against violation of copyright) in 8 *South. L. Rev.* 20. Opinion of *MONELL, J.*, in 2 *Sweeny*, approved in 8 *South. L. Rev.* 21. Decision in 47 *N. Y.* approved in *Id.* 22. Quoted in 2 *High. on Inj.* 2 ed. §§ 1038, 1039.
- **v. Foley**, 44 *How. Pr.* 308. Modified in 36 *Super. Ct. (J. & S.)* 14; s. c., 45 *How. Pr.* 110. Further proceeding in 2 *Abb. N. C.* 191; which was aff'd in 42 *Super. Ct. (J. & S.)* 365; but the latter rev'd in 71 *N. Y.* 106. See *Carpenter v. Wright*; *Drummond v. Husson*. Decision in 36 *Super. Ct. (J. & S.)* disapproved (Injunction to restrain interference with discharge of duties of office) in *Morris v. Whelan*, 11 *Abb. N. C.* 64. Decision in 71 *N. Y.* followed (Liability on injunction bond, as affected by discontinuance of action) in *Benedict v. Dixon*, 47 *Super. Ct. (J. & S.)* 477, 480; *Johnson v. Elwood*, 82 *N. Y.* 362, 365. Disting'd in *Bishop v. Bascoe*, 9 *Weekly Cin. L. Bul.* 111. Quoted (Distinction between void and voidable acts) in *Wait on Fraud. Conv.* § 444, n. 1.
- **v. Fort Plain & Cooperstown Plank-road Co.**, 11 *N. Y.* 376. See *Jackson v. Florence*. Disting'd and limited (What is covenant and not condition) in *Booth v. Cleveland Mill Co.*, 74 *N. Y.* 15, 22. Disapproved as obiter (When commissioners of highways, &c., act as agents of town in conveying to plank-road company) in *Town of Galen v. Clyde & Rose Plank-road Co.*, 27 *Barb.* 552.
- **v. Guernsey**, 7 *Wend.* 248. Questioned (Absolute conveyance when construed as mortgage) in *Cooper v. Whitney*, 3 *Hill*, 95, 99; *Baker v. Thrasher*, 4 *Den.* 493. Disting'd and questioned in *Macaulay v. Porter*, 71 *N. Y.* 173, 179.
- **v. Hand**, 13 *Johns.* 434; s. c., 7 *Am. Dec.* 392, with note. See *Haggerty v. Palmer*. Examined with *Smith v. Lynes*, 5 *N. Y.* 41 (Rights of subsequent bona fide purchaser as against lien of original vendor) in *Matthews v. Hobby*, 48 *Barb.* 167, 170.
- **v. Haskins**. See *Lewis v. Chapman*.
- **v. Hicks**, 6 *Johns.* 133. Doctrine applied (Fishery rights) in *Trustees of Brookhaven v. Strong*, 60 *N. Y.* 56, 65. Explained (Presumptions) in 2 *Best on Ev.* § 381, n. a, Wood's ed.
- **v. Horn**, 20 *Hun.* 70. Aff'd in 84 *N.*

- Y. 516. Decision in *Id.* disting'd with *Barstow v. Goodwin*, 2 *Brudf.* 413; *Hamlin v. Osgood*, 1 *Redf.* 409 (Provision in will for "issue" or descendants) in *Murray v. Bronson*, 1 *Dem.* 217.
- **v. Hussey**, 65 *Barb.* 278. Aff'd in 59 *N. Y.* 647.
- **v. Kelly**, 36 *Super. Ct. (J. & S.)* 571. Rev'd in 56 *N. Y.* 637.
- **v. Lawrence**, 3 *Sandf.* 161. Aff'd in 5 *N. Y.* 389. See *Spear v. Crawford*. Decision in 3 *Sandf.* applied (When stockholder, &c., cannot question regularity of organization or power of corporation) in *Eaton v. Aspinwall*, 3 *Abb. Pr.* 422; *Steam Nav. Co. v. Weed*, 17 *Barb.* 382; *Whitney Arms Co. v. Barlow*, 63 *N. Y.* 71, which rev'd 38 *Super. Ct. (J. & S.)* 563, which see. Disting'd in *N. Y. State Loan and Trust Co. v. Helmer*, 77 *N. Y.* 64, 70. Quoted and collated with other cases in *Field on Ultra Vires*, 189. Quoted in *Ang. & A. on Corp.* § 519, n. 1, 11 ed.; *Morawetz on Corp.* § 142. Decision in 5 *N. Y.* collated with *People v. Edwards*, 15 *Barb.* 529; *Libby v. Rosenkrans*, 55 *Id.* 202, and other cases (Disqualification of judges by reason of interest) in 12 *Weekly L. Bul.* 3.
- **v. Lorillard**, 15 *Johns.* 14. Rev'd in 16 *Id.* 343. See *Gelston v. Hoyt*. Decision in 16 *Johns.* approved and reviewed (Contract of affreightment when not terminated by delay) in *Clark v. Mass. F. & M. Ins. Co.*, 2 *Pick. (Mass.)* 104; s. c., 13 *Am. Dec.* 400, with note. Commented on in 3 *Keit Com.* 224. Included with notes in 2 *Redf. Am. Railw. Cas.* 185.
- **v. Manning**, 4 *Den.* 131. Disting'd (Sufficiency of admission of making of note) in *Bardin v. Stevenson*, 75 *N. Y.* 164, 168.
- **v. Miller**, 25 *Barb.* 399. See *Dominick v. Michael*. Included (Mortgage by infant) in *Ewell Lead. Cas. on Inf. &c.* 181.
- **v. Mulligan**, 3 *Cai.* 307; s. c., 2 *Am. Dec.* 270, with note, wherein it is shown to have been extensively cited as authority. Previous decision, as it seems, in 2 *Cai.* 380. See *People ex rel. Loomis v. Canal Appraisers*; *Platt v. Johnson*. Decision in 3 *Cai.* applied (Extent of right to use stream) in *Thomas v. Brackney*, 17 *Barb.* 657. Applied in *Bullard v. Saratoga, &c. Manuf. Co.*, 77 *N. Y.* 530. Explained and applied in *Platt v. Johnson*, 15 *Johns.* 218. Explained with *Platt v. Johnson*, in *Wadsworth v. Tillotson*, 15 *Conn.* 366; s. c., 39 *Am. Dec.* 391, 397, with note. Cited (When dam is nuisance) in *Simpson v. Seavey*, 8 *Greenl. (Me.)* 138; s. c., 22 *Am. Dec.* 228. Approved and applied (Right of public servitude in stream) in *Morgan v. King*, 30 *Barb.* 17. Elaborately examined with other cases, in *People v. Canal Appraisers*, 33 *N. Y.* 472. Followed with *Hooker v. Cummings*, 20 *Johns.* 100, in *Enfield T. B. Co. v. Hartford R. R. Co.*, 7 *Conn.* 40; s. c., 42 *Am. Dec.* 716, 725, with note. Quoted and collated with other cases in *Mills Thoms. on Highw.* 3 ed. 46. Decision in 2 *Cai.* applied (What relief must be demanded in one motion) in *McLean v. Hoyt*, 56 *How. Pr.* 353.
- **v. Myers**, 43 *Barb.* 509. See *Havens v. Hussey*; *Robinson v. McIntosh*. Explained (Power of partners to make assignment for benefit of creditors) in *Burrill on Assign.* § 85, 4 ed.
- **v. Palmer**, 1 *Paige*, 276. See *Fry v. Fry*. Said never to have been questioned in *N. Y.* (Statutes of this State as to divorce exclusive of the law of England) in *Campbell v. Crampton*, 18 *Blatchf. C. Ct.* 150, 160; s. c., 8 *Abb. N. C.* 363. Quoted (Divorce for cruelty on husband's application) in 1 *Bishop on Mar. & D.* § 761, 6 ed.
- **v. Phoenix Ins. Co.**, 22 *Hun.* 224. Approved (*Sup'm. Ct. Rule* 32, as affected by *Code Civ. Pro.* § 1023) in *Gormerly v. McGlynn*, 84 *N. Y.* 284, 287.
- **v. Smedley**, 13 *Abb. Pr.* 185. Disting'd (Issuing precept for costs of demurrer) in *Henderson v. Jackson*, 2 *Sweeny*, 603. Compare (Power of court to direct order of trial of issues) *Code Civ. Pro.* § 967.
- **v. Stephens**, 1 *Den.* 471. See *Dusenberry v. Ellis*; *Hills v. Bannister*; *Rossiter v. Rossiter*. Applied (Fictitious signature, when binding) in *David v. Williamsburgh City Fire Ins. Co.*, 83 *N. Y.* 265, 269. Said to be inconsistent with *Walker v. Bank of N. Y.*, 9 *Id.* 582; *White v. Madison*, 26 *Id.* 117,—in *Bartlett v. Tucker*, 104 *Mass.* 336; s. c., 5 *Am. R.* 240, 245,—where also *Brown v. Butchers' & Drovers' B'k*, 6 *Hill*, 443, was disting'd. Quoted and explained in 1 *Benj. on Sales*, § 257, n. 3 (Corbin's 4 *Am. ed.*). Cited (Liability of partnership on note, &c., signed in name of one partner) in *Story on Partn.* 7 ed. § 142, n.
- **v. Wetmore**, 2 *Sandf.* 316. See *Dyett v. Pendleton*; *Myers v. Gemmell*. Followed (Implied easement of light and air) in *Doyle v. Lord*, 39 *Super. Ct. (J. & S.)* 421, 432, which was rev'd in 64 *N. Y.* 432, which see. Approved with *Myers v. Gemmell*, 10 *Barb.* 537, in *Keats v. Hugo*, 115 *Mass.* 204; s. c., 15 *Am. R.* 80, 91; opinion in *Lampman v. Milks*, 21 *N. Y.* 505, 512, being criticised as *dictum*.
- Palmer v. Wagner**. See *Welch v. Pullman Palace Car Co.*
- Pam v. Vilmar**, 54 *How. Pr.* 235. Overruled (Mode of objecting that plaintiff's remedy is at law) in *De Bussiere v. Holladay*, 4 *Abb. N. C.* 111, 119.
- P. & F. Corbin v. Gordon**. See *Corbin, P. & F. v. Gordon*.
- Pangburn v. Bull**, 1 *Wend.* 345. Cited with *Vanduzor v. Linderman*, 10 *Johns.* 106 (When action will lie for malicious prosecution) in *Lockenour v. Sides*, 57 *Ind.* 360; s. c., 26 *Am. R.* 58. Applied in *Closson v. Staples*, 42 *Vt.* 209; s. c., 1 *Am. R.* 316, 324.
- **v. Miles**. See *Rinaldo v. Housmann*.
- **v. Patridge**, 7 *Johns.* 140; s. c., 5 *Am.*

- Dec.* 250. See *Thompson v. Button*. Followed with *Thompson v. Button*, 14 *Johns.* 84; *Clark v. Skinner*, 20 *Id.* 465; *Marshall v. Davis*, 1 *Wend.* 109 (When replevin may be maintained) in *Bruen v. Ogden*, 6 *Halst. (N. J.)* 370; s. c., 20 *Am. Dec.* 593, 595, with note, a case of goods taken on execution. Followed and approved in *Gist v. Cole*, 2 *Nott. & McC. (So. Car.)* 456; s. c., 10 *Am. Dec.* 616, with note, as denying the position taken in *Gilbert on Replevin*, 154. See, to same effect, 12 *Am. Jur.* 104. Followed in *Daggett v. Robins*, 2 *Blackf. (Ind.)* 415; s. c., 21 *Am. Dec.* 752, with note.
- *v. Ramsay*, 11 *Johns.* 141. Followed (Effect of verdict in curing defect in pleading) in *Hall v. Kitson*, 4 *Chand. (Wisc.)* 22.
- Panton v. Holland**, 17 *Johns.* 92; s. c., 8 *Am. Dec.* 369. See *Clark v. Foot*; *Farrand v. Marshall*; *Hay v. Cohoes Co.*; *Radcliff v. Mayor, &c. of Brooklyn*. Disting'd (Whether acts legal in themselves become actionable if done with malice) in *PHELPS v. Nowlen* 72 *N. Y.* 39. Approved in *Chesley v. King*, 74 *Me.* 164, 177. For a review of decisions, see *Washb. on Easements*, 488-492, 3 ed. Applied (Extent of right to excavate soil) to municipal corporation, in *Humes v. Mayor of Knoxville*, 1 *Humph. (Tenn.)* 403; s. c., 34 *Am. Dec.* 657, with note. Cited as authority with *Lasala v. Holbrook*, 4 *Paige*, 169; *Hay v. Cohoes Co.*, 2 *N. Y.* 159, 162, in *Gilmore v. Driscoll*, 122 *Mass.* 199; s. c., 23 *Am. R.* 312, 320. Approved in *Callender v. Marsh*, 1 *Pick. (Mass.)* 418, 434. Collated with other cases in *Bigel. Cas. on Torts*, 552. Included in *Lanson's Lead. Com. L. Cas. Simplified*, 220. Collated with other cases in *McAdam on Landl. & T.* 2 ed. § 222. Included in 1 *Thomps. on Negl.* 249.
- Pardee v. Drew**, 25 *Wend.* 459; s. c., 14 *N. Y. Com. L. Law. ed.* 908, with brief note. See *Orange County Bank v. Brown*. Explained (Carrier's liability for loss of baggage) in *Magnin v. Dinsmore*, 38 *Super. Ct. (J. & S.)* 248, 254; which was rev'd in 62 *N. Y.* 35, which see. Reviewed with *Hawkins v. Hoffman*, 6 *Hill*, 586; *Orange County Bank v. Brown*, 9 *Wend.* 85; *Weed v. Saratoga & Schenectady R. Co.*, 19 *Id.* 524, and other cases in *Jordan v. Fall River R. R. Co.*, 5 *Cush. (Mass.)* 69; s. c., 51 *Am. Dec.* 44, 46, with note.
- *v. Fish*, 67 *Barb.* 407. Aff'd in 60 *N. Y.* 265; s. c., 19 *Am. R.* 176. See *Merritt v. Todd*. Decision in 60 *N. Y.* disting'd (Necessity for demand for payment of demand note) in *Eisenlord v. Dillenback*, 15 *Hun*, 23, 25; *Crim v. Starkweather*, 88 *N. Y.* 342. Applied (Necessity for demand of payment of certificate of deposit) in *Munger v. Albany City Nat. B'k*, 85 *Id.* 580, 587. See cases cited (Negotiable character of certificate of deposit) in 24 *Am. R.* 610, n. Applied (Right to recovery of money as affected by laches) in *U. S. v. Nat. Park B'k, U. S. Dist. Ct. S. D. N. Y.*, 6 *Fed. Rep.* 854.
- *v. Robertson*, 6 *Hill*, 550. See *Patterson v. Westervelt*. Commented on and doubted (Proof in action for neglect to return *feri facias*) in *Stevens v. Rowe*, 3 *Den.* 327, 331; which was, however, overruled in *Ledyard v. Jones*, 7 *N. Y.* 550.
- *v. Tilton*, 58 *How. Pr.* 476. Fully reported in 20 *Hun*, 76.
- *v. Treat*, 18 *Hun*, 298. Rev'd in 82 *N. Y.* 385.
- *v. Van Anken*, 3 *Barb.* 534. Applied with *Dauchy v. Bennett*, 7 *How. Pr.* 375 (Right to redeem from mortgage) in *Belden v. Slade*, 26 *Hun*, 635. Discussed in 4 *Kent Com.* 162, n. 1, Comstock's ed. Explained (Right to assignment of mortgage) in *Ellsworth v. Lockwood*, 42 *N. Y.* 89, 97, 99. Criticised in *Thomas on Mort.* 223.
- Pardo v. Osgood**, 2 *Abb. Pr. N. S.* 365. Rev'd (Set-off) in 5 *Robt.* 348.
- Parfitt v. Warner**, 13 *Abb. Pr.* 471. See *Sternhaus v. Schmidt*. Applied (Defective undertaking on appeal) in *Dinkel v. Wehle*, 61 *How. Pr.* 159.
- Parham v. Moran**, 4 *Hun*, 717. Aff'd, it seems, in 71 *N. Y.* 596, but without opinion.
- Parisen v. Parisen**, 1 *Sup'm. Ct. (T. & C.)* 642. Appeal said, in 5 *Id.* iv, to have been dismissed.
- Parish Will Case**, 8 *Abb. Pr.* 336; s. c., 29 *Barb.* 627. See *DeLafield v. Parish*. See (Costs in surrogate's courts) *Code Civ. Pro.* 1881, § 2558, n. Proceedings before surrogate published with medical opinions, at *N. Y.* in 1857. See case, &c., in vols. 102-106 of *Ct. of App. Cas. in State Libr. at Albany*. Also statement of facts and opinion of *Ct. of App.* published at *N. Y.* in 1862. Also testimony, &c., published in 6 vols. at *N. Y.* in 1864. Also, argument of *J. W. Edmonds* before surrogate, in 1857. Also that of *A. M. Sherman* in *Sup'm. Ct.*, in 1858. Also statement of facts by *J. K. Porter* and *J. B. Jewett*, published at *Albany*, in 1862. Also argument of *J. K. Porter*, before *Ct. of App.* in 1862. See *Mr. O'Connor's* copy of report of case in 7 large vols., in *Law Inst. Libr. N. Y. City*. Other reports in same library.
- Parish v. Golden**, 35 *N. Y.* 462. See *Merritt v. Village of Portchester*; *Van Rensselaer v. Witbeck*. Disting'd from *Van Rensselaer v. Witbeck*, 7 *N. Y.* 517 (Requisites of affidavit annexed to assessment roll) in *Westfall v. Preston*, 49 *Id.* 849, 355; which rev'd 3 *Lans.* 151, which see. Disting'd in *Hinckley v. Cooper*, 22 *Hun*, 253, 257.
- *v. Parish*, 42 *Barb.* 274. Aff'd in *DeLafield v. Parish*, 25 *N. Y.* 9. Decision in 42 *Barb.* superseded (Appeal from surrogate's decision) by *Code Civ. Pro.* § 2568.
- *v. Wheeler*, 22 *N. Y.* 494. See *Whitney Arms Co. v. Barlow*. Applied (Effect of contract *ultra vires*) in *Buffitt v. Troy &*

- Boston R. R. Co., 36 *Barb.* 426; Whitney Arms Co. v. Barlow, 63 *N. Y.* 71. Explained in Town of Verona v. Peckham, 66 *Barb.* 114. Approved, but disting'd, in Thomas v. R. R. Co., 101 *U. S.* 71, 86. Quoted and explained in *Morawetz on Corp.* § 118; *Ang. & A. on Corp.* 256, n. a, 11 ed. Quoted and collated with other cases in *Field on Ultra Vires*, 182. Explained (Damages in trover by mortgagee of chattels against mortgagor) in 52 *Am. Dec.* 679, n. Approved, as clearly stating principle, in 2 *Sedgw. on Meas. of Dama.* 7 ed. 393, n. Relied on (When mortgages, &c., do not cover subsequently acquired interests) in Emerson v. North American R'y Co., 67 *Me.* 387; s. c., 24 *Am. R.* 39.
- Parish of Bellport v. Tooker**, 29 *Barb.* 256. Aff'd as Petty v. Tooker, in 21 *N. Y.* 267.
- Park v. Carnley**, 7 *How. Pr.* 355. Followed (Change of venue) in Gifford v. Town of Gravesend, 8 *Abb. N. C.* 246, 249.
- **v. Church**, 1 *Code R. N. S.* 47; s. c., more fully, 5 *How. Pr.* 381.
- **v. Musgrave**, 2 *Sup'm. Ct. (T. & C.)* 571. Further proceeding in 6 *Hun*, 223.
- **v. Park**, 18 *Hun*, 466. Aff'd in 80 *N. Y.* 156. Decision in *Id.* applied (Remedies available in action for absolute divorce) in Boucault v. Boucault, 21 *Hun*, 431, 434. Disting'd (Enforcing payment of alimony) in Gane v. Gane, 46 *Super. Ct. (J. & S.)* 219. See, also, Strobridge v. Strobridge, 21 *Hun*, 288. Explained (Punishment by contempt, for disobedience of order) in Baker v. Baker, 23 *Id.* 356, 360.
- **v. People**, 1 *Lans.* 263. Aff'd as People v. Park in 41 *N. Y.* 21.
- **v. Spaulding**, 10 *Hun*, 128. See Ebbinghausen v. Worth Club. Disting'd (Liability of members of unincorporated association) in Flagg v. Swift, 25 *Hun*, 623, 625. Opposed in Ebbinghausen v. Worth Club, 4 *Abb. N. C.* 300, 317.
- Park Bank v. Watson**, 42 *N. Y.* 490. Explained at length (Amount of recovery by bona fide holder of negotiable paper) in Huff v. Wagner, 63 *Barb.* 233. Referred to in Stevens v. Corn Exchange B'k, 5 *Sup'm. Ct. (T. & C.)* 287, as substantially overruled. Applied (Effect of surrender of note, to constitute bona fide holder) in Paddon v. Taylor, 44 *N. Y.* 374. Explained (Sufficiency of pre-existing debt, to support conveyance of property) in Cary v. White, 52 *Id.* 143.
- Parker, Matter of**, 1 *Barb. Ch.* 154. See (Surrogate's authority to direct as to infant's maintenance) *Code Civ. Pro.* 1881, § 2846, n.
- Parker v. Arctic Fire Ins. Co.**, 1 *Sup'm. Ct. (T. & C.)* 897. Aff'd in 59 *N. Y.* 1. With decision in *Id.*, see, also (Change of risk) Brueck v. Phoenix Ins. Co., 21 *Hun*, 542, 545, 547.
- **v. Baker**, *Clarke*, 223. Rev'd in 8 *Paige*, 428. See People v. Dean. Decision in 8 *Paige* examined (Authority of officer, when not to be inquired into collaterally) in Morris v. People, 3 *Den.* 393. Applied in Dolan v. Mayor, &c. of N. Y., 68 *N. Y.* 278; People ex rel. Mosher v. Stowell, 9 *Abb. N. C.* 456, 461. Discussed with People v. White, 24 *Wend.* 520; People v. Collins, 7 *Johns.* 549; McIntstry v. Tanner, 9 *Id.* 135; Wilcox v. Smith, 5 *Wend.* 281 (What constitutes officer de facto) in State v. Carroll, 38 *Conn.* 449; s. c., 9 *Am. R.* 409, 423.
- **v. Baxter**, 19 *Hun*, 410. Aff'd in 86 *N. Y.* 586. Decision in *Id.* quoted and explained (Sales of specific chattels unconditionally) in 1 *Benj. on Sales*, § 353 (Corbin's 4 *Am. ed.*).
- **v. Browning**, 8 *Paige*, 388; s. c., 35 *Am. Dec.* 717, with note, wherein are collected citations of the case. See Bergh's Case; Noe v. Gibson. Applied (Remedy of receiver against third person) in Bowers Sav'gs B'k v. Richards, 3 *Hun*, 369. Approved in Powers v. C. H. Hamilton Paper Co., 60 *Wis.* 23, 31. Applied (Actions against receivers) in Meara's Adm'r v. Holbrook, 20 *Ohio St.* 137; s. c., 5 *Am. R.* 633. Quoted in *High on Receiv.* § 150, n. 1. Cited, and doctrine discussed, in 3 *Am. L. Reg. N. S.* 31.
- **v. City of Cohoes**, 10 *Hun*, 531. Aff'd in 74 *N. Y.* 610, on opinion below, without further opinion.
- **v. City of Syracuse**, 31 *N. Y.* 376. Explained (Effect of order payable out of specified fund, as assignment) in Alger v. Scott, 54 *N. Y.* 15. Applied in Brill v. Tuttle, 81 *Id.* 461; Shuttleworth v. Bruce, 7 *Robt.* 162.
- **v. Foote**, 19 *Wend.* 309; s. c., 13 *N. Y. Com. L. Law. ed.* 618, with brief note. See Myers v. Gemmel. Followed (English law as to easements of lights and air not prevalent in this country) in Myers v. Gemmel, 10 *Barb.* 546. Recognized as authority, but disting'd, in Doyle v. Lord, 64 *N. Y.* 439; which rev'd 39 *Super. Ct. (J. & S.)* 431, which see. Said in 7 *Am. Dec.* 51, n., to be a leading case. Cited with approval in Stein v. Hauck, 56 *Ind.* 65; s. c., 27 *Am. R.* 10, 13. Followed and approved in Pierre v. Fernald, 26 *Me.* 436; s. c., 46 *Am. Dec.* 573, 576, with extended note; and on p. 582 of note, is said to have been often approved, and to hold what is the settled law in N. Y. and elsewhere. Fully approved in Ray v. Sweeney, 14 *Bush (Ky.)* 1; s. c., 29 *Am. R.* 388, 395, with note collating cases. Reviewed with other cases in Keats v. Hugo, 115 *Mass.* 204; s. c., 15 *Am. R.* 80, 85. Cited approvingly, with Myers v. Gemmel, 10 *Barb.* 537, in Mitchell v. Mayor, &c. of Rome, 49 *Ga.* 19; s. c., 15 *Am. R.* 669, 672; Turner v. Thompson, 58 *Ga.* 268; s. c., 24 *Am. R.* 497. Followed and approved in Guest v. Reynolds, 68 *Ill.* 478; s. c., 18 *Am. R.* 570, 577; Mahan v. Brown, 13 *Wend.* 261; and Myers v. Gemmel, 10 *Barb.* 537, being also relied on. Considered a leading case in 4 *Am. L. Rev.* 148. Followed (Effect of continued user in furnish-

- ing presumption of grant) in *Hammond v. Zehner*, 21 *N. Y.* 120. Approved in *Adams v. Van Alstyne*, 25 *Id.* 238. Applied in *Flora v. Carbeau*, 38 *Id.* 115. Considered in 11 *Am. Dec.* 663, *n.*, to hold what is the better opinion. Quoted in 2 *Washb. on Real Prop.* 319. Cited with other cases in 13 *Am. L. Reg. N. S.* 73. Applied (Incorporeal hereditament, as interest in land) in *Wolfe v. Frost*, 4 *Sandf. Ch.* 90. Explained (Implied easements) in *Lampman v. Milks*, 21 *N. Y.* 512.
- *v. Gainer*, 17 *Wend.* 559. See (Action for or against executor, &c.) *Code Civ. Pro.* 1881, ch. XV., tit. III., art. 1, *n.*
- *v. Greele*, 2 *Wend.* 545. Aff'd in 5 *Id.* 414.
- *v. Jackson*, 16 *Barb.* 33. Disting'd (Limitation of action to recover debt of decedent) in *Malloy v. Vanderbilt*, 4 *Abb. N. C.* 127, 130. Explained (Who to be sued, in case of death of one of joint obligors) in *De Agreda v. Mantel*, 1 *Abb. Pr.* 138. Applied (Judgment in case of misjoinder of defendants) in *McIntosh v. Ensign*, 28 *N. Y.* 175.
- *v. Jervis*, 3 *Keyes*, 271; *s. c.*, 3 *Abb. Ct. App. Dec.* 449. Explained (Review by Court of Appeals, of refusal to non-suit) in *Bryant v. Bryant*, 42 *N. Y.* 11, 17. Discussed (Change of possession on assignment for benefit of creditors) in *Burrill on Assign.* § 371, *n.* 1, 4 ed.
- *v. Laney*, 1 *Sup'm. Ct. (T. & C.)* 590. Rev'd in 58 *N. Y.* 469.
- *v. Newland*. See *Hatch v. Mann*.
- *v. Parmele*, 20 *Johns.* 130; *s. c.*, 11 *Am. Dec.* 253, with note, wherein it is said to be no longer authority in *N. Y.* (What will satisfy contract to give good deed); referring also to note at p. 34, where it is critically considered. See *Gazley v. Price*; *Green v. Reynolds*; *Mann v. Eckford*. Referred to in *Delavan v. Duncan*, 49 *N. Y.* 485, 487, as overruled in *Burwell v. Jackson*, 9 *Id.* 535. Explained in 1 *Chitty on Contr.* 429, *n. o.*, 11 *Am. ed.* Disting'd (When, in agreement for purchase of land, promise to pay is independent) in *Hageman v. Sharkey*, 1 *Louv. (Miss.)* 277; *s. c.*, 29 *Am. Dec.* 627.
- *v. Parshall*, 5 *N. Y. Leg. Obs.* 418. Overruled (Effect of chattel mortgage for sum payable in installments) in *Willis v. O'Brien*, 35 *Super. Ct. (J. & S.)* 541.
- *v. Rensselaer & Saratoga R. R. Co.*, 16 *Barb.* 315. See *Tracy v. Troy & Boston R. R. Co.* Explained with *Vandekar v. Rensselaer & Saratoga R. R. Co.*, 13 *Barb.* 390 (Cattle guards in village streets) in *Brace v. N. Y. Central R. R. Co.*, 27 *N. Y.* 269, 272. Questioned (Liability of other than owner of railroad, for injury resulting from failure to maintain such guards) in *Burchfield v. Northern Central R. R. Co.*, 57 *Barb.* 589, 591. With this case and *Ross v. Mather*, 51 *N. Y.* 108; *Delevan v. Simonson*, 35 *Super. Ct. (J. & S.)* 243 (Allegation of tort and variance therefrom) see *Wylie v. Northampton Nat. B'k U. S. Cir. Ct. S. D. N. Y.*, 15 *Fed. Rep.* 428.
- *v. Schenck*, 28 *Barb.* 33. See *Bennett v. Hall*. Explained and compared (Statute of frauds, as affecting contracts for articles to be made) in *Cooke v. Millard*, 65 *N. Y.* 362.
- *v. Van Houten*, 7 *Wend.* 145. Collated with other cases (Action by commissioners for obstructions in highway) in *Mills Thomps. on Highw.* 3 ed. 329.
- *v. Walrod*, 13 *Wend.* 296. Aff'd in 16 *Id.* 514; *s. c.*, 30 *Am. Dec.* 124, with note, wherein are collected citations of the case. See *Warner v. Shed*. Decision in 16 *Wend.* explained (Right to seize under process, property previously conveyed by defendant) in *Hall v. Stryker*, 27 *N. Y.* 596, 604. Recognized as authority in *Parker v. Smith*, 1 *Gilm. (6 Ill.)* 415; *Jackson v. Hobson*, 4 *Scann. (Ill.)* 418 (Protection in execution of process regular on its face). Limited in *Leachman v. Dougherty*, 81 *Ill.* 327; where *Webber v. Gay*, 24 *Wend.* 487; and *Clearwater v. Brill*, 4 *Hun.* 730, are doubted.
- Parker Mills v. Commissioners of Taxes.** See *People ex rel. Parker Mills v. Commissioners of Taxes*; *Williams v. Supervisors of Wayne Co.*
- Parkhurst v. Van Cortlandt**, 1 *Johns. Ch.* 273. Rev'd in 14 *Johns.* 15; *s. c.*, 7 *Am. Dec.* 427. See *Abel v. Radcliff*; *Clason v. Bailey*; *Phillips v. Thompson*. Decision in 14 *Johns.* followed (Effect of part performance to take contract out of statute of frauds) in *Green v. Green*, 2 *Redf.* 408, 410. Cited as authority in *Townsend v. Houston*, 1 *Harr. (Del.)* 532; *s. c.*, 27 *Am. Dec.* 732, 740, with note. Frequently referred to in the notes to *Woolam v. Hearn*, 2 *White & Tudor Lead. Cas. in Eq.* 484; where the distinction between seeking and resisting specific performance, as to the admission of evidence, is discussed. Commented on in 3 *Par. on Contr.* 395, *n. g.* Decision in 1 *Johns. Ch.* approved in *Pomeroy on Sp. Perf.* § 104, *n.*, as stating a now thoroughly established principle. Decision in 14 *Johns.* relied on (Necessity of memorandum in case of sale of real estate) in *Gwathney v. Cason*, 74 *N. C.* 5; *s. c.*, 21 *Am. R.* 484. Decision in 1 *Johns. Ch.* recognized as authority with *Benedict v. Lynch*, *Id.* 374 (Necessity that remedy be mutual, to entitle one to decree of special performance) in *De Cordova v. Smith*, 9 *Tex.* 129; *s. c.*, 58 *Am. Dec.* 136. Followed with *Wendell v. Van Rensselaer*, 1 *Johns. Ch.* 354; *Town v. Needham*, 3 *Paige*, 554 (Compensation for improvements made under *bona fide* claim of title) in *Horton v. Sledge*, 29 *Ala.* 478, 490.
- Parkinson v. Jacobson**, 13 *Hun.* 317. Aff'd as *Parkinson v. Sherman*, in 74 *N. Y.* 88; *s. c.*, 30 *Am. R.* 268. Further proceeding in 18 *Hun.* 353. Decision in *Id.* explained and followed (Rights under title derived from heir) in *Fonda v. Chapman*, 23 *Id.*

- 119, 122. Compare (Limit of time of lien) *Code Civ. Pro.* §§ 2750, 2751.
- **v. Scoville**, 19 *Wend.* 150. Said in *Easterly v. Goodwin*, 35 *Conn.* 280, to be overruled by *Baldwin v. Hale*, 1 *Wall.* 223 (Extra-territorial effect of discharge under State insolvent law). Explained in 3 *Par.* on *Contr.* 439, *n. w.*
- **v. Sherman**. See *Bumpus v. Platner*; *Parkinson v. Jacobson*.
- Parks v. Hardey**, 4 *Bradf.* 15. Collated with other cases (Valuation of land for dower) in *Sharsw. & B. Cas. on Real Prop.* 399.
- **v. Jackson**, 11 *Wend.* 442; *s. c.*, 25 *Am. Dec.* 656, with note containing citations. Effect of this case stated (Judgment against vendor of land, as affected by payment made subsequently by purchaser) in *Moyer v. Hinman*, 13 *N. Y.* 180.
- **v. Morris Ax & Tool Co.**, 4 *Lans.* 103; *s. c.*, 60 *Barb.* 140; 41 *Hov. Pr.* 18. Aff'd in 54 *N. Y.* 586. See *Hargous v. Stone*; *Reed v. Randall*. Decision in 54 *N. Y.* followed (Application of warranty in case of executory contract of sale) in *Brown v. Burhans*, 4 *Hun.* 227, 230. Approved and applied in *Nichols v. Townsend*, 7 *Id.* 378. Examined, and other cases cited, in 15 *Am. L. Rev.* 661.
- **v. Parks**, 19 *Abb. Pr.* 161. Disapproved (Validity of proceedings by or against infant without guardian) in *Wolford v. Oakley*, 43 *Hov. Pr.* 118, as rendered without benefit of *Rutter v. Puckhofer*, 9 *Bow.* 638. Disting'd in *Fairweather v. Satterly*, 7 *Robt.* 546; *McMurray v. McMurray*, 60 *Barb.* 117.
- **v. —**, 9 *Paige*, 107. Followed (Effect of valid coupled with illegal provisions in will) in *Van Schuyver v. Mulford*, 59 *N. Y.* 426, 433.
- Parmelee v. Egan**, 7 *Paige*, 610. Said to be defectively reported, and also explained (Right of judgment creditor to attack fraudulent sale) in *Cooke v. Smith*, 3 *Sandf. Ch.* 333, 338.
- **v. Hoffman Ins. Co.**, 54 *N. Y.* 193. Approved as clear and emphatic (Contradiction of proof of loss made by mistake) in *Waldeck v. Springfield F. & M. Ins. Co.*, 53 *Wis.* 129, 133.
- **v. Oswego & Syracuse R. R. Co.**, 7 *Barb.* 599. Aff'd in 6 *N. Y.* 74. Decision in *Id.* applied (Lessor when not bound to enter, to enforce forfeiture) in *Allegany Oil Co. v. Bradford Oil Co.*, 21 *Hun.* 26, 32.
- **v. Thompson**, 45 *N. Y.* 58. See *Keating v. Price*. Explained (Sufficiency of consideration to extend time of payment of debt) in *Tammien v. Clause*, 67 *Barb.* 431.
- Parmenter v. Roth**, 9 *Abb. Pr. N. S.* 385. Explained and extended (Limitations upon jurisdiction of county judge with respect to orders) in *Town of Middletown v. Roundout & Oswego R. R. Co.*, 12 *Id.* 276.
- Parmly v. Tenth Ward Bank**, 3 *Edw.* 395. Aff'd in 2 *Ch. Sent.* 20, but without opinion.
- Parrott v. Colby**, 6 *Hun.* 55. Aff'd, it seems, in 71 *N. Y.* 597, on opinion below. Decision in 6 *Hun.* applied (Stockholder's liability as affected by note given by corporation for debt) in *Jagger Iron Co. v. Walker*, 43 *Super. Ct. (J. & S.)* 275, 280. Quoted in 2 *Benj. on Sales*, § 1081, *n.* 17 (Corbin's 4 *Am. ed.*).
- **v. Knickerbocker Ice Co.**, 2 *Sweeny*, 93. Rev'd in 46 *N. Y.* 361. Decision in *Id.* followed (Recovery of interest on property lost or destroyed by negligence) in *Duryea v. Mayor, &c. of N. Y.*, 26 *Hun.* 120. Also followed with *Walrath v. Redfield*, 18 *N. Y.* 457, in *Mairs v. Manhattan Real Estate Ass'n*, 89 *Id.* 498. Quoted in *Sedg. & W. on Tr. of Tit. to Land*, § 670.
- Parsell v. Stryker**, 41 *N. Y.* 480. Disting'd (Specific performance of contract to devise) in *Shakespeare v. Markham*, 10 *Hun.* 311, 324. Followed (What is violation of constitutional provision against leases of agricultural lands) in *Rutherford v. Graham*, 4 *Id.* 796.
- Parshall v. Eggart**, 52 *Barb.* 367. Rev'd in 54 *N. Y.* 18. See *Delaware v. Ensign*. Decision in 54 *N. Y.* disting'd (Effect of chattel mortgage as to creditor becoming such before filing, though judgment is obtained afterwards) in *Matter of Collins*, 12 *Blatchf. C. Ct.* 548, 550.
- Parsons v. Barnard**, 7 *Johns.* 144; *s. c.*, 4 *N. Y. Com. L. Law. ed.* 277, with brief note. Approved (Federal courts have exclusive cognizance of suits for infringement of patents) in *Livingston v. Van Ingen*, 9 *Johns.* 582; *Gibson v. Woodworth*, 8 *Paige*, 134; *Smith v. Mercer*, 4 *West. L. J.* 53.
- **v. Bowdoin**, 17 *Wend.* 14. See *Hildreth v. Ellice*. Explained (Right of sheriff to poundage) in *Campbell v. Cothran*, 56 *N. Y.* 279, 284. Followed (Attorney's liability for sheriff's fees) in *Van Kirk v. Sedgwick*, 23 *Hun.* 37, 39.
- **v. Brown**, 5 *Hun.* 112. Leave given in 78 *N. Y.* 613, to withdraw appeal, and go to new trial before jury.
- **v. —**, 15 *Barb.* 590. Approved and followed (Evidence of possession of real estate) in *Hardenburgh v. Crary*, 50 *Id.* 32. See to the contrary, *Thistle v. Frostburgh Coal Co.*, 10 *Md.* 129. See, also, *Abb. Tr. Ev.* 692. Approved and followed (Right to use force in defending possession) in *Sage v. Harpending*, 49 *Id.* 166.
- **v. Hardy**, 14 *Wend.* 215; *s. c.*, 12 *N. Y. Com. L. Law. ed.* 592, with brief note. Explained (Delivery by common carrier) in *Ang. on Carr.* § 332, 5 *ed.*
- **v. Hughes**, 9 *Paige*, 591. Disting'd (Effect of settlement by defrauded party, on his right to relief) in *Baker v. Spencer*, 47 *N. Y.* 564.
- **v. Johnson**, 68 *N. Y.* 62. Collated with *Voorhees v. Burchard*, 55 *Id.* 95; *Comstock v. Johnson*, 46 *Id.* 615; *Huttemeier v. Albro*, 18 *Id.* 48; *Adams v. Conover*, 87 *Id.* 422; *Simmons v. Clooman*, 47 *Id.* 3; *Lampman*

- v. Milks*, 21 *Id.* 505; *Jackson v. Striker*, 1 *Johns. Cas.* 284, and cases from other jurisdictions (What passes as incident to grant of land) in 40 *Am. R.* 381, *n.* Explained in *Moak's Underhill's Torts*, 1 *Am. ed.* 433.
- *v. Loucks*, 4 *Robt.* 216. Aff'd in 48 *N. Y.* 17. Decision in *Id.* disting'd (When contract to manufacture is sale within statute of frauds) in *Cooke v. Millard*, 65 *Id.* 360. Followed in *Deal v. Maxwell*, 51 *Id.* 652. Explained in *Benj. on Sales*, § 109, *n. y* (Bennett's 4 *Am. ed.*).
- *v. Lyman*, 4 *Bradf.* 268. Rev'd in part as *Lyman v. Parsons*, 28 *Barb.* 566, and the latter aff'd, though with different directions as to the accounting, and without passing on the construction of the will, in 20 *N. Y.* 103; *s. c.*, 18 *How. Pr.* 193. Decision in *Id.* applied (Transfer of personal property, by what law governed) in *Ackerman v. Cross*, 40 *Barb.* 483. Approved and followed (Authority of foreign executor or administrator) in *Stone v. Scripture*, 4 *Lans.* 188. Commented on in 11 *Am. Dec.* 394, *n.*, citing other cases. See *Code Civ. Pro.* 1881, § 2701, *n.*
- *v. Monteath*, 13 *Barb.* 353. See *Cole v. Goodwin*; *Gould v. Hill*; *Hollister v. Nowlen*; *Welles v. N. Y. Central R. R. Co.* Explained (Right of carrier to limit his liability) in *Railroad Co. v. Lockwood*, 17 *Wall.* 357, 364. Commented on in *Ang. on Carr.* § 239, *a*, 5 *ed.*
- *v. Sutton*, 39 *Super. Ct. (J. & S.)* 544. Aff'd in 66 *N. Y.* 92. Decision in *Id.* quoted and explained (Remedies of buyer in case of special damage) in 2 *Benj. on Sales*, § 1322, *n.* 6 (Corbin's 4 *Am. ed.*).
- *v. Tilden*, 3 *Sup'm. Ct. (T. & C.)* aff'd in 59 *N. Y.* 639.
- *v. Travis*, 5 *Duer*, 650. See (Payment into court) *Code Civ. Pro.* 1881, § 743, *n.*
- Partenheimer v. Van Order**, 20 *Barb.* 479. With *Guille v. Swan*, 19 *Johns.* 361, applied to case of trespass (Joint liability for injury arising from acts of several acting independently) in *Blaisdell v. Stephens*, 14 *Nev.* 17; *s. c.*, 33 *Am. R.* 525. Commented on in *Throop Justice's Man.* 2 *ed.* 115. See *Code Civ. Pro.* 1881, § 3109, *n.*
- Partridge v. Badger**, 25 *Barb.* 146. Collated with *Barry v. Merchants' Exchange Co.*, 1 *Sandf. Ch.* 280; *Beers v. Phoenix Glass Co.*, 14 *Barb.* 358; *De Ruyter v. St. Peter's Church*, 3 *N. Y.* 238; *Clark v. Titcomb*, 42 *Barb.* 122; *Central Gold Mining Co. v. Platt*, 3 *Daly*, 263, and other cases in 23 *Am. Dec.* 740, *n.*, as establishing the principle beyond question (*Jus disponendi* as incident of ownership in corporations).
- *v. Colby*, 19 *Barb.* 248. Cited with *McVean v. Scott*, 46 *Id.* 379; *Muir v. Demarce*, 12 *Wend.* 468; *McCaughney v. Smith*, 27 *N. Y.* 39 (Effect of adding to note after issue, additional maker's name) in 1 *Whart. Com. on Ev.* § 626, *n.*
- *v. Eaton*, 3 *Hun*, 533; *s. c.*, more fully, 5 *Sup'm. Ct. (T. & C.)* 625. Aff'd in 63 *N. Y.* 482. See also (Rights in pond) *Myer v. Whitaker*, 5 *Abb. N. C.* 172, *n.*
- *v. Gilbert*, 3 *Duer*, 184. Aff'd in 15 *N. Y.* 601. See *Lampman v. Milks*; *Sherred v. Cisco*. Decision in 15 *N. Y.* explained (Right to increase height of party wall) in *Brooks v. Curtis*, 50 *Id.* 639, 643. Collated with other cases in *McAdam on Landl. & T.* 2 *ed.* § 233. Quoted in *Wood on Nuis.* 2 *ed.* §§ 221, 226, 230, 234, 238, 242. Applied with *Sherred v. Cisco*, 4 *Sandf.* 480 (Destruction of easement in party wall, by destruction of the wall) in *Hoffman v. Kuhn*, 57 *Miss.* 746; *s. c.*, 34 *Am. R.* 491, 493, where, however, the wall itself was left standing.
- *v. Gildermeister*, 6 *Bosw.* 57. Aff'd in 1 *Keyes*, 93; *s. c.*, 3 *Abb. Ct. App. Dec.* 461.
- *v. Menck*, 2 *Sandf. Ch.* 622. Aff'd in 2 *Barb. Ch.* 101; *s. c.*, 47 *Am. Dec.* 281, with extended note, and the latter aff'd in *How. App. Cas.* 547. See *Fetridge v. Wells*. Decisions in 2 *Sandf. Ch.* and 2 *Barb. Ch.* applied (Violation of right in trademark) in *Merrimack Manfg Co. v. Garner*, 2 *Abb. Pr.* 325; *Swift v. Dey*, 4 *Robt.* 612. Decision in 2 *Sandf. Ch.* applied in *Corwin v. Daly*, 7 *Bosw.* 228. Collated with other cases in *Thomps. on Prov. Rem.* 261. Collated with other cases in 35 *Am. R.* 549, *n.* Opinion of *WALWORTH*, Chancellor, quoted in 2 *Pars. on Contr.* 257*b*, *n. i.* That of *SANDFORD*, *V. C.*, quoted in 1*d.* 257*b*, *n. f.* Decision in 2 *Barb. Ch.* explained in *Newman v. Alvord*, 49 *Barb.* 596. Applied in *Glen & Hall Manfg Co. v. Hall*, 61 *N. Y.* 233; *Godillot v. Hazard*, 44 *Super. Ct. (J. & S.)* 430. Cited as authority in *Manfg Co. v. Trainer*, 101 *U. S.* 51, 62. Decision in *How. App. Cas.* followed in *Fetridge v. Wells*, 4 *Abb. Pr.* 155; *Hobbs v. Francois*, 19 *How. Pr.* 571. Decisions in 2 *Sandf. Ch.* and *How. App. Cas.* applied in *Fetridge v. Merchant*, 4 *Abb. Pr.* 157.
- *v. Westervelt*, 13 *Wend.* 500. Applied (Authority of outgoing sheriff) in *Feerick v. Conner*, 60 *How. Pr.* 506, 509.
- Paskoag Bank v. Hunt**, 3 *Edw.* 583. Questioned (Right to follow in equity, securities illegally obtained) in *Newton v. Porter*, 5 *Lans.* 416, citing *Bank of America v. Pollock*, 4 *Edw.* 583.
- Passaic Mfg Co. v. Hoffman**, 3 *Daly*, 495. Explained and compared (When contract to manufacture is sale within statute of frauds) in *Cooke v. Millard*, 65 *N. Y.* 363. Explained in *Benj. on Sales*, § 109, *n. y* (Bennett's 4 *Am. ed.*).
- Passenger v. Thorburn**, 35 *Barb.* 17. Aff'd in 34 *N. Y.* 634. See *Cary v. Gruman*. Decision in 34 *N. Y.* disting'd (Representations that amount to warranty) in dissenting opinion in *Brown v. Tuttle*, 66 *Barb.* 178. Limited (Damages for breach of special warranty) in *Whitney v. Taylor*, 54 *Barb.* 539. Disting'd in *Edwards v. Collison*, 5 *Lans.* 323. Ex-

- plained (Allowance of expected gains as damages for breach of contract for delivery of merchandise) in *Kemp v. Knickerbocker Ice Co.*, 51 *How. Pr.* 42; *Albert v. Bleecker St. R. R. Co.*, 2 *Daly*, 394. Followed in *White v. Miller*, 7 *Hun*, 438, which was rev'd in 71 *N. Y.* 132, which see; *Schutt v. Baker*, 9 *Hun*, 557; *Parks v. Morris Ax & Tool Co.*, 54 *N. Y.* 592. Disting'd in *Van Wyck v. Allen*, 69 *Id.* 67. Approved in *Milburn v. Belloni*, 39 *Id.* 54. Cited approvingly with *White v. Madison*, 26 *N. Y.* 117; *White v. Miller*, 71 *Id.* 118, in *Herring v. Skaggs*, 62 *Ala.* 180; s. c., 34 *Am. R.* 4. Followed with *Schutt v. Baker*, 9 *Hun*, 556; *Van Wyck v. Allen*, 69 *N. Y.* 62; *Milburn v. Belloni*, 39 *Id.* 53; *White v. Miller*, 71 *Id.* 118, in *Jones v. George*, 61 *Tex.* 345; s. c., 48 *Am. R.* 280, 289. Followed in *Lewis v. Rountree*, 79 *N. C.* 122; s. c., 28 *Am. R.* 309. Included with note in *Sedgw. Cas. on Dama.* 533.
- Patchen v. Devin**, 37 *Barb.* 430. Rev'd as *Devin v. Patchin*, 26 *N. Y.* 441; s. c., less fully, 25 *How. Pr.* 5.
- Patchin v. Trustees of Brooklyn**, 2 *Wend.* 377. Aff'd in 8 *Id.* 47. See *Striker v. Kelly*. Decision in 2 *Wend.* approved with *Striker v. Kelly*, 2 *Den.* 323; *Matter of Canal Street*, 11 *Wend.* 154 (What is a judicial power) and applied to case of admission of attorneys, in *Matter of Cooper*, 22 *N. Y.* 67, 83.
- Paterson v. Bangs**, 9 *Paige*, 627. Said to have been overruled, and also criticised and disting'd (Intervention of court of equity after judgment) in *Pollock v. Gilbert*, 16 *Ga.* 398; s. c., 60 *Am. Dec.* 732, with note.
- Paton v. Westervelt**, 5 *How. Pr.* 399. Referred to in 1 *Am. Dec.* 342, n., as overruled (Perpetuation of testimony, as matter of right). Cited (Depositions in perpetual memory, when to be taken) in 1 *Whart. Com. on Ev.* § 183, n.
- **v. Wright**. See *Deming v. Colt*.
- Patrick v. Commercial Ins. Co.**, 11 *Johns.* 14. Questioned (What is predominating and efficient cause of loss under marine policy) in *Brown v. St. Nicholas Ins. Co.*, 61 *N. Y.* 332, 343. Disting'd in *Sauter v. N. Y. Central, & C. R. Co.*, 66 *Id.* 53, a case of a railroad accident.
- **v. Excelsior Life Ins. Co.**, 4 *Hun*, 263; s. c., more fully, 67 *Barb.* 202.
- **v. Hallett**, 1 *Johns.* 241. Followed with *Talcot v. Commercial Ins. Co.*, 2 *Id.* 129 (When presumption of unseaworthiness may be repelled) in *Sneath v. Memphis Ins. Co.*, 3 *La. Ann.* 474; s. c., 48 *Am. Dec.* 462, with note.
- **v. Ludlow**, 3 *Johns. Cas.* 10; s. c., 2 *Am. Dec.* 130; 1 *N. Y. Com. L. Law. ed.* 600, with brief note on deviation.
- **v. Metcalf**, 9 *Bosw.* 483. Aff'd on the merits in 37 *N. Y.* 332. Decision in *Id.* followed (Right of action against one receiving payment under claim of right, to the exclusion of another's claim) in *Butterworth v. Gould*, 41 *Id.* 456. Followed with *Butterworth v. Gould*, in *Osby v. Conant*, 5 *Lans.* 310. Followed in *Rowe v. Bank of Auburn*, 51 *N. Y.* 674; *Peckham v. Van Wagenen*, 83 *Id.* 40, 45. Disting'd in *Carver v. Crique*, 48 *Id.* 389; *Hathaway v. Town of Cincinnati*, 62 *Id.* 434, 445; *Lake v. Devoe Manufacturing Co.*, 7 *Daly*, 161, 163. Approved with *Butterworth v. Gould*, 41 *N. Y.* 450; *Rowe v. Bank of Auburn*, 51 *Id.* 674; *Hathaway v. Town of Homer*, 54 *Id.* 655; *Decker v. Salzman*, 50 *Id.* 275, in *Nolan v. Manton*, *Supm. Ct. N. J.* 1884, 18 *Reporter*, 402.
- Patrie v. Murray**, 28 *How. Pr.* 312. Compare (Power of Congress to confer original jurisdiction on U. S. circuit courts) in *People v. Murray*, 5 *Park.* 577.
- Patten v. Accessory Transit Co.**, 4 *Abb. Pr.* 139. Rev'd in 4 *Id.* 235.
- **v. Harris**, 10 *Wend.* 623. Disting'd (Granting leave to plead, after judgment on demurrer) in *Fisher v. Gould*, 81 *N. Y.* 228, 231.
- **v. N. Y. Elevated R. R. Co.**, 3 *Abb. N. C.* 306. Appeal from affirmance of injunction dismissed in 67 *N. Y.* 484. Decision in 3 *Abb. N. C.* disting'd (Damages to owners of land abutting on railroad) in *Caro v. Metrop. Elev. Ry. Co.*, 46 *Super. Ct. (J. & S.)* 138, 160. Compare *Washington Cemetery v. Prospect Park, &c. R. R. Co.*, 4 *Abb. N. C.* 15.
- **v. Stitt**, 34 *Super. Ct. (J. & S.)* 346. Overruled as to costs in 50 *N. Y.* 591.
- Patterson, Matter of**, 18 *Hun*, 221. Aff'd, it seems, in 78 *N. Y.* 608, on opinion of court below. See *matter of Burr*.
- Patterson v. Baker**, 3 *Hun*, 398; s. c., reported in 6 *Supm. Ct. (T. & C.)* 76.
- **v. Birdsall**, 6 *Hun*, 632. Aff'd in 64 *N. Y.* 294; s. c., 21 *Am. R.* 609. Both decisions disting'd (Right of usurious lender to be subrogated to security of prior incumbrance) in *Baldwin v. Moffett*, 26 *Hun*, 209; which was aff'd in 94 *N. Y.* 82, which see. Decision in 64 *Id.* disting'd (Valid obligation as affected by being made subject of contract void for usury) in *Wyeth v. Braniff*, 84 *Id.* 627, 633.
- **v. Brewster**, 4 *Edw.* 322. Disting'd and criticised (Ordinary rules of partnership as applicable to partnerships in buying and selling land) in *Chester v. Dickerson*, 54 *N. Y.* 1, 11.
- **v. Choate**, 7 *Wend.* 441. See *Johnson v. Beardslee*; *Van Keuren v. Parmelee*. Overruled (Effect of acknowledgment by one partner after dissolution to remove bar of statute of limitations as to rest) in *Van Keuren v. Parmelee*, 2 *N. Y.* 523. Followed in *Wheelock v. Doolittle*, 18 *Verm.* 440; s. c., 46 *Am. Dec.* 163, with note.
- **v. Ellis**, 11 *Wend.* 259; with points of counsel *Id.* 672. See *Loder v. Hatfield*. Disting'd (Legacy, when vested) in *Everitt v. Everitt*, 29 *Barb.* 114, which was rev'd



- in 29 *N. Y.* 39, 76, which see; Five Points House of Industry *v.* Amerman, 11 *Hun.* 163. Applied in Booth *v.* Cornell, 2 *Redf.* 263. Disting'd (Limitation over, when repugnant to prior gift) in Smith *v.* Van Ostrand, 64 *N. Y.* 284. Explained (Effect of limitation over after death of prior taker without issue) in Norris *v.* Beyea, 13 *Id.* 279, which rev'd 15 *Barb.* 426, which see. Disting'd in Trustees of Theol. Sem. of Auburn *v.* Kellogg, 16 *N. Y.* 91. Quoted in 3 *Jarm. on Wills*, Rand. & T. ed. 298, n. 2.
- **v. Patterson**, 47 *How. Pr.* 242. Aff'd in 1 *Hun.* 323; which was aff'd in part, in 59 *N. Y.* 574; s. c., 17 *Am. R.* 384. Decision in *Id.* examined and applied (Set-off of claim not due at decedent's death, in action by personal representative) in Jordan *v.* Shoe & Leather B'k, 474 *Id.* 467, 474. Explained as an exception to the general rule in McLaughlin *v.* Winner, 63 *Wis.* 120, 129. Explained (Necessity of mutual right of action at same time, to enable set-off) in Taylor *v.* Mayor, &c. of N. Y., 82 *Id.* 10, 17. Thought (Liability for funeral expense) in 9 *Am. Dec.* 652, n., to be not inconsistent with Gregory *v.* Hooker, 1 *Hawks. (N. C.)* 394; s. c., 9 *Am. Dec.* 646, and other cases.
- **v. —**, 13 *Johns.* 379. Followed as decisive (Liability on agreement to compensate by will) in Campbell *v.* Campbell, 65 *Barb.* 639, 645. Cited as authority in Jilison *v.* Gilbert, 26 *Wis.* 637; s. c., 7 *Am. R.* 100, 104. Explained in 2 *Pars. on Contr.* 54, n. f.
- **v. People**, 46 *Barb.* 625. Disapproved as contrary to all authority (Duty of prisoner to prove justification beyond reasonable doubt) in People *v.* Schryver, 42 *N. Y.* 1, 8.
- **v. Perry**, 5 *Bosw.* 518; s. c., 10 *Abb. Pr.* 82, where opinion of HOFFMAN, J., is given at length.
- **v. Stettaner**, 39 *Super. Ct. (J. & S.)* 413. Further proceeding in 40 *Id.* 54. Decision in 39 *Id.* collated with other cases (What cases are referable) in 1 *Abb. N. C.* 110, n.
- **v. Westervelt**, 17 *Wend.* 543. Followed with Bank of Rome *v.* Curtiss, 1 *Hill*, 275; Pardee *v.* Robertson, 6 *Id.* 550 (Damages in action against sheriff, &c.) in Evans Governor, 18 *Ala.* 659; s. c., 54 *Am. Dec.* 172. Cited approvingly in 2 *Sedgw. on Meas. of Dama.* 7 ed. 451.
- Pattison v. Adams**, 7 *Hill*, 126; s. c., 42 *Am. Dec.* 59, with note, wherein are collected citations of the case. Prior decision in *Hill & D.* 426. Decision in 7 *Hill* disting'd with Scofield *v.* Whitlegge, 49 *N. Y.* 259 (Allegations as to property, in complaint in replevin) in Morrison *v.* Lewis, 49 *Super. Ct. (J. & S.)* 178. Cited as authority in Vanderminde *v.* Elsas, 36 *Id.* 66. Decision in *Hill & D.* questioned as an authority under present system of pleading (Answer of title in third person in replevin) in Stowell *v.* Otis, 71 *N. Y.* 36, 38.
- **v. Blanchard**, 6 *Barb.* 537. Aff'd in 5 *N. Y.* 186. Decision in *Id.* cited (When joint enterprise does not constitute partnership) in *Story on Partn.* 7 ed. § 40, n. Discussed in 1 *Collyer on Partn.* § 50, Wood's Am. ed.
- **v. Hull**, 9 *Cow.* 747; s. c., 9 *N. Y. Com. L. Law. ed.* 800, with brief note. See Bank of Albion *v.* Smith; Green *v.* Hart. Applied (Application of payments) in Dows *v.* Morewood, 10 *Barb.* 189. Doubted in Gaston *v.* Barney, 11 *Ohio St.* 512. Collated with other cases in 38 *Am. Dec.* 440, n. See cases collected in 5 *Am. L. Reg. N. S.* 262. Commented on in 1 *Hare & W. Am. Leud. Cas.* 5 ed. 352. Explained in 2 *Chitty on Contr.* 1114, n. 2, 11 Am. ed. Followed (Necessity of cross-bill in foreclosure proceedings) in Schwarz *v.* Sears, *Walk. Ch. (Mich.)* 174, where also Hine *v.* Handy, 1 *Johns. Ch.* 6; Nichols *v.* Wilson, 4 *Id.* 115, were explained as not authorities for giving positive relief to mortgagee. Followed (Interest in mortgage passes as incident to mortgage debt) in Buck *v.* Swazey, 35 *Me.* 41; s. c., 56 *Am. Dec.* 681.
- **v. Powers**, 8 *Paige*, 549. Overruled (Necessity of discontinuance of action on mortgage debt, in case of foreclosure suit) in Williamson *v.* Champlin, 8 *Id.* 70; Suydam *v.* Bartles, 9 *Id.* 294. Followed with Comstock *v.* Drohan, 71 *N. Y.* 9; Scofield *v.* Doscher, 72 *Id.* 491 (Parties to foreclosure suit) in Vanderbilt *v.* Schreyer, 91 *Id.* 392.
- **v. Richards**, 22 *Barb.* 143. See Leavenworth *v.* Packer. Applied (Counter-claim against tort) in Cheever *v.* Gilbert Elev. R. Co., 43 *Super. Ct. (J. & S.)* 478, 496.
- **v. Syracuse Nat. B'k**, 1 *Hun.* 606; s. c. fully reported in 4 *Sup'm. Ct. (T. & C.)* 96. Further decision in 17 *Hun.* 419; which was aff'd in 80 *N. Y.* 82; s. c., 36 *Am. R.* 582, with note, and 2 *Browne's Nat. B'k Cas.* 319. Decision in *Id.* approved (Power of national banks to receive special deposits) in First Nat. B'k *v.* Graham, 100 *U. S.* 699. Cited approvingly in 2 *Pars. on Contr.* 90, n. 1 Keller's ed. See authorities collected in 6 *South. L. Rev. N. S.* § 4, p. 518.
- Patty v. Milne**, 16 *Wend.* 557. Aff'd in 22 *Id.* 588, but without opinion.
- **v. Pease**, 8 *Paige*, 277; s. c., 35 *Am. Dec.* 683. Applied (Effect of release, &c. of part of mortgaged premises) in Kendall *v.* Woodruff, 87 *N. Y.* 1, 7. Approved with Guion *v.* Knapp, 6 *Paige*, 35, in Iglehart *v.* Wesson, 42 *Ill.* 267.
- Paul v. Lahe**, 3 *Weekly Dig.* 512. Contradiction in report explained in 7 *Abb. N. Y. Dig. (Supp.)* 743, n.
- **v. Munger**, 47 *N. Y.* 469. Followed (Effect of order dissolving preliminary injunction) in People *v.* Schoonmaker, 50 *Id.* 499.

- Paulding v. Cooper**, 10 *Hun*, 20. Aff'd, it seems, in 74 *N. Y.* 619, but without opinion. Decision in 10 *Hun* applied (Limit of cost of municipal contract) in *People ex rel. Murphy v. Kelly*, 5 *Abb. N. C.* 383, 459.
- Pawling v. Bird**, 13 *Johns.* 192. See *Kinnier v. Kinnier*. Overruled (Effect of judgment obtained in another State) in *Andrews v. Montgomery*, 19 *Johns.* 162. Cited approvingly in 1 *Kent Com.* 261, *n. b.*, with many other authorities.
- **v. Willson**, 13 *Johns.* 192; *s. c.*, 5 *N. Y. Com. L. Law. ed.* 584, with brief note.
- Payn, Matter of**, 8 *How. Pr.* 220. See (Committee of lunatic, &c.) *Code Civ. Pro.* 1881, § 2322, *n.*
- Payn v. Grant**, 23 *Hun*, 134. Disting'd (Who may defend in foreclosure suit) in *Smith v. Hathorn*, 25 *Id.* 159, 162.
- Payne v. Baldwin**, 14 *Barb.* 570. Questioned (Agreement to answer for another obligation, when collateral) in *Quintard v. De Wolf*, 34 *Barb.* 97, 102.
- **v. Burnham**, 2 *Hun*, 143; *mem. s. c.*, 4 *Sup'm. Ct. (T. & C.)* 678. Rev'd in 62 *N. Y.* 69. Decision in *Id.* followed (Purchaser of usurious mortgage, to what extent protected) in *Coffin v. Brooks*, *N. Y. Daily Reg.* Aug. 26, 1882. Followed (Mortgagor's affidavit, &c., how far an estoppel against defense of usury) in *Hirsch v. Trainer*, 3 *Abb. N. C.* 279; *Smyth v. Lombardo*, 15 *Hun*, 417; *Smyth v. Munroe*, 84 *N. Y.* 362. Limited in *Grissler v. Powers*, 53 *How. Pr.* 197, which was aff'd in 81 *N. Y.* 60, which see. Disting'd in *Fleischmann v. Stern*, 24 *Hun*, 265, 268, a case of a note. Examined with other cases (Requisites of estoppel, *in pais*) in *Victor v. International Nav. Co.*, 45 *Super. Ct. (J. & S.)* 129, 143.
- **v. Cutler**, 13 *Wend.* 605. See *Bay v. Coddington*; *Root v. French*; *Wardell v. Howell*. Reviewed with other cases (Effect of transfer for pre-existing debt, as constituting holder for value of commercial paper) in *Farrington v. Frankfort B'k*, 24 *Barb.* 563. Disting'd in *De Zeng v. Fyfe*, 1 *Bosw.* 337. Followed in *Stalker v. McDonald*, 6 *Hill*, 98; *Clark v. Ely*, 2 *Sandf. Ch.* 171.
- **v. Eden**. See *Callagan v. Hallett*; *Wigin v. Bush*.
- **v. Gardiner**, 29 *N. Y.* 146. Aff'g *Payne v. Slate*, 39 *Barb.* 634. See *Herrick v. Woolverton*; *Winchell v. Hicks*. Decision in 29 *N. Y.* explained (Effect as promissory note, of instrument acknowledging receipt of money) in *Frank v. Wessels*, 64 *Id.* 158. Applied (Distinction between loan and deposit) in *Upton v. N. Y. & Erie B'k*, 13 *Hun*, 272. Explained in *Pardee v. Fish*, 60 *N. Y.* 269. Disting'd with *Thomson v. Bank of British N. A.*, 82 *Id.* 1; *Boughton v. Flint*, 74 *Id.* 476 (Necessity of demand, in order to set statute of limitations running) in *Compton v. Elliott*, 48 *Super. Ct. (J. & S.)* 211. Dicta disapproved (Limitation of action on demand note, &c.) in *Hirst v. Brooks*, 50 *Barb.* 337. Explained in *Sullivan v. Fosdick*, 10 *Hun*, 179. Applied in *Munger v. Albany City Nat. B'k*, 85 *N. Y.* 580, 587. Both decisions explained in *Herrick v. Woolverton*, 41 *Id.* 595. See *Code Civ. Pro.* 1881, § 410, *n.*
- **v. Hathaway**, 4 *N. Y. Leg. Obs.* 21. Explained and followed (Security for costs in justices' courts) in *Mellen v. Hutchins*, 8 *Abb. N. C.* 228.
- **v. Hodge**, 7 *Hun*, 612. Aff'd in 71 *N. Y.* 598, but without opinion. Decision in 7 *Hun* followed (Admissibility of evidence based on memoranda) in *Mayor, &c. of N. Y. v. Second Ave. R. R. Co.*, 31 *Id.* 241.
- **v. Ladue**, 1 *Hill*, 116. See *Bank of Albion v. Smith*; *Pechner v. Phoenix Ins. Co.* Approved (Want of consideration as defense to action on note) in *Walker v. Crawford*, 56 *Ill.* 444; *s. c.*, 8 *Am. R.* 701.
- **v. Matthews**, 6 *Paige*, 19; *s. c.*, 29 *Am. Dec.* 738, with note, wherein are collected citations. Disapproved (Respective rights of partnership and separate creditors) in *Kirby v. Carpenter*, 7 *Barb.* 373, 378.
- **v. Sheldon**, 43 *How. Pr.* 1. Rev'd in 63 *Barb.* 169.
- **v. Slate**. See *Payne v. Gardiner*.
- **v. Troy & Boston R. R. Co.**, 9 *Hun*, 526. Subsequent decision in 83 *N. Y.* 572. Decision in 9 *Hun* applied (Inadmissibility of evidence of subsequent acts, to show negligence) in *Morrell v. Peck*, 24 *Id.* 37. Followed (Question of negligence, when one of fact) in *Urquhart v. City of Ogdensburgh*, 13 *Weekly Dig.* 108.
- **v. Wilson**, 11 *Hun*, 302. Aff'd in 74 *N. Y.* 348.
- Peabody v. Beach**, 6 *Duer*, 53; *s. c.*, more fully, 3 *Abb. Pr.* 353.
- **v. Roberts**, 47 *Barb.* 91. Applied (Effect of foreclosure on dower interest if wife is not made party) in *Ross v. Boardman*, 22 *Hun*, 527, 529. See (Limitation of action to redeem prior mortgage) *Code Civ. Pro.* 1881, § 379, *n.*
- **v. Speyers**, 56 *N. Y.* 230. See *Cook v. Barr*. Followed (Validity of contract to sell gold or silver coin) in *Bigelow v. Benedict*, 9 *Hun*, 432; which was aff'd in 70 *N. Y.* 207, which see. Explained (Note or memorandum required by statute of frauds) in 1 *Benj. on Sales*, § 231, *n.* 28, 4 *Am. ed.*
- Peacock v. N. Y. Life Ins. Co.**, 1 *Bosw.* 338. Aff'd in 20 *N. Y.* 293. See *Ætna Fire Ins. Co. v. Tyler*.
- Peak v. Lennon**, 1 *Lans.* 295. Aff'd, it seems, in 49 *N. Y.* 666, but without opinion.
- Peake v. Bell**, 7 *Hun*, 454. Disapproved (Power to set aside verdict, as against weight of evidence) and *Shearman v. Henderson*, 12 *Id.* 170, followed in *McCarthy v. Christopher St., &c. R. R. Co.*, 10 *Daly*, 540. Disapproved in *Shearman v. Henderson*, 12 *Hun*, 170. Disapproved with *Sickles v. Gillies*, 45 *How. Pr.* 94; *Rowe v.*

- Stevens, 44 *Id.* 10, in *Kelly v. Frazier*, 27 *Hun.* 314.
- Pearce v. Ferris**, 10 *N. Y.* 280. Discussed (Complaint in ejectment) in *Sedgw. & W. on Tr. of Tit. to Land*, § 452.
- Pearl v. Robitschek**, 2 *Daly*, 138. Followed (Attorney's lien for costs, as affected by settlement) in *Wright v. Wright*, 7 *Id.* 62.
- Pearsall v. Post**, 20 *Wend.* 111. Aff'd in 22 *Id.* 425. Decision in 20 *Id.* reviewed with other cases (Mode of alleging interest or profit in soil of another) in *Littlefield v. Maxwell*, 31 *Me.* 134; s. c., 50 *Am. Dec.* 653, 655, with note. Collated with other case, and commented on (Right to use adjoining banks of stream, as place of public landing) in *Cook's Highw. L.* 4 ed. 24. Quoted and collated with other cases, in *Mills Thomps. on Highw.* 3 ed. 6. Compared and doctrine discussed in 4 *Am. L. Reg. N. S.* 520. Collated with other cases (Changing purpose for which land has been dedicated) in *Mills Thomps. on Highw.* 3 ed. 17.
- Pearse v. Pettis**, 47 *Barb.* 276. Explained and disting'd (Rescission of contract of sale) in *Kinney v. Kiernan*, 2 *Lans.* 492; which was rev'd in 49 *N. Y.* 164, which sec.
- Pearson v. Lovejoy**, 53 *Barb.* 407. See (Notice of appeal in justices' court) *Code Civ. Pro.* 1881, § 3046, n.
- **v. Pearson**, 7 *Johns.* 26; s. c., 4 *N. Y. Com. L. Law. ed.* 237, with brief note. Followed with *Fink v. Cox*, 18 *Johns.* 145 (Enforcing promise to pay money as gift) in *Hall v. Howard's Adm'r's, Rice's Law (So. Car.)* 310; s. c., 33 *Am. Dec.* 115, with note; *Wright v. Wright*, 1 *Cow.* 598, being disapproved as contrary to principle and authority, in so far as it asserts a contrary doctrine.
- **v. Williams**, 24 *Wend.* 244. Aff'd in 26 *Id.* 630. See *Bagley v. Peddie*. Decision in 26 *Id.* discussed (Liquidated damages) in 2 *Chitty on Contr.* 1317, n. e', 1318, 11 *Am. ed.*
- Pease v. Barber**, 3 *Cai.* 266. See *Gillet v. Maynard*. Examined with *Reid v. Rensselaer Glass Factory*, 3 *Cow.* 423; *People v. Gasherie*, 9 *Johns.* 71 (Interest) in *Beardslee v. Horton*, 3 *Mich.* 564.
- **v. Copp**, 67 *Barb.* 132. Explained (Duty of vendee to examine goods delivered) in *Benj. on Sales*, § 701, n. d' (Bennett's 4 *Am. ed.*).
- **v. Howard**, 14 *Johns.* 479. Followed (Action of debt on judgment not barred by statute of limitations) in *Dudley v. Lindsey*, 9 *B. Monr. (Ky.)* 486; s. c., 50 *Am. Dec.* 522, with note. Discussed in *Ang. on Limit.* §§ 79, 82, 85, 6 ed. Cited as authority (Judgment is not contract) in *Sprott v. Reid*, 3 *G. Greene (Iowa)* 489; s. c., 56 *Am. Dec.* 549, 553.
- **v. Morgan**, 7 *Johns.* 463. Explained (When averment that note was made or indorsed by several, is supported by proof that one signed for all) in *Nash v. Skinner*, 12 *Verm.* 219; s. c., 36 *Am. Dec.* 338, 341.
- **v. Smith**, 5 *Lans.* 519. Aff'd in 61 *N. Y.* 477. Decision in *Id.* approved (Effect of testimony of witness who has made false statements) in *Deering v. Metcalf*, 74 *Id.* 501, 505.
- Pechner v. Phoenix Ins. Co.**, 6 *Lans.* 411. Aff'd in 65 *N. Y.* 195; which was aff'd as *Ins. Co. v. Pechner*, 95 *U. S.* 183. Decision in 65 *N. Y.* explained (Waiver by insurance agent) in *Marvin v. Universal Life Ins. Co.*, 85 *Id.* 278, 283. Followed in *Goodwin v. Mass. Mut. Life Ins. Co.*, 73 *Id.* 480, 491, 495. Reviewed at length with *East-erly v. Barber*, 66 *Id.* 433; *Batterman v. Pierce*, 3 *Hill*, 171; *Reab v. McAlister*, 8 *Wend.* 109; *Hutchins v. Hebbard*, 34 *N. Y.* 24; *Barry v. Ransom*, 12 *Id.* 462; *Hope v. Balen*, 58 *Id.* 380; *Messmore v. N. Y. Shot & Lead Co.*, 40 *Id.* 422; *White's B'k of Buffalo v. Myles*, 17 *Alb. L. J.* 433; *Bookstaver v. Jayne*, 60 *N. Y.* 146; *Johnson v. Hathorn*, 3 *Keyes*, 126; *Western N. Y. Life Ins. Co. v. Clinton*, 66 *N. Y.* 331; *Bowen v. Bell*, 20 *Johns.* 338; *Renard v. Sampson*, 12 *N. Y.* 561, 566; *Benton v. Martin*, 52 *Id.* 570; *Souverby v. Arden*, 1 *Johns. Ch.* 253; *Johnson v. McIntosh*, 31 *Barb.* 267; *Burbank v. Beach*, 15 *Id.* 326, 332; *Frost v. Everett*, 5 *Cow.* 497; *Martin v. Rapelye*, 3 *Edw.* 229; *Hunt v. Bloomer*, 5 *Duer*, 202; *Farm. & Manuf. B'k v. Winfield*, 24 *Wend.* 419; *Thompson v. Ketcham*, 8 *Johns.* 190; *Van Allen v. Allen*, 1 *Hill*, 524; *Erwin v. Saunders*, 1 *Cow.* 249; *Payne v. Ladue*, 1 *Hill*, 116; *Ely v. Kilborn*, 5 *Den.* 514; *Gridley v. Dole*, 4 *N. Y.* 486; *Lewis v. Jones*, 7 *Bow.* 366; *Norton v. Woodruff*, 2 *N. Y.* 153; *Giles v. Comstock*, 4 *Id.* 270; *Clark v. Baird*, 9 *Id.* 183; *Lawler v. Le Roy*, 2 *Sandf.* 202 (Oral agreements contemporaneous with written contracts) in *Bulls' Head Bank v. Koehler*, 1 *City Ct.* 264.
- Peck v. Acker**, 20 *Wend.* 605. Disting'd (Right of sheriff's indentors to select counsel in action against sheriff) in *Preston v. Yates*, 17 *Hun.* 92, 94. See *Code Civ. Pro.* 1881, § 1421, n.
- **v. Briggs**, 3 *Den.* 107. Quoted (Maintenance) in *Benj. on Sales*, § 529, n. p (Bennett's 4 *Am. ed.*); 2 *Chitty on Contr.* 996, n. d, 11 *Am. ed.*
- **v. Burr**, 10 *N. Y.* 294. Collated with other cases (Application of doctrines of ratification and estoppel to municipal contracts) in 5 *Abb. N. C.* 49, n.
- **v. Cary**, 27 *N. Y.* 9. See *Rutherford v. Rutherford*. Disting'd (Sufficiency of proof of publication of will) in *Abbey v. Christy*, 49 *Barb.* 279; *Matter of Smith*, 40 *How. Pr.* 125; *Heath v. Cole*, 15 *Hun.* 104. Applied in *Willis v. Mott*, 36 *N. Y.* 493; *Gilbert v. Knox*, 52 *Id.* 129; *Norton v. Norton*, 2 *Redf.* 15; *Mairs v. Freeman*, 3 *Id.* 195. Applied (Effect of habitual intoxication, to incapacitate testator) in *McLaughlin's Will*, 2 *Id.* 513. Included with notes in *Redf. Lead. Cas. on Wills*, 326. Quoted in *Wait on Fraud. Conv.* § 476, n. 1.

- **v. Collins**, 70 *N. Y.* 376. Aff'd in 103 *U. S.* 660. Decision in 70 *N. Y.* followed (Effect of decision in interference proceedings, on validity of patent) in *Mars-ton v. Swett*, 82 *Id.* 526, 531.
- **v. Elder**, 3 *Sandf.* 126. Followed (Joinder of owners of separate premises in proceedings to abate nuisance) in *Gillespie v. Forrest*, 18 *Hun.* 112. Quoted and dis-cussed (Smells as nuisance) in *Wood on Nuis.* 2 ed. § 585.
- **v. Ellis**, 2 *Johns. Ch.* 131. See *Cun-ningham v. Pell*; *Miller v. Fenton*. Followed with *Miller v. Fenton*, 11 *Paige*, 18 (Con-tribution between wrongdoers) in *Boyd v. Gill*, *U. S. Cir. Ct. S. D. N. Y.* 19 *Fed. Rep.* 146. Cited as authority with *Miller v. Fenton*, in *Ervin v. Oregon R'y & Nav. Co.*, *U. S. Cir. Ct. S. D. N. Y.* 20 *Fed. Rep.* 582. Cited (Basis of jurisdiction in case of contribution between sureties) in dissenting opinion in *Waters' Representa-tives v. Riley's Adm'r*, 2 *Harr. & G. (Md.)* 305; s. c., 18 *Am. Dec.* 302-309, with note.
- **v. Foot**, 4 *How. Pr.* 425. Overtuled (Validity of return by judges gone out of office) in *Harris v. Whitney*, 6 *Id.* 175.
- **v. Hiler**, 24 *Barb.* 178; s. c., 14 *How. Pr.* 155. Subsequent proceedings in 30 *Barb.* 655, and 31 *Id.* 116.
- **v. Ingersoll**, 7 *N. Y.* 528. Followed (Effect of payment of rent, by under-tenant to head landlord) in *Raubitscheck v. Sem-ken*, 4 *Abb. N. C.* 205, *n.*
- **v. Mallams**, 10 *N. Y.* 505. See *Frost v. Beekman*; *Jackson v. McChesney*. Disting'd (Contract when void for uncertainty) in *Durant v. Kennedy*, 32 *Hun.* 634. Ex-plained and head-note, criticised (*Mortgage*, when private property of executor) in *People v. Keyser*, 28 *N. Y.* 226, 233; citing also *Babcock v. Beman*, 11 *Id.* 200; and *Chouteau v. Suydam*, 21 *Id.* 179.
- **v. Minot**, 4 *Robt.* 323. Aff'd in 4 *Tranc. App.* 27; s. c., 3 *Abb. Ct. App. Dec.* 465.
- **v. Newton**, 46 *Barb.* 173. Application of principle herein questioned (Effect, un-der the Code, of distinction between pro-ceedings at law and in equity) in *Pomeroy on Rem.* § 68, *n.* 1.
- **v. N. Y. Central, &c. R. R. Co.**, 4 *Hun.* 236; s. c., 6 *Sup'm. Ct. (T. & C.)* 436. Confirmed on further decision in 8 *Hun.* 286; which was aff'd in 70 *N. Y.* 587. Decision in 4 *Hun.* explained (Setting aside verdict for excessive damages) in *Gale v. N. Y. Central, &c. R. R. Co.*, 13 *Id.* 5.
- **v. Randall**, 1 *Johns.* 165. See *Willcox v. Smith*. Followed (Statute of limitations as affected by subsequent disability) in *Faysoux v. Prather*, 1 *Nott & McC. (So. Car.)* 296; s. c., 9 *Am. Dec.* 691; *Ruff's Adm'r v. Bull*, 7 *Harr. & J. (Md.)* 14; s. c., 16 *Am. Dec.* 290, with note. Reviewed (Proper defenses to actions for salvage) in *Waples on Proc. in Rem.*, § 512.
- **v. Sherwood**, 56 *N. Y.* 615. Disting'd (Effect of provision in will upon exemption of personal property) in *Matter of Frazer*, 92 *Id.* 239. Followed (Apportionment, as between life tenant and remainderman) in *Gillespie v. Brooks*, 2 *Redf.* 349, 364.
- **v. Von Keller**, 15 *Hun.* 470. Aff'd in 75 *N. Y.* 604.
- **v. Yorks**, 24 *How. Pr.* 363. Aff'd in 41 *Barb.* 547. Further decisions in proceed-ings between same parties, as it seems, in 47 *Id.* 131; 75 *N. Y.* 421. Decision in 47 *Barb.* criticised and disapproved (Condi-tional admission of evidence) in *Kerslake v. Schoonmaker*, 1 *Hun.* 436. With decision in 75 *N. Y.* see (Costs in case of transfer of action) *Code Civ. Pro.* 1881, § 3247, *n.*
- **v. Young**, 26 *Wend.* 613. Relied on (What constitutes citizenship) in *State v. Adams*, 45 *Iowa*, 99; s. c., 24 *Am. R.* 760.
- Peckham v. Henderson**, 27 *Barb.* 207. See *Dygart v. Schenck*. Re-asserted (Distinc-tion between encroachment and nuisance) in *Griffith v. McCullum*, 46 *Barb.* 561. Commented on in *Wood on Nuis.* 2 ed. § 255.
- **v. Smith**, 9 *How. Pr.* 436. Said in *Belmont v. Coleman*, 21 *N. Y.* 101; *Miller v. White*, 8 *Abb. Pr. N. S.* 52, to have been aff'd at General Term.
- **v. Van Wagenen**, 45 *Super. Ct. (J. & S.)* 328. Aff'd in 83 *N. Y.* 40; s. c., 38 *Am. R.* 392. Decision in 45 *Super. Ct. (J. & S.)* explained (Title to stock dividends) in *Herrmann v. Maxwell*, 47 *Id.* 347, 351.
- Peel v. Metropolitan Police**, 44 *Barb.* 91. Said in 41 *How. Pr.* 638, to have been rev'd by Ct. of App. in June, 1866.
- Peet v. McGraw**, 21 *Wend.* 667. Subsequent decision in 25 *Id.* 653. See *Grinnell v. Cook*. Decision in 21 *Id.* cited (No writ of error until final judgment) in *Bogert v. People*, 6 *Hun.* 262, 264. Decision in 25 *Wend.* explained (Necessity that owner of goods be guest, to create innkeeper's liability) in *Grinnell v. Cook*, 3 *Hill*, 485, 488; *Ingals-bee v. Wood*, 36 *Barb.* 452, 457.
- Pegram v. Carson**, 10 *Bosw.* 505. See *Jen-nings v. Merrill*. Disting'd (Possession en-abling factor to pledge) in *Howland v. Woodruff*, 16 *Abb. Pr. N. S.* 422.
- Pell v. Grigg**, 7 *Con.* 426. Disting'd (Dis-charge of surety on undertaking given on granting provisional remedy) in *Jewett v. Crane*, 13 *Abb. Pr.* 97, 100.
- **v. Lovett**, 19 *Wend.* 546. Rev'd in 22 *Id.* 369.
- **v. Ulmar**, 21 *Barb.* 500. Rev'd in 18 *N. Y.* 139. See *Phyfe v. Riley*. Decision in 18 *N. Y.* examined and followed (Fore-closure by loan commissioners) in *White v. Lester*, 4 *Abb. Ct. App. Dec.* 588. Ex-plained in *Thompson v. Commrs. for Loaning Certain Moneys of U. S.*, 79 *N. Y.* 61. Dictum questioned as unsupported by au-thority (*Mortgagee obtaining possession without force*) in *Witherell v. Wiberg*, 4 *Sawyer*, 232. Decision in 21 *Barb.* exam-

- ined with other cases (Execution of power conferred on several) in *First Nat. B'k of North Bennington v. Town of Mt. Tabor*, 52 *Vt.* 87; s. c., 36 *Am. R.* 734, 741.
- Pelletreau v. Jackson**, 11 *Wend.* 110. Aff'd as *Jackson v. Waldron*, 13 *Id.* 178. Overruled (Release of contingent interest) in *Miller v. Emans*, 19 *N. Y.* 384. Approved in *Bogy v. Shoab*, 13 *Mo.* 366, 380.
- **v. Moore**. See *Roosevelt v. Fulton*.
- **v. Smith**, 30 *Barb.* 494. See (Sale of decedent's real property where undivided interest or precedent estate is created by will) *Code Civ. Pro.* 1881, § 2764, n.
- Peltier v. Collins**, 3 *Wend.* 459; s. c., 20 *Am. Dec.* 711, with note, wherein it is thought to establish the general rule, and *Adams v. Gray* 8 *Conn.* 11; s. c., 20 *Am. Dec.* 82, with note, an exception (Parol evidence to explain terms of contract of sale). Explained in *Benj. on Sales*, § 209, n. 6 (Corbin's 4 *Am. ed.*).
- **v. Sewall**, 3 *Wend.* 269. Overruled (Necessity of declaring on special agreement) in further decision in 12 *Id.* 386. But see *Clark v. Smith*, 14 *Johns.* 326; *Wood v. Edwards*, 19 *Id.* 205; and *Phil. on Ev.* 109.
- **v. Westchester Fire Ins. Co.**, 13 *Hun.* 23. Aff'd in 77 *N. Y.* 605.
- Pender v. People**, 18 *Hun.* 560. See cases cited (Juror when disqualified by opinion) in 20 *Am. L. Reg. N. S.* 117, n. Compare *Points of Law in Guiteau's Case*, p. 83 (Boston: Little, Brown, & Co., 1881).
- Pendleton v. Dyett**, 4 *Cow.* 581. Rev'd in *Dyett v. Pendleton*, 8 *Id.* 737.
- **v. Empire Stone Dressing Co.**, 19 *N. Y.* 13. Followed (Proof of inconsistent statements by witness) in *Ryerson v. Abington*, 102 *Mass.* 530. See also 1 *Whart. Com. on Ev.* § 549.
- **v. Fay**, 2 *Paige*, 202. Subsequent decision in 3 *Id.* 204. Decision in 3 *Id.* followed (Supplemental complaint, when not to be allowed) in *Sage v. Mosher*, 17 *Abb. Pr.* 373. Applied (Notice that puts purchaser on inquiry) in *Bassett v. Lederer*, 1 *Hun.* 277. Decision in 2 *Paige*; followed in *Baynard v. Norris*, 5 *Gill (Md.)* 468; s. c., 46 *Am. Dec.* 647, which was confirmed on this point in *Price v. McDonald*, 1 *Md.* 403; s. c., 54 *Am. Dec.* 657, 661, citing *Pendleton v. Fay*, and other cases.
- **v. Hughes**, 65 *Barb.* 136. Aff'd, it seems, in 53 *N. Y.* 626, on this opinion, no further opinion being given.
- **v. Weed**, 17 *N. Y.* 72. Decision on motion in *Sup'm. Ct.* in 1 *Abb. Pr.* 51. With decision in 17 *N. Y.* compare (Effect of use of part of account in evidence) *Walden v. Sherburne*, 15 *Johns.* 409. But see *Abb. Tr. Ev.* 326.
- Pendril v. Second Ave. R. R. Co.**, 34 *Super. Ct. (J. & S.)* 481; s. c., with points of counsel, 43 *How. Pr.* 399.
- Penfield v. Carpenter**, 13 *Johns.* 350. Explained (Cure of error created by admission of improper evidence) in *Meyer v. Clark*, 2 *Daly*, 498, 519. Dissented from with *Tuttle v. Hunt*, 2 *Cow.* 436, in *Sparr v. Wellman*, 11 *Mo.* 230, 236.
- **v. James**, 12 *Abb. Pr. N. S.* 247. We are informed by counsel that this decision was subsequently rev'd at General Term, but without opinion. Further proceeding in 56 *N. Y.* 659. Mem. of further proceedings in 4 *Hun.* 69; *Id.* 668.
- **v. Thayer**, 2 *E. D. Smith*, 305. Explained and applied (Evidence of gift *inter vivos*) in *Trow v. Shannon*, 8 *Daly*, 239, 243. Followed, as conclusive, in *Camp's Appeal*, 36 *Conn.* 88; s. c., 4 *Am. R.* 39.
- Penn v. Buffalo & Erie R. Co.**, 3 *Lans.* 443. Rev'd in 49 *N. Y.* 204; s. c., 10 *Am. R.* 355. See *Poucher v. N. Y. Central R. Co.* Decision in 49 *N. Y.* followed (Liability of carrier of animals) in *Bills v. N. Y. Central R. R. Co.*, 53 *Id.* 608. Cited in *South & North Ala. R. R. Co. v. Henlein*, 52 *Ala.* 606; s. c., 23 *Am. R.* 573. Criticised in *Lawson's Contr. of Carr.* § 109.
- Pennell v. Wilson**, 2 *Abb. Pr. N. S.* 466; s. c., 4 *Robt.* 610. See *Gallagher v. Egan*; *Stoddard v. Clark*. Explained (Reformation of contract) in *O'Donnell v. Harmon*, 3 *Daly*, 424. Compare (Costs on new trial) *Voorhees v. Nat. Citizen's B'k*, 15 *Abb. Pr. N. S.* 13.
- Pennie v. Continental Life Ins. Co.**, 67 *N. Y.* 278. Followed, but point not indicated, in *Nat. B'k of Fort Edward v. Washington Co. Nat. B'k*, 72 *Id.* 606. Cited approvingly with *Wiley v. Brigham*, 81 *Id.* 13, and *Brown v. Sigourney*, 72 *Id.* 122 (Amount in controversy which determines jurisdiction on appeal) in *Logan v. Davis, Ky. Super. Ct.*, 6 *Ky. L. Rep.* 137.
- Penniman v. Briggs, Hopk. 300. Aff'd in 8 *Cow.* 387. See *Slee v. Bloom*. Decision in *Hopk.* explained (Corporation, when deemed dissolved) in *Barclay v. Talman*, 4 *Edw.* 128; *B'k of Niagara v. Johnson*, 8 *Wend.* 656. Applied in *Story v. Furman*, 25 *N. Y.* 221, 225, 230; *Bruce v. Platt*, 80 *Id.* 387. Explained (Stockholder's liability, whether joint or several) in *Mann v. Pentz*, 2 *Sandf. Ch.* 270. Examined with other cases (Nature of stockholder's liability) in *Lowry v. Inman*, 2 *Sweeny*, 134. Explained in *Ang. & A. on Comp.* § 613, 11 *ed.***
- **v. Meigs**, 9 *Johns.* 325. See *McMenomy v. Murray*; *Murray v. De Rottenham*. Applied (Effect of discharge under N. Y. insolvent act) to discharge under U. S. law,—in *Murray v. De Rottenham*, 6 *Johns. Ch.* 59. Referred to in *Ritchie v. Garrison*, 10 *Abb. Pr.* 251, as not overruled, as a rule of interpretation of a statute. Applied in *Sherrill v. Hopkins*, 1 *Cow.* 105, where extent to which it has been overruled is stated. Referred to in *Hicks v. Hotchkiss*, 7 *Johns. Ch.* 312, as overruled by *McMillan v. McNeill*, 4 *Wheat.* 209. See, also, *Sturges v. Crownin-*

shield, *Id.* 122; *Wyman v. Mitchell*, 1 *Cov.* 316; *Witt v. Follett*, 2 *Wend.* 458; *Mather v. Bush*, 16 *Johns.* 233; *Roosevelt v. Cebra*, 17 *Id.* 108.

**Pennington v. Townsend**, 7 *Wend.* 276. See *Swords v. Owen*. Collated with *Griffith v. Wells*, 3 *Den.* 226; *Ferdon v. Cunningham*, 20 *How. Pr.* 154, and other cases, as fully sustaining the established doctrine (Action based on transaction forbidden by statute, not maintainable) in 8 *Am. Dec.* 691, *n.*

**Pennock v. White**, 10 *Weekly Dig.* 74. Aff'd in 85 *N. Y.* 654.

**Pennsylvania Coal Co. v. Blake**, 20 *Alb. L. J.* 54. Aff'd in 85 *N. Y.* 226. Decision in *Id.* explained (Liability of one guaranteeing to pay mortgage debt on condition) in *Vanderbilt v. Schreyer*, 91 *N. Y.* 392.

— **v. Delaware & Hudson Canal Co.**, 29 *Barb.* 589. Aff'd in 1 *Keyes*, 72. Another decision in 81 *N. Y.* 91. See *Delaware & Hudson Canal Co. v. Pennsylvania Coal Co.* See No. 62 of Charles O'Connor's "My Own Cases" now in the Law Inst. Libr. *N. Y. city*. Head-note to decision in 11 *Keyes* criticised in *Pomeroy on Rem.* § 81, *n.* 3, as not sustained by the decision.

**Penny v. Corwith**, 18 *Johns.* 499. Reviewed with other cases (Effect of alteration of written agreement by consent of parties) in *Collins v. Collins*, 51 *Miss.* 311; *s. c.*, 24 *Am. R.* 632, 637.

— **v. Martin**, 4 *Johns. Ch.* 566. See *Robertson v. Smith*. Discussed with *Marvin v. Bennett*, 26 *Wend.* 169; *Stettheimer v. Kilip*, 75 *N. Y.* 282; *Whittemore v. Farrington*, 76 *Id.* 452 (Relief against contract on ground of mistake) in *Knapp v. Fowler*, 30 *Hun*, 512.

**Pentz v. Brown**, 5 *N. Y. Leg. Obs.* 19. Overruled in effect (Liability on agreement to pay for party-wall) in *Brown v. Pentz*, 11 *N. Y. Leg. Obs.* 24; *s. c.*, 1 *Abb. Ct. App. Dec.* 227.

— **v. Receiver of Aetna Fire Ins. Co.**, 3 *Edw.* 341. Rev'd in 9 *Paige*, 568.

— **v. Stanton**, 10 *Wend.* 271; *s. c.*, 25 *Am. Dec.* 558, with note; and 11 *N. Y. Com. L. Law. ed.* 854, with brief note. See *Hills v. Bannister*; *Rathbon v. Badlong*. Disting'd (Liability of one contracting as agent) in *Hicks v. Hinde*, 9 *Barb.* 529; *Conro v. Port Henry Iron Co.*, 12 *Id.* 55; *Auburn City B'k v. Leonard*, 40 *Id.* 136. Applied in *Hearne v. Keene*, 5 *Bosw.* 586; *Maryland Coal Co. v. Edwards*, 4 *Hun*, 434. Compared in *Fenly v. Stewart*, 5 *Sandf.* 111. Applied in *Manufacturers' & Merchants' Bank v. Follett*, 11 *R. I.* 92; *s. c.*, 23 *Am. R.* 418. Included in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 744.

**People v. Abbot**, 19 *Wend.* 192. See *Same v. Jackson*. Referred to in *Crossman v. Bradley*, 53 *Barb.* 136, as overruled by *People v. Jackson*, 3 *Park.* 398 (Evidence of character in prosecution, &c., for rape). Followed in *Ford v. Jones*, 62 *Barb.* 487, where *Brady v. Kibbe*, 31 *Id.* 276; *Hogan*

*v. Cregan*, 6 *Robt.* 150, are thought to overrule *People v. Jackson*. Followed in *Brennan v. People*, 7 *Hun*, 174. Followed with *Lohman v. People*, 1 *N. Y.* 379 (disapproving 1 *Greenl. on Ev.* § 458) in *People v. Blakely*, 4 *Park.* 176, 182, a case of forgery. Question referred to as still open, —in *Woods v. People*, 55 *N. Y.* 517. Explained in *La Beau v. People*, 33 *How. Pr.* 74. Followed in *Benstine v. State*, 2 *Lea (Tenn.)* 169; *s. c.*, 31 *Am. R.* 593, 595. Collated with other cases in 1 *Bennett & H. Cas. on Crim. L.* 230. Applied (Limit of time on inquiry as to character) in *Stevens v. Rodger*, 25 *Hun*, 55. Applied (What constitutes rape) in *People v. Quin*, 50 *Barb.* 132; *Reynolds v. People*, 41 *How. Pr.* 188; *People v. Morrison*, 1 *Park.* 644. Explained (Evidence to discredit witness) in *Gt. Western Turnpike Co. v. Loomis*, 32 *N. Y.* 137. Disting'd (Entering *nolle prosequi*) in *People v. Porter*, 4 *Park.* 524.

— **v. Acton**, 48 *Barb.* 524; *s. c.*, 33 *How. Pr.* 52. Followed, and said to have been aff'd by Ct. of App. (Limit of authority of legislature to confer powers of local legislation upon board of commissioners appointed by governor) in *Schuster v. Board of Health*, 49 *Barb.* 450, 454.

— **v. Adams**, 3 *Den.* 190; *s. c.*, 45 *Am. Dec.* 468, with note, wherein are collected citations. Aff'd as *Adams v. People*, 1 *N. Y.* 173. Decision in 3 *Den.* applied (Commission of crime without being personally present) in *Commonwealth v. White*, 123 *Mass.* 430; *s. c.*, 25 *Am. R.* 116; *Exp. Rogers*, 10 *Tex. Ct. App.* 655; *s. c.*, 38 *Am. R.* 654. Commented on in 1 *Barb. on Crim. L.* 3 ed. 138. Disting'd (Extradition) in *Jones v. Leonard*, 50 *Iowa*, 106; *s. c.*, 32 *Am. R.* 116, 118.

— **v. —**, 17 *Wend.* 475. Said never to have been questioned (Sufficiency of indictment for selling spirituous liquors) in *Osgood v. People*, 39 *N. Y.* 449. Followed in *Whiting v. State*, 14 *Conn.* 487; *s. c.*, 36 *Am. Dec.* 499, 501, with note.

— **ex rel. Averill v. Adirondack R. R. Co.**, 57 *Barb.* 656. Referred to as superseded by acts passed in 1870 and 1871 (Petitions for town bonding in aid of railroads) in *People v. Peck*, 62 *Id.* 545, 548. Applied with *People ex rel. Rogers v. Spencer*, 55 *N. Y.* 1; *People ex rel. Green v. Smith*, *Id.* 135; *Town of Wellsborough v. N. Y. & Canada R. R. Co.*, 76 *Id.* 182 (Petitions for town bonding in aid of railroads) in *Craig v. Town of Andes*, 93 *Id.* 405, 413.

— **v. Adler**. See *Keyser v. Harbeck*.

— **v. Adsit**. See *Same v. Comm'rs of Hudson*.

— **v. Albany & Susquehanna R. R. Co.**, 8 *Abb. Pr. N. S.* 122. Aff'd in 57 *Barb.* 204; *s. c.* as *People v. Church*, 2 *Lans.* 459. Another decision in 1 *Id.* 308; *s. c.*, 7 *Abb. Pr. N. S.* 265; 55 *Barb.* 344, rev'd in part, in 5 *Lans.* 25; which was rev'd in part, and aff'd in part in 57 *N. Y.* 161.

- See *Kincaid v. Dwinelle*. Decision in 5 *Lans.* applied with *Ogdensburgh, &c. R. R. Co. v. Vermont, &c. R. R. Co.*, 63 *N. Y.* 176; *Weaver v. Ely*, 83 *Id.* 89; *Struthers v. Pearce*, 51 *Id.* 365; *Atlantic Dock Co. v. Libby*, 45 *Id.* 499; *Lattimer v. Livermore*, 72 *Id.* 184 (Basis of allowance) in *Conaughy v. Saratoga County B'k*, 92 *Id.* 401. Compare *Code Civ. Pro.* § 3252. See (Affirmative relief) *Code Civ. Pro.* 1881, § 1204, *n.* With decision in 57 *N. Y.* see to the contrary (Right of trial by jury in cases of *quo warranto*) *State ex rel. Norton v. Lupton*, 64 *Mo.* 415; *s. c.*, 27 *Am. R.* 253. See, also, *Code Civ. Pro.* 1881, § 1950, *n. &c.*
- *v. Albany and Vermont R. R. Co.*, 11 *Abb. Pr.* 136; *s. c.*, 19 *How. Pr.* 523. Aff'd in 37 *Barb.* 216. Subsequent decisions in 12 *Abb. Pr.* 171; *s. c.*, 20 *How. Pr.* 358. Also in 24 *N. Y.* 261, and in 16 *Abb. Pr.* 465. See *People ex rel. Garbutt v. Rochester State Line R. R. Co.*; *People v. N. Y. & Staten Island Ferry Co.* Decision in 24 *N. Y.* explained (Obligation of railroad company to complete work of constructing its road) in *Whiting v. Sheboygan & Fond du Lac R. R. Co.*, 25 *Wis.* 167; *s. c.*, 3 *Am. R.* 30, 47. Decision in 16 *Abb. Pr.* applied (Basis of extra allowance) in *Williams v. Western Union Tel. Co.*, 61 *How. Pr.* 305, 309; *Riley v. Hulbert*, 13 *Weekly Dig.* 101.
- *v. —*, 15 *Hun.* 126. Rev'd in 77 *N. Y.* 232.
- *ex rel. Bolton v. Albertson*, 55 *N. Y.* 50. Disting'd (Extent of power that may be conferred by legislature) in *People ex rel. Cox v. Special Sessions*, 7 *Hun.* 214; *People ex rel. Kilmer v. McDonald*, 4 *Id.* 190. Disting'd (Law, when within spirit of constitutional provision) in *People ex rel. Bush v. Thornton*, 25 *Id.* 456, 465.
- *v. ex rel. Alexander v. Alexander*, 3 *Hun.* 211; *s. c.*, fully reported in 5 *Sup'm. Ct. (T. & C.)* 297. Followed (Proceedings necessary before attachment) in *Sutton v. Davis*, 6 *Hun.* 237.
- *v. Allen*, 43 *N. Y.* 28. Rev'g 57 *Barb.* 338. Decision in 43 *N. Y.* said not to be superseded by legislation (Competency of jurors) in *Greenfield v. People*, 6 *Abb. N. C.* 1, 4.
- *v. —*, 6 *Wend.* 486. Examined with other cases (Statutory provision, when directory) in *People v. Gardner*, 8 *N. Y.* 586. Applied in *Whiteside v. People*, 26 *Wend.* 647. Reviewed and relied on in *State v. Smith*, 67 *Me.* 328.
- *v. —*, 1 *Park.* 445. Relied on with *Woodford v. People*, 62 *N. Y.* 117; *Hennessey v. People*, 21 *How. Pr.* 239 (Acts that constitute but one criminal offense) in *State v. Colgate*, 31 *Kans.* 511; *s. c.*, 47 *Am. R.* 507.
- *v. —*, 5 *Den.* 76. Followed (Indictment for statute offenses must follow the statute) in *Dedieu v. People*, 22 *N. Y.* 178, 180.
- *ex rel. Adsit v. Allen*, 1 *Lans.* 248. Rev'd on the question of constitutionality, in 42 *N. Y.* 378. Decision in *Id.* explained (Act for improvement in limited locality, a local act) in *People ex rel. Clauson v. Newburgh & Shawangunk Pl. R. Co.*, 86 *Id.* 1, 7.
- *ex rel. Schenectady Observatory v. Allen*, 42 *N. Y.* 404. Disting'd (Law, when within spirit of constitutional provision) in *People ex rel. Bush v. Thornton*, 25 *Hun.* 456, 465.
- *ex rel. Yawger v. Allen*, 52 *N. Y.* 538. See *Town of Springport v. Teutonia Sav'g B'k*. Explained (Effect of affidavit of assessors in town bonding proceedings) in *Town of Springport v. Teutonia Sav'g's B'k*, 84 *N. Y.* 403, 407, 410.
- *v. Ambrecht*, 11 *Abb. Pr.* 97. Said in 24 *How. Pr.* 610, to have been aff'd by Ct. of App. in March, 1863. Criticised (Ejectment against officer of U. S.) in *Polack v. Mansfield*, 44 *Cal.* 36; *s. c.*, 13 *Am. R.* 151. Examined and followed in *King v. La Grange*, *Sup'm. Ct. Cal.* 1881, 12 *Reporter*, 358; overruling *Polack v. Mansfield*, 44 *Cal.* 36. See *U. S. v. Lee*, 106 *U. S.* 196. Discussed in *Sedgw. & W. on Tr. of Tit. to Land*, § 249, *n.* 1.
- *v. American Art Union*, 13 *Barb.* 577. Rev'd in 7 *N. Y.* 240. Decision in 13 *Barb.* commented on (What constitutes lottery) in 2 *Add. on Contr.* 1158, *n.*, *Abb. ed.*
- *v. Ames*, 35 *N. Y.* 484. Explained (Amendment of sheriff's return) in *Tasker v. Wallace*, 6 *Daly*, 364.
- *ex rel. Hovey v. Ames*, 19 *How. Pr.* 551. Disting'd and limited (Reconsideration of action by board of supervisors) in *People ex rel. Hotchkiss v. Supervisors of Broome*, 65 *N. Y.* 228.
- *v. Anderson*, 14 *Johns.* 294; *s. c.*, 7 *Am. Dec.* 462, with note. See *Loomis v. Edgerton*; *People v. Cogdell*; *People v. McGarren*. Followed (Lost goods not subject of larceny) in *State v. Roper*, 3 *Dev. (N. C.)* 473; *s. c.*, 24 *Am. Dec.* 268, 271. Disapproved in *Ransom v. State*, 22 *Conn.* 157; *Griggs v. State*, 58 *Ala.* 425; *s. c.*, 29 *Am. R.* 764. Disapproved as contrary to all authority, in *Robinson v. State*, 11 *Tex.* 403; *s. c.*, 40 *Am. R.* 790. See, in connection therewith, *Hunt's Case*, 13 *Gratt. (Va.)* 761; *Regina v. Thurborn*, 5 *Br. C. C.* 387; *Regina v. Preston*, 6 *Id.* 353; 1 *Bishop on Crim. L.* § 207. Collated with other cases and commented on in 2 *Bennett & H. Cas. on Crim. L.* 32.
- *ex rel. Sheridan v. Andrews*, 52 *N. Y.* 445. Compare (Certiorari to review summary proceedings) *Code Civ. Pro.* §§ 2122, 2260.
- *ex rel. Hubbard v. Annis*, 45 *Barb.* 304. Doubted (When occupancy is as servant, and not as tenant) in *Kerrains v. People*, 60 *N. Y.* 221, 225. Examined and collated with *Comstock v. Dodge*, 43 *How.*

- Pr.* 97; *Doyle v. Gibbs*, 6 *Lans.* 180, and other cases in 21 *Am. L. Reg. N. S.* 467, *n.*
- *ex rel. Steinert v. Anthony*, 6 *Hun.* 142. Disting'd (Who bound by judgment in *quo warranto*) in *People ex rel. Gilchrist v. Murray*, 73 *N. Y.* 540; which rev'd 8 *Daly*, 347, which see.
- *v. Appo*, 18 *How. Pr.* 350. Aff'd as *Appo v. People*, 20 *N. Y.* 531. Decision in 18 *How. Pr.* disting'd (Jurisdiction of oyer and terminer) in *Willis v. People*, 32 *N. Y.* 715.
- *v. Arnold*, 4 *N. Y.* 508. See (Limitation of action by people) *Code Civ. Pro.* 1881, § 362, *n.*
- *ex rel. Western R. R. Co. v. Assessors of Albany*, 40 *N. Y.* 154. See *Stone v. Mayor, &c. of N. Y.* Collated with other cases (Office of common law certiorari) in *People ex rel. Schuylerville & Upper Hudson R. R. Co. v. Betts*, 55 *N. Y.* 600. Applied in *People v. Eddy*, 57 *Barb.* 600.
- *ex rel. Williams v. Assessors of Albany*, 2 *Hun.* 583; *s. c.*, 5 *Sup'm. Ct. (T. & C.)* 155. Compare (Assessment of bank shares) *Williams v. Weaver*, 75 *N. Y.* 30; *People v. Weaver*, 100 *U. S.* 539; *First Nat. B'k of St. Joseph v. Township of St. Joseph*, 46 *Mich.* 526.
- *ex rel. Sears v. Assessors of Brooklyn*, 18 *Hun.* 386. Aff'd in 84 *N. Y.* 610.
- *ex rel. Williamsburgh Gas Light Co. v. Assessors of Brooklyn*, 16 *Hun.* 196. Aff'd in 76 *N. Y.* 202. Decision in *Id.* followed (Liability of fund arising from extra profits to taxation) in *People ex rel. American Fire Ins. Co. v. Comm'rs of Taxes*, 28 *Hun.* 261. Applied (Effect of certificate entitling stockholder to additional stock) in *Goldsmith v. Swift*, 13 *Weekly Dig.* 66, 68.
- *v. Assessors of Mechanicsville*, 6 *Lans.* 105; *s. c.*, more fully, as *People v. Howland*, 61 *Barb.* 273. Overruled in effect (Conclusiveness of uncontradicted affidavit) by *People ex rel. Buffalo, &c. R. R. Co. v. Barker*, 48 *N. Y.* 70.
- *ex rel. Carleton v. Assessors of N. Y.*, 7 *Hun.* 228; *s. c.*, reported in 52 *How. Pr.* 140. Compare (Denial in mandamus) *Code Civ. Pro.* §§ 2077, 2079, 2080.
- *ex rel. Marsh v. Assessors of Southfield*. Reported as *Same v. Delaney*, 49 *N. Y.* 655.
- *ex rel. Bank of Watertown v. Assessors of Watertown*, 1 *Hill*, 616. See *Bank of Watertown v. Assessors of Watertown*.
- *ex rel. Develin v. Asten*, 4 *Hun.* 461. Aff'd in 64 *N. Y.* 661, on opinion below.
- *ex rel. Hieser v. Asten*, 6 *Hun.* 228. Aff'd, it seems, in 64 *N. Y.* 634, on opinion below.
- *ex rel. Meyer v. Asten*. Reported as *People ex rel. Hieser v. Asten*.
- *ex rel. Ward v. Asten*, 49 *How. Pr.* 405; *s. c.*, less fully, 6 *Daly*, 18. Aff'd on opinion below, in 62 *N. Y.* 623.
- *v. Atlantic Mut. Life Ins. Co.*, 15 *Hun.* 84. Appeal dismissed as *Attorney-General v. Same*, in 77 *N. Y.* 336. Previous proceeding in 53 *How. Pr.* 227. Also in *Id.* 800; which was modified in 74 *N. Y.* 177. Also in 56 *How. Pr.* 391. Decision 15 *Hun.* and 77 *N. Y.* followed (Effect of actuary's report) in *People v. Globe Mut. Life Ins. Co.*, 60 *How. Pr.* 57.
- *ex rel. Peabody v. Attorney-Gen'l*, 22 *Barb.* 114. Followed (Removal of intruder into office) in *People ex rel. Demarest v. Fairchild*, 8 *Hun.* 334; which was aff'd in 67 *N. Y.* 334, which see. Applied (Action when to be prosecuted by attorney-general) in *People v. Central Cross Town R. R. Co.*, 21 *Hun.* 476, 480.
- *ex rel. Thurston v. Auditors of Elmira*, 20 *Hun.* 150. Aff'd in 82 *N. Y.* 80.
- *ex rel. Van Keuren v. Auditors of Esopus*, 10 *Hun.* 551. Aff'd in 74 *N. Y.* 310. Decision in *Id.* followed (Liability of towns for negligence of officers) in *People ex rel. Loomis v. Board of Town Auditors*, 75 *Id.* 316, 320; *City of Rochester v. Town of Rush*, 80 *Id.* 302, 311.
- *ex rel. Lowell v. Auditors of Westford*, 53 *Barb.* 555. Aff'd in 38 *How. Pr.* 23.
- *v. Babcock*, 7 *Johns.* 201; *s. c.*, 5 *Am. Dec.* 256. Collated with other cases (False pretences when indictable) in 1 *Bennett & H. Cas. on Crim. L.* 14.
- *v. Badgley*. See *Same v. Hennessey*.
- *v. Baker*, 20 *Wend.* 602. See *Jackson v. Collins*. Applied (Effect of indictment containing different counts) in *Taylor v. People*, 12 *Hun.* 216; *Hawker v. People*, 75 *N. Y.* 490. Disting'd in *People ex rel. Tweed v. Liscomb*, 60 *Id.* 578.
- *v. —*, 76 *N. Y.* 78. Rev'g *Baker v. People*, 15 *Hun.* 256. See *Hunt v. Hunt*. Decision in 76 *N. Y.* disting'd (Effect of foreign divorce) in *O'Dea v. O'Dea*, 17 *Weekly Dig.* 375. Compared in *Collins v. Collins*, 80 *N. Y.* 1, 7. Followed in *People v. Chase*, 27 *Hun.* 256. Approved in *Cook v. Cook*, 56 *Wis.* 195, 213. Collated with *Hunt v. Hunt*, 72 *N. Y.* 217; *Van Voorhis v. Brintnall*, 86 *Id.* 18, in 26 *Alb. L. J.* 446, 466.
- *ex rel. Adams v. Baker*, 35 *Barb.* 105. Questioned (Mandamus to settle case) in *Tweed v. Davis*, 4 *Sup'm. Ct. (T. & C.)* 1, 9.
- *v. Bancker*, 5 *N. Y.* 106. Approved and applied (Jurisdiction to discharge debtor) in *Bullymore v. Cooper*, 2 *Lans.* 71.
- *v. Bank of Hudson*, 6 *Cov.* 217. Explained and cases cited to the contrary (*Quo warranto* against private corporations) in *High on Extr. Rem.* 2 ed. § 661, *n.* 1. Discussed in *Ang. & A. on Corp.* § 734, 11 ed.
- *v. Bank of Niagara*, 6 *Cov.* 196. Discussed (*Quo warranto* against private corporation) in *Ang. & A. on Corp.* § 734, 11 ed.
- *v. Bank of North America*, 13 *Hun.* 434. Another proceeding in 75 *N. Y.* 547.



Decision in *Id.* explained (Mitigation of damages for trespass) in *Moak's Underhill's Torts*, 1 Am. ed. 97.

— **ex rel. Commissioners of Washington Park v. Banks**, 67 *N. Y.* 568. See *Hurlbert v. Banks*. Followed (Constitutionality of private or local bills) and *Kerrigan v. Force*, 68 *N. Y.* 384 disting'd in *Shanley v. City of Brooklyn*, 30 *Hun.* 396. Disting'd with *Matter of Lexington Avenue*, 29 *Id.* 303 (Constitutionality of local acts respecting streets, &c.) in *Matter of Woolsey*, *Id.* 626.

— **v. Barker**, 2 *Wheel. Cr.* 19. See *Dana v. Tucker*. See speeches published at *N. Y.* 1827. See, also, papers addressed to the public, dated Exchange Bank, Aug. 1819. Also Maxwell's report of 3d trial, *N. Y.* 1827. Also report by *J. Barker*, *N. Y.* 1827.

— **ex rel. Buffalo & State Line R. R. Co. v. Barker**, 48 *N. Y.* 70. Aff'g *Same v. Fredericks*, 48 *Barb.* 173; s. c., 33 *How. Pr.* 150.

— **v. Barnes**, 12 *Wend.* 492. See *Stilwell v. Mills*. Followed (Necessity of proof of jurisdictional facts, to sustain surrogate's decree) in *People ex rel. Myer v. Hartman*, 2 *Sweeny*, 576, 580. Applied (Action, when maintainable on administrator's bond) in *Hood v. Hood*, 85 *N. Y.* 561, 573.

— **v. Barrett**, 2 *Cal.* 304; s. c., 2 *Am. Dec.* 239; 2 *N. Y. Com. L. Law. ed.* 437, with brief note. See *Klock v. People*; *People v. Denton*; *People v. Goodwin*; *People v. Olcott*. Reviewed with *People v. Olcott*, 2 *Johns. Cas.* 301; *People v. Denton*, *Id.* 275; *People v. Goodwin*, 18 *Johns.* 187 (Discharge of jury in criminal case) in *Commonwealth v. Cook*, 6 *Serg. & R. (Pa.)* 577; s. c., 9 *Am. Dec.* 465, 469, 474, 480, 484. Approvingly cited in *Mount v. State*, 14 *Ohio*, 295; s. c., 45 *Am. Dec.* 542, with note; *People v. Goodwin*, 18 *Johns.* 187, being disting'd, though said to have been recognized as law in *Harley v. State*, 6 *Ohio*, 404.

— **v. —**, 1 *Johns.* 66. Followed with *People v. McGowan*, 17 *Wend.* 386 (Sufficiency of plea of former acquittal or conviction) in *Roberts v. State*, 14 *Geo.* 8; s. c., 58 *Am. Dec.* 528, with note. Disting'd in *State v. Cooper*, 1 *Green L. (N. J.)* 361; s. c., 25 *Am. Dec.* 490, with note.

— **v. Bartlett**, 3 *Hill*, 570. See *Cathcart v. Cannon*; *Harmony v. Bingham*. Explained (What will excuse default in appearance by accused in court) in *People v. Anable*, 7 *Hill*, 34. Applied in *People v. Tubbs*, 37 *N. Y.* 588. Applied to suit on distiller's bond, in *U. S. v. Stewart*, 2 *Biss.* 412, 414; *Belding v. State*, 25 *Ark.* 315; s. c., 4 *Am. R.* 26. Disapproved in *State v. Merrihew*, 47 *Iowa*, 112; s. c., 29 *Am. R.* 467. Disting'd (Excuse for non-performance of contract) in *First Nat. B'k of Ballston Spa v. Ins. Co. of No. Am.*, 5 *Lans.* 205.

— **ex rel. Dunkirk, &c. R. R. Co. v.**

**Batchelor**, 53 *N. Y.* 128; s. c., 8 *Abb. L. J.* 120; 13 *Am. R.* 480. Disting'd (Effect of legislative provisions respecting town bonding) in *Rogers v. Rochester, &c. R. R. Co.*, 21 *Hun.* 44; *Town of Duanesburgh v. Jenkins*, 57 *N. Y.* 177, 192; *Williams v. Town of Duanesburgh*, 66 *Id.* 134; *Town of Queensbury v. Culver*, 19 *Wall.* 83, 91. Applied in *People ex rel. Town of Rochester v. Deyoe*, 2 *Sup'm. Ct. (T. & C.)* 151. Examined and approved in *Horton v. Town of Thompson*, 71 *N. Y.* 513, 521. Compared with later cases in *Thompson v. Perrine*, 103 *U. S.* 813. Cited in 59 *Am. Dec.* 786, *n.*, as contrary to *Allison v. Louisville, &c. R'y*, 10 *Bush. (Ky.)* 1. Disting'd (Power of legislature as to taxation of municipal corporations) in *Wallack v. Mayor, &c. of N. Y.*, 5 *Sup'm. Ct. (T. & C.)* 310, 321; *People ex rel. N. Y. & Harlem R. R. Co. v. Havemeyer*, 47 *How. Pr.* 514. Commented on in *Cooley on Const. Limit.* 5 ed. 286, *n.* Explained and applied to private corporation (Power of legislature to compel action of municipal corporation for private purposes) in *People ex rel. Manhattan Sav'gs Inst. of N. Y. v. Otis*, 24 *Hun.* 519, 523. Criticised in *Weismer v. Village of Douglas*, 4 *Id.* 210, which was aff'd in 64 *N. Y.* 103, which see. See *People ex rel. Park Comm'r's v. Common Council of Detroit*, 28 *Mich.* 228; s. c., 15 *Am. R.* 202; *People v. Mayor of Chicago*, 51 *Ill.* 17; s. c., 2 *Am. R.* 278.

— **ex rel. Loew v. Batchelor**, 28 *Barb.* 210. Aff'd in 22 *N. Y.* 128. See *Darlington v. Mayor, &c. of N. Y.* Decision in 22 *N. Y.* disting'd as applicable to appointive offices (Constitutionality of act extending term of officer) in *People ex rel. Fowler v. Bull*, 46 *N. Y.* 57, 66. Applied in *People ex rel. Brown v. Woodruff*, 32 *Id.* 365. Overruled in *People ex rel. Williamson v. McKinney*, 52 *Id.* 374, 379. Cited and discussed with *People ex rel. Fowler v. Bull*, 46 *Id.* 59; *People v. McKinney*, 52 *Id.* 376 (Power of legislature to extend term of elective officer) in *State v. Arrington*, 18 *Nev.* 412, 422, where the doctrine of *People v. Batchelor* is said to be rejected by the others, and the latter are approved as sustaining the rule. Applied (Power of legislature to recall power conferred on municipal corporation) in *People v. Pinckney*, 32 *N. Y.* 394. Applied (When members of corporate body are charged with notice of its meetings) in *Matter of Church St.*, 49 *Barb.* 458. Disting'd in *Chouteau Ins. Co. v. Holmes' Adm'r*, 68 *Mo.* 601; s. c., 30 *Am. R.* 807, 809.

— **v. Batting**. See *Same v. Walworth*.

— **ex rel. Belknap v. Beach**, 57 *How. Pr.* 337. Aff'd in 19 *Hun.* 259.

— **ex rel. Erie R'y v. Beardsley**, 52 *Barb.* 105. Said in 41 *N. Y.* 619, to have been aff'd in Ct. of App. in Sept. 1869. Followed (What taxable as land) in *People ex rel. Dunkirk & Fredonia R. R. Co. v. Casity*, 2 *Lans.* 294, 299. Applied in *People*

- ex rel.* Smith v. Comm'rs of Taxes, 10 *Hun*, 207, 210.
- *v. Beebe*, 1 *Barb.* 379. Denied, as contrary to authority with *Gage v. Brewster*, 31 *N. Y.* 218 (Merger of lien of mortgage in judgment of foreclosure) in *Evansville Gaslight Co. v. State ex rel. Reitz*, 73 *Ind.* 219; s. c., 38 *Am. R.* 129, with note; 20 *Am. L. Reg. N. S.* 676, with note.
- *ex rel. Fowler v. Bell*, 46 *N. Y.* 57. Cited (Repeal by implication) in *Peck v. Peck*, 8 *Abb. N. C.* 400.
- *v. Bennett*, 6 *Abb. Pr.* 343. Aff'g 5 *Id.* 284. Decision in 6 *Id.* approved (Requisites of summons in action on contract) in *Mason v. Hand*, 1 *Lans.* 66. Both decisions doubted (Action for statute penalty, as one arising on contract) in *Abbot v. N. Y. Central R. R. Co.*, 12 *Abb. Pr. N. S.* 465.
- *v. —*, 37 *N. Y.* 117; s. c., 4 *Abb. Pr. N. S.* 89. Followed (Effect of irregularity in caption of indictment) in *McGarry v. People*, 2 *Lans.* 227, 231. Disting'd in *Gray v. People*, 21 *Hun*, 140, 144. Followed (Names of jurors by which indictment was found need not be stated therein) in *People v. Haynes*, 55 *Barb.* 452. Applied (Who has legal "possession" of property) in *People v. Phelps*, 6 *Hun*, 401, 427; which was aff'd in 72 *N. Y.* 334, which see.
- *v. —*, 49 *N. Y.* 137. Approved (Direction of verdict) in *People v. Dohring*, 59 *Id.* 374, 381. Disting'd (Writ of error in criminal case) in *People v. Bork*, 78 *Id.* 346, 350.
- *ex rel. Hawley v. Bennett*, 4 *Paige*, 232. See *Rogers v. Paterson*; *Watson v. Nelson*. Applied (Right to jail liberties, of one imprisoned for contempt) in *People ex rel. Crouse v. Cowles*, 3 *Abb. Ct. App. Dec.* 513; *Matter of Watson*, 3 *Lans.* 414; 69 *N. Y.* 539. Disting'd in *Allen v. Allen*, 8 *Abb. N. C.* 175, 186.
- *ex rel. Jay v. Bennett*, 14 *Hun*, 58. See, also, decision in subsequent action in *Id.* 63. Decision in *Id.* 63 disting'd with *People ex rel. Shaw v. McCarty*, 62 *How. Pr.* 152 (Summary proceedings, in case of illegal use) in *Bultman v. Kindelon*, 2 *Civ. Pro. R. (McCarty)* 47. Applied in *People ex rel. Shaw v. McCarty*, 62 *How. Pr.* 152, 155.
- *v. Berberich*, 11 *How. Pr.* 289; s. c., as *People v. Toynbee*, 2 *Park.* 329; better reported in 20 *Barb.* 168, 224. See affirmance of *People v. Toynbee*, in 13 *N. Y.* 378.
- *ex rel. Day v. Bergen*, 53 *N. Y.* 404; s. c., 15 *Abb. Pr. N. S.* 97. Further proceedings in 6 *Hun*, 267; 9 *Id.* 202. Decision in 53 *N. Y.* disting'd with *Ranney v. Peyser*, 20 *Hun*, 11 (Provisions in orders or judgment in foreclosure proceedings) in *Mutual Life Ins. Co. v. Sage*, 28 *Hun*, 595. Compare *Easton v. Pickersgill*, 55 *N. Y.* 310.
- *v. Berner*, 13 *Johns.* 383. Followed (Discharge of surety by forbearance towards principal) in *Atlantic & Pacific Tel. Co. v. Barnes*, 39 *Super. Ct. (J. & S.)* 40, 45. Denied with *King v. Baldwin*, 17 *Johns.* 391, in *Lasscer v. Young*, 6 *Gill & J. (Md.)* 243.
- *ex rel. Schuylerville & Upper Hudson R. R. Co. v. Betts*, 55 *N. Y.* 600. Applied (Conclusiveness of report of commissioners in condemnation proceedings) in *Matter of Prospect Park & C. I. R. R. Co.*, 85 *Id.* 489, 498. Reviewed with other cases (Office of certiorari) in *People ex rel. Wheeler v. Cooper*, 57 *How. Pr.* 433. Applied in *People ex rel. Bailey v. Sherman*, 15 *Hun*, 579.
- *v. Bill*, 10 *Johns.* 95. Followed with *People v. Williams*, 19 *Wend.* 377 (Competency of co-defendant as witness) in *McIntyre v. People*, 9 *N. Y.* 38; which aff'd 1 *Park.* 373, which see. Cited as authority in *State v. Roberts*, 15 *Mo.* 28; s. c., 55 *Am. Dec.* 103, n.
- *v. Bishop*, 5 *Wend.* 111. Followed (Illegality of contract compounding misdemeanor) in *Partridge v. Hood*, 120 *Mass.* 403; s. c., 21 *Am. R.* 524, 528.
- *ex rel. Lee v. Bixly*, 4 *Hun*, 636; s. c., more fully, 67 *Barb.* 221.
- *v. Blakeley*, 4 *Park.* 176. Overruled (Right to put disparaging questions on cross-examination) in *Great Western Turnpike Co. v. Loomis*, 32 *N. Y.* 127, 135. See *La Beau v. People*, 33 *How. Pr.* 66.
- *ex rel. Brown v. Board of Apportionment*, 52 *N. Y.* 224. Further decisions as *People ex rel. Brown v. Green*, in 2 *Sup'm. Ct. (T. & C.)* 18, 23. Decision in 52 *N. Y.* followed, but point not indicated, in *People ex rel. Curry v. Green*, 56 *Id.* 679.
- *ex rel. Tenth Nat. Bank v. Board of Apportionment of N. Y.*, 3 *Hun*, 11; s. c., 5 *Sup'm. Ct. (T. & C.)* 382. Aff'd in 64 *N. Y.* 627.
- *ex rel. Citizens' Gas Light Co. v. Board of Assessors*, 39 *N. Y.* 81. Dissenting opinion of MILLER, J., in 6 *Transac. App.* 116, 124. See *Stone v. Mayor, &c.* of *N. Y.* Disting'd (Effect on personal property of annexation to real estate) in *People ex rel. Dunkirk & Fredonia R. R. Co. v. Cassidy*, 2 *Lans.* 294; *People ex rel. N. Y. Elevated R. R. Co. v. Comm'rs of Taxes*, 19 *Hun*, 462. Disting'd (Assessment of corporate stock) in *People ex rel. Panama R. R. Co. v. Comm'rs of Taxes of N. Y.*, 64 *How. Pr.* 405. Applied in *People v. Howland*, 61 *Barb.* 283. Disapproved in *People ex rel. Twenty-third St. R. R. Co. v. Comm'rs of Taxes of N. Y.*, 95 *N. Y.* 554. Disting'd (Effect of delay in applying for certiorari) in *People ex rel. Waldman v. Police Comm'rs of N. Y.*, 82 *Id.* 506, 508. Disting'd (Extent of office of writ of certiorari) in *People ex rel. Kimball v. Supervisors of St. Lawrence*, 25 *Hun*, 131, 135. Explained and applied in *People ex rel. Haskin v. Supervisors of Westchester*, 8 *Abb. Pr. N. S.* 282. Explained in *People*

- ex rel.* Schuylerville & Upper Hudson R. R. Co. v. Betts, 55 N. Y. 600, 602. Applied in *People v. Hillhouse*, 1 Lans. 89; *People v. Board of Police*, 39 N. Y. 516.
- *ex rel.* Wells v. Board of Audit of Hempstead, 4 Hun, 94; s. c., more fully, 6 Supm. Ct. (T. & C.) 374.
- *ex rel.* Brooklyn Orphan Asylum v. Board of Education of Brooklyn, 13 Barb. 400. Followed (Orphan asylum, when not "common school") in *St. Patrick's Orphan Asylum v. Board of Education of Rochester*, 34 How. Pr. 227.
- *ex rel.* Murphy v. Board of Education of N. Y., 3 Hun, 177. Followed and approved (Effect of proceedings of school board in dismissing teacher) in *School District v. McCoy*, 30 Kans. 268; s. c., 46 Am. R. 92.
- *ex rel.* Noble v. Board of Pilots, 37 Barb. 126. See (Certiorari, when allowed) *Code Civ. Pro.* 1881, § 2122, n.
- *ex rel.* Cook v. Board of Police, 40 Barb. 626; s. c., 15 Abb. Pr. 473; 26 How. Pr. 152. Previous proceedings in 16 Abb. Pr. 337; s. c., at Special Term 25 How. Pr. 89. Further decision in 17 Abb. Pr. 324, n.; s. c., 26 How. Pr. 450. Final decision in 39 N. Y. 506, but erroneously reported. Judgment below, instead of being aff'd, as appears by report, was rev'd as to costs, and aff'd only as to residue. See *People ex rel. Harvey v. Heath*; *People ex rel. Latorre v. O'Brien*; *Stone v. Mayor, &c. of N. Y.* Decision in 39 N. Y. approved with *People ex rel. Miller v. Board of Police*, 6 Hun, 229 (Extension of remedy by certiorari in Matter of Lauterjung, 48 Supm. Ct. (J. & S.) 308. Explained in *People ex rel. Seymour v. Canal Board*, 7 Lans. 223. Disting'd in *People ex rel. Kimball v. Supervisors of St. Lawrence*, 25 Hun, 131, 135. Applied in *People v. Police Commissioners of Troy*, 43 How. Pr. 385, 387; *People ex rel. Cummings v. Fire Comm'rs*, 12 Hun, 503; *People v. Hillhouse*, 1 Lans. 89. See (Costs on certiorari) *People ex rel. Spencer v. Fuller*, 40 How. Pr. 35, where contrary decisions were followed. Examined with other cases in *People ex rel. Green v. Smith*, 13 Hun, 230.
- *ex rel.* Dunn v. Board of Police for the Metropolitan Police District, 35 Barb. 544. Rev'd in 26 N. Y. 316, 323.
- *ex rel.* Gorman v. Board of Police for the Metropolitan Police District, 35 Barb. 527. Rev'd in 24 How. Pr. 611, on grounds which appear in 26 N. Y. 316.
- *ex rel.* Haurahan v. Board of Police for the Metropolitan Police District, 35 Barb. 644; s. c., 14 Abb. Pr. 151. Rev'd in 26 N. Y. 316. Decision in *Id.* limited (Time for making objection in mandamus proceedings) in *People ex rel. Dunkirk, &c. R. R. Co. v. Batchellor*, 53 Ll. 123, 138.
- *ex rel.* McCune v. Board of Police for the Metropolitan Police District, 26 Barb. 487. Aff'd in 19 N. Y. 188. See *People v. Draper*. Decision in 19 N. Y. discussed in connection with the contradictory one of *People v. Draper*, 15 N. Y. 532 (Effect of act establishing Metropolitan Police District) in *People v. Board of Police*, 9 Abb. Pr. 257, 272.
- *ex rel.* Peck v. Board of Police for the Metropolitan Police District, 35 Barb. 651; s. c., 14 Abb. Pr. 158. Rev'd in 24 How. Pr. 611. See for a case wherein proceedings were identical, — *People ex rel. Haurahan v. Board of Police*, 26 N. Y. 316.
- *ex rel.* Titus v. Board of Police for the Metropolitan Police District, 35 Barb. 535. Rev'd in 24 How. Pr. 611, on grounds which appear in 26 N. Y. 316.
- *ex rel.* Folk v. Board of Police of Brooklyn, 69 N. Y. 408. Disting'd (Review of proceedings for removal of subordinate) in *People ex rel. Campbell v. Campbell*, 82 Id. 247, 255. See *Code Civ. Pro.* 1881, § 2140, n.
- *ex rel.* Clapp v. Board of Police of N. Y., 72 N. Y. 415. Rev'g 5 Hun, 457. Compare (Questions arising on certiorari) *Code Civ. Pro.* § 2140.
- *ex rel.* Satterlee v. Board of Police of N. Y., 12 Hun, 653. Rev'd in 75 N. Y. 38. Decision in *Id.* limited with *Kehn v. State of N. Y.*, 93 Id. 291; *People ex rel. Ryan v. French*, 91 Id. 265 (Regulating compensation for services) in *Riley v. Mayor, &c. of N. Y.*, 96 Id. 331. Applied (Form of remedy against department of city government) in *Swift v. Mayor, &c. of N. Y.*, 83 Id. 528, 535. Applied (Effect of public contract made at less than statutory rates) in *Quigley v. Comm'rs of Sumner Co.*, 24 Kan. 297.
- *ex rel.* Clute v. Boardman, 3 Abb. Ct. App. 483; s. c., 3 Keyes, 59. Disting'd (Appeal from decision in special statutory proceedings) in Matter of Comm'rs of Central Park, 50 N. Y. 498.
- *v. Bodine*, 1 Den. 308. Rev'g 1 Edm. Sel. Cas. 86. See *People v. Vane*. Decision in 1 Den. collated with other cases (Challenge to jury) in *Greenfield v. People*, 6 Abb. N. C. 24, n. Applied in *Lohman v. People*, 1 N. Y. 358. Explained in *People v. Honeymen*, 3 Den. 121. Followed in *Sanchez v. People*, 22 N. Y. 147, 151. Examined with *Freeman v. People*, 4 Den. 32, in *Schroeffler v. State*, 3 Wisc. 833. Explained (Burden of proof) in 1 *Best on Ev.* § 275, n. a, Wood's ed.
- *v. Booth*, 32 N. Y. 398. Reviewed (Action by attorney-general) in *People v. Tweed*, 13 Abb. Pr. N. S. 25, 53, but see *Id.* 152, and n., and *People v. Ingersoll*, 58 N. Y. 1.
- *ex rel.* Duff v. Booth, 32 How. Pr. 17. Aff'd in 49 Barb. 31.
- *v. Bostwick*, 43 Barb. 9. Aff'd in 32 N. Y. 445. See *Lovett v. Adams*. Decision in 32 N. Y. followed with *Bookstaver v. Jayne*, 60 Id. 150; *Benton v. Martin*, 52 Id. 570 (Liability of surety signing bond conditionally) and *Russell v. Freer*, 56 Id. 67,

- disting'd in *Grimwood v. Wilson*, 31 *Hun.* 215. Disting'd and doubted in *Russell v. Freer*, 56 *N. Y.* 67, 71. Disapproved, and *Dair v. U. S.*, 16 *Wall.* 1; *Russell v. Freer*, 56 *N. Y.* 71, approved in preference, in *Richardson v. Rogers*, 50 *How. Pr.* 403, 407. Cited in *Nash v. Fugate*, 24 *Gratt. (Va.)* 202; s. c., 18 *Am. R.* 640, 645, as contrary to what is there held. Disapproved as overriding the whole doctrine of estoppel in pais, in *State v. Peck*, 53 *Me.* 284, 295 (See 25 *Am. R.* 709, n.). Reviewed with other cases in *Cutler v. Roberts*, 7 *Neb.* 4; s. c., 20 *Am. R.* 371, 375. See to the contrary *Pope v. Latham*, 1 *Pike (Ark.)* 66. But see *Abb. Tr. Ev.* 507. Opinion of CAMPBELL, J., criticised as dictum (Delivery of deed as escrow, to party taking interest therein) in *Ordinary of N. J. v. Thatcher*, 12 *Vroom (N. J.)* 403; s. c., 32 *Am. R.* 225. Opinion of CAMPBELL, J., also criticised in 35 *Am. Dec.* 545, n.
- **ex rel. Roberts v. Bowe**, 20 *Hun.* 85. Rev'd in 81 *N. Y.* 43; s. c., 8 *Abb. N. C.* 234. See *N. Y. Guaranty & Ind. Co. v. Gleason*; *Gleason's Case*; *Roberts' Case*. Decision in 8 *Abb. N. C.* disting'd (Validity of execution against the person) in *Benedict, &c. M'fg Co. v. Thayer*, 21 *Hun.* 614.
- **ex rel. Thayer v. Bowe**, 59 *How. Pr.* 272; s. c., more fully, 21 *Hun.* 614. Said in *Id.* vi, that motion to dismiss appeal was denied without costs Oct. 5, 1880. Previous proceeding in 20 *Hun.* 547.
- **v. Bowen**, 30 *Barb.* 24. Aff'd in 21 *N. Y.* 517.
- **v. Bradley**, 4 *Park.* 245. Approved (Receipts, &c. as subjects of larceny) in *People v. Griffin*, 38 *How. Pr.* 475.
- **ex rel. Lawrence v. Brady**, 56 *N. Y.* 188. Disting'd (Sufficiency of application for extradition) in *People ex rel. Nubell v. Byrnes*, 2 *N. Y. Crim. R.* 398. Reviewed with other cases in 57 *Am. Dec.* 397, n. Followed (Decision under one writ of *habeas corpus* not barring issuing of second writ) in *People ex rel. McIntyre v. Hurlburt*, 67 *How. Pr.* 362. Questioned (Conclusiveness of governor's warrant in extradition proceedings) in *Leary's Case*, 6 *Abb. N. C.* 43, 63, 66, citing *People ex rel. Connors v. Reilley*, 11 *Hun.* 94. Followed (Judicial interference with executive) in *Matter of Nichols*, 6 *Abb. N. C.* 474, 493. Collated with other cases (Requisites of indictment for conspiracy) in 1 *Barb. on Crim. L.* 3 ed. 247, n.
- **v. Brandon**, 42 *N. Y.* 265. Disting'd (Extent of privilege of accused testifying in his own behalf) in *People v. Crapo*, 76 *Id.* 288, 291.
- **v. Brandreth**, 36 *N. Y.* 191; s. c., 3 *Abb. Pr. N. S.* 224. Explained (Set-off against State) in *People v. Denison*, 8 *Abb. N. C.* 128, 138.
- **ex rel. Cunningham v. Brennan**, 18 *Abb. Pr.* 100. Collated with other cases (Changes of plan in municipal contract) in 5 *Abb. N. C.* 45, n.
- **ex rel. Jennys v. Brennan**, 3 *Hun.* 666. Approved (Effect of voluntary appearance in bankruptcy court) in *O'Brien v. Weld*, 92 *U. S.* 84.
- **ex rel. Taylor v. Brennan**, 39 *Barb.* 522. See *Brown v. Weber*. See (Peremptory mandamus, when to issue in first instance) *Code Civ. Pro.* 1881, § 2070, n.
- **v. Brewster**, 4 *Wend.* 498. Disting'd (Effect of violation of act prohibiting certain corporations, &c. from carrying on banking business) in *N. Y. State Loan and Trust Co. v. Helmer*, 77 *N. Y.* 64, 70.
- **v. Briggs**, 60 *How. Pr.* 17. Followed (Wife as witness against husband) in *People v. Houghton*, 24 *Hun.* 501. See *Byrd v. State*, 57 *Miss.* 243; s. c. 34 *Am. R.* 440, and note.
- **ex rel. City of Rochester v. Briggs**, 50 *N. Y.* 553. See *Matter of Volkening*. Applied with *Matter of Mayor*, 50 *N. Y.* 504; *Matter of One Hundred and Thirty-eighth Street*, 86 *Id.* 437 (Constitutional law as to private and local bills) and *Matter of Sackett Street*, 74 *Id.* 95 disting'd in *Matter of Blodgett*, 27 *Hun.* 12; which was rev'd in 89 *N. Y.* 392, which see. Approved and applied in *More v. Deyoc*, 22 *Hun.* 208, 220. Followed in *Tift v. City of Buffalo*, 82 *N. Y.* 204, 211. Applied in *Neuendorff v. Duryea*, 6 *Daly*, 276, 282; which was aff'd in 69 *N. Y.* 557; which see; *Hurlburt v. Banks*, 1 *Abb. N. C.* 165; which was aff'd in 67 *N. Y.* 573, which see. Disting'd in city of Watertown v. Fairbanks, 65 *Id.* 588.
- **ex rel. Burroughs v. Brinkerhoff**, 7 *Hun.* 668. Modified as to clerk's costs in 68 *N. Y.* 259.
- **v. Bristol, &c. Turnpike Co.**, 23 *Wend.* 222. See *People v. Manhattan Co.* Applied (Forfeiture of charter of corporation organized to build turnpike, &c.) in *People v. Fishkill, &c. Plank Road Co.*, 27 *Barb.* 453; *People v. Williamsburgh T'pike, &c. Co.*, 47 *N. Y.* 595; *People v. Hillsdale, &c. T'pike Road Co.*, 23 *Wend.* 257. Quoted and commented on in *Morawetz on Corp.* § 647. Quoted and commented on (Origin of writ of quo warranto) in *High. on Extr. Rem.* 2 ed. § 593, n. 2.
- **ex rel. Brooks v. Brooks**, 35 *Barb.* 85. See *People v. Mercein*. Discussed (Custody of children) in *Schouler on Dom. Rel.* 3 ed. § 249, n. 2.
- **ex rel. Galsten v. Brooks**, 40 *How. Pr.* 165. Followed (Discharge of imprisoned debtor) in *Matter of Fitzgerald*, 5 *Abb. N. C.* 357. Collated with other cases in *Bishop on Assign.* § 121.
- **v. Brown**, 16 *Wend.* 561. Followed (Indictment for act not expressly prohibited) in *People v. Gilkinson*, 4 *Park.* 26, 33.
- **v. —**, 6 *Park.* 666. Explained (Offenses under statute against sale of intoxica-

- ting liquors) in *Foot v. People*, 56 *N. Y.* 321, 325.
- *v. —*, 1 *Cai* 424. Quoted and collated with other cases (State enforcing condition of forfeiture in *Sharsu. & B. Cas. on Real Prop.* 145).
- *v. —*, 72 *N. Y.* 571. Aff'g *Brown v. People*, 8 *Hun.* 562. See *Brandon v. People*; *People v. Crapo*. Decision in 72 *N. Y.* disting'd (Evidence of commission of crime) in *People v. Irving*, 95 *Id.* 541.
- *ex rel. Martin v. Brown*, 55 *N. Y.* 180. Disting'd (Right of town to moneys raised by taxation) in *Bridges v. Supervisors of Sullivan*, 92 *Id.* 570; *Shepherd's Fold v. Mayor, &c. of N. Y.*, 13 *Weekly Dig.* 572. Applied (Effect of affidavits of assessors in case of town bonds) in *Town of Springport v. Teutonia Sav'gs B'k*, 75 *N. Y.* 406. Followed in *Cagwin v. Town of Hancock*, 84 *Id.* 532, 539. See (Allowance of peremptory mandamus) *Code Civ. Pro.* 1881, § 2070, *n.*
- *ex rel. Joyce v. Brundage*, 18 *Hun.* 291. Aff'd in 78 *N. Y.* 403.
- *v. Buckland*, 13 *Wend.* 592. Disting'd (Conclusiveness of judgment in criminal case) in *Sims v. Sims*, 75 *N. Y.* 473.
- *v. Buel*, 18 *Hun.* 487. Aff'd in 78 *N. Y.* 492.
- *v. Bull*, 42 *Super. Ct. (J. & S.)* 19. Followed, but disapproved (Summons in action for penalty) in *Schoonmaker v. Brooks*, 24 *Hun.* 554.
- *ex rel. Fowler v. Bull*, 46 *N. Y.* 57. See *People ex rel. Loew v. Batchelor*. Disting'd (Legislative power over elections) in *People v. Flanagan*, 66 *N. Y.* 243. Followed in *People ex rel. Williamson v. McKinney*, 52 *Id.* 374, 378.
- *v. Burden*, 9 *Barb.* 467. Disapproved (Perjury as established by proof of contradictory oath) in *Schwartz v. Commonwealth*, 27 *Gratt. (Va.)* 1025; *s. c.*, 21 *Am. R.* 365, 367.
- *v. Burke*, 11 *Wend.* 129. Followed (Legislative power to punish offense of bringing stolen goods into State) in *Hemmaker v. State*, 12 *Mo.* 453; *s. c.*, 51 *Am. Dec.* 172, with note.
- *ex rel. Woodworth v. Burrows*, 27 *Barb.* 89; *s. c.*, 16 *How. Pr.* 27. Approved (Repeal of mandamus against State officer, in absence of appropriation) in *People v. Tremain*, 29 *Barb.* 96.
- *v. Bush*, 3 *Park.* 552. Disting'd with *Nelson v. People*, 5 *Id.* 39; *People v. Graves*, *Id.* 134 (Reconsidering verdict) in *People v. Hale*, 1 *N. Y. Crim. R.* 532. Disapproved (Evidence of parents' care of child) in *Smith v. Grand St., &c. R. R. Co.*, 11 *Abb. N. C.* 62, as overruled by *Mailler v. Express Propeller Line*, 61 *N. Y.* 316; *Warner v. N. Y. Central R. R. Co.*, 44 *Id.* 465. Approved (What is dwelling in sense of law of burglary) in *Mason v. People*, 26 *N. Y.* 200.
- *v. —*, 4 *Hill*, 133. Disting'd as resting on a statute (Proof of remote act, as sustaining conviction for attempt to commit felony) in *Stabler v. Commonwealth*, 95 *Penn. St.* 318; *s. c.*, 40 *Am. R.* 653.
- *v. Butler*, 16 *Johns.* 203. See report of trial reported as *Rose Butler's Case*, 4 *City H. Rec.* 77. Disapproved (Killing while committing another crime) in *Buel v. People*, 78 *N. Y.* 492. Disapproved and *Buel v. People*, 18 *Hun.* 489; 78 *N. Y.* 499, followed in *People v. McKeon*, 81 *Hun.* 449.
- *v. Byron*, 3 *Johns. Cas.* 53; *s. c.*, 1 *N. Y. Com. L. Law. ed.* 615, with brief note. Applied (Power of guardian over property of wards) in *Thompson v. Boardman*, 1 *Verm.* 367; *s. c.*, 18 *Am. Dec.* 684, with note, wherein see criticisms.
- *ex rel. Ketteltas v. Cady*, 4 *Sup'm. Ct. (T. & C.)* 656; *s. c.*, with opinion 2 *Hun.* 224.
- *v. Call*, 1 *Den.* 120; *s. c.*, 43 *Am. Dec.* 655, with note, wherein are collected citations. Applied (Larceny by one having custody of property) in *Phelps v. People*, 6 *Hun.* 401, 427; which was aff'd in 72 *N. Y.* 334, which see. Disting'd with *People v. McGarrin*, 17 *Wend.* 460; *Wolfstein v. People*, 6 *Hun.* 121, in *State v. Ducker*, 8 *Oreg.* 394; *s. c.*, 34 *Am. R.* 591, and collated in note thereto. Cited in 57 *Am. Dec.* 275, *n.*, as furnishing exceptions to the rule.
- *ex rel. Gilmore v. Callahan*, 60 *How. Pr.* 372; *s. c.*, 23 *Hun.* 581. Collated with other cases (When objections to summary proceedings are to be made) in *McAdam on Landl. & T.* 2 ed. § 264.
- *v. Campbell*, 4 *Park.* 386. Disting'd (Jurisdiction by consent in criminal cases) *People v. Dohring*, 59 *N. Y.* 374, 380.
- *ex rel. Hambrecht v. Campbell*, 22 *Hun.* 574. Followed (Jurisdiction of justice of N. Y. District Court over summary proceedings) in *People ex rel. Richmann v. Meyer*, 23 *Hun.* 666, but without opinion.
- *ex rel. Lunney v. Campbell*, 72 *N. Y.* 496. Followed, but point not indicated, in *People ex rel. McKone v. Green*, *Id.* 612.
- *ex rel. Freer v. Canal Appraisers*, 13 *Hun.* 64. Aff'd in 73 *N. Y.* 443.
- *ex rel. Loomis v. Canal Appraisers*, 33 *N. Y.* 461. See *Bellinger v. N. Y. Central R. R. Co.*; *Brown v. Scofield*; *Canal Comm'rs v. People*; *Child v. Starr*, Commissioners of Canal Fund *v. Kempshall*; *Ex parte Jennings*; *Gould v. Hudson River R. R. Co.*; *People v. Tibbetts*. Disting'd (Application in this State of common law rule respecting navigable rivers) in *Smith v. City of Rochester*, 92 *N. Y.* 463. Collated with *Palmer v. Mulligan*, 3 *Cai.* 307; *People v. Canal Appraisers*, 13 *Wend.* 355, in 10 *Am. Dec.* 385, *n.* where the N. Y. Courts are thought until decision in 13 *Wend.* to have held very steadily to the common law rule. See for further examination of legal questions arising on the subject 11 *Am. Dec.* 168, *n.* and *Id.* 253, *n.* Criticised in 13 *Cent. L.*

- J. 2.* Collated with other cases in *Mills' Thoms. on Highw.* 3 ed. 50. Commented on in *Cook Highw. L.* 4 ed. 27. See collation of authorities (Property in water) in 7 *Am. Dec.* 581, *n.*
- *ex rel. Tibbits v. Canal Appraisers*, 18 *Wend.* 355. Rev'd in 17 *Id.* 571. Decision in 13 *Id.* approved with Canal Comm'rs *v. People*, 5 *Id.* 423; *Gardner v. Village of Newburgh*, 2 *Johns. Ch.* 162 (Invasion of real property is taking within constitutional rule) in *Weaver v. Mississippi & Rum River Boom Co.*, 28 *Minn.* 534, 540. See also *Black River Impr. Co. v. LaCrosse, Booming, &c. Co.*, 54 *Wis.* 659; *s. c.*, 41 *Am. R.* 66.
- *v. Canal Board*, 7 *N. Y. Sup'm. Ct. (T. & C.)* 309. Aff'd in 55 *N. Y.* 390. See *Mohawk & Hudson R. R. Co. v. Artcher*. Decision in 55 *N. Y.* disting'd (Injunction restraining public officers) in *Davis v. American Soc. P. C. A.*, 75 *Id.* 369.
- *ex rel. Seymour v. Canal Board*, 7 *Lans.* 220. Followed (Passage of act validating proceedings after issue of certiorari to review) in *People ex rel. Kilmer v. McDonald*, 2 *Hun*, 70, 73.
- *ex rel. Yates v. Canal Board*, 13 *Barb.* 432. Overruled (Mandamus to compel execution of contract for work on canals) in *People ex rel. Vickerman v. Contracting Board*, 46 *Id.* 254.
- *v. Caniff*, 2 *Park.* 586. See in accord therewith (Right of people to two challenges) in *People v. Masters*, 3 *Id.* 517.
- *v. Carey*, 5 *Da'y*, 533. Further decision in 6 *Id.* 406.
- *v. Carpenter*, 9 *Barb.* 580. Explained (Wife as witness for people on trial of husband) in 1 *Best on Ev.* § 98, *n. a*, Wood's ed. Quoted and cases cited to the contrary in 2 *Bennett & H. Cas. on Crim. L.* 257.
- *v. —*, 24 *N. Y.* 86. Compared with other cases (Legislative character of power of incorporation) in *People ex rel. Shumway v. Bennett*, 29 *Mich.* 451; *s. c.*, 18 *Am. R.* 107.
- *v. ex rel. Rosekrans v. Carr*, 62 *How. Pr.* 5. Rev'd in 25 *Hun*, 325; *s. c.*, 62 *How. Pr.* 19, and that aff'd in 86 *N. Y.* 512; *s. c.*, 62 *How. Pr.* 51.
- *v. Carrique*, 2 *Hill*, 93. Disting'd (Validity of appointment or election to office) in *People ex rel. Furman v. Clute*, 50 *N. Y.* 451, 468. Explained (Effect of acceptance of second office incompatible with first) in *People ex rel. Martin v. Board of Police*, 35 *Barb.* 553. Limited (Necessity of notice to removed officer) in *Holley v. Mayor, &c. of N. Y.*, 59 *N. Y.* 166, 170. Reviewed with other cases (What is necessary to create vacancy in office) in *Turnipseed v. Hudson*, 50 *Miss.* 429; *s. c.*, 19 *Am. R.* 15, 25. Applied with *Van Orsdall v. Hazard*, 3 *Hill*, 243, in *Stubbs v. Lee*, 64 *Me.* 195; *s. c.*, 18 *Am. R.* 251.
- *ex rel. Childs v. Cartwright*, 9 *Hun*, 159. Further proceeding in 11 *Id.* 362.
- *v. Casey*. See *Brandon v. People*; *People v. Crapo*; *Ryan v. People*.
- *v. Cassels*, 5 *Hill*, 164. Applied (Inquiry into jurisdiction in *habeas corpus* proceedings) in *People ex rel. Tweed v. Liscomb*, 60 *N. Y.* 559, 572. Examined in *Re Blair*, 4 *Wisc.* 532. Followed (Effect of want of jurisdiction) in *Bolton v. Jacks*, 6 *Robt.* 166.
- *v. Cassity*, 2 *Lans.* 294. Aff'd in 46 *N. Y.* 46. Both decisions followed (What taxable as "land") in *Troy & Lansingburgh R. R. Co. v. Kane*, 9 *Hun*, 508; *People ex rel. Smith v. Comm'r's of Taxes*, 10 *Id.* 207, 210; *Smith v. Mayor, &c. of N. Y.*, 68 *N. Y.* 556. Decision in 46 *Id.* followed in *People ex rel. Van Nest v. Comm'r's of Taxes of N. Y.*, 80 *Id.* 573, 577; *People ex rel. N. Y. Elev. R. R. Co. v. Comm'r's of Taxes of N. Y.*, 82 *Id.* 459, 462; which aff'd 19 *Hun*, 461, which see.
- *v. Cavanagh*, 1 *Park.* 588; *s. c.*, as Matter of Cavanagh, 10 *How. Pr.* 27. Rev'd in 2 *Abb. Pr.* 84; *s. c.*, 2 *Park.* 650, where certiorari and return are given.
- *v. Central City Bank*, 53 *Barb.* 412. See *Adams v. Dyer*. Limited (Adjournment of court to chambers) to Sup'm. Ct. judges, in *Bennett v. Cooper*, 57 *Barb.* 642.
- *v. Central Crostown R. R. Co.*, 21 *Hun*, 476. Compare brief mem. *Id.* 588.
- *v. Central R. R. of N. J.*, 48 *Barb.* 478; *s. c.*, 33 *How. Pr.* 407. Rev'd in 42 *N. Y.* 283. Decision in *Id.* disting'd (Jurisdiction of foreign corporation) in *Gibb v. Queen Ins. Co.*, 63 *Id.* 130. Applied in *Atlantic & Pac. Tel. Co. v. Balt. & Ohio R. R. Co.*, 46 *Super. Ct. (J. & S.)* 377, 385, 387, 425.
- *v. Chalmers*, 1 *Hun*, 683; *s. c.*, 4 *Sup'm. Ct. (T. & C.)* 185. Second trial resulted in judgment for defendants, which was aff'd by General Term, Jan. 4, 1875, which adopted the opinion it had previously given and which is reported in 1 *Hun*, 683. This judgment aff'd in 60 *N. Y.* 154. Decision in 1 *Hun* disting'd (Liability of sureties on assignee's bond) in *Williams v. Kiernan*, 25 *Id.* 355, 362, a case of administrator's bond. Also disting'd in *Adams v. Hyams, U. S. Cir. Ct. D. Conn.*, 8 *Fed. Rep.* 418. Quoted in *Burrill on Assign.* § 28, *n. 4*, 4 ed.
- *ex rel. Ruggles v. Chapman*, 64 *N. Y.* 557. Aff'g *Ruggles v. Chapman*, 1 *Hun*, 324, and another decision to same effect in 2 *Sup'm. Ct. (T. & C.)* 600.
- *ex rel. Siehel v. Chapman*, 30 *How. Pr.* 202. Disting'd (Power of Supreme Court justice to admit to bail outside of county of arrest) in *People v. Clews*, 77 *N. Y.* 39, 45.
- *v. Charles*, 3 *Den.* 212. Aff'd in 1 *N. Y.* 180.
- *v. Chegaray*, 18 *Wend.* 637; *s. c.*, 13 *N. Y. Com. L. Law. ed.* 495, with brief

- note on right of parent to custody of children.
- **ex rel. Kilmer v. Cheritree**, 4 *Sup'm. Ct. (T. & C.)* 289. Further decision in 6 *Sup'm. Ct. (T. & C.)* 473; which was aff'd in 5 *Weekly Dig.* 65.
  - **v. Christie**, 2 *Abb. Pr.* 256; s. c., 2 *Park.* 579. Disting'd (Prejudice of juror against religious sect to which defendant belongs, ground for challenge) in *U. S. v. Noelke*, 17 *Blanchf. O. Ct.* 554, 563. Cited (Compelling person to answer questions as to his motives in testifying) in 1 *Whart Com. on Ev.* § 544. Cited (Extent of privilege of witness for prosecution to refuse to answer as to sources of his information) in *Id.* § 604, n.
  - **v. Christopher**, 4 *Hun.* 805. Opposed (Sufficiency of denial) in *Jones v. Ludlum*, 74 *N. Y.* 61.
  - **v. Church**, 2 *Lans.* 459. Aff'g *People v. Albany & Susquehanna R. R. Co.*, 8 *Abb. Pr. N. S.* 122. See *Bergh's Case*.
  - **ex rel. Brooklyn Park Comm'rs v. City of Brooklyn**, 3 *Hun.* 596. Aff'd, it seems, in 66 *N. Y.* 642, but without opinion.
  - **ex rel. Oswego Canal Co. v. City of Oswego**, 5 *Hun.* 117; s. c., with opinion, 6 *Sup'm. Ct. (T. & C.)* 673.
  - **ex rel. Porter v. City of Rochester**, 21 *Barb.* 656. See *People ex rel. Cook v. Board of Police*. To same effect (*Office of common law certiorari*) *People v. Overseers of Barton*, 6 *How. Pr.* 25. See *Stone v. Mayor, &c. of N. Y.*, 25 *Wend.* 157, 182. Compare, however, reasoning in *Moorewood v. Hallister*, 6 *N. Y.* 309.
  - **ex rel. Francis v. City of Troy**, 17 *Hun.* 20. Rev'd in 78 *N. Y.* 33.
  - **ex rel. Curtis v. City of Utica**, 45 *How.* 289; s. c., with points of counsel, as *Same v. Common Council of Utica*, 65 *Barb.* 9.
  - **v. Clark**, 4 *Cow.* 95. Followed (Application of general rules of pleading to proceedings on information in nature of quo warranto) in *State v. Steers*, 44 *Mo.* 223.
  - **v. —**, 1 *Park.* 347. See (*Stay of judgment in criminal cases*) *People v. O'Reilly*, 9 *Abb. N. C.* 77, 91.
  - **v. —**, 7 *N. Y.* 385; s. c., 11 *N. Y. Leg. Obs.* 4. Applied (*Degree of deliberation requisite to constitute premeditated design*) in *Fitzgerrold v. People*, 4 *Abb. Pr. N. S.* 73, 81; see dissenting opinion in 37 *N. Y.* 689. Also applied in *People v. Sullivan*, 7 *Id.* 399; *People v. Rogers*, 18 *Id.* 22; *McCann v. People*, 6 *Park.* 634. Commented on in *People v. Lamb*, 2 *Keyes*, 382. Explained (*Power of appellate court as to fixing time of execution*) in *People v. Ferris*, 32 *How. Pr.* 422.
  - **v. Clarke**, 9 *N. Y.* 349. Aff'g 10 *Barb.* 120; 11 *Id.* 337. Decision in 10 *Id.*, followed (*Lapse of time as bar to action by government*) in *U. S. v. Beebee*, *U. S. Cir. Ct. E. D. Ark.* 12 *Am. L. Rev.* 142.
  - **ex rel. Debenetti v. Clerk of Marine Ct.**, 22 *Barb.* 502; s. c., more fully, 3 *Abb. Pr.* 57. Aff'd in *Id.* 309; s. c., 3 *Abb. Ct. App. Dec.* 491.
  - **v. Clews**, 14 *Hun.* 90. Aff'd in 77 *N. Y.* 39. Other proceedings in 4 *Abb. N. C.* 256; and in 57 *How. Pr.* 245. See contrary to decision in 4 *Abb. N. C.* (Validity of adjournment) 17 *Alb. L. J.* 175.
  - **v. Cline**, 23 *Barb.* 197. Criticised and overruled (*Right of referees, hearing appeal from order of commissioners of highways to inquire into commissioner's jurisdiction*) in *People ex rel. Hubbard v. Harris*, 63 *N. Y.* 391. Quoted and collated with other cases in *Mills Thomps. on Highw.* 3 ed. 297.
  - **v. Clough**, 17 *Wend.* 351. See *McCord v. People*. Superseded (*Falsely soliciting charitable donations, not indictable*) by *L.* 1851, c. 144.
  - **ex rel. Furman v. Clute**, 12 *Abb. Pr. N. S.* 399. Rev'd in part in 63 *Barb.* 356; but latter rev'd, and former aff'd, in 50 *N. Y.* 451; s. c., 10 *Am. R.* 508. Further decision in 52 *N. Y.* 576 modifies that in 50 *N. Y.* 451, on the question of costs, and on this point affirms 63 *Barb.* 356. Decision in 50 *N. Y.* applied (*Effect of disqualification of candidate having highest number of votes*) in *Re Corliss*, 11 *E. I.* 638; s. c., 23 *Am. R.* 538, 543. Followed in *Barnum v. Gilman*, 27 *Minn.* 470. Collated with other cases in 12 *Am. R.* 341, n.
  - **ex rel. Wright v. Coffin**. See *Tucker v. Tucker*; *Wright's Accounting*; *Wright v. Fleming*.
  - **v. Cogdell**, 1 *Hill.* 94. See *People v. McGarren*. Relied on in dissenting opinion of O'KEE, J. (*Lost property as subject of larceny*) in *Brooks v. State*, 35 *Ohio St.* 49; s. c., 29 *Am. R.* 769, n. Approved with *People v. Anderson*, 14 *Johns.* 294; *Abrams v. People*, 6 *Hun.* 491; *Wilson v. People*, 39 *N. Y.* 459, in *State v. Dean*, 49 *Iowa*, 73; s. c., 31 *Am. R.* 143, 145. Collated with other cases in 17 *Id.* 140, n.
  - **v. Colbern**, 1 *Wheel. Cr.* 479. Criticised as lacking weight of authority (*Wife or husband of one co-defendant as witness against another co-defendant*) in *Commonwealth v. Reid*, 1 *Leg. Gaz. Pa.* 182, 192; s. c., 8 *Phila. (Pa.)* 385. Discussed in 1 *Best on Ev.* § 98, n. a, Wood's ed.
  - **ex rel. Sanders v. Colborne**, 20 *How. Pr.* 378. See (*Definition of "action"*) *Code Civ. Pro.* 1881, § 3383, n.
  - **v. Cole**, 4 *Park.* 35. Disapproved (*Weight of evidence of good character in criminal cases*) in *State v. Northrup*, 48 *Iowa*, 583; s. c., 30 *Am. R.* 410. Collated with other cases (*Prisoner retreating in self defense*) in *Horrigan & T. Cas. on Self Def.* 141.
  - **ex rel. Banks v. Colgate**, 9 *Hun.* 708. Aff'd in 67 *N. Y.* 512.
  - **ex rel. Bush v. Collins**, 7 *Johns.* 549. See *Parker v. Baker*. Approved and applied with *People v. Dean*, 3 *Wend.* 438 (*Effect of acts of officer de facto*) in *Morris v. Peo-*

- ple, 3 *Den.* 381, 395. Followed in *Wilcox v. Smith*, 5 *Wend.* 233. Applied in *Board of Education v. Fonda*, 77 *N. Y.* 357. Disting'd in *People v. Brennan*, 30 *How. Pr.* 419. Applied in *Petersilea v. Stone*, 119 *Mass.* 465; s. c., 20 *Am. R.* 335. Followed in *Buckman v. Ruggles*, 15 *Mass.* 180; s. c., 8 *Am. Dec.* 98. Followed with *Reed v. Gillet*, 12 *Johns.* 296, in *Burke v. Elliott*, 4 *Ired. L. (N. C.)* 355; s. c., 42 *Am. Dec.* 142, with note. Followed with *People v. Hopson*, 1 *Den.* 574, in *Plymouth v. Painter*, 17 *Conn.* 585; s. c., 44 *Am. Dec.* 574, 577, with note. Disting'd with *People v. Dean*, 3 *Wend.* 438; *Morris v. People*, 3 *Den.* 381, in *State ex rel. McCurdy v. Tappan*, 29 *Wis.* 664; s. c., 9 *Am. R.* 622, 635. Approved and applied with *McInstry v. Tanner*, 9 *Johns.* 135, in *McGregor v. Balch*, 14 *Verm.* 428; s. c., 39 *Am. Dec.* 231. Followed with *People v. Runkle*, 9 *Johns.* 147, in *St. Luke's Church v. Matthews*, 4 *Desaus. (So. Car.)* 578; s. c., 6 *Am. Dec.* 619, 626. Said in *Stevenson v. Miller*, 2 *Litt. (Ky.)* 306; s. c., 13 *Am. Dec.* 271, 276, with note to establish the rule. With *McInstry v. Tanner*, 9 *Johns.* 135, said in 19 *Am. Dec.* 65, *n.*, to have been qualified by subsequent adjudications. Disting'd (Mandamus to compel filing, &c.) in *People ex rel. Hartford, &c. Ins. Co. v. Fairman*, 12 *Abb. N. C.* 252.
- *ex rel. Case v. Collins*, 19 *Wend.* 56. Applied (Proof requisite to entitle one to remedy by mandamus) in *People ex rel. Coppers v. Trustees*, 21 *Hun.* 184. Explained in *People ex rel. Frost v. Fay*, 3 *Lans.* 404. Disting'd (Mandamus, on application of individual, in case of public right) in *People v. Canal Board*, 13 *Barb.* 448. Regarded as having settled the rule and being a well considered case, in *People ex rel. Stephens v. Halsey*, 37 *N. Y.* 344. Disapproved with *People v. Tracy*, 1 *Den.* 618, in *Drake v. Regents, &c.*, 4 *Mich.* 102. Collated with other cases in 28 *Am. R.* 448, *n.* Approved (Proceedings in mandamus, as affected by expiration of term of office of defendant) in *Thompson v. U. S.*, 103 *U. S.* 483.
- *v. Colt*, 3 *Hill.* 432. Opinion of Chancellor Walworth referred to in *Id.* 436, *n. a.*, is reported in 1 *Park.* 611. See *Sun. ed.* of proceedings at N. Y. oyer and terminer published at N. Y. 1842. See also Vol. 1, p. 226, of Remarkable Trials, published at N. Y. 1867. See *Life of J. C. Colt*, 3 ed. Boston, 1842.
- *v. Columbia Common Pleas*, 1 *Wend.* 297; s. c., 9 *N. Y. Com. L. Law.* ed. 922, with brief note of other cases. Disting'd (Correcting verdict on jurors' affidavits) in *Dalrymple v. Williams*, 63 *N. Y.* 361. Followed in *Clark v. Carter*, 12 *Geo.* 500; s. c., 68 *Am. Dec.* 485. Commented on and cases cited to the contrary (Mandamus to inferior courts) in *High. on Extr. Rem.* 2 ed. § 160, *n.* 5.
- *v. Coman*, 5 *Daly*, 527; s. c., 49 *How. Pr.* 91. Appeal dismissed, it seems, in 63 *N. Y.* 611, but without opinion. Decision in 5 *Daly* applied (Discharging judgment on forfeited recognizance) in *People v. Cary*, 6 *Id.* 406. Followed in *People v. Haggerty*, 5 *Id.* 532.
- *ex rel. County Superintendents of Poor of Monroe v. Commissioners of Emigration*, 15 *How. Pr.* 177. Rev'd in 27 *Barb.* 562.
- *ex rel. Argyle, &c. Pl. Rd. Co. v. Commissioners of Fort Edward*, 11 *How. Pr.* 89. See (Alternative writ of mandamus, how returnable) *Code Civ. Pro.* 1881, § 2072, *n.*
- *ex rel. Hunting v. Commissioners of Highways of East Hampton*, 30 *N. Y.* 72. Explained and disting'd (Necessity that proceedings be at the time pending before inferior tribunal, to justify use of certiorari) in *People ex rel. Haines v. Smith*, 45 *Id.* 772. Reviewed with other cases (Limits of inquiry on certiorari) in *People v. Board of Police*, 39 *Id.* 515.
- *ex rel. Purdy v. Commissioners of Highways of Marlborough*, 54 *N. Y.* 276. See *People v. Devlin*; *Thomas v. Dakin*. Cited (Presumption that statute was duly passed) in 1 *Whart. Com. on Ev.* § 290, where qualifying cases are cited. To the contrary see authorities in *Abb. Tr. Ev.* 770, *n.* 5.
- *ex rel. Failing v. Commissioners of Highways of Palatine*, 53 *Barb.* 70. Followed (Title of local bill) in *People ex rel. Schenectady Observatory v. Allen*, 42 *N. Y.* 404, 418. Disting'd in *People ex rel. Commissioners v. Banks*, 67 *Id.* 568, 572.
- *ex rel. Ottman v. Commissioners of Highways of Seward*. See *People v. Hynds*.
- *v. Commissioners of Hudson*, 7 *Wend.* 474. Commented on with *People v. Adsit*, 2 *Hill.* 619 (Liability of commissioners of highways) in *Adsit v. Brady*, 4 *Id.* 680, 634.
- *ex rel. Presmeyer v. Commissioners of Police, &c.* See *People ex rel. Beller v. Wright*.
- *ex rel. Clark v. Commissioners of Reading*, 1 *Sup'm. Ct. (T. & C.)* 193. Disting'd (Discontinuance of highway) in *People ex rel. Miller v. Griswold*, 67 *N. Y.* 59, 62.
- *ex rel. Abrams v. Commissioners of Taxes*, 52 *N. Y.* 659. Explained (What taxable as real estate) in *People ex rel. Van Nest v. Commissioners of Taxes of N. Y.*, 80 *Id.* 573, 575.
- *ex rel. Academy of Sacred Heart v. Commissioners of Taxes*, 6 *Hun.* 109. Aff'd as *People ex rel. Female Academy, &c. v. Same*, 64 *N. Y.* 656. Decision in 6 *Hun* followed (Exemption of "lot" from taxation) in *People ex rel. St. Johns College v. Commr's of Taxes of N. Y.*, 10 *Id.* 246.
- *ex rel. Bank of British N. A. v. Com-*



**missioners of Taxes.** Reported as *People ex rel. Bank of Montreal v. Same.*

— **ex rel. Bank of Commerce of N. Y. v. Commissioners of Taxes,** 40 *Barb.* 334. Rev'd in 2 *Wall.* 200. Results of this decision examined (Tax upon stock issued by act of Congress) in *People ex rel. Lockport City Bank v. Board of Education of Lockport*, 46 *Barb.* 588, 593.

— **v. —**, 26 *N. Y.* 163. Said in 4 *Am. L. Leg. N. S.* 235, to have been rev'd (Tax upon stock issued by act of Congress) in 2 *Black*, 620.

— **ex rel. Bank of Commonwealth v. Commissioner of Taxes,** 23 *N. Y.* 192. Aff'd 32 *Barb.* 509; s. c., 20 *How. Pr.* 182; 18 *Id.* 245. Rev'd in 2 *Black*, 620; s. c., 25 *How. Pr.* 9. Decision in 23 *N. Y.* followed (Definition of capital stock) in *Williams v. Western Union Tel. Co.*, 9 *Abb. N. C.* 419, 423. Followed (Taxation of U. S. securities) in *People v. Comm'r's of Taxes of N. Y.*, 37 *Barb.* 638; *Same v. Same*, 26 *N. Y.* 164. Examined in connection with subsequent decisions and legislation in *People ex rel. Otsego County Bank v. Supervisors of Otsego Co.*, 51 *Id.* 401, 404. Disapproved in 2 *Am. L. Reg. N. S.* 43, n. Decisions in 2 *Wall.*; 23 *N. Y.* examined in *People v. Board of Education of Lockport*, 46 *Barb.* 594. Decision in 23 *N. Y.* cited in 1 *Kent Com.* 429, n. 1, Holmes' ed. Included in 3 *Am. L. Reg. N. S.* 535, with note by Prof. DWIGHT. Decisions in 32 *Barb.*; 23 *N. Y.*; 25 *How. Pr.* reviewed (Taxation of capital stock) in *People v. Comm'r's of Taxes of N. Y.*, 40 *Barb.* 347; *Same v. Same*, 46 *How. Pr.* 231. Decision in 23 *N. Y.* applied in *Pacific Steamship Co. v. Comm'r's of Taxes*, 46 *How. Pr.* 342.

— **ex rel. Bank of Montreal v. Commissioners of Taxes,** 1 *Sup'm. Ct. (T. & C.)* 630. Rev'd in 59 *N. Y.* 40, and the assessments vacated. See *Williams v. Supervisors of Wayne Co.*

— **ex rel. Broadway & Seventh Ave. R. Co. v. Commissioners of Taxes,** 1 *Sup'm. Ct. (T. & C.)* 635; s. c., 46 *How. Pr.* 227. Aff'd, it seems, in 60 *N. Y.* 638, but without opinion.

— **ex rel. Gallatin Nat. Bank v. Commissioners of Taxes,** 8 *Hun.* 536. Aff'd in 67 *N. Y.* 516. Compare (Taxation of bank shares) in *People v. Comm'r's of Taxes*, 94 *U. S.* 415.

— **ex rel. Hanover Bank v. Commissioners of Taxes,** 37 *Barb.* 635; s. c., 2 *Am. L. Reg. N. S.* 31, with notes by Prof. DWIGHT.

— **ex rel. Hoyt v. Commissioners of Taxes,** 33 *Barb.* 116. Dissenting opinion in *Id.* 523. Rev'd in 23 *N. Y.* 224; s. c., 21 *How. Pr.* 385. See *People v. Gardner*; *Williams v. Supervisors of Wayne Co.* Decision in 23 *N. Y.* explained (Limitation of office of certiorari) in *People v. Supervisors of Livingston*, 43 *Barb.* 236. Explained (Taxation of personal property, as affected

by question of place) in *People v. Comm'r's of Taxes*, 37 *Id.* 639; *Same v. Same*, 40 *Id.* 355; *People ex rel. Pacific Mail Steamship Co. v. Comm'r's of Taxes*, 58 *N. Y.* 246. Applied in *People v. Gardner*, 51 *Barb.* 355; *Pacific Steamship Co. v. Comm'r's of Taxes*, 46 *How. Pr.* 343; *People ex rel. Jefferson v. Smith*, 88 *N. Y.* 576. Explained and disting'd in *Boardman v. Supervisors of Tompkins*, 85 *Id.* 359, 361, 363. Followed with *People ex rel. Jefferson v. Gardner*, 51 *Barb.* 352, in *Trowbridge v. Commissioner of Taxes*, 4 *Hun.* 595, 598. Relied on in *Jenkins v. Charleston*, 5 *So. Car.* 393; s. c., 22 *Am. R.* 14, 23. Reviewed with *Duer v. Small*, 17 *How. Pr.* 201; *Trowbridge v. Commissioners of Taxes*, 4 *Hun.* 595, and other cases in *Dyer v. Osborne*, 11 *R. I.* 321; s. c., 23 *Am. R.* 460, 463. Disting'd (Situs of personal property) in *Kelly v. Crapo*, 45 *N. Y.* 92. Approved in *Graham v. First Nat. B'k of Norfolk*, 84 *Id.* 393, 400.

— **ex rel. Kennedy v. Commissioner of Taxes,** 35 *N. Y.* 423. Aff'd in 4 *Wall.* 244. Both decisions cited with other authorities (State tax on Federal operations) in 1 *Kent Com.* 429, n. 1 Holmes' ed.

— **ex rel. National Freight, &c. Co. v. Commissioners of Taxes,** 3 *Month. L. Bul.* 5. This case, or one of similar name, explained (Exemption of corporation from taxation under *L.* 1880, c. 542) in *People ex rel. Westchester Fire Ins. Co. v. Davenport*, 25 *Hun.* 630.

— **ex rel. N. Y. Elev. R. R. Co. v. Commissioners of Taxes,** 19 *Hun.* 460. Aff'd in 82 *N. Y.* 459.

— **ex rel. Pacific Mail Steamship Co. v. Commissioners of Taxes,** 46 *How. Pr.* 315; s. c., 1 *Sup'm. Ct. (T. & C.)* 611. Further proceeding in 1 *Hun.* 143; s. c., 3 *Sup'm. Ct. (T. & C.)* 678; 47 *How. Pr.* 164, which was aff'd in 58 *N. Y.* 242. Also further proceeding in 5 *Hun.* 200, and that aff'd in 64 *N. Y.* 541. Decision in 5 *Hun.* criticised (Taxation of stock of foreign corporations held by residents) in 56 *Am. Dec.* 528, n., as contrary to weight of authority.

— **ex rel. Parker Mills v. Commissioners of Taxes,** 23 *N. Y.* 242; s. c., 22 *How. Pr.* 143. Explained and applied (Taxation of foreign corporation doing business in this State) in *People ex rel. Bank of Montreal v. Comm'r's of Taxes*, 59 *N. Y.* 44, which rev'd 1 *Sup'm. Ct. (T. & C.)* 634, which see.

— **ex rel. Trademen's Bank v. Commissioners of Taxes,** 9 *Hun.* 650. Rev'd in 69 *N. Y.* 91.

— **ex rel. Trowbridge v. Commissioners of Taxes,** 4 *Hun.* 595. Aff'd, it seems, in 62 *N. Y.* 630, but without opinion. See *People v. Gardner*. Decision in 4 *Hun.* disting'd (Shares of stock in foreign corporation, where taxable) in *Dyer v. Osborne*, 11 *R. I.* 321; s. c., 23 *Am. R.* 464.

— **ex rel. Van Nest v. Commissioners of Taxes,** 80 *N. Y.* 573. Followed (What

- taxable as real estate) in *People ex rel. N. Y. Elev. R. R. Co. v. Comm'rs of Taxes*, 82 *Id.* 459, 463.
- *ex rel. Brisbane v. Common Council of Buffalo*, 76 *N. Y.* 558. Explained (Destroying property to save other property) in *Moak's Underhill's Torts*, 1 *Am. ed.* 454.
- *ex rel. Market Commissioners v. Common Council of New York*, 1 *Abb. Pr. N. S.* 318; s. c., 45 *Barb.* 473; 30 *How. Pr.* 327. Aff'd in 3 *Keyes*, 81; s. c., 3 *Abb. Ct. App. Dec.* 502.
- *ex rel. White v. Common Council of Rochester*. See *Geraty v. Reid*.
- *ex rel. Gas Light Co. v. Common Council of Syracuse*, 52 *How. Pr.* 346. Rev'd in 78 *N. Y.* 56.
- *ex rel. Francis v. Common Council of Troy*, 78 *N. Y.* 33. Rev'd 17 *Hun.* 20. Decision in 78 *N. Y.* applied (Power of court to direct subordinate body as to construction of law) in *People ex rel. Van Wyck v. Police Comm'rs*, 57 *How. Pr.* 459. Applied (When decision of public body on question of fact is not to be controlled by mandamus) in *People v. Auditors of Elmira*, 20 *Hun.* 151.
- *ex rel. Curtis v. Common Council of Utica*. See *Same v. City of Utica*.
- *ex rel. Griffin v. Common Pleas of Jefferson*. See *Blunt v. Greenwood*.
- *ex rel. Manning v. Common Pleas of N. Y.*, 13 *Wend.* 649; s. c., 28 *Am. Dec.* 495, with note. Subsequent proceeding in 13 *Wend.* 655, *n.* With decision in *Id.* see (Nature of alternative writ of mandamus) *Code Civ. Pro.* 1881, § 2072, *n.*
- *v. Compton*, 1 *Duer*, 512. Aff'd as *People v. Sturtevant*, in 9 *N. Y.* 263. Decision in 1 *Duer* approved (What is not excuse for disobedience of injunction) in *Atl. & Pac. Tel. Co. v. Balt. & Ohio R. R. Co.*, 46 *Super. Ct. (J. & S.)* 377, 417. Followed (Allowance for counsel fees in proceedings for contempt) in *Van Valkenburgh v. Doolittle*, 4 *Abb. N. C.* 72, 75.
- *v. Comptroller*, 20 *Wend.* 595. Approved (Who are public officers) in *First Nat. B'k of North Bennington v. Town of Mt. Tabor*, 52 *Vt.* 87; s. c., 36 *Am. R.* 734, 744.
- *v. Comstock*, 8 *Wend.* 549. See *People v. Dutchess Oyer & Terminer*. Commented on (New trials in criminal cases) in 2 *Ben-net & H. Cas. on Crim. L.* 49C.
- *ex rel. Hatfield v. Comstock*, 18 *Hun.* 311. Rev'd in 78 *N. Y.* 356.
- *v. Conklin*, 2 *Hill*, 67. Reviewed and explained (Effect of naturalization on right to inherit) in *Heeney v. Brooklyn Benevolent Society*, 39 *N. Y.* 333, 337. Followed (Time when capacity to take by descent must exist) in *Donovan v. Pitcher*, 53 *Ala.* 411; s. c., 25 *Am. R.* 634. Commented on (Conveyance by alien) in *Sharsw. & B. Cas. on Real Prop.* 501.
- *ex rel. Floyd v. Conklin*, 5 *Hun.* 452. Further proceeding in 7 *Id.* 188.
- *ex rel. Donovan v. Connor*, 6 *Hun.* 250. Aff'd as *Same v. Conner*, 64 *N. Y.* 481.
- *ex rel. Devlin v. Conover*, 26 *Barb.* 516. Aff'd in 17 *N. Y.* 64.
- *ex rel. Belden v. Contracting Board*, 27 *N. Y.* 378. See *People ex rel. Vickerman v. Same*. Applied (When mandamus does not lie) in *People ex rel. Grace v. Police Comm'rs of Troy*, 12 *Abb. Pr. N. S.* 183; *Weed v. Beach*, 56 *How. Pr.* 476; *People ex rel. Frost v. Fay*, 3 *Lans.* 402. Explained in *People v. Contracting Board*, 46 *Barb.* 257; *People v. Allen*, 42 *N. Y.* 410. Disapproved and dissenting opinion commented in dissenting opinion of MAXWELL, J., in *State ex rel. Silver v. Kendall*, 15 *Neb.* 262; s. c., 18 *Northw. Rep.* 85, 91. See (Issue of peremptory writ of mandamus in first instance) *Code Civ. Pro.* 1881, § 2070, *n.*
- *ex rel. Bullard v. Contracting Board*, 20 *How. Pr.* 206. Rev'd in 33 *Barb.* 510; which was aff'd in 33 *N. Y.* 382. Decision in *Id.* explained (Refusal of mandamus) in *People ex rel. Schenectady Observatory v. Allen*, 42 *Id.* 404. See (Issue of peremptory writ of mandamus in first instance) *Code Civ. Pro.* 1881, §§ 2070, *n.* See also (Service of notice of motion for mandamus) *Id.* 2071, *n.*
- *ex rel. Vickerman v. Contracting Board*, 46 *Barb.* 254. Explained as not in conflict with *People ex rel. Belden v. Contracting Board*, 27 *N. Y.* 387 (Refusal of mandamus to award contract) in *Weed v. Beach*, 56 *How. Pr.* 470.
- *v. Cook*, 14 *Barb.* 259. Aff'd in 8 *N. Y.* 67; s. c., 59 *Am. Dec.* 451, with notes on various points. See *Franklin v. Talmadge*; *Hamlin v. Dingman*. Decision in 8 *N. Y.* applied (Effect of irregularities committed by inspectors of election) in *People ex rel. Frost v. Wilson*, 62 *Id.* 193; *People v. McManus*, 34 *Barb.* 625; *Felt's Case*, 11 *Abb. Pr. N. S.* 207. Disting'd in *People ex rel. Bush v. Thornton*, 25 *Hun.* 456, 463. Included with notes in *Brightly Cas. on Elect.* 423. Disting'd (Liability for swearing before unauthorized officer) in *Lambert v. People*, 6 *Abb. N. C.* 181, 195. Applied (Effect of objection to legal conclusion based on wrong assumption) in *Pol-len v. Le Roy*, 10 *Dow.* 56. Applied (Liability for costs in *quo warranto* proceedings) in *People ex rel. Furman v. Clute*, 52 *N. Y.* 577. Commented on (Right of counsel to address jury) in *Elwell v. Chamberlain*, 31 *N. Y.* 621. Dictum herein disapproved in *Matter of Church*, 64 *How. Pr.* 393. See cases collected (Acts of *de facto* officers valid as to third parties) in 10 *Am. L. Reg. N. S.* 445. Both decisions explained (Inquiry into qualifications of voters) in *People v. Pease*, 30 *Barb.* 599; which was aff'd in 27 *N. Y.* 61, which see. Applied (What is a valid oath) in *People v. O'Reilly*, 9 *Abb. N. C.* 77, 89; which was rev'd in 10 *Id.* 53,

which see. Discussed (Construction of State Constitutions) in *Cooley on Const. Limit.* 5 ed. 89. Discussed (Right to vote) in *Id.* 767, n. 2.

— **v. Cooper**, 6 *Hill*, 516. Approved (Duty to maintain bridges erected under *L.* 1823, p. 128, § 4) in *Follett v. People*, 12 *N. Y.* 268.

— **v. —**. See *Warner v. Shed*.

— **ex rel. Nichols v. Cooper**, 57 *How. Pr.* 463. Other proceedings in 19 *Hun*, 441; 58 *How. Pr.* 358, and the latter aff'd in 21 *Hun*, 517.

— **ex rel. Scudder v. Cooper**, 20 *Hun*, 486. Discussed (Writ of possession in ejectment) in *Sedgw. & W. on Tr. of Tit. to Land*, § 557.

— **v. Corbin**, 56 *N. Y.* 363; s. c., 15 *Am. R.* 427. Applied (Other criminal acts as evidence) in *State v. Lapage*, 57 *N. Y.* 245; s. c., 24 *Am. R.* 69, 79, 91; *Coleman v. People*, 55 *N. Y.* 90, being also relied on, and *People v. Wood*, 3 *Park*, 681, being disting'd in concurring opinion of *SMITH, J.* Explained in 2 *Add. on Torts*, 630, n., *Wood's ed.* Quoted and explained in 2 *Best on Ev.* § 495, n. a, *Wood's ed.*

— **v. Corlies**, 1 *Sandf.* 228. See *Stilwell v. Mills*. Followed (Proof of surrogate's jurisdiction) in *People ex rel. Meyer v. Hartman*, 2 *Sweeny*, 576, 580.

— **ex rel. Henry v. Cornell**, 47 *Barb.* 329; s. c., 32 *How. Pr.* 149. Rev'd in 35 *How. Pr.* 31.

— **v. Corning**, 2 *N. Y.* 9; s. c., 49 *Am. Dec.* 364, with note, wherein are collected citations. Explained with reference to subsequent legislation (Writ of error in behalf of people after judgment) in *People v. Barry*, 10 *Abb. Pr.* 227; *People v. Tarbox*, 30 *How. Pr.* 320; *People v. Merrill*, 14 *N. Y.* 77. See *People v. Nestle*, 19 *Id.* 583. Highly approved and followed in *Commonwealth v. Cummings*, 36 *Cush. (Mass.)* 212; s. c., 50 *Am. Dec.* 732, 737, with note. Included in 1 *Bennett & H. Cas. on Crim. L.* 425, with note.

— **v. Corporation of Albany**, 11 *Wend.* 539; s. c., 27 *Am. Dec.* 95, with note containing citations. See *People v. Vanderbilt*. Disting'd (Liability of municipal corporation as to nuisance) in *Cain v. City of Syracuse*, 95 *N. Y.* 83. Approved with *Buckbee v. Brown*, 21 *Wend.* 110 (Liability for failure to keep wharf, &c., in repair) in *Pittsburgh v. Grier*, 22 *Penn. St.* 54; s. c., 60 *Am. Dec.* 65, with note. Followed (Municipal liability for negligence) in *City of Tallahassee v. Fortune*, 3 *Fla.* 319; s. c., 52 *Am. Dec.* 358, 362, with note. Cited as authority (Extent of power of municipal corporation) in *Cooper v. Aiden*, *Harr. Ch. (Mich.)* 86.

— **v. Corporation of Brooklyn**, 1 *Wend.* 313; s. c., 19 *Am. Dec.* 502, with note. Applied (Rights when vested, in condemnation proceedings) in *Matter of Washington Park*, 56 *N. Y.* 144, 155. Quoted (When

mandamus issues) in *Hugh on Extr. Rem.* 2 ed. § 10, n. 1.

— **v. Cortelyou**, 36 *Barb.* 164. Disting'd, and as to dictum overruled (Inquiry by referees into jurisdiction of commissioners of highways) in *People ex rel. Hubbard v. Harris*, 63 *N. Y.* 396. Collated with other cases in *Mills Thomps. on Highw.* 3 ed. 297.

— **v. Costello**, 1 *Den.* 83. Followed (Including distinct offenses in different counts of indictment) in *People ex rel. Twced v. Liscomb*, 3 *Hun*, 788; which was rev'd in 60 *N. Y.* 578, which see. Followed (Conviction on testimony of accomplice) in *People v. Haynes*, 55 *Barb.* 453; *People v. Lawton*, 56 *Id.* 130. Approved in *Haskins v. People*, 16 *N. Y.* 352. Approved in *Commonwealth v. Holmes*, 127 *Mass.* 424; s. c., 34 *Am. R.* 391, with note collating *Lindsay v. People*, 63 *N. Y.* 143; *People v. Davis*, 21 *Wend.* 309, and other cases. Followed (Competency as witness, of woman on whom abortion has been committed) in *People v. Lohman*, 2 *Barb.* 224; *Dunn v. People*, 29 *N. Y.* 532.

— **v. Cottarel**, 18 *Johns.* 115. See report of trial in 5 *City H. Rec.* 71. Decision in 18 *Johns.* followed and approved (Prisoner putting fire to jail with intent to escape is not guilty of arson) in *Jenkins v. State*, 52 *Ga.* 33; s. c., 21 *Am. R.* 255. Dissented from in *Luke v. State*, 49 *Ala.* 30; s. c., 20 *Am. R.* 269; *People v. Rose*, 12 *Johns.* 339, being also cited (Indictable nature of offense committed with intent to escape).

— **ex rel. Parker v. County Court of Jefferson**, 1 *Supm. Ct. (T. & C.)* 603. Aff'd in 55 *N. Y.* 604.

— **ex rel. Bendon v. County Judge of Rensselaer**, 13 *How. Pr.* 398. See (Definition of "action") *Code Civ. Pro.* 1881, § 3333, n.

— **v. County of N. Y.**, 5 *Cow.* 331. Applied (Time from which interest runs on taxes, &c.) in *Matter of Miller*, 24 *Hun*, 637.

— **ex rel. Bunn v. Contant**, 11 *Wend.* 132. Aff'd in *Id.* 511. Both decisions followed (Term of office of one elected or appointed to fill vacancy) in *People ex rel. Rosekrans v. Carr*, 62 *How. Pr.* 5, 16, which was rev'd in *Id.* 19.

— **ex rel. Crouse v. Cowles**, 34 *How. Pr.* 481. Rev'd in 4 *Keyes*, 38; s. c., 3 *Abb. Ct. App. Dec.* 507. Decision in *Id.* disting'd (Enforcement of order for payment of money) in *Watson v. Nelson*, 69 *N. Y.* 536, 545. Followed in *Matter of Clark*, 20 *Hun*, 551, 555. See *Code Civ. Pro.* 1881, § 2555, n. See (*Habeas corpus*, when not allowed) *Id.* § 2016, n.

— **ex rel. Hislop v. Cowles**, 16 *Hun*, 577. Aff'd in *People v. Hislop*, 77 *N. Y.* 331.

— **v. Cox**, 21 *Hun*, 47. Aff'd without opinion, in 83 *N. Y.* 610. Decision in 21 *Hun* applied (Contradicting witness, by discrediting his testimony) in *Stape v. People*, *Id.* 399, 401.

- **ex rel. Dargin v. Cox**, 9 *Hun.*, 146. Aff'd in 76 *N. Y.* 47.
- **v. Cram**, 8 *How. Pr.* 151. Said never to have been questioned (Separate judgments against one or more defendants jointly liable) in *Pomeroy on Rem.* § 258.
- **v. Crapo**, 76 *N. Y.* 288. See *Brandon v. People*; *Ryan v. People*. Reviewed with *People v. Brown*, 72 *N. Y.* 571; *Ryan v. People*, 79 *Id.* 594; *People ex rel. Phelps v. Oyer & T.*, 83 *Id.* 460; *People v. Casey*, 72 *Id.* 393 (Questions admissible as tending to discredit witness) in *People v. Noelke*, 29 *Hun.* 461. Disting'd in *Pontius v. People*, 82 *N. Y.* 339, 350.
- **v. Crilley**, 20 *Barb.* 246. Seems not to have been followed (What are strong and spirituous liquors) in *Commissioners of Excise v. Taylor*, 21 *N. Y.* 173.
- **ex rel. Lord v. Crooks**, 53 *N. Y.* 648. Compare (Misjoinder of parties plaintiff) *Code Civ. Pro.* § 488, subd. 5.
- **v. Crosswell**, 3 *Johns. Cas.* 337. See arguments of counsel in pamphlet, published at *N. Y.* in 1804, and entitled, "The speeches at full length of Mr. Van Ness, Mr. Caines, the Attorney-general, Mr. Harrison, and General Hamilton, in the great cause of the *People v. Crosswell, &c.*" It will be found in 1 *Am. Trials*, No. 5, Boston Social Law Libr. See *Steele v. Southwick*. Commented on with reference to subsequent legislation (Justification in libel cases) in *Castle v. Houston*, 19 *Kans.* 417; s. c., 27 *Am. R.* 127. Approved in *Cincinnati Gazette Co. v. Bishop*, 7 *Weekly Cin. L. Bul.* 64. Explained (Function of jury, in libel case) in *Root v. King*, 7 *Cov.* 624 (and see remarks of Mr. HAMILTON approved in *Dolloway v. Turrill*, 26 *Wend.* 396). Approved (Function of jury, generally) in *People v. Cook*, 8 *N. Y.* 76. Mr. HAMILTON's definition of a libel approved and applied in *Cooper v. Greeley*, 1 *Den.* 359; *Steele v. Southwick*, 9 *Johns.* 215. Followed in *Robertson v. Bennett*, 44 *Super. Ct. (J. & S.)* 66, 70. Cited in 2 *Kent Com.* 16, n. d. See also *Id.* 20, 24.
- **ex rel. Dinsmore v. Croton Aqueduct Board**, 5 *Abb. Pr.* 316. Aff'd in 26 *Barb.* 240; s. c., 6 *Abb. Pr.* 42.
- **v. Cummings**, 3 *Park.* 343. Approved with *People v. McCann*, *Id.* 293 (Summoning jurors in criminal cases) in *Ferris v. People*, 48 *Barb.* 17, 23.
- **v. Cunningham**, 1 *Den.* 524; s. c., 43 *Am. Dec.* 709, with note, wherein are collected citations. See *Mills v. Hall*. Applied (Right to continue nuisance not given by prescription) in *Crill v. City of Rome*, 47 *How. Pr.* 406; *Campbell v. Seaman*, 2 *Sup'm. Ct. (T. & C.)* 241. Approved (Liability for obstruction of public way) in *Dennis v. Sipperly*, 17 *Hun.* 70. Approved in *Clark v. Fry*, 8 *Ohio (N. S.)* 358; *Palmer v. Silverthorn*, 32 *Penn.* 65. Included with note in *Lewison Lead. Cas. (Crim. L.) Simplified*, 143. Collated with other cases in *Mills Thomps. on Highw.* 3 ed. 317. Discussed in *Wood on Nuis.* 2 ed. § 263. Cited with other cases as applicable to steam-whistles in 14 *Am. L. Reg. N. S.* 672.
- **ex rel. Barlow v. Curtis**, 50 *N. Y.* 321; s. c., 10 *Am. R.* 483. Aff'g Matter of *Vogt*, 44 *How. Pr.* 171.
- **v. Cutting**. See *Jackson v. Adams*.
- **ex rel. Lewis v. Daly**, 4 *Hun.* 641; s. c., more fully, 67 *Barb.* 325. Compare (*Certiorari*, when allowed) *Code Civ. Pro.* § 2121.
- **v. Damon**, 13 *Wend.* 351. Questioned (Discharging disqualified juror) in 1 *Am. L. Reg. N. S.* 528. Collated with other cases in 2 *Bennett & H. Cas. on Crim. L.* 362.
- **ex rel. Underwood v. Daniell**, 6 *Lans.* 44. Aff'd in 50 *N. Y.* 274, on the main constitutional question. Decision in *Id.* disting'd (Right to appear by counsel in court martial proceedings) in *People ex rel. Garling v. Van Allen*, 55 *Id.* 31, 35. See *L.* 1875, c. 223, § 50.
- **v. Darling**, 47 *N. Y.* 666. Followed (Tenancy from month to month) in *Geiger v. Braun*, 6 *Daly*, 506.
- **v. Davis**, 18 *How. Pr.* 134; s. c., more fully, 4 *Park.* 61.
- **v. —**, 45 *Barb.* 494. Aff'd in 36 *N. Y.* 77; s. c., 33 *How. Pr.* 442.
- **v. —**, 21 *Wend.* 309. See *People v. Costello*; *People v. Mather*. Followed (Proof of incorporation of bank, on indictment for forgery of bank notes) and *People v. Peabody*, 25 *Wend.* 472, disting'd, in *People v. D'Argencourt*, 95 *N. Y.* 624. Quoted (Evidence of accomplice) in 1 *Best on Ev.* § 171, n. a, Wood's ed.
- **v. —**, 61 *Barb.* 456. Rev'd as *Huber v. People*, in 49 *N. Y.* 132; s. c., less fully, 44 *How. Pr.* 375.
- **v. —**, 56 *N. Y.* 95. See *Luby v. Hudson River R. R. Co.* Disapproved (Dying declarations of victim of abortion, as evidence) in *Montgomery v. State*, 80 *Ind.* 338; s. c., 41 *Am. R.* 815. See 28 *Moak Eng.* 592, n.; 31 *Id.* 741, n. Criticised and collated with *Jackson v. Vredenburg*, 1 *Johns.* 159; *Hackett v. People*, 54 *Barb.* 370, and other cases (Dying declarations when only admissible) in *Commonwealth v. Bruce*, *Philadelphia Quarter Sessions*, 12 *Wash. L. Rep.* 590; s. c., 1 *Am. L. J.* 366; 16 *Chic. Leg. N.* 342. Collated with *Hackett v. People*, 54 *Barb.* 370, and other cases in 19 *Cent. L. J.* 128.
- **ex rel. Williams v. Dayton**, 1 *Sup'm. Ct. (T. & C.)* 14. Rev'd in 55 *N. Y.* 367. Decision in *Id.* disting'd (Effect of construction of statute by legislature) as inapplicable to construction by public officers, in *Matter of Manhattan Savgs. Inst.*, 82 *Id.* 142, 144. See *Matter of Merriam*, 84 *Id.* 596, 603. Applied in *People v. Stephens*, 13 *Hun.* 22.

- **v. Dean**, 3 *Wend.* 438. See *People v. Collins*. Approved and applied with *Parker v. Baker*, 8 *Paige*, 428; *McInstry v. Tanner*, 9 *Johns.* 135; *Morris v. People*, 3 *Den.* 381 (What constitutes officer *de facto*) in *Brown v. O'Connell*, 36 *Conn.* 432; s. c., 4 *Am. R.* 80, 94.
- **ex rel. Marsh v. Delaney**, 49 *N. Y.* 655. Compared (Office of common law certiorari) in *People ex rel. Schuylerville & Upper Hudson R. R. Co. v. Betts*, 55 *Id.* 600, 602.
- **v. Delaware Common Pleas**, 1 *Johns. Cas.* 181. Followed (Mandamus proper remedy to restore attorney disbarred by inferior court) in *People v. Turner*, 1 *Cal.* 143; s. c., 52 *Am. Dec.* 295, 302, with note.
- **ex rel. Phelps v. Delaware Common Pleas**, 2 *Wend.* 256. Disting'd (Delay when reason for refusing writ of mandamus) in *People ex rel. Gas Light Co. v. Common Council of Syracuse*, 78 *N. Y.* 56–62.
- **v. Deming**, 1 *Hilt.* 271. Cited (Repeal by implication) in *Peck v. Peck*, 8 *Abb. N. C.* 400, 402.
- **v. Denison**, 17 *Wend.* 312. Disting'd (Presumption of title of people to land) in *People v. Trinity Church*, 30 *Barb.* 548; which was aff'd in 22 *N. Y.* 48, 62, which see.
- **v. —**, 19 *Hun.* 137. Aff'd in 80 *N. Y.* 656. Further decision in 59 *How. Pr.* 157; s. c., more fully, 8 *Abb. N. C.* 128; mem. s. c., 22 *Hun.* 317, and that aff'd as *People v. Dennison*, 84 *N. Y.* 274. Decisions in 8 *Abb. N. C.* and 84 *N. Y.* disting'd (Effect of judgment absolute on stipulation) in *Rust v. Hauselt*, 8 *Abb. N. C.* 148, 157. Compare (Action, &c., against State) *Am. Dock, &c. Co. v. Trustees of Pub. Schools*, 32 *N. J. Eq.* (5 *Stew.*) 428. See the *Newbattle, Ct. of App.* 1885, 33 *Weekly Rep.* 318, and cases cited. See (State Board of Audit) *L.* 1881, c. 211, amending *L.* 1876, c. 444. Decisions in 19 *Hun.* and 80 *N. Y.* disting'd (Recovery of overpayments on canal contract) in *Belden v. State of N. Y.*, 31 *Hun.* 409.
- **v. Denslow**. See *First Baptist Church v. Utica & Schenectady R. R. Co.*
- **v. Denton**, 2 *Johns. Cas.* 275. See *People v. Barrett*. Followed with *People v. Woodwin*, 18 *Johns.* 188; *People v. Olcott*, 1 *Johns. Cas.* 301 (Effect of discharge of jury in criminal case) in *Nugent v. State*, 1 *Stew. & T. (Ala.)* 72; s. c., 24 *Am. Dec.* 46. Disapproved with *People v. Olcott*, 1 *Johns. Cas.* 301, in *McCauley v. State*, 26 *Ala.* 135; s. c., 1 *Am. Dec.* 176, *n.*, their loctrine being said, though repudiated in *People v. Barrett*, 2 *Cal.* 305, to have nevertheless been followed in some later *N. Y.* cases and elsewhere. Quoted and collected with other cases in 2 *Bennett & H. Gas. on Crim. L.* 370.
- **ex rel. Clapp v. Department of Police** of *N. Y.*, 5 *Hun.* 457. Rev'd in 72 *N. Y.* 415.
- **v. Devlin**, 33 *N. Y.* 269. See *People v. Supervisors of N. Y.*; *Thomas v. Dakin*. Dictum explained (Compensation of county treasurer) in *Supervisors of Otsego v. Hendryx*, 58 *Barb.* 284. Cited as authority with *People ex rel. Purdy v. Commissioners, &c. of Marlborough*, 54 *N. Y.* 276 (Conclusiveness of enrolled bill, as law) in *Chicot County v. Davies*, 40 *Ark.* 200, 210. Approved (Power of governor to return bill to legislature) in *Wolfe v. McCaull*, *Va. Sup'm. Ct. of App.* 1882, 26 *Alb. L. J.* 369.
- **ex rel. Foote v. Dewey**, 1 *Hun.* 529. Fully reported in 3 *Sup'm. Ct. (T. & C.)* 638.
- **v. Dibble**, 3 *Abb. Ct. App. Dec.* 518; s. c., 5 *Park.* 28. Aff'g *Dibble v. People*, 4 *Id.* 199.
- **ex rel. Cutler v. Dibble**, 18 *Barb.* 412. Aff'd in 16 *N. Y.* 203; and that in 21 *How. (U. S.)* 366. Decision in 16 *N. Y.* considered (When lands cease to be part of Indian reservation) in *Fellows v. Denniston*, 23 *Id.* 420, 434.
- **v. Didieu**. See *Didieu v. People*.
- **ex rel. Coleman v. Dikeman**, 7 *How. Pr.* 124. See (Application to mandamus proceedings, of statute as to defect of title in affidavit) *Code Civ. Pro.* § 3347, subd. 6.
- **v. Dixon**, 4 *Park.* 651. Cited as authority with *People v. Van Horne*, 8 *Barb.* 158; *Ex parte Tayloe*, 5 *Cow.* 39 (When prisoner charged with felony is entitled to bail) in *Ex parte McAnally*, 53 *Ala.* 495; s. c., 25 *Am. R.* 646.
- **v. Dohring**, 59 *N. Y.* 374; s. c., 17 *Am. R.* 349. See *Cancemi v. People*. Disting'd (Organization of court of sessions) in *Hinman v. People*, 13 *Hun.* 266. Applied (Resistance necessary to constitute rape) in *Oleson v. State*, 11 *Neb.* 276; s. c., 38 *Am. R.* 366. Approved as laying down the correct rule in *People v. Mayes*, *Sup'm. Ct. Cal.* 1885, 6 *Pac. Rep.* 691, 694. Included with notes in *Lawson Lead. Cas. Crim. L. Simplified*, 228.
- **ex rel. Cagger v. Dolan**, 36 *N. Y.* 59. Overruled (Deduction, on account of debts, from valuation of bank shares for assessment) in *People ex rel. Williams v. Weaver*, 100 *U. S.* 539; s. c., 2 *Brown's Nat. Bk. Cas.* 57. Denied in *Nat. Albany Exchange Bk v. Wells*, 18 *Blatchf. Ct. Ct.* 478, 480; s. c., 2 *Brown's Nat. Bk. Cas.* 456, 458. Statement of *HUNT, J.*, approved and followed (Rate of taxation has nothing to do with exemption) in *Crawford v. County of Linn*, *Sup'm. Ct. Oreg.* 5 *Pac. Rep.* 738.
- **v. Donnelly**, 2 *Park.* 182; s. c., more fully, 1 *Abb. Pr.* 459. Referred to as expressly overruled by *Wixson v. People*, 5 *Park.* 119, and the latter case applied (Defendant in indictment as incompetent witness for co-defendant) in *Taylor v. People*, 12 *Hun.* 212.

- **ex rel. Lowenbein v. Donohue**, 15 *Hun.* 418; s. c., as *People ex rel. Louenbein v. Donohue*, 56 *How. Pr.* 152.
- **v. Douglass**, 4 *Cow.* 26; s. c., 15 *Am. Dec.* 332, with note. See *Brant v. Fowler*; *Eastwood v. People*; *Horton v. Horton*; *Wilson v. Abrahams*. Explained (Misconduct of jurors, as ground for setting aside verdict) in *Wilson v. Abrahams*, 1 *Hill*, 207, 211. Applied in *U. S. v. Bennett*, 16 *Blatchf. C. Ct.* 338, 373. Referred to with *Bullard v. Spoor*, 2 *Cow.* 430; *Brant v. Fowler*, 7 *Id.* 562, in 35 *Am. Dec.* 258, n., as overruled by *Wilson v. Abrahams*, 1 *Hill*, 207. See also 15 *Am. Dec.* 339, n. Followed in *Leighton v. Sargent*, 31 *N. H.* 119. Disapproved in *State v. Druce*, 43 *Iowa*, 530; s. c., 30 *Am. R.* 406. Cited as authority in *Early v. State*, 1 *Tex. Ct. App.* 248; s. c., 28 *Am. R.* 409. Followed with *Brant v. Fowler*, 7 *Cow.* 562, and both said to be modified by *Wilson v. Abrahams*, 1 *Hill*, 207, in *Davis v. State*, 35 *Ind.* 496; s. c., 9 *Am. R.* 760, with note collating cases. Quoted and commented on in 2 *Bennett & H. Cas. on Crim. L.* 386.
- **ex rel. Wood v. Draper**, 24 *Barb.* 265; s. c., 4 *Abb. Pr.* 333; 14 *How. Pr.* 233. Subsequent decision in 25 *Barb.* 344, aff'd in 15 *N. Y.* 532. See No. 39 of Charles O'Connor's "My Own Cases" now in the Law Inst. Lib. N. Y. City. See *Clark v. People*; *People ex rel. McCune v. Board of Police for Metropolitan Police District*; *People v. Fisher*; *Sill v. Village of Corning*. Decision in 15 *N. Y.* followed (Implications from constitutional provisions) in *People ex rel. Sherrill v. Canal Board*, 4 *Lans.* 272, 274. Followed (Validity of law providing for filling of offices) in *Hanlon v. Supervisors of Westchester*, 8 *Abb. Pr. N. S.* 275; *People v. Conover*, 26 *Barb.* 525; 531, 533, 537; *People ex rel. Bradley v. Stevens*, 51 *How. Pr.* 142; *People v. Woodruff*, 32 *N. Y.* 365; *People v. Pinckney*, *Id.* 381, 724. Relied in *State v. Arrington*, 18 *Nev.* 412, 415. Explained and applied in *People v. Acton*, 48 *Barb.* 527; *People v. Blake*, 49 *Id.* 13; *People v. Raymond*, 37 *N. Y.* 431. Applied (Validity of law creating new governmental district) in *Coe v. Schultz*, 2 *Abb. Pr. N. S.* 198; *Litchfield v. McComber*, 42 *Barb.* 299; *Cooper v. Schultz*, 32 *How. Pr.* 128; *Rumsey v. People*, 19 *N. Y.* 55; *People v. Shepard*, 36 *N. Y.* 285. Followed as decisive in *Metropolitan Bd. of Health v. Heister*, 37 *N. Y.* 667. Criticised and disting'd in *People ex rel. Bolton v. Anderson*, 55 *Id.* 63. Applied (Questions to be determined in proceeding affecting title to office) in *People v. Carpenter*, 24 *N. Y.* 88. Explained (Effect of act establishing Metropolitan Police District) in *People v. Metropolitan Police Board*, 19 *N. Y.* 191. Quoted (Powers of legislative department) in *Cooley on Const. Limit.* 5 ed. 106. Quoted (Inquiry into legislative motives) in *Id.* 223, n. 3. Approved (Police officers are State officers rather than municipal) in *Burch v. Hardwicke*, 30 *Gratt. (Va.)* 24; s. c., 32 *Am. R.* 640. Decision in 24 *Barb.* quoted (Injunction against police commissioners) in 2 *High on Inj.* 2 ed. § 1812, n. 1.
- **v. Duell**, 16 *How. Pr.* 43. Applied (What only is brought up by writ of certiorari in criminal cases) in *Cases of Lynch and Burns*, 9 *Abb. N. C.* 69, 74.
- **v. Dunning**, 1 *Wend.* 16. Disting'd (Process as void or erroneous) in *Churchill v. Marsh*, 2 *Abb. Pr.* 225. Applied in *Walden v. Davison*, 15 *Wend.* 578; *James v. Gurley*, 48 *N. Y.* 166.
- **ex rel. Brunett v. Dutcher**, 3 *Abb. Pr. N. S.* 151. See (Punishment for disobedience to order in supplementary proceedings) *Code Civ. Pro.* 1881, § 2457, n.
- **ex rel. Comaford v. Dutcher**, 20 *Hun.* 241. Rev'd in 83 *N. Y.* 240. See *People ex rel. Stetzer v. Rawson*. Decision in 20 *Hun* disting'd (Jurisdiction of courts of sessions) in *McDonald v. People*, 13 *Weekly Dig.* 548.
- **ex rel. Creegan v. Dutcher**, 2 *Hun.* 156; s. c., reported 4 *Sup'm. Ct. (T. & C.)* 391.
- **ex rel. Green v. Dutchess & Columbia R. R. Co.** See *Fletcher v. Auburn & Syracuse R. R.*; *People ex rel. Garbutt v. Rochester & State Line R. R. Co.*
- **v. Dutchess Oyer & Terminer**, 2 *Barb.* 282. Reviewed with *People v. Morrison*, 1 *Park.* 625; *People v. Stone*, 5 *Wend.* 39; *People v. Comstock*, 8 *Id.* 549; *People v. Townsend*, 1 *Johns. Cas.* 104; *Noah's Case*, 3 *City H. Rec.* 24; *People v. Justices of Chenango*, 1 *Johns. Cas.* 179 (Power to grant new trials) and the question settled in *Appo v. People*, 20 *N. Y.* 531.
- **ex rel. Valiente v. Dyckman**, 24 *How. Pr.* 222. Disting'd and said to have been overruled (Compelling production of books &c.) in *De Bary v. Stanley*, 5 *Daly*, 412.
- **v. Dyle**, 21 *N. Y.* 578. Applied (Effect of failure to testify) in *Brooks v. Steen*, *Hun.* 617.
- **v. Eastwood**, 14 *N. Y.* 562; s. c., *Park.* 25. See *DeWitt v. Barley*; *McKe v. Nelson*. Explained (Opinion of witnesses) in *Hardenburgh v. Cockcroft*, *Daly*, 82. Approved and applied in *DeWitt v. Barly*, 17 *N. Y.* 352. Applied in *Blake People*, 73 *Id.* 587. Cited with approval *Yahn v. City of Ottumwa*, 60 *Iowa*, 42 433; s. c., 22 *Am. L. Reg. N. S.* 647, with note collating *Blake v. People*, 73 *N. Y.* 586; *Greenfield v. People*, 85 *Id.* 75, and other cases. Followed in *State v. Pike*, 49 *N. H.* 399; s. c., 6 *Am. R.* 533, 542.
- **ex rel. Morris v. Edmonds**. See *Pomer v. Lawrence*.
- **ex rel. Stuart v. Edmonds**, 9 *How. Pr.* 470. Aff'd in 19 *Barb.* 468.
- **ex rel. Van Sickle v. Eldredge**, 3 *Sup'm. Ct. (T. & C.)* 20; s. c., more full, 3 *Hun.* 541.
- **v. Eldridge**, 7 *How. Pr.* 108. Disting'd

- (Amendment to perfect appeal) in *Zinsser v. Seiler*, 7 *Daly*, 464. Disapproved as to construction of Code, in *Wood v. Kelly*, 2 *Hill*, 334.
- *v. Ellis*, 15 *Wend.* 371. Doubted (Effect of withdrawal of juror in preventing new trial) in *Klock v. People*, 2 *Park.* 676, 684. Commented on in 2 *Bennett & H. Cas. on Crim. L.* 365.
- *v. Enoch*, 13 *Wend.* 159; s. c., 27 *Am. Dec.* 197, 203, with note, wherein it is shown to be recognized as settling the law in N. Y., as to the various points therein decided. Applied (Power of appellate court to fix day of execution on affirmance of judgment in criminal case) in *People v. Ferris*, 32 *How. Pr.* 421. Applied (Duty of court to declare law, in criminal cases) in *Foster v. People*, 50 *N. Y.* 601. Disting'd (Sufficiency of intent, as element of crime of murder) in *People v. Clark*, 7 *Id.* 394. Followed in *Fitzgerrold v. People*, 37 *Id.* 413. Dicta explained in *Darry v. People*, 10 *Id.* 158. Explained and applied by *Bronson, J.*, in *People v. Rector*, 19 *Wend.* 608. See *People v. Johnson*, 1 *Park.* 295. Applied (Subjection of newly created crimes to incidents of class into which they are introduced) in *People v. Toyubee*, 20 *Barb.* 213. Disting'd (Necessity of embodying statutory description of offense in indictment) in *People v. Lohman*, 2 *Id.* 219. Explained in *Gouglemann v. People*, 3 *Park.* 20. Followed in *Cox v. People*, 80 *N. Y.* 500, 514. See *People v. White*, 24 *Wend.* 571; *People v. Butler*, 3 *Park.* 382.
- *v. Erie Ry. Co.*, 54 *How. Pr.* 59. Followed (Relief, when not to be granted on motion) in *N. Y. Elevated R. R. Co. v. Manhattan Ry. Co.*, 63 *Id.* 14, 33.
- *v. Erwin*, 4 *Den.* 129. Explained (Bawdy house as nuisance) in *Wood on Nuis.* 2 ed. § 30.
- *ex rel. Clark v. Essex Com. Pl.*, 1 *How. Pr.* 114. See (Service of alternative writ of mandamus) *Code Civ. Pro.* 1881, § 2071, *n.*
- *v. Evans*, 40 *N. Y.* 1. See *Dunn v. People*. Compare (Credibility of witness) *Warren v. Haight*, 62 *Barb.* 490. Examined in *Deering v. Metcalf*, 74 *N. Y.* 501, 505. Explained in *People v. Moett*, 23 *Hun.* 60, 63.
- *ex rel. Demarest v. Fairchild*, 8 *Hun.* 334. Aff'd in 67 *N. Y.* 334. Decision in *Id.* applied (Proceedings, when under control of attorney-general) in *People v. Central Cross Town R. R. Co.*, 21 *Hun.* 476, 480.
- *v. Falconer*, 2 *Sandf.* 81. Applied (Liability of sureties on administration bond) in *Field v. Van Cott*, 5 *Daly*, 308, 311.
- *v. Fallon*, 6 *Park.* 256. Aff'd as *Fallon v. People*, 2 *Keyes*, 145.
- *v. Fancher*, 50 *N. Y.* 291. Quoted (Construction of State Constitution) in *Cooley on Const. Limit.* 5 ed. 101, *n. 1.*
- *ex rel. Phelps v. Fancher*. See *Mitchell's Case*.
- *v. Farrington*, 22 *How. Pr.* 294. See cases collected (Right of church to expel member) in 12 *Am. L. Reg. N. S.* 537.
- *v. Fellingner*, 24 *How. Pr.* 341; s. c., more fully, as *Fellinger v. People*, 15 *Abb. Pr.* 128.
- *v. Ferguson*, 8 *Cow.* 102. Approved (Power of courts to examine validity of election proceedings) in *People v. Vail*, 20 *Wend.* 12; *People v. Seaman*, 5 *Den.* 409; *People v. Cook*, 28 *N. Y.* 67, 82. Disapproved, in *Carpenter v. Ely*, 4 *Wisc.* 430. Considered with *People v. Van Slyck*, 4 *Conn.* 297; *People ex rel. Benton v. Vail*, 20 *Wend.* 14; in *People v. Tisdale*, 1 *Doug. (Mich.)* 63. Followed in *People v. Smith*, 45 *N. Y.* 772, 779. Followed with *People v. Vail*, 20 *Wend.* 14, in *People v. Van Cleve*, 1 *Mich.* 362; s. c., 53 *Am. Dec.* 69, with note. Cited in *Cooley on Const. Limit.* 5 ed. 765, *n. 3.*
- *ex rel. Glens Falls Ins. Co. v. Ferguson*, 38 *N. Y.* 89. Explained (Deduction for unearned premiums, on assessment of insurance company) in *People ex rel. Westchester Fire Ins. Co. v. Davenport*, 25 *Hun.* 630. Applied in *People ex rel. M. F. Ins. Co. v. Comm'rs of Taxes of N. Y.*, 76 *N. Y.* 73. Applied (Duty of assessor in making corrections in assessment of stock) in *People v. Howland*, 61 *Barb.* 284. Disting'd in *People v. Comm'rs of Taxes in N. Y.*, 46 *How. Pr.* 232. Examined with other cases (What may be considered on certiorari) in *People v. Board of Police*, 39 *N. Y.* 516.
- *v. Ferris*, 1 *Abb. Pr. N. S.* 193; s. c., 48 *Barb.* 17. Aff'd in 35 *N. Y.* 125; s. c., 31 *How. Pr.* 140.
- *ex rel. Faile v. Ferris*, 16 *Hun.* 219. Aff'd in 76 *N. Y.* 326.
- *ex rel. Robinson v. Ferris*, 41 *Barb.* 121; s. c., 18 *Abb. Pr.* 64; 27 *How. Pr.* 193. Rev'd in part, in 36 *N. Y.* 218; s. c., 34 *How. Pr.* 189.
- *ex rel. Cooper v. Field*, 52 *Barb.* 198. Further decisions in 1 *Lans.* 222, and in 58 *Barb.* 270. See *Hyatt v. Wood*. With decision in 52 *Barb.* compare (Proof of actual occupancy on issue upon forcible entry or detainer) *Code Civ. Pro.* § 2245.
- *v. Fields*, 53 *N. Y.* 491. Subsequent decision in 50 *How. Pr.* 481. Decision in 58 *N. Y.* followed (Right to recover back public moneys illegally paid), in *Wood v. Mayor, &c. of N. Y.*, 73 *Id.* 558; *Supervisors of Richmond v. Ellis*, 59 *Id.* 620, 625. Applied in *McGinnis v. Mayor, &c. of N. Y.*, 6 *Daly*, 416, 418. See also (Limit of municipal obligations) *People ex rel. Murphy v. Kelly*, 5 *Abb. N. C.* 383, 468.
- *v. Filkins*, 1 *Buff. Super. Ct. (Sheldon)* 504. Rev'd as *Filkins v. People*, 69 *N. Y.* 101.
- *v. Finger*, 24 *Barb.* 341. Overruled as dictum (Effect of denying motion to strike out issues) in *People v. Board of Police, &c.*, 35 *Id.* 644, 650.

- *ex rel. Emerick v. Fire Comm'rs of N. Y.*, 86 *N. Y.* 149. Aff'd 23 *Hun.* 317.
- *ex rel. Hart v. Fire Comm'rs of N. Y.*, 9 *Weekly Dig.* 390. Rev'd in 82 *N. Y.* 358.
- *ex rel. Hudson v. Fire Comm'rs of N. Y.*, 77 *N. Y.* 605. See (Limitation of time for review by certiorari) *Code Civ. Pro.* 1881, § 2125, *n.*
- *ex rel. Munday v. Fire Comm'rs of N. Y.*, 72 *N. Y.* 445. Reviewed and explained with *People ex rel. Sims v. Fire Comm'rs*, 73 *Id.* 440; *People ex rel. Campbell v. Campbell*, 82 *Id.* 247; *People ex rel. Mayor v. Nichols*, 79 *Id.* 588 (Removal of officers in N. Y. city) in *People ex rel. Keech v. Thompson*, 94 *Id.* 451. Explained and followed in *Matter of Nichols*, 6 *Abb. N. C.* 474, 481, 486; *People ex rel. Emerick v. Fire Comm'rs*, 23 *Hun.* 317, 320. Reviewed and disting'd with *People ex rel. Sims v. Fire Comm'rs*, 73 *N. Y.* 440; *People ex rel. Keech v. Thompson*, 26 *Hun.* 28; *People ex rel. Folk v. Board of Police*, 69 *N. Y.* 409, in *Matter of Emmet*, 65 *How. Pr.* 266. Applied in *People ex rel. Jackson v. Grant*, *N. Y. Daily Reg. Jan.* 22, 1884. Followed in *People ex rel. Nichols v. Mayor, &c. of N. Y.*, 19 *Hun.* 441.
- *ex rel. Sims v. Fire Comm'rs of N. Y.*, 73 *N. Y.* 437. See *People ex rel. Munday v. Fire Comm'rs*. Explained and followed (Power of removal of officer in N. Y. city) in *People ex rel. Emerick v. Fire Comm'rs*, 23 *Hun.* 317, 320. Applied in *People ex rel. Westray v. Mayor, &c. of N. Y.*, 82 *N. Y.* 491, 494.
- *v. Fisher*, 14 *Wend.* 9; *s. c.*, 28 *Am. Dec.* 501, with extended note. Disting'd and limited (Illegality of combinations among workmen to raise rate of wages) in *Master Stevedores' Association v. Walsh*, 2 *Daly*, 1. Explained as overruled by *L.* 1870, c. 19, in *Johnston Harvester Co. v. Meinhardt*, 9 *Abb. N. C.* 393, 399. Disting'd as resting on a statutory provision,—in *Commonwealth v. Hunt*, 4 *Metc. (Mass.)* 111; *s. c.*, 38 *Am. Dec.* 346, 360, with note. Applied in *Raymond v. Leavitt*, 46 *Mich.* 447, 452, to combination to affect price of produce.
- *ex rel. Booth v. Fisher*, 2 *Park.* 402; *s. c.*, 20 *Barb.* 652. Overruled (Trial at Special Sessions not unconstitutional) in *Wynehamer v. People*, 13 *N. Y.* 378.
- *ex rel. Kresser v. Fitzsimmons*, 68 *N. Y.* 514. Disting'd (Appointment to office) in *People ex rel. Babcock v. Murray*, 70 *Id.* 521, 523.
- *ex rel. Ellis v. Flagg*, 15 *How. Pr.* 553. Followed (Power of comptroller as to allowing and auditing claims against N. Y. county) in *People ex rel. Outwater v. Green*, 56 *N. Y.* 466, 474. Approved and applied in *People ex rel. Martin v. Earle*, 16 *Abb. Pr. N. S.* 67. Limited to facts disclosed in case,—in *Brown v. Green*, 2 *Sup'm. Ct. (T. & C.)* 13.
- *ex rel. McLean v. Flagg*, 46 *N. Y.* 401; *s. c.*, 11 *Am. L. Reg. N. S.* 80, with note on legislative control. Disting'd (Power of legislature to compel municipal corporation to issue bonds) in *People ex rel. Dunkirk, &c. R. R. Co. v. Batchelor*, 53 *N. Y.* 128, 138. Explained in *People ex rel. Town of Rochester v. Deyoe*, 2 *Sup'm. Ct. (T. & C.)* 151.
- *ex rel. Reynolds v. Flagg*, 16 *Barb.* 503; *s. c.*, 12 *N. Y. Leg. Obs.* 42. Criticised as extreme (Mandamus to compel payment by municipal corporation) in *People v. Wood*, 35 *Barb.* 653, 660. Compare *People ex rel. Smith v. Flagg*, 17 *N. Y.* 584.
- *v. Flake*, 14 *How. Pr.* 527. Disapproved (Costs on review of referee's decision in highway proceedings) in *People v. Heath*, 20 *Id.* 804.
- *v. Flanagan*, 5 *Hun.* 187. Aff'd in 66 *N. Y.* 237. Decision in *Id.* applied (Effect of recognition of title of citizen to office) in *People ex rel. Gilchrist v. Murray*, 8 *Daly*, 347, 355, which was rev'd in 73 *N. Y.* 535.
- *v. Fleming*, 4 *Den.* 137. Aff'd in 2 *N. Y.* 484.
- *v. Florence*, 5 *Daly*, 365. Aff'd as *People v. Quigg*, in 59 *N. Y.* 83.
- *ex rel. Hogan v. Flynn*, 4 *Hun.* 647; *s. c.*, fully reported 49 *How. Pr.* 280. Rev'd in 62 *N. Y.* 375. Decision in *Id.* explained (Term of office and power of removal of clerk of N. Y. district court) in *People ex rel. Gilchrist v. Murray*, 8 *Daly*, 347; which was rev'd in 73 *N. Y.* 535, which see. Followed in *Dolan v. Mayor, &c. of N. Y.*, 68 *Id.* 277.
- *ex rel. Grissler v. Fowler*, 55 *N. Y.* 675. Dismissing appeal from 8 *Abb. L. J.* 207; *s. c.*, more fully, 1 *Hun.* 104, *n.* Compare (Certiorari in summary proceedings) *Code Civ. Pro.* § 2122, subd. 2, § 1357. See, also (Redemption in summary proceedings) *Code Civ. Pro.* 1881; § 2257, *n.*
- *v. Francisco*, 10 *Abb. Pr.* 30; *s. c.*, more fully, 4 *Park.* 139.
- *ex rel. Buffalo & State Line R. R. Co. v. Fredericks*, 48 *Barb.* 173; *s. c.*, 33 *How. Pr.* 150. Aff'd as *Same v. Barker*, 48 *N. Y.* 70. Decision in 48 *Barb.* followed (Effect on personal property of annexation to real estate) in *People ex rel. Dunkirk & Fredonia R. R. Co. v. Cassity*, 2 *Lans.* 294, 298.
- *v. Freer*, 1 *Cai.* 518; *s. c.*, 2 *N. Y. Com. L. Law. ed.* 253, with brief note. Previous decision in 1 *Cai.* 485. Decision on p. 485 overruled, i. seems (Appearance by defendant in person, in proceedings to punish for contempt) in *People v. Van Wyck*, 2 *Id.* 333. Decision on p. 518 approved (Punishment for constructive contempts) in *People v. Wilson*, 64 *Ill.* 125; *s. c.*, 16 *Am. R.* 528, 543; 2 *Am. Dec.* 391, *n.*
- *ex rel. McCarthy v. French*, 12 *Weekly Dig.* 490. Fuller mem. in 25 *Hun.*, 111.



- **ex rel. Murphy v. French**, 60 *How. Pr.* 377. Aff'd, it seems, but without opinion, in 24 *Hun.* 659; and that aff'd in 92 *N. Y.* 306. Decision in *Id.* disting'd (Power to review evidence on certiorari) in *People ex rel. Drevet v. Fire Comm'rs of N. Y.*, 80 *Hun.* 376.
- **v. Fry**, 21 *Hun.* 282. Aff'd in 84 *N. Y.* 650, but without opinion.
- **v. Fuller**, 40 *How. Pr.* 35. Followed (Costs of proceedings on certiorari) in *People v. Smith*, 13 *Hun.* 227, 230.
- **v. Gaffney**, 1 *Buff. Super. Ct. (Sheldon)* 304; s. c., 14 *Abb. Pr. N. S.* 36. Aff'd in part as *Gaffney v. People*, 50 *N. Y.* 416.
- **v. Galloway**, 17 *Wend.* 541. See *People v. Shall*. Relied on (Married woman's deed, void for want of acknowledgment,—effect of as basis of criminal proceedings) in *Roode v. State*, 5 *Neb.* 174; s. c., 25 *Am. R.* 475.
- **ex rel. Phenix Fire Ins. Co. v. Gardiner**, 48 *Barb.* 608. Overruled in effect (State tax of U. S. certificates) by *The Banks v. The Mayor, &c.*, 7 *Wall.* 16.
- **v. Gardner**, 2 *Johns.* 477. Reviewed with *People v. Schenck*, *Id.* 479, and other cases (Right of punishing in one jurisdiction for larceny in another) in *State v. Seay*, 3 *Stew. (Ala.)* 123; s. c., 20 *Am. Dec.* 66, 68, with note. Followed with *People v. Schenck*, 2 *Johns.* 479, in *Stanley v. State*, 24 *Ohio St.* 166; s. c., 15 *Am. R.* 604, 609.
- **ex rel. Davis v. Gardner**, 59 *Barb.* 198. Another opinion by MULLIN, J., in 5 *Lans.* 1. Aff'd in 45 *N. Y.* 812. See *Real v. People*. Decision in 45 *N. Y.* applied (Age limitation on term of county judge) in *People ex rel. Joyce v. Brundage*, 78 *Id.* 403.
- **ex rel. Jefferson v. Gardner**, 51 *Barb.* 352. See *People ex rel. Hoyt v. Commissioners of Taxes*; *People ex rel. Westbrook v. Trustees of Ogdensburgh*. Followed with *People ex rel. Trowbridge v. Comm'rs of Taxes*, 4 *Hun.* 595; 62 *N. Y.* 630; *Graham v. First Nat. B'k of Norfolk*, 84 *Id.* 393 (Taxation of personal securities in another State) in *People ex rel. Jefferson v. Smith*, 88 *Id.* 576. Disting'd in *Boardman v. Supervisors of Tompkins*, 85 *Id.* 359, 364. Disapproved in *Kirtland v. Hotchkiss*, 42 *Conn.* 426; s. c., 19 *Am. R.* 546, 552; *People ex rel. Hoyt v. Commissioners of Taxes*, 23 *N. Y.* 224, being disting'd as applying not to choses in action but to chattels. Cited as authority with *People ex rel. Hoyt v. Commissioners of Taxes*, 23 *N. Y.* 238, in *Redmond v. Commissioners of Rutherford*, 87 *N. C.* 125. Disting'd in *Hunter v. Board of Supervisors*, 33 *Iowa*, 376; s. c., 11 *Am. R.* 132.
- **v. Garey**, 6 *Cow.* 642. Aff'd in 9 *Id.* 640, but without opinion. Decision in 6 *Id.* explained (Effect of statute altering counties, whereby terms of office are also altered) in *People v. Morrill*, 21 *Wend.* 563, 582.
- **v. Gasherie**, 9 *Johns.* 71; s. c., 6 *Am. Dec.* 263; 4 *N. Y. Com. L. Law. ed.* 673, with brief note. See *Gillet v. Maynard*; *Pease v. Barber*.
- **v. Gates**, 13 *Wend.* 811. Limited (Effect of including different offenses in one indictment) in *People ex rel. Tweed v. Liscomb*, 60 *N. Y.* 559 579.
- **v. —**, 15 *Wend.* 159. Followed (What is arson) in *People v. Smith*, 3 *How. Pr.* 226.
- **ex rel. Barbour v. Gates**, 39 *How. Pr.* 74; s. c., 57 *Barb.* 291. Rev'd in 43 *N. Y.* 40. See *Matter of McDowle*. Decision in 43 *N. Y.* followed (Effect of unstamped instrument) in *Moore v. Quirk*, 105 *Mass.* 49; s. c., 7 *Am. R.* 499. Collated with *Moore v. Moore*, 46 *N. Y.* 467; *Baker v. Baker*, 6 *Lans.* 509, and other cases in 1 *Whart. Com. on Ev.* § 697. See to the contrary, *Chartiers & R. Turnp. Co. v. McNamara*, 72 *Penn. St.* 278; s. c., 13 *Am. R.* 673. See also *Abb. Tr. Ev.* 453.
- **v. Gay**, 1 *Park.* 308. Aff'd in 7 *N. Y.* 378. Decision in *Id.* followed (Evidence of character of witness) in *Wilder v. Peabody*, 21 *Wend.* 379. Applied in *People v. Crapo*, 76 *N. Y.* 293; *Berner v. Mittnacht*, 2 *Sweeny*, 587. Considered in *George v. Pilcher*, 28 *Gratt. (Va.)* 299; s. c. 26 *Am. R.* 352.
- **v. Genet**, 59 *N. Y.* 80; s. c., 17 *Am. R.* 315. Further proceeding in 19 *Hun.* 91; which was aff'd as *People ex rel. Phelps v. Court of Oyer and Terminer*, 83 *N. Y.* 436. Decision in 59 *Id.* referred to as well stating the doctrine (Prisoner's right to appeal while a fugitive from justice) in 41 *Am. Dec.* 272, *n.*, wherein it is said to have been approved on this point, in *People v. Redinger*, 55 *Cal.* 290; s. c., 36 *Am. R.* 32.
- **v. Genung**, 11 *Wend.* 18; s. c., 25 *Am. Dec.* 594. Applied (Evidence of attempt to compromise prosecution incompetent to impeach witness) in *Pooler v. Curtiss*, 3 *Sup'm. Ct. (T. & C.)* 228, 231. Doubted (Evidence to affect credibility of witness) in *Morgan v. Frees*, *Sup'm. Ct. N. Y.* 1852, 1 *Am. L. Reg.* 92.
- **ex rel. Dilcher v. German United Evang. Ch.**, 3 *Lans.* 434. Rev'd in 6 *Id.* 172, but that rev'd and former aff'd in 53 *N. Y.* 103. Decision in *Id.* disting'd (Mandamus to restore to membership in corporation) in *People ex rel. Doyle v. Benevolent Society*, 3 *Hun.* 361, 363. Cited approvingly in *Livingston v. Rector, &c. of Trinity Ch.*, 16 *Vroom (N. J.)* 230, 241, as applicable to certiorari proceedings to review exclusion from pew.
- **ex rel. Munger v. Gerow**. Reported under *People ex rel. Stevens v. Hayt*.
- **v. Gilbert**, 18 *Johns.* 227; s. c., 6 *N. Y. Com. L. Law. ed.* 568, with brief note. Followed with *Wilcox v. Fitch*, 20 *Johns.* 472 (State when not bound by statute in which it is not named) in *Commonwealth v.*

- Baldwin, 1 *Watts*. (Pa.) 54; s. c., 26 *Am. Dec.* 33, with note. Discussed in *Ang. on Limit*, § 37, 6 ed.
- *v. Globe Mut. Life Ins. Co.*, 57 *How. Pr.* 481. Further proceedings in 60 *Id.* 57, and in *Id.* 82. Compare brief mem. in 22 *Hun.* 315. Still further proceedings in 91 *N. Y.* 175. See *Globe Mut. Ins. Co. v. People*. Decision in 91 *N. Y.* distinguishing'd (Effect of dissolution of insurance company upon claim made by agent) in *Hepburn v. Montgomery*, 5 *Civ. Pro. R.* (Browne) 244. Disting'd and applied (Effect of dissolution of corporation on right of creditors) and *Kincaid v. Dwinelle*, 59 *N. Y.* 543, disting'd in *Eddy v. Co-operative Dress Assn.*, 3 *Civ. Pro. R.* (Browne) 442.
- *v. Godfrey*, 17 *Johns.* 225. Applied (Acquiring by U. S. of jurisdiction over lands in State) in *Re O'Connor*, 37 *Wis.* 379; s. c., 19 *Am. R.* 765. Cited approvingly in 1 *Kent Com.* 431.
- *v. Godwin*, 5 *City Hall Rec.* 11. Said never to have been questioned (When bail is allowable in cases of felony) in *People v. Perry*, 8 *Abb. Pr. N. S.* 27.
- *ex rel. Aldhouse v. Goelet*, 14 *Abb. Pr. N. S.* 130; s. c., with points of counsel, 64 *Barb.* 476. Collated with other cases (Construction of contract for monthly tenancy) in *McAdam on Landl. & T.* 2 ed. § 22.
- *ex rel. Oswald v. Goff*, 52 *N. Y.* 434. Followed (Assessment of omitted property, when illegal) in *Marsh v. Bowen*, 12 *Abb. N. O.* 1. Compare *People ex rel. Superv's of Monroe v. Hadley*, 1 *Abb. N. C.* 441.
- *v. Gonzalez*, 35 *N. Y.* 49. Approved (Effect of reception of illegal evidence) in *Vandevoort v. Gould*, 36 *Id.* 639, 644. Disting'd in *People v. Williams*, 29 *Hun.* 520. Followed (Opinions by non-experts as to blood stains) in *People v. Greenfield*, 23 *Hun.* 454, 463; which was aff'd in 85 *N. Y.* 75, 84, which see. Cited in 1 *Whart. Com. on Ev.* § 439. Applied (What may be exhibited to jury) in *King v. N. Y. Central, & c. R. R. Co.*, 72 *N. Y.* 609.
- *v. Goodhue*. See *Matter of Washburn*.
- *v. Goodwin*, 18 *Johns.* 187; s. c., 9 *Am. Dec.* 203. Another decision in 1 *Wheel. Cr.* 443. See *People v. Barrett*; *People v. Denton*; *People v. Olcott*; *Whitney v. Hitchcock*. Decision in *Wheel. Cr.* approved (Bail in capital cases) in *Ex parte Tayloe*, 5 *Cov.* 39, 60. Decision in 18 *Johns.* applied (Defendant in criminal case, when not in jeopardy) in *People v. Reagle*, 60 *Barb.* 544; *Shepherd v. People*, 25 *N. Y.* 421. Explained in *Klock v. People*, 2 *Park.* 683. Compared in *Hartung v. People*, 26 *N. Y.* 183. Cited in *Ex parte McLaughlin*, 41 *Cal.* 211; s. c., 10 *Am. R.* 272, as according with the weight of authority. Cited as authority with *People v. Barrett*, 2 *Cui.* 304, in *Dobbins v. State*, 14 *Ohio*, 493, 500. Commented on in 2 *Bennett & H. Cas. on Crim. L.* 359.
- *ex rel. Bodine v. Goodwin*, 5 *N. Y.* 568. Disting'd (Estoppel as created by consent to making of public improvement) in *Matter of Sharp*, 56 *Il.* 257, 260. Applied in *Marble v. Whitney*, 28 *Id.* 307. Relied on in *City of Burlington v. Gilbert*, 31 *Iowa*, 356; s. c., 7 *Am. R.* 143. Followed (Extent of review on certiorari) in *People v. Overseers of Ontario*, 15 *Barb.* 293; *People v. Cortelyou*, 36 *Id.* 105. Reviewed with other cases in *People v. Board of Police*, 29 *N. Y.* 512. Disting'd (Inquiry by referees into jurisdiction of highway commissioners) in *People ex rel. Hubbard v. Harris*, 63 *Id.* 397.
- *ex rel. Sharkey v. Goodwin*, 50 *Barb.* 562. Applied (Election as to law under which arrest may be made) in *Townsend v. Nebenzahl*, 8 *Abb. N. C.* 427, 430.
- *v. Goshen & Minisink Turnpike Co.*, 11 *Wend.* 597. Followed (Liability by indictment for failure to repair road) in *Syracuse & Tully Plank Road Co. v. People*, 66 *Barb.* 25, 30.
- *v. Graves*, 5 *Park.* 134. See *Same v. Bush*. Explained (Presumptions) in 2 *Best on Ev.* § 446, n. a. Wood's ed.
- *v. Gray*, 25 *Wend.* 465. Explained (Return to writ of error) in *Manke v. People*, 74 *N. Y.* 415, 418.
- *v. Green*, 1 *Park.* 11. Subsequent decision in 1 *Den.* 614. Decision in 1 *Park.* approved (Effect of statements made in party's presence) in *McKec v. People*, 36 *N. Y.* 116.
- *v. —*, 13 *Wend.* 55. See *People v. Olcott*.
- *v. —*, 64 *Barb.* 504. Followed (Who may be appointed by sheriff to attend court of Oyer and Terminer) in *Day v. Mayor, &c. of N. Y.*, 6 *Hun.* 92; which was rev'd in 66 *N. Y.* 592.
- *ex rel. Bagley v. Green*, 1 *Hun.* 1. Compare (Framing issues in mandamus) *Code Civ. Pro.* § 2083.
- *ex rel. Brown v. Green*, 2 *Sup'm. Ct. (T. & C.)* 18; s. c., 46 *How. Pr.* 302. Another case of same name in 2 *Sup'm. Ct. (T. & C.)* 23; which was aff'd in 56 *N. Y.* 476. See *Same v. Board of Apportionment*. Decisions in 2 *Sup'm. Ct. (T. & C.)* disting'd (Effect of allowance of claim by supervisors) in *Cowan v. Mayor, &c. of N. Y.*, 3 *Hun.* 635.
- *ex rel. Curry v. Green*, 64 *Barb.* 493. Aff'd in 56 *N. Y.* 679, on the authority of *People ex rel. Brown v. Board of Apportionment*, 52 *N. Y.* 224. Decision in 64 *Barb.* disting'd (Effect of allowance or disallowance of claim by supervisors) in *People ex rel. Benedict v. Superv's of Oneida*, 24 *Hun.* 413, 421.
- *ex rel. Doyle v. Green*, 3 *Hun.* 755; s. c., 6 *Sup'm. Ct. (T. & C.)* 129. Aff'd, it seems, in 62 *N. Y.* 624, but without opinion.
- *ex rel. Gallup v. Green*, 2 *Wend.* 262. Rule approved (Legislative construction of

- constitution) in *People ex rel. Joyce v. Brundage*, 78 *N. Y.* 403, 406. Disting'd (Construction of provision respecting term of office) in *People ex rel. Lansing v. Tremain*, 9 *Hun*, 580. Followed (Term of officer elected to fill vacancy) in *People ex rel. Rosekrans v. Carr*, 62 *How. Pr.* 5, 16, which was rev'd in *Id.* 19; *People v. Coutant*, 11 *Wend.* 134, 522. Followed in *Ex parte Meredith*, 33 *Gratt. (Va.)* 119; s. c., 36 *Am. R.* 771, 774, 778.
- *ex rel. McKone v. Green*, 52 *How. Pr.* 304. Aff'd in 11 *Hun*, 56. Appeal dismissed, it seems, in 72 *N. Y.* 612. Previous decision as *People ex rel. McKown v. Green*, 50 *How. Pr.* 500; which was aff'd, it seems, in 64 *N. Y.* 656, but without opinion.
- *ex rel. N. Y. Dispensary v. Green*, 6 *Hun*, 11. Rev'd in 64 *N. Y.* 499.
- *ex rel. Outwater v. Green*, 56 *N. Y.* 466. Disting'd (Comptroller's power as to auditing) in *Matter of Murphy*, 24 *Hun*, 592, 596. Applied (Effect of re-enactment of provision that has received judicial construction) in *Butler v. Perrott*, 1 *Dem.* 13. Reviewed with other cases (Conclusiveness of action of supervisors) in *Breunan v. Mayor, &c. of N. Y.*, 8 *Daly*, 429. Disting'd in *Cowan v. Mayor, &c. of N. Y.*, 6 *Sup'm. Ct. (T. & C.)* 155.
- *ex rel. Ryan v. Green*, 46 *How. Pr.* 169. Aff'd in 5 *Daly*, 254; which was rev'd in 58 *N. Y.* 295. See *Dash v. Van Kleeck*. Decision in 58 *N. Y.* applied (Jurisdiction of *N. Y. Common Pleas*) in *Masters v. Eclectic Life Ins. Co.*, 6 *Daly*, 455. Applied (Effect of statute unconstitutional in part) in *Hurlburt v. Banks*, 1 *Abb. N. C.* 166.
- *ex rel. Schack v. Green*. Reported as *People ex rel. N. Y. Dispensary v. Green*, 6 *Hun*, 11; which was rev'd in 64 *N. Y.* 499.
- *ex rel. Tenth Nat. Bank v. Green*, 3 *Hun*, 208; s. c., fully reported in 5 *Sup'm. Ct. (T. & C.)* 375.
- *v. Greenfield*, 23 *Hun*, 454. Aff'd as *Greenfield v. People*, in 85 *N. Y.* 75; s. c., 59 *Am. R.* 636, with note. Decision in 23 *Hun* collated with other cases (Privilege of accused person testifying for himself) in 22 *Am. L. Reg.* 32.
- *ex rel. Miller v. Griswold*, 2 *Sup'm. Ct. (T. & C.)* 351. Aff'd in 67 *N. Y.* 59.
- *v. Guild*, 4 *Den.* 551. Explained (Action on executor's bond) in *Hood v. Hood*, 85 *N. Y.* 561, 573.
- *v. Hackley*, 24 *N. Y.* 74. See *Same v. McCoy*. Applied (Commitment for refusal to answer before grand jury) in *People ex rel. Phelps v. Fancher*, 2 *Hun*, 226, 229. Collated with other cases (Appeal from sentence for contempt) in 24 *Am. R.* 624, *n.*
- *v. Hadden*, 3 *Den.* 220. Approved (Foundation for admission of deposition) in *Barron v. People*, 1 *N. Y.* 386, 388.
- *ex rel. Supervisors of Westchester v. Hadley*, 16 *Hun*, 113. Rev'd in 76 *N. Y.* 337. Previous decision in 14 *Hun*, 183.
- Decision in 76 *N. Y.* followed (Jurisdiction of State assessors) in *People ex rel. Robison v. Supervisors of Ontario*, 85 *Id.* 323, 327. Applied in *State of Wisconsin ex rel. Town of Manitowoc v. County Clerk of Manitowoc County*, 59 *Wis.* 15, 21.
- *ex rel. Williams v. Haines*, 49 *N. Y.* 587. Applied (Legality of assessment had under *L. 1867, c. 774*) in *Dewey v. Supervisors of Niagara*, 2 *Hun*, 393. Applied (Authority created by statute, when exhausted) in *Smith v. Mayor, &c. of N. Y.*, 47 *How. Pr.* 279. Applied (Interference with land, that entitles to compensation) in *Matter of Chesebrough*, 56 *Id.* 463; which was aff'd in 17 *Hun*, 562, and that in 78 *N. Y.* 238, which see.
- *v. Hall*, 6 *Park.* 642. Cited as authority (What is necessary to constitute felonious intent in taking of property) in *State v. Hollyway*, 41 *Iowa*, 200; s. c., 20 *Am. R.* 586.
- *ex rel. Hatzel v. Hall*, 58 *How. Pr.* 147. Rev'd in effect as to *People*, and aff'd as to *relator*, in 80 *N. Y.* 117. See *Dudley v. Mayhew*. Decision in 80 *N. Y.* followed (Jurisdiction of courts to judge as to validity of election of alderman) in *McVeany v. Mayor, &c. of N. Y.*, *Id.* 185, 189.
- *v. Hallenbeck*, 52 *How. Pr.* 502; s. c., more fully, 2 *Abb. N. C.* 66.
- *ex rel. Stephens v. Halsey*, 53 *Barb.* 547; s. c., 36 *How. Pr.* 487. Aff'd in 78 *N. Y.* 344.
- *ex rel. Livermore v. Hamilton*, 15 *Abb. Pr.* 328. Aff'd in 39 *N. Y.* 107. Decision in *Id.* applied (Summary proceedings not a civil action) in *Brown v. Mayor, &c. of N. Y.*, 5 *Daly*, 481, 484.
- *v. Hammill*, 2 *Park.* 223. See *Same v. Robinson*. With *People v. Robinson*, *Id.* 235; *People v. Rogers*, 18 *N. Y.* 9, approved as well considered (Intoxication no excuse for crime) in *Kenny v. People*, 31 *Id.* 330, 341. Disapproved (Weight of evidence of good character in criminal cases) in *State v. Northrup*, 48 *Iowa*, 583; s. c., 30 *Am. R.* 410.
- *v. Hanna*, 3 *How. Pr.* 39. Approved (Jurisdiction of Supreme Court judge as to *habeas corpus*) in *People v. Folmsbee*, 60 *Barb.* 480.
- *v. Hardenbergh*, 8 *Joins.* 335; s. c., 4 *N. Y. Com. L. Law. ed.* 559, with brief note. Collated with *St. John v. Diefendorf*, 12 *Wend.* 261; *Pulver v. Harris*, 52 *N. Y.* 73, and other cases (Attorney's lien on judgment and enforcement thereof) in *Horton v. Champlin*, 12 *R. I.* 550; s. c., 34 *Am. R.* 722.
- *ex rel. Hubbard v. Harris*, 63 *N. Y.* 391. Followed (Appeal from decision of commissioners of highways) in *Rector v. Clark*, 12 *Hun*, 189; which was rev'd in 78 *N. Y.* 21, which see. Collated with other cases in *Mills Thomps. on Highw.* 3 ed. 299.
- *ex rel. Kipp v. Harris*, 6 *Abb. Pr.* 30. See (Demurrer to alternative writ of mandamus) *Code Civ. Pro.* 1881, § 2073, *n.*

— **v. Harrison.** See *Same v. Shall*.

— **v. Hartung,** 4 *Park*. 256. Decision on motion for new trial in *Id.* 314; s. c., 8 *Abb. Pr.* 132; 17 *How. Pr.* 85. Decision on application for writ of error in 17 *How. Pr.* 151. On writ of error judgment aff'd in 4 *Park*. 319; but that rev'd in 23 *N. Y.* 95. Subsequent decision in 23 *How. Pr.* 314; which was rev'd in 26 *N. Y.* 167; s. c., 25 *How. Pr.* 221; motion to dismiss writ of error having been denied in 26 *N. Y.* 154. Decision in *Id.* disting'd (Writ of error does not lie until final judgment) in *Bogert v. People*, 6 *Hun.* 262. Decision in 17 *How. Pr.* applied with *Baker v. Simmons*, 29 *Barb.* 198; *People v. Carnal*, 1 *Park.* 256 (New trial for misconduct of jurors) and *Mitchell v. Carter*, 14 *Hun.* 448 disting'd in *People v. Draper*, 28 *Id.* 1.

— **ex rel. Lent v. Hascall**, 18 *How. Pr.* 118. Approved (Acknowledgment of deeds by notaries) in *Utica, &c. R. R. Co. v. Stewart*, 33 *Id.* 314.

— **v. Haskins**, 7 *Wend.* 463. Overruled (Sale of rent charge on execution as real estate) in *Payn v. Beal*, 4 *Den.* 405.

— **ex rel. N. Y. & Harlem R. R. Co. v. Havemeyer**, 16 *Abb. Pr. N. S.* 219; s. c., more fully, 4 *Sup'm. Ct. (T. & C.)* 365; 47 *How. Pr.* 494. See *First Nat. B'k of Oxford v. Wheeler*; *Milhau v. Sharp*. Followed (Waiver by municipal corporation) in *People ex rel. Brooklyn Park Comm'rs v. City of Brooklyn*, 3 *Hun.* 596. Disting'd in *Weismer v. Village of Douglass*, 64 *N. Y.* 91, 106.

— **ex rel. Baldwin v. Haws**, 13 *Abb. Pr.* 375, n.; s. c., 23 *How. Pr.* 107. Aff'd in 37 *Barb.* 440; s. c., 15 *Abb. Pr.* 115; 24 *How. Pr.* 148. See *Britton v. Mayor, &c. of N. Y.* Decision in 37 *Barb.* overruled (Power of legislature to compel municipal corporation to submit to arbitration) in *Darlington v. Mayor, &c. of N. Y.*, 31 *N. Y.* 164. Quoted in *Cooley on Const. Limit.* 5 ed. 288, n. 1.

— **ex rel. Kelly v. Haws**, 12 *Abb. Pr.* 192. Followed (Effect of supervisors' audit of claim) in *People ex rel. Brown v. Green*, 2 *Sup'm. Ct. (T. & C.)* 18, 22; *Same v. Same*, 5 *Daly*, 194, 198; *People ex rel. Outwater v. Green*, 56 *N. Y.* 466, 474. *People ex rel. Martin v. Earle*, 16 *Abb. Pr. N. S.* 69.

— **ex rel. McSpedon v. Haws**, 12 *Abb. Pr.* 70. To same effect is further decision, in 34 *Barb.* 69; s. c., 12 *Abb. Pr.* 204; 21 *How. Pr.* 178.

— **v. Hayden**, 6 *Hill*, 359. See *Bloodgood v. Mohawk & Hudson River R. R. Co.* Examined with other cases (Provisions for compensation in case of taking property by right of eminent domain) in *Chapman v. Gates*, 54 *N. Y.* 132, 146.

— **v. Hayes**, 7 *How. Pr.* 248. Applied (Who are public officers) in *First Nat. B'k of North Bennington v. Town of Mt. Tabor*, 52 *Vt.* 87; s. c., 36 *Am. R.* 734, 744.

— **v. —**, 1 *Edm. Sel. Cas.* 582. See cases cited (Challenges to jurors) in 6 *Abb. N. C.* 24, n. Compare *Points of Law in Guitau's Case*, p. 61 (Boston; Little, Brown & Co., 1881).

— **v. Haynes**, 11 *Wend.* 557. Rev'd in 14 *Id.* 546; s. c., 28 *Am. Dec.* 530, with note, wherein it is referred to as with other cases, settling the principle (Passing of title to goods shipped). Decision in 11 *Wend.* followed and reversal explained (Effect of false representations on sale) in *Hersey v. Benedict*, 15 *Hun.* 282, 288. Disting'd (Passing of title to goods shipped) in *Jones v. Bradner*, 10 *Barb.* 201; *Baker v. Boucicault*, 1 *Daly*, 28; *Bradner v. Jones*, 5 *N. Y. Leg. Obs.* 99. Applied in *Glen v. Whitaker*, 51 *Barb.* 458; *Smith v. Lynes*, 3 *Sandf.* 209; which was rev'd in 5 *N. Y.* 44, which see.

— **v. Hays**, 2 *Hill*, 351. Explained (Criminal conviction for assault, when to be sustained) in *People v. Bransby*, 32 *N. Y.* 525, 534.

— **ex rel. Stevens v. Hayt**, 7 *Hun.* 39. Rev'd in 66 *N. Y.* 606.

— **ex rel. Harvey v. Heath**, 20 *How. Pr.* 304. Disapproved (What is special proceeding) in *People ex rel. Clute v. Boardman*, 3 *Abb. Ct. App. Dec.* 485. Explained (Costs on certiorari) in *People ex rel. Cook v. Board of Police*, 17 *Abb. Pr.* 324, n. Approved in *Same v. Same*, 39 *N. Y.* 521. Disapproved in *People v. Comm'rs of Highways of Schodack*, 27 *How. Pr.* 160; *People v. Fuller*, 40 *Id.* 37; *People v. Smith*, 13 *Hun.* 227, 230.

— **v. Heffernan**, 5 *Park.* 393. Approved (Indictment pending preliminary examination) in *People ex rel. Phelps v. Westbrook*, 12 *Hun.* 649.

— **v. Hendrickson.** See *Hendrickson v. People*.

— **v. Hennessey**, 15 *Wend.* 147. Followed with *People v. Badgley*, 16 *Id.* 53; *People v. Porter*, 2 *Park.* 14 (Effect of extra-judicial confession to support conviction) in *Matthews v. State*, 55 *Ala.* 187; s. c., 23 *Am. R.* 698, 701. Followed with *People v. Porter*, 2 *Park.* 14, in *Priest v. State*, 10 *Neb.* 393; s. c., 46 *Am. R.* 259, n.

— **v. Henries**, 1 *Park.* 579. Disapproved (Right of People to peremptory challenge) in *People v. Masters*, 3 *Id.* 517.

— **v. Herkimer**, 4 *Cov.* 345; s. c., 15 *Am. Dec.* 379, with extended note (Effect of general words in statute to bind sovereign).

— **ex rel. Etheridge v. Herkimer Com. Pl.**, 7 *Wend.* 536. See (Service of alternative mandamus) *Code Civ. Pro.* 1881, § 2071, n.

— **v. Herrick**, 13 *Johns.* 82; s. c., 7 *Am. Dec.* 364. Followed (Necessity of record proof of conviction of witness) in *Newcomb v. Griswold*, 24 *N. Y.* 301. Approved in *Blaufus v. People*, 69 *Id.* 110. Disting'd in *Perry v. People*, 86 *Id.* 353, 358.

- *v. —*, 13 *Wend.* 87. Followed (Evidence as to responsibility in case of indictment for obtaining money by false pretenses) in *People v. Higbie*, 66 *Barb.* 135.
- *v. Hewitt*, 2 *Park.* 20. Disting'd (Evidence to show that signature was simulated) in *Kowing v. Manly*, 49 *N. Y.* 192, 203.
- *v. Hickey*, 5 *Daly*, 365. Aff'd as *People v. Quigg*, 59 *N. Y.* 83.
- *ex rel. Davis v. Hill*, 1 *Sup'm. Ct. (T. & C.)* 154; s. c., 65 *Barb.* 435. Aff'd in 53 *N. Y.* 547. Another decision in 7 *Alb. L. J.* 220. With latter decision see (To whom writ of certiorari is to be directed) *Code Civ. Pro.* 1881, § 2129, *n.*
- *ex rel. McConvill v. Hills*, 46 *Barb.* 340. Rev'd in 35 *N. Y.* 449. See *Conner v. Mayor, &c. of N. Y.*; *People v. Lawrence*. Decision in 35 *N. Y.* followed (Title of local bill) in *People ex rel. Schenectady Observatory v. Allen*, 42 *Id.* 404, 418; *People ex rel. Bradley v. Stevens*, 51 *Hov. Pr.* 145, 150; *Healey v. Dudley*, 5 *Lans.* 125. Applied in *People v. O'Brien*, 38 *N. Y.* 194; *People v. Supervisors of Chautauqua*, 43 *Id.* 19. Explained in *People v. Briggs*, 50 *Id.* 553, 561. Disting'd (What is local bill) in *People v. Davis*, 61 *Barb.* 465; which was rev'd in 49 *N. Y.* 134, which see.
- *v. Hillsdale & Chatham Turnpike Co.*, 23 *Wend.* 254. See cases collected (Corporate franchises, how forfeited) in 5 *Am. L. Reg. N. S.* 586. Quoted and explained (Liabilities for nuisance in highways) in *Wood on Nuis.* 2 ed. § 323, *n.* 5.
- *ex rel. Macey v. Hillsdale & Chatham Turnpike Co.*, 2 *Johns.* 190. See *Russell v. Mayor of N. Y.* Followed (Quo warrant not remedy against corporation occupying land for road without authority) in *State ex rel. O'Brien v. Kill Buck Turnp. Co.*, 38 *Ind.* 71.
- *ex rel. Bailey v. Hoffman*, 7 *Wend.* 489. Limited with *Grant v. Van Schoonhoven*, 9 *Paige*, 255 (Appointment of guardian *ad litem*) in *Varian v. Stephens*, 2 *Duer*, 635.
- *ex rel. Hassell v. Hoffman*, 60 *Hov. Pr.* 324. Aff'd, it seems, in 24 *Hun*, 142, but without opinion.
- *ex rel. Nat. Broadway B'k v. Hoffman*, 37 *N. Y.* 9. Rev'd in *The Banks v. The Mayor*, 7 *Wall.* 16. Decision in 37 *N. Y.* cited and compared with Federal decisions, and principle commented on (Power of State to tax Federal operations) in 1 *Kent Com.* 429, *n.* 1 *Holmes'* ed.
- *v. Holbrook*, 13 *Johns.* 90. Explained (Sufficiency of indictment for stealing instrument for payment of money) in *Phelps v. People*, 72 *N. Y.* 355. Examined in *People v. Kent*, 1 *Doug. (Mich.)* 44. Applied (Effect of form of action to give notice to produce instrument) in *Hardin v. Kretzinger*, 17 *Johns.* 295. Cited in *Taylor on Ev.* 406.
- *v. Holley*, 12 *Wend.* 481. Applied (Statutory provision that officer shall give bond within prescribed time, is directory only) in *City of Chicago v. Gage*, 95 *Ill.* 598; s. c., 35 *Am. R.* 182.
- *v. Holmes*, 3 *Park.* 567. Approved and applied (Stay of judgment) in *People v. O'Reilly*, 9 *Abb. N. C.* 77, 92.
- *v. Honeyman*, 3 *Den.* 121. Disting'd (Competency of jurors) in *Greenfield v. People*, 6 *Abb. N. C.* 1, 8; which rev'd 13 *Hun*, 250, which see. Compared in *People v. Hayes*, 1 *Edm. Sel. Cas.* 587. See cases cited in 6 *Abb. N. C.* 24, *n.* Applied (Challenge to favor after challenge for principal cause) in *Carnal v. People*, 1 *Park.* 279.
- *ex rel. Church v. Hopkins*, 1 *Sup'm. Ct. (T. & C.)* 195. Rev'd (Power of deputy superintendent of insurance department) in 55 *N. Y.* 74.
- *v. Hopson*, 1 *Den.* 574. See *Green v. Burke*; *People v. Collins*; *People ex rel. Morton v. Tieman*; *Shepard v. Rowe*. Applied (Effect of acts of officer *de facto*) in *Hamlin v. Dingman*, 41 *Hov. Pr.* 135; *People ex rel. Steinert v. Anthony*, 6 *Hun*, 145. Cited in *Commonwealth v. Kane*, 108 *Mass.* 423; s. c., 11 *Am. R.* 373. Applied (Effect of levy as satisfaction of judgment) in *Denvery v. Fox*, 22 *Barb.* 526; *Waddell v. Elmendorf*, 5 *Den.* 448. Explained in *McChain v. Duffy*, 2 *Duer*, 647. Cited with *Green v. Burke*, 23 *Wend.* 501, in *Trapnall v. Richardson*, 13 *Ark.* 543; s. c., 58 *Am. Dec.* 338, with note. Applied (Renewal of execution) in *Chapman v. Fuller*, 7 *Barb.* 72. Applied (Right to make entry on premises, to make execution sale of personal property) in *Stief v. Hart*, 1 *N. Y.* 37.
- *v. Horton*, 4 *Park.* 222. Approved (Indictment pending preliminary examination) in *People ex rel. Phelps v. Westbrook*, 12 *Hun*, 649. Disapproved in *People v. Heffernan*, 5 *Park.* 393.
- *v. —*, 5 *Hun*, 516. Aff'd in 64 *N. Y.* 610. Motion to dismiss appeal denied in *Id.* 58.
- *v. Hovey*, 5 *Barb.* 117. Overruled (Effect of re-marriage of guilty party after divorce) in *People v. Faber*, 92 *N. Y.* 146. Quoted in 2 *Bish. on Mar. & D.* § 700, 6 ed.
- *v. Howell*, 4 *Johns.* 296. Approved (Competency of witness whose signature has been forged, to prove forgery) in *People v. Dean*, 6 *Conn.* 27. Cited with approval in *Hess v. State*, 5 *Ohio*, 5; s. c., 22 *Am. Dec.* 767, 770. Explained (Right of peremptory challenge as giving right of separate trial) in *Hawkins v. State*, 9 *Ala.* 137; s. c., 44 *Am. Dec.* 431, 434.
- *ex rel. Am. Linen Thread Co. v. Howland*. See *Same v. Assessors of Mechanicsville*.
- *ex rel. Ainslee v. Howlett*, 13 *Hun*, 138. Aff'd in 76 *N. Y.* 574. Both decisions disting'd (Usury as defense in sum-

mary proceedings) in *Barnes v. Gilmore*, 6 *Civ. Pro. R. (Browne)* 286, 291.

— **ex rel. White v. Hulbert**, 59 *Barb.* 446. Rev'd in 46 *N. Y.* 110. Decision in *Id.* applied (Proceedings on petition for issue of town bonds) in *People ex rel. Allen v. Knowles*, 47 *Id.* 418.

**People ex rel. Williams v. Hulburt**, 1 *Code R. N. S.* 75; s. c., more fully, 5 *How. Pr.* 446. See *Fenner v. Sanborn*. Criticised (Adjournment by judge of supplementary proceedings) in *Kaufman v. Thrasher*, 10 *Hun.* 438, 440. Said to be overruled (Compelling assignment to receiver in supplementary proceedings) in *Clan Ranald v. Wyckoff*, 41 *Super. Ct. (J. & S.)* 528.

— **v. Hulbut**, 4 *Den.* 183. Approved (Impeaching indictment) in *People v. Restenblatt*, 1 *Abb. Pr.* 271. Explained in *People v. Clews*, 57 *How. Pr.* 247. Followed in *Hop v. People*, 83 *N. Y.* 418, 422; *U. S. v. Reed*, 2 *Blatchf. C. Ct.* 435, 466. Applied (Effect of illegal sale by agent or servant) in *Verona Central Cheese Co. v. Murtaugh*, 50 *N. Y.* 319. Followed (Proof of sale of spirituous liquors) in *Vallance v. Everts*, 3 *Barb.* 553.

— **v. Hulse**, 3 *Hill*, 309. Approved (Evidence of character of witness) in *Starks v. People*, 5 *Den.* 106, 109; *People v. Gay*, 7 *N. Y.* 380; which aff'd 1 *Park.* 311, which see. Considered in *George v. Pilcher*, 28 *Gratt. (Va.)* 299, s. c., 26 *Am. R.* 351. Approved and applied (Place to find indictment for offense committed on board vessel) in *Manley v. People*, 7 *N. Y.* 301. Applied (Effect of declarations of prosecutrix on trial for rape) in *Baccio v. People*, 41 *Id.* 270. Quoted and commented on in 1 *Barb. on Crim. L.* 3 ed. 70.

— **v. Humphrey**, 7 *Johns.* 314. See *Fenton v. Reed*. Dissented from as contrary to weight of authority (Proof of marriage) in *Dumas v. State*, 14 *Tex. Ct. App.* 464; s. c., 46 *Am. R.* 241. Denied in *Commonwealth v. Murtagh*, 1 *Ashmead*, 275. See *State v. Roswell*, 6 *Conn.* 453. Reviewed with other cases in *Commonwealth v. Jackson*, 11 *Bush (Ky.)* 679; s. c., 21 *Am. R.* 225. Approved in *Cameron v. State*, 14 *Ala.* 546; s. c., 48 *Am. Dec.* 111, with note. Collated with *Clayton v. Wardell*, 4 *N. Y.* 230; *Gahagan v. People*, 1 *Park.* 383, and other cases in 1 *Whart. Com. on Ev.* § 84, n., as showing the condition of the American authorities; *Rockwell v. Tunnicliffe*, 62 *Barb.* 408; *Johnston v. Allen*, 39 *How. Pr.* 506, being cited as authorities in this connection.

— **ex rel. Rhoades v. Humphreys**, 24 *Barb.* 521. See *People v. Mercein*.

— **v. Huntington**. Examined with *Freeman v. People*, 4 *Den.* 28, in dissenting opinion of *Doe, J.* (Knowledge as test of insanity) in *State v. Pike*, 49 *N. H.* 399; s. c., 6 *Am. R.* 533, 544, 583, wherein *People v. Huntington* is said to have been decided in 1856.

— **v. —**, 4 *N. Y. Leg. Obs.* 187. Cited with approval (Power of Congress to regulate commerce) in 1 *Kent Com.* 439, n. b, *Holmes'* ed.

— **v. Hyler**, 2 *Park.* 566. Approved (Indictment without preliminary examination) in *People ex rel. Phelps v. Westbrook*, 12 *Hun.* 649.

— **ex rel. Ottman v. Hynds**, 27 *Barb.* 94. Aff'd in effect in 30 *N. Y.* 453. Decision in *Id.* followed (Order of highway commissioners) in *Phillips v. Schumacher*, 10 *Hun.* 405, 409; *Chapman v. Swan*, 65 *Barb.* 211; *People ex rel. Dann v. Williams*, 36 *N. Y.* 444. See *Stewart v. Wallis*, 30 *Barb.* 344. Decision in 27 *Id.* disting'd (Inquiry into jurisdiction of highway commissioners) in *People ex rel. Hubbard v. Harris*, 63 *N. Y.* 396.

— **v. Ingersoll**, 67 *Barb.* 472. Aff'd in 58 *N. Y.* 1; s. c., 17 *Am. R.* 178, which overruled *People v. Tweed*, 13 *Abb. Pr. N. S.* 25. Previous proceeding in 14 *Id.* 23. Decision in 58 *N. Y.* followed (Action by people for recovery of money or property) in *People v. Fields*, *Id.* 491, 506; see *Same v. Same*, 50 *How. Pr.* 484. Collated with other cases (Municipal corporation as public agent) in 8 *Abb. N. C.* 280, n.

— **v. Irvin**, 21 *Wend.* 128. Approved (Inheritance, in case of alienage) in *McLean v. Swanton*, 13 *N. Y.* 535, 540.

— **v. Jackson**, 3 *Park.* 391. See *Same v. Abbot*. Reviewed with *People v. Abbot*, 19 *Wend.* 192; *Bracy v. Kibbe*, 31 *Barb.* 273; *Crossman v. Bradley*, 53 *Id.* 125; *Ford v. Jones*, 62 *Id.* 484; *Wandell v. Edwards*, 25 *Hun.* 498 (Evidence of specific acts of lewdness) in *Gulerette v. McKinley*, 27 *Id.* 320. Overruled in *Ford v. Jones*, 62 *Barb.* 484; citing *Bracy v. Kibbe*, 31 *Id.* 276; *Hogan v. Cregan*, 6 *Robt.* 150. Collated with other cases in 1 *Barb. on Crim. L.* 3 ed. 74, n.

— **v. —**, 2 *Hill*, 92. Disting'd (Conviction of offense of less grade than that specified in indictment) in *Dedieu v. People*, 22 *N. Y.* 178, 184.

— **v. —**, 8 *Barb.* 637. Reviewed with other cases (Sufficiency of description in indictment for stealing money) in *Arnold v. State*, 52 *Ind.* 281; s. c., 21 *Am. R.* 175, 177.

— **ex rel. Burnet v. Jackson**, 23 *Hun.* 568. Rev'd in 85 *N. Y.* 541.

— **ex rel. Woolf v. Jacobs**, 5 *Hun.* 428. Aff'd in 66 *N. Y.* 8. Decision in 5 *Hun.* applied (Effect of including improper items in order of commitment for non-payment of money) in *Allen v. Allen*, 8 *Abb. N. C.* 175, 185. Compare *Van Valkenburg v. Doolittle*, 4 *Id.* 72. See cases cited (Reviewing commitment for contempt) in 20 *Am. L. Reg. N. S.* 369.

— **v. Jansen**, 7 *Johns.* 332; s. c., 4 *N. Y. Com. L. Law. ed.* 342, with brief note citing cases in disapproval; also s. c., 5 *Am.*

*Dec. 275*, with note, wherein it is considered as undermined, if not virtually overruled in *N. Y.* as an authority, but also said to be entitled to weight, and to have been respectfully regarded by courts of high authority,—collating and criticising cases. See *Hubbard v. Gurney*. Examined with other cases (Parol proof of suretyship) in *Hubbard v. Gurney*, 64 *N. Y.* 461. Disting'd (Discharge of surety by failure to proceed against principal) in *Pain v. Packard*, 13 *Johns.* 174; *People v. Berner*, *Id.* 384. Said not to have been followed, in *McKechnie v. Ward*, 58 *N. Y.* 548; Board of Supervisors of *Monroe v. Otis*, 62 *Id.* 95. Explained in *King v. Baldwin*, 17 *Johns.* 394; which rev'd 2 *Johns. Ch.* 554, which see. Referred to as overruled,—in *Hurd v. Callahan*, 9 *Abb. N. C.* 374. Referred to in *Looney v. Hughes*, 26 *N. Y.* 514, as overruled by *People v. Russell*, 4 *Wend.* 570; *Seymour v. Van Slyck*, 8 *Id.* 403; *Albany Dutch Church v. Vedder*, 14 *Id.* 165, and other cases in this State and the U. S. courts. Compare *State v. Atherton*, 40 *Mo.* 210. Said to be overruled by *Looney v. Hughes*, 26 *N. Y.* 514; Board of Supervisors of *Monroe v. Otis*, 62 *Id.* 88, and also disapproved in *Hawkins v. Mims*, 36 *Ark.* 145; s. c., 38 *Am. R.* 30; the principle of *Pain v. Packard*, 13 *Johns.* 174 being held not to apply. Explained in State to use of *Carroll County v. Roberts*, 68 *Mo.* 234; s. c., 30 *Am. R.* 788, 792. Disting'd in *Commonwealth v. Wolbert*, 6 *Binn. (Pa.)* 292; s. c., 6 *Am. Dec.* 452. Referred to in *Mutual Loan & Building Ass'n v. Price*, 16 *Fla.* 204; s. c., 26 *Am. R.* 703, as overruled by *People v. Russell*, 4 *Wend.* 570. Reviewed at length with *Pain v. Packard*, 13 *Johns.* 174; *King v. Baldwin*, 2 *Johns. Ch.* 559, in *Cope v. Smith*, 8 *Serg. & R. (Pa.)* 110; s. c., 11 *Am. Dec.* 582, with note. Followed in *Baker v. Briggs*, 8 *Pick. (Mass.)* 121; s. c., 19 *Am. Dec.* 311, 315. Commented on in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 389.

— **ex rel. Nelson v. Jefferts**, 2 *Hun.* 149; s. c., with opinion, 4 *Sup'm. Ct. (T. & C.)* 398.

— **v. Jewett**, 3 *Wend.* 314. Subsequent decision in 6 *Id.* 386. Decision in 3 *Id.* reviewed with other cases (Time of objection to grand juror) in *State v. Easter*, 30 *Ohio St.* 542; s. c., 27 *Am. R.* 478. Cited, and contrary cases followed in *State v. Davis*, 12 *R. I.* 492; s. c., 34 *Am. R.* 704, with note collating cases. Followed in *State v. Hamlin*, 47 *Conn.* 95; s. c., 36 *Am. R.* 54. Cited as authority in *Patrick v. State*, 16 *Neb.* 331. Followed (Mode of trial of issue as to competency of grand juror) in *U. S. v. Tuska*, 14 *Blatchf. Ct.* 5, 8. Decision in 6 *Wend.* followed (Effect of not exercising right of challenge) in *Johns v. Hodges*, 60 *Md.* 215; s. c., 45 *Am. R.* 722. Questioned in *Briggs v. Georgia*, 15 *Vt.* 72.

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— **v. Johnson**, 1 *Park.* 564. Applied (Liability for receiving stolen goods) in *Miller v. People*, 25 *Hun.* 473.

— **v. —**, 12 *Johns.* 292. *Young v. King*, 3 *Term. R.* 98 said in *McKenzie v. State*, 6 *Eng. (Ark.)* 598, to be cited herein to establish the opposite of its true doctrine (Liability for obtaining property by false pretenses). Included with notes in *Lawson Lead. Cas. Crim. L. Simplified*, 293.

— **ex rel. Reilly v. Johnson**, 37 *Barb.* 502; s. c., more fully, 14 *Abb. Pr.* 416. Aff'd in 38 *N. Y.* 63. Decision in *Id.* cited (Former adjudication, when not conclusive as to particular facts) in 2 *Whart. Com. on Ev.* § 785.

— **v. Jones**, 54 *Barb.* 311. See *Wintermute v. Clark*. Applied (Extent of discretion of excise commissioners) in *People ex rel. Beller v. Wright*, 5 *Sup'm. Ct. (T. & C.)* 518, 520.

— **ex rel. Day v. Jones**. See *Day v. Lee*. — **ex rel. Dorn v. Jones**, 2 *Sup'm. Ct. (T. & C.)* 360. Rev'd in 63 *N. Y.* 306.

— **ex rel. Commissioners of Highways of Cortlandville v. Judges of Cortland, 24 *Wend.* 491. Applied (Duty of commissioners in ascertaining, &c. existing highways) in *Talmage v. Hunting*, 39 *Barb.* 657; *Marvin v. Pardee*, 64 *Id.* 361; *Cole v. Van Keuren*, 6 *Sup'm. Ct. (T. & C.)* 482.**

— **ex rel. Doughty v. Judges of Dutchess**, 20 *Wend.* 658. Approved (Mandamus to correct judicial errors) in *People v. Judge of Wayne*, 1 *Mich.* 361; citing *Elkins v. Athearn*, 2 *Den.* 191.

— **ex rel. Seward v. Judges of Dutchess**, 23 *Wend.* 360. Qualified (What questions may be raised on certiorari) in *Mullins v. People*, 24 *N. Y.* 399, 402.

— **ex rel. Titus v. Judges of Dutchess**, 5 *Cov.* 34. Explained (Sufficiency of execution of bond by sureties on appeal from justice's decision) in *Ex parte Brooks*, 7 *Id.* 428.

— **ex rel. Case v. Judges of Dutchess Oyer and Terminer**, 3 *Barb.* 282. Doubted (Court of sessions as superior court of general jurisdiction) in *People v. Sessions of Wayne*, 1 *Park.* 369. Disapproved (Power to grant new trial in criminal cases) in *People v. Morrison*, *Id.* 625; see *People v. Townsend*, 1 *Johns. Cas.* 105; *People v. Stone*, 5 *Wend.* 39; *Appo v. People*, 20 *N. Y.* 531, 547. Cited with 2 *Summ.* 19, in *State v. McCord*, 8 *Kans.* 232; s. c., 12 *Am. R.* 469, as standing alone. Commented on in 2 *Bennett & H. Cas. on Crim. L.* 493. Approved (Power of removal from Oyer and Terminer to Supreme Court) in *Jones v. People*, 79 *N. Y.* 50.

— **v. Judges of Herkimer**, 20 *Wend.* 186. Disting'd (Necessity of notice of hearing on appeal in highway proceeding) as inapplicable under the Long Island Counties Act, in *People v. Smith*, 21 *N. Y.* 595, 599.

— **ex rel. Mallard v. Judges of Madison**. See *Ex parte Benson*.

- **ex rel. Kanouse v. Judges of N. Y. Common Pleas**, 2 *Den.* 197. Followed and approved (Jurisdiction, as between State and U. S. circuit courts to issue mandamus for removal of cause) in *People ex rel. Glens Falls Ins. Co. v. Judge of Jackson Circuit*, 21 *Mich.* 577; s. c., 4 *Am. R.* 504. Doubt in *Hough v. Western Transportation Co.*, 1 *Biss.* 425. Commented on in *High on Extr. Rem.* 2 ed. § 226, n. 2.
- **ex rel. Perkins v. Judges of N. Y. Common Pleas**, 8 *Cov.* 127. Approved (Withdrawal of juror in cases of surprise) in *Messenger v. Fourth Nat. B'k*, 6 *Daly*, 190, 194.
- **v. Judges of Suffolk**, 24 *Wend.* 249. Collated with other cases (Appeal from commissioners of highways) in *Mills Thomps. on Highw.* 3 ed. 299.
- **v. Judges of Washington Common Pleas**, 1 *Cai.* 511; s. c., 2 *N. Y. Com. L. Law ed.* 249, with brief note. Disting'd as resting on a statute (Mandamus to inferior court to compel signing of bill of exceptions) in *Drexel v. Man, 6 Watts & S. (Pa.)* 386; s. c., 40 *Am. Dec.* 573.
- **ex rel. Tomb v. Judges of Washington Common Pleas**, 1 *Cov.* 576. Applied (Security for costs on appeal from justices' courts, &c.) in *Mellen v. Hutchins*, 8 *Abb. N. C.* 228.
- **v. Judges of Westchester**, 4 *Cov.* 73. Subsequent decision in *Id.* 403. See (Service of alternative mandamus) *Code Civ. Pro.* 1881, § 2071, n.
- **v. Justices of Chenango**, 1 *Johns. Cas.* 180. See *People v. Dutchess Oyer and Terminer*. Compare (Right to grant new trials on the merits) *People v. Stone*, 5 *Wend.* 39; *Appo v. People*, 20 *N. Y.* 531.
- **v. Kane**, 4 *Den.* 530. See *Same v. Koebcr*.
- **v. —**, 23 *Wend.* 414. Overruled (Appointment of police justices in cities) in *Clark v. People*, 26 *Id.* 599; but deemed rightly decided on another ground. Followed with *People v. White*, 24 *Id.* 520 (Validity of acts of officer acting under unconstitutional law) in *State v. Carroll*, 38 *Conn.* 449; s. c., 9 *Am. R.* 409, 430.
- **ex rel. Brooklyn Industrial School v. Kearney**, 31 *Barb.* 430; s. c., 19 *How. Pr.* 493. Proceedings of surrogate in 1 *Redf.* 292. Subsequent proceedings (Attachment for contempt) in 21 *How. Pr.* 74. With decision in 31 *Barb.* see (Appointment of guardian) *Code Civ. Pro.* 1881, § 2821, n. Explained in *Schouler on Dom. Rel.* 3 ed. § 300.
- **v. Keeler**, 25 *Barb.* 23. Aff'd in *Id.* 421, and that rev'd in 17 *N. Y.* 370. Dissenting opinion in *Id.* adopted (Office of justice of peace not town but county office) in *People v. Carter*, 29 *Barb.* 208.
- **ex rel. Hackley v. Kelly**, 12 *Abb. Pr.* 150; s. c., 21 *How. Pr.* 54. Aff'd in 24 *N. Y.* 74; s. c., less fully, 24 *How. Pr.* 369; also s. c., 1 *Am. L. Reg. N. S.* 534, with note by Prof. DWIGHT. See *Matter of Hackley*; *Mitchell's Case*; *People v. Sturtevant*. Decision in 24 *N. Y.* approved and followed (Witness when not exempted because of criminating tendency of answer) in *U. S. v. McCarthy*, *U. S. Cir. Ct. S. D. N. Y.* 18 *Fed. Rep.* 87. Followed with *People v. Mather*, 4 *Wend.* 229, in *Emery's Case*, 107 *Mass.* 172; s. c., 9 *Am. R.* 22, 26. Examined (Review of commitment for contempt) in 20 *Am. L. Reg. N. S.* 368, 371. See (Habeas corpus and certiorari, when not allowed) *Code Civ. Pro.* 1881, § 2016, n.
- **ex rel. Murphy v. Kelly**, 76 *N. Y.* 475; s. c., more fully, 5 *Abb. N. C.* 383. Explained and applied (Extent of power of comptroller of N. Y. city) in *People ex rel. Burnet v. Jackson*, 23 *Hun.* 568, 572; which was rev'd in 85 *N. Y.* 541, which see.
- **ex rel. Sharkey v. Kelly**, 7 *Robt.* 592. Rev'd in 50 *Barb.* 562.
- **v. Kennedy**, 2 *Park.* 312. See *Wynehamer v. People*. See (Right to trial by jury in case of misdemeanor) *Wynehamer v. People*, 13 *N. Y.* 378.
- **v. Kerr**, 20 *How. Pr.* 130. Further proceeding as *People v. Mayor, &c. of N. Y.*, in *Id.* 144. Decision on p. 130 rev'd, and that on p. 144 aff'd in 37 *Barb.* 357; which was aff'd in 27 *N. Y.* 188; s. c., less fully, 25 *How. Pr.* 258. See *Craig v. Rochester City & Brighton R. R. Co.*; *Radcliff v. Mayor, &c. of Brooklyn*; *Story v. N. Y. Elevated R. R. Co.*; *Wynehamer v. People*. Decision in 27 *N. Y.* applied (Extent of legislative authority over property of corporation of N. Y.) in dissenting opinion of HUNT, J., in *Baldwin v. Mayor, &c. of N. Y.*, 2 *Keyes*, 417. Applied (Right to authorize, without additional compensation, construction of railroad in street, fee of which is in public) in *Washington Cem. v. Prospect Park, &c. R. R. Co.*, 4 *Abb. N. C.* 18. Cited as settled law, in *N. Y. & Harlem R. R. Co. v. Forty-Second St., &c. R. R. Co.*, 50 *Barb.* 311. Disting'd in *Craig v. Rochester City, &c. R. R. Co.*, 39 *N. Y.* 412. Disting'd as to gas pipes in country highway,—in *Bloomfield, &c. Gas Light Co. v. Calkins*, 62 *Id.* 390. Collated with *Craig v. Rochester City & Brighton R. R. Co.*, 39 *Id.* 404, and other cases, in 28 *Am. R.* 267, n., where the N. Y. doctrine is said to conflict with the weight of authority, *Williams v. N. Y. Central R. R. Co.*, 16 *N. Y.* 97, being also collated with other cases as to steam railways. Reviewed with other cases in *Perry v. New Orleans, Mobile, &c. R. R. Co.*, 55 *Ala.* 413; s. c., 28 *Am. R.* 740, 744. Also in 15 *Am. L. Rev.* 397. Criticised in *Mills Thomps. on Highw.* 3 ed. 400. Discussed in *Cooley on Const. Limit.* 5 ed. 684. Disting'd with *Mahady v. Bushwick R. R. Co.*, 91 *N. Y.* 148; *Story v. N. Y. Elevated R. R. Co.*, 90 *N. Y.* 122; *People v. Metropolitan Telephone, &c. Co.*,



- 31 *Hun.* 596 (Legislative control over use of streets) in Metropolitan Telephone, & C. Co. v. Colwell Lead Co., 50 *Super. Ct. (J. & S.)* 488. Explained and applied (Rights of abutting owners) in Kellinger v. Forty-Second St., & C. R. Co., 50 *N. Y.* 209. Followed in Mahady v. Bushwick R. R. Co., 91 *Id.* 148. Explained and limited with Kellinger v. Forty-Second Street R. R. Co., 50 *Id.* 206, in Story v. N. Y. Elevated R. R. Co., 90 *Id.* 122. Applied with Story v. N. Y. Elevated R. R. Co., in Taylor v. Metropolitan Elevated R'y Co., 50 *Super. Ct. (J. & S.)* 311. Reviewed with Story v. N. Y. Elevated R. R. Co., and other N. Y. cases, in connection with similar provisions in constitutions of other States, in 23 *Am. L. Reg. N. S.* 454. Disting'd (Extent of public interest in highway) in Kelsey v. King, 33 *How. Pr.* 46. Disting'd (Power to take for railroad purposes, property held for other public use) in Matter of Boston & Albany R. R. Co., 53 *N. Y.* 579. Applied (Limitations on ownership of streets in fee by corporation of N. Y.) in Trenor v. Jackson, 15 *Abb. Pr. N. S.* 121. Disting'd in Milhau v. Sharp, 27 *N. Y.* 623.
- **v. Kerrains**, 1 *Sup'm. Ct. (T. & C.)* 333. Rev'd as Kerrains v. People, 60 *N. Y.* 221.
- **ex rel. Zeiser v. Kessel**, 21 *Hun.* 277. Motion to dismiss appeal denied in 81 *N. Y.* 638, but without opinion.
- **ex rel. Eagle v. Keyser**, 28 *N. Y.* 226; s. c., more fully, 17 *Abb. Pr.* 214. Rev'g 39 *Barb.* 587.
- **ex rel. McCann v. Kilbourn**. Reported under People *ex rel.* Lansing v. Tremain, 9 *Hun.* 573. Aff'd in 68 *N. Y.* 479.
- **v. King**, 23 *Hun.* 148. Aff'd as King v. People in 83 *N. Y.* 587.
- **ex rel. Williams v. Kingman**, 24 *N. Y.* 559. See Wiggins v. Tallmadge. Approved and followed (Road which is not thoroughfare, may yet be public way) in Peckham v. Lebanon, 39 *Conn.* 235. Cited as authority in Sheafe v. People *ex rel.* Colwell, 87 *Ill.* 189; s. c., 29 *Am. R.* 49; Bartlett v. Bangor, 67 *Me.* 465; s. c., 29 *Am. R.* 53, n.
- **v. Kingston & Middletown Turnpike Co.**, 23 *Wend.* 193. Quoted (Quo warranto against private corporations) in *High on Extr. Rem.* 2 ed. § 651, n. 1. Quoted (Liability of corporation for non-performance of duties) in *Morawetz on Corp.* § 642.
- **v. Kleim**, 1 *Edm. Seld. Cas.* 13. See Freeman v. People. Commented on by Mr. Seward (Relation of the law to the insane) in his defense of Freeman, *Snyder's Great Sp.* 149, 160.
- **v. Kling**, 6 *Barb.* 366. Referred to with People v. Landt, 2 *Johns.* 375; Carpenter v. Whitman, 15 *Id.* 208, in *Tyler on Inf. & Cov.* 2 ed. § 188, as holding a doctrine which is the same as that in Massachusetts, and is probably recognized in all the States (Legal custody of illegitimate children while infants).
- **v. Koeber**, 7 *Hill.* 39. Overruled (Requisites of declaration in action on recognition) in People v. Kane, 4 *Den.* 530. Examined with People v. Kane, *Id.*; People v. Young, 7 *Hill.* 44; Champlin v. People, 2 *N. Y.* 82; People v. Mills, 5 *Barb.* 511, in People v. Ratan, 3 *Mich.* 47.
- **v. Krummer**, 4 *Park.* 217. Followed (Essentials of forgery) in State v. Eades, 68 *Mo.* 150; s. c., 30 *Am. R.* 780; People v. Wright, 9 *Wend.* 193, being thought to have been overruled by People v. Stearns, 21 *Id.* 409. Explained in 3 *Greenl. on Ev.* 14 ed. § 103, n. c.
- **v. Lacoste**, 37 *N. Y.* 192. Cited (Answer brought out by question from court, as ground for reversal) in 1 *Whart. Com. on Ev.* § 426.
- **v. Lake**, 12 *N. Y.* 358. Applied (Opinions as evidence) in Hagadorn v. Conn. Mut. Life Ins. Co., 22 *Hun.* 249, 252. Dictum explained in Haggerty v. Brooklyn City, & C. R. Co., 6 *Abb. N. C.* 133, n.; People v. McCann, 3 *Park.* 303. Applied (Inadmissibility of opinion founded on evidence not heard) in Shaw v. People, 3 *Hun.* 282.
- **ex rel. Hatch v. Lake Shore & M. S. R. R. Co.**, 11 *Hun.* 1. Compare (Mandamus to compel exhibition of books by transfer agent of foreign corporation) Sage v. Same, 70 *N. Y.* 220. Followed in People *ex rel.* Field v. Northern Pacific R. R. Co., *N. Y. Super. Ct.* 1883, 18 *Fed. Rep.* 476.
- **v. Lamb**, 54 *Barb.* 312. Aff'd in 2 *Keyes*, 360. Decision in *Id.* compared (Evidence of character of deceased, on trial for murder) in Nichols v. People, 23 *Hun.* 165, 167. Included with notes in *Horrigan & T. Cas. on Self-Def.* 646.
- **v. Landt**. See Same v. Kling.
- **ex rel. Dolan v. Lane**, 8 *Alb. L. J.* 349. Rev'd on ground that mandamus was not proper remedy, in 55 *N. Y.* 217.
- **ex rel. Metropolitan Board v. Lane**, 6 *Abb. Pr. N. S.* 105. Compare (What is a jury) Knight v. Campbell, 62 *Barb.* 16.
- **v. Lawrence**, 6 *Hill.* 244. See Starin v. Town of Genoa. Criticised as overruled by later decisions (Mandamus to compel payment by county officer) in Healy v. Dudley, 5 *Lans.* 115, 125. Applied in People *ex rel.* McSpedon v. Stout, 4 *Abb. Pr.* 29; People v. Supervisors of Fulton, 14 *Barb.* 52, 59. Explained (Effect of allowance by supervisors) in Brennan v. Mayor, &c. of N. Y., 8 *Daly*, 426, 429. Disting'd as to allowance by N. Y. common council, — in People *ex rel.* Smith v. Flagg, 5 *Abb. Pr.* 234. Disting'd (What is county charge) in Supervisors of Onondaga v. Briggs, 2 *Den.* 36. Applied in Halstead v. Mayor, &c. of N. Y., 3 *N. Y.* 437.
- **ex rel. Crowell v. Lawrence**, 41 *N. Y.*

137. Aff'g 36 *Barb.* 177. See *Matter of Mayor, &c. of N. Y.*; *People ex rel. Griffin v. Mayor of N. Y.*; *People ex rel. Griffing v. Mayor, &c. of Brooklyn*; *Town of Guilford v. Supervisors of Chenango*. Decision in 36 *Barb.* explained and applied (*Practice on certiorari to review proceedings of commissioners of assessment*) in *People ex rel. Reynolds v. City of Brooklyn*, 49 *Barb.* 136. Cited as authority with *People ex rel. McConvill v. Hills*, 35 *N. Y.* 449 (*Effect of constitutional provision respecting enactment of statute*) in *State v. Rogers*, 10 *Nev.* 250; s. c., 21 *Am. R.* 738. Commented on in *Cooley on Const. Limit.* 5 ed. 98.
- *ex rel. Mitchell v. Lawrence*, 54 *Barb.* 589. Followed (*Service on board of commissioners*) in *Metcalf v. Garlinghouse*, 40 *How. Pr.* 50.
- *ex rel. Demarest v. Laws*, 3 *Abb. Pr.* 450. Aff'd in 4 *Id.* 292.
- *ex rel. Healy v. Leask*, 6 *Daly*, 517. Aff'd in 67 *N. Y.* 521.
- *ex rel. Lumley v. Lewis*, 28 *How. Pr.* 470. See (*Function of writ on mandamus proceedings*) *Code Civ. Pro.* 1881, § 2076, n. See also (*Definition of "action"*) *Id.* § 3333, n.
- *ex rel. Tweed v. Liscomb*, 3 *Hun*, 760; s. c., 6 *Sup'm. Ct. (T. & C.)* 258. Rev'd in 60 *N. Y.* 559; s. c., 19 *Am. R.* 211. See *Ferguson v. Crawford*; *People v. Sturtevant*. Decision in 60 *N. Y.* disting'd (*Effect of including several counts in indictment*) in *Taylor v. People*, 12 *Hun*, 216; *Polinsky v. People*, 11 *Id.* 392; which was aff'd in 73 *N. Y.* 69, which see. Disapproved (*Cumulative sentences*) in *Eldredge v. State*, 37 *Ohio St.* 191. Opposed in *Matter of Fry*, *Sup'm. Ct. Dist. Col.* 1884, 12 *Wash. L. Rep.* 388. Also opposed in *Castro v. The Queen*, 44 *L. T. R. N. S.* 350; *Ho. of L.*, Mar. 1881, aff'g *L. R.* 5 *Q. B.* 490; s. c., 43 *L. T. R. N. S.* 78; 29 *Moak's Eng.* 408, with note. Disting'd in *Kennedy v. Howard*, 74 *Ind.* 87, 90. Said in 58 *Am. Dec.* 250, n. not to be in accordance with the rule in other States. So also stated in 12 *Weekly L. Bul.* 15. Disting'd and explained (*Review of commitment by habeas corpus*) in *People ex rel. Woolf v. Jacobs*, 66 *N. Y.* 8, 10; which aff'd 5 *Hun*, 433, which see. Applied in *People ex rel. Cowley v. Bowe*, 58 *How. Pr.* 395; *People ex rel. Catlin v. Neilson*, 16 *Hun*, 216. Disting'd in *People ex rel. Phelps v. Oyer and Terminer*, 14 *Id.* 23. Applied in *People ex rel. Fries v. Riley*, 25 *Id.* 587, 589. Referred to in 26 *Am. Dec.* 42, n. as a leading and valuable authority on the subject. See *Code Civ. Pro.* 1881, § 2066, n. Disting'd (*Relief against judgment had without jurisdiction*) in *National B'k v. Spencer*, 19 *Hun*, 576. Disting'd in *Ex parte Bond*, 9 *So. Car.* 80; s. c., 30 *Am. R.* 20, 22.
- *v. Livingston*, 8 *Barb.* 253. See (*Lim-*
- itation of action of ejectment in favor of people) *Code Civ. Pro.* 1881, § 362, n.
- *ex rel. Dailey v. Livingston*, 18 *Hun*, 59. Rev'd in 79 *N. Y.* 279.
- *ex rel. Fleming v. Livingston*, 6 *Wend.* 526. Applied (*Validity of retrospective law affecting remedy*) in *Oriental Bank v. Freeze*, 18 *Me.* 109; s. c., 36 *Am. Dec.* 701, 703, with note.
- *v. Lohman*, 2 *Barb.* 450. Aff'd as *Lohman v. People*, 1 *N. Y.* 379. Decision in 2 *Barb.* reviewed with other cases (*Juror, when disqualified by opinion*) in dissenting opinion of *INGRAHAM, P. J.*, in *Allen v. People*, 57 *Barb.* 352; which was rev'd in 43 *N. Y.* 28, 34, which see. Applied in *Greenfield v. People*, 13 *Hun*, 251. Explained and applied (*Right to let to bail after sentence*) in *People v. Folmsbee*, 60 *Barb.* 485. Approved and applied in *People ex rel. Cowley v. Bowe*, 58 *How. Pr.* 397. Disting'd (*Proof, when required that witness is not entitled to privilege*) in *People ex rel. Hackley v. Kelly*, 12 *Abb. Pr.* 155. Applied in *Re Lewis*, 39 *How. Pr.* 157. Approved (*What is abortion*) in *People v. Stockham*, 1 *Park.* 424, 427.
- *v. Lord*, 12 *Hun*, 282. Said in *Id.* viii, to have been aff'd by Ct. of App. Jan. 15, 1878. Opposed (*Limitation as to time for indictment*) in 17 *Alb. L. J.* 183. Compare *Moore v. State*, 14 *Vroom (N. J.)* 203, 220; which rev'd 13 *Id.* 208.
- *v. Lott*, 21 *Barb.* 130. Applied (*Super-vision of judgment on forfeited recognizance*, in *People v. Hickey*, 5 *Daly*, 365, 375.
- *v. Lowber*, 7 *Abb. Pr.* 158. Followed (*Injunction against legislation by municipal corporation*) in *People v. Mayor, &c. of N. Y.*, 9 *Id.* 253. Opposed (*Power of attorney-general*) in *People v. Miner*, 3 *Lans.* 396, 409. See *People v. Tweed*, 13 *Abb. Pr. N. S.* 25, 53. Commented on and case cited to the contrary in 2 *High on Inj.* 2 ed. § 1304, n. 3. Applied (*Implied powers in municipal corporation*) in *Farmers' Loan & Trust Co. v. Mayor, &c. of N. Y.*, 4 *Bosa.* 91. Explained (*Limitation on power of N. Y. Common Council*) in *People ex rel. N. Y. Dispensary v. Green*, 6 *Hun*, 16.
- *v. Lynch*, 11 *Johns.* 549. Discussed (*Treason, as against State*) in 1 *Kent Com.* 403, n. a.
- *ex rel. Lee v. Lynch*, 54 *N. Y.* 681. Disting'd (*Who entitled to appeal*) in *Matter of Guardian Savgs. Inst.*, 78 *Id.* 403, 411.
- *ex rel. Higgins v. McAdam*, 58 *How. Pr.* 442. Aff'd in 22 *Hun*, 559; s. c., 60 *How. Pr.* 139; and that rev'd in *Id.* 444; s. c., 84 *N. Y.* 287.
- *v. McCann*, 16 *N. Y.* 58; s. c., 15 *How. Pr.* 503. Aff'g *McCann v. People*, 3 *Park.* 272. See *Moett v. People*; *People v. Cummings*. Decision in 16 *N. Y.* questioned and opposed (*Benefit of doubt as to insanity*) in *Patterson v. People*, 46 *Barb.* 625,

- 640; citing *Walter v. People*, 32 *N. Y.* 147. See *People v. Montgomery*, 13 *Abb. Pr. N. S.* 207. Followed in *People v. Schryver*, 42 *N. Y.* 1, 8; disapproving *Patterson v. People*, though opinion of *Brows, J.*, in *Ct. of App.* is considered to be against weight of authority. Explained in *Flanagan v. People*, 52 *N. Y.* 467, 471. See cases collected in 9 *Am. L. Reg. N. S.* 209. Criticised in 14 *Cent. L. J.* 2, 4, 7. Collated with other cases in 1 *Barb. Crim. L.* 3 ed. 265, *n.* Relied on (Defendant on trial for murder entitled to benefit of doubt) in *Pollard v. State*, 53 *Miss.* 410; *s. c.*, 24 *Am. R.* 703. Followed (Local statute may contain provision of general application) in *Bretz v. Mayor, &c. of N. Y.*, 4 *Abb. Pr. N. S.* 260; *People ex rel. Bradley v. Stevens*, 51 *How. Pr.* 146; *Williams v. People*, 24 *N. Y.* 407; *Alexander v. Bennett*, 38 *Super. Ct. (J. & S.)* 498. Explained in *Fellows v. Mayor, &c. of N. Y.*, 8 *Hun.* 489. Dictum explained (Act relating to courts, when local) in *People v. Davis*, 61 *Barb.* 463. Explained and applied (What is public act) in *McLain v. Mayor, &c. of N. Y.*, 3 *Daly*, 34. Examined with other cases in dissenting opinion of *HUNT, J.*, in *Baldwin v. Mayor, &c. of N. Y.*, 2 *Keyes*, 409. Explained in *People v. O'Brien*, 38 *N. Y.* 195; *People v. Allen*, 42 *Id.* 418. Applied (Effect of statute invalid in part) in *Hurlburt v. Banks*, 1 *Abb. N. C.* 166. Decision in 3 *Park.* approved and reversal explained (Proceedings on drawing of jurors) in *Ferris v. People*, 48 *Barb.* 23.
- *ex rel. Shaw v. McCarty*, 62 *How. Pr.* 152. Rev'g *Shaw v. McCarty*, 59 *Id.* 487.
- *v. McCoy*, 45 *How. Pr.* 216. Collated with other cases (Compelling prisoner to exhibit person for identification) in 33 *Am. R.* 530, *n.* wherein *Bank v. Trapp*, 24 *How. Pr.* 21; *People v. Hackley*, 24 *N. Y.* 75. are cited. Collated with other cases in 22 *Am. L. Reg. N. S.* 33.
- *v. McCumber*, 27 *Barb.* 632; *s. c.*, 15 *How. Pr.* 186. Aff'd in 27 *Barb.* 638; and that aff'd in 18 *N. Y.* 315. Decision in *Id.* followed (Striking out denials in answer) in *Corbett v. Eno*, 13 *Abb. Pr.* 67; *Elizabethport Man'g Co. v. Campbell, Id.* 92; *Richter v. Murray*, 15 *Id.* 347, *n.*; *Agawam B'k v. Egerton*, 10 *Bosw.* 673; *Butterfield v. Macomber*, 22 *How. Pr.* 153. Doubted in *Roby v. Hallock*, 5 *Abb. N. C.* 86, 88. Explained in *Wayland v. Tysen*, 45 *N. Y.* 283; *McCarty v. O'Donnell*, 7 *Robt.* 435. Applied (Right to judgment, in case of sham answer) in *Kreitz v. Frost*, 5 *Abb. Pr. N. S.* 279. Applied (Irrelevancy in answer) in *Perkins v. Squier*, 1 *Sup'm. Ct. (T. & C.)* 621.
- *v. McDonald*, 43 *N. Y.* 61. See *Hildebrand v. People*. Explained and applied (What constitutes larceny) in *Zink v. People*, 6 *Abb. N. C.* 431; *Phelps v. People*, 6 *Hun.* 425; which was aff'd in 72 *N. Y.* 360, which see.
- *ex rel. Kilmer v. McDonald*, 2 *Hun.* 70. Subsequent proceedings in *Id.* 601; 4 *Id.* 187; and the latter aff'd in 69 *N. Y.* 362.
- *v. McGarren*, 17 *Wend.* 460. See *McLaughlin v. Waite*; *People v. Call*. Explained (Lost goods as subject of larceny) in *Griggs v. State*, 58 *Ala.* 425; *s. c.*, 29 *Am. R.* 762, with note. Collated with *People v. Anderson*, 14 *Johns.* 294; *People v. Cogdell*, 1 *Hill.* 94; *Amory v. Flynn*, 10 *Johns.* 102; and other cases in 21 *Am. R.* 187, *n.* Collated with other case in 2 *Bennett & H. Cas. on Crim. L.* 34.
- *v. McGowan*, 17 *Wend.* 386. See *People v. Barrett*. Followed (Former acquittal as bar to trial for another offense of which conviction might have been had under indictment under which acquittal was had) in *State v. Brannon*, 55 *Mo.* 63; *s. c.*, 18 *Am. R.* 643, 645.
- *ex rel. Stemmler v. McGuire*, 2 *Hun.* 269; *s. c.*, 4 *Sup'm. Ct. (T. & C.)* 658. Aff'd, it seems, in 60 *N. Y.* 640, but without opinion.
- *v. McIntyre*, 1 *Park.* 371. Aff'd as *McIntyre v. People*, in 9 *N. Y.* 38.
- *v. McKay*, 18 *Johns.* 212. See *People v. Townsend*. See account by *M. T. C. Gould*, published at Albany in 1821. Explained (New trial after conviction) in *Quimbo Appo v. People*, 20 *N. Y.* 552; *Shepherd v. People*, 25 *Id.* 417. Applied (Mistrial when not bar to new trial) in *People v. Reagle*, 60 *Barb.* 544. Explained as not authority (Separation of jury on trial of capital case) in *Stephens v. People*, 18 *N. Y.* 559. Compared in *Eastwood v. People*, 3 *Park.* 43. Disting'd (Effect of irregularity in summoning jurors) in *People v. Ransom*, 7 *Wend.* 427. Applied in *McGuire v. People*, 2 *Park.* 157. See *People v. Cummings*, 3 *Id.* 348. Followed with *Blakely v. Sheldon*, 7 *Johns.* 32; *Root v. Sherwood*, 6 *Id.* 68 (Waiver of irregularity in criminal cases) in *Nomaque v. People*, *Breeze (Ill.)* 145; *s. c.*, 12 *Am. Dec.* 157. Explained in *Clinton v. Engelbrecht*, 13 *Wall.* 434, 440.
- *ex rel. Marshall v. McKinnon*, 41 *Barb.* 515. Disting'd (Length of term of officer chosen to fill vacancy) in *People ex rel. Rosekrans v. Carr*, 62 *How. Pr.* 5, 17; which was rev'd in *Id.* 19.
- *ex rel. Bay State Shoe, &c. Co. v. McLean*, 5 *Abb. N. C.* 137. Aff'd in 17 *Hun.* 204; and that aff'd in 80 *N. Y.* 254.
- *v. McLeod*, 1 *Hill.* 377; *s. c.*, 25 *Wend.* 483; and 37 *Am. Dec.* 328, with note on p. 363, where it is reviewed at length as to the various points decided. See *Jackson v. Potter*. For an account of the history of this case see 27 *Alb. L. J.* 27; and *Neilson's Memoirs of Rufus Choate*, c. 10, p. 173. See report in 27 *Gould's Stenog. Reporter*, published at Washington in 1841, containing evi-

- dence, addresses, &c. and to be found in Law Inst. Libr. N. Y. City. See also account published at N. Y. 1841. Also the Sun edition 1841. Also review of the case by J. PICKERING, Boston, 1841. Also review of opinion of COWEN, J. by D. B. TALLMADGE, N. Y. 1841, with argument on banking laws, in 1 vol. Also HILL's reply to TALLMADGE in 3 *Hill*, app'x, and TALLMADGE's reply to HILL in 1 *Am. L. Mag.* 348. Also review of trial in 26 *Am. J.* 236, 341; 4 *Law Rep.* 169. See also 26 *Wend.* 663. Applied (Proof on return to *habeas corpus*) in *Re Edymoin*, 8 *How. Pr.* 481; *People v. Martin*, 7 *N. Y. Leg. Obs.* 51. Followed (Malice as implied from fact of homicide) in *Commonwealth v. York*, 9 *Metc. (Mass.)* 93; s. c., 43 *Am. Dec.* 373, 392, with note. Included in *Horrigan & T. Ca. on Self-Def.* 784.
- *v. McMahon*, 2 *Park.* 663. Rev'd in 15 *N. Y.* 384. See *Hendrickson v. People*; *People v. Wentz*. Decision in 15 *N. Y.* disting'd (Admissibility of statements of accused person) in *Murphy v. People*, 63 *Id.* 590. Approved and applied in *Phillips v. People*, 57 *Barb.* 353, 363. Said in *People v. Montgomery*, 13 *Abb. Pr. N. S.* 207, 251, to have been overruled by *Teachout v. People*, 41 *N. Y.* 7; the doctrine of *Hendrickson v. People*, 10 *Id.* 13, being re-established. See however in 5 *Maak's Eng.* 168, criticism on reporter's statement in *People v. Montgomery*. Disapproved in *U. S. v. Graff*, 14 *Blatchf. C. Ct.* 381, 386. Approved (New trial in case of substantial error) in *People v. Stout*, 4 *Park.* 71, 130.
- *ex rel. Lasher v. McNeil*, 2 *Sup'm. Ct. (T. & C.)* 140. Disting'd (Effect of authority to "lay out" highway) in dissenting opinion in *Matter of Deering*, 85 *N. Y.* 1, 14.
- *v. Mallory*, 2 *Sup'm. Ct. (T. & C.)* 76; s. c., 46 *How. Pr.* 281. Subsequent decision in 4 *Sup'm. Ct. (T. & C.)* 567; *mem.* s. c., 2 *Hun.* 381. Decision in 2 *Sup'm. Ct. (T. & C.)* followed (Incumbrance upon pier) in *People v. Macy*, 62 *How. Pr.* 66.
- *v. Maloney*, 1 *Park.* 593. See *Hinckley v. Emerson*. Explained and applied (Dog as subject of larceny) in *Ward v. State*, 48 *Ala.* 161; s. c., 17 *Am. R.* 31. Reviewed with other authorities in dissenting opinion of APPLETON, C. J., in *State v. Harriman*, 75 *Me.* 562; s. c., 46 *Am. R.* 423, *n.*
- *v. Manhattan Co.*, 9 *Wend.* 351. See *Jackson v. Potter*; *Slee v. Bloom*. Followed (Forfeiture of corporate franchise) in *Matter of N. Y. Bridge Co.*, 4 *Hun.* 636; *State v. Bank of Charleston*, 2 *McMull. (So. Car.)* 489; s. c., 39 *Am. Dec.* 135, 140, with note. Explained with *People v. Bristol, &c. Turnpike Co.*, 23 *Wend.* 222, 243, in *Grand Rapids Bridge Co. v. Prange*, 35 *Mich.* 400; s. c., 24 *Am. R.* 585, 588. See cases collected in 5 *Am. L. Reg. N. S.* 533. Quoted and explained (Pleadings in *quo warranto* proceedings) in *High on Extr. Rem.* 2 ed: § 727, *n.* 1. Explained in *Ang. & A. on Corp.* § 757, 11 ed.
- *v. Manning*, 8 *Cow.* 297; s. c., 18 *Am. Dec.* 451, with note containing citations (What excuses non-performance of contract) See *Cathcart v. Cannon*. Followed in *Blake v. Niles*, 13 *N. H.* 459; s. c., 38 *Am. Dec.* 506. Followed and approved in *Scully v. Kilpatrick*, 79 *Penn. St.* 224; s. c., 21 *Am. R.* 62, 65.
- *ex rel. Egan v. Marine Ct.*, 18 *Hun.* 323. Rev'd in 81 *N. Y.* 500; s. c., 8 *Abb. N. C.* 377; 59 *How. Pr.* 413.
- *v. Maring*. See *Same v. Moring*.
- *v. Marks*, 10 *How. Pr.* 261. Applied (Remedy in case of surprise on trial) in *Messenger v. Fourth Nat. B'k*, 6 *Daly*, 190, 194.
- *v. Martin*, 1 *Park.* 187. Applied (Certiorari in connection with *habeas corpus*) in *Re Martin*, 5 *Blatchf. C. Ct.* 303, 306.
- *v. Mather*, 4 *Wend.* 229; s. c., 21 *Am. Dec.* 122, with note containing citations. See *Lower v. Winters*; *People v. Kelly*; *People v. Rathbun*; *Ex parte Vermilyea*. Criticised (Opinion that disqualifies juror) in *People v. Bodine*, 1 *Edm. Sel. Cas.* 91. Examined, with respect to subsequent legislation, in *Balbo v. People*, 80 *N. Y.* 493. Referred to as in part overruled, in *People v. Hayes*, 1 *Edm. Sel. Cas.* 582, 587. Applied (Challenge to principal cause after challenge to favor) in *Carnal v. People*, 1 *Park.* 279. Explained and applied (Evidence of character of witness) in *Gilbert v. Sheldon*, 13 *Barb.* 625; *Hagadorn v. Kearney*, 13 *Hun.* 237. Examined with other cases in *People v. Abbot*, 19 *Wend.* 198; *People v. Rector*, *Id.* 579. Followed with *People v. Rector*, *People v. Davis*, 21 *Id.* 309, in *Hamilton v. People*, 29 *Mich.* 173, 187. Applied (Court as trier of challenge) in *O'Brien v. People*, 3 *Abb. Pr. N. S.* 372. Explained in *People v. Rathbun*, 21 *Wend.* 544. Applied (Privilege of witness to refuse to make answer tending to degrade him) in *Re Lewis*, 39 *How. Pr.* 158. Explained in *Gt. W. Turnpike Co. v. Loomis*, 32 *N. Y.* 137. Explained and limited in *Youngs v. Youngs*, 5 *Redf.* 505, 518. Explained with *Southard v. Rexford*, 6 *Cow.* 254; *Bank of Salina v. Henry*, 2 *Den.* 155, in 1 *Whart Com. on Ev.* § 536, as holding a position abundantly sustained by authority. Referred to with *Curtis v. Knox*, 2 *Den.* 341, as carefully considered, in 22 *Am. L. Reg. N. S.* 29, where authorities from other states are cited. Cited with *Scott v. Miller*, 1 *Johns.* 328, in 2 *Taylor on Ev.* 1264. Also in *Id.* 1274. Quoted in 1 *Greenl. on Ev.* 14 ed. § 451, *n.* 2. Applied (Distinction between direct examination and cross-examination) in *People v. Genet*, 19 *Hun.* 101. Followed

and approved (Review of discretion of trial judge to regulate examination of witnesses) in *Turney v. State*, 8 *Smedes & M. (Miss.)* 104; s. c., 47 *Am. Dec.* 74, 80, with note. Applied to power to adjourn, &c. in *Taylor v. Commonwealth*, 77 *Va.* 692, 695. Approved (Conspiracy to commit misdemeanor, as merged in misdemeanor) in *People v. Richards*, 1 *Mich.* 216; s. c., 51 *Am. Dec.* 75, 79, with note.; *Commonwealth v. Delany*, 1 *Grant's (Penn.) Cas.* 224. Followed in *State v. Murphy*, 6 *Ala.* 765; s. c., 41 *Am. Dec.* 79, 82. Quoted in 2 *Bennett & H. Cas. on Crim. L.* 88.

— **ex rel. Roberts v. Matthews**, 43 *Barb.* 168. Aff'd (Summary proceedings) in 38 *N. Y.* 451.

— **v. Mauran**, 5 *Den.* 389. Disting'd (Effect of dissolution of corporation on title to real estate held by it) in *Owen v. Smith*, 31 *Barb.* 640, 647.

— **v. Mayor, &c. of Albany**, 5 *Lans.* 524. Aff'd in 53 *N. Y.* 629, opinion of Sup'm. Ct. being adopted, and *Coster v. Mayor, &c.*, 43 *N. Y.* 399, cited, but no further opinion given.

— **ex rel. Griffing v. Mayor, &c. of Brooklyn**, 9 *Barb.* 535. Rev'd in 4 *N. Y.* 419; s. c., 55 *Am. Dec.* 266, with extended note, containing citations, and wherein it is said to have been frequently approved. See *Grant v. Courter*; *Matter of Mayor, &c. of N. Y.*; *Town of Guilford v. Supervisors of Chenango Co.* Decision in 4 *N. Y.* disting'd (Power of legislature to impose tax) in *People ex rel. Baldwin v. Haws*, 15 *Abb. Pr.* 119; *People ex rel. Dunkirk, &c. R. R. Co. v. Batchellor*, 53 *N. Y.* 143. Applied in *People v. Edmonds*, 15 *Barb.* 534; *Town of Guilford v. Cornell*, 18 *Id.* 634; *People ex rel. N. Y. & Harlem R. R. Co. v. Havemeyer*, 47 *How. Pr.* 510; *Brewster v. City of Syracuse*, 19 *N. Y.* 118; *Darlington v. Mayor, &c. of N. Y.*, 31 *Id.* 190; *Davidson v. Mayor, &c. of N. Y.*, 2 *Robt.* 245. Applied to act authorizing loan of credit to railroad.—in *Benson v. Mayor, &c. of Albany*, 24 *Barb.* 253. Followed in *Hanson v. Vernon*, 27 *Iowa*, 28; s. c., 1 *Am. R.* 215, 234, as a leading case. Cited as authority in *City of Chicago v. Larned*, 34 *Ill.* 274; *Johnson v. County of Ill.*, 24 *Id.* 89; Relied on with *Town of Guilford v. Cornell*, 18 *Barb.* 615; *Town of Guilford v. Supervisors of Chenango County*, 18 *N. Y.* 147, and other cases in *Stewart v. Supervisors of Polk Co.*, 30 *Iowa*, 9; s. c., 1 *Am. R.* 238, 251. Reviewed and applied with *Brewster v. City of Syracuse*, 19 *N. Y.* 116; *Town of Guilford v. Supervisors of Chenango Co.*, 18 *Id.* 143; *Thomas v. Leland*, 24 *Wend.* 65; *Litchfield v. Vernon*, 41 *N. Y.* 123; *People ex rel. Crowell v. Lawrence, Id.* 137, in *North Missouri R. R. Co. v. Maguire*, 49 *Mo.* 490; s. c., 8 *Am. R.* 141, 147. Quoted and discussed in *Cooley on Const. Limit.* 5 ed. 627. Applied (Val-

idity of assessment for local improvement) in *Litchfield v. McComber*, 42 *Barb.* 291; *Howell v. City of Buffalo*, 37 *N. Y.* 269; *People ex rel. Crowell v. Lawrence*, 41 *Id.* 140; *Astor v. Mayor, &c. of N. Y.*, 37 *Super. Ct. (J. & S.)* 559, 562. Approved in *Emery v. San Francisco Gas Co.*, 28 *Cal.* 345, as having been universally recognized as a correct exposition of the law. Relied on in *Beals v. Providence Rubber Co.*, 11 *R. I.* 381; s. c., 23 *Am. R.* 472. Criticised at length and disting'd in *McBean v. Chandler*, 9 *Heisk. (Tenn.)* 349; s. c., 24 *Am. R.* 308, 313. Followed in *White v. People*, 94 *Ill.* 604, 611. Approved in *Reeves v. Treasurer of Wood Company*, 8 *Ohio N. S.* 333; *State v. City of Newark*, 3 *Dutcher (N. J.)* 185. Approved and followed in *Nichols v. City of Bridgeport*, 23 *Conn.* 189; s. c., 60 *Am. Dec.* 636, 643, with note. Disting'd (Necessity of notice in proceedings for such assessment) in *Ireland v. City of Rochester*, 51 *Barb.* 431. Applied in *Stuart v. Palmer*, 20 *Ill.* 25; which was aff'd in 74 *N. Y.* 190, which see. Applied (Setting of benefits against damages for taking property for public use) in *Rexford v. Knight*, 15 *Barb.* 641.

— **ex rel. Post v. Mayor, &c. of Brooklyn**, 6 *Barb.* 209. See *Matter of Canal St. Overruled in part (Taxation and assessments) in People ex rel. Griffing v. Mayor, &c. of Brooklyn*, 4 *N. Y.* 419, 424, 427. Explained in *Town of Macon v. Patty*, 57 *Miss.* 378; s. c., 34 *Am. R.* 451, 455, 465.

— **v. Mayor, &c. of N. Y.**, 32 *Barb.* 102. See *Roosevelt v. Draper*. Followed and approved (Intent of statute to exempt from taxation must be clearly expressed) in *East Saginaw Man'fg Co. v. City of East Saginaw*, 19 *Mich.* 259; s. c., 2 *Am. R.* 82, 89. Quoted (What property subject to exercise of right of eminent domain) in *Cooley on Const. Limit.* 5 ed. 649, n. 1.

— **v. —**, 3 *Johns. Cas.* 79. See *Fish v. Weatherwax*.

— **v. —**, 8 *Abb. Pr.* 7. Other proceedings in 17 *How. Pr.* 57; and in 28 *Barb.* 240; 10 *Abb. Pr.* 111; 19 *How. Pr.* 289; 11 *Abb. Pr.* 66. See *Gaillard v. Smart*. Decision in 28 *Barb.* followed (Improper joinder of parties defendant as ground for demurrer) in *United Society of Shakers v. Underwood*, 9 *Bush (Ky.)* 609; s. c., 15 *Am. R.* 731, 738. Commented on (Complaint in ejectment) in *Sedgw. & W. on Tr. of Tit. to Land*, § 439. Decision in 10 *Abb. Pr.* quoted (Appointment of receiver) in *Sedgw. & W. on Tr. of Tit. to Land*, § 614.

— **v. —**, 9 *Abb. Pr.* 253. Subsequent proceedings in 10 *Id.* 144; s. c., 32 *Barb.* 35; 19 *How. Pr.* 155. Decision in 9 *Abb. Pr.* opposed (Power of attorney-general) in *People v. Miner*, 2 *Lans.* 396, 409.

— **ex rel. Agnew v. Mayor, &c. of N. Y.**, 2 *Hill*, 9. See *People ex rel. Church v. Supervisors of Alleghany*. Applied (What

- reviewable on certiorari) in *People ex rel. Shipman v. Overseers*, 6 *How. Pr.* 27. Examined with other cases in *People v. Board of Police*, 39 *N. Y.* 509. Approved (Delay, as ground for refusing certiorari) in *People ex rel. Davis v. Hill*, 53 *Id.* 547, 549.
- *ex rel. Lynch v. Mayor, &c. of N. Y.*, 25 *Wend.* 680. See *People ex rel. Hodgkinson v. Stevens*. Overruled (Application of constitutional provision respecting assent of legislature to bill creating, &c. corporations) in *Purdy v. People*, 4 *Hill*, 385, 396. Explained (Mandamus to compel payment of public money) in *People v. Allen*, 42 *N. Y.* 404, 409. Followed with *People ex rel. Dikeman v. Brooklyn*, 25 *Wend.* 320 (Effect of motion for peremptory mandamus, as admission of truth of answer) in *B'd of Police of Attala Co. v. Grant*, 9 *Smedes & M. (Miss.)* 77; s. c., 47 *Am. Dec.* 102, 104, with note.
- *ex rel. Moulton v. Mayor, &c. of N. Y.*, 10 *Wend.* 393. See *Doughty v. Hope*; *People ex rel. Hodgkinson v. Stevens*. Quoted (When mandamus issues) in *High on Extr. Rem.* 2 ed. § 20, n. 1.
- *ex rel. Westray v. Mayor, &c. of N. Y.*, 16 *Hun.* 809. Aff'd in 82 *N. Y.* 491.
- *ex rel. Howlett v. Mayor, &c. of Syracuse*, 2 *Hun.* 433; s. c., 5 *Sup'm. Ct. (T. & C.)* 61. Rev'd (Condemnation of church property for public uses) in 63 *N. Y.* 291.
- \* — *ex. rel. Fiedler v. Mead*, 24 *N. Y.* 114. Further decision in 36 *Id.* 224; s. c., 34 *How. Pr.* 249. See *Starin v. Town of Genoa*. Decision in 24 *N. Y.* disting'd (Validity of town bonds) in *Ross v. Curtiss*, 31 *Id.* 606, 609; *Avery v. Town of Springport*, 14 *Blatchf. Ct. Ct.* 273. Applied in *Scipio v. Wright*, 101 *U. S.* 665, 676. Explained in *Town of Venice v. Murdock*, 92 *Id.* 494, 500. Followed (Mandamus to compel payment of public moneys) in *People ex rel. N. Y., &c. R. R. Co. v. Havemeyer*, 16 *Abb. Pr. N. S.* 223; *People ex rel. Kedian v. Nelson*, 5 *Sup'm. Ct. (T. & C.)* 368. Explained in *People ex rel. Navarro v. Green*, 2 *Sup'm. Ct. (T. & C.)* 67. Disting'd in *Federgreen v. Town of Fallsburgh*, 25 *Hun.* 152, 154. Both decisions reconciled in *Hcaley v. Dudley*, 5 *Lans.* 126. Decision in 36 *N. Y.* applied (Validity of town bonding proceedings, when not to be questioned) in *People ex rel. Martin v. Brown*, 55 *Id.* 189, and see dissenting opinion *Id.* 189, 192, 199. Also applied in *People v. N. Y. & Canada R. R. Co. v. Hutton*, 18 *Hun.* 121.
- *ex rel. Bartlett v. Medical Soc'y of Erie*, 32 *N. Y.* 187. See *People ex rel. Thatcher v. N. Y. Com. Benev. Ass'n*. Followed (Expulsion of members of association) in *Wachtel v. Noah Widows', &c. Soc'y*, 60 *How. Pr.* 424.
- *v. Medical Soc'y of Erie County*, 24 *Barb.* 570. Compared and doctrine discussed (Power to make by-laws) in 8 *Am. L. Reg. N. S.* 539.
- *v. Meighan*, 1 *Hill*, 298. See to the contrary (Effect of bond taken by justice imposing obligations in addition to those allowed by law) *Williams v. Hubbard*, 2 *Code R.* 52.
- *ex rel. Barry v. Mercein*, 3 *Hill*, 399; s. c., 38 *Am. Dec.* 644; 15 *N. Y. Com. L. Law. ed.* 630, with brief note. Previous decisions in 8 *Paige*, 47; also as *Mercein v. People ex rel. Barry*, in 25 *Wend.* 64. Decision in 8 *Paige* examined (Right to custody of child) in *People v. Brooks*, 35 *Barb.* 85, 93. Collated with *People v. Humphreys*, 24 *Id.* 521; *Brooks v. Brooks*, 35 *Id.* 85; *Holmes's Case*, 19 *How. Pr.* 329; *Price v. Price*, 55 *N. Y.* 656, and other cases in 34 *Am. R.* 698, n. Decision in 3 *Hill* followed in *State v. Baldwin*, 1 *Halst. Ch. (N. J.)* 454; s. c., 45 *Am. Dec.* 399. Reviewed with *Canover v. Cooper*, 3 *Barb.* 117, and other cases (Right of widow to earnings of minor child) in *Hammond v. Corbett*, 50 *N. H.* 501; s. c., 9 *Am. R.* 288. Decision in 8 *Paige* cited (Testimony by wife as to acts of cruelty, on *habeas corpus* proceedings by husband to obtain her custody) in 1 *Whart. Com. on Ev.* § 424. Quoted in 1 *Bish. on Mar. & D.* § 624, 6 ed.; *Id.* § 798a, n. 3.
- *v. Merchants' & Mechanics' B'k of Troy*, 78 *N. Y.* 269. See *Matter of Le Blanc*. Applied (Effect of mailing check, &c. to bank) in *Indig v. National City B'k of Brooklyn*, 80 *N. Y.* 100, 106. Applied (Effect of theory of complaint not being sustained by proof) in *Briggs v. Central Nat. B'k*, 61 *How. Pr.* 250, 256.
- *v. Merrill*, 2 *Park.* 590. Rev'd in 14 *N. Y.* 74. See *Guenther v. People*. Decision in 14 *N. Y.* applied (Writ of error in criminal cases, when some of the issues are undisposed of) in *Tabor v. People*, 25 *Hun.* 638.
- *ex rel. Murphy v. Metropolitan Police Commissioners*, 5 *Abb. Pr.* 241. Held otherwise (Amending defective mandamus) of certiorari, in *People ex rel. Gambling v. Cholwell*, 6 *Abb. Pr.* 151.
- *v. Meyer*, 2 *Code R.* 49. Examined and approved (Demurrer and answer to same cause of action) in *Slocum v. Wheeler*, 4 *How. Pr.* 373.
- *v. Miller*, 1 *Sup'm. Ct. (T. & C.)* 274. Aff'd in 56 *N. Y.* 448.
- *v. —*, 2 *Park.* 197. Followed (Evidence of specific debts on trial for obtaining goods, &c. by false representations as to debts) in *Barber v. People*, 17 *Hun.* 366.
- *ex rel. Millis v. Mills*. See *People v. Koeber*.
- *v. Miner*, 2 *Lans.* 396. See *Davis v. Mayor, &c. of N. Y.* Re-aff'd (Power of attorney-general to bring action) in *People*

- v. Albany & Susquehanna R. R. Co.**, 5 *Lans.* 25. Reviewed in *People v. Tweed*, 13 *Abb. Pr. N. S.* 25, 50, 96. But compare *Superv's of N. Y. v. Tweed*, *Id.* 152, and note; *People v. Ingersoll*, 58 *N. Y. 1*. Compare also *Code Civ. Pro.* § 1948.
- **v. —**, 32 *Barb.* 612. Rev'd in 37 *Id.* 466; s. c., 23 *How. Pr.* 223.
- **ex rel. Albany & Susquehanna R. R. Co. v. Mitchell**, 45 *Barb.* 208. Aff'd in 35 *N. Y.* 551. See *Bank of Rome v. Village of Rome*; *Doughty v. Hope*; *Thomas v. Leland*. Decision in 35 *N. Y.* followed (Authority of legislature as to town bonding proceedings) in *Town of Duaneburgh v. Jenkins*, 57 *Id.* 177, 184, 194. Explained in *Hardenburgh v. Van Keuren*, 16 *Hun.* 22. Cited and compared in *Thompson v. Perrine*, 103 *U. S.* 806, 812. Cited with *Clarke v. City of Rochester*, 28 *N. Y.* 604; *Gould v. Town of Venice*, 20 *Barb.* 442, and other cases in *Stewart v. Supervisors of Polk Co.*, 30 *Iowa*, 9; s. c., 1 *Am. R.* 238, 253, as showing an almost uniform current of American authority. Explained (Conclusiveness of affidavit of compliance with statute, in such proceedings) in dissenting opinion in *People ex rel. Martin v. Brown*, 55 *N. Y.* 180, 198. Disting'd in *Cagwin v. Town of Hancock*, 84 *Id.* 532, 539.
- **v. Moett**, 23 *Hun.* 60. Aff'd as *Moett v. People*, in 85 *N. Y.* 373. Previous decision in 58 *How. Pr.* 467.
- **v. Molineux**, 53 *Barb.* 9. Aff'd in 40 *N. Y.* 113. Both decisions applied (Application of statutes regulating internal administration of State) in *Bishop v. Barton*, 2 *Hun.* 437.
- **v. Monnais**, 17 *Abb. Pr.* 345. Disting'd and questioned (Essentials of crime of rape) in *People v. Dohring*, 59 *N. Y.* 374, 383.
- **v. Montgomery**, 13 *Abb. Pr. N. S.* 207. See *Same v. McCann*. See report of case published at *N. Y.* 1873. Relied on (Fees to expert witnesses) in *Buchanan v. State*, 59 *Ind.* 1, 7; s. c., 25 *Am. R.* 620. Followed in 1 *Whart. Com. on Ev.* § 456, though *Lyon v. Wilkes*, 1 *Cow.* 591, seems to be referred to as maintaining a contrary position. See 6 *South. L. Rev. N. S.* 709.
- **v. Moody**, 5 *Park.* 568. Referred to in 32 *Am. Dec.* 664, n., as a well considered decision (Malicious mischief).
- **v. Moore**, 15 *Wend.* 419. Criticised as not authority (Allowing recall of witness to prove falsity of former testimony) in *Stacy v. Graham*, 14 *N. Y.* 492.
- **v. Moores**, 4 *Den.* 518. Reviewed with *People v. Mullin*, 25 *Wend.* 698 (What contracts of infant are binding on him) in *Barker v. Hibbard*, 54 *N. H.* 539; s. c., 20 *Am. R.* 160, 162. Collated with other cases in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 304.
- **v. Morgan**, 5 *Daly*, 161. Aff'd in 58 *N. Y.* 679, in opinion in *Wenzler v. People*, *Id.* 516.
- **ex rel. Akin v. Morgan**, 1 *Sup'm. Ct.* (T. & C.) 101; s. c., 65 *Barb.* 473. Rev'd in 55 *N. Y.* 587, without passing on question decided below. Decision in *Id.* followed (Authority to issue town bonds in aid of railroad) in *People ex rel. Corwin v. Walter*, 2 *Hun.* 385, 388; which was rev'd in 68 *N. Y.* 403, which see. Cited approvingly in *Thomas v. Town of Lansing*, *U. S. Cir. Ct. N. D. N. Y.* 14 *Fed. Rep.* 625. Disting'd (Certiorari to review proceedings of assessors in town bonding proceedings) in *People ex rel. Gray v. Phillips*, 67 *N. Y.* 583. Decision in 1 *Sup'm. Ct. (T. & C.)* followed but point not indicated, in *People ex rel. Tucker v. Phillips*, 3 *Id.* 798. Followed with *People v. Ryken*, 6 *Hun.* 625 (Proofs to be considered on return to certiorari) in *State ex rel. Town of Manitowoc v. County Clerk of Manitowoc County*, 59 *Wis.* 15, 24.
- **v. Moring**, 47 *Barb.* 642. Rev'd in 3 *Abb. Ct. App. Dec.* 539; s. c., as *People v. Maring*, 3 *Keyes*, 374. Decision in *Id.* disting'd (Validity of State tax on import business) in *People ex rel. Hamman v. Tax Comm'rs*, 10 *Hun.* 255, 258. Applied in *People v. National F. Ins. Co. of N. Y.*, 61 *How. Pr.* 334, 342.
- **v. Morrell**, 21 *Wend.* 563. See *Conner v. Mayor, &c. of N. Y.* Explained with *Oakley v. Aspinwall*, 3 *N. Y.* 568 (Interpretation of constitutional provisions) in *Territory v. Scoll*, *Sup'm. Ct. Dakota* 1884, 20 *Northw. Rep.* 401, 424. Disting'd (Effect of division of county) in *Davidson v. Root*, 11 *Ohio*, 98; s. c., 37 *Am. Dec.* 411, 413. See *Bowman v. Hovious*, 17 *Cal.* 471, 476.
- **v. Morris**, 13 *Wend.* 325. Applied (Power of legislature over public corporation) in *People v. Kerr*, 37 *Barb.* 424; *People v. Pinckney*, 32 *N. Y.* 395. Approved in *Smith v. Village of Adrian*, 1 *Mich.* 498. Quoted in *Cooley on Const. Limit.* 3 ed. 291, n. 5. Dictum explained (Application to public corporations, of constitutional provision respecting assent of legislature to laws) in *De Bow v. People*, 1 *Den.* 13; but see *Gifford v. Livingston*, 2 *Id.* 385. See also *Purdy v. People*, 4 *Hill*, 396; which rev'd 2 *Id.* 39, which see; *Warner v. Beers*, 23 *Wend.* 126; *People v. Mayor, &c. of N. Y.*, 25 *Id.* 682. Cited as authority (County as municipal corporation) in *Ex parte Selma & Gulf R. R. Co.*, 45 *Ala.* 696; s. c., 6 *Am. R.* 722, 731. Applied (Obligation of contracts not to be impaired by legislation) in *Gebhard v. Canada Southern Ry. Co.*, 17 *Blatchf. Ct.* 416, 419. Cited as authority with *People v. Draper*, 15 *N. Y.* 543; *Wynehamer v. People*, 13 *Id.* 391 (Implied limitations on exercise of legislative authority) in *People ex rel. Trombley v. Humphrey*, 23 *Mich.* 471; s. c., 9 *Am. R.* 94, 102.
- **v. Morrisette**, 20 *How. Pr.* 118. Criticised (Power to suspend sentence) in *State v. Addy*, 14 *Vroom (N. J.)* 113; s. c., 39 *Am. R.* 547. Collated with *Miller's Case*, 9

- Cow.* 730, and other cases in 12 *Weekly L. Bul.* 61.
- *v. Morrison*, 1 *Park.* 625. See *People v. Dutches Oyer & Terminer*. Explained (Requisites of crime of rape) in *People v. Monnais*, 17 *Abb. Pr.* 348. Applied in *Reynolds v. People*, 41 *How. Pr.* 188. Overruled (Power of Oyer and Terminer to grant new trial after conviction) in *Quimbo Appo v. People*, 20 *N. Y.* 547; which aff'd 18 *How. Pr.* 351, which see. Cited in *State v. Rover*, 10 *Nev.* 388; s. c., 21 *Am. R.* 745, 750, as ably discussing the question. Commented on in 2 *Bennett & H. Cas. on Crim. L.* 493.
- *v. Mosher*, 2 *Park.* 195. Applied (Extra territorial effect of statutory prohibition against marriage) in *Van Voorhis v. Brintnall*, 86 *N. Y.* 18, 31, 36.
- *ex rel. Mann v. Mott*, 2 *Hun.* 672; s. c., more fully, 5 *Sup'm. Ct. (T. & C.)* 207. Aff'd, it seems, in 60 *N. Y.* 649, but without opinion.
- *ex rel. Larrabee v. Mulholland*, 19 *Hun.* 548. Aff'd in 82 *N. Y.* 324; s. c., 37 *Am. R.* 568. Decision in *Id.* collated with other cases (Validity of municipal ordinances) in 35 *Am. R.* 703, n.
- *v. Mullin*. See Same *v. Moores*.
- *v. Murray*, 5 *Hill.* 468. See *Story v. Furman*. Applied (Waiver of statutory or constitutional provision) in *Vose v. Cockcroft*, 44 *N. Y.* 423. Cited as authority in *Morse v. Home Ins. Co.*, 30 *Wis.* 496; s. c., 11 *Am. R.* 580. Applied (Waiver of trial by jury) in *People ex rel. Yale v. Eckler*, 19 *Hun.* 613. Disting'd (Sufficiency of official certificate) in *Brackett v. Miller*, 24 *Id.* 560.
- *v. —*, 5 *Park.* 577. Approved (Removal of cause to U. S. court) in *Patric v. Murray*, 29 *How. Pr.* 312, 317.
- *ex rel. Babcock v. Murray*, 8 *Hun.* 579. Rev'd in 70 *N. Y.* 521. Previous decision in 5 *Hun.* 42. Decision in *Id.* questioned (Mode of appointment of officers) in *People ex rel. Kresser v. Fitzsimmons*, 68 *N. Y.* 514. Compare (Allegations in proceeding against one usurping office) *Code Civ. Pro.* § 1949.
- *ex rel. Gilchrist v. Murray*, 8 *Daly*, 347. Rev'd in 73 *N. Y.* 535. Decision in *Id.* followed (Judgment no estoppel against stranger) in *Flanagan v. Flanagan*, 8 *Abb. N. C.* 413, 422.
- *v. Mutual Gas Light Co. of Brooklyn*, 54 *How. Pr.* 286. Rev'd in 14 *Hun.* 157; and that aff'd in 74 *N. Y.* 434. With decision in *Id.* see (Depositions) *Code Civ. Pro.* 1881, § 870, n.
- *v. Nash*, 5 *Park.* 473; s. c., less fully, as *Matter of Nosh*, 16 *Abb. Pr.* 281; 25 *How. Pr.* 307. Overruled (Power of city judge) and questioned (Distinction between judicial and ministerial acts) in *People ex rel. Ryan v. Russel*, 1 *Abb. Pr. N. S.* 230.
- *v. —*, 25 *Hun.* 59. Abridg't s. c., 12 *Weekly Dig.* 545.
- *ex rel. Welch v. Nash*, 3 *Hun.* 535. Aff'd in 62 *N. Y.* 484.
- *v. National Fire Ins. Co. of N. Y.*, 61 *How. Pr.* 334. Corrected (Meaning of "hereafter" in statute) in *People v. N. Y. Floating Dock Co.*, 11 *Abb. N. C.* 40, 47. Followed (Taxation of insurance companies for time preceding passage of act) in *People v. National Fire Ins. Co. of Hartford*, 61 *How. Pr.* 342.
- *v. Nearing*, 27 *N. Y.* 306. Questioned (Assessment of compensation for occupying lands to construct ditch) in *People ex rel. Williams v. Haynes*, 49 *Id.* 587, 593.
- *ex rel. Kedian v. Neilson*, 3 *Hun.* 214; s. c., 5 *Sup'm. Ct. (T. & C.)* 367; 48 *How. Pr.* 454. Applied (Funds of separate organization, when not subject to control of city government) in *People ex rel. Burnet v. Jackson*, 60 *How. Pr.* 330, 332.
- *ex rel. Blossom v. Nelson*, 3 *Lans.* 394; s. c., 60 *Barb.* 159; 10 *Abb. Pr. N. S.* 200. Rev'd in 11 *Id.* 106; which was rev'd and former aff'd in 46 *N. Y.* 477. Decision in *Id.* applied with other cases (Who may question existence of corporation) in *Vredenburg v. Behan*, 33 *La. Ann.* 636.
- *v. Nevins*, 1 *Hill.* 154. Followed (Specification of amount of costs, in proceedings for non-payment) in *Matter of Kelly*, 6 *Sup'm. Ct. (T. & C.)* 117. Approved (Mode of punishing disobedience of order for payment) in *Clark v. Bininger*, 43 *Super. Ct. (J. & S.)* 127.
- *ex rel. Clauson v. Newburgh & S. Plank Road Co.*, 23 *Hun.* 173. Rev'd in 86 *N. Y.* 1.
- *ex rel. Howard v. Newell*, 13 *Barb.* 86. Rev'd as *Newell v. People*, 7 *N. Y.* 9. Compare (Power to award damages and interest) *People v. Benton*, 7 *Barb.* 208.
- *v. New England Mut. Life Ins. Co.*, 26 *N. Y.* 303. Criticised as not authority (Enjoining collection of illegal assessment) in *Mut. Benefit Life Ins. Co. v. Supervisors of N. Y.*, 2 *Abb. Pr. N. S.* 233.
- *N. Y. Central R. R. Co.*, 25 *Barb.* 199. Aff'd in 13 *N. Y.* 78. Decision in *Id.* followed (Recovery of penalties for successive violations of statute) in *Johnson v. Hudson R. R. Co.*, 2 *Sweeny*, 298, 313.
- *v. —*, 34 *Barb.* 123. Aff'd in 24 *N. Y.* 485. See opinion and argument in *Sup'm. Ct.* reported by E. F. Underhill, and published at Albany, 1861. See points, &c. in *Ct. of App. Cas. in Law Inst. Libr. N. Y. city.*
- *v. —*, 29 *N. Y.* 418. Subsequent decision in 30 *How. Pr.* 148. Decision in 29 *N. Y.* followed and approved (Order when appealable, as involving substantial right) in *Matter of Duff*, 10 *Abb. Pr. N. S.* 423. Applied in *Macdonald v. Macdonald*, 14 *Hun.* 497; *Tracy v. First Nat. B'k of Selma*, 37 *N. Y.* 524. Explained in *Howell v. Mills*, 53 *N. Y.* 329. Explained and applied (Appealability of order for extra allowance) in *Gori v. Smith*, 3 *Abb. Pr. N. S.* 52. Ap-



- plied to allowance in divorce suit,—in *Leslie v. Leslie*, 6 *Id.* 195. Decision in 30 *How. Pr.* followed in *Hayner v. American Pop. Life Ins. Co.*, 36 *Super. Ct. (J. & S.)* 211, 215. Decision in 29 *N. Y.* explained (Power of appellate court to grant extra allowance) in *Dupuy v. Wurts*, 3 *Sup'm. Ct. (T. & C.)* 115. Applied (Proof that justifies extra allowance) in *Burke v. Candee*, 63 *Barb.* 555.
- **ex rel. Armstrong v. N. Y. Central, &c. R. R. Co.**, 2 *Hun.* 482; s. c., 5 *Sup'm. Ct. (T. & C.)* 84. Aff'd in 60 *N. Y.* 116. Other proceedings in *Id.* 112; and in 5 *Hun.* 86; which was aff'd in 66 *N. Y.* 407.
- **ex rel. Thatcher v. N. Y. Commercial Assoc.**, 18 *Abb. Pr.* 271. Followed (Expulsion of member of association) in *Dickinson v. Chamber of Commerce of Milwaukee*, 29 *Wis.* 45; s. c., 9 *Am. R.* 544. Collated with *People v. Medical Society*, 32 *N. Y.* 194; *People ex rel. Schmidt v. St. Franciscus Benevolent Soc.*, 24 *How. Pr.* 216, and other cases in 15 *Am. R.* 27, n.
- **v. N. Y. & Manhattan Beach R'y Co.**, 22 *Hun.* 95. Aff'd in 84 *N. Y.* 565. Decision in *Id.* discussed (Ejectment by people) in *Sedgwick & W. on Tr. of Tit. to Land*, § 193.
- **v. N. Y. & Staten Island Ferry Co.**, 49 *How. Pr.* 511. Aff'd in 7 *Hun.* 105; which was aff'd in 68 *N. Y.* 71, except as to allowance. Decision in *Id.* followed (Basis of extra allowance) in *Musgrave v. Sherwood*, 29 *Hun.* 475. Reviewed with *Ogdensburg & L. C. R. R. Co. v. Vermont & C. R. R. Co.*, 63 *N. Y.* 179; *Lattimer v. Livermore*, 72 *Id.* 183; *People v. Albany & Vt. &c. R. R. Co.*, 16 *Abb. Pr.* 465; in *People v. Genesee Valley Canal R. R. Co.*, 30 *Hun.* 565. Disting'd in *Potter v. Farrington*, 24 *Id.* 551. Compare *Code Civ. Pro.* § 3252.
- **ex rel. Consolidated Stage Co. v. N. Y. Common Pleas**, 43 *Barb.* 278. Collated with other cases (Criterion to determine when prohibition is proper remedy) in 12 *Am. Dec.* 607, n.
- **ex rel. Gould v. N. Y. Common Pleas**, 1 *Wend.* 81. See *Blanchard v. Myers*. Reporter's note corrected and case approved (Supersedeas of execution, after levy) in *Payfer v. Bissell*, 3 *Hill*, 239, 242.
- **ex rel. Mayor, &c. of N. Y. v. N. Y. Common Pleas**, 3 *Abb. Pr.* 181. Compare (Injunction where right depends on nature of action) *Code Civ. Pro.*, § 603.
- **ex rel. Manning v. N. Y. Common Pleas**, 13 *Wend.* 649; s. c., 28 *Am. Dec.* 495, with note containing citations. Disting'd with *Nicoll v. Nicoll*, 16 *Wend.* 446, and the former held no authority because rev'd (Attorney's right to judgment for costs) in *Ely v. Cook*, 2 *Hill*, 406, 419. Disapproved in *Roberts v. Carter*, 9 *Abb. Pr.* 367, n. Applied in *Sanders v. Gillett*, 8 *Daly*, 183. Explained (Right of unsuccessful party to costs) in *Koon v. Thurman*, 2 *Hill*, 357.
- **ex rel. Musgrove v. N. Y. Common Pleas**, 9 *Wend.* 429. Reviewed and dis-
- approved (Practice on demurring to or moving to correct return to mandamus) in *People v. Ovenshire*, 41 *How. Pr.* 164. See *Code Civ. Pro.* 1881, § 2078, n.
- **ex rel. Pinckney v. N. Y. Five Underwriters**, 54 *How. Pr.* 240. Aff'd in 7 *Hun.* 248.
- **v. N. Y. Gas Light Co.**, 6 *Lans.* 467; s. c., more fully, 64 *Barb.* 55.
- **v. N. Y. General Sessions**, 15 *Abb. Pr.* 59. Overruled (New trial not granted by Court of Sessions) in *Lanergan v. People*, 39 *N. Y.* 39.
- **ex rel. Hasbrouck v. N. Y. General Sessions**, 3 *Barb.* 144. See (Writ of prohibition) *Code Civ. Pro.* 1881, § 2100, n.
- **ex rel. Norton v. N. Y. Hospital**, 3 *Abb. N. C.* 229. Followed (Taking testimony of lunatic) in *Hand v. Burrows*, 23 *Hun.* 330.
- **ex rel. Splain v. N. Y. Juvenile Asylum**, 2 *Sup'm. Ct. (T. & C.)* 475. Aff'd, it seems, in 59 *N. Y.* 629, but without opinion.
- **ex rel. Holdsworth v. N. Y. Superior Court**, 18 *Wend.* 675. Explained and cases to the contrary cited (Mandamus to inferior courts) in *High on Extr. Rem.* 2 ed. § 157, n. 1.
- **ex rel. Oebricks v. N. Y. Superior Court**, 5 *Wend.* 114. Subsequent decision in 10 *Id.* 285. See *Hull v. Supervisors of Oneida*. These decisions overruled (Mandamus to inferior courts) in *Judges of Oneida v. People*, 18 *Wend.* 79, 96; *People v. Judges of Dutchess*, 20 *Id.* 658. Applied (Ignorance of defense, as ground for new trial) in *Wixon v. Davis*, *Walk. Ch. (Mich.)* 18.
- **ex rel. Fleming v. Niagara Common Pleas**, 12 *Wend.* 246. Overruled (Mandamus to inferior courts) in *People v. Judges of Oneida*, 21 *Id.* 20.
- **v. Nichols**, 3 *Park.* 579. Rev'd as *Nichols v. People*, in 17 *N. Y.* 114. Compare (Requisites of larceny) *Cocheron's Case*, 1 *City Hall Rec.* 177; *Hadley's Case*, 5 *Id.* 8.
- **ex rel. Mayor, &c. of N. Y. v. Nichols**, 18 *Hun.* 530; s. c., 57 *How. Pr.* 467. Rev'd in 79 *N. Y.* 582; s. c., 58 *How. Pr.* 200. See *People ex rel. Munday v. Fire Comm'rs*. Decision in 79 *N. Y.* disting'd (Removal of officers in N. Y. city) in *People ex rel. Keech v. Thompson*, 26 *Hun.* 28. Compare (*Certiorari* returnable at chambers) *Code Civ. Pro.* § 2138.
- **ex rel. Washington v. Nichols**, 52 *N. Y.* 478; s. c., 11 *Am. R.* 734. Applied (Execution of public trust delegated to several) in *First Nat. B'k of North Bennington v. Town of Mt. Tabor*, 52 *Vt.* 87; s. c., 36 *Am. R.* 734, 742; *Talcott v. Blanding*, 54 *Cal.* 289.
- **v. North America Life Ins. Co.**, 15 *Hun.* 18. Rev'd in 77 *N. Y.* 297; s. c., 6 *Abb. N. C.* 293, with note. Previous proceedings in 56 *How. Pr.* 160; s. c., 6 *Abb. N. C.* 293. Further proceedings in 58 *How.*

- Pr.* 197; *aff'd* in 18 *Hun.* 470, which was *aff'd* in 80 *N. Y.* 152. See *Attorney-Gen'l v. North America Life Ins. Co.*
- *v. Northern R. R. Co.*, 53 *Barb.* 98. *Aff'd* as to the merits, in 42 *N. Y.* 217. Decision in *Id.* *disting'd* (Sufficiency of denial) in Smith *v. Gratz*, 59 *How. Pr.* 275.
- *v. Northrop*, 15 *How. Pr.* 152. See cases cited (Limitations on municipal expenses) in 5 *Abb. N. C.* 468.
- *v. Northrup*, 50 *Barb.* 147. *Rev'd* in 37 *N. Y.* 203; s. c., 4 *Abb. Pr. N. S.* 227. See *Northrup v. People*.
- *v. Norton*, 9 *N. Y.* 178. Followed (Waiver of objection to proceeding by petition) in *People ex rel. Jeunys v. Brennan*, 3 *Hun.* 672. Followed (Power to appoint new trustee on petition) in *Milbank v. Crane*, 25 *How. Pr.* 194. Applied (Want of jurisdiction, when not defense to action on bond) in *Field v. Van Cott*, 15 *Abb. Pr. N. S.* 352. Explained (Action on bond, in name of people) in *Connor v. Such*, 9 *Bosw.* 321; *Cridler v. Curry*, 44 *How. Pr.* 349; *People v. Groat*, 22 *Hun.* 166; *Dayton v. Johnson*, 69 *N. Y.* 428. Applied in *People ex rel. Becar v. Struller*, 16 *Hun.* 236. *Disting'd* (Questioning regularity of trustee's proceedings) in *Anonymous v. Gelpcke*, 5 *Hun.* 256. Explained in *Burrill on Assign.* § 429, n. 3, 4 ed.
- *v. —*, 7 *Barb.* 477. Approved (Discretion as to granting or refusing tavern license) in *People v. Jones*, 54 *Barb.* 311. Applied in *People ex rel. Beller v. Wright*, 5 *Sup'm. Ct. (T. & C.)* 518, 520.
- *v. —*, 4 *Sandf.* 640. See (Examination of third party in supplementary proceedings) *Code Civ. Pro.* 1881, § 2441, n.
- *ex rel. Clark v. Norton*, 5 *Lans.* 7. For opinion of *Johnson, J.*, see 59 *Barb.* 169.
- *v. Nostrand*, 46 *N. Y.* 375. Followed (Necessity of proof of right to office) in *People ex rel. Steinert v. Anthony*, 6 *Hun.* 142, 144. *Disting'd* in *Foot v. Stiles*, 57 *N. Y.* 399, 404. *Disting'd* (Effect of vacancy in office of one of board) in *People ex rel. Kingsland v. Palmer*, 52 *Id.* 187; *People ex rel. Howlett v. Mayor, &c. of Syracuse*, 63 *Id.* 297. Applied (Definition of officer) in *Sweeny v. Mayor, &c. of N. Y.*, 5 *Daly*, 275.
- *v. O'Brien*, 38 *N. Y.* 193. See *Conner v. Mayor, &c. of N. Y.* *Disting'd* (What is local act) in *People v. Davis*, 61 *Barb.* 465. Compared with other cases in *Healey v. Dudley*, 5 *Lans.* 123. Applied in *Kerrigan v. Force*, 9 *Hun.* 188; *People v. Allen*, 42 *N. Y.* 418; *People v. Sup'rs of Chautauqua*, 43 *Id.* 20. Criticised in *People ex rel. Clauson v. Newburgh & Shawangunk Pl. R. Co.*, 86 *Id.* 1, 7. Applied (Effect of statute in part constitutionally invalid) in *People ex rel. City of Rochester v. Briggs*, 50 *Id.* 566.
- *ex rel. La Torre v. O'Brien*, 53 *Barb.* 38; s. c., 5 *Abb. Pr. N. S.* 223. *Aff'd* in 6 *Id.* 63; s. c., 3 *Abb. Ct. App. Dec.* 552. Decision in *Id.* contrasted with *People ex rel. Cook v. Board of Police*, 39 *N. Y.* 506, and other cases, and declared incorrect (Costs in certiorari proceedings) in *People v. Fuller*, 40 *How. Pr.* 35, 38. Applied (Election of remedy as to arrest of debtor) in *Townsend v. Nebenzahl*, 8 *Abb. N. C.* 427, 423.
- *v. Olcott*, 6 *Johns. Cas.* 301; s. c., 1 *Am. Dec.* 168, with note; 1 *N. Y. Com. L. Law. ed.* 523, with brief note. See *Klock v. People*; *People v. Barrett*; *People v. Denton*. Reviewed with other cases (Discharging jury in criminal case) in *State v. McKee*, 1 *Barley (So. Car.)* 651; s. c., 1 *Am. Dec.* 499, 501. Reviewed with *People v. Barrett*, 2 *Cal.* 304; *People v. Goodwin*, 18 *Johns.* 187, and other cases in *Mahala v. State*, 10 *Yerg. (Tenn.)* 532; s. c., 31 *Am. Dec.* 591, with note. Disapproved with *People v. Goodwin*, 18 *Johns.* 187; *People v. Green*, 13 *Wend.* 55, in *Williams v. Commonwealth*, 2 *Gratt. (Va.)* 567; s. c., 44 *Am. Dec.* 403. Quoted and collated with other cases in 2 *Bennett & H. Cas. on Crim. L.* 370.
- *ex rel. Mace v. Oliver*, 66 *Barb.* 570. Compare (Recitals in order for examination in supplementary proceedings) *Day v. Brosnan*, 6 *Abb. N. C.* 312. Compare (Amount of fine for contempt not shown to have produced injury) *Code Civ. Pro.* § 2284.
- *ex rel. Parker v. Onondaga Common Pleas*, 2 *Wend.* 263. Qualified (Effect of plea of title in justice's court) in *Fleet v. Youngs*, 7 *Id.* 291, 298.
- *ex rel. Ransom v. Onondaga Common Pleas*, 3 *Wend.* 331. Followed (Execution satisfied by payment of amount, in absence of directions as to collection of interest) in *Todd v. Blatchford*, 86 *N. Y.* 517, 519.
- *v. Orcutt*, 7 *Park.* 252. Approved (Buildings in relation to crime) in *Quinn v. People*, 71 *N. Y.* 561, 571. Applied in *Levy v. People*, 80 *Id.* 327, 333.
- *v. O'Reilly*, 9 *Abb. N. C.* 77. *Rev'd* in 10 *Id.* 53. Compare (Perjury) *U. S. v. Baer*, *U. S. Dist. Ct. S. D. N. Y.* 13 *Chic. L. N.* 196.
- *ex rel. Wicks v. Oswego Ct. of Sessions*, 2 *Sup'm. Ct. (T. & C.)* 431. See to the contrary (Substituting successor of officer as plaintiff, &c.) *Code Civ. Pro.* § 766.
- *ex rel. Sunderlin v. Orenshire*, 41 *How. Pr.* 164. See (Compelling further return in mandamus proceedings) *Code Civ. Pro.* 1881, § 2078, n.
- *Pacific Mail S. S. Co.*, 58 *N. Y.* 242. Followed (Situs of vessel for purposes of taxation) in *Irvin v. New Orleans, St. Louis, &c. R. R. Co.*, 94 *Ill.* 105; s. c., 34 *Am. R.* 208, 212.
- *v. Page*, 3 *Park.* 600. Approved (Indictment without preliminary examination) in *People ex rel. Phelps v. Westbrook*, 12 *Hun.* 649.
- *v. Parish*, 4 *Den.* 153. *Disting'd* and limited (Effect of admission of proof out of order) in *McCarney v. People*, 83 *N. Y.* 408, 417.

- **v. Park**, 41 *N. Y.* 21. Aff'd 1 *Lans.* 263.
- **v. Parker**, 4 *Johns.* 124. See Same *v.* Hennessey. Collated with other cases, the views in which are preferred (What buildings are within the "curtilage") in 22 *Am. Dec.* 147, *n.*
- **ex rel. Jenkins v. Parker Vein Coal Co.**, 10 *How. Pr.* 186. Aff'd in 1 *Abb. Pr.* 128; *s. c.*, more fully, 10 *How. Pr.* 543, with opinion of MORRIS, J.
- **ex rel. Devlin v. Peabody**, 5 *Abb. Pr.* 194. Disting'd (Termination of proceedings so as to review by certiorari) in *People ex rel. Gilmore v. Donohue*, 22 *Hun.* 470.
- **v. Pearsall**, 46 *How. Pr.* 121. The accuracy of this report is impugned in 9 *Alb. L. J.* 144.
- **v. Pease**, 3 *Johns. Cas.* 333. Criticised (Repugnant condition in pardon) in 2 *Am. L. Reg. N. S.* 487. Collated with other cases in 59 *Am. Dec.* 576, *n.*
- **ex rel. Smith v. Pease**, 30 *Barb.* 588. Aff'd in 27 *N. Y.* 45; *s. c.*, less fully, 25 *How. Pr.* 495. See *Kane v. Johnston*. Decision in 27 *N. Y.* disting'd (Inquiry into election returns) in *People ex rel. Judson v. Thacher*, 55 *Id.* 525, 535. Applied in *People ex rel. Stemmler v. McGuire*, 2 *Hun.* 269, 274; *People ex rel. Bush v. Thornton*, 25 *Id.* 456, 460. Included with notes in *Brightly Cas. on lect.* 385. Commented on in *Cooley on Const. Limit.* 5 ed. 791, *n.* 3. Decision in 30 *Barb.* applied (Powers of inspector as to qualification of elector) in *People ex rel. O'Donnell v. McNally*, 9 *Abb. N. C.* 468, 470. Decision 27 *N. Y.* followed (Right to secrecy of ballot) in *Williams v. Stein*, 38 *Ind.* 89; *s. c.*, 10 *Am. R.* 97. Quoted in *Cooley on Const. Limit.* 5 ed. 762, *n.* 1; *Id.* 763, *n.* 1. Commented on in *Id.* 766, *n.* Quoted and collated with other cases (Recovery by legally elected officer, of fees received by usurper) in *Brightly Cas. on Elect.* 610. Decision in 30 *Barb.* reviewed with other cases (What is court of common-law jurisdiction within meaning of act of Congress, relating to naturalization) in *People ex rel. Bracket v. McGowan*, 77 *Ill.* 644; *s. c.*, 20 *Am. R.* 254, 257.
- **ex rel. Hoag v. Peck**, 4 *Lans.* 528; *s. c.*, 62 *Barb.* 525; 42 *How. Pr.* 425. Criticised (Proceedings for town bonding in aid of railroad) in *Craig v. Town of Andes*, 93 *N. Y.* 405, 418. Applied (Sufficiency of allegation in such proceedings, that corporation in question is in this State) in *Matter of Town of Gorham*, 43 *How. Pr.* 263, 267. Overruled (Necessity of proof that road has been located) in *People ex rel. Aikin v. Morgan*, 55 *N. Y.* 587.
- **ex rel. Smith v. Peck**, 11 *Wend.* 604; *s. c.*, 27 *Am. Dec.* 104, with note, wherein it is stated to have been frequently referred to (Provisions of statute, when to be deemed directory and not mandatory). See other citations in note.
- **v. Pendleton**. Reported under Mayor, &c. of *N. Y. v. N. Y. & Staten Island Ferry Co.*
- **v. Pennock**, 1 *Sup'm. Ct. (T. & C.)* 209. Rev'd in 60 *N. Y.* 421. Decision in *Id.* followed (Liability of sureties on official bond) in *Sutherland v. Carr*, 85 *Id.* 105, 113; *City of Lafayette v. James*, 92 *Ind.* 240; *s. c.*, 47 *Am. R.* 140.
- **v. Perkins**, 1 *Wend.* 91. See *Fox v. Smith*. Disting'd with *Maurer v. People*, 43 *N. Y.* 1 (Necessity of presence of prisoner during trial) in *People v. Bragle*, 88 *Id.* 585. Followed in *State v. Hughes*, 2 *Ala.* 102; *s. c.*, 36 *Am. Dec.* 411; *Sneed v. State*, 5 *Ark.* 431; *s. c.*, 41 *Am. Dec.* 102. Disting'd in *Nolan v. State*, 55 *Ga.* 521; *s. c.*, 21 *Am. R.* 282.
- **v. Perry**, 8 *Abb. Pr. N. S.* 27. Approved (Taking bail of prisoner indicted for murder) in *Petition of Alexander*, 59 *Mo.* 598; *s. c.*, 21 *Am. R.* 393.
- **ex rel. Van Allen v. Perry**, 16 *Hun.* 463. Applied (Time within which certiorari is to be applied for) in *People ex rel. Smith v. Cooper*, 22 *Id.* 515. Compare (Service of affidavits on certiorari proceedings) *Code Civ. Pro.* § 2128.
- **v. Pettit**, 3 *Hun.* 416; *s. c.*, more fully, 6 *Sup'm. Ct. (T. & C.)* 9.
- **v. Phelps**, 5 *Wend.* 9. Followed (Requisites of indictment for perjury) in *People Warner*, *Id.* 271; *Burns v. People*, 59 *Barb.* 531. Disapproved, but followed, in *People v. Tredway*, 3 *Barb.* 470. Compare *Hoch v. People*, 3 *Mich.* 554; *State v. Lamont*, 2 *Wisc.* 441. Followed in *State v. Newton*, 1 *G. Greene (Iowa)* 160; *s. c.*, 48 *Am. Dec.* 367, 369.
- **v. —**, 49 *How. Pr.* 462. Aff'd as *Phelps v. People*, 6 *Hun.* 428, and that aff'd in 72 *N. Y.* 365. See error books and briefs collected in 2 vols. in State Libr. in Albany. See also arguments and charge, same Libr. See also briefs, &c., and three error books, in vol. 451 of Ct. of App. Cas. in Law Inst. Libr. *N. Y. city*. Decision in 72 *N. Y.* applied (Title of State to drafts indorsed to State treasurer in payment for taxes) in *People v. Bank of North Am.*, 75 *Id.* 554.
- **v. Phillips**, 1 *Park.* 95. Approved (Form of record in certiorari proceedings) in *Cases of Lynch and Burns*, 9 *Abb. N. C.* 69, 75.
- **v. —**, 42 *N. Y.* 200. Aff'd *Phillips v. People*, 57 *Barb.* 353.
- **v. —**, 1 *Den.* 388. Applied (Issues in *quo warranto* proceedings) in *People v. Albany, &c. R. R. Co.*, 57 *N. Y.* 161, 173.
- **ex rel. Gray v. Phillips**, 67 *N. Y.* 582. See (Time within which to bring certiorari proceedings) *Code Civ. Pro.* 1881, § 2125, *n.*
- **v. Phoenix Bank**. See *People v. President, &c. Manhattan Co.*
- **v. Pinckney**, 32 *N. Y.* 377. Dissenting opinion of BROWN, J., in *Id.* 724. Followed (Constitutional validity of act of March 30, 1865, creating Metropolitan Fire District) in

- People v. Booth, *Id.* 397. Applied (Mode of appointment of officers to perform local duties) in People v. Acton, 48 *Barb.* 529; Devoy v. Mayor, &c. of N. Y., 36 *N. Y.* 450. Disting'd in Matter of Ryers, 72 *Id.* 6.
- **v. Pine**, 2 *Barb.* 566. Quoted and collated with other cases (Insane delusion as excuse for crime) in 1 *Bennett & H. Cas. on Crim. L.* 101.
- **ex rel. Draper v. Pinkerton**, 17 *Hun.* 199. Aff'd in 77 *N. Y.* 245. Decision in 17 *Hun* and other cases reviewed (Executive discretion as to arrest of fugitives from justice in another State) in 57 *Am. Dec.* 392, *n.*
- **v. Platt**, 17 *Johns.* 195; *s. c.*, 8 *Am. Dec.* 382. See Hooker v. Cummings; Shaw v. Crawford. Followed (Effect of legislative grant as contract) in Derby Turnpike Co. v. Parks, 10 *Conn.* 522; *s. c.*, 27 *Am. Dec.* 700, 704, with note. Applied in Commonwealth v. Penn. Canal Co., 66 *Penn.* 41; *s. c.*, 5 *Am. R.* 329, 342. Explained and approved (Power of courts to declare statute unconstitutional) in 1 *Kent Com.* 454. Collated with other cases (Extent of grant bounded on navigable streams) in *Mills Thoms. on Highw.* 3 ed. 46. Collated with other cases (Dams in navigable streams) in 57 *Am. Dec.* 692, *n.* Relied on (Retrospective law, when not unconstitutional) and also reviewed with Vanderbilt v. Adams, 7 *Cow.* 349 (Legislative right to appropriate private property for public benefit) in Aldridge v. Tusculumbia, &c. R. R. Co., 2 *Stew. & P. (Ala.)* 199; *s. c.*, 23 *Am. Dec.* 507, 514, with note.
- **v. Pleas**, 2 *Johns. Cas.* 376. See cases collated (Trustees' compromises) in 5 *Abb. N. C.* 349, *n.*
- **ex rel. Miller v. Police Comm'rs of N. Y.**, 6 *Hun.* 229; *s. c.*, more fully, 52 *How. Pr.* 289. Rev'd in 67 *N. Y.* 475; *s. c.*, 52 *How. Pr.* 289. Further decision in 11 *Hun.* 513. See People *ex rel.* Cook v. Board of Police.
- **ex rel. Skahan v. Police Comm'rs of N. Y.**, 10 *Hun.* 106. Aff'd, it seems, in 8 *Weekly Dig.* 350; *mem. s. c.*, 76 *N. Y.* 613, on opinion of DAVIS, J., below.
- **ex rel. Grace v. Police Comm'rs of Troy**, 12 *Abb. Pr.* 181. Aff'd in 43 *How. Pr.* 385.
- **ex rel. Tappan v. Porter**, 1 *Duer.* 709. Compare subsequent decision of BARCULO, J., in Sup'm. Ct., in People *ex rel.* Trainer v. Cooper, 8 *How. Pr.* 288. See People v. Hennessey; People v. Rogers. See (Jurisdiction of Superior city courts) *Code Civ. Pro.* 1881, § 268, *n.*
- **v. Potter**, 1 *Park.* 47; *s. c.*, 4 *N. Y. Leg. Obs.* 177. Followed (Granting conditional pardon) in Lee v. Murphy, 22 *Gratt. (Va.)* 789; *s. c.*, 12 *Am. R.* 563, 566. Cited approvingly in 1 *Kent Com.* 284, *n. b.*
- **ex rel. Jackson v. Potter**, 42 *How. Pr.* 260; *s. c.*, more fully, 47 *N. Y.* 375. Disting'd (Construction of constitution) in Settle v. Van Evrea, 49 *Id.* 280.
- **v. Powell**, 14 *Abb. Pr.* 91. Sustained (Power of Court of Sessions to grant new trial) in Lannergan v. People, 39 *N. Y.* 39.
- **v. Powers**, 7 *Barb.* 462. Aff'd in 6 *N. Y.* 50. Decision in *Id.* applied (Curing defect in indictment) in Case v. People, 6 *Abb. N. C.* 151, 157.
- **ex rel. Bridenbecker v. Prescott**, 3 *Hun.* 419. Compare (Subscription by ex-cutors to notice of sale under foreclosure by advertisement) *Code Civ. Pro.* §§ 2388, subd. 4, 2389.
- **ex rel. Dikeman v. President, &c. of Brooklyn**, 1 *Wend.* 318. Applied (Proof of relator's right in mandamus proceedings) in People v. Canal Board, 13 *Barb.* 443. Reviewed with other cases (Rights when vested, in proceedings to take land for public purposes) in Matter of Comm'rs of Washington Park, 56 *N. Y.* 155. See Matter of Rhinebeck, &c. R. R. Co., 67 *Id.* 246.
- **v. —**, 13 *Wend.* 130. Followed (Proceedings on alternative mandamus) in People v. Ovenshire, 41 *How. Pr.* 164, 166.
- **v. Manhattan Co.**, 9 *Wend.* 351. Followed (Waiver of forfeiture of corporate privilege by subsequent legislative recognition) in Matter of N. Y. Bridge Co., 4 *Hun.* 635. Followed with People v. Phenix Bank, 24 *Wend.* 431, in State v. Real Estate Bank, 5 *Ark.* 595; *s. c.*, 41 *Am. Dec.* 109, 116, with note.
- **v. Purdy**, 2 *Hill.* 31. Rev'd in 4 *Id.* 385. See Thomas v. Dakin. Decision in 2 *Hill* cited with approval (Constitutional interpretation) in Hale v. Everett, 53 *N. H.* 9; *s. c.*, 16 *Am. R.* 82, 186. Quoted and commented on in *Cooley on Const. Limit.* 5 ed. 68, *n. 2*. Cited and authorities collected (Manner of passage of statute) in 3 *Am. L. Reg. N. S.* 345.
- **v. Putnam**. See People *ex rel.* Murray v. Special Sessions.
- **v. Quant**, 2 *Park.* 410. Overruled (Power of legislature to regulate sale of intoxicating liquors) in Wynehamer v. People, 13 *N. Y.* 378.
- **v. Quigg**, 59 *N. Y.* 83. Followed (Implied repeal of statutes) in Bartels v. Cunningham, 8 *Abb. N. C.* 226. Followed (Remedy on forfeited recognizance) in People v. Sands, 7 *Hun.* 535; citing Wetmore v. Tracey, 14 *Wend.* 255.
- **v. Raudall**, 5 *City Hall Rec.* 141. Discussed (Defendant's wife as witness on trial for murder) in 1 *Best on Ev.* § 98, *n. a*, Wood's ed.
- **v. ex rel. Morris v. Randall**, 8 *Daly*, 81. Appeal from order of General Term which aff'd this, dismissed, it seems, in 77 *N. Y.* 621, but without opinion. See vol. 485, Ct. of App. Cas. Law Inst. Libr. N. Y. city. Previous proceeding in 73 *N. Y.* 416. Decision in *Id.* followed (Injunction, when merged in subsequent proceedings) and Sixth Ave. R. R. Co. v. Gilbert, 71 *Id.* 430; Eric R'y Co. v. Ramsey, 45 *Id.* 637; Power v. Village of

Athens, 19 *Wm.*, 169 disting'd in *Gardner v. Gardner*, 87 *N. Y.* 14. See *Code Civ. Pro.* 1881, § 2451, *n.* Applied (When not contempt for attorney enjoined in one action to proceed for another client) in *Slater v. Merritt*, 75 *N. Y.* 272.

— *v. Randolph*, 2 *Park.* 174. Approved (Burden of proof of capacity of boy to commit rape) in *Hiltabiddle v. State*, 35 *Ohio St.* 52; *s. c.*, 35 *Am. R.* 592.

— *v. Rands*, 3 *Park.* 335. Overruled (Evidence of declarations of those from whom one has received stolen property) in *People v. Dowling*, 84 *N. Y.* 478, 485.

— *v. Ransom*, 7 *Wend.* 417; *s. c.*, 11 *N. Y. Com. L. Law. ed.* 182, with brief note of other cases. See *Horton v. Horton*. Followed with *Smith v. Thompson*, 1 *Cow.* 221 (Misconduct of jurors as cause for setting aside verdict) in *Pettibone v. Phelps*, 13 *Conn.* 445; *s. c.*, 35 *Am. Dec.* 88, with note. Applied in *U. S. v. Bennett*, 16 *Blatchf. Ct.* 388, 373.

— *ex rel. Post v. Ransom*, 4 *Den.* 145. Aff'd in 2 *N. Y.* 490. See *Commercial Bank of Albany v. Canal Commissioners*. Decision in 2 *N. Y.* applied (Nature of proceeding by alternative mandamus) in *People ex rel. Adams v. Baker*, 14 *Abb. Pr.* 28; *People v. Supervisors of Westchester*, 15 *Barb.* 613; *People ex rel. Argyle, &c. Co. v. Comm'rs of Fort Edward*, 11 *How. Pr.* 89. Disting'd (Conveyance by sheriff to assignee of certificate of sale) in *Phillips v. Shiffer*, 14 *Abb. Pr. N. S.* 101, 107. Applied in *Wood v. Moorhouse*, 1 *Lans.* 416. Both decisions explained in *Aylesworth v. Brown*, 10 *Barb.* 172, a case of assignment of judgment. Decision in 4 *Den.* followed (Waiver of production of papers in redemption proceedings) as preferable to later decision in 2 *N. Y.*, in *Bagley v. Ward*, 37 *Cal.* 121, 130. See *Code Civ. Pro.* 1881, § 1464, *n.*

— *ex rel. Rice v. Ransom*, 2 *Hill.* 51. Disting'd (Redemption of property sold under execution) in *Brackett v. Miller*, 24 *Hun.* 560. Referred to in 32 *Am. Dec.* 597, *n.*, as disapproving of the narrow construction placed by *Waller v. Harris*, 20 *Wend.* 555 upon the statute, it being thought that the question as to the necessity of strict compliance with the prerequisites established by the statute has not been uniformly answered by the *N. Y.* courts. See *Code Civ. Pro.* 1881, § 1464, *n.*

— *v. Rathbun*, 21 *Wend.* 509. Applied (What is uttering deed) in *Paige v. People*, 3 *Abb. Ct. App. Dec.* 447. Applied with *Beebe v. People*, 5 *Hill.* 32 (Waiver by defendant on trial for felony) in *Stephens v. People*, 4 *Park.* 395, 509; which was aff'd in 19 *N. Y.* 565, which see; *Pierson v. People*, 79 *Id.* 420. Examined with *People v. Mather*, 4 *Wend.* 229 (Challenge for favor) in *People v. Doe*, 1 *Mich.* 454.

— *ex rel. Chase v. Rathbun*, 15 *N. Y.* 528. Reported below as *Griffin v. Chase*, in 23 *Barb.* 278.

— *ex rel. Stetzer v. Rawson*, 61 *Barb.* 619. Followed with *People ex rel. Comaford v. Dutcher*, 83 *N. Y.* 240 (Petit larceny not a felony) in *People ex rel. Loughlin v. Finn*, 87 *Id.* 533, which aff'd 26 *Hun.* 58, where *People ex rel. Murphy v. Special Sessions*, 74 *N. Y.* 406, was also relied on. Explained and approved in *People ex rel. Comaford v. Dutcher*, 83 *Id.* 240, 243. Disting'd (Jurisdiction as to misdemeanors) in *McDonald v. People*, 13 *Weekly Dig.* 548.

— *v. Raymond*, 37 *N. Y.* 428. Disting'd (Effect of acts done under unconstitutional statute) in *People ex rel. Kingsland v. Bradley*, 64 *Barb.* 228, 237. See also *People ex rel. Kingsland v. Bradley*, 42 *How. Pr.* 423.

— *v. Rector*, 19 *Wend.* 569. See *Gilbert v. Sheldon*; *People v. Mather*. See account of proceedings at Albany Oyer and Terminer, by *N. J. Hadley*, published at Albany, 1838. Referred to as overruled (Evidence of character of witness) in *Frost v. McCargar*, 29 *Barb.* 621; *Leonori v. Bishop*, 4 *Duer.* 422. Overruled in *People v. Gay*, 7 *N. Y.* 378. Explained in *People v. Hulse*, 3 *Hill.* 314; *G't W. Turnpike Co. v. Loomis*, 32 *Id.* 137. Explained (Liability for killing done in attempt to perpetrate minor offense) in *Buel v. People*, 18 *Hun.* 488; which was aff'd in 78 *N. Y.* 499, which see. Disting'd (Burden of proof as to privilege of witness) in *People ex rel. Hackley v. Kelly*, 12 *Abb. Pr.* 155. Applied (Evidence of intent with which killing was done) in *Temple v. People*, 4 *Lans.* 127. Disting'd in *People v. Clark*, 7 *N. Y.* 394. Reviewed with other cases in *Shorter v. People*, 2 *Id.* 200. Included in 2 *Horriggan & T. Cas. on Self-Def.* 795. Explained (Evidence of malice, requisite to constitute murder) in *People v. White*, 24 *Wend.* 583. Quoted and commented on in 1 *Barb. on Crim. L.* 3 ed. 27.

— *v. Rector, &c. of Trinity Church*, 30 *Barb.* 537. Aff'd in 22 *N. Y.* 44. Decision in *Id.* discussed (Ejectment by people) in *Sedgw. & W. on Tr. of Tit. to Land*, § 192.

— *ex rel. Rapelee v. Reddy*, 43 *Barb.* 539. Overruled in effect (Conclusiveness of uncontradicted affidavit of owner of assessed property) by *People ex rel. Buffalo & State Line R. R. Co. v. Barker*, 48 *N. Y.* 70; which aff'd *Same v. Fredericks*, 48 *Barb.* 173. Explained (Remedy for erroneous tax) in *Genesee Valley Nat. Bank v. Supervisors of Livingston Co.*, 53 *Barb.* 223, 234. Explained with *People ex rel. Thuzman v. Ryan*, 88 *N. Y.* 142 (Costs against assessors, &c.) in *People ex rel. Mann v. Peterson*, 31 *Hun.* 421.

— *ex rel. Knapp v. Reeder*, 25 *N. Y.* 302. Disting'd (Receipt of goods, when estopped) in *Clark v. Weaver*, 17 *Hun.* 481, 486. Collated with *Cornell v. Dakin*, 38 *N. Y.* 256, and other cases in 25 *Am. Dec.* 426, *n.*

- **v. Rensselaer & Saratoga R. R. Co.**, 15 *Wend.* 113; s. c., 30 *Am. Dec.* 33, with extended note; and 12 *N. Y. Com. L. Law. ed.* 804, with brief note. Quoted (Judgment in quo warranto proceedings) in *High. on Extr. Rem.* 2 ed. § 753, n. 1. Relied on (Constitutional power of State over navigable rivers) in *City of Chicago v. McGinn*, 51 *Ill.* 266; s. c., 2 *Am. R.* 295, 300.
- **v. Restell**, 3 *Hill*, 289. Followed (Deposition in criminal case, otherwise than by consent) in *Ex parte Harkins*, 6 *Ala.* 63; s. c., 41 *Am. Dec.* 38, as an elaborate and learned decision. Explained (Necessity that oath precede statement) in *Case v. People*, 6 *Abb. N. C.* 151, 164.
- **v. Richardson**, 3 *Cow.* 357. Subsequent decision in 4 *Id.* 97.
- **v. Rickert**, 8 *Cow.* 226. Subsequent decision arising out of transactions here involved, as *Rickert v. Snyder*, 9 *Wend.* 415. Decision in 8 *Cow.* disting'd (Effect of parol lease as tenancy from year to year) in *Greaton v. Smith*, 1 *Daly*, 384. Followed in *Taggard v. Roosevelt*, 8 *How. Pr.* 144; in *Morrill v. Mackman*, 24 *Mich.* 279; s. c., 9 *Am. R.* 124, 129. Applied (Evidence of ill-will) in *Jewett v. Banning*, 21 *N. Y.* 30.
- **ex rel. Dana v. Robertson**, 17 *How. Pr.* 74. Approved (Length of notice of appeal from order refusing to lay out highway) in *Terpening v. Smith*, 46 *Barb.* 203, 211.
- **ex rel. Elston v. Robertson**, 39 *Barb.* 9. Explained (Sub-leases and assignments) in *Constantine v. Wake*, 1 *Sweeny*, 239, 250. See authorities reviewed in 16 *Am. L. Rev.* 30.
- **v. Robinson**, 2 *Park.* 235. Aff'd 1 *Id.* 649. See *People v. Hammill*; *People v. Rogers*. See account of murder with life and confession, published at Boston, 1855. Decision in 2 *Park.* followed with *People v. Hammill*, *Id.* 223; *People v. Rogers*, 18 *N. Y.* 9 (Intoxication as excuse for crime) in *Kenny v. People*, 31 *N. Y.* 330, 341.
- **ex rel. Burbank v. Robinson**, 14 *Hun*, 226. Aff'd in 76 *N. Y.* 422.
- **ex rel. Garbutt v. Rochester & State Line R. R. Co.**, 14 *Hun*, 371. Modified and aff'd in 76 *N. Y.* 294. Another proceeding in 15 *Hun*, 188. Decision in 76 *N. Y.* applied with *People ex rel. Green v. D. & C. R. R.*, 53 *N. Y.* 152; *People v. N. Y. Central, & C. R. R. Co.*, 74 *Id.* 302; *People v. Albany & Vermont R. R. Co.*, 24 *Id.* 261 (Power to compel railroad corporation by mandamus to discharge its duties) in *People v. N. Y. Central, & C. R. R. Co.*, 28 *Hun*, 543.
- **v. Rogers**, 3 *Park.* 632; s. c., less fully, 15 *How. Pr.* 557. Rev'd in 18 *N. Y.* 9. See *People v. Hammill*; *People v. Robinson*. Decision in 18 *N. Y.* approved (Intoxication as excuse for crime) in *Kenny v. People*, 31 *Id.* 330, 341. Followed in *Flanigan v. People*, 86 *Id.* 554, 559. Collated with *Kennedy v. People*, 27 *How. Pr.* 202; 18 *Alb. L. J.* 91; 31 *N. Y.* 330; O'Brien v. People, 48 *Barb.* 274; *People v. Willey*, 2 *Park.* 19; *People v. Porter*, *Id.* 14, in 23 *Am. L. Reg. N. S.* 219. Compared in *Hopt v. People*, 104 *U. S.* 631, with cases arising under statute requiring deliberate premeditation to constitute murder in first degree. See cases cited in 28 *Moul's Eng.* 659, n. Included in *Lawson Lead. Cas. (Crim. L.) Simplified*, 15.
- **ex rel. Cunningham v. Roper**, 35 *N. Y.* 629. Explained (Repeal by legislature of limited privileges) in *Cooley on Const. Limit.* 5 ed. 474, n. 1.
- **v. Rose**. See *Same v. Cotteral*.
- **v. Rulloff**, 3 *Park.* 401. Rev'd as *Ruloff v. People*, in 18 *N. Y.* 179.
- **v. Runkle**, 9 *Johns.* 147. See *People v. Collins*; *Slee v. Bloom*. Discussed (Holding over by officers of corporation) in *Ang. & A. on Corp.* § 124, 11 ed. § 142.
- **ex rel. Ryan v. Russel**, 1 *Abb. Pr. N. S.* 230; s. c., 46 *Barb.* 27. Overruled (Discretionary character of *habeas corpus*. Power of city judge) in *Nash v. People*, 36 *N. Y.* 607.
- **v. Russell**, 4 *Wend.* 570. See *People v. Jansen*.
- **ex rel. Smith v. Russell**, 19 *Abb. Pr.* 136. See (Quashing mandamus, &c.) *Code Civ. Pro.* 1881, § 2075, n.
- **ex rel. Crane v. Ryder**, 16 *Barb.* 370. Aff'd in 12 *N. Y.* 433. Compare (Necessity of allegations as to relator's right on proceedings against usurper of office) *Code Civ. Pro.* § 1949.
- **v. Ryken**. See *People v. Morgan*.
- **v. Rynders**, 12 *Wend.* 425. Limited (Effect of indictment charging several offenses) in *People ex rel. Tweed v. Liscomb*, 60 *N. Y.* 559, 578. Followed in *Bulloch v. State*, 10 *Ga.* 47; s. c., 54 *Am. Dec.* 369, 376, with note; *Hampton v. State*, 8 *Humph. (Tenn.)* 69; s. c., 47 *Am. Dec.* 599, with note. Applied (Sufficiency of indictment for forgery) in *Holmes v. People*, 15 *Abb. Pr.* 159. Applied (Effect of argumentative pleading in indictment) in *People v. Charles*, 3 *Den.* 213; which was aff'd in 1 *N. Y.* 185, which see. Applied (Curing defect in indictment) in *Case v. People*, 6 *Abb. N. C.* 157; *Fleming v. People*, 27 *N. Y.* 333.
- **v. Safford**, 5 *Den.* 112. Applied (Right to impeach one's own witness) in *Coulter v. Am. Merchants' Union Exp. Co.*, 56 *N. Y.* 585, 589.
- **ex rel. Van Valkenburgh v. Sage**, 3 *How. Pr.* 56. See (Actions by or against officers) *Code Civ. Pro.* 1881, § 1930, n.
- **ex rel. Schmidt v. St. Francisus Benev. Socy.** See *People ex rel. Thatcher v. N. Y. Commercial Benev. Assoc.*
- **ex rel. Dilcher v. St. Stephen's Church.** See *Same v. German United Evan. Ch.*
- **v. Sanchez**, 18 *How. Pr.* 72; s. c., as *Sanchez v. People*, 4 *Park.* 535. Approved, but rev'd on account of Act of 1860, in 22 *N. Y.* 147.

- **v. Sands**, 1 *Johns*. 78; s. c., 3 *Am. Dec.* 296; 3 *N. Y. Com. L. Law ed.* 64, with brief note of cases. Explained (Keeping gunpowder, when a nuisance) in *Heeg v. Licht*, 8 *Abb. N. C.* 355, 361. Dissented from in *Cheatham v. Shearon*, 1 *Swan (Tenn.)* 213; s. c., 55 *Am. Dec.* 734.
- **v. Saratoga & Rens. B. R. Co.**, 15 *Wend.* 113. Followed (Liability as to obstructions in navigable waters) in *Delaware & Hudson Canal Co. v. Lawrence*, 2 *Hun*, 163, 178, 182. Approved and applied in *Silliman v. Troy & West Troy Bridge Co.*, 11 *Blatchf. Ct. Ct.* 274, 289.
- **v. Sargeant**, 8 *Cov.* 139. Questioned (Billiard table not nuisance at common law) in *Tanner v. Trustees of Albion*, 5 *Hill*, 121. Commented on in *Wood on Nuis.* 2 ed. § 41.
- **v. Saunders**, 4 *Park.* 196. Opposed (Merger) as maintaining a doctrine now abolished by statute or decision in nearly every State,—in 17 *Am. L. Rev.* 742, 746; compare, however, *State v. Hattabough*, 66 *Ind.* 223.
- **ex rel. Irwin v. Sawyer**, 52 *N. Y.* 296. See subsequent decision affecting bonds here involved,—in *Orleans v. Platt*, 99 *U. S.* 676, 681. Decision in 52 *N. Y.* applied (Revocation of consent in town bonding proceedings) in *People ex rel. Yawger v. Allen*, *Id.* 538, 541; *People v. Hatch*, 1 *Sup'm. Ct. (T. & C.)* 115; *People ex rel. Youmans v. Wagner*, *Id.* 223.
- **v. Saxton**, 22 *N. Y.* 309. See *Seymour v. Wilson*. Disting'd (Effect of irregularities in election) in *People ex rel. Bush v. Thornton*, 25 *Hun*, 456, 463. Discussed in *Cooley on Const. Limit.* 5 ed. 764, n. 1.
- **v. Schenck**. See *Matter of Washburn*; *People v. Gardner*.
- **v. Schermerhorn**, 19 *Barb.* 540. Disting'd (Necessity of statutory notice, in proceedings to acquire land) in *Stevenson v. Mayor, &c. of N. Y.*, 1 *Hun*, 51, 55.
- **v. Schoharie Common Pleas**, 1 *Wend.* 315. Overruled in subsequent decision in 2 *Id.* 260.
- **v. Schoonmaker**, 63 *Barb.* 44. Appeal dismissed in 50 *N. Y.* 499.
- **ex rel. Merriam v. Schoonmaker**, 19 *Barb.* 657. Rev'd in 13 *N. Y.* 238.
- **ex rel. Ennis v. Schroeder**, 12 *Hun*, 413. Aff'd in 76 *N. Y.* 160.
- **ex rel. Lockwood v. Scrugham**, 20 *Barb.* 302. Rev'd in 25 *Id.* 216.
- **v. Schryver**, 42 *N. Y.* 4. See *Walter v. People*. Disapproved (Burden of proof on defendant on plea of justification for killing) in 17 *Am. L. Rev.* 892, 916. Included in *Horrigan & T. Cas. on Self Defe.* 910.
- **ex rel. Kellogg v. Schuyler**, 5 *Barb.* 166. Rev'd in 4 *N. Y.* 173. See *Ex parte Reed*. Decision in 4 *N. Y.* disting'd (Wrongful levy, as breach of official bond) in *Comstock v. Lucas*, 93 *Id.* 585. Reviewed with numerous authorities and shown to accord with the weight of authority,—in *Lammon v. Feusier*, 111 *U. S.* 17. Applied in *Gerber v. Ackley*, 37 *Wis.* 43; s. c., 19 *Am. L.* 751. See *Code Civ. Pro.* 1881, § 385, n.
- **ex rel. Sage v. Schuyler**, 17 *Hun*, 106. Rev'd in 79 *N. Y.* 189.
- **ex rel. Wasson v. Schuyler**, 51 *How. Pr.* 461. Modified in 69 *N. Y.* 242.
- **v. Seaman**, 5 *Den.* 409. Compare (Rejection of ballot with two names) *People ex rel. Hovey v. Ames*, 19 *How. Pr.* 551; *People v. Saxton*, 22 *N. Y.* 309. Applied (Inquiry into determination of election inspectors) in *People v. Pease*, 30 *Barb.* 597. Discussed in *Cooley on Const. Limit.* 5 ed. 765, n.
- **v. Security Life Ins., &c. Co.**, 78 *N. Y.* 114; s. c., more fully, 7 *Abb. N. C.* 198. Other proceedings in 23 *Hun*, 596, appeal from which was dismissed in 86 *N. Y.* 620; also in 23 *Hun*, 601. See also *People ex rel. Attorney-Gen. v. Security Life Ins. Co.*, 11 *Hun*, 96, appeal from which was dismissed in 71 *N. Y.* 222. See also 79 *Id.* 267. See *Matter of Franklin B'k.* Decision in 78 *N. Y.* disting'd with *Attorney-General v. Continental Life Ins. Co.*, 68 *Id.* 343; 53 *How. Pr.* 16; *Attorney-General v. Guardian Mut. Life Ins. Co.*, 17 *Id.* 272 (Advertisement of claims against corporation) in *Attorney-General v. Atlantic Mut. Ins. Co.*, 11 *Abb. N. C.* 139, 143. Disting'd and approved (Time of presentation of claims) in *Attorney-Genl. v. Continental Life Ins. Co.*, 88 *N. Y.* 77, 80. Disting'd (Violation by company of contract with policy-holder) in *Matter of Empire Mut. Life Ins. Co.*, 64 *How. Pr.* 51, 54. Explained (Effect of death of policy-holder upon valuation of policy) in *Attorney-General v. Continental Life Ins. Co.*, 64 *How. Pr.* 73, citing also *Attorney-General v. Guardian Mut. Life Ins. Co.*, 82 *N. Y.* 336. Explained in *Atty.-Genl. v. Guardian Mut. Life Ins. Co.*, *Id.* Questioned and not followed in *Atty.-Genl. v. N. Amer. Life Ins. Co.*, *Id.* 172, 187. Approved in *Clemmitt v. N. Y. Life Ins. Co.*, 76 *Va.* 355, 362; *Guy v. Globe Ins. Co.*, *Cir. Ct. (Va.)* 1880, 9 *Ins. L. J.* 467. Followed in *ReMe v. Columbia Fire Ins. Co.*, 76 *Mo.* 594, 604. Applied (Policy-holders not partners) in *Bewley v. Equitable Life Assur. Socy.*, 61 *How. Pr.* 344, 348. Disting'd (Contract by insurance company as affected by proceedings for its dissolution) in *People v. Globe Mut. Life Ins. Co.*, 91 *N. Y.* 174, 180, 184. Decision in 23 *Hun* followed with *Attorney-General v. North Am. Life Ins. Co.*, 91 *N. Y.* 57 (Allowance for counsel fees out of assets of insolvent insurance company) in *People v. Empire Mut. Life Ins. Co.*, *N. Y. Daily Reg.* Nov. 5 1883.
- **v. Seneca Common Pleas**, 2 *Wend.* 264. Disting'd (Delay as reason for refusing writ of mandamus) in *People ex rel. Gas Light Co. v. Common Council of Syracuse*, 78 *N. Y.* 56, 62.
- **v. Shall**, 9 *Cox.* 778. Reconciled (What instruments may be subjects of forgery)

- in *Arnold v. Cost*, 3 *Gill & J. (Md.)* 219; s. c.; 22 *Am. Dec.* 302, with note collating cases. Followed with *People v. Harrison*, 8 *Barb.* 560; *People v. Galloway*, 17 *Wend.* 540, in *Rembert v. State*, 53 *Ala.* 467; s. c., 25 *Am. R.* 639; *People v. Stearns*, 21 *Wend.* 413, and other cases being also relied on.
- *v. Shaw*, 1 *Park.* 327. Limited (Liability for assault with intent to kill) in *Slatterly v. People*, 58 *N. Y.* 354, 357.
- *v. —*, 63 *N. Y.* 36. Superseded (Necessity of presence of associates in Oyer and Terminer) by *Code Civ. Pro.* § 23.
- *v. Shay*, 10 *Abb. Pr.* 413; s. c., 18 *How. Pr.* 583; also as *Shay v. People*, 4 *Park.* 353. Aff'd in 22 *N. Y.* 317. Another decision in 4 *Park.* 344.
- *ex rel. McMullen v. Shepard*, 36 *N. Y.* 285. See *Sill v. Village of Corning*. Questioned (Constitutionality of laws creating "police districts") in *People v. Albertson*, 55 *N. Y.* 50, 64.
- *v. Shepherd*, 25 *N. Y.* 406. Followed (Mistrial not bar to new trial) in *People v. Reagle*, 60 *Barb.* 527, 544.
- *v. Sheriff of N. Y.*, 7 *Abb. Pr.* 96. Approved (Sufficiency of commitment for contempt) in *Davison's Case*, 13 *Id.* 129, 139.
- *ex rel. Wheeler v. Shorb*, 14 *Hun.* 112. See authorities reviewed (Sub-lease and assignment) in 16 *Am. L. Rev.* 30, 36.
- *v. Shorter*, 4 *Barb.* 460. Aff'd in 2 *N. Y.* 193. With decision in *Id.* compare (Liability of one that without sufficient cause does injury to prevent other injury) *Struve v. Droge*, 10 *Abb. N. C.* 142, 146.
- *ex rel. Mitchell v. Simpson*, 37 *Barb.* 432; s. c., 14 *Abb. Pr.* 457; 23 *How. Pr.* 481. Aff'd on insufficiency of affidavit, in 28 *N. Y.* 55.
- *v. Sheehan*, 49 *Barb.* 217. Discussed (Impeaching credibility of witness) in 1 *Best on Ev.* § 263, n. a, Wood's ed.
- *v. Smith*, 3 *Cai.* 221; s. c., 2 *N. Y. Com. L. Law. ed.* 616, with brief note.
- *v. —*, 5 *Cov.* 258. See *Loomis v. Edgerton*. Limited with *Loomis v. Edgerton*, 19 *Wend.* 419 (Liability for malicious mischief) in *State v. Manuel*, 72 *N. C.* 201; s. c., 21 *Am. R.* 455. See cases collected in 6 *Am. L. Reg. N. S.* 332. Quoted and commented on in 1 *Bennett & H. Cas. on Crim. L.* 17.
- *v. —*, 3 *How. Pr.* 226. See *Bradish v. Schenck*.
- *v. —*, 51 *Barb.* 360. See (Dismissal of complaint) *Code Civ. Pro.* 1881, § 1209, n.
- *v. —*, 69 *N. Y.* 175. Compare (Granting liquor license to one not hotel-keeper) *Mundy v. Excise Comm'rs of N. Y.*, 9 *Abb. N. C.* 117, 121.
- *ex rel. Carroll v. Smith*, 17 *Hun.* 286. Reported under *People ex rel. Dilks v. Smith*. Aff'd, it seems, in 77 *N. Y.* 620, but without opinion. See *People ex rel. Walsh v. Smith, Id.* 347.
- *ex rel. Dilks v. Smith*, 17 *Hun.* 286. Aff'd, it seems, in 77 *N. Y.* 620, but without opinion. See *Same ex rel. Walsh v. Smith, Id.* 347.
- *ex rel. Green v. Smith*, 55 *N. Y.* 185. Subsequent proceedings in 18 *Hun.* 227. See *People ex rel. Averill v. Adirondack Co.*; *People ex rel. Rogers v. Spencer*. Decision in 55 *N. Y.* applied (What petition to bond town must show to give county judge jurisdiction) in *Whiting v. Town of Potter*, 18 *Blatchf. C. Ct.* 165, 176. Followed in *Cowdry v. Town of Canadea, U. S. Cir. Ct. N. D. N. Y.* 16 *Reporter*, 162.
- *ex rel. Haines v. Smith*, 3 *Lans.* 291. Aff'd in 45 *N. Y.* 772. See *Town of Springport v. Teutonia Sav'g B'k.* Decision in 45 *N. Y.* followed (Power of court on certiorari) in *People ex rel. Saunders v. Court of Special Sessions*, 5 *Sup'm. Ct. (T. & C.)* 260. Applied in *People ex rel. Miller v. Board of Police Comm'rs*, 52 *How. Pr.* 290, 297. Applied (Insufficiency of signature by proxy to petition, in town bonding proceedings) in *People ex rel. Allen v. Knowles*, 47 *N. Y.* 418. Compared (When act authorized by statute may be performed by agent) in *Lowenstein v. Flauraud*, 82 *Id.* 494, 498. Approved and applied in *Rapp v. City, &c. R. R. Co., Hamilton Co. Ohio, Ct. Com. Pl.* 12 *Weekly L. Bul.* 120. Compare *N. Y. Surface R. R. Act*, L. 1884, c. 252, § 3.
- *ex rel. Herrick v. Smith*, 21 *N. Y.* 595. Disting'd (Power of legislature as to exercise of right of eminent domain) in *Matter of Deansville Cemetery Assoc.*, 66 *N. Y.* 572. Relied on with numerous other cases in *Eastern R. R. Co. v. Boston & Maine R. R.*, 111 *Mass.* 125; s. c., 15 *Am. R.* 13, 19. Quoted in *Cooley on Const. Limit.* 5 ed, 669, n. 1.
- *ex rel. Walsh v. Smith*, 17 *Hun.* 286. Aff'd in 77 *N. Y.* 347.
- *v. Snyder*, 2 *Park.* 23. Explained (Dwelling house within meaning of law of burglary) in 3 *Greenl. on Ev.* 14 ed, § 80, n. b.
- *v. —*, 51 *Barb.* 589. Aff'd in 41 *N. Y.* 397. Decision in *Id.* followed (Validity of title to the Pulteney estate) in *Howard v. Mott*, 5 *Sup'm. Ct. (T. & C.)* 89. Limited (Sufficiency of denial) in *Smith v. Gratz*, 59 *How. Pr.* 274. Discussed (Outstanding Indian title) in *Sedgw. & W. on Tr. of Tit. to Land*, § 194.
- *v. —*, 2 *Paige*, 326. Disting'd (Fine as indemnity, on proceedings to punish for contempt) in *Marshall v. Hitchcock*, 3 *Redf.* 464.
- *ex rel. Backus v. Spalding*, 9 *Paige*, 607. Subsequent decision in 10 *Id.* 284; which was aff'd in 7 *Hill*, 301, and that aff'd in 4 *How. (U. S.)* 21. See *Watson v. Nelson*. Decisions in 10 *Paige*; 7 *Hill*; 4 *How. (U. S.)* examined (Punishment for contempt) in *People v. Compton*, 1 *Duer*, 523. Decision in 10 *Paige* compared in



- Matter of Watson, 3 *Lans.* 413. Applied (Inquiry into jurisdiction, in *habeas corpus* proceedings) in *People ex rel. Tweed v. Liscomb*, 3 *Hun.* 779. Applied (Effect of bankrupt discharge on fine for contempt) in *Macy v. Jordan*, 2 *Den.* 573.
- **ex rel. Cox v. Special Sessions**, 7 *Hun.* 214. Followed (Power of board of health to pass ordinances) in *Polinsky v. People*, 11 *Id.* 390; which was aff'd in 73 *N. Y.* 65, which see.
- **ex rel. Lynch v. Special Sessions**, 12 *Hun.* 65. Compare (Reference to ordinance in proceeding for its violation) *Code Civ. Pro.* § 1897.
- **ex rel. Murray v. Special Sessions**, 13 *Hun.* 533. Rev'd in 74 *N. Y.* 406. See *People ex rel. Stetzer v. Rawson*. Decision in 74 *N. Y.* followed with *People v. Putnam*, 3 *Park.* 386, 388; *People v. McCarthy*, 45 *How. Pr.* 97 (Right to trial by jury, in case of minor offenses) in *People v. Burleigh*, 1 *N. Y. Crim. R.* 522. Applied in *People ex rel. Comaford v. Dutcher*, 88 *N. Y.* 240, 244. Followed (*Petit larceny*, as misdemeanor) in *People v. Finn*, 13 *Weekly Dig.* 463.
- **ex rel. Keiley v. Speir**, 12 *Hun.* 70; s. c., 54 *How. Pr.* 73; and less fully, 2 *Abb. N. C.* 466. See *Keiley v. Dusenbury*.
- **ex rel. Rogers v. Spencer**, 55 *N. Y.* 1. See *Ferguson v. Crawford*; *People ex rel. Averill v. Adirondack Co.* Explained (Sufficiency of petition to issue bonds in aid of railroad) in *Calhoun v. Delhi & Middletown R. R. Co.*, 28 *Hun.* 379, 390. Applied in *Whiting v. Town of Potter*, 18 *Blatchf. C. Ct.* 165, 176. Repudiated with *People ex rel. Greene v. Smith*, 55 *N. Y.* 135; *Town of Wellsboro v. N. Y. & Canada R. R. Co.*, 76 *Id.* 182; *Metzger v. Attica & A. R. R. Co.*, 79 *Id.* 171, in *Rich v. Town of Mentz*, *U. S. Cir. Ct. N. D. N. Y.* 18 *Fed. Rep.* 53.
- **v. Spooner**, 1 *Den.* 343; s. c., 43 *Am. Dec.* 672, with note, wherein are collected citations. So far as in conflict, overruled (Comparison of signatures) in *Miles v. Loomis*, 75 *N. Y.* 288, 293. See to the contrary cases cited in *Abb. Tr. Ev.* 397, n. 1.
- **v. Starkweather**, 40 *Super. Ct. (J. & S.)* 453. Further proceeding in 42 *Id.* 325.
- **v. Stearns**, 21 *Wend.* 409. Further decision in 23 *Id.* 634. See *People v. Krummer*; *People v. Shall*. Decision in 23 *Wend.* applied (Effect of indictment charging intent to defraud corporation and others) in *People v. Noakes*, 5 *Park.* 298. Decision in 21 *Wend.* approved (Sufficiency of allegations as to instruments in indictment for forgery) in *Carberry v. State*, 11 *Ohio St.* 415.
- **ex rel. Buffalo Mut. Gas Light Co. v. Steele**, 1 *Buff. Super. Ct. (Sheldon)* 345. Aff'd in part in 56 *N. Y.* 664.
- **ex rel. Griffin v. Steele**, 6 *N. Y. Leg. Obs.* 54; s. c., more fully, 2 *Barb.* 397, and still more fully, 1 *Edm. Sel. Cas.* 505, with opinion of EDMONDS, J. Subsequent proceedings in 2 *Barb.* 554; s. c., 1 *Edm. Sel. Cas.* 568. See *Field v. Field*; *McCullough v. Mayor of Brooklyn*. Decision in 2 *Barb.* 397 compared (Conclusive effect of church authority) in 10 *Am. L. Reg. N. S.* 313. Decision in 2 *Barb.* 554 followed (Writ of error not *supersedeas* of peremptory mandamus) in *Tyler v. Hammersley*, 44 *Conn.* 393; s. c., 26 *Am. R.* 471, 478.
- **v. Stephens**, 52 *N. Y.* 306. Further proceedings in 51 *How. Pr.* 227, and in 1d. 235; which latter was approved in still further decision in 71 *N. Y.* 527. Corrected report of latter decision in 72 *Id.* 621. Decision in 71 *Id.* followed (Contracts with State must be judged by same rules as those of individuals) in *People v. Denison*, 19 *Hun.* 137, 150. See also *People v. Denison*, 8 *Abb. N. C.* 128, 142.
- **ex rel. Bradley v. Stephens**, 2 *Abb. Pr. N. S.* 348. Statement in 41 *N. Y.* 619, that this judgment was rev'd in Ct. of App. is erroneous, as decision in Ct. of App. was in *action* to determine conflicting claims to office.
- **v. Stetson**, 4 *Barb.* 151. See *McCord v. People*. Followed (Necessity of averment as to value, in indictment for obtaining property by false pretences) in *People v. Higbie*, 66 *Barb.* 158. Reviewed and distinguish'd (Liability of one that obtains property by means of false representations as to power to arrest) in *Perkins v. State*, 67 *Ind.* 270; s. c., 33 *Am. R.* 89, with note collating cases.
- **v. Steuben Common Pl.**, 5 *Wend.* 103. Applied with *Jackson v. Brown*, 4 *Cow.* 550 (When defective writs, &c. may be amended) in *Cartwright v. Chabert*, 3 *Tex.* 261; s. c., 49 *Am. Dec.* 742, 744.
- **v. Stevens**, 13 *Wend.* 341. Followed (Penalty prescribed by prohibitory statute exclusive) in *Brown v. Buffalo & State Line R. R. Co.*, 22 *N. Y.* 191, 198. Followed (Not punishment twice for same offense, to inflict a penalty and subject to criminal prosecution) in *In re Seszynsky*, 16 *Blatchf. C. Ct.* 9, 16. Followed with *Blatchley v. Moser*, 15 *Wend.* 215, in *Commonwealth v. Avery*, 14 *Bush (Ky.)* 625; s. c., 29 *Am. R.* 429, 431.
- **ex rel. Hodgkinson v. Stevens**, 5 *Hill*, 616; s. c., 16 *N. Y. Cum. L. Law. ed.* 249, with brief note of other cases. See *Fish v. Weatherwax*. Limited (Rights of officer *de facto*) in *People ex rel. Steinert v. Anthony*, 6 *Hun.* 142, 147. Approved (Proceedings to obtain books and papers) in *Matter of Whiting*, 2 *Barb.* 513, 520; *People v. Allen*, 42 *Id.* 205; *Welch v. Cook*, 7 *How. Pr.* 288. Applied in *Devlin's Case*, 5 *Abb. Pr.* 306; *Matter of Baker*, 11 *How. Pr.* 430; *Matter of Davis*, 19 *Id.* 327. Applied (Official return, when not to be varied by subsequent statement of officer) in *Matter of N. Y., Lackawanna, &c. R'y Co.*, 29 *Hun.* 1. Followed (Remedy to try title to office)

- in *Matter of Gardner*, 68 *N. Y.* 472. Followed with *People ex rel. Lynch v. Mayor, &c. of N. Y.*, 25 *Wend.* 685; and *People ex rel. Moulton v. Mayor, &c. of N. Y.*, 10 *Id.* 396, disting'd in *People ex rel. Smith v. Olds*, 3 *Cal.* 167; s. c., 58 *Am. Dec.* 398. Cited with approval in *State v. Sherwood*, 15 *Minn.* 221; s. c., 2 *Am. R.* 116.
- *ex rel. Vanderbilt v. Stilwell*, 19 *N. Y.* 531. Applied and disting'd in part (Delay as ground for refusing certiorari) in *People ex rel. Waldman v. Police Comm'rs of N. Y.*, 82 *Id.* 506, 508. Disting'd (Appeal from order quashing certiorari) in *People ex rel. Haskin v. Supervisors of Westchester*, 8 *Abb. Pr. N. S.* 281. Applied in *People ex rel. Davis v. Hill*, 53 *N. Y.* 547, 549.
- *v. Stocking*, 50 *Barb.* 573. Reviewed with other cases (Effect of audit by supervisors) in *Brennan v. Mayor, &c. of N. Y.*, 8 *Daly*, 426, 430. Disting'd in *People v. Supervisors of Montgomery Co.*, 67 *N. Y.* 109, 114.
- *v. Stokes*, 53 *N. Y.* 164; s. c., 13 *Am. R.* 492. Followed (Declarations when original evidence) in *Shaw v. People*, 3 *Hun.* 272. Collated with other cases (Evidence of character of deceased, in homicide cases) in 11 *Am. R.* 776, n. Followed (Burden of proof in criminal cases) in *State v. Wingo*, 66 *Mo.* 181; s. c., 27 *Am. R.* 329.
- *v. Stone*, 5 *Wend.* 40. See *Same v. Dutchess Oyer and Terminer*. Overruled (Right to grant new trial in capital cases) in *People v. Comstock*, 8 *Wend.* 549; *Appo v. People*, 20 *N. Y.* 531, 548. See *People v. Dutchess Co.*, 2 *Barb.* 282; *U. S. v. Gibert*, 2 *Sum.* 57. Commented on in 2 *Bennett & H. Cas. on Crim. L.* 493. Questioned (Exclusiveness of jurisdiction of Oyer and Terminer) in *Jones v. People*, 79 *N. Y.* 45, 50.
- *v. Stout*, 3 *Park.* 670. Subsequent decision in 4 *Id.* 71. See *Johnson v. Johnson*. Decision in 4 *Park.* cited as authority (Admissibility of evidence showing prisoner's guilt of other offense) in *Templeton v. People*, 27 *Mich.* 501.
- *ex rel. Downing v. Stout*, 23 *Barb.* 349. Disting'd (Judicial nature of action of supervisors) in *People v. Supervisors of Montgomery*, 67 *N. Y.* 109, 114. Disting'd (Validity of claim against municipal corporation) in *Jones v. Mayor, &c. of N. Y.*, 7 *Robt.* 209, 217.
- *ex rel. Platt v. Stout*, 19 *How. Pr.* 171; s. c., more fully, 11 *Abb. Pr.* 17.
- *ex rel. Mosher v. Stowell*, 9 *Abb. N. C.* 456. Compare (Caucusing by members of official board) *McCortle v. Bates*, 29 *Ohio St.* 419.
- *ex rel. Becar v. Struller*, 16 *Hun.* 234. Compare (Action in name of people on bond of executor, &c.) *Code Civ. Pro.* § 2607.
- *ex rel. Stryker v. Stryker*, 24 *Barb.* 649. Opposed (Requisites of schedule to support valid discharge in insolvency) in *Merry v. Sweet*, 43 *Id.* 476. Applied in *Schaeffer v. Soule*, 23 *Hun.* 583, 585.
- *v. Sturdevant*, 23 *Wend.* 418. Followed (Construction of lottery law) in *Charles v. People*, 1 *N. Y.* 180, 185.
- *v. Sturtevant*, 3 *Duer.* 616. Examined and criticised at length (Costs of appeal in special proceedings) in *People v. Smith*, 13 *Hun.* 227.
- *v. —*, 9 *N. Y.* 263; s. c., 59 *Am. Dec.* 536, with note. See *Mitchell's Case*. Followed (Effect of decision of court having jurisdiction) in *Pinkney v. Hagerman*, 4 *Lans.* 374, 376. Applied in *People ex rel. Brooklyn School v. Kearney*, 21 *How. Pr.* 75; *Fisher v. Hepburn*, 48 *N. Y.* 53. Explained in *Butler v. Miles*, 35 *How. Pr.* 329, 332. Cited in *Tyler v. Hammersley*, 44 *Conn.* 393; s. c., 26 *Am. R.* 471, 477, as clearly stating the principle. Disting'd (Proceedings of common council) in *Wetmore v. Story*, 3 *Abb. Pr.* 283. Approved in *Milhau v. Sharp*, 27 *N. Y.* 620. Disting'd with *Davis v. Mayor, &c. of N. Y.*, 14 *N. Y.* 506, in *Des Moines Gas Co. v. City of Des Moines*, 44 *Iowa*, 505; s. c., 24 *Am. R.* 756, 760. Applied (Jurisdiction of superior city court) in *International B'k v. Bradley*, 19 *N. Y.* 251. Examined (Questions as to jurisdiction, on *habeas corpus* proceeding) and compared with *People ex rel. Hackley v. Kelly*, 24 *N. Y.* 74; *People ex rel. Tweed v. Liscomb*, 60 *Id.* 559, in 19 *Cent. L. J.* 102.
- *ex rel. Grissler v. Stuyvesant*, 1 *Hun.* 102; s. c., 3 *Sup'm. Ct. (T. & C.)* 179. Aff'd as *Same v. Dudley*, 58 *N. Y.* 323.
- *ex rel. Gillies v. Suffern*, 6 *Herv.* 304. Aff'd in 68 *N. Y.* 321. See *Merritt v. Village of Portchester*.
- *v. Sullivan*, 1 *Park.* 347. Explained (Stay of judgment) in *People v. O'Reilly*, 9 *Abb. N. C.* 77, 91.
- *v. —*, 7 *N. Y.* 396. Included with note (Killing in self-defense) in *Horrigan & T. Cas. on Self Defe.* 65.
- *ex rel. Hadley v. Supervisors of Albany*, 28 *How. Pr.* 22. Approved (Claim against county, of attorney assigned to defend prisoner) in *People ex rel. Ransom v. Supervisors of Niagara*, 78 *N. Y.* 622. Cited at length in note to *Wayne Co. v. Waller*, 90 *Penn. St.* 99; s. c., 35 *Am. R.* 636.
- *ex rel. Hilton v. Supervisors of Albany*, 12 *Wend.* 257. Disting'd (Compensation for public services) in *Crofut v. Brandt*, 5 *Daly*, 124, 126; which was aff'd in 58 *N. Y.* 106, 113, which see. Disting'd in *People ex rel. Hadley v. Supervisors of Albany*, 28 *How. Pr.* 25; *Supervisors of Richmond v. Ellis*, 59 *N. Y.* 620, 622; *People ex rel. Brown v. Green*, 2 *Sup'm. Ct. (T. & C.)* 24.
- *ex rel. Wilson v. Supervisors of Albany*, 12 *Johns.* 414. See *Hull v. Supervisors of Oncida*. Approved with *Gilbert v. Judges of Niagara C. P.*, 3 *Cow.* 59, in

People *ex rel.* Bristol *v.* Pearson, 2 *Scam. (Ill.)* 189; s. c., 33 *Am. Dec.* 445.

— *ex rel.* Church *v.* Supervisors of Allegany, 15 *Wend.* 198. Followed (Place of application for common law certiorari) in People *ex rel.* Kilmer *v.* McDouald, 2 *Hun.* 70, 73. Reviewed with other cases (Conclusiveness of action of supervisors) in Brennan *v.* Mayor, &c. of N. Y., 8 *Daly*, 426, 429. Applied (Certiorari to review taxation) in Wilson *v.* Mayor, &c. of N. Y., 1 *Abb. Pr.* 18; Case of Fifty-first Street, 3 *Id.* 232; People *v.* Supervisors of Queens, 1 *Hill*, 200; People *v.* Supervisors of Livingston, 34 *N. Y.* 518. Explained (Certiorari, when allowed) in Conover's Case, 5 *Abb. Pr.* 189. Applied in People *v.* City of Rochester, 21 *Barb.* 665; People *v.* Stilwell, 19 *N. Y.* 533. Followed with People *v.* Mayor, &c. of N. Y., 2 *Hill*, 9, in Keys *v.* Marin County, 42 *Cal.* 255; Spring Valley Water Works *v.* Bryant, 52 *Id.* 140.

— *ex rel.* Hotchkiss *v.* Supervisors of Broome, 65 *N. Y.* 222. Examined with other cases (Conclusiveness of audit by supervisors) in Brennan *v.* Mayor, &c. of N. Y., 8 *Daly*, 426, 430. Compare Bigler *v.* Mayor, &c. of N. Y., 5 *Abb. N. C.* 51.

— *ex rel.* Lee *v.* Supervisors of Chautauqua, 43 *N. Y.* 10. Applied (What is local bill) in Lewenthal *v.* Mayor, &c. of N. Y., 61 *Barb.* 521; Kerrigan *v.* Force, 9 *Hun.* 188; which was aff'd in 68 *N. Y.* 383, which see. Cited at length in note to Pierce *v.* Kimball, 9 *Greenl. (Me.)* 54; s. c., 23 *Am. Dec.* 537.

— *ex rel.* Mygatt *v.* Supervisors of Chenango, 11 *N. Y.* 563. Further decision as Mygatt *v.* Washburn, 15 *Id.* 316. Decision in 11 *Id.* applied (Jurisdiction of assessors) in Wade *v.* Matheson, 4 *Lans.* 162; Palmer *v.* Lawrence, 6 *Id.* 292. Disting'd (Personal liability of assessor) in Barhyte *v.* Shepherd, 35 *N. Y.* 244. Applied (Execution of authority delegated to board) in Comm'rs of Pilots *v.* Vanderbilt, 2 *Robt.* 380. Disting'd (Liability to refund money obtained by illegal tax) in Newman *v.* Supervisors of Livingston, 45 *N. Y.* 683. Explained (Mandamus to enforce claim to public moneys) in People *v.* Mead, 24 *Id.* 114, 120. Both decisions disting'd with Clark *v.* Norton, 49 *Id.* 243; Westfall *v.* Preston, *Id.* 349 (Assessment, when complete) in McMahon *v.* Beekman, 65 *How. Pr.* 427.

— *ex rel.* Scott *v.* Supervisors of Chenango, 8 *N. Y.* 317. See Thomas *v.* Dakin. Followed (Effect of act passed or framed otherwise than the constitution directs) in People *v.* Supervisors of Orange, 27 *Barb.* 575, 584. Commented on in Cooley on *Const. Limit.* 5 ed 35. Followed and approved with People *v.* Devlin, 33 *N. Y.* 269 (Right of courts to go behind authentication of statute) in State *v.* Swift, 10 *Nev.* 176; s. c., 21 *Am. R.* 721, 726, any dicta to the contrary in De Bow *v.* People, 1 *Den.* 14;

Purdy *v.* People, 4 *Hill*, 384, being referred to as overruled.

— *v.* Supervisors of Columbia, 10 *Wend.* 363; s. c., 11 *N. Y. Com. L. Law. ed.* 887, with brief note. Approved (Mandamus against supervisors, to compel payment of money) in Boyce *v.* Supervisors of Cayuga, 20 *Barb.* 296. Explained in Clark *v.* Clark, 25 *Id.* 75. Applied to common council, in People *ex rel.* Green *v.* Common Council of Spracuse, 20 *How. Pr.* 502. To mayor, in Wallack *v.* Mayor, &c. of N. Y., 16 *Abb. N. S.* 223. To town railroad commissioners, in People *v.* Mead, 24 *N. Y.* 122. Explained (Application of statute of limitation to causes of action arising before R. S.) in Fairbanks *v.* Wood, 17 *Wend.* 329.

— *ex rel.* Holley *v.* Supervisors of Columbia, 4 *Cow.* 146. Disting'd (Fees of court attendants) in Day *v.* Mayor, &c. of N. Y., 66 *N. Y.* 595.

— *ex rel.* Van Tassel *v.* Supervisors of Columbia, 8 *Hun.* 275. Rev'd in 67 *N. Y.* 330, on the ground that the services in question, after commitment, are still a county charge.

— *ex rel.* Kinney *v.* Supervisors of Cortland, 58 *Barb.* 139. Disting'd (Compensation for advertising) in MacArthur *v.* City of Troy, 24 *Hun.* 55, 57.

— *v.* Supervisors of Delaware, 9 *Abb. Pr.* *N. S.* 408. Modified in 45 *N. Y.* 196. Decision in *Id.* applied (Effect of allowance, &c., of claim by supervisors) in People *ex rel.* Martin *v.* Earle, 16 *Abb. Pr. N. S.* 70. Applied (Relief as justified by notice of motion) in Thompson *v.* Erie R. R. Co., 45 *N. Y.* 476. Applied (Relief in mandamus proceedings, as justified by order to show cause) in People *ex rel.* Henry *v.* Nostrand, 46 *Id.* 377.

— *ex rel.* Youmans *v.* Supervisors of Delaware, 47 *How. Pr.* 24. Rev'd in 2 *Hun.* 102; s. c., 4 *Sup'm. Ct. (T. & C.)* 336; which was rev'd in 60 *N. Y.* 381.

— *v.* Supervisors of Dutchess, 1 *Hill*, 50. Disting'd (Variance between peremptory and alternative mandamus) in People *ex rel.* Green *v.* Dutchess & Columbia R. R. Co., 58 *N. Y.* 152, 161. Disting'd (Certainty in mandatory part of writ of mandamus) in People *ex rel.* Henry *v.* Nostrand, 46 *Id.* 375, 379.

— *ex rel.* Witherbee *v.* Supervisors of Essex, 70 *N. Y.* 228. Further decision in 85 *Id.* 612; fuller mem. s. c., 12 *Weekly Dig.* 343.

— *v.* Supervisors of Fulton, 14 *Barb.* 52. Disapproved (Action against supervisors for county charge) in Boyce *v.* Supervisors of Cayuga, 20 *Id.* 294; Chase *v.* County of Saratoga, 33 *Id.* 603, 608.

— *v.* Supervisors of Genesee, 7 *Hill*, 171. Disting'd (County liability for support of insane) in Supervisors of Onondaga *v.* Morgan, 2 *Keyes*, 277.

— *ex rel.* Bailey *v.* Supervisors of Greene, 12 *Barb.* 217. Disting'd (Right to man-

- damus) in *People v. Contracting Board*, 46 *Id.* 261. Disapproved (Mandamus to compel canvass of election returns) in *State v. Gibbs*, 13 *Fla.* 55; s. c., 7 *Am. R.* 235. Collated with other cases in *Lewis v. Comm'r of Marshall County*, 16 *Kans.* 102; s. c., 22 *Am. R.* 275. See (Writ of mandamus, how returnable) *Code Civ. Pro.* 1881, § 2072, n.
- *ex rel. Mott v. Supervisors of Greene*, 5 *Hun.* 650. Modified in 64 *N. Y.* 600. See (Peremptory mandamus, when to be granted in first instance) *Code Civ. Pro.* 1881, § 2070, n.
- *ex rel. Thompson v. Supervisors of Hamilton*, 9 *Hun.* 60. Rev'd in 73 *N. Y.* 604.
- *v. Supervisors of Herkimer*, 56 *Barb.* 452. Applied (Statutory provisions, when mandatory on supervisors) in *Lee v. Supervisors of Jefferson*, 62 *How. Pr.* 201, 209.
- *ex rel. Del Vecchio v. Supervisors of Kings*, 23 *How. Pr.* 89. Aff'd in 3 *Keyes*, 630; s. c., 3 *Abb. Ct. App. Dec.* 560.
- *ex rel. Hopkins v. Supervisors of Kings*, 52 *N. Y.* 556. Explained (Delegation of power to levy tax) in *Townsend v. Mayor, &c. of N. Y.*, 16 *Hun.* 362.
- *ex rel. Hoyt v. Supervisors of Kings*, 16 *Wend.* 520; Disting'd (Auditing board or officer, as bound by previous decision of authorized tribunal) in *Matter of Murphy*, 24 *Hun.* 592, 595; which aff'd 60 *How. Pr.* 258, which see.
- *ex rel. Patchen v. Supervisors of Kings*, 7 *Wend.* 530. Overruled (Power of supervisors to examine assessment and reduce damages) in *People ex rel. Hoyt v. Supervisors of Kings*, 16 *Id.* 520.
- *ex rel. Baldwin v. Supervisors of Livingston*, 26 *Barb.* 118. Disting'd (Conclusiveness of action of supervisors) in *People v. Supervisors of Montgomery*, 67 *N. Y.* 109, 114; *People v. Supervisors of N. Y.*, 21 *How. Pr.* 328; *People v. Supervisors of Cayuga*, 9 *Hun.* 442.
- *ex rel. Conway v. Supervisors of Livingston*, 6 *Hun.* 572. Rev'd in 68 *N. Y.* 114.
- *ex rel. Dickinson v. Supervisors of Livingston*, 43 *Barb.* 232. Aff'd in 34 *N. Y.* 516. Decision in 43 *Barb.* followed (Proceedings of supervisors, when reviewable by certiorari) in *People ex rel. Kimball v. Supervisors of St. Lawrence*, 25 *Hun.* 131, 135. Decision in 34 *N. Y.* followed, as to proceedings here involved respecting paying bounties, &c.—in *Hall v. Lauderdale*, 46 *Id.* 70.
- *ex rel. Oneida Valley Nat. B'k v. Supervisors of Madison*, 51 *N. Y.* 542. Disting'd (Supervisor's action, when reviewable by certiorari) in *People ex rel. Kimball v. Supervisors of St. Lawrence*, 25 *Hun.* 131, 135. Compared in *People ex rel. Schuylerville & Upper Hudson R. R. Co. v. Betts*, 55 *N. Y.* 600, 602.
- *v. Supervisors of N. Y.*, 16 *N. Y.* 424. Collated with other cases (Declaratory legislation) in 8 *Am. R.* 156, n.
- *ex rel. Bank of N. Y. v. Supervisors of N. Y.*, 37 *N. Y.* 21; s. c., with opinion of GROVER, J., in 4 *Transc. App.* 136. Rev'd in *Bank v. Supervisors*, 7 *Wall.* 26. Decision in 37 *N. Y.* cited, and compared with Federal decisions (State tax on Federal operations) in 1 *Kent Com.* 429, n. 1 Holmes' ed.
- *ex rel. Comm'r of Records v. Supervisors of N. Y.*, 11 *Abb. Pr.* 114. Aff'd (Failure to raise money by tax) in *People ex rel. Wetmore v. Supervisors of N. Y.*, 3 *Abb. Ct. App. Dec.* 566. Decision in 11 *Abb. Pr.* disting'd (Power of legislature to compel payment of claim) in *People ex rel. Baldwin v. Haws*, 15 *Id.* 119. Applied (Mandamus to compel payment) in *People ex rel. Raymond v. Connolly*, 4 *Abb. Pr. N. S.* 377.
- *ex rel. Hall v. Supervisors of N. Y.*, 18 *Abb. Pr.* 8. Rev'd in 32 *N. Y.* 473. See *Brady v. Supervisors of N. Y.* Decision in 32 *N. Y.* disting'd (Mandamus, when allowed) in *People ex rel. Frost v. Fay*, 3 *Lans.* 402, a case of an agreement.
- *ex rel. Hasbrouck v. Supervisors of N. Y.*, 21 *How. Pr.* 322. Aff'd in 22 *Id.* 71.
- *ex rel. McSpedon v. Supervisors of N. Y.*, 10 *Abb. Pr.* 233; s. c., less fully, 18 *How. Pr.* 152. Aff'd, but without opinion, in 21 *Id.* 288. Further decision in 11 *Abb. Pr.* 114.
- *ex rel. Mut. Life Ins. Co. v. Supervisors of N. Y.*, 20 *Barb.* 81. Aff'd in 16 *N. Y.* 424.
- *ex rel. Phoenix v. Supervisors of N. Y.*, 1 *Hill.* 362. Applied (Extra compensation to salaried officer) in *Cowan v. Mayor, &c. of N. Y.*, 3 *Hun.* 634.
- *ex rel. City of Lockport v. Supervisors of Niagara*, 50 *How. Pr.* 353. Compare (Costs in mandamus proceedings) *Code Civ. Pro.* § 2086.
- *ex rel. McMaster v. Supervisors of Niagara*, 4 *Hill.* 20. Aff'd in 7 *Id.* 504. See (Taxation of corporations) as to effect of amendment of 1853,—*Am. Trans. Co. v. City of Buffalo*, 20 *N. Y.* 388, 393, n.; 23 *Barb.* 272.
- *ex rel. Robison v. Supervisors of Ontario*, 17 *Hun.* 501. Rev'd in 85 *N. Y.* 323.
- *ex rel. Burrows v. Supervisors of Orange*, 27 *Barb.* 575. Aff'd in 17 *N. Y.* 235. Decision in *Id.* questioned (Constitutional provisions, when directory) in *People v. Lawrence*, 36 *Barb.* 185. Disting'd (Constitutionality of law imposing tax) in *People v. Moring*, 47 *Id.* 644. Applied to case of local bill in dissenting opinion of HUNT, J., in *Baldwin v. Mayor, &c. of N. Y.* 2 *Keyes*, 408. Quoted in *Cooley on Const. Limit.* 5 ed. 221.
- *ex rel. Scott v. Supervisors of Orange*, 20 *Hun.* 196. Aff'd in 85 *N. Y.* 641, but without opinion.
- *ex rel. Central Bank v. Supervisors*

- of Otsego, 53 *Barb.* 564. Aff'd as *People ex rel.* Otsego Co. Bank v. Supervisors, 51 *N. Y.* 401. Decision in *Id.* explained (Discretion of supervisors as to allowance of claim) in *People ex rel. Benedict v. Supervisors of Oneida*, 24 *Hun.* 413, 420. Applied in *Lee v. Supervisors of Jefferson*, 62 *Hov. Pr.* 201, 209; *People ex rel. Saunders v. Supervisors of Erie*, 1 *Sheld.* 520; *People ex rel. Witherbee v. Supervisors of Essex*, 70 *N. Y.* 235.
- *ex rel. Onderdonk v. Supervisors of Queens*, 1 *Hill*, 195. Reviewed with other cases (Conclusiveness of action of supervisors) in *Brennan v. Mayor, &c. of N. Y.*, 8 *Daly*, 426, 429; *Adrian v. Supervisors of N. Y.*, 12 *Hov. Pr.* 228. Explained (Mandamus as remedy) in *People ex rel. Debenetti v. Clerk N. Y. Marine Ct.*, 3 *Abb. Pr.* 321. Followed (Certiorari as remedy) in *People ex rel. Corwin v. Walter*, 68 *N. Y.* 410. Applied (Writ of prohibition, to whom directed) in *Norton v. Dowling*, 46 *Hov. Pr.* 9. Explained in *People ex rel. Wheeler v. Cooper*, 57 *Id.* 430; in dissenting opinion in *Quimbo Appo v. People*, 20 *N. Y.* 557. Quoted in *High on Extr. Rem.* 2 ed. § 782, n. 1.
- *ex rel. Weeks v. Supervisors of Queens*, 18 *Hun.* 4. Modified in 82 *N. Y.* 275.
- *ex rel. Aspinwall v. Supervisors of Richmond*, 20 *N. Y.* 252. Further decision in 28 *Id.* 112. Decision in *Id.* distinguishing (Damages recoverable against supervisors) in *Clark v. Miller*, 54 *Id.* 528, 535.
- *ex rel. Commissioners of Emigration v. Supervisors of Richmond*, 21 *Hov. Pr.* 335. Aff'd in 22 *Id.* 275.
- *ex rel. Sherman v. Supervisors of St. Lawrence*, 30 *Hov. Pr.* 173. Said to be superseded by *L. 1868, c. 565* (County liability for expense of autopsies, &c.) in *Doremus v. Mayor, &c. of N. Y.*, 6 *Daly*, 121, 128.
- *ex rel. Thompson v. Supervisors of Schenectady*, 35 *Barb.* 408. Disting'd and questioned (Reconsideration and reversal of action of supervisors) in *People ex rel. Hotchkiss v. Supervisors of Broome*, 65 *N. Y.* 227. Doubted in *People v. Stocking*, 50 *Barb.* 581. See also *Brennan v. Mayor, &c. of N. Y.*, 8 *Daly*, 426, 430; *Bigler v. Mayor, &c. of N. Y.*, 5 *Abb. N. C.* 51, and *Id.* n.
- *ex rel. Cagger v. Supervisors of Schuyler*, 2 *Abb. Pr. N. S.* 78. Followed (Place of application for mandamus) in *Mason v. Willers*, 7 *Hun.* 23. See *Code Civ. Pro.* 1881, § 2068, n.
- *ex rel. Dunkirk, W. & P. R. R. Co. v. Supervisors of Stockton*. Cited as *Same v. Batcheller*, 53 *N. Y.* 128; s. c., 13 *Am. R.* 480.
- *ex rel. Waller v. Supervisors of Sullivan*, 56 *N. Y.* 240. See (Proceedings after issue, in mandamus) *Code Civ. Pro.* 1881, § 2082, n.
- *ex rel. Hermance v. Supervisors of Ulster*, 10 *Hun.* 545. Aff'd as *Hermance v. Same*, in 71 *N. Y.* 481.
- *ex rel. Lefever v. Supervisors of Ulster*, 32 *Barb.* 473. Rev'd on the merits, in 34 *N. Y.* 268.
- *ex rel. Pells v. Supervisors of Ulster*, 65 *N. Y.* 300. See *People ex rel. Pitts v. Supervisors*.
- *ex rel. Pitts v. Supervisors of Ulster*, 63 *Barb.* 83. Rev'd as *People ex rel. Pells v. Supervisors of Ulster*, 65 *N. Y.* 300. Decision in *Id.* disting'd and limited (Review of assessment) in *Matter of Hermance*, 71 *Id.* 481, 483. Both decisions disting'd with *Dash v. Van Kleeck*, 7 *Johns.* 502 (Retrospective laws) in *People v. Nat. Fire Ins. Co. of Hartford*, 27 *Hun.* 188.
- *v. Supervisors of Westchester*, 12 *Barb.* 446. See (Limitation of time for bringing special proceedings) *Code Civ. Pro.* 1881, § 414, n.
- *ex rel. Fountain v. Supervisors of Westchester*, 4 *Barb.* 64. Disting'd and applied (Effect of repealing statute on vested rights) in *Van Dyck v. McQuade*, 86 *N. Y.* 38, 49. Approved in *Stephens v. Marshall*, 3 *Chand. (Wisc.)* 228.
- *ex rel. Haskin v. Supervisors of Westchester*, 57 *Barb.* 377. Disting'd (Review of supervisors' action by certiorari) in *People ex rel. Kimball v. Supervisors of St. Lawrence*, 25 *Hun.* 131, 135.
- *ex rel. Lawrence v. Supervisors of Westchester*, 11 *Hun.* 306. Modified in 73 *N. Y.* 173. Decision in *Id.* explained and cases cited to the contrary (Mandamus to municipal corporations) in *High on Extr. Rem.* 2 ed. § 346, n. 5. See (Allowance of peremptory mandamus) *Code Civ. Pro.* 1881, § 2070, n.
- *ex rel. Kenyon v. Sutherland*, 16 *Hun.* 192. Rev'd in 81 *N. Y.* 1. Decision in *Id.* cited (Solemnity of oath) in *O'Reilly v. People*, 86 *Id.* 154, 158. Compare (Certiorari superseded by appeal) *Code Civ. Pro.* §§ 1356, 1357, 2121. Compare also (Proof of service of order to show cause, in proceedings for insolvent's discharge) *Id.* § 2165.
- *ex rel. Teel v. Sweeting*, 2 *Johns.* 184. Followed (Discretion as to allowance of *quo warranto* proceedings) in *People v. Tisdale*, 1 *Doug. (Mich.)* 61. Noted in *Ang. & A. on Corp.* § 744, 11 ed.
- *v. Sweetman*, 3 *Park.* 358. Disting'd (Jurisdiction of county courts in naturalization proceedings) in *People v. Pease*, 30 *Barb.* 588, 599. Disapproved (Jurisdiction of State courts to punish false swearing in naturalization proceedings) in *State v. Whittemore*, 50 *N. H.* 245; s. c., 9 *Am. R.* 197.
- *ex rel. Bunge v. Tax Comm'rs of N. Y.* See *People ex rel. Haneman v. Tax Comm'rs of N. Y.*
- *ex rel. Haneman v. Tax Comm'rs of*

- N. Y., 10 *Hun.* 255. Aff'd, it seems, in 73 *N. Y.* 607, on opinion of DANIELS, J., below. Said in 23 *Alb. L. J.* 296, to have been aff'd by U. S. Sup'm. Ct. Mem. of further proceeding reported under *People ex rel. Bunge v. Tax Comm'rs.*, in 17 *Hun.* 596. Decision in 73 *N. Y.* disting'd (Appeal to Court of Appeals in certiorari proceeding) in *People ex rel. Haneman v. Tax Comm'rs of N. Y.*, 85 *Id.* 655.
- *v. Taylor*, 3 *Den.* 91. Disting'd with *People v. Payne*, *Id.* 88 (Sufficiency of indictment for violation of lottery law) in *Dunn v. People*, 27 *Hun.* 272; *People v. Payne* being also disting'd in *People v. Noelke*, 29 *Hun.* 461. Disting'd and applied in *People v. Borges*, 6 *Abb. Pr.* 136. Applied to case of arson, in *Dedieu v. People*, 22 *N. Y.* 180. Cited approvingly in *State v. Gray*, 29 *Minn.* 144. Quoted and collated with other cases in 1 *Bennett & H. Cas. on Crim. L.* 322. Applied (Power of court as to judgment, on reversal) in *Fellinger v. People*, 15 *Abb. Pr.* 128, 135; *Shepherd v. People*, 25 *N. Y.* 418. Dictum explained (New trial in criminal cases) in *Kuckler v. People*, 5 *Park.* 214.
- *ex rel. Teed v. Teed*, 48 *Barb.* 424. Collated with other cases (When objections to summary proceedings to be made) in *McAdam on Landl. & T.* 2 ed. § 264.
- *ex rel. Judson v. Thacher*, 1 *Sup'm. Ct. (T. & C.)* 158; s. c., 7 *Lans.* 274. Order for new trial approved but appeal dismissed in 55 *N. Y.* 525; s. c., 14 *Am. R.* 312. Decision in *Id.* disting'd (Right to appeal without joining others) in *Williams v. Western Union Tel. Co.*, 93 *N. Y.* 162, 194. Applied (Inquiry into title to office) in *People ex rel. Hatzel v. Hall*, 80 *Id.* 117, 127. Disting'd (Inquiry into election irregularities) in *People ex rel. Bush v. Thornton*, 25 *Hun.* 456, 463. Followed in *People ex rel. Stemmler v. McGuire*, 2 *Id.* 269, 274. Applied in *Prince v. Skillin*, 71 *Me.* 361; s. c., 36 *Am. R.* 325, 331.
- *ex rel. Jermain v. Thayer*, 4 *Hun.* 798. Aff'd in 63 *N. Y.* 348.
- *v. Third Ave. Sav'gs B'k*, 50 *How. Pr.* 22. Disting'd (Who may be appointed receiver) in *Chamberlain v. Greenleaf*, 4 *Abb. N. C.* 92, 95.
- *v. Thomas*, 2 *Park.* 256. Approved (Form of writ of error) in *Phillips v. People*, 57 *Barb.* 353; which was modified in 42 *N. Y.* 200, which see.
- *v. Thompson*, 41 *N. Y.* 1. Disting'd (Juror as disqualified by opinion) in *Greenfield v. People*, 6 *Abb. N. C.* 8. Explained with reference to subsequent legislation, in *Balbo v. People*, 80 *N. Y.* 493. Followed (Effect of failure to take exception in criminal case) in *Gaffney v. People*, 50 *Id.* 426; *Wilke v. People*, 53 *Id.* 527.
- *ex rel. Taylor v. Thompson*, 21 *Wend.* 235. Rev'd in 23 *Id.* 537. Decision in *Id.* applied (Foundation for judgment of ouster for forfeiture of corporate franchise) in *People v. Williamsburgh Tp'ike, & Co.*, 47 *N. Y.* 593.
- *ex rel. Bush v. Thornton*, 60 *How. Pr.* 457. Rev'd in 25 *Hun.* 456.
- *v. Tibbetts*, 19 *N. Y.* 523. See *Beltinger v. N. Y. Central R. R. Co.*; Commissioners of Canal Fund *v. Kempshall*; *Gould v. Hudson R. R. Co.*; *Lansing v. Smith*. Followed as authority and collated with *Wheeler v. Spinola*, 54 *N. Y.* 377; *People v. Canal Appraisers*, 33 *Id.* 461 (Riparian rights and ownership) in *Wood v. Fowler*, 26 *Kans.* 682; s. c., 40 *Am. R.* 330. Collated with other cases in *Mills Thompson on Highw.* 3 ed. 50.
- *ex rel. Israel v. Tibbits*, 4 *Cov.* 358; s. c., 8 *N. Y. Com. L. Law. ed.* 413, with brief note. Explained (By-laws of private corporation) in *Ang. & A. on Corp.* § 345, 11 ed.
- *ex rel. Morton v. Tieman*, 8 *Abb. Pr.* 359; s. c., 30 *Barb.* 193. See *Smith v. Mayor, &c. of N. Y.* Applied (Right of officer *de facto*) in *People ex rel. Steierv. Anthony*, 6 *Hun.* 142, 145. Followed with *People v. Hopson*, 1 *Den.* 574, in *Matthews v. Supervisors of Copiah County*, 53 *Miss.* 715; s. c., 24 *Am. R.* 715. Followed in *Mayfield v. Moore*, 53 *Ill.* 428; s. c., 5 *Am. R.* 52. Quoted and collated with other cases in *Brightly Cas. on Elect.* 611. See cases collected in 10 *Am. L. Reg. N. S.* 445.
- *ex rel. Stanton v. Tioga Common Pleas*, 19 *Wend.* 73. Subsequent action respecting instrument here involved,— as *Stanton v. Thomas*, 24 *Id.* 71. See *McDowell v. Second Ave. R. R. Co.*; *Pulver v. Harris*. Decision in 19 *Wend.* applied (Assignment of right of action for injury) in *Thurman v. Wells*, 18 *Barb.* 510; *Mackey v. Mackey*, 43 *Id.* 62; *Pulver v. Harris*, 62 *Id.* 506; which was aff'd in 52 *N. Y.* 75, which see; *Hyslop v. Randall*, 4 *Duer.* 662; *Zabriskie v. Smith*, 13 *N. Y.* 334; *Coughlin v. N. Y. Central, &c. R. R. Co.*, 71 *Id.* 450. Disting'd in *Robinson v. Weeks*, 6 *How. Pr.* 162. Criticised and disting'd in *Williams v. Ingersoll*, 89 *N. Y.* 508. Approved in *McKee v. Judd*, 12 *Id.* 622, 625. Quoted in 2 *Chitty on Contr.* 1358, n. f, 11 *Am. ed.*
- *ex rel. Atkinson v. Tompkins*, 6 *Hun.* 299. Rev'd in 64 *N. Y.* 53.
- *v. Tompkins General Sessions*, 19 *Wend.* 154. See (Effect of adjudication in bankruptcy proceedings) *Thayer v. Overseers of Hamilton*, 5 *Hill.* 443.
- *v. Townsend*, 1 *Johns. Cas.* 104. See *People v. Dutches Oyer and Terminer*. Opposed (Power to grant new trials in criminal cases) in *People v. Dutches Oyer and Terminer*, 2 *Barb.* 282. Followed with *People v. McKay*, 18 *Johns.* 212, in *State v. Hornsby*, 8 *Rob. (La.)* 583; s. c., 41 *Am. Dec.* 314, 318, with note.
- *v. —*, 5 *How. Pr.* 315. See (Enlargement of time in arbitration proceedings) *Code Civ. Pro.* 1881, § 2363, n.

- **ex rel. Spahn v. Townsend**, 10 *Abb. N. C.* 169. Aff'd in 25 *Hun.* 313, on opinion below.
- **v. Toynbee**, 2 *Park.* 329; s. c., as *People v. Berberich*, 11 *How. Pr.* 289; more fully, in 20 *Barb.* 168. Aff'd as *Wynhamer v. People*, in 13 *N. Y.* 378; s. c., 2 *Park.* 490, where argument of counsel is fully reported; and 12 *How. Pr.* 238. Decision in 13 *N. Y.* explained and disting'd (Deprivation of right to trial, by jury in criminal cases) in *Knight v. Campbell*, 62 *Barb.* 16, 29.
- **v. Tracy**. See *People ex rel. Case v. Collins*.
- **v. Tredway**, 3 *Barb.* 470. Followed (Sufficiency of indictment for perjury) in *Burns v. People*, 59 *Id.* 531, 542.
- **ex rel. Lansing v. Tremain**, 9 *Hun.* 573. Aff'd, it seems, in 68 *N. Y.* 628, on opinion in *People ex rel. McCann v. Kilbourn*, *Id.* 479.
- **ex rel. Staats v. Tremain**, 17 *How. Pr.* 10. Rev'd in *Id.* 142; s. c., 29 *Barb.* 96. Decision in *Id.* disting'd (Mandamus against officer to pay claim) in *People ex rel. Satterlee v. Board of Police*, 75 *N. Y.* 38, 44.
- **v. Trinity Church**, 30 *Barb.* 537. Aff'd in 22 *N. Y.* 44.
- **ex rel. Hetfield v. Trustees of Ft. Edward**, 70 *N. Y.* 28. Applied (Constitutional amendments on existing rights) in *Negus v. City of Brooklyn*, 10 *Abb. N. C.* 180, 186.
- **v. Trustees of Geneva College**, 5 *Wend.* 211. Explained (Constitution of powers, &c. of corporation) in *Ang. & A. on Corp.* § 106, 11 ed.
- **ex rel. Gale v. Trustees of No. 13**, 8 *How. Pr.* 125. Aff'd in 10 *Id.* 468. Another proceeding in 6 *Id.* 332. Decision in 8 *Id.* approved (Effect of *L. 1847, c. 172*, respecting indemnification of school district officers) in *People ex rel. Atkins v. Van Leuven*, 8 *Id.* 358. Compare to the contrary *People ex rel. Powell v. Snyder*, 10 *Id.* 143.
- **ex rel. Westbrook v. Trustees of Ogdensburgh**, 48 *N. Y.* 390. Disting'd (Where choses in action are taxable) in *Herron v. Keeran*, 59 *Ind.* 472; s. c., 26 *Am. E. 87*; *Wilcox v. Ellis*, 14 *Kan.* 588; s. c., 19 *Am. R.* 107, 109, where *People ex rel. Jefferson v. Gardner*, 51 *Barb.* 352, is also cited as showing the weight of judicial authority.
- **ex rel. Cuyler v. Trustees of Palmyra**, 3 *Hun.* 549. Followed (Certiorari, when prematurely granted) in *People ex rel. Kimball v. Supervisors of St. Lawrence*, 25 *Id.* 131, 136.
- **ex rel. Coppers v. Trustees of St. Patrick's Cathedral**. See *Coppers v. Trustees of St. Patrick's Cathedral*.
- **v. Tubbs**, 37 *N. Y.* 586. Disting'd (Surety on bail bond when not responsible for failure of principal to appear) in *State v. Merrihew*, 47 *Iowa*, 112; s. c., 29 *Am. R.* 464; *Adler v. State*, 35 *Ark.* 517; s. c., 37 *Am. R.* 48.
- **ex rel. Erie & Genesee Val. R. R. Co. v. Tubbs**, 59 *Barb.* 401. Aff'd in 49 *N. Y.* 356.
- **v. Tweed**, 13 *Abb. Pr. N. S.* 148. Another proceeding in *Id.* 25; which was overruled in *People v. Ingersoll*, 58 *N. Y.* 1. Also another proceeding in 13 *Abb. Pr. N. S.* 419. Decision in *Id.* 25 disting'd (Power of attorney-general to sue in behalf of people to recover back money illegally expended) in *Supervisors of N. Y. v. Tweed*, *Id.* 152.
- **v. —**, 5 *Hun.* 353. Confirmed in 63 *N. Y.* 194; s. c., 50 *How. Pr.* 38. Other proceedings as follows: 5 *Hun.* 382 (Motion to vacate arrest or reduce bail); confirmed in 63 *N. Y.* 202; s. c., less fully, 50 *How. Pr.* 26; *Id.* 262 (Challenge to array); *Id.* 273 (Struck jury); *Id.* 434 (Motion to dismiss complaint); 11 *Hun.* 195 (Aff'g judgment and granting of extra allowance). See also proceedings in 50 *How. Pr.* 280, and *Id.* 286; aff'd in 11 *Hun.* 195. See *Wood v. Wood*. With decision in 5 *Hun.* 353 compare (Bill of particulars) *Mayor, &c. of N. Y. v. Marrener*, 49 *How. Pr.* 36. Decision in 63 *N. Y.* applied (When second arrest for same cause is illegal) in *Ewart v. Schwartz*, 48 *Super. Ct. (J. & S.)* 390. Statute here referred (Action for public funds illegally obtained, &c.) is now *Code Civ. Pro.* §§ 1969, 1970.
- **ex rel. McGuire v. Ulrich**, 2 *Abb. Pr.* 28. Questioned (Sufficiency of affidavit in summary proceedings) in *People v. Simpson*, 37 *Barb.* 432, 435. Collated with other cases (When objections are to be made in such proceedings) in *McAdam on Landl. & T.* 2 ed. § 264.
- **ex rel. Tremper v. Judges of Ulster**, 1 *Johns.* 64. See (Peremptory mandamus, when to issue) *Code Civ. Pro.* 1881, § 2070, *n.* See also (Service of alternative writ) *Id.* § 2071, *n.*
- **ex rel. Attorney-General v. Utica Ins. Co.**, 15 *Johns.* 353; s. c., 8 *Am. Dec.* 243, with note, wherein it is said to be an undisputed authority as to the various points decided. See *Pratt v. Short*. Followed (Statute when regarded as including corporations) in *Internat. Life Assur. Co. v. Comm'rs of Taxes*, 28 *Barb.* 321; *La Farge v. Exchange Fire Ins. Co.*, 22 *N. Y.* 354; *Ontario B'k v. Bunnell*, 10 *Wend.* 193. Applied in *Knox v. Protection Ins. Co.*, 9 *Conn.* 430; s. c., 25 *Am. Dec.* 33. Applied (Limitation of rights of company incorporated for specific purpose) in *N. Y. Firemen Ins. Co. v. Ely*, 2 *Cow.* 699; *Scott v. De Peyster*, 1 *Edw.* 530; *Fulton B'k v. Benedict*, 1 *Hall*, 555; *Utica Ins. Co. v. Hunt*, 1 *Wend.* 57. Examined in *People v. President, &c. of Manhattan Co.*, 9 *Wend.* 383. Explained in *Utica Ins. Co. v. Scott*, 8 *Cow.* 717. Approved with *N. Y. Firemen's Ins. Co. v. Sturges*, 2 *Cow.* 675; Same *v. Ely*, 2 *Id.* 699, in *McMasters v. Reed's Executors*, 1 *Grant's (Penn.) Cas.* 36. Approved in

- N. Y. Firemen Ins. Co. v. Ely, 5 *Conn.* 560; s. c., 13 *Am. Dec.* 100, with note. Explained in *Ang. & A. on Corp.* § 265, 11 ed. Reviewed with N. Y. Firemen Ins. Co. v. Ely, 2 *Cow.* 678, 699; *Talmage v. Pell*, 7 *N. Y.* 328, 343, and other cases (Nature of discount made by bank) in *Farmers' & Mechanics' B'k v. Baldwin*, 23 *Minn.* 198; s. c., 23 *Am. R.* 683. Followed (What are franchises) in *Chicago, &c. R. R. Co. v. Dunbar*, 95 *Ill.* 571, 576. Doubtful and disting'd (Money lent recoverable though notes are void) in *Re Jaycox*, 12 *Blatchf. C. Ct.* 209, 214. See also (Statutes in *pari materia*) 1 *Kent Com.* 463. Followed (*Quo warranto* as remedy against corporation) in *People v. Trustees of Geneva College*, 5 *Wend.* 219. Quoted in *High on Extr. Rem.* 2 ed. § 650, n. 5. Discussed in *Ang. & A. on Corp.* § 734, 11 ed. Quoted and collated with other cases in *Field on Ultra Vires*, 387.
- *ex rel. Benton v. Vail*, 20 *Wend.* 12. See *People v. Ferguson*. Approved (Fault of canvassing boards not to vitiate election) in *Carpenter v. Ely*, 4 *Wisc.* 428.
- *ex rel. Palmer v. Vail*, 1 *Cow.* 589. Further decision in 2 *Id.* 623.
- *ex rel. Garling v. Van Allen*, 55 *N. Y.* 31. Followed (Right to be heard by counsel) in *Matter of Nichols*, 6 *Abb. N. C.* 474, 487. Followed (Certiorari to review proceedings of court martial) in *People ex rel. Spahn v. Townsend*, 10 *Id.* 169, 171.
- *ex rel. Van Rensselaer v. Van Alstyne*, 32 *Barb.* 131. Further decision after further report of referees, in 3 *Keyes*, 35; s. c., 3 *Abb. Ct. App. Dec.* 575. See Commissioners of Warwick v. Judges of Orange. Decision in 32 *Barb.* disting'd (Inquiry by referees into jurisdiction of highway commissioners) in *People ex rel. Hubbard v. Harris*, 63 *N. Y.* 391, 396. Explained in *People v. Kniskern*, 50 *Barb.* 92. Decision in 3 *Abb. Ct. App. Dec.* followed (Evidence on hearing before such referees) in *People ex rel. Lasher v. McNeil*, 2 *Sup'm. Ct. (T. & C.)* 140. Disapproved and said to be in conflict with later decisions (Costs of special proceedings) in *People v. Smith*, 13 *Hun.* 227.
- *v. Van Blaricum*, 2 *Johns.* 105. Explained (Dwelling house as subject of arson) in *Snyder v. People*, 26 *Mich.* 106; s. c., 12 *Am. R.* 302. Followed in *State v. Whittier*, 21 *Me.* 341; s. c., 38 *Am. Dec.* 272.
- *v. Vanderbilt*, 28 *N. Y.* 396; s. c., 25 *Hov. Pr.* 138. The opinion here attributed to EMOTT, J., was delivered by BALCOM, J. See also full report in 26 *N. Y.* 287. Aff'd 38 *Barb.* 282; s. c., 24 *Hov. Pr.* 301. Decision in 26 *N. Y.* followed (Action by people for removal, &c., of nuisance) in *People v. Metropolitan Telephone, &c. Co.*, 11 *Abb. N. C.* 304,—in preference to *People v. Corporation of Albany*, 11 *Wend.* 539. Followed (*Pier, &c.* when nuisance to be abated) in *People v. N. Y. & Staten Island Ferry Co.*, 49 *Hov. Pr.* 515; which was aff'd in 7 *Hun.* 109, and that in 68 *N. Y.* 79, which see. Disting'd in *Delaware & H. Canal Co. v. Lawrence*, 2 *Hun.* 181; *Matter of N. Y. Central, &c. R. R. Co.*, 77 *N. Y.* 260. Discussed in *Wood on Nuis.* §§ 86, 250, 492. Applied (Form of judgment for removal of nuisance) in *De Laney v. Blizzard*, 7 *Hun.* 68.
- *v. Vane*, 12 *Wend.* 78. Disregarded (Proof of former corroborative statements made by witness) in *Robb v. Hackley*, 23 *Wend.* 50; *Dudley v. Bolles*, 24 *Id.* 465. Overruled in *Donoghoe v. People*, 6 *Park.* 120. Collated with *Robb v. Hackley*, 23 *Wend.* 50; *Dudley v. Bolles*, 24 *Id.* 465; *Smith v. Stickney*, 17 *Barb.* 489; *Hotchkiss v. Ins. Co.*, 5 *Hun.* 90, in 11 *Am. Dec.* 758, n. Overruled (Effect of omission to prove good character) in *People v. White*, 24 *Wend.* 520. See *Ware v. Ware*, 8 *Greenl. (Me.)* 55; *Craig v. Craig*, 5 *Rawle (Pa.)* 91. Disapproved and *People v. Bodine*, 1 *Den.* 281 followed in *State v. Kabrich*, 39 *Ind.* 277.
- *v. Van Horne*. See *Same v. Dixon*.
- *v. Van Keuren*, 5 *Park.* 66. Applied (When several acts constitute but one criminal offense) in *Stats v. Eggesht*, 41 *Iowa*, 574; s. c., 20 *Am. R.* 612, 616.
- *ex rel. Navano v. Van Nort*, 64 *Barb.* 205. Disting'd (Validity of municipal contract made without bids) in *Green v. Mayor, &c. of N. Y.*, 1 *Hun.* 24, 26; which was rev'd in 60 *N. Y.* 308, which see. Collated with other cases in 5 *Abb. N. C.* 42, n.
- *v. Van Rensselaer*, 8 *Barb.* 189. Further decision in 9 *N. Y.* 291. Decision in *Id.* approved (Reservation as precluding adverse possession) in *People v. Trinity Church*, 22 *N. Y.* 44, 56. See with decision in 8 *Barb.* (Limitation of action by people) *Code Civ. Pro.* 1881, § 362, n.
- *ex rel. Van Voast v. Van Slyck*, 4 *Cow.* 297; s. c., 8 *N. Y. Com. L. Law. ed.* 391, with brief note. See *People v. Ferguson*. Approved and followed (Reviewing action of election officers) in *People v. Pease*, 27 *N. Y.* 45, 55, 57, 60; which aff'd 30 *Barb.* 598, which see. Applied in *People v. Cook*, 8 *N. Y.* 83; *People v. Vail*, 20 *Wend.* 14. Quoted and collated with other cases in *Brightly Cas. on Elect.* 305. Disting'd (Effect of verbal appointment to office) in *People ex rel. Babcock v. Murray*, 70 *N. Y.* 521, 527. Quoted (*Quo warranto* against public officers) in *High on Extr. Rem.* 2 ed. § 638, n. 2.
- *v. Van Wyck*, 4 *Cow.* 260. Approved (Action against district attorney for sheriff's services) in *People v. Supervisors of N. Y.*, 32 *N. Y.* 473; which rev'd 18 *Abb. Pr.* 8, which see.
- *v. Vermilyea*, 7 *Cow.* 108. See *Durrell v. Mosher*; *Ex parte Vermilyea*. Followed (Challenge to juror) in *People v. Mather*, 4 *Wend.* 239. Applied (Questions for re-



- view on common law certiorari) in *People ex rel. Shipman v. Overseers of Poor of Barton*, 6 *How. Pr.* 26; *Birdsall v. Phillips*, 17 *Wend.* 469. Applied (Certiorari to remove indictment to Supreme Court) in *People v. Baker*, 3 *Abb. Pr.* 47.
- *v. —*, 7 *Cow.* 369. Approved (Newly-discovered evidence) in *State v. Bean*, 36 *N. H.* 122.
- *v. Videto*, 1 *Park.* 603. Collated with *Ruloff v. People*, 18 *N. Y.* 179, and other cases (Necessity of proof of *corpus delicti*, in case of murder) in 14 *Am. R.* 486, *n.*
- *v. Vilas*, 36 *N. Y.* 459; *s. c.*, 3 *Abb. Pr. N. S.* 252. Followed as decisive authority (Discharge of sureties on official bond) in *Mayor, &c. of N. Y. v. Ryan*, 35 *How. Pr.* 408. Applied in *Supervisors of Monroe v. Clarke*, 25 *Hun.* 282, 284. Disting'd in *People v. Chalmers*, 60 *N. Y.* 154, 160. Cited as leading case in 29 *Ab. L. J.* 404, collating cases. See (Judgment dismissing complaint) *Code Civ. Pro.* 1881, § 1209, *n.*
- *ex rel. Smith v. Village of Nelliston*, 18 *Hun.* 175. Appeal dismissed, it seems, in 78 *N. Y.* 610, but without opinion. Further proceeding in 79 *Id.* 638.
- *ex rel. Westbrook v. Village of Ogdensburgh*, 48 *N. Y.* 390. Disting'd (Taxation of personal property in hands of agent of non-resident) in *Boardman v. Supervisors of Tompkins*, 85 *Id.* 359, 364.
- *v. Walbridge*, 6 *Cow.* 512. Further decision in 3 *Wend.* 120.
- *v. Walker*, 21 *Barb.* 630. Rev'd in 17 *N. Y.* 502.
- *ex rel. Hawes v. Walker*, 23 *Barb.* 304. Rule said (Execution of power delegated to several) in *Moore v. Rector, &c. of St. Thomas*, 4 *Abb. N. C.* 51, 56, to be embodied in 2 *R. S.* 555, § 27. Explained in *First Nat. B'k of North Bennington v. Town of Mt. Tabor*, 52 *Vt.* 87; *s. c.*, 36 *Am. R.* 734, 741.
- *ex rel. Ludlum v. Wallace*, 2 *Hun.* 152; *s. c.*, reported in 4 *Sup'm. Ct. (T. & C.)* 438.
- *ex rel. Corwin v. Walter*; *People ex rel. Hess v. Walter*; *People ex rel. Mentz v. Walter*; *People ex rel. Stockwell v. Walter*. All reported under first named case in 2 *Hun.* 385; *s. c.*, 4 *Sup'm. Ct. (T. & C.)* 638. Rev'd in 68 *N. Y.* 403. Decision in *Id.* followed (Title of *bona fide* purchaser of town bonds not affected by subsequent certiorari proceedings respecting them) in *Phelps v. Town of Lewiston*, 15 *Blatchf. C. Ct.* 131.
- *v. Walters*, 18 *Abb. Pr.* 147; *s. c.*, as *Walters v. People*, 6 *Park.* 15. Aff'd in 32 *N. Y.* 147.
- *v. Walworth*, 8 *Ab. L. J.* 19. See vol. 2 of "Remarkable Trials;" also illustrated pamphlet report of trial published in 1873, and to be found in *Law Inst. Libr. N. Y. city*. Memorandum in 8 *Ab. L. J.* 19 reviewed with *People v. Batting*, 49 *How. Pr.* 392; *People v. Clark*, 7 *N. Y.* 393, and other cases (What constitutes murder in first degree) in 18 *Am. Dec.* 778, *n.*
- *ex rel. Stokes v. Warden, &c. of Sing Sing*, 66 *N. Y.* 345. Applied (Time from which sentence to imprisonment takes effect) in *People ex rel. King v. McEwen*, 62 *How. Pr.* 226. Disting'd in *People v. Lincoln*, 25 *Hun.* 306.
- *v. Warner*, 5 *Wend.* 271. Followed (Sufficiency of indictment for perjury) in *Harris v. People*, 4 *Hun.* 1, 5.
- *v. Warren*. See *Warner v. Shed*.
- *v. Washington & Warren Bank*, 6 *Cow.* 211. See *Slee v. Bloom*. Discussed (*Quo warranto* in case of private corporations) in *Ang. & A. on Corp.* § 784, 11 ed.
- *v. Waters*, 1 *Johns. Cas.* 137. Overruled (Sheriff's liability as to process coming to deputy) in *People v. Brown*, 6 *Cow.* 41.
- *v. Wentz*, 37 *N. Y.* 303. Followed with *Cox v. People*, 80 *Id.* 500 (Effect of confessions of accused person) in *People v. McGloin*, 91 *Id.* 241. Followed in *Phillips v. People*, 57 *Barb.* 353, 363; *Cox v. People*, 19 *Hun.* 430. Followed with *People v. McMahon*, 15 *N. Y.* 391, in *State v. Phelps*, 74 *Mo.* 128; *s. c.*, 46 *Am. R.* 258.
- *ex rel. Sears v. Westervelt*, 17 *Wend.* 674. Aff'd in 28 *Id.* 416.
- *v. Wheeler*, 21 *N. Y.* 82. Reviewed with other cases (Questions to be considered on certiorari) in *People v. Board of Police*, 39 *N. Y.* 513. Applied (Costs in certiorari proceedings) in *People v. Fuller*, 40 *How. Pr.* 38. Applied (Interest as disqualification to hold office) in *Matter of Southern Boulevard*, 3 *Abb. Pr. N. S.* 449. Explained in *Riventurgh v. Henness*, 4 *Lans.* 211; *Foot v. Stiles*, 57 *N. Y.* 407.
- *v. Wheelock*, 3 *Park.* 9. See *Nevin v. Ladue*. Explained (What are "strong and spirituous liquors") in *Commissioners of Tompkins v. Taylor*, 21 *N. Y.* 173, 175.
- *v. Whipple*, 9 *Cow.* 707. Approved but disting'd (Accomplice, when entitled to pardon) in *Commonwealth v. Dabney*, 1 *Rob. (Va.)* 696; *s. c.*, 40 *Am. Dec.* 717, 724. Criticised in 31 *Am. R.* 522, *n.* Approved (Accomplice, when permitted to testify) in *Ray v. State*, 1 *G. Greene (Iowa)* 316; *s. c.*, 48 *Am. Dec.* 379, 383, with note.
- *v. White*, 14 *Wend.* 111; *s. c.*, 12 *N. Y. Com. L. Law. ed.* 555, with brief note of other cases on comments of court on evidence.
- *v. —*, 24 *Wend.* 520. Rev'g 22 *Id.* 167. See *Parker v. Baker*; *People v. Kane*. Both decisions explained (Sufficiency of allegations as to malice, in indictment for murder) in *Fitzgerrold v. People*, 4 *Abb. Pr. N. S.* 73, 79. Dicta in decision in 24 *Wend.* disapproved in *Darry v. People*, 2 *Park.* 630. Decision in 22 *Wend.* disting'd (Conviction of offense of degree less than charged in indictment) in *Dedieu v. People*, 22 *N. Y.* 178, 184. Decision in 24 *Wend.* applied (Acts of officer *de facto*, when not to be questioned collaterally) in *Morris v.*

- People, 3 *Den.* 9; *Coyle v. Sherwood*, 1 *Hun.* 273; *Nelson v. People*, 23 *N. Y.* 296. Followed in *Ostrander v. People*, 29 *Hun.* 513. Explained (Effect of omission to give proof of good character of accused) in *People v. Finnegan*, 1 *Park.* 152.
- *v.* —, 11 *Barb.* 26. See *Brinckerhoff v. Wemple*. Overruled in effect (Reversion of land appropriated to use of canal) in *Rexford v. Wright*, 11 *N. Y.* 308. Collated with other cases in *Mills Thomps. on Highw.* 3 ed. 37.
- *v.* —, 14 *How. Pr.* 498. Applied (Proceedings of insolvent debtor, when "just and fair") in *Matter of Fowler*, 8 *Daly*, 548, 556. Collated with other cases in *Bishop on Assign.* § 121.
- *ex rel. Upham v. Whiteside*, 23 *Wend.* 9. Rev'd in 26 *Id.* 634.
- *ex rel. Wilcox v. Wilcox*, 22 *Barb.* 178. Aff'd as *Wilcox v. Wilcox*, 14 *N. Y.* 575. Decision in 22 *Barb.* explained (Chancery control over infants) in *Schouler on Dom. Rel.* 3 ed. § 332.
- *v. Wiley*, 3 *Hill*, 194. See *Marquand v. Webb*. Referred to as modified by later decisions (Effect of reception of illegal evidence) in *People v. Gonzalez*, 35 *N. Y.* 60. Followed (Unissued bonds, receipts, &c., as subjects of larceny) in *Bork v. People*, 91 *Id.* 5.
- *v. Williams*. See *People v. Bill*.
- *v.* —, 4 *Hill*, 9. Applied (Liability for false representations) in *People v. Stetson*, 4 *Barb.* 156; *Long v. Warren*, 68 *N. Y.* 432. Doubted in *Watson v. People*, 87 *Id.* 561. Examined (Liability for obtaining signature by false pretenses) in *Dord v. People*, 9 *Barb.* 673; *People v. Crissie*, 4 *Den.* 528. Approved but disting'd in *People v. Sully*, 1 *Buff. Super. Ct. (Sheld.)* 44. Compare *People ex rel. Phelps v. Oyer* and *Term. of N. Y.*, 83 *N. Y.* 436, 449.
- *v.* —, 3 *Abb. Ct. App. Dec.* 596. Examined with other cases (*Res gestæ* in criminal cases) in 22 *Alb. L. J.* 4. Compare *Mack v. State*, 48 *Wis.* 271.
- *ex rel. Frost v. Wilson*, 3 *Hun.* 437; s. c., 5 *Sup'm. Ct. (T. & C.)* 636. Rev'd in 62 *N. Y.* 186.
- *v. Winters*, 2 *Park.* 10. Followed with *Perry v. Perry*, 2 *Paige*, 501, 503 (Illegality of wife beating) in *Commonwealth v. McAfee*, 108 *Mass.* 458; s. c., 11 *Am. R.* 383, 385.
- *v. Wood*, 3 *Park.* 681. See *People v. Corbin*.
- *v.* —, 35 *Barb.* 653. Disting'd (*Mandamus* as remedy to compel payment of public money) in *People v. Haws*, 36 *Id.* 59.
- *v. Woodin*, 2 *Weekly Dig.* 291; s. c., less fully as *Woodin v. People*, 6 *Hun.* 654.
- *ex rel. Brown v. Woodruff*, 29 *How. Pr.* 203; s. c., more fully, 82 *N. Y.* 355. See cases cited (*Functus officio*) in 5 *Abb. N. C.* 52, n.
- *v. Works*, 9 *Wend.* 486. Overruled (Prohibition to ministerial officer to stay execution of process) in *People v. Supervisors of Queens*, 1 *Hill*, 195.
- *v. Wright*, 9 *Wend.* 193. See *People v. Krummer*. Explained (Necessity of specification, in indictment, of extrinsic circumstances respecting written instrument) in *Fenton v. People*, 4 *Hill*, 128; *People v. Stearns*, 21 *Wend.* 420. Explained (Duplicitv as ground for asserting judgment) in *Polinsky v. People*, 73 *N. Y.* 72. Collated with *Woodford v. People*, 62 *Id.* 117, and other cases in 58 *Am. Dec.* 246, n.
- *ex rel. Beller v. Wright*, 3 *Hun.* 306. Followed with *People ex rel. Presmeyer v. Commrs of Police, &c.*, 59 *N. Y.* 92; *Metropolitan Board of Excise v. Barrie*, 34 *Id.* 667 (Right of legislature to revoke license to sell liquors) in *La Croix v. County Commrs*, 50 *Conn.* 321; s. c., 47 *Am. R.* 648.
- *v. Young*, 7 *Hill*, 44. See *People v. Koeber*. Overruled (Averments necessary in action on recognizance) in *People v. Kane*, 4 *Den.* 530, 544.
- People of Michigan v. Phoenix Bank**, 4 *Bosw.* 363. Subsequent decision in 7 *Id.* 20; which was modified as *State of Michigan v. Phoenix Bank*, in 33 *N. Y.* 9.
- People's Bank v. Mitchell**, 73 *N. Y.* 406. See *Ketchum v. Evertson*. Applied (Waiver of performance of contract) in *Hill v. Heller*, 27 *Hun.* 416, 419. Collated with other cases (Covenant of renewal in lease) in *McAdam on Landl. & T.* 2 ed. § 123.
- People's Bank of N. Y. v. Bogart**, 16 *Hun.* 270. Aff'd in 81 *N. Y.* 101; s. c., 37 *Am. R.* 481. See *Dambman v. Schulting*.
- People's Bank of N. Y. v. Mechanics' Nat. Bank of Newark**. See *Rhoner v. First Nat. Bank of Allentown*.
- Pepin v. Lachenmeyer**, 45 *N. Y.* 27. Disting'd (Judgments of Confederate Courts as foreign judgments) in *Pennywit v. Foote*, 27 *Ohio St.* 600; s. c., 22 *Am. R.* 340, 361. Criticised and disapproved in 2 *Whart. Com. on Ev.* § 807.
- Pepoon v. Jenkins**, 2 *Johns. Cas.* 119. Followed (Sufficient authentication of record of court of U. S.) in *Adams v. Lisher*, 3 *Blackf. (Ind.)* 241; s. c., 25 *Am. Dec.* 102. Cited as authority with *Dobson v. Pearce*, 12 *N. Y.* 156 (Effect of judgments of U. S. courts) in *Embry v. Palmer*, 107 *U. S.* 3, 10.
- Percival v. Hickley**, 18 *Johns.* 257; s. c., 9 *Am. Dec.* 210. Approvingly cited (Trespass and case for actions immediately injurious) in *Jordan v. Wyatt*, 4 *Gratt. (Va.)* 151; s. c., 47 *Am. Dec.* 720, 725.
- *v. Jones*. See *Wallsworth v. McCulloch*.
- Percy, Matter of**, 36 *N. Y.* 651. Disting'd (Evidence on proceedings to disbar attorney for misconduct) in *Matter of Eldridge*, 82 *Id.* 161, 166. Sustained and approved (Disbarring attorney for indictable offense of which he has not been convicted) in *Ex*

- parte* Wall, 107 *U. S.* 265, 285. See *Id.* 316.
- Perine v. Dunn**, 4 *Johns. Ch.* 140. Approved (Effect of dismissing bill on merits) in *Pelton v. Mott*, 11 *Vt.* 148; s. c., 34 *Am. Dec.* 678, with note; *Rosse v. Rust*, 4 *Johns. Ch.* 300, being disting'd.
- Perkins v. Church**, 31 *Barb.* 84. Disting'd (Enforcing liability of stockholder of foreign corporation) in *Patterson v. Baker*, 34 *How. Pr.* 180, 183.
- **v. Coddington**, 4 *Robt.* 647. Collated with other cases (Covenants in lease restricting erections) in *McAdam on Landl. & T.* 2 ed. § 98.
- **v. Giles**, 53 *Barb.* 342. Aff'd in 50 *N. Y.* 228. Another action in 6 *Lans.* 437; which was aff'd in 65 *N. Y.* 593. Decision in 50 *Il.* applied (Grounds for setting aside award) in *Halstead v. Seaman*, 52 *How. Pr.* 423.
- **v. Hatch**, 4 *Hun.* 137. Aff'd, it seems, in 64 *N. Y.* 634, but without opinion.
- **v. Mitchell**, 31 *Barb.* 461. Reviewed with *Hastings v. Lusk*, 22 *Wend.* 410; *Marsh v. Ellsworth*, 50 *N. Y.* 311, and other cases (What statements in judicial proceedings are privileged) in *Lanning v. Christy*, 30 *Ohio St.* 115; s. c., 27 *Am. R.* 431, 433.
- **N. Y. Central R. R. Co.**, 24 *N. Y.* 196; s. c., 2 *Am. L. Reg. N. S.* 318. See *Cole v. Goodwin*; *Gould v. Hill*; *Nolton v. Western R. R. Co.*; *Sandford v. Handy*; *Welles v. N. Y. Central R. R. Co.* Disting'd (Right of carrier to limit his liability by contract) in *Kirkland v. Dinsmore*, 2 *Hun.* 46, 51. Explained in *Railroad Co. v. Lockwood*, 17 *Wall.* 357, 364. Questioned in *Illinois Central R. R. Co. v. Read*, 37 *Ill.* 507; *Pennsylvania R. R. Co. v. Henderson*, 51 *Penn. St.* 328; *Ohio & Mississippi R'y Co. v. Selby*, 47 *Ind.* 485; *Jacobus v. St. Paul & Chicago R'y Co.*, 20 *Minn.* 128. See *Thomps. on Carr. of Pass.* XLIX. Denied in dissenting opinion of *SANDERSON, J.*, in *Hooper v. Wells*, 27 *Cul.* 11, 44. Criticised in *Lawson's Contr. of Carr.* §§ 28, 128, 220. Approved in *Hutch. on Carr.* § 567, n.
- **v. Perkins**, 7 *Lans.* 19; s. c., 62 *Barb.* 531. See *Longendyke v. Longendyke*. Followed (Liability of husband for necessities for wife) in *Webber v. Spannhake*, 2 *Redf.* 258. Relied on with *Kelso v. Tabor*, 52 *Barb.* 125; *Corn Exchange Ins. Co. v. Babcock*, 57 *Id.* 222; *Chambovet v. Cagney*, 35 *Super. Ct. (J. & S.)* 474 (Limitations on power of married woman to contract) in *Haas v. Shaw*, 91 *Ind.* 384; s. c., 46 *Am. R.* 607. Criticised as contrary to express language of statute and decisions (Actions between husband and wife on contract) in *Pomeroy on Rem.* § 240, n. 6.
- **v. Savage**, 15 *Wend.* 412. Applied (Denial of relief to parties to illegal contract) in *Knowlton v. C. & E. Spring Co.*, 57 *N. Y.* 518, 530; *Williamson v. Chicago R. I. & P. R. Co.*, 53 *Iowa*, 126; s. c., 38 *Am. R.* 206, 211, with note.
- **v. Squier**, 1 *Sup'm. Ct. (T. & C.)* 620. Disapproved and partly overruled (Liability of purchaser assuming payment of mortgage) in *Calvo v. Davies*, 8 *Hun.* 222. Commented on and said to conflict with *Calvo v. Davies*,—in *Thomas on Mort.* 72, 73.
- **v. Taylor**, 19 *Abb. Pr.* 146. Approved (Enforcing payment of referee's fees) in *Geib v. Topping*, 83 *N. Y.* 46, 48.
- **v. Warren**, 6 *How. Pr.* 341. Compare (Writ of injunction) *Code Civ. Pro.* § 602.
- **v. Washington Ins. Co.**, 6 *Johns. Ch.* 485. Rev'd in 4 *Cow.* 645. Decision in *Id.* disting'd (Payment of premium as prerequisite to validity of contract of insurance) in *Redfield v. Paterson Fire Ins. Co.*, 6 *Abb. N. C.* 456, 463. Followed in *Blanchard v. Waite*, 28 *Me.* 51; s. c., 48 *Am. Dec.* 474, 476, with note. Approved in *Hallock v. Ins. Co.*, 2 *Dutcher (N. J.)* 268, 275. Cited as authority with *Carpenter v. Ins. Co.*, 4 *Sandf. Ch.* 408 (Jurisdiction of equity to enforce contract of insurance) in *Hebert v. Mutual Life Ins. Co.*, *U. S. Cir. Ct. D. Oreg.* 14 *Reporter*, 198; s. c., 12 *Fed. Rep.* 807.
- **v. Wing**, 10 *Johns.* 143. See to the contrary (Denial of award) *Dresser v. Stansfield*, 14 *Mees. & W.* 822. But see *Abb. Tr. Ev.* 469.
- Perrin v. N. Y. Central R. R. Co.**, 40 *Barb.* 65. Rev'd in 36 *N. Y.* 120. Said in 41 *Id.* 619, that judgment on new trial was aff'd by *Ct. of App.* in 1869. Decision in 36 *N. Y.* disting'd (Form of judgment in ejectment) in *White's Bank of Buffalo v. Nichols*, 64 *Id.* 75.
- Perrine v. Hotchkiss**, 2 *Sup'm. Ct. (T. & C.)* 370. Aff'd, it seems, in 59 *N. Y.* 649, on opinion of *TALCOTT, J.*, below.
- **v. Striker**, 7 *Paige*, 598. Applied (Extent of constitutional privilege of witness) in *People ex rel. Hackley v. Kelly*, 12 *Abb. Pr.* 153; which was aff'd in 24 *N. Y.* 84, which see. Explained (Relief against usurious obligation) in *Williams v. Ayrault*, 31 *Barb.* 369; *Allerton v. Belden*, 49 *N. Y.* 376; which rev'd 3 *Lans.* 494, which see; *Vilas v. Jones*, 1 *N. Y.* 279, 283; *Williams v. Fitzhugh*, 37 *Id.* 447. Applied in *Skinner v. Christmas, Clarke*, 269; *Minturn v. Farmers' Loan & Trust Co.*, 3 *N. Y.* 499; *Morse v. Hovey*, 9 *Paige*, 198; see *Same v. Same*, 1 *Sandf. Ch.* 192. Explained (Parties to bill to obtain relief against usury) in *Beggs v. Butler, Clarke*, 523.
- Perry v. Chester**, 36 *Super. Ct. (J. & S.)* 228. Rev'd in 53 *N. Y.* 240. Other proceedings in 12 *Abb. Pr. N. S.* 131. Decision in 53 *N. Y.* disting'd (Counterclaim in action founded on joint liability) in *Clegg v. American Newsp. Union*, 60 *How. Pr.* 498, 505. Decision in 12 *Abb. Pr. N. S.* criticised in *Pomeroy on Rem.* § 752, n. 4.
- **v. Dickerson**, 7 *Abb. N. C.* 466. Aff'd in 85 *N. Y.* 345; s. c., 39 *Am. R.* 663.

- **v. Livingston**, 6 *How. Pr.* 404. Disting'd (Several bills of costs) in *Williams v. Cassidy*, 22 *Hun.* 180, 183.
- **v. Lorillard Fire Ins. Co.**, 6 *Lans.* 201. Aff'd in 61 *N. Y.* 214; s. c., 19 *Am. R.* 272. Decision in *Id.* disting'd (Change of title that avoids policy) in *Hammel v. Queen's Ins. Co.*, 54 *Wis.* 72; s. c., 41 *Am. R.* 1.
- **v. Mitchell**, 5 *Den.* 537. See (Surrogate's jurisdiction) *Code Civ. Pro.* 1881, § 2481, *n.*
- **v. People**, 8 *Weekly Dig.* 445. Rev'd in 86 *N. Y.* 353; s. c., 62 *How. Pr.* 143.
- **v. Perry**, 2 *Paige*, 501. See *Fry v. Fry*; *People v. Winters*. See (English law of marriage, how far applicable in this country) *Campbell v. Crampton*, 8 *Abb. N. C.* 363, 374. Discussed in *Bish. on Mar. & D.* § 73, 6 ed. Said never to have been questioned (Decree of separation from bed and board) in *McNamara v. McNamara*, 2 *Hill.* 547, 549.
- **v. Rollins**, 56 *How. Pr.* 242. Subsequent affirmance but without opinion in 86 *N. Y.* 629. Decision in 56 *How. Pr.* disapproved (Reference of account for lawyer's services) in *Merritt v. Vigelius*, 28 *Hun.* 420.
- **v. Tynen**, 22 *Barb.* 137. Disting'd (Sufficiency of reference to statute, in action for penalty) in *Schoonmaker v. Brooks*, 24 *Hun.* 553, 555.
- Person v. Civer**, 28 *How. Pr.* 139. Rev'd in 29 *How. Pr.* 432.
- **v. Grier**, 66 *N. Y.* 124; s. c., 23 *Am. R.* 35. Aff'g *Person v. Pardee*, 6 *Hun.* 477. See *Hopkins v. Coburn*. Decision in 66 *N. Y.* applied (Privilege of non-resident witness from service of process) in *Grafton v. Weeks*, 7 *Daly*, 523, 525. Explained in 1 *Whart. Com. on Ev.* § 390. Cited with *Sanford v. Chace*, 3 *Cow.* 381, and other cases as according with weight of authority, —in *Re Healey*, 53 *Vt.* 695. Collated with *Sanford v. Chase*, 3 *Cow.* 381; *Norris v. Beach*, 2 *Johns.* 294; *Bours v. Tuckerman*, 7 *Id.* 538, and other cases (Exemption of parties and witnesses from service of process) in *Larned v. Griffin*, *U. S. Cir. Ct. D. Mass.* 14 *Reporter*, 258; s. c., 21 *Am. L. Reg. N. S.* 675. Cited as authority in *Nichols v. Horton*, *U. S. Cir. Ct. N. D. Iowa*, 14 *Fed. Rep.* 329.
- **v. Pardee**. See *Person v. Grier*.
- **v. Warren**, 14 *Barb.* 488. Followed (Action in name of committee of lunatic) in *Fields v. Fowler*, 2 *Hun.* 400.
- Persons, Ex parte**, 1 *Hill.* 655. Followed (Extent of discretion of excise board) in *People ex rel. Beller v. Wright*, 5 *Sup'm. Ct. (T. & C.)* 518, 520.
- Persons v. Snook**, 40 *Barb.* 144. Discussed (Perpetuities) in 1 *Jarm. on Wills*, Rand. & T. ed. 511, *n.* Compared with other cases (Gifts to heir as purchaser) in 2 *Id.* 617, *n.* 17.
- Persse & Brooks Paper Works v. Willet**, 14 *Abb. Pr.* 119. Further decision on the merits, in 19 *Id.* 416. Decision in 14 *Id.* disting'd with *Low v. Graydon*, *Id.* 443; *Lawrence v. Jones*, 15 *Id.* 110 (Motions for irregularity in practice, when to be made) in *Greenwood v. Marvin*, 29 *Hun.* 99.
- Pern Iron Co., Ex parte**, 7 *Cow.* 540. See (Real property, how long bound by judgment docketed) *Code Civ. Pro.* § 1251.
- Peters' Case**. See *Goodell v. Jackson*.
- Peters v. Delaplaine**, 49 *N. Y.* 365. Disting'd (Limitation of actions, in case of contracts under seal) in *Devinelle v. Edy*, 66 *How. Pr.* 328. Explained (Compelling specific performance, in case of inability to obtain release of dower) in *Sternberger v. McGovern*, 56 *N. Y.* 12, 18.
- **v. Diossy**. See *Hess v. Beekman*.
- **v. McKeon**, 4 *Den.* 546. See *Bush v. Cole*. Explained with *Trull v. Granger*, 8 *N. Y.* 115; *Brinckerhoff v. Phelps*, 24 *Barb.* 100, and the former case followed (Damages for breach of contract to convey land) in *Conger v. Weaver*, 20 *N. Y.* 140, 146.
- **v. Newkirk**, 6 *Cow.* 103. Criticised and disapproved with *McMahon v. N. Y. & Erie R. R. Co.*, 20 *N. Y.* 463, and the former said to have been impaired by *Elmendorf v. Harris*, 5 *Wend.* 521 (Necessity of notice of hearing, in case of arbitration) in *Norton v. Gale*, 95 *Ill.* 533; s. c., 35 *Am. R.* 173, with note including dissenting opinion which collates to the contrary *Peters v. Newkirk*, *supra*; *Underhill v. Van Cortlandt*, 2 *Johns. Ch.* 239; *Brown v. Lyddy*, 11 *Hun.* 451; *McMahon v. N. Y. & Erie R. R. Co.*, *supra*; *Collins v. Vanderbilt*, 8 *Bosw.* 313.
- **v. Porter**, 60 *How. Pr.* 422. Reviewed with other cases (Extrinsic evidence to identify lands mentioned in will) in 46 *Am. R.* 72, *n.*
- **v. Sandford**, 1 *Den.* 224. Approved (Effect of judgment on individual partner's note given for firm debt) in *Benson v. Paine*, 2 *Hill.* 552, 559.
- Peterson v. Chemical Bank**, 27 *How. Pr.* 491; s. c., 2 *Robt.* 605. Aff'd in 32 *N. Y.* 21; s. c., less fully, 29 *How. Pr.* 240. See *Myers v. Davis*. Decision in 32 *N. Y.* qualified (Power of foreign administrator to assign or collect) in *Reynolds v. McMullen*, 55 *Mich.* 568, 575. Collated with other cases in *Dial v. Gary*, 14 *So. Car.* 573; s. c., 37 *Am. R.* 737; *Wilkins v. Ellett*, 103 *U. S.* 259.
- **v. Clark**, 15 *Johns.* 205. Disting'd (Mortgage as distinguished from conditional sale) in *Morrison v. Brand*, 5 *Daly*, 40, 45. Applied with *Dey v. Dunham*, 2 *Johns. Ch.* 189; *Brown v. Bemont*, 8 *Johns.* 75, in *Edrington v. Harper*, 3 *J. J. Marsh. (Ky.)* 353; s. c., 20 *Am. Dec.* 145, with note. Denied (Mortgagee's right of action for cutting of timber) in *Searle v. Sawyer*, 127 *Mass.* 491; s. c., 34 *Am. R.* 425. See *Thomas on Mort.* 55, *n.* 2.
- **v. Humphrey**, 4 *Abb. Pr.* 394. Criticised and disapproved (Right to use of former name of firm) in *Reeves v. Denicke*, 12

- Abb. Pr. N. S.* 93. Collated with other cases in 35 *Am. R.* 550, n. Explained in 2 *Para. on Contr.* 257 bj, n. l.
- **v. Mayor, &c. of N. Y.**, 17 *N. Y.* 449. Rev'g 4 *E. D. Smith*, 413. See Hoyt v. Thompson. Decision in 17 *N. Y.* followed (Power of common council to contract) in *People ex rel. Smith v. Flagg*, 5 *Abb. Pr.* 237; *Smith v. Mayor, &c. of N. Y.*, 21 *How. Pr.* 5. Disting'd in *Haughwot v. Mayor, &c. of N. Y.*, 2 *Abb. Ct. App. Dec.* 348. Collated with other cases (Ratification of municipal contracts) in 5 *Abb. N. C.* 49, n.
- **v. Walsh**, 1 *Daly*, 182. Said to be impaired by *Cisco v. Robers*, 36 *N. Y.* 292 (Jurisdiction of State courts over violations of State pilotage laws, beyond boundary of State) in *Wilson v. Mills*, 10 *Abb. Pr.* 143.
- Petition of** —. See name of party in alphabetical place in this table.
- Petrie v. Barekley**, 47 *N. Y.* 653. Compare (Seal as evidence of consideration) *Code Civ. Pro.* § 840.
- **v. Fitzgerald**, 1 *Daly*, 401. Disting'd (Effect of giving bail, as waiver of right to discharge from arrest, on ground of privilege) in *Bacharach v. Lagrave*, 4 *Sup'm. Ct. (T. & C.)* 215, 217; which was rev'd as *Adriance v. Lagrave*, 59 *N. Y.* 110.
- **v. Feeter**. See *Manufacturers' & Trad. B'k v. Hazard*.
- Pettee v. Orser**, 6 *Bosw.* 123. See *Deming v. Colt*; *Robinson v. McIntosh*. Explained (Power of partner to make assignment for benefit of creditors) in *Burrill on Assign.* § 84, 4 ed.
- Pettengill v. Mather**, 16 *Abb. Pr.* 399. See (Satisfaction of judgment) *Code Civ. Pro.* 1881, § 1261, n.
- Pettigrew v. Mayor, &c. of N. Y.**, 17 *How. Pr.* 492. Disting'd (Correction of judgment) in *Rockwell v. Carpenter*, 25 *Hun*, 529, 531, and see dissenting opinion p. 535.
- Pettis v. Pier**, 1 *Hun*, 622; fuller mem. s. c., 4 *Sup'm. Ct. (T. & C.)* 690.
- Pettit v. Shepard**, 32 *N. Y.* 97. Disting'd (Parol evidence to explain language in deed) in *Green v. Collins*, 86 *Id.* 254.
- **v. Shepherd**, 5 *Paige*, 493; s. c., 28 *Am. Dec.* 437, 441, with note, wherein it is shown to be regarded as a leading authority both in N. Y. and elsewhere (Jurisdiction of equity to remove and prevent clouds on title). See *Hamilton v. Cummings*; *Livingston v. Livingston*. Disting'd in *Hotchkiss v. Elting*, 36 *Barb.* 38, 47. See (Real property, how long bound by judgment docketed) *Code Civ. Pro.* § 1251.
- Petty v. Tooker**, 21 *N. Y.* 267. Aff'g Parish of Bellport v. Tooker, 29 *Barb.* 256. See *Field v. Field*; *Robertson v. Bullions*. See cases cited (Diversion of church property to maintenance of faith other than that of founders) in 8 *Am. R.* 283, n.; 12 *Am. L. Reg. N. S.* 361, n.
- Peugnet, Matter of**, 5 *Hun*, 434. Aff'd in 67 *N. Y.* 441. Both decisions followed (Assessment as validated by certificate of commissioners) in *Matter of Marsh*, 21 *Hun*, 582. Decision in 5 *Id.* approved in *Casey v. Mayor, &c. of N. Y.*, *Id.* 463. Decision in 67 *N. Y.* approved in *Matter of Kendall*, 85 *Id.* 302, 307.
- Pew v. Hastings**, 1 *Barb. Ch.* 452. Followed (Power of surrogate to open decree) in *Bailey v. Stewart*, 2 *Redf.* 212, 223. Commented on in *Willard on Executors*, 49.
- Peyser v. Mayor, &c. of N. Y.**, 8 *Hun*, 413. Rev'd in 70 *N. Y.* 497; s. c., 26 *Am. R.* 624. See *Bellinger v. Gray*. Decision in 70 *N. Y.* explained and followed (Recovery back of amount paid on assessment) in *Pursell v. Mayor, &c. of N. Y.*, 85 *Id.* 330, 332. Disting'd in *Horn v. Town of New Lots*, 83 *Id.* 100, 104; *Strusburgh v. Mayor, &c. of N. Y.*, 45 *Super. Ct. (J. & S.)* 511; *Petition of Santiago Litran*, 77 *N. Y.* 170. Criticised in 28 *Alb. L. J.* 322 as contrary to cases there cited. Reviewed and explained with *Marsh v. City of Brooklyn*, 59 *N. Y.* 280; *Stewart v. Palmer*, 74 *Id.* 183; *Merritt v. Village of Portchester*, 71 *Id.* 309; *Horn v. Town of New Lots*, 83 *Id.* 100; *Matter of Lima*, 77 *Id.* 170; *Wilkes v. Mayor, &c. of N. Y.*, 79 *Id.* 621; *Newman v. Supervisors of Livingston*, 45 *Id.* 677; *Buffalo & State Line R. R. Co. v. Erie Co.*, 48 *Id.* 97; *Bank of Commonwealth v. Mayor*, 43 *Id.* 184; *Flower v. Lance*, 59 *Id.* 603; in *Bruecher v. Village of Portchester*, 31 *Hun*, 553. See *City of Grand Rapids v. Blakely*, 40 *Mich.* 367; s. c., 29 *Am. R.* 539. Doctrine discussed in 17 *Alb. L. J.* 120.
- **v. McCormack**, 7 *Hun*, 300. Compare (Verification, how and by whom made) *Code Civ. Pro.* § 525. Compare also (Attachment of bonds, notes, &c.) *Id.* § 643.
- Peyton v. Hallett**, 1 *Cai.* 363. See *Cowperthwaite v. Sheffield*. Approved and applied with *Townsend v. Fenners*, 3 *Johns.* 83 (Effect of order drawn on agent, as assignment) in *Debesse v. Napier*, 1 *McC. (So. Car.)* 106; s. c., 10 *Am. Dec.* 658.
- Pfohl v. Simpson**, 50 *How. Pr.* 341. Aff'd by General Term, and appeal from that dismissed in 59 *N. Y.* 174. Another proceeding in 74 *Id.* 137. See *Weeks v. Love*. Decision in 74 *N. Y.* disting'd (Separate actions to enforce stockholder's liability) in *Van Wagenen v. Clark*, 22 *Hun*, 497, 499.
- Phelps v. Garrow**, 8 *Paige*, 322; s. c., 35 *Am. Dec.* 688. Referred to as authority (Evidence of intent, to vary effect of written instrument) in *Trustees v. Otis*, 85 *Ill.* 181.
- **v. Gebhard Fire Ins. Co.** See *Herkimer v. Rice*.
- **v. Green**. See *Wilkin v. Wilkin*.
- **v. Hawley**, 3 *Lans.* 160. Aff'd in 52 *N. Y.* 23. See also (Liability of county as to maintaining bridge) *Ensign v. Supervisors of Livingston*, 25 *Hun*, 20.
- **v. Johnson**, 8 *Johns.* 54. Followed (What sort of covenant may operate as bar to action on promissory note) in *Haskins v.*

- Lombard, 16 *Me.* 140; s. c., 33 *Am. Dec.* 645, 649.
- **v. McDonald**, 26 *N. Y.* 82. Disting'd (Practice on requests to find) in *Meyer v. Amidon*, 45 *Id.* 169, 173. Criticised in *Lefler v. Field*, 33 *How. Pr.* 388. Explained in *Manley v. Ins. Co. of No. Am.*, 1 *Lans.* 22.
- **v. Nowlen**, 72 *N. Y.* 39; s. c., 28 *Am. R.* 93, with note. See *Ellis v. Duncan*; *Pickard v. Collins*. Followed (Liability for damage resulting from act lawfully done) in *Chenango Bridge Co. v. Paige*, 83 *N. Y.* 178, 190. Applied with *Pickard v. Collins*, 23 *Barb.* 444; *Kiff v. Youmans*, 86 *N. Y.* 324, in *Ileywood v. Tillson*, 75 *Me.* 225, 235. See 21 *Alb. L. J.* 284. Commented on in *Wood on Nuis.* 2 ed. § 880, n. 2. Compare (Sale of water) *Bram v. Marfell*, *Engl. Ct. App.* 20 *Am. L. Reg. N. S.* 93, with note.
- **v. People**, 6 *Hun.* 428. Aff'd in 72 *N. Y.* 365. For proceedings at Oyer and Terminer see *People v. Phelps*, 49 *How. Pr.* 462. Decision in 6 *Hun.* overruled in effect (Sufficient ground of challenge) in *Greenfield v. People*, 5 *Abb. N. C.* 1. See cases cited in 20 *Am. L. Reg. N. S.* 124, n. Compare also *Points of Law in Guiteau's Case*, 82. (Boston: Little, Brown & Co., 1881.)
- **v. Phelps**, 28 *Barb.* 121. Aff'd with modification, as *Phelps v. Pond*, in 23 *N. Y.* 69. See *Kilpatrick v. Johnson*. Decision in 23 *N. Y.* applied (Disposition of income of fund) in *Ellingwood v. Beare*, 59 *How. Pr.* 503, 506. Approved (Discretion given to executors, as affecting conversion of realty into personality) in *Graham v. Livingston*, 7 *Hun.* 14. Applied (Charitable trust, as affected by rule against perpetuities) in *Levy v. Levy*, 33 *N. Y.* 128. Followed in *Bascom v. Albertson*, 34 *Id.* 584. See *Burrill v. Boardman*, 43 *Id.* 260. Decision in 28 *Barb.* collated with other cases in *Gerard Titles to Real Est.* 301.
- **v. Platt**, 50 *Barb.* 430. Compare (Right of administrator to set aside fraudulent conveyance by intestate) *Barton v. Hosner*, 24 *Hun.* 467, 469.
- **v. Pond**. See *Phelps v. Phelps*.
- **v. Racey**, 5 *Daly*, 235. Aff'd in 60 *N. Y.* 10; s. c., 19 *Am. R.* 140. Compare (State law, when void as infringing on power of Congress to regulate inter-State commerce) *State v. Saunders*, 19 *Kans.* 127; s. c., 27 *Am. R.* 98. Decision in 60 *N. Y.* disting'd on ground of peculiarities in *N. Y.* statute,—(Application of game laws to game killed in another State) in *Commonwealth v. Hall*, 128 *Mass.* 410; s. c., 35 *Am. R.* 387, 390.
- **v. Vischer**, 50 *N. Y.* 69; s. c., 10 *Am. R.* 433. See *Dean v. Hall*; *Hall v. Newcomb*; *Herrick v. Carman*; *Moore v. Cross*. Disapproved (Liability of irregular indorser) in *Burton v. Hamford*, 10 *W. Va.* 470; s. c., 27 *Am. R.* 576. Applied in *Thacher v. Stevens*, 46 *Conn.* 561; s. c., 33 *Am. R.* 30.
- Phenix Ins. Co. v. Church**, 56 *How. Pr.* 493. Rev'd in 81 *N. Y.* 218; s. c., 37 *Am. R.* 494; 59 *How. Pr.* 293. Previous decision in 56 *Id.* 29. Decision in 81 *N. Y.* disting'd with *Lawrence v. Clark*, 36 *Id.* 128 (Title of holder of negotiable paper, when good by estoppel) in *Fleischman v. Stern*, 90 *Id.* 110.
- Philbrick v. Dallett**, 12 *Abb. Pr. N. S.* 419; s. c., 43 *How. Pr.* 419, and with points of counsel, 34 *Super. Ct. (J. & S.)* 370. Followed (What constitutes bona fide holder of negotiable paper) in *Justh v. Nat. Bank of Commonwealth*, 36 *Id.* 273, 277.
- Phillips, Matter of**, 43 *Barb.* 108; s. c., 19 *Abb. Pr.* 281. Collated with other cases (Petitioning creditors under two-thirds act) in *Bishop on Assign.* § 21.
- Phillips v. Belden**, 2 *Edw.* 1. See *Murray v. Toland*; *Young v. Hill*. Cited with approval (What is an account stated) in *Lockwood v. Thorne*, 11 *N. Y.* 170. Followed in *Towsley v. Denison*, 45 *Barb.* 490. Disapproved in *Anding v. Levy*, 57 *Miss.* 51; s. c., 34 *Am. R.* 439.
- **v. Brainard**, 2 *Cow.* 440. Further decision as *Brainard v. Phillips*, 4 *Id.* 20.
- **v. Hawley**, 6 *Johns.* 129. Followed with *Morgan v. Dyer*, 9 *Id.* 255 (Power to set aside judgment entered at previous term) in *Reynolds v. Stansbury*, 20 *Ohio*, 344; s. c., 55 *Am. Dec.* 459.
- **v. Peters**, 21 *Barb.* 352. Overruled (Promise that removes bar of statute of limitations) in *Wakeman v. Sherman*, 9 *N. Y.* 85.
- **v. Rose**, 8 *Johns.* 392. Followed (Action of covenant not maintainable on contract compounded of specialty and parol) in *Vicary v. Moore*, 2 *Watts (Pa.)* 451; s. c., 27 *Am. Dec.* 323, with note.
- **v. Wickham**, 1 *Paige*, 590. Explained as not authority (Right of corporation, without special authority to delegate right of voting by proxy) in *Taylor v. Griswold*, 2 *Green (N. J.)* 222; s. c., 27 *Am. Dec.* 33, 40, with extended note. Also said (p. 57) to be in harmony with English cases of *Pemberton v. Allen*, *Davis*, 42; *Attorney-general v. Scott*, 1 *Ves.* 413, in denying such right to be a general right. Quoted in *Ang. & A. on Corp.* § 128, 11 ed. Followed with *Slee v. Bloom*, 5 *Johns. Ch.* 366 (Dissolution of corporation as caused by loss of integral part) in *Lehigh Bridge Co. v. Lehigh Coal & N. Co.*, 4 *Rawle (Pa.)* 9; s. c., 26 *Am. Dec.* 111, with note. Quoted and discussed in *Ang. & A. on Corp.* § 770, 11 ed.
- Phillip v. Gallant**, 1 *Hun.* 528; s. c., more fully, 3 *Sup'm. Ct. (T. & C.)* 618. Modified and aff'd in 62 *N. Y.* 256. See *Champain v. Rowley*. Decision in 62 *N. Y.* collated with *Johnson v. De Peyster*, 50 *Id.* 666; *Gladius v. Black*, 50 *Id.* 145; *Smith v. Brady*, 17 *Id.* 173; *Nolans v. Whitney*, 83 *Id.* 584; *Thomas v. Fleury*, 26 *Id.* 26;

- Bowery National B'k v. Mayor, &c. of N. Y., 63 *Id.* 336; King v. Knapp, 59 *Id.* 462, and many other cases (Substantial performance of contracts) in 19 *Cent. L. J.* 442.
- Phillips, Matter of**, 60 N. Y. 16. Rev'g Phillips v. Mayor, &c. of N. Y., 2 *Hun.* 212; s. c., 4 *Sup'm. Ct. (T. & C.)* 484. Decision in 60 N. Y. disting'd (Vacating assessment when prior one has been paid) in Matter of Welsh, 30 *Hun.* 372. Followed (Effect of failure to publish resolution, in assessment proceedings) in Matter of Little, 60 N. Y. 343; which rev'd 3 *Hun.* 215, which see. Disting'd in Matter of Anderson, 60 N. Y. 457, 461. Disting'd and qualified (What is repayment) in Matter of Burmeister, 9 *Hun.* 613, 615; but see Same, 56 *How. Pr.* 418, 425. Disting'd in Matter of Grube, 81 N. Y. 139; which rev'd 20 *Hun.* 303, which see. Applied in Matter of Belmont, 12 *Id.* 562; Matter of Burke, 62 N. Y. 224, 229. Applied ("Party aggrieved" by improper assessment) in Matter of Walter, 75 N. Y. 357. Disting'd in Matter of Gantz, 85 *Id.* 536, 539. Decision in 2 *Hun.* followed in Williamson v. Mayor, &c. of N. Y., 3 *Id.* 66, 69. Applied in Pier v. Fond du Lac County, 53 *Wis.* 421, 428.
- Phillips v. Benedict**, 33 *Barb.* 655. See other cases collected (Testimony of parties) in 1 *Abb. N. C.* 364, n.
- **v. Berger**, 2 *Barb.* 608. Aff'd in 8 *Id.* 527.
- **v. Berick**, 16 *Johns.* 136; s. c., 8 *Am. Dec.* 299. Disting'd (Divisibility of actions) in O'Dougherty v. Remington Paper Co., 81 N. Y. 496, 499; Jex v. Jacob, 7 *Abb. N. C.* 459; Derby v. Hartman, 3 *Daly*, 461; Duncel v. Wiles, 11 N. Y. 426. Applied in Secor v. Sturgis, 2 *Abb. Pr.* 72; which was aff'd in 16 N. Y. 553, which see; Staples v. Goodrich, 21 *Barb.* 318; McIntosh v. Zown, 49 *Id.* 556; Hale v. Andrus, 6 *Cov.* 231; Hughes v. Alexander, 5 *Duer*, 492; Butler v. Wright, 2 *Wend.* 375; Stevens v. Lockwood, 13 *Id.* 646; Law v. McDonald, 62 *How. Pr.* 340, 343.
- **v. Conklin**, 2 *Sup'm. Ct. (T. & C.)* 619. Aff'd in 58 N. Y. 682.
- **v. Cook**, 24 *Wend.* 389. See Scrugham v. Carter. Approved (Right to take partnership property for debts of individual partner) in Smith v. Orser, 42 N. Y. 132. Cited approvingly in 1 *Pars. on Contr.* 209, n. i; 3 *Kent Com.* 65, n. Followed with Stief v. Hart, 1 N. Y. 20; Bank of Lansingburgh v. Cray, 1 *Barb.* 542; as applicable to interest of mortgagor of chattels in Cotton v. Marsh, 3 *Wisc.* 242. Compare *Code Civ. Pro.* 1881, § 693, n.
- **v. Covert**, 7 *Johns.* 1. Criticised (Creation of tenancy at will) in Stedman v. McIntosh, 1 *Ired. (N. C.)* 291; s. c., 42 *Am. Dec.* 122, with extended note. Quoted in *Sedgw. & W. on Tr. of Tit. to Land*, § 384.
- **v. Gorham**, 17 N. Y. 240. See Reubens v. Joel. Explained and applied (Joinder of legal and equitable grounds of relief in same action) in N. Y. Ice Co. v. Northwestern Ins. Co., 12 *Abb. Pr.* 418. Reviewed with other cases in Genet v. Howland, 45 *Barb.* 569. Followed in Sheehan v. Hamilton, 4 *Abb. Ct. App. Dec.* 214; Lattin v. McCarty, 41 N. Y. 110. Disting'd in Schnitzer v. Cohen, 7 *Hun.* 667. Explained in *Sedgw. & W. on Tr. of Tit. to Land*, § 639. Explained (Distinction between legal and equitable actions) in Marsh v. Benson, 11 *Abb. Pr.* 247. Explained and limited (Equitable defenses) in Cramer v. Benton, 60 *Barb.* 216, 227. Followed (Anticipating defense in complaint) in Wade v. Rusher, 4 *Bosw.* 545.
- **v. Hall**. See Bristol v. Burt.
- **v. Hebband**, 5 *Alb. L. J.* 185. Rev'd, it seems, as Phillips v. Hebbard, in 61 N. Y. 614.
- **v. Higgins**, 7 *Lans.* 314. Aff'd, it seems, in this opinion, in 55 N. Y. 663.
- **v. McCombs**, 53 N. Y. 494. Applied (Extrinsic evidence of testator's intention) in Reynolds v. Robinson, 82 *Id.* 103, 108. See also Boughton v. Flint, 5 *Abb. N. C.* 215 and *Id.* 216, n.
- **v. Mayor, &c. of N. Y.**, 2 *Hun.* 212; s. c., 4 *Sup'm. Ct. (T. & C.)* 484. Rev'd as Matter of Phillips, in 60 N. Y. 16.
- **v. People**, 57 *Barb.* 353. Aff'd with modifications, as People v. Phillips, 42 N. Y. 200. Decision in 57 *Barb.* confirmed (Proper contents of return to writ of error) in Manke v. People, 74 N. Y. 415, 421.
- **v. Peters**. See Soulden v. Van Rensselaer.
- **v. Rensselaer & Saratoga R. R. Co.**, 57 *Barb.* 644. Rev'd in 49 N. Y. 177. Decision in *Id.* applied (Contributory negligence in railroad passenger) in Gonzales v. N. Y. & Harlem R. R. Co., 50 *How. Pr.* 130. Disting'd in Dale v. Brooklyn City, &c. R. R. Co., 3 *Sup'm. Ct. (T. & C.)* 687. Disting'd with Clark v. Eighth Ave. R. R. Co., 36 N. Y. 307; Ward v. Central Park R. R. Co., 11 *Abb. Pr. U. S.* 411; Solomon v. Central Park R. R. Co., 1 *Sweeney*, 298, in Nolan v. Brooklyn City & Newtown R. R. Co., 87 N. Y. 63.
- **v. Schiffer**, 7 *Lans.* 347; s. c., more fully, 14 *Abb. Pr. N. S.* 101; 64 *Barb.* 548. See (Waiver of recording of assignment of certificate of sale by sheriff) *Code Civ. Pro.* 1881, § 1474, n.
- **v. Simmons**, 20 *How. Pr.* 342; s. c., 11 *Abb. Pr.* 287. See cases collected (Liability of husband to wife's attorney in divorce) in 11 *Am. L. Reg. N. S.* 285. Also cases collected in *Tyler on Inf. & Cov.* 2 ed. § 293.
- **v. Suydam**, 54 *Barb.* 153; s. c., with points of counsel, 6 *Abb. Pr. N. S.* 289. Criticised and disting'd (Right to amend pleading, when waived by noticing cause for argument or trial) in Clifton v. Brown, 27 *Hun.* 231.
- **v. Thompson**, 1 *Johns. Ch.* 131. Fol-

- lowed (Retaining suit, to give damages) in *Burling v. King*, 66 *Barb.* 632, 643. Reviewed with other cases in *Beck v. Allison*, 4 *Daly*, 421, 452; *Wiswall v. McGowan*, *Hoffm.* 181. Disting'd in *Hatch v. Cobb*, 4 *Johns. Ch.* 560. Cited approvingly with *German v. Machin*, 6 *Paige*, 289, 293 (Doctrine of past performance of parol contracts not to be extended) in *Gangwer v. Fry*, 17 *Pa. St.* 491; s. c., 55 *Am. Dec.* 578. Cited with *Parkhurst v. Van Cortlandt*, 1 *Johns. Ch.* 273, in *Green v. Drummond*, 31 *Md.* 71; s. c., 1 *Am. R.* 14, 20, as establishing the doctrine.
- *v.* —, 2 *Johns. Ch.* 418; s. c., 7 *Am. Dec.* 535. See *Moses v. Murgatroyd*.
- *v. Trull*, 11 *Johns.* 486. Quoted and commented on (Arrest by private person) in *Bennett & H. Cas. on Crim. L.* 149.
- *v. Wheeler*, 2 *Hun*, 603; s. c., 16 *Abb. Pr. N. S.* 242; 6 *Sup'm. Ct. (T. & C.)* 306. Aff'd in 67 *N. Y.* 104. Decision in *Id.* followed (Motions, where to be made) in *Curtis v. Greene*, 28 *Hun*, 294. See *Code Civ. Pro.* 1881, § 769, n.
- *v. Wooster*, 36 *N. Y.* 412. Quoted (Effect of illegal conveyance as between parties) in *Wait on Fraud. Conv.* § 401.
- Phinney v. Broschell**, 19 *Hun*, 116. Aff'd in 58 *How. Pr.* 492; s. c., 80 *N. Y.* 544. Decision in *Id.* applied (Form of order for publication) in *Mojarrieta v. Saenz*, *Id.* 554.
- Phipps v. Carman**, 23 *Hun*, 150. Aff'd in 84 *N. Y.* 650, but without opinion. See *Quackenbush v. Johnson*; *Waters v. Shepherd*.
- Phoenix v. Baldwin**, 14 *Wend.* 62. Followed (Testimony taken by commission) in *Bradley v. Geiselman*, 17 *Ill.* 572; *Frink v. Potter*, *Id.* 408. Dissented from, in *Hammock v. McBride*, 6 *Cobb. (Geo.)* 183.
- *v. Dey*, 5 *Johns.* 412. See *Verplank v. Sterry*. Followed (Right of insolvent debtor to prefer creditors) in *Haldeman v. Michael*, 6 *Watts & S. (Pa.)* 128; s. c., 40 *Am. Dec.* 546. Applied with *Hurd v. West*, 7 *Cow.* 760; *Frear v. Evertson*, 20 *Johns.* 142; *Taylor v. Marshal*, 14 *Id.* 204 (Effect of admissions, &c. as to rights of third persons) in *Doe v. Moore*, 4 *Blackf. (Ind.)* 445; s. c., 30 *Am. Dec.* 666, 668. Cited in 2 *Whart. Com. on Ev.* § 1164.
- *v. Dupuy*, 2 *Abb. N. C.* 146; s. c., 7 *Daly*, 238; and as *Phoenix v. Dupy*, 53 *How. Pr.* 159. Followed (Party when privileged from examination before trial) and *Corbett v. De Comeau*, 54 *How. Pr.* 506, disting'd in *Walker v. Dunlevey*, 4 *Civ. Pro. R. (Browne)* 38, n.
- Phoenix Bank of N. Y. v. Donnell**, 40 *N. Y.* 410. Aff'g 41 *Barb.* 571. Decision in *Id.* quoted and collated with other cases (allegation in pleading, of corporate existence) in *Throop Justices' Man.* 2 ed. 289. See *Code Civ. Pro.* 1881, § 1775, n.
- Phoenix Fire Ins. Co. v. Philip**, 13 *Wend.* 81. Explained (Comparison of handwritings) in *Miles v. Loomis*, 10 *Hun*, 372, 375; which was aff'd in 75 *N. Y.* 288, which see. Followed (Evidence of amount of stock carried by other dealers, as showing amount destroyed by fire) in *Townsend v. Merchants' Ins. Co.*, 36 *Super. Ct. (J. & S.)* 172, 179.
- Phoenix Ins. Co. v. Church**. See *Phenix Ins. Co. v. Church*.
- *v. Floyd*, 19 *Hun*, 287. Aff'd, it seems, but without opinion, in 83 *N. Y.* 613.
- Phoenix Warehousing Co. v. Badger**, 6 *Hun*, 293. Aff'd in 67 *N. Y.* 294. See *Rankine v. Elliott*. Decision in 67 *N. Y.* disting'd (Contract of subscription for stock, when merged) in *Billings v. Robinson*, 28 *Hun*, 122.
- Phyfe, Matter of**, 5 *N. Y. Leg. Obs.* 331. Explained and applied (Surrogate's jurisdiction, on application for payment of debt) in *McNulty v. Hurd*, 11 *Hun*, 339, 341.
- Phyfe v. Riley**, 15 *Wend.* 248. Explained and limited with *Fox v. Lipe*, 24 *Id.* 164; *Olmsted v. Elder*, 5 *N. Y.* 144; *Mickles v. Dillaye*, 17 *Id.* 80; *Mickles v. Townsend*, 18 *Id.* 575; *Chase v. Peck*, 21 *Id.* 581; *Waring v. Smyth*, 2 *Barb. Ch.* 135; *Pell v. Ulmar*, 18 *N. Y.* 139; *Robinson v. Ryan*, 25 *Id.* 320; *Winslow v. Clark*, 47 *Id.* 261; *Madison Ave. Bapt. Ch. v. Oliver St. Bapt. Ch.*, 73 *Id.* 82; *Gross v. Welwood*, 90 *Id.* 638 (Rights of mortgagee in possession) in *Howell v. Leavitt*, 95 *Id.* 617. Questioned in *Fort v. Burch*, 6 *Barb.* 60, 76.
- *v. Wardell*, 2 *Edw.* 47. Aff'd in 6 *Paige*, 268; s. c., 28 *Am. Dec.* 430, with note containing citations of the case on the points decided. Decision in 5 *Paige*, approved (Renewal of lease obtained by one having special interest in former lease) in *Mitchell v. Reed*, 61 *N. Y.* 123, 130.
- Pickard v. Collins**, 23 *Barb.* 444. See *Fish v. Dodge*; *Phelps v. Nowlen*. Applied (Liability for injury arising from use of one's land) in *Phelps v. Nowlen*, 72 *N. Y.* 45. Relied on with *Mahan v. Brown*, 13 *Wend.* 261; *Delhi v. Youmans*, 50 *Barb.* 316; *Phelps v. Nowlen*, 72 *N. Y.* 45 (Liability for malicious act lawfully done) in *Heywood v. Tillson*, 75 *Me.* 225; s. c., 46 *Am. R.* 373, 380. Quoted in *Wood on Nuis.* 2 ed. § 7. Quoted and discussed (Smell as nuisance) in *Id.* § 567.
- *v. Yencer*, 21 *Hun*, 403. Followed (Effect of settlement of action on attorney's lien for costs) in *Wilber v. Baker*, 24 *Id.* 24, 26.
- Pickersgill v. Read**, 5 *Hun*, 170. Further proceeding in 7 *Id.* 636.
- Pickett v. Leonard**, 34 *N. Y.* 175. Followed (Payment that removes bar of statute of limitations) in *Smith v. Ryan*, 39 *Super. Ct. (J. & S.)* 489, 493; which was aff'd in 66 *N. Y.* 352, which see.
- *v. People*, 8 *Hun*, 83. Aff'd, it seems, in 67 *N. Y.* 609, but without opinion.
- Pier v. George**, 14 *Hun*, 568. Further proceedings in 17 *Id.* 207, and in 20 *Id.* 210; which latter was rev'd in 86 *N. Y.*



- 613 on authority of *Pier v. Hanmore*, *Id.* 95, a decision based on same transactions. Decision in *Id.* followed (Liability of trustees for making false report) and *Bonnell v. Griswold*, 80 *Id.* 128; re-aff'd in *Bonnell v. Griswold*, 89 *Id.* 122.
- *v. Hanmore*. See *Pier v. George*.
- Pierce v. Brown**, 40 *Super Ct. (J. & S.)* 398. Mem. of another proceeding in *Id.* 549. Aff'd, it seems, but without opinion in 68 *N. Y.* 622. Decision in *Id.* explained (Purchasing goods by deceit) in *Moak's Underhill's Torts*, 1 *Am. ed.* 529.
- *v. Crafts*, 12 *Johns.* 90. See *Arnold v. Crane*; *Crandall v. Bradley*. Applied (Right of action for money had and received) in *Causidiere v. Beers*, 1 *Abb. Ct. App. Dec.* 337. Followed in *Ela v. American, &c. Express Co.*, 29 *Wis.* 611; s. c., 9 *Am. R.* 619; *Chase v. Burnham*, 13 *Verm.* 447; s. c., 37 *Am. Dec.* 602. Denied in *Kennedy v. Carpenter*, 2 *Whart. (Pa.)* 340, *et seq.* Applied to action of debt against indorser, in *Onondaga Co. B'k v. Bates*, 3 *Hill*, 55; against maker, in *Willmarth v. Crawford*, 10 *Wend.* 343. Explained in *Wilson v. Scott*, 3 *Lans.* 312; *Butterworth v. Gould*, 41 *N. Y.* 462. Applied (Note, &c. as evidence under general money count) in *Carter v. Hope*, 10 *Barb.* 182; *Murray v. Judah*, 6 *Cow.* 493; *Hays v. Phelps*, 1 *Sandf.* 67.
- *v. Dart*, 7 *Cow.* 609. See *Dygert v. Schenck*; *Hart v. Mayor &c. of Albany*. Quoted and discussed (Private action for public nuisance) in *Wood on Nuis.* 2 ed. § 660. Discussed in 1 *Add. on Torts* 298, n. 2, *Wood's ed.*
- *v. Delamater*, 1 *N. Y.* 17. See *Delamater v. Pierce*. Explained (Disqualification of judge, by means of former connection with case) in *Oakley v. Aspinwall*, 3 *N. Y.* 553. Collated with *Pistor v. Brundutt*, 42 *Hov. Pr.* 5; *McLaren v. Charrier*, 5 *Paige*, 530; *Ten Eick v. Simpson*, 11 *Id.* 177; *People v. Clark*, 21 *Barb.* 214, and other authorities in 12 *Weekly L. Bul.* 5.
- *v. Drake*. See *Wilson v. Force*.
- *v. Hubbard*. See *Gold v. Bissell*.
- *v. Kearney*. See *Robertson v. Smith*.
- *v. Keator*, 9 *Hun.* 532. Aff'd in 70 *N. Y.* 419; s. c., 26 *Am. R.* 612. See *Woodward v. Paine*.
- *v. Kingsmill*, 25 *Barb.* 631. See (Claim to property attached in action in justices' court) *Code Civ. Pro.* 1881, § 2922, n.
- *v. Kinney*, 59 *Barb.* 56. Quoted and discussed (Duties of dam-owners) in *Wood on Nuis.* 2 ed. § 349.
- *v. Pierce*, 9 *Hun.* 50. Aff'd in 71 *N. Y.* 154; s. c., 27 *Am. R.* 22, with note.
- *v. —*, 25 *Barb.* 243. See (Action for use and occupation under deed) 6 *Am. L. Rev.* 17. See also *Abb. Tr. Ev.* 352.
- *v. Schenck*, 3 *Hill*, 28. See *Baker v. Wheeler*. Followed (Test of bailment) in *Hasbrouck v. Bouton*, 60 *Barb.* 413, 416.
- Quoted and explained in 2 *Pars. on Contr.* 133, n.
- *v. Sheldon*, 13 *Johns.* 191. Overruled, it seems (Remedy against constable for failure to serve execution) in *Platt v. Sherry*, 7 *Wend.* 236.
- *v. Thomas*. See *Miller v. Eagle Life & Health Ins. Co.*
- *v. Tuttle*, 1 *Sup'm. Ct. (T. & C.)* 139. Statement in 4 *Id.* iii that this decision was rev'd in Ct. of App. seems to be an error. Decision in 58 *N. Y.* 650 was in another action of same name. See cases, &c., in Ct. of App. in *Law Inst. Libr. N. Y. city*. See also "Errata" in 59 *N. Y.* 760. Another decision in 51 *Hov. Pr.* 193,—and still another in 53 *Barb.* 155; which was aff'd, it seems, in 57 *N. Y.* 636, but without opinion. Decision in 51 *Hov. Pr.* followed (Setting off judgment appealed from) in *Hardt v. Schulting*, 24 *Hun.* 346.
- *v. Van Dyke*, 6 *Hill*, 613. See *Hoffman v. Carow*. Explained and applied (Replevin without previous demand) in *Talcott v. Belding*, 36 *Super. Ct. (J. & S.)* 84, 93. Followed in *Twinam v. Swart*, 4 *Lans.* 263, 268. Reviewed with other cases (Necessity of demand in case of wrongful taking) in dissenting opinion of *Johnson, J.*, in *Ward v. Ritt*, *Hamilton Co. O. Dist. Ct.* 7 *Weekly Cin. L. Bul.* 130.
- Pierrepont v. Barnard**, 5 *Barb.* 364. Rev'd in 6 *N. Y.* 279. See *Bank of Lansingburgh v. Crary*; *Bennett v. Scutt*. Decision in 6 *N. Y.* disting'd (Effect of parol license to do acts on land) in *Wiseman v. Luksinger*, 84 *Id.* 31, 41. Compare *Babcock v. Utter*, 1 *Abb. Ct. App. Dec.* 27, 48. Cited as authority with *Mumford v. Whitney*, 15 *Wend.* 380; *Smith v. Benson*, 1 *Hill*, 176; *Bennett v. Scutt*, 18 *Barb.* 347, in *Owens v. Lewis*, 46 *Ind.* 488; s. c., 15 *Am. R.* 295, 320. Commented on in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 593. Explained in *Benj. on Sales*, § 117, n. 5 (Corbin's 4 *Am. ed.*).
- *v. Edwards*, 24 *Hov. Pr.* 419; s. c., more fully, 25 *N. Y.* 128. Followed (Annuity payable from income) in *Delaney v. Van Aulen*, 21 *Hun.* 274; which was rev'd in 84 *N. Y.* 16, which see. Disting'd (Demonstrative legacies) in *Bushnell v. Drinker*, 5 *Redf.* 581.
- Pierson v. Hooker**, 3 *Johns.* 68; s. c., 3 *Am. Dec.* 467. Applied (Effect of release by one of persons having joint interest) in *People ex rel. Eagle v. Keyser*, 28 *N. Y.* 228. Examined with other cases in *McBride v. Hagan*, 1 *Wend.* 336.
- *v. People*, 18 *Hun.* 239. Aff'd in 79 *N. Y.* 424; s. c., 35 *Am. R.* 524. See *Whiting v. Barney*. Both decisions examined with other cases (Privileged communications) in *Pearsall v. Ellmer*, 5 *Redf.* 181, 185, 189. Decision in 79 *N. Y.* disting'd in *Grattan v. Metropolitan Life Ins. Co.*, 80 *Id.* 281, 301.
- Piggot v. Mason**, 1 *Paige*, 412. Explained (Distinction between sub-lease and assign-

- ment) in *Constantine v. Wake*, 1 *Sweeny*, 247. Reviewed in 16 *Am. L. Rev.* 29.
- Pike v. Butler**, 4 *Barb.* 650. Rev'd in 4 *N. Y.* 360. Decision in *Id.* applied (Effect of incomplete performance of contract) in *Pullman v. Corning* 9 *Id.* 98; *Oakley v. Morton*, 11 *Id.* 32.
- **v. Irwin**, 1 *Sandf.* 14. Approved (Invalidity of verbal acceptance) in *Walton v. Mandeville*, 56 *Iowa*, 597, 600.
- **v. Johnson**, 47 *N. Y.* 1. See (Notice of appeal from justice's decision) *Code Civ. Pro.* 1881, § 3070, *n.*
- **v. Nash**, 3 *Abb. Ct. App. Dec.* 610. See to the contrary (Tow boats as carriers) *Bussey v. Mississippi Val. Transp. Co.*, 24 *La. Ann.* 165; *s. c.*, 13 *Am. R.* 120. And see *Abb. Tr. Ev.* 561.
- **v. Van Wormer**, 5 *How. Pr.* 171. Further decision in 6 *Id.* 99. See *Getty v. Hudson River R. R. Co.* Decision in 5 *How. Pr.* applied with *Caldwell v. Raymond*, 2 *Abb. N. C.* 196 (Necessity for innuendo in action or indictment for libel) in *People v. Isaacs*, 1 *N. Y. Crim. R.* 148.
- Pilling v. Pilling**, 45 *Barb.* 86. Disapproved (Practice on appeal from decree of surrogate to Supreme Court) in *Johnson v. Hicks*, 1 *Lans.* 150.
- Pillow v. Bushnell**, 4 *How. Pr.* 9; *s. c.*, 5 *Barb.* 156. Disting'd (Husband and wife as witnesses) in *Marsh v. Potter*, 30 *Id.* 506, 517, 521.
- Pinckney v. Hagadorn**, 1 *Duer*, 90. Said in 14 *N. Y.* 590 to have been aff'd by Ct. of App. in 1854.
- **v. Hagerman**, 4 *Lans.* 374. Aff'd in 53 *N. Y.* 31.
- **v. Pinckney**, 1 *Bradf.* 269. Applied (Effect of limitation over after absolute power of disposition given to primary legatee) in *Cohen v. Cohen*, 4 *Redf.* 48, 50.
- Pindar v. Black**, 4 *How. Pr.* 95. Commented on (Affidavit to obtain arrest) in *Thomps. on Prov. Rem.* 59.
- **v. Continental Ins. Co.**, 38 *N. Y.* 364. Followed (Construction of word "hazardous" in fire policy) in *Pindar v. Resolute Fire Ins. Co.*, 47 *Id.* 114; *Reynolds v. Commerce Fire Ins. Co.*, *Id.* 597.
- **v. Resolute Ins. Co.**, 47 *N. Y.* 114. See *Brown v. Cattaraugus County Mut. Ins. Co.* Explained (Effect of acceptance of policy with knowledge of its terms) in *Maher v. Hibernia Ins. Co.*, 67 *N. Y.* 289. Disting'd in *Van Schoick v. Niag. Fire Ins. Co.*, 68 *Id.* 441. Questioned in 2 *Am. Dec.* 364, *n.* Disting'd (Evidence to explain language of policy) in *Bowman v. Agricultural Ins. Co.*, 2 *Sup'm. Ct. (T. & C.)* 264.
- Pinder v. Morris**, 3 *Cut.* 165. Followed (Attorney's lien as subject to set-off) in *Sanders v. Gillett*, 8 *Daly*, 184. Applied with *Martin v. Hawks*, 15 *Johns.* 405; *Nicoll v. Nicoll*, 16 *Wend.* 446 (Extent of attorney's lien) in *Andrews v. Morse*, 12 *Conn.* 444; *s. c.*, 31 *Am. Dec.* 752, 754, with note.
- **v. Stoothoff**, 7 *Abb. Pr. N. S.* 433. Followed (Right to costs, as determined by question of justice's jurisdiction) in *Whitney v. Daggett*, 6 *Abb. N. C.* 434, 436.
- Pine v. Rickert**, 21 *Barb.* 469. Collated with other cases (Fraud in making assignment for creditors) in *Bishop on Assign.* § 226. Discussed in *Durrill on Assign.* § 369, 4 ed.
- Pinkerton v. Bailey**, 8 *Wend.* 600. Disting'd (Effect of implied promise to pay) in *Chilcott v. Trimble*, 13 *Barb.* 509. Disting'd (New promise to pay debt, to whom available) in *Clark v. Atkinson*, 2 *E. D. Smith*, 115.
- Pinneo v. Higgins**, 12 *Abb. Pr.* 334. Approved and followed (Validity of compromise between debtor and creditor) in *Gilmour v. Thompson*, 6 *Daly*, 95, 97, 100. Followed in *Bean v. Amsinck*, 10 *Blatchf. Ct.* 361, 371.
- Pinney v. Gleason**, 5 *Wend.* 393; *s. c.*, 21 *Am. Dec.* 223, with note, wherein it is shown to have been frequently cited with approval in *N. Y.* See *Clark v. Pinney*; *Gleason v. Pinney*. Disting'd (Effect of contract to pay in specific articles) in *B'k of Prince Edward's Island v. Trumbull*, 4 *Abb. Pr. N. S.* 86; *Sternberger v. McGovern*, 4 *Daly*, 464; *Dowdney v. McCullom*, 59 *N. Y.* 371. Criticised and disting'd in *Thomas v. Murray*, 32 *Id.* 616. Applied in *Kimpton v. Bronson*, 45 *Barb.* 629; *Fletcher v. Derrickson*, 3 *Bosw.* 188; *Rockwell v. Rockwell*, 4 *Hill*, 165; *Rodes v. Bronson*, 34 *N. Y.* 652. Followed in *Blackmer v. Holmes*, 13 *Weekly Dig.* 424; *Sims v. Cox*, 40 *Ga.* 76; *s. c.*, 2 *Am. R.* 560. Reviewed with other cases in 21 *Am. Dec.* 424, *n.* Included in *Sedgw. Lead. Cas. on Dama.* 481; *Brackett v. McNair*, 14 *Johns.* 170; being also included at p. 99.
- Pintard v. Tackington**, 10 *Johns.* 104. Followed with *McNair v. Gilbert*, 3 *Wend.* 344 (Recovery on lost note) in *Lazell v. Lazell*, 12 *Vt.* 443; *s. c.*, 36 *Am. Dec.* 352, with note. Followed as maintaining a rational doctrine and one prevailing in the U. S.,— in *Chaudron v. Hunt*, 3 *Stew. (Ala.)* 31; *s. c.*, 20 *Am. Dec.* 60, 64, with note. Included with notes in 1 *Redf. & B. Lead. Cas. on B. of Exch.* 671. See *Code Civ. Pro.* 1881, § 1917, *n.*
- Piper v. N. Y. Central, &c. R. R. Co.**, 1 *Sup'm. Ct. (T. & C.)* 290. Aff'd in 56 *N. Y.* 630. Decision in 1 *Sup'm. Ct. (T. & C.)* followed (Safety of railroad switches) in *Salters v. Delaware, &c. Canal Co.*, 5 *Id.* 559.
- Pirnie, Matter of**, *Tuck.* 119. See *Valentine v. Valentine*. Opposed (Commissions of one who is executor and trustee) in *Meeker v. Crawford*, 5 *Redf.* 450, 462. Explained in *Matter of Carman*, 3 *Id.* 46, 51.
- Pitcher v. Hennessey**, 48 *N. Y.* 415. Referred to (Extent of rule denying relief in equity against mistakes of law) in 10 *Am. Dec.* 327, *n.*, as in harmony with *Sparks v. Pittman*, 51 *Miss.* 511, and other cases.

- **v. Livingston**, 4 *Johns.* 1; s. c., 4 *Am. Dec.* 229; 3 *N. Y. Com. L. Law. ed.* 723, with brief note. See *Staats v. Ten Eyck*. Reviewed at length and followed with *Staats v. Ten Eyck*, 3 *Cai.* 111; *Tanner v. Livingston*, 12 *Wend.* 83; *Dimmick v. Lockwood*, 10 *Id.* 142; *Bennet v. Jenkins*, 13 *Johns.* 50; *Kinney v. Watts*, 14 *Wend.* 38; *Peters v. McKeon*, 4 *Den.* 550 (Measure of damages in case of breach of covenants of seisin, for quiet enjoyment, &c.) in *Willson v. Willson*, 25 *N. H.* 229; s. c., 57 *Am. Dec.* 320. Included with note in *Sedgw. Cas. on Dama.* 14.
- **v. Turin Plank-road Co.**, 10 *Barb.* 436. Disting'd (Effect of settlement made in ignorance of law) in *Toplin v. Wilson*, 4 *Hun.* 244, 249.
- Pitkin v. Long Island R. R. Co.**, 2 *Barb.* Ch. 221; s. c., 47 *Am. Dec.* 320, with note, wherein are collected citations. Discussed (Statute of frauds as affecting agreement not to be performed in a year) in *Browne on Stat. of Frauds*, § 276, n. 4, 4 ed.
- Pitney v. Glen's Falls Ins. Co.**, 61 *Barb.* 335. Aff'd in 65 *N. Y.* 6. Decision in *Id.* followed (Waiver by insurance agent) in *Goodwin v. Massachusetts Mut. Life Ins. Co.*, 73 *Id.* 480, 495. Followed (Waiver of objection as to other insurance) in *Pechner v. Phoenix Ins. Co.*, 65 *Id.* 210. Disting'd (Effect of phrase in policy "as interest may appear") in *Dakin v. Liverpool, &c. Ins. Co.*, 77 *Id.* 601, 604.
- Pitt v. Davison**, 12 *Abb. Pr.* 385. Rev'd in 37 *Barb.* 97; which was rev'd in 37 *N. Y.* 235; s. c., 3 *Abb. Pr. N. S.* 398, and 34 *How. Pr.* 355. See *N. Y. & New Haven R. R. Co. v. Ketchum*. Decision in 37 *N. Y.* approved (Proceedings for contempt are proceedings in the action) in *Seely v. Black*, 35 *How. Pr.* 369, 371. Compare *Sudlow v. Knox*, 9 *Abb. Pr. N. S.* 411. Applied in *Woodhouse v. Woodhouse*, 5 *Redf.* 131, 135. Applied (Appeal in proceedings to punish for contempt) in *Brinkley v. Brinkley*, 47 *N. Y.* 44. Followed (Interrogatories in proceedings to punish for contempt) in *People v. Campbell*, 40 *Id.* 137; *People v. Alexander*, 5 *Sup'm. Ct. (T. & C.)* 297, 299. Explained in dissenting opinion in *Matter of Nichols*, 54 *N. Y.* 74. See *Code Civ. Pro.* 1881, §§ 2273, n., 2283, n. Followed (Sufficiency of service on attorney) in *De Bemser v. Drew*, 57 *Barb.* 446; *Rossner v. N. Y. Museum Assoc.*, 20 *Hun.* 182, 184.
- Pittman v. Mayor, &c. of N. Y.**, 3 *Hun.* 370; s. c., less fully, 6 *Sup'm. Ct. (T. & C.)* 89. Aff'd, it seems, in 62 *N. Y.* 637, but without opinion. Decision in 3 *Hun.* explained (Review of taxation of costs) in *Mayor, &c. of N. Y. v. Cornell*, 9 *Hun.* 215. Disting'd (Effect of allowance of charge, as former adjudication) in *People v. Starkweather*, 42 *Super. Ct. (J. & S.)* 325, 333.
- Pitts v. Congdon**, 2 *N. Y.* 352; s. c., 51 *Am. Dec.* 299, with note collecting citations. Applied (Rights as surety for party liable on note) in *Deck v. Works*, 18 *Hun.* 273.
- **v. Hunt**, 6 *Lans.* 146. Aff'd, it seems, in 61 *N. Y.* 637, but without opinion. Decision in 6 *Lans.* applied (Effect of payment by joint debtor) in *Nat. B'k of Delavan v. Cotton*, 53 *Wis.* 31, 35.
- **v. Pitts**, 44 *How. Pr.* 64; s. c., 13 *Abb. Pr. N. S.* 272; 64 *Barb.* 482. Aff'd in 44 *How. Pr.* 300; s. c., 64 *Barb.* 482, and the latter aff'd in 52 *N. Y.* 593; s. c., 45 *How. Pr.* 45, and 14 *Abb. Pr. N. S.* 97, where whole case is reported.
- Pixley v. Clark**, 32 *Barb.* 268. Rev'd in 35 *N. Y.* 520. Decision in *Id.* applied (Liability for such use of premises as causes injury to others) in *Heeg v. Licht*, 8 *Abb. N. C.* 355, 360. Explained in *Loose v. Buchanan*, 51 *N. Y.* 476, 481; which rev'd 61 *Barb.* 86, 113, which see. Collated with other cases in *Bigel. Cas. on Torts*, 499. Compared with other cases in 2 *Sedgw. on Dama.* 7 ed. 320, n. Followed (Liability for percolation) in *Wilson v. City of New Bedford*, 108 *Mass.* 261; s. c., 11 *Am. R.* 352, 356; *City of Emporia v. Soden*, 25 *Kan.* 588; s. c., 37 *Am. R.* 265, 273. Applied (Effect of variance) in *Place v. Minister*, 65 *N. Y.* 103.
- **v. Winchell**, 7 *Cow.* 366; s. c., 17 *Am. Dec.* 525, with note, wherein it is said to have been frequently relied on as authority in the *N. Y.* cases cited.
- Place v. Butternuts Woolen, &c. Co.**, 28 *Barb.* 503. Said in 26 *How. Pr.* 601, to have been rev'd by Ct. of App. in 1863; also so stated in *Clarke*, 191, n., Moak's ed. Further proceeding in 28 *How. Pr.* 184. Decision in 28 *Barb.* disting'd (Stockholder as "party") in *Goodyear v. Phoenix Rubber Co.*, 48 *Id.* 522. Overruled (Effect of kinship of judge to stockholder in corporation party) in *Matter of Dodge & Stevenson Manuf. Co.*, 77 *N. Y.* 101. See (Costs in justice's courts) *Code Civ. Pro.* 1881, § 3075, n. Decision in 28 *How. Pr.* followed unwillingly (Allowance of trial fee) in *Muller v. Higgins*, 13 *Abb. Pr. N. S.* 297, 299.
- **v. Chesebrough**, 4 *Hun.* 577. Aff'd in 63 *N. Y.* 315.
- **v. Greenman**, 4 *Hun.* 660; s. c., reported in 6 *Sup'm. Ct. (T. & C.)* 681.
- **v. McIlvain**, 1 *Daly*, 266. Aff'd in 38 *N. Y.* 96. Both decisions applied (Discharge of indorser, &c. by agreement for extension of time) in *Eisner v. Keller*, 3 *Daly*, 493; *Maier v. Canavan*, 8 *Id.* 275. Decision in 38 *N. Y.* applied in *Pomeroy v. Tanner*, 70 *Id.* 550. Disting'd in *Auburn City Nat. B'k v. Hunsiker*, 72 *Id.* 256. Applied (Agreement for extension of time, when implied) in *Grocers' B'k v. Penfield*, 7 *Hun.* 282.
- **v. Minister**, 65 *N. Y.* 89. See *Hosley v. Black*. Applied (Effect of testimony of

- witness who is shown to have testified falsely) in *Deering v. Metcalf*, 74 *N. Y.* 501, 506.
- **v. Union Express Co.**, 2 *Hill*, 19. Collated with *Mynard v. Syracuse, &c. R. R. Co.*, 71 *N. Y.* 180; *Tierney v. N. Y. Central & H. R. R. Co.*, 76 *Id.* 305; *McAndrew v. Whitlock*, 52 *Id.* 40; *Marshall v. N. Y. Central R. R. Co.*, 48 *Id.* 660; *Cooper v. Kane*, 19 *Wend.* 386; *Hollister v. Nowlen*, 19 *Id.* 238, and other cases (Liability of carrier of perishable property) in 31 *Am. R.* 567, *n.* Commented on (Distinction between carrier and forwarder) in 2 *Redf. Am. Railro. Cas.* 83.
- Planck v. Schermerhorn**, 3 *Barb. Ch.* 644. Quoted (Who may make assignment for benefit of creditors) in *Burrill on Assign.* § 61, *n.* 6, 4 ed.
- Plank v. N. Y. Central, &c. R. R. Co.**, 1 *Sup'm. Ct. (T. & C.)* 319. Aff'd in 60 *N. Y.* 607. See *Driscoll v. Mayor, &c. of N. Y.*; *Gibson v. Erie R'y Co.* Decision in 60 *N. Y.* explained and disting'd (Risks assumed by employee) in *De Forest v. Jewett*, 23 *Hun.* 490; which was aff'd in 88 *N. Y.* 269, which see; *Jones v. Roach*, 41 *Super. Ct. (J. & S.)* 248, 255.
- Plant v. Long Island R. R. Co.**, 10 *Barb.* 29. See *Radcliff v. Mayor, &c. of Brooklyn*. Explained (Distinction between use of city streets and of country highways) in *Kelsey v. King*, 33 *How. Pr.* 39, 49.
- Plate v. N. Y. Central R. R. Co.**, 37 *N. Y.* 472. Applied (Liability for continuing injury to land, caused by use for railroad purposes) in *Henderson v. N. Y. Central R. R. Co.*, 78 *Id.* 423, 435.
- Platner v. Best**. See *Brockway v. Kinney*.
- **v. Platner**, 78 *N. Y.* 90. Followed (Remedy against evidence admitted without exception) in *Pontius v. People*, 82 *Id.* 339, 347.
- Plato v. Reynolds**, 27 *N. Y.* 586. Disting'd (Refusal to accept draft, as excusing presentment for payment) in *Pendleton v. Knickerbocker L. Ins. Co.*, *U. S. Cir. Ct. W. D. Tenn.* 12 *Reporter*, 456. Included in 2 *Ames Cas. on B. & N.* 309.
- Platt v. Crawford**, 8 *Abb. Pr. N. S.* 297. Explained (Allegation of receivership in action by receiver) in *High. on Receiv.* § 237, *n.* 3.
- **v. Hibbard**, 7 *Cow.* 497. See *Lamb v. Camden & Amboy R. R. Co.*; *Roberts v. Turner*. Commented on and disapproved (Burden of proof as to negligence, in case of warehouseman) in *Foot v. Storrs*, 2 *Barb.* 329. Explained and applied in *Bush v. Miller*, 13 *Id.* 489. Examined at length with other authorities in *Arent v. Squire*, 1 *Daly*, 350. See *Claffin v. Meyer*, 75 *N. Y.* 263; *Coleman v. Livingston*, 36 *Super. Ct. (J. & S.)* 39. Collated with *Bush v. Miller*, 13 *Barb.* 481; *Arent v. Squire*, 1 *Daly*, 347, and other cases in 24 *Am. Dec.* 150, *n.*, the doctrine being said to be well established in *N. Y.* Compare *Gres. Eq. Ev.* 25.
- Commented on in 2 *Story on Contr.* 5 ed. § 902, *n.* 6. Explained in *Ang. on Carr.* § 61, *n.* 5, 5 ed.
- **v. Hunter**, 11 *Weekly Dig.* 300; *mem. s. c.*, 23 *Hun.* 291. Modified in 86 *N. Y.* 641.
- **v. Johnson**, 15 *Johns.* 213; *s. c.*, 8 *Am. Dec.* 233. See *Palmer v. Mulligan*. Followed (Water rights as affected by priority of occupation) in *Martin v. Bigelow*, 2 *Aikens (Vt.)* 284; *s. c.*, 16 *Am. Dec.* 696, with note; *Dumont v. Kellogg*, 29 *Mich.* 420; *s. c.*, 18 *Am. R.* 102. Followed with *Palmer v. Mulligan*, 3 *Qui.* 307, in *Omelvany v. Jaggars*, 2 *Hill (So. Car.)* 634; *s. c.*, 27 *Am. Dec.* 417, 420; *Hoy v. Sterrett*, 2 *Watts (Pa.)* 327; *s. c.*, 27 *Am. Dec.* 313, with note.
- **v. Lott**, 17 *N. Y.* 478. See *Wilkes v. Ferris*. Followed (Effect of defect in or omission of schedule in case of assignment for creditors) in *Birchell v. Straus*, 8 *Abb. Pr.* 58; *Turner v. Jaycox*, 40 *Barb.* 172; which was aff'd in 40 *N. Y.* 473, which see. Disting'd, as to an indemnity bond, in *Holmes v. Hubbard*, 60 *Id.* 185. Disapproved in *Nims v. Armstrong*, 31 *Md.* 87; *s. c.*, 1 *Am. R.* 27.
- **v. Parker**, 4 *Hun.* 135; *s. c.*, reported in 6 *Sup'm. Ct. (T. & C.)* 377.
- **v. Platt**, 2 *Sup'm. Ct. (T. & C.)* 25. Aff'd in 58 *N. Y.* 646. Further proceeding in 66 *Id.* 360. Prior proceeding in 11 *Abb. Pr. N. S.* 110; *s. c.*, less fully, 61 *Barb.* 52. Also further decision as *Smith v. Platt*, 96 *N. Y.* 635. Decision in 11 *Abb. Pr. N. S.* overruled (Inspection of partnership books) in *Livingston v. Curtis*, 12 *Hun.* 121. Decision in 2 *Sup'm. Ct. (T. & C.)* applied (New trial in equity cases) in *Church v. Kidd*, 5 *Id.* 454, 462. See (Good faith in partnership dealings) 9 *Alb. L. J.* 251.
- **v. Robins**, 1 *Johns. Cas.* 276; *s. c.*, 1 *Am. Dec.* 110, with note (Omission to plead *plene administravit*. Enforcing judgment against executor).
- **v. Smith**, 14 *Johns.* 368. Followed (Effect of words written at foot or in margin of award) in *Whitcher v. Whitcher*, 49 *N. H.* 176; *s. c.*, 6 *Am. R.* 486, 493.
- **v. White**. See *White v. Platt*.
- **v. Willson**, 9 *How. Pr.* 375. Overruled (Double costs not allowed under the Code) in *Bartle v. Gilman*, 18 *N. Y.* 260.
- Platz v. City of Cohoes**, 8 *Abb. N. C.* 392. Appeal dismissed, it seems, in 79 *N. Y.* 620, but without opinion.
- Plestoro v. Abraham**, 1 *Paige*, 236. Rev'd in 3 *Wend.* 538. See *Abraham v. Plestoro*. Decision in 1 *Paige* followed, and *Holmes v. Remsen*, 20 *Johns.* 229, disting'd (Effect of foreign assignment in bankruptcy) in *Smith v. Eaton*, 36 *Me.* 298; *s. c.*, 58 *Am. Dec.* 746.
- Plets v. Johnson**, 3 *Hill*, 112; *s. c.*, 15 *N. Y. Com. L. Law. ed.* 533, with brief note.
- Ploedtterll v. Mayor of N. Y.**, 55 *N. Y.* 666.

Discussed (Excavation in highway as nuisance) in *Wood on Nuis.* 2 ed. § 267.

**Plumb v. Cattarangus Mut. Ins. Co.**, 18 *N. Y.* 392. See *Brown v. Same*; *Jennings v. Chenango Mut. Ins. Co.*; *Masters v. Madison Co. Mut. Ins. Co.* Disting'd (Effect of statement made by insured) in *Baker v. Home Life Ins. Co.*, 2 *Hun.* 405. Followed in *Flynn v. Equitable Life Assur. Co.*, 7 *Id.* 390; which was rev'd in 67 *N. Y.* 500. 506, which see; *Taylor v. Mut. Benefit Life Ins. Co.*, 10 *Hun.* 55; *Rowley v. Empire Ins. Co.*, 36 *N. Y.* 550; *Boos v. World Mut. Ins. Co.*, 6 *Sup'm. Ct. (T. & C.)* 368. Explained in *Chase v. Hamilton Ins. Co.*, 20 *N. Y.* 52. See *Carroll v. Charter Oak Ins. Co.*, 1 *Abb. Ct. App. Dec.* 216. Explained at length in *Owens v. Holland Purchase Ins. Co.*, 56 *N. Y.* 571. Explained in *Rohrbach v. Germania Fire Ins. Co.*, 62 *Id.* 62. Disapproved in *Franklin Fire Ins. Co. v. Martin*, 11 *Vroom (N. J.)* 568; s. c., 29 *Am. R.* 277. Followed with *Rowley v. Empire Ins. Co.*, 36 *N. Y.* 550. In *Insurance Co. v. Wilkinson*, 13 *Wall.* 222; *Combs v. Hannibal Savings & Ins. Co.*, 43 *Mo.* 148.

— **v. Milk.** See *Dusenberry v. Ellis*.

— **v. Tubbs**, 41 *N. Y.* 442. Followed (Validity of condition in deed limiting use of premises) in *Post v. Bernheimer*, 31 *Hun.* 247; *Smith v. Barrie*, *Sup'm. Ct. Mich.* 1885, 22 *Northw. Rep.* 816, 819. Discussed in *Sedgw. & W. on Tr. of Tit. to Land*, § 213.

**Plummer v. Murray**, 51 *Barb.* 201. Overruled (Effect of birth of child to married woman, after making of her will) in *Cothéal v. Cothéal*, 40 *N. Y.* 405.

— **v. Plummer**, 7 *How. Pr.* 62. Dissented from (Effect of abatement in judgment by confession) in *Whitney v. Kenyon*, *Id.* 458.

**Plumtree v. Drutt**, 41 *Barb.* 333. Applied (Proof of official character of party to suit) in *Albro v. Rood*, 24 *Hun.* 72, 74.

**Plunkett v. Appleton**, 51 *How. Pr.* 469; s. c., 41 *Super. Ct. (J. & S.)* 159, with affirmance. Appeal dismissed, it seems, in 66 *N. Y.* 645, but without opinion. See *Thayer v. Van Vleet*.

**Poerschke v. Kedenburg**, 60 *Abb. Pr. N. S.* 172. Disapproved (Continuation of mechanic's lien, under *L.* 1863, c. 500) in *Mathews v. Daley*, 7 *Id.* 379.

**Pohalski v. Mutual Life Ins. Co.**, 45 *How. Pr.* 504; s. c., more fully, 36 *Super. Ct. (J. & S.)* 234. Aff'd in 56 *N. Y.* 640, on opinion of FREEDMAN, J.

**Poillon v. Lawrence**, 43 *Super. Ct. (J. & S.)* 385. Rev'd in 77 *N. Y.* 207. Decision in *Id.* followed (Discharge in bankruptcy, when invalid) in *Matter of Le Baron*, 6 *Civ. Pro. R. (Browne)* 62. Applied in *Honegger v. Wettstein*, 47 *Super. Ct. (J. & S.)* 125, 135. See authorities cited in *Abb. Tr. Ev.* 820, n.

— **v. Martin**, 1 *Sandf. Ch.* 569. Disting'd (Rights of assignee of non-negotiable chose

in action) in *Moore v. Metropolitan Nat. B'k*, 55 *N. Y.* 41, 49. Cited as authority with *Sweet v. Van Wyck*, 3 *Barb. Ch.* 647, in *Bush v. Lathrop*, 22 *N. Y.* 535, 547. Approved (Clerk of attorney, &c., when prohibited from purchasing) in *Gardner v. Ogden*, *Id.* 327, 349.

— **v. Mayor, &c. of N. Y.** See *Brinckerhoff v. Board of Education*.

— **v. Secor**, 61 *N. Y.* 456. Disapproved (Liability of one held out as partner) in *Thompson v. First Nat. Bk. U. S.*, 111 *U. S.* 529, 541, as inconsistent with *Central City Sav'gs B'k v. Walker*, 66 *N. Y.* 424. Disting'd with *Conklin v. Barton*, 43 *Barb.* 435, in *Pringle v. Leverich*, 48 *Super. Ct. (J. & S.)* 90.

— **v. Volkening**, 11 *Hun.* 385. Rev'd as *Jordan v. Volkening*, 72 *N. Y.* 300.

**Polinsky v. People**, 11 *Hun.* 390. Aff'd in 73 *N. Y.* 65. See *Metropolitan Board of Health v. Heister*.

**Polk v. Daly**, 4 *Daly*, 411; s. c., 14 *Abb. Pr. (N. S.)* 156. Disting'd (Duty of servant to hold himself in readiness to perform, in order to entitle him to sue for wages) in *Howard v. Daly*, 61 *N. Y.* 362, 372. Included in *Sedgw. Cas. on Dama.* 415.

**Pollak v. Gregory**, 9 *Bosw.* 116. Disting'd (Validity of agreement to testify for reward) in *Nickelson v. Wilson*, 60 *N. Y.* 362, 370. Approved in *Waterman on Sp. Perp.* § 217, n.

**Pollen v. Leroy**, 10 *Bosw.* 38. Aff'd in 30 *N. Y.* 549. See *McEachron v. Randles*. Decision in 30 *N. Y.* applied (Damages for breach of contract to purchase) in *Hay v. Leigh*, 48 *Barb.* 401. Explained in 2 *Benj. on Sales*, § 1125, n. 6 (*Corbin's 4 Am. ed.*). Quoted in *Id.* § 1180, n. 5.

**Pollett v. Long**, 56 *N. Y.* 200. Rev'g 58 *Barb.* 20. See *Ryan & N. Y. Central R. R. Co.* Compare (Right of riparian owners to construct embankments, &c.) *Wallace v. Drew*, 59 *Barb.* 413; which was rev'd in 54 *N. Y.* 678.

**Pollitt v. Long**, 3 *Sup'm. Ct. (T. & C.)* 232. Discussed (Nuisance as created by diversion and detention of water) in *Wood on Nuis.* 2 ed. § 368.

**Pollock, Matter of**, 3 *Redf.* 100. See (Executor's accounting) *Code Civ. Pro.* 1881, § 2734, n.

**Pollock v. National Bank**, 7 *N. Y.* 274; s. c., 57 *Am. Dec.* 520, with notes. Applied (Right to compel transfer of stock by corporation) in *Cushman v. Thayer Man'g. Jewelry Co.*, 76 *N. Y.* 369; which aff'd 7 *Daly*, 332, which see. Explained in *Purchase v. N. Y. Exchange B'k*, 3 *Robt.* 170. Followed in *Pratt v. Taunton Copper Co.*, 123 *Mass.* 110; s. c., 25 *Am. R.* 37. Explained in *Ang. & A. on Corp.* § 582, n. 1, 11 ed.

— **v. Pollock**, 71 *N. Y.* 137. See *Bullard v. Pearsall*. Reviewed with *Merrill v. Merrill*, 11 *Abb. Pr. N. S.* 74; *Sullivan v. Sullivan*, 41 *Super. Ct. (J. & S.)* 519; *Harper*

- v. Harper*, 5 *Weekly Dig.* 440; *Waterman v. Waterman*, 37 *How. Pr.* 36; *Whale v. Whale*, 1 *Code R.* 115 (References in divorce suits) in *McCleary v. McCleary*, 30 *Hun.* 154. Followed (Evidence of adultery) in *Conger v. Conger*, 82 *N. Y.* 603.
- Poltz v. Curtis**, 9 *Wend.* 497; s. c., more fully, 18 *Id.* 159, n.
- Polly v. Saratoga & Washington R. R. Co.** See *Bellinger v. N. Y. Central R. R. Co.*
- Pomeroy v. Ainsworth**, 22 *Barb.* 118. Explained (Usury as determined by law of place) in *Wayne Co. Savgs. B'k v. Low*, 6 *Abb. N. C.* 76, 87; *Smith v. Alvord*, 63 *Barb.* 427. Followed in *Jewell v. Wright*, 18 *Abb. Pr.* 86. Applied (Usury, as determined by payment of principal being conditional) in *Braynard v. Hoppock*, 7 *Bosw.* 166; *Sumner v. People*, 29 *N. Y.* 340. Followed (Law of place of contract when to govern) in *Stoddart v. Key*, 62 *How. Pr.* 137, 145. Relied on in *Barter v. Wheeler*, 49 *N. H.* 9; s. c., 6 *Am. R.* 434, 449.
- **v. Drury**. See *Gazley v. Price*.
- **v. Hulin**, 7 *How. Pr.* 161. Disting'd (Trial fee on discontinuance) in *Sutphen v. Lash*, 10 *Hun.* 120, 122. Approved in *Hawley v. Davis*, 5 *Id.* 642.
- **v. Wells**, 8 *Paige*, 406. Overruled (Necessity that superintendents of poor sue in corporate name) in *Alger v. Miller*, 56 *Barb.* 227, 230. Dictum said in *Tyler on Inf. & Cov.* 2 ed. § 225, to have been overruled (Action by superintendents of poor against husband for support of insane wife) by *Norton v. Rhodes*, 18 *Barb.* 100.
- Pomroy v. Sperry**, 16 *How. Pr.* 211. Compare (In whose name action by excise commissioners is to be brought) *Hart v. Benson*, 18 *Id.* 302. Explained and approved (Mode of taking objection, in such case) in *Commissioners of Excise v. Purdy*, 13 *Abb. Pr.* 434, 439.
- Pond v. Bergh**, 10 *Paige*, 140. Approved (Intention of the testator to be followed in construing will) in *Cipperly v. Cipperly*, 40 *How. Pr.* 269.
- **v. Comstock**, 20 *Hun.* 492. Aff'd in 87 *N. Y.* 627, but without opinion. Decision in 20 *Hun.* followed (Rights of one obtaining title from fraudulent transferrer) in *Murphy v. Moore*, 23 *Id.* 95, 99.
- Pontius v. People**, 21 *Hun.* 328. Aff'd in 82 *N. Y.* 339. Both decisions disting'd (Evidence of pecuniary means) in *Gorham v. Price*, 25 *Hun.* 11.
- Ponto v. Phelps**, 36 *How. Pr.* 19. Collated with other cases (Notice of appeal from justices' judgment) in *Throop's Justice's Man.* 2 ed. 91. See *Code Civ. Pro.* 1881, § 3070, n.
- Ponvert v. Belmont**, 42 *Super. Ct. (J. & S.)* 531. Subsequent decision in 81 *N. Y.* 649, but without opinion. See *Cas. in Ct. App.*, Law Inst. Libr. N. Y.
- Pool v. Coleman**, 8 *Daly*, 113. Included (Injunction to restrain nuisance caused by noise) in *Lawson Lead. Cas. in Eq. Simplified*, 149. Explained in *Moak's Underhill Torts*, 1 *Am. ed.* 237.
- Poole v. Kermit**, 37 *Super. Ct. (J. & S.)* 114. See also (Constitutionality of State law giving lien on vessel) *The Edith*, 11 *Blatchf.* 451.
- Pooler v. Maplis**, 1 *Wend.* 65. See (When commission may issue to take deposition) *Code Civ. Pro.* 1881, § 888, n.
- Poor v. Bowen**, 1 *Hun.* 122; mem. s. c., 3 *Sup'm. Ct. (T. & C.)* 759. Aff'd, it seems, in 60 *N. Y.* 626, but without opinion.
- Pope v. Bank of Albion**, 59 *Barb.* 226. Rev'd in 57 *N. Y.* 126. Decision in *Id.* cited (Usage as qualifying contracts made by banks through officers) in *Whart. Com. on Ag.* § 676. Also cited (Sub cashier cannot accept post-dated check) in *Id.* § 687.
- **v. Cole**, 64 *Barb.* 406; s. c., 66 *Id.* 282. Aff'd in 55 *N. Y.* 124; s. c., 14 *Am. R.* 198. See *Jenkins v. De Groot*. See cases cited (Necessity of showing inability to collect from surviving partner) in 20 *Am. L. Reg.* 469, n. Decision in 55 *N. Y.* cited in *Story on Partn.* § 262, where the doctrine is said still to prevail in *N. Y.*
- **v. Dinsmore**, 8 *Abb. Pr.* 429. See (Appeal from judgment by default) *Code Civ. Pro.* 1881, § 1294, n.
- **v. Hanmer**, 8 *Hun.* 265. Aff'd in 74 *N. Y.* 240. See (Adverse possession under claim of title) *Code Civ. Pro.* 1881, § 369, n., § 372. Decision in 74 *N. Y.* quoted in *Sedgw. & W. on Tr. of Tit. to Land*, § 768.
- **v. Hart**, 35 *Barb.* 630. See (Plaintiff's adjournment in justices' courts) *Code Civ. Pro.* 1881, § 2960, n.
- **v. Luff**. See *Chapman v. White*.
- Popham v. Cole**. See *Popham v. Wilcox*.
- **v. Wilcox**, 14 *Abb. Pr. N. S.* 206. Subsequent decision in 38 *Super. Ct. (J. & S.)* 247; which was aff'd as *Popham v. Cole*, in 66 *N. Y.* 69; s. c., 23 *Am. R.* 22, with note. Decision in *Id.* disting'd (What constitutes infringement of trade-mark) in *Ilier v. Abrahams*, 82 *N. Y.* 519, 523. Followed in *Thornton v. Crowley*, 47 *Super. Ct. (J. & S.)* 527, 530. Collated with *Amoskeag Man'g Co. v. Spear*, 2 *Sandf.* 599, and other cases in note to *Liggett, & Co. Tobacco Co. v. Hynes*, *U. S. Cir. Ct. W. D. Ark.* 19 *Cent. L. J.* 109, 111.
- Poppenhusen v. Seeley**, 41 *Barb.* 450. Aff'd in 3 *Abb. Ct. App. Dec.* 615; s. c., 3 *Keyes*, 150. Decision in 41 *Barb.* disting'd (Liability on undertaking given on appeal) in *Lowry v. Tew*, 25 *Hun.* 257, 259.
- Popper v. Scheider**, 38 *How. Pr.* 34; s. c., 7 *Abb. Pr. N. S.* 56. Discussed (Appointment of receiver of partnership) in 1 *Collyer on Partn.* § 375, *Wood's Am. ed.* Quoted in *High on Receiv.* § 478, n. 3.
- Port v. Jackson**, 17 *Johns.* 239. Aff'd in *Id.* 479. See *Matter of Negus*; *Rector, & Co. of Trinity Church v. Higgins*. Decision on p. 239 reviewed with other cases (Liability on agreement to indemnify) in *Wright v. Whiting*, 40 *Barb.* 238. Applied in *Haw-*

- kins v. Mosher, 13 *Hun.* 565; Rector, &c. of Trinity Church v. Higgins, 48 *N. Y.* 537; see *Same v. Same*, 4 *Robt.* 374; also applied in *Matter of Negus*, 7 *Wend.* 503. Disting'd (Liability of assignee of lease) in *Astor v. L'Amoreux*, 4 *Sandf.* 529.
- Porter v. Clark**, 12 *How. Pr.* 107. Thought in 38 *Am. Dec.* 583, *n.* to be in contradiction to *Seymour v. Wilson*, 16 *Durb.* 298 (Right of receiver to attack validity of transfers of property made by debtor in fraud of creditors).
- **v. Goodman**, 1 *Cow.* 413. Applied (Amendment of execution) in *Tasker v. Wallace*, 6 *Daly*, 364, 366.
- **v. Havens**, 37 *Burb.* 343. Reviewed and followed (Validity of contract to affect administration of criminal justice) in *Conderman v. Trenchard*, 40 *How. Pr.* 71, 81.
- **v. Kemball**, 53 *Barb.* 467. Cited and approved (Waiver of protest includes waiver of demand) in *Harvey v. Nelson*, 31 *La. Ann.* 434; *s. c.*, 33 *Am. R.* 223.
- **v. Kingsbury**, 5 *Hun.* 597. Aff'd in 71 *N. Y.* 588. Second action in 13 *Hun.* 33; which was aff'd in 77 *N. Y.* 104. Decisions in 5 *Hun.*; 71 *N. Y.* disting'd with *Rae v. Beach*, 76 *Id.* 164 (Action on undertaking given on appeal) in *Yates v. Burch*, 87 *Id.* 409. Decision in 5 *Hun.* followed in *Rae v. Harteau*, 7 *Daly*, 95, 100.
- **v. Knapp**, 6 *Lans.* 125. Rev'd, it seems, in 65 *N. Y.* 564, but without opinion. Compare (Stolen property and proceeds) *Newton v. Porter*, 5 *Lans.* 416; 69 *N. Y.* 133; *Warren v. Haight*, 65 *Id.* 171.
- **v. Lane**, 8 *Johns.* 357. Disapproved (Attorney's lien for costs, as subject to set-off of judgments) in *Currier v. Boston & Maine R. R. Co.*, 37 *N. H.* 223.
- **v. McClure**, 15 *Wend.* 187. Explained (Formation of partnership) in 1 *Collyer on Partn.* § 20, *n.* 1, Wood's *Am. ed.*
- **v. Mount**, 45 *Barb.* 422. See *Wheaton v. Hibbard*. Disting'd (Liability of husband for wife's torts) in *Tait v. Culbertson*, 57 *Barb.* 9.
- **v. N. Y. Central R. R. Co.**, 34 *Barb.* 353. Compared (Exaction of illegal fares) in *Bordeaux v. Eric R'y Co.*, 8 *Hun.* 579, 581.
- **v. Parks**, 5 *Sup'm. Ct. (T. & C.)* 683; *s. c.*, reported, 2 *Hun.* 654. Previous decision in 49 *N. Y.* 564.
- **v. Parmley**, 34 *Super. Ct. (J. & S.)* 398; *s. c.*, 13 *Abb. Pr. N. S.* 104; 43 *How. Pr.* 445. Rev'd in 52 *N. Y.* 185; *s. c.*, 14 *Abb. Pr. N. S.* 16. Further proceedings in 38 *Super. Ct. (J. & S.)* 490; and in 39 *Id.* 219. See *Meech v. Patchin*. Decision in 52 *N. Y.* explained (Validity of chattel mortgage as to creditors) in *Fraser v. Gilbert*, 11 *Hun.* 634, 637.
- **v. Rose**, 12 *Johns.* 209. See *Cook v. Ferral*. Applied (Pleading in action for non-delivery) in *Crandall v. Clark*, 7 *Barb.* 171; *Topping v. Root*, 5 *Cow.* 405. Disting'd in *Coonley v. Anderson*, 1 *Hill*, 523.
- Followed in *McGehee v. Hill*, 4 *Port. (Ala.)* 170; *s. c.*, 29 *Am. Dec.* 277, with note.
- **v. Ruckman**, 38 *N. Y.* 210. Opinion of CLERKE, J., in 6 *Transc. App.* 65.
- **v. Spencer**, 2 *Johns. Ch.* 169. Cited with approval (Matters of account when within jurisdiction of court of equity) in *McMartin v. Bingham*, 27 *Iowa*, 234; *s. c.*, 1 *Am. R.* 265.
- **v. Talcott**, 1 *Cow.* 359. See *Linningdale v. Livingston*; *Monroe v. Hoff*; *Ontario Bank v. Lightbody*; *Whitbeck v. Van Ness*. Dictum overruled (Payment by note of third person) in *Noel v. Murray*, 1 *Duer*, 385.
- **v. Waring**, 51 *How. Pr.* 295. Aff'd in 69 *N. Y.* 250; *s. c.*, 2 *Abb. N. C.* 230.
- **v. Williams**, 5 *How. Pr.* 441; *s. c.*, 9 *N. Y. Leg. Obs.* 307. Aff'd in 9 *N. Y.* 142; *s. c.*, 59 *Am. Dec.* 519, with note; also *s. c.*, as *Porter v. Clark*, with opinion of DENIO, J., in 12 *How. Pr.* 107. Decision in 9 *N. Y.* applied (Receiver, as representative of creditors) in *Irving Nat. B'k v. Kernan*, 3 *Redf.* 6. Applied (Right of receiver, as such representative to maintain proceeding to set aside fraudulent transfer) in *Osgood v. Ogden*, 3 *Abb. Ct. App. Dec.* 429. Disting'd in *Donnelly v. Shaw*, 7 *Abb. N. C.* 270; *Gere v. Dibble*, 17 *How. Pr.* 33; *Underwood v. Sutcliffe*, 77 *N. Y.* 62. Quoted in *Wait on Fraud. Conv.* § 116, *n.* 1. Commented on in *High on Receiv.* § 447, *n.* 4. Quoted in *Id.* § 454, *n.* 3. Discussed (Mistakes in assignment for benefit of creditors) in *Burrill on Assign.* § 263, 4 ed. Dictum approved (Effect between parties, of assignment void as to creditors) in *Gates v. Andrews*, 37 *N. Y.* 659. Decisions in 5 *How. Pr.*; 9 *N. Y.* explained (Title of receiver in supplementary proceedings) in *Voorhees v. Seymour*, 26 *Barb.* 580. Decision in 5 *How. Pr.* explained and that in 9 *N. Y.* applied in *Clan Renald v. Wyckoff*, 52 *How. Pr.* 509, 511. Collated with other cases in *Thomp. on Prov. Rem.* 481. Decision in 9 *N. Y.* explained in *Moak v. Coats*, 33 *Barb.* 500; *Scott v. Elmore*, 10 *Hun.* 71. Decision in 5 *How. Pr.*; 9 *N. Y.* explained (Lien created by order instituting supplementary proceedings) in *Becker v. Torrance*, 31 *Id.* 638.
- Post v. Aetna Ins. Co.**, 43 *Barb.* 351. Explained (Extent of authority conferred on agent by insurance company) in *Ellis v. Albany City Fire Ins. Co.*, 4 *Lans.* 433, 437; which was aff'd in 50 *N. Y.* 402, 407, which see.
- **v. Arnot**, 2 *Den.* 344. Rev'g *Arnot v. Post*, 6 *Hill*, 65. See *Jackson v. Crafts*. Decision in 2 *Den.* criticised (Effect of tender of mortgage debt after default) in *Kortright v. Cady*, 21 *N. Y.* 362; which rev'd 5 *Abb. Pr.* 361, 370, which see. To same effect, see *Walsh v. Rutgers Fire Ins. Co.*, 13 *Abb. Pr.* 33, 37. Examined with other cases in dissenting opinion in *Trimm v. Marsh*, 54 *N. Y.* 623. Explained (Effect

- of foreclosure on rights of subsequent incumbrancer) in *Peabody v. Roberts*, 47 *Barb.* 100. Explained (Necessity of service of notice, on foreclosure by advertisement) in *Root v. Wheeler*, 12 *Abb. Pr.* 294, 300.
- **v. Bank of Utica**, 7 *Hill*, 391. See *Cole v. Savage*. Applied (Who may obtain relief against usurious contract) in *Rexford v. Widger*, 3 *Barb. Ch.* 64; which was aff'd in 2 *N. Y.* 131, which see; *Murray v. Judson*, 9 *Id.* 73, 85. Explained in *Morris v. Floyd*, 5 *Barb.* 134; *Schermerhorn v. Am. Life Ins. & Trust Co.*, 14 *Id.* 165; *Sands v. Church*, 6 *N. Y.* 353; *Allerton v. Belden*, 49 *Id.* 376. Examined and reconciled with *Post v. Dart*, 8 *Paige*, 639, in *Chamberlain v. Dempsey*, 14 *Abb. Pr.* 241, 245, 247, 250. See *Sane v. Same*, 36 *N. Y.* 149. Approved and followed in *Billington v. Wagoner*, 33 *Id.* 35.
- **v. Black**, 5 *Den.* 66. See (Costs in justices' court) *Code Civ. Pro.* 1881, § 3075, n.
- **v. Boardman**, *Clarke*, 333. Aff'd in 10 *Paige*, 580.
- **v. Campbell**, 18 *Hun.* 51. Aff'd in 83 *N. Y.* 279.
- **v. Dart**, 8 *Paige*, 639. See *Brooks v. Avery*; *Post v. Bank of Utica*. Examined and applied (Who may set up defense of usury) in *Morris v. Floyd*, 5 *Barb.* 135. Applied in *Lynde v. Staats*, 1 *N. Y. Leg. Obs.* 91; *Williams v. Tilt*, 36 *N. Y.* 325; *Berdan v. Sedgwick*, 44 *Id.* 631. Explained (Competency, as witness to prove usury, of defendant that has taken bill in foreclosure as confessed) in *Mann v. Cooper*, 1 *Barb. Ch.* 187.
- **v. Doremus**, 1 *Hun.* 521; s. c., 3 *Sup'm. Ct. (T. & C.)* 626. Modified in 60 *N. Y.* 371. Decision in *Id.* followed (Liability of sureties on undertaking given on appeal) in *Burdett v. Lowe*, 85 *Id.* 241. Disting'd with *Grimwood v. Wilson*, 66 *Hov. Pr.* 283, in *Hooker v. Townsend*, *Id.* 349.
- **v. Dorr**, 4 *Edw.* 412. Applied (Lien of receiver in foreclosure on unpaid rents) in *Rider v. Vrooman*, 12 *Hun.* 299. Followed in *Washington Life Ins. Co. v. Fleischauer*, 10 *Id.* 117, 120.
- **v. Hathorn**, 54 *N. Y.* 147. See (Motion for new trial) *Code Civ. Pro.* 1881, § 1000, n.
- **v. Hover**, 30 *Barb.* 312. Aff'd, but overruled, as to point that direction amounted to devise in trust, in 33 *N. Y.* 593. Decision in *Id.* applied (Proof of devise by implication) in *Newell v. Toles*, 17 *Hun.* 77; *Robert v. Corning*, 23 *Id.* 304. Discussed (Ejectment as distinguished from suit to obtain construction of will) in *Sedgwick & W. on Tr. of Tit. to Land*, § 163. Explained (Recitals in wills) in 2 *Jarm. on Wills*, *Rand. & T. ed.* 104, n.
- **v. Kearney**, 2 *N. Y.* 394; s. c., 51 *Am. Dec.* 303, with note collecting citations of the case. Questioned (Distinction between assignment and sub-lease) in *Woodhull v. Rosenthal*, 61 *N. Y.* 382, 392. Explained in *Constantine v. Wake*, 1 *Sweeny*, 239, 247. Reviewed in 16 *Am. L. Rev.* 29.
- **v. Kimberley**, 9 *Johns.* 470; s. c., 4 *N. Y. Com. L. Law. ed.* 846, with brief note. See *King v. Baldwin*; *Munford v. Nicoll*. Relied on (Doctrine of constructive partnership not to be extended) in *Loomis v. Marshall*, 12 *Conn.* 69, 77. See also *Story on Partn.* 7 ed. § 45, n. Cited as a leading case and discussed (Partnership liability in purchase of goods) in 1 *Para. on Contr.* 176, n. p. Discussed in 1 *Collyer on Partn.* § 30, *Wood's Am. ed.* Explained in *Id.* § 510.
- **v. Leet**, 8 *Paige*, 337. Disting'd (Existence of assessment, as ground of relief to purchaser of real estate) in *De Peyster v. Murphy*, 39 *Super. Ct. (J. & S.)* 255, 270; which was rev'd in 66 *N. Y.* 622.
- **v. Neale**, 3 *Cal.* 22. Followed (Action at law on decree of court of chancery) in *Thrall v. Waller*, 13 *Verm.* 231; s. c., 37 *Am. Dec.* 592; *Evans v. Tatem*, 9 *Serg. & R. (Pa.)* 252; s. c., 11 *Am. Dec.* 717, 722.
- **v. Pearsall**, 20 *Wend.* 111. Aff'd in 22 *Id.* 425. Decision in *Id.* applied (Grant of right of profits *a prendre* as an appurtenance) in *Huntington v. Asher*, 96 *N. Y.* 604, 610. Approved (Definition of "dedication") in *Gardiner v. Tisdale*, 2 *Wis.* 153; s. c., 60 *Am. Dec.* 407, with note. Both decisions approved (User as evidence of dedication of landing to public use) in *O'Neill v. Annett*, 3 *Dutcher (N. J.)* 290, 295. Compare *Mankato v. Willard*, 13 *Minn.* 13.
- **v. Post**. See *Nichols v. Williams*.
- Potter v. Bank of Ithaca**, 5 *Hill*, 490. Aff'd in 7 *Id.* 530.
- **v. Carpenter**, 56 *Hov. Pr.* 89. Rev'd in 71 *N. Y.* 74. Further decision in 76 *Id.* 157.
- **v. Chapin**, 6 *Paige*, 649. Applied (Validity of gift or bequest to public or charitable uses) in *Ould v. Washington Hospital*, 1 *McArth.* 541; s. c., 29 *Am. R.* 605, 610. Approved in *Bartlett v. Nye*, 4 *Meta. (Mass.)* 379. Quoted in *Aug. & A. on Corp.* § 182, 11 ed.
- **v. Cromwell**, 40 *N. Y.* 287. See *Murdock v. Gifford*. Applied (Intention, &c., as element in test of fixture) in *Funk v. Brigaldi*, 4 *Daly*, 361; *Grosz v. Jackson*, 5 *Id.* 464; *McRea v. Central Nat. B'k*, 50 *Hov. Pr.* 53; which was aff'd in 66 *N. Y.* 495, which see; *Voorhees v. McGinnis*, 48 *Id.* 282. Disting'd in *Wells v. Maples*, 15 *Hun.* 92; *Tift v. Horton*, 53 *N. Y.* 383. Reconciled in *Sisson v. Hibbard*, 10 *Hun.* 424.
- **v. Etz**, 5 *Wend.* 74. Explained (Costs against personal representatives that unreasonably resist claim) in *Gansevoort v. Nelson*, 6 *Hill*, 389, 395.
- **v. Hopkins**, 25 *Wend.* 417; s. c., 14 *N. Y. Com. L. Law. ed.* 893, with brief note. Disting'd (Variance when material) in *Cornwall v. Haight*, 8 *Barb.* 330. Applied



- (Parol evidence to supplement written agreement) in *Beach v. Raritan, &c. R. R. Co.*, 37 *N. Y.* 464.
- *v. Lausing*, 1 *Johns.* 215; s. c., 3 *N. Y. Civ. L. Law. ed.* 118, with brief note; also s. c., 3 *Am. Dec.* 318, with note, wherein it is said to be a well recognized authority (Damages in action against sheriff for escape). Examined in 2 *Sedgw. on Dama.* 7 ed. 512. Criticised and disting'd in dissenting opinion of Gibson, J. (When delivery of goods to carrier is delivery to consignee) in *Griffith v. Ingledew*, 6 *Serg. & R. (Pa.)* 429; s. c., 9 *Am. Dec.* 444, 453. See cases collated in 8 *Am. Dec.* 214, n. Thought, though not expressly overruled, to be no longer authority in *N. Y.* (Consignor's action against carrier) in 7 *South. L. Rev. N. S.* 283, citing other cases. Discussed in *Ang. on Carr.* § 505, 5 ed.
- *v. Low*, 16 *How. Pr.* 549. See (Receiver in supplementary proceedings) *Code Civ. Pro.* 1881, § 2469, n.
- *v. Merchants' Bank*, 28 *N. Y.* 641. See *Tyler v. Ames*. Disting'd (Damages for conversion of note) in *Thayer v. Manley*, 8 *Hun.* 551. Applied (*Prima facie* value of obligation for payment of money) to judgment, in *Furniss v. Ferguson*, 34 *N. Y.* 492. Applied (Interest as damages) in *Greer v. Mayor, &c. of N. Y.*, 3 *Robt.* 410. See (Effect of recital of jurisdictional facts) *Bolton v. Jacks*, 6 *Id.* 166, 202.
- *v. Ontario & Livingston Mut. Ins. Co.*, 5 *Hill*, 147. Disting'd (Effect of clause in policy respecting other insurance) in *Westlake v. St. Lawrence Mut. Ins. Co.*, 14 *Barb.* 213. Quoted and explained (Construction and interpretation of contracts) in 2 *Pars. on Contr.* 498, n. p.
- *v. Van Vranken*, 36 *N. Y.* 619. See *Van Bergen v. Bradley*. See (Bond or undertaking as affected by change of parties) *Code Civ. Pro.* 1881, § 815, n. See also (Abatement and revival) *Id.* § 1736, n.
- *v. White*, 6 *Bosw.* 644. Collated with other cases (Interference with party-wall) in *McAdam on Landl. & T.* 2 ed. § 233.
- *v. Whittaker*, 27 *How. Pr.* 10. Followed (Process from justice's court when presumed to be regular) in *Avery v. Woodbeck*, 5 *Lans.* 498.
- Potts v. Mayer**, 53 *How. Pr.* 368; mem. s. c., 43 *Super. Ct. (J. & S.)* 544. Rev'd in 74 *N. Y.* 594. Further decision in 46 *Super. Ct. (J. & S.)* 182; rev'd in 86 *N. Y.* 302; s. c., 10 *Abb. N. C.* 63; 62 *How. Pr.* 126.
- Poucher v. Blanchard**, 21 *Hun.* 102. Aff'd, it seems, in 86 *N. Y.* 256.
- *v. N. Y. Central R. R. Co.*, 49 *N. Y.* 263; s. c., 10 *Am. R.* 364, with note. See *Cole v. Goodwin*; *Welles v. N. Y. Central R. R. Co.* Disting'd (Exemption of carrier from liability by express agreement) in *Blair v. Erie R. Co.*, 66 *N. Y.* 317. Explained in *Railroad Co. v. Lockwood*, 7 *Wall.* 357, 367. Questioned in *Ohio, &c. R'y Co. v. Selby*, 47 *Ind.* 485. Criticised in *Lawson's Contr. of Carr.* § 128. Collated with *Cragin v. N. Y. Central R. R. Co.*, 51 *N. Y.* 61; *Mynard v. Syracuse, B., &c. R. R. Co.*, 71 *Id.* 180; *Stinson v. N. Y. Central R. R. Co.*, 32 *Id.* 333; *Holsapple v. Rome, W. & O. R. Co.*, 86 *Id.* 275; *Clarke Rochester & S. R. R. Co.*, 14 *Id.* 571; *Harris v. No. Indiana R. R. Co.*, 20 *Id.* 232; *Penn. v. Buffalo & Erie R. R. Co.*, 49 *Id.* 204; *Bills v. N. Y. Central R. R. Co.*, 84 *Id.* 5; *Keeney v. Grand Trunk R. R. Co.*, 47 *Id.* 525, and many other cases (Transportation of live stock) in 19 *Cent. L. J.* 161.
- Poughkeepsie & Salt Point Plank-road Co. v. Griffin**, 21 *Barb.* 454. Rev'd on ground of effect of preliminary subscription, in 24 *N. Y.* 150.
- Poulin v. Broadway & Seventh Ave. R. R. Co.**, 34 *Super. Ct. (J. & S.)* 296. Aff'd in 61 *N. Y.* 621.
- Powell v. Clark**, 5 *Abb. Pr.* 70. Applied (Corroborative affidavits on motion) in *Jacobs v. Miller*, 10 *Hun.* 230.
- *v. Jones*, 42 *Barb.* 24. Followed (New trial for newly discovered evidence) in *May v. Strauss*, 8 *Abb. N. C.* 274, 278. Applied in *Darbee v. Elwood*, 5 *Sup'm. Ct. (T. & C.)* 148, 151.
- *v. Kane*, 2 *Edw.* 450. Aff'd in 5 *Paige*, 265.
- *v. Murray*, 2 *Edw.* 636. Aff'd in 10 *Paige*, 256. Decision in *Id.* explained (Trusts, when barred in equity) in 1 *Perry on Trusts*, 3 ed. § 229.
- *v. Meyers*, 26 *Wend.* 591. See *Roth v. Buffalo & State Line R. R. Co.* Followed (Continuance of carrier's liability) in *Cary v. Cleveland & Toledo R. R. Co.*, 29 *Barb.* 48; *Curtis v. Avon, &c. R. R. Co.*, 49 *Id.* 148, 155. Approved but disting'd in *Roth v. Buffalo & State Line R. R. Co.*, 34 *N. Y.* 551. See *Burnell v. N. Y. Central R. R. Co.*, 45 *Id.* 184. Opinion of VERPLANK, Senator, approved in *Clendaniel v. Tuckerman*, 17 *Barb.* 188. Discussed in *Ang. on Carr.* § 109, 5 ed.; *Id.* § 318; *Id.* § 321. Included with notes in 2 *Redf. Am. Railw. Cas.* 133.
- *v. People*, 5 *Hun.* 169. Aff'd in 63 *N. Y.* 88, solely for error in charge.
- *v. Powell*, 3 *Hun.* 413; s. c., more fully, 6 *Sup'm. Ct. (T. & C.)* 51. Rev'd in 71 *N. Y.* 71. Decision in *Id.* disting'd (Influences from facts proven) in *Hart v. Hudson River Bridge Co.*, 84 *Id.* 57, 63.
- *v. Preston*, 1 *Hun.* 513. See *Steelyards v. Singer*. See authorities collected (Conditional sale when void as to third persons) in *Lewis v. McCabe*, 49 *Conn.* 141, 149; s. c., 21 *Am. L. Reg. N. S.* 217, with note collating authorities.
- *v. Trustees of Newburgh*, 19 *Johns.* 284. Disting'd (Town's liability to indemnify against suit) in *People ex rel. Van Keuren v. Auditors of Esopus*, 10 *Hun.* 551, 553.
- *v. Tuttle*, 3 *N. Y.* 396. Applied (Necessity of presence of both of loan commis-

- sioners acting under *L. 1837, c. 150*) in *N. Y. Life Ins. & Trust Co. v. Staats*, 21 *Barb.* 547; *Olmsted v. Elder*, 5 *N. Y.* 147. Applied (Duty of public officer on sale of property) in *Kellogg v. Howell*, 62 *Barb.* 292. Explained in *Allen v. Comm'rs of Land-office*, 33 *N. Y.* 318.
- *v. Waters*, 8 *Cow.* 669; s. c., 9 *N. Y. Com. L. Law. ed.* 515, with brief note. See *Aeby v. Rapelye*; *Munn v. Commission Co.*; *Pain v. Packard*. Disting'd with *Sweet v. Chapman*, 7 *Hun.* 577; *Hall v. Wilson*, 16 *Barb.* 548 (Sale of note, when usurious) in *Corning v. Pond*, 29 *Hun.* 129. Explained with *Rice v. Mather*, 3 *Wend.* 62; *Cram v. Hendricks*, 7 *Id.* 569; *Munn v. Commission Co.*, 15 *Johns.* 44; *Rapelye v. Anderson*, 4 *Hill.* 472; *Holmes v. Williams*, 10 *Paige*, 326; *Holford v. Blatchford*, 2 *Sandf. Ch.* 149, in *Dickerman v. Day*, 31 *Iowa*, 444; s. c., 7 *Am. R.* 156.
- Power v. Cassidy**, 54 *How. Pr.* 4; s. c., with affirmance in 16 *Hun.* 294; which was aff'd in 79 *N. Y.* 602; s. c., 5 *Am. R.* 550, with note; and 1 *Am. Prob. R.* 368, with note. See *Williams v. Williams*. Decision in 79 *N. Y.* disting'd with *Lent v. Howard*, 89 *Id.* 169 (Equitable conversion) and *Gourley v. Campbell*, 66 *Id.* 169 followed in *Hobson v. Hale*, 95 *Id.* 588. Applied (Validity of trust created by will for benefit of charity institutions) in *Matter of Hagenmeyer's Will*, 12 *Abb. N. C.* 432. Explained and followed in *Gumble v. Pfluger*, 62 *How. Pr.* 118, 120. Disting'd in *O'Hara v. Dudley*, 14 *Abb. N. C.* 71.
- *v. Hathaway*, 43 *Barb.* 214. See (Effect of foreign statute of limitations) *Code. Civ. Pro.* 1881, § 390, n.
- *v. Kent*, 1 *Cow.* 211. Cited with *Birkbeck v. Stafford*, 14 *Abb. Pr.* 211 (Power of attorney to act by substitute in issuing process) in *Whart. Com. on Ag.* § 579.
- *v. Lester*, 17 *How. Pr.* 413. Aff'd in 23 *N. Y.* 527. Decision in *Id.* applied (Right of husband and wife to sue each other) in *Dygart v. Remerschneider*, 32 *Id.* 629, 646. Examined with other cases (Identity of property interests of husband and wife) in *Meeker v. Wright*, 7 *Abb. N. C.* 303. Quoted and collated with other cases (Lease by mortgagor and mortgagee) in *McAdam on Landl. & Ten.* 2 ed. § 56.
- *v. Price*, 12 *Wend.* 500. Aff'd in 16 *Id.* 450.
- *v. Village of Athens*, 19 *Hun.* 165. See *People ex rel. Morris v. Randall*. Disting'd (Injunction as affected by appeal) in *Gardner v. Gardner*, 62 *How. Pr.* 265, 267.
- Powers v. Bergen**, 6 *N. Y.* 358. See *Leggett v. Hunter*. Considered and disting'd (Power of legislature to authorize sale of private property for other than public uses) in *Leggett v. Hunter*, 19 *N. Y.* 445, 461. Followed in *Brevoort v. Grace*, 53 *Id.* 245, 256, wherein it is said that *Leggett v. Hunter* was not designed to overrule *Powers v. Bergen*. Quoted and explained in 3 *Washb. on Real Prop.* 4 ed. 215. Discussed in *Cooley on Const. Limit.* 5 ed. 126.
- *v. French*, 1 *Hun.* 582. Explained and disting'd (Recovery against accommodation indorser) in *First Nat. Bank v. Wood*, 71 *N. Y.* 405, 411.
- *v. Graydon*, 10 *Bosw.* 630. Quoted and commented on (Assignment for benefit of creditors, as affected by exacting releases) in *Bishop on Assign.* § 199.
- *v. Gross*, 6 *Hun.* 234. Aff'd in 66 *N. Y.* 646.
- *v. Ingraham*. See *Wright v. Moore*.
- *v. Mitchell*, 3 *Hill.* 545. Explained (Common carrier's liability for negligence) in *Ang. on Carr.* § 58, 5 ed.
- *v. Rome, Watertown, & C. R. R. Co.*, 3 *Hun.* 285. Compare (Form of denial) *Jones v. Ludlum*, 74 *N. Y.* 61.
- *v. Shepard*, 45 *Barb.* 524; s. c., 1 *Abb. Pr. N. S.* 129. Overruled (Constitutionality of bounty act) in further decision in 49 *Barb.* 418; s. c., 35 *How. Pr.* 53; which was aff'd in 48 *N. Y.* 540. Decision in *Id.* cited (Repeal by implication) in *Peck v. Peck*, 8 *Abb. N. C.* 400, 402.
- *v. Trenor*, 48 *How. Pr.* 500. Aff'd in 3 *Hun.* 3; s. c., 5 *Sup'm. Ct. (T. & C.)* 231.
- *v. Witty*, 42 *How. Pr.* 352. Applied (Conclusiveness of judgment in summary proceedings) in *Brown v. Mayor, & C. of N. Y.*, 5 *Daly*, 481, 483.
- Prall v. Mutual Protection Life Assur. Socy.**, 5 *Daly*, 298. Aff'd, it seems, in 63 *N. Y.* 608, but without opinion.
- Pramagiori v. Pramagiori**, 7 *Robt.* 302. Disting'd (Pleading in actions for divorce) in *Mitchell v. Mitchell*, 61 *N. Y.* 398, 411.
- Pratt v. Adams**, 7 *Paige*, 615. See *Murray v. Judson*. Followed (Usury as determined by law of place) in *Jewell v. Wright*, 12 *Abb. Pr.* 58; *Wayne Co. Savg's B'k v. Low*, 6 *Abb. N. C.* 85; *Pomeroy v. Ainsworth*, 22 *Barb.* 129; *Bank of State of Georgia v. Lewin*, 45 *Id.* 343; *Sheldon v. Haxton*, 24 *Hun.* 197. Disting'd in *Dickinson v. Edwards*, 7 *Abb. N. C.* 82. Applied in dissenting opinion of *DAVIES, J.*, in *Jewell v. Wright*, 9 *Abb. Pr. N. S.* 402. Criticised at length in dissenting opinion in *Smith v. Alvord*, 63 *Barb.* 434. Applied (Effect of including usurious debt in assignment for creditors) in *Green v. Morse*, 4 *Id.* 337, 343; *Murray v. Judson*, 9 *N. Y.* 83. Commented on in *Burrill on Assign.* § 118, 4 ed. Explained (Designation of debts to be paid) in *Id.* § 813. Discussed (Distribution to creditors) in *Id.* §§ 427, n., 428. Commented on (Applying to court for instructions) in *Id.* § 460, 4 ed. Disting'd (Validity of security for payment of illegal obligation) in *Tyler v. Yates*, 3 *Barb.* 226. Explained (Validity of transaction involving circulation of foreign bank-bills) in *Mer-*

- chants' Bank of N. Y. v. Spalding, 9 *N. Y.* 53, 63. Explained in *Ang. & A. on Corp.* § 267, 11 ed.
- *v. Allen*. See Butchers' & Drovers' Bank v. Jacobson.
- *v. Andrews*, 4 *N. Y.* 493. Cited (Evidence of previous good character of seduced person) in 1 *Whart. Com. on Ev.* § 51.
- *v. Chase*, 19 *Abb. Pr.* 150; s. c., 29 *How. Pr.* 296. Rev'd in 44 *N. Y.* 597. See Murray v. De Rottenham.
- *v. Coman*, 37 *N. Y.* 440. Opinions of MILLER, J., and WOODRUFF, J., in 5 *Trans. App.* 334. Followed (Surrender of security, as constituting *bona fide* holder of negotiable paper) in Phenix Ins. Co. v. Church, 56 *How. Pr.* 496; which was rev'd in 81 *N. Y.* 224, which see; Clothier v. Adriance, 51 *Id.* 326. Explained in Starin v. Kelly, 36 *Super. Ct. (J. & S.)* 371, as not overruled. Applied to mortgage given to secure existing indebtedness in Cary v. White, 7 *Lans.* 4; which was rev'd in 52 *N. Y.* 142, which see. Followed (Effect of giving note, as suspension of right to sue) in Maier v. Canavan, 8 *Daly*, 275.
- *v. Eaton*, 18 *Hun*, 293. Rev'd in 79 *N. Y.* 449.
- *v. Foote*, 12 *Barb.* 209. Rev'd in 9 *N. Y.* 463. Opinion of JOHNSON, J., in 10 *Id.* 599. With decision in 9 *Id.* compare (Effect of acceptance of check) Oddie v. National City Bank of N. Y., 45 *Id.* 735, 741. Explained and applied (What amounts to payment of check, &c.) in Kelty v. Second Nat. B'k of Erie, 52 *Barb.* 328, 335; Van Etten v. Troudden, 67 *Id.* 349. Disting'd in Auburn City Nat. B'k v. Hunsiker, 72 *N. Y.* 252, 257. Followed (Agreement as established by entries on bank books) in Coates v. First Nat. B'k of Emporia, 91 *Id.* 20.
- *v. Gulick*, 13 *Barb.* 297. Disting'd (Vendor's right of recovery for part delivery) in Avery v. Willson, 81 *N. Y.* 341, 345.
- *v. Hudson River R. R. Co.*, 21 *N. Y.* 305. Applied (Defect in complaint, when cured by averment in answer) in Haddow v. Lundy, 59 *Id.* 328. Disting'd in Volkening v. De Graat, 81 *Id.* 272.
- *v. Huggins*, 29 *Barb.* 277. Approved as of great weight and followed with Borst v. Carey, 15 *N. Y.* 505 (Remedy on mortgage as affected by action being barred on accompanying obligation) in Browne v. Browne, 17 *Fla.* 607; s. c., 35 *Am. R.* 96; reconciling Demarest v. Wynkoop, 3 *Johns. Ch.* 135. Explained in 3 *Pars. on Contr.* 100, n. g.
- *v. Hull*, 13 *Johns.* 334. Approved (Power to non-suit) in Labar v. Koplin, 4 *N. Y.* 547.
- *v. Munson*, 17 *Hun*, 475. Followed in case of same name in 21 *Id.* 105, but without opinion.
- *v. N. Y. Central Ins. Co.*, 64 *Barb.* 589. Aff'd in 55 *N. Y.* 505; s. c., 14 *Am. R.* 304. Decision in *Id.* cited as authority (Effect of proceedings to foreclose mortgage on insured property) in Titus v. Glens Falls Ins. Co., 8 *Abb. N. C.* 315, 327.
- *v. Norton*, 2 *Hun*, 517; s. c., reported 5 *Sup'm. Ct. (T. & C.)* 8.
- *v. Petrie*. See Sackrider v. McDonald.
- *v. Potter*, 21 *Barb.* 589. Approved (When deed takes effect) in Judd v. Seckins, 62 *N. Y.* 266.
- *v. Short*, 53 *How. Pr.* 506. Rev'd by General Term, and that decision rev'd in 79 *N. Y.* 437; s. c., 35 *Am. R.* 531. See Vol. 532, Cas. in Ct. of App. Law Inst. Libr. N. Y. city. Decision in 79 *N. Y.* disting'd with Bank of Salina v. Alvord, 31 *Id.* 473 (Effect of unauthorized loan or discount by bank) in Davis Sewing Machine Co. v. Best, 30 *Hun*, 638, 643. Applied with People ex rel. Attorney General v. Utica Ins. Co., 15 *Johns.* 383 (Banking powers) in Nassau Bank v. Jones, 95 *N. Y.* 115, 121.
- *v. Wells*, 1 *Barb.* 425. See (Arrest as substitute for *ne exeat*) *Code Civ. Pro.* 1881, § 551, n.
- Prendegast v. N. Y. Central, &c. R. R. Co., 58 *N. Y.* 652. See other cases collected (Contributory negligence of parent, &c.) in 6 *Abb. N. C.* 113, n.
- Prentice v. Geiger, 9 *Hun*, 350. Aff'd in 74 *N. Y.* 341.
- *v. Jaussen*, 14 *Hun*, 548. Aff'd in 79 *N. Y.* 478. Another proceeding in 7 *Hun*, 86. Decision in 79 *N. Y.* followed (Valid execution of executor's power to convey) in Bloomfield v. Ketcham, 13 *Weekly Dig.* 22.
- *v. Knickerbocker Life Ins. Co.*, 43 *Super. Ct. (J. & S.)* 352. Aff'd in 77 *N. Y.* 483; s. c., 33 *Am. R.* 651. Decision in *Id.* cited as settled law (Necessity that waiver by insurer be based on new agreement or estoppel) in Titus v. Glens Falls Ins. Co., 8 *Abb. N. C.* 315, 328. Applied in Brink v. Hanover Fire Ins. Co., 80 *N. Y.* 112. Disting'd in How v. Union Mut. Life Ins. Co., *Id.* 32, 43.
- *v. Wilkinson*, 5 *Abb. Pr. N. S.* 49. Overruled or limited (Effect of oral promise to pay debt of another, in consideration of discontinuance of proceedings) in Duffy v. Wunsch, 8 *Id.* 113.
- Prentiss v. Graves, 33 *Barb.* 621. Disting'd (Evidence of condition of accommodation indorsement) in Willse v. Whitaker, 22 *Hun*, 242, 244.
- Presbyterian Church v. Mayor, &c. of N. Y., 5 *Cov.* 538. See Britton v. Mayor, &c. of N. Y. Applied (Disability of municipal corporation to restrict itself by contract) in Whitney v. Mayor, &c. of N. Y., 6 *Abb. N. C.* 337, n.; Corning v. Greene, 23 *Barb.* 53; Matter of Albany Street, 6 *Abb. Pr.* 276. Disting'd in Mayor, &c. of N. Y. v. Second Ave. R. R. Co., 34 *Barb.* 44; State of N. Y. v. Mayor, &c. of N. Y., 3 *Duer*, 147; Holt v. Comm'rs of Excise, 31 *How. Pr.* 342, n.; Rousseau v. City of Troy, 49 *Id.* 493; Mayor, &c. of N. Y. v. Second

- Ave. R. R. Co., 32 *N. Y.* 269. Disting'd with Brooklyn Park Comm'rs v. Armstrong, 45 *Id.* 234; Whitney v. Mayor, &c. of N. Y., 6 *Abb. N. C.* 329, in Knickerbocker Ice Co. v. Forty-second St. R. R. Co., 48 *Super. Ct. (J. & S.)* 489, 498. Approved with Stuyvesant v. Mayor, &c. of N. Y., 7 *Cow.* 588, in West Sav. Fund v. City of Philadelphia, 31 *Penn.* 175. Disting'd (Power of municipal corporation to remove property as nuisance) in Clark v. Mayor, &c. of N. Y., 13 *Barb.* 39. Applied in Hart v. Mayor, &c. of Albany, 9 *Wend.* 598. Applied (Effect of by-law authorized by legislature) in McDermott v. Board v. Police, &c., 25 *Barb.* 643; Stuyvesant v. Mayor, &c. of N. Y., 7 *Cow.* 604. Applied (Validity of police regulations that incidentally impair the obligation of contracts) in Mississippi Society of Arts & Sciences v. Musgrave, 44 *Miss.* 820; s. c., 7 *Am. R.* 723. Quoted and explained in 2 *Pars. on Contr.* 674, n. 7. Disting'd (Municipal corporation, when acting in private capacity in the management of its property) in Roosevelt v. Draper, 23 *N. Y.* 325. Applied in Mayor, &c. of N. Y. v. Rice, 4 *E. D. Smith*, 608. Examined with other cases (Requisites of estoppel) in dissenting opinion of Bronson, J., in Dezell v. Odell, 3 *Hill*, 222. Applied in Andrews v. Aetna Life Ins. Co., 18 *Hun.* 166. Disting'd in White v. Ashton, 51 *N. Y.* 286; McMasters v. Ins. Co. of No. Am., 55 *Id.* 229.
- Presbyterian Congregation of Salem v. Williams**, 9 *Wend.* 147. See Lansing v. Montgomery. Applied (Estoppel, as applicable in actions relating to real property) in Finnegan v. Carahar, 61 *Barb.* 258; which was aff'd in 47 *N. Y.* 499, which see. Disting'd in Van Rensselaer v. Hayes, 5 *Den.* 481; Miller v. Platt, 5 *Duer*, 279. Disting'd (Defendant, when estopped by statements made prior to action) in Warder v. Baker, 54 *Wisc.* 49, 59.
- Presbyterian Society of Knox v. Beach**, 8 *Hun.* 644. Rev'd in 74 *N. Y.* 72.
- Presbyterian Society of Waterloo v. Auburn & Roch. R. R. Co.** See Trustees of Presb. Soc., &c. v. Auburn, &c. R. R. Co.
- Presbytery of N. Y., Matter of**, 9 *Daly*, 116. Aff'd in 80 *N. Y.* 642, but without opinion. Decision in 9 *Daly* followed (When work must be done under contract in city of N. Y.) in Matter of Newtown, 19 *Hun.* 470.
- Prescott, Matter of**, 4 *Redf.* 178. See McPherson v. Clark. Followed (No partial revocation of will by obliteration) in Lovell v. Quitman, 25 *Hun.* 538.
- Prescott v. De Forest**, 16 *Johns.* 159. Reviewed (Sub-leases and assignments) in 16 *Am. L. Rev.* 28.
- **v. Hull**, 17 *Johns.* 284. See Green v. Hart. Approved (Rights of assignee of debt, in case of it being attached) in Oldham v. Ledbetter, 1 *How. (Miss.)* 43; s. c., 26 *Am. Dec.* 690, with note. Cited (Assignment of chose in action by delivery) in Vose v. Handy, 2 *Greenl. (Me.)* 322; s. c., 11 *Am. Dec.* 101, 109. Compare Runyan v. Mersereau, 11 *Johns.* 534; Fryer v. Rockefeller, 63 *N. Y.* 276.
- President, &c. of Westfield Bank v. Cornen**. See Bank of U. S. v. Davis; Welsh v. German American Bank.
- Preston v. Leavitt**, 6 *Wend.* 663. Disapproved (Renewal of justice's execution not new process) in Smith v. Randall, 3 *Hill*, 495.
- **v. Morrow**, 66 *N. Y.* 452. Disting'd (Order of reference, how far binding) in Elliott v. Lewis, 16 *Hun.* 581. Disting'd as inapplicable under L. 1879, c. 542 (Appointment of new referee) in May v. Moore, 24 *Hun.* 351.
- Preusser v. Florence**, 51 *How. Pr.* 385; s. c., more fully 4 *Abb. N. C.* 136.
- Price, Matter of**, 67 *N. Y.* 281. Followed (Power of court of equity to correct mistakes in judicial sales) in Parkinson v. Sherman, 74 *Id.* 88, 94.
- Price v. Durin**, 56 *Barb.* 647. Explained (Memorandum required by statute of frauds) in Browne on Stat. of Frauds, § 353, n. 2, 4 ed.
- **v. Hartshorn**, 44 *Barb.* 655. Aff'd in 44 *N. Y.* 94.
- **v. Keyes**, 1 *Hun.* 177; s. c., 3 *Sup'm. Ct. (T. & C.)* 720. Rev'd in 62 *N. Y.* 378.
- **v. Lyons Bank**, 30 *Barb.* 85. • Rev'd (Usury on renewal of loan) in 33 *N. Y.* 55.
- **v. McClave**, 5 *Duer*, 670; s. c., as Price v. McClave, 3 *Abb. Pr.* 253. Aff'd in 6 *Duer*, 544. Decision in *Id.* disapproved (Allegations of notice of non-payment of negotiable instrument) and Puhquique B'k v. Martin, 11 *Abb. Pr.* 291; Cook v. Warren, 88 *N. Y.* 37 disting'd in Baldwin v. Doying, 5 *Civ. Pro. R. (Browne)* 300.
- **v. Oswego & Syracuse R. R. Co.**, 58 *Barb.* 599. Rev'd in 50 *N. Y.* 213; s. c., 10 *Am. R.* 475. Decision in *Id.* disting'd (Liability of carrier for delivery to impositor) in Samuel v. Cheney, 135 *Mass.* 278; s. c., 46 *Am. R.* 467. See cases collated in 10 *Moak's Eng.* 37, n.
- **v. Palmer**, 22 *Hun.* 464; s. c., as it seems, reported in full in 23 *Id.* 504.
- **v. Powell**, 3 *N. Y.* 322. See Tinney v. N. J. Steamboat Co. See (Consignor's action against carrier) 7 *South. L. Rev. N. S.* 264. Citing R. R. Co. v. Kelly, 4 *Head (Tenn.)* 158; R. R. Co. v. Nelson, 1 *Caldw. (Tenn.)* 272.
- **v. Price**, 2 *Sup'm. Ct. (T. & C.) Adden.* 659. Fully reported as Anonymous, 15 *Abb. Pr. N. S.* 311.
- **v. —**, 2 *Hun.* 611; mem. s. c., 5 *Sup'm. Ct. (T. & C.)* 696. Further proceedings in 11 *Hun.* 299, aff'd in 75 *N. Y.* 244; s. c., 31 *Am. R.* 463.
- **v. —**, 55 *N. Y.* 656. See People ex

- rel Barry v. Mercein.* See (Custody of children) *Code Civ. Pro.* 1881, § 1771, *n.*
- Priest v. Cummings**, 16 *Wend.* 617. Rev'd in 20 *Id.* 338. See *Mick v. Mick.* Decision in 20 *Wend.* approved (Effect of naturalization) in *Heeney v. Brooklyn Benevolent Society*, 39 *N. Y.* 333. Collated with other cases in *Sharsw. & B. Cas. on Real Prop.* 302.
- **v. Price**, 3 *Keyes*, 222. Explained (Right to compel finding of fact) in *Quincey v. Young*, 5 *Daly*, 44.
- **v. Watkins**, 2 *Hill*, 225. Explained (To what date letters of administration relate back) in *Willard on Executors*, 188.
- Prime, Matter of**, 1 *Barb.* 296; *s. c.*, more fully, 5 *N. Y. Leg. Obs.* 409.
- Prime v. Koehler**, 7 *Daly*, 345. Aff'd in 77 *N. Y.* 91. See *Leonard v. Vredenburg*.
- Prince v. Down**, 2 *E. D. Smith*, 525. See to the contrary at common law (Grounds of action on contract for services) *Rosc. N. P.* 555. See also *Abb. Tr. Ev.* 357.
- **v. Hazelton**, 20 *Johns.* 511; *s. c.*, 11 *Am. Dec.* 307. Criticised and doubted (Nuncupative will, when deemed invalid) in *Johnson v. Glasscock*, 2 *Ala.* 242. Followed as sustained by authority in *Matter of Yarnall*, 4 *Ruble (Pa.)* 46; *s. c.*, 26 *Am. Dec.* 115, 120, with note. Questioned in *Harrington v. Stees*, 82 *Ill.* 50; *s. c.*, 25 *Am. R.* 290, 293. Referred to in 1 *Redf. on Wills*, 184, as presenting a most exhaustive discussion. Commented on in 4 *Kent Com.* 517, *n. c.* Also in *Willard on Executors*, 64, 115.
- Prindle v. Anderson**, 19 *Wend.* 391. Aff'd as *Anderson v. Prindle*, 23 *Id.* 616. See *Niblo v. Post.* Decision in 19 *Wend.* overruled in effect (Examination of merits on certiorari) in *Niblo v. Post*, 25 *Id.* 280. Overruled, also, in *Morewood v. Hollister*, 6 *N. Y.* 309. Reviewed with other cases and followed (Notice to quit in case of tenancies of less than year) in *Steffens v. Earl*, 11 *Vroom (N. J.)* 128; *s. c.*, 29 *Am. R.* 214.
- **v. Beveridge**, 7 *Lans.* 225. Aff'd as *Lytle v. Beveridge*, in 58 *N. Y.* 592.
- **v. Carruthers**, 10 *How. Pr.* 33. Rev'd in 15 *N. Y.* 425; *s. c.*, 5 *Duer*, 670, *n.* Decision in *Id.* explained (Presumption of consideration for note) in *Paine v. Noelke*, 43 *Super. Ct. (J. & S.)* 176, 185. Disting'd in *Spear v. Downing*, 34 *Barb.* 522, 526. See *Dougal v. Simmons*, 23 *N. Y.* 491, 493.
- Pringle v. Phillips**, 5 *Sandf.* 157. See *Baker v. Bliss*; *Keutgen v. Parks.* Disting'd and limited (Knowledge that puts purchaser on inquiry) in *Seybel v. Nat. Currency B'k.*, 54 *N. Y.* 288, 297. Followed in *Weiss v. Brennan*, 41 *Super. Ct. (J. & S.)* 177, 180. Approved in *Hamilton v. Marks*, 53 *Mo.* 78; *s. c.*, 14 *Am. R.* 391.
- Prior v. Williams**, 2 *Keyes*, 530. Disting'd (Liability of surety in equity) in *Gosman v. Cruger*, 69 *N. Y.* 87, 91.
- Pritchard v. Hicks**, 1 *Paige*, 270. See *Roman Catholic Orphan Asylum v. Emmons.*
- Followed with *Farre v. Colden*, 1 *Paige*, 166; *Davoue v. Fanning*, 4 *Johns. Ch.* 199 (Executors, &c. as necessary parties to proceedings for distribution of estate of decedent) in *Porter's Heirs v. Porter*, 1 *How. (Miss.)* 106; *s. c.*, 40 *Am. Dec.* 55, 57.
- Proctor v. Clarke**, 3 *Redf.* 445. Rev'd as *Brown v. Clark*, 16 *Hun.* 559; which was aff'd in 77 *N. Y.* 369; *s. c.*, 1 *Am. Prob. R.* 510, with note.
- **v. Waumaker**, 1 *Barb. Ch.* 302. Applied (Surrogate's power to revoke his decision) in *Bailey v. Stewart*, 2 *Redf.* 212, 224. See *Code Civ. Pro.* 1881, § 2685, *n.*
- Produce Bank of N. Y. v. Baldwin**, 49 *How. Pr.* 277. Rev'd as *Same v. Morton*, 40 *Super. Ct. (J. & S.)* 328; which was overruled in part in further decision in 67 *N. Y.* 199; *s. c.*, 52 *How. Pr.* 157, and less fully, 1 *Abb. N. C.* 174. Further proceedings in 42 *Super. Ct. (J. & S.)* 124; and in *Id.* 472. Decision in 67 *N. Y.* disting'd (Judgment in action to set aside assignment, when final) in *Myers v. Becker*, 95 *Id.* 486. See (Necessity that judgment be obtained, before action to set aside transfer as fraudulent) *Southard v. Pinckney*, 5 *Abb. N. C.* 184.
- **v. Morton.** See *Produce Bank of N. Y. v. Baldwin.*
- Proprietors, &c. of Southold v. Horton.** See *Jackson v. Plumb.*
- Prospect Park, &c. R. Co., Matter of**, 8 *Hun.* 80. Aff'd in 67 *N. Y.* 371. Further proceeding in 13 *Hun.* 345, confirmed in 16 *Id.* 261. Decision in 67 *N. Y.* disting'd (Proof of failure to agree with owner, in proceedings to acquire lands) in *Matter of Marsh*, 71 *Id.* 315, 318.
- Prosser v. Luqueer**, 4 *Hill*, 420; *s. c.*, 40 *Am. Dec.* 288, with note. See *Hough v. Gray.* Explained (Liability of guarantor of note, as joint and several maker) in *Hall v. Newcomb*, 7 *Hill*, 416. Disapproved in *Tinker v. McCauley*, 3 *Mich.* 192.
- **v. Secor**, 5 *Barb.* 607. See *Vail v. Owen.* Overruled (Liability of assessor for erroneous assessment) in *Brown v. Smith*, 24 *Barb.* 419, 422. Said in *Bell v. Pierce*, 48 *Id.* 51, to have also been overruled in *Ct. of App.* Compare *Bank of Commonwealth v. Mayor, &c.*, 43 *N. Y.* 184; *Newman v. Supervisors of Livingston*, 45 *Id.* 676, and cases cited; *Dorn v. Backer*, 61 *Barb.* 597; *Wade v. Matheson*, 4 *Lans.* 158; *People v. Howland*, 61 *Barb.* 273. Cited approvingly in *Nat. Bank of Chemung v. City of Elmira*, 53 *N. Y.* 49, 55.
- Protestant Episc. Public School, Matter of**, 40 *How. Pr.* 139; *s. c.*, more fully, 58 *Barb.* 161. Rev'd in 46 *N. Y.* 178.
- , 40 *How. Pr.* 198. Aff'd in 47 *N. Y.* 556.
- Prouty v. Eaton**, 41 *Barb.* 409. Approved (Usury as defense or counterclaim) in *Equitable Life Assur. Soc. v. Cuyler*, 75 *N. Y.* 515.
- Prouty v. Lake Shore & M. S. R. R. Co.**, 6

- Hun*, 246. Appeal dismissed, it seems, in 64 *N. Y.* 641, but without opinion. Previous proceedings in 52 *N. Y.* 363; 1 *Hun*, 655; s. c., 4 *Sup'm. Ct. (T. & C.)* 230. Further proceedings in 85 *N. Y.* 272. See *Milner v. Milner*. Decision in 1 *Hun*, followed (Jurisdiction over foreign corporation) in *Burnett v. Chicago & Lake Huron R. R. Co.*, 4 *Id.* 116. Compare *Code Civ. Pro.* 1881, § 1780, n. Explained (Authority to issue preferred stock) in *Kent v. Quicksilver Mining Co.*, 12 *Hun*, 59; which was aff'd in part in 58 *N. Y.* 181, which see. See other cases collected in 20 *Am. L. Reg. N. S.* 633.
- *v. Michigan Southern & N. I. R. R. Co.* See *Prouty v. Lake Shore & M. S. R. R. Co.*
- *v. Prouty*, 5 *How. Pr.* 81. Opposed with *Wright v. Mosher*, 16 *Id.* 454 (Estate "at will from year to year") in *Park v. Castle*, 19 *Id.* 29.
- *v. Swift*, 51 *N. Y.* 594. Subsequent decision in 10 *Hun*, 232. Decision in 51 *N. Y.* explained (Sharing in profits as constituting partnership) in 1 *Collyer on Partn.* §§ 47, 51, n. 1, Wood's *Am. ed.* Decision in 10 *Hun*, 234 followed (Right to set off judgment, when accruing) in *Moloughney v. Kavanagh*, 3 *Civ. Pro. R. (Browne)* 253.
- Provost v. Calder**, 2 *Wend.* 517. Approved and followed (Effect of exception or reservation) in *French v. Carhart*, 1 *N. Y.* 96, 108, 112.
- *v. Farrell*, 13 *Hun*, 303. See *Union Trust Co. v. Whiton*. Disting'd (Effect of reversal, with provisions for costs to abide event) in *Havemeyer v. Havemeyer*, 62 *How. Pr.* 476, 478. See *Code Civ. Pro.* 1881, § 3241, n. Compare (Including stenographer's fees in bill of costs) *Id.* §§ 3256, 3311.
- *v. Patchin*, 9 *N. Y.* 235. See (Owner of vessel, when bound for supplies) in *Stedman v. Feidler*, 20 *Id.* 437, 441, 446.
- *v. Provost*, 7 *Hun*, 81. Aff'd in 70 *N. Y.* 141.
- Prowitt v. Rodman**, 37 *N. Y.* 42. Applied (Effect of words "now living," in will) in *McKinstry v. Sanders*, 2 *Sup'm. Ct. (T. & C.)* 187. Followed ("Children" as including grandchildren) in *Bowie v. Underhill*, 6 *Id.* 344, 346.
- Pruyn v. Brinkerhoff**, 7 *Abb. Pr. N. S.* 400. Disting'd with *Children's Aid Soc. v. Loveridge*, 70 *N. Y.* 392; *Rugg v. Rugg*, 83 *Id.* 592; *Reeve v. Crosby*, 3 *Redf.* 74 (Disqualification by reason of interest, from testifying as to execution of will) in *Matter of Burke*, 5 *Id.* 369. Followed in *Rugg v. Rugg*, 21 *Hun*, 384.
- Public Administrator v. Hughes**, 1 *Bradf.* 125. Commented on (Distribution of property as affected by law of domicile) in *Wilard on Executors*, 404.
- *v. Peters*, 1 *Bradf.* 100. See *Lathrop v. Smith*. Opposed (Right of administration) in *Lathrop v. Smith*, 24 *N. Y.* 417; which aff'd 35 *Barb.* 64, which see. But see amendment of 2 *R. S.* 74, § 27 by *L.* 1863, c. 362, § 3.
- *v. Ward*, 3 *Bradf.* 244. Explained (Issuing of warrant for examination as to property of decedent) in *Matter of Rosenthal*, 59 *How. Pr.* 327.
- *v. Watts*, 1 *Paige*, 347. Rev'd in 4 *Wend.* 168. See *Lathrop v. Smith*. Decision in 1 *Paige* followed (Right of public administrator to administration) in *Matter of Blank*, 2 *Redf.* 443, 445.
- Public Parks, Matter of.** See Department of Public Parks.
- Puckhafer v. White**, 33 *Super. Ct. (J. & S.)* 267. Confirmed in effect (Effect of death of one of joint obligors) by *Wood v. Fisk*, 63 *N. Y.* 246.
- Pudney v. Griffiths**, 15 *How. Pr.* 410; s. c., more fully, 6 *Abb. Pr.* 211. See (Return of execution when such as to serve as basis for supplementary proceedings) *Sperling v. Levy*, 10 *Id.* 426, 430.
- Pugsley v. Aikin**, 14 *Barb.* 114. Rev'd in 11 *N. Y.* 494. Decision in *Id.* disting'd (Executor's liability on testator's covenant in lease) in *Howard v. Heinerschit*, 16 *Hun*, 179. Disting'd as to contract made by executors,—in *Austin v. Munro*, 47 *N. Y.* 366. Disting'd (Necessity of notice, to terminate tenancy) in *Gibbons v. Dayton*, 4 *Hun*, 454.
- *v. Kisselburgh*. See *Brown v. Brown*.
- *v. Murray*, 4 *E. D. Smith*, 245. See *Rowe v. Stevens*. Followed (Right of broker to commissions from both parties) in *Lynch v. Fallon*, 11 *R. I.* 311; s. c., 22 *Am. R.* 458.
- Pulen v. Reynolds**, 22 *How. Pr.* 353. See (Parties defendant in action to recover real property) *Code Civ. Pro.* 1881, § 1503, n.
- Puleston v. Wallace**, 35 *Super. Ct. (J. & S.)* 569. Aff'd in 84 *N. Y.* 679, but without opinion.
- Pullman v. Corning**, 14 *Barb.* 174. Aff'd in 9 *N. Y.* 93.
- *v. Mayor, &c. of N. Y.*, 49 *Barb.* 57; s. c., 2 *Abb. Pr. N. S.* 29. Rev'd in 54 *Barb.* 169.
- Pulver v. Harris**, 62 *Barb.* 500. Aff'd in 52 *N. Y.* 73. See *Coughlin v. N. Y. Central, &c. R. R. Co.*; *People v. Hardenbergh*; *Rooney v. Second Ave. R. R. Co.* Decision in 62 *Barb.* followed (Right to settle action, as affected by attorney's claim) in *Sullivan v. O'Keefe*, 53 *How. Pr.* 428; *McBratney v. Rome, W. & O. R. R. Co.*, 17 *Hun*, 389. Both decisions followed in *Coughlin v. N. Y. Central, &c. R. R. Co.*, 71 *N. Y.* 451. Decision in 52 *Id.* followed with *Coughlin v. Hudson River R. R. Co.*, 71 *Id.* 443; *People ex rel. Staunton v. Tioga Common Pleas*, 19 *Wend.* 78, in *Lamont v. Washington & Georgetown R. R. Co.*, 2 *Mack. (Dist. of C.)* 502; s. c., 47 *Am. R.* 268. Compare *Code Civ. Pro.* § 66.
- *v. Richardson*, 3 *Sup'm. Ct. (T. & C.)*

436. Compared with later and contrary decisions (Right of mortgagee of chattels to purchase them) in *Hall v. Ditson*, 5 *Abb. N. C.* 198, 211.
- Pumpelly v. Phelps**, 40 *N. Y.* 59. See *Bush v. Cole*. Followed (Damages for breach of contract for sale of land) in *Timby v. Kinsey*, 18 *Hun.* 256. Disting'd in *Margraf v. Muir*, 57 *N. Y.* 160; *Cockcroft v. N. Y. & Harlem R. R. Co.*, 69 *Id.* 206; *Hamburgh v. Ismay*, 35 *Super. Ct. (J. & S.)* 41. Applied to breach of covenant for quiet enjoyment, in *Mack v. Patchin*, 42 *N. Y.* 175; but see *Burr v. Stenton*, 43 *Id.* 467. Discussed in *Sedgw. Cas. on Dama.* 85, n. Disting'd (Personal liability of one contracting as agent) in *Bellinger v. Bentley*, 1 *Hun.* 565; *Hood v. Hallenbeck*, 7 *Id.* 366.
- Purcell v. Jaycox**, 3 *Sup'm. Ct. (T. & C.)* 406. Rev'd in 59 *N. Y.* 288.
- Purchase v. Bellows**, 14 *Abb. Pr.* 357; s. c., 23 *How. Pr.* 421. Aff'd in 19 *Abb. Pr.* 306.
- **v. Mattison**, 6 *Duer*, 587. Rev'd in 25 *N. Y.* 211; s. c., 25 *How. Pr.* 161, and 15 *Abb. Pr.* 402, where points of counsel are given. Further decisions on the merits, in 3 *Bosw.* 310, and in 2 *Robt.* 71. See *Hosley v. Black*; *Schepp v. Carpenter*; *White v. Springfield Bank*. Decision in 25 *N. Y.* disting'd (Effect of consent to direction of verdict) in *Byrnes v. City of Cohoes*, 5 *Hun.* 602.
- **v. N. Y. Exchange B'k**, 3 *Robt.* 164. Approved (Duty of corporation in regard to transfer of stock) in *Cushman v. Thayer Mfg. Jewelry Co.*, 76 *N. Y.* 365, 369.
- Purdy v. Austin**, 3 *Wend.* 187. Discussed (New promises and acknowledgments) in *Ang. on Limit.* § 214, 6 ed.
- **v. Carpenter**, 6 *How. Pr.* 361. Disting'd (Necessity of proof of want of probable cause) in *Given v. Webb*, 7 *Robt.* 65.
- **v. Delavan**, 1 *Cai.* 304; s. c., 2 *N. Y. Com. L. Law. ed.* 161, with note citing cases. Quoted (Award as defense) in 2 *Story on Contr.* 5 ed. § 1368, n. 1.
- **v. Doyle**, 1 *Paige*, 558. See *Edmeston v. Lyde*. See (Lien of judgment as affected by second suit) *Mumford v. Stocker*, 1 *Cow.* 178; *Harvey v. Wood*, 5 *Wend.* 221. Denied in *Planters' Bank v. Calvit*, 3 *Smedes & M. (Miss.)* 143; s. c., 41 *Am. Dec.* 616, 633, with note.
- **v. Huntington**, 46 *Barb.* 389. Rev'd in 42 *N. Y.* 334. Decision in *Id.* followed (Purchaser when bound by assignment of mortgage) in *Miller v. Lindsey*, 19 *Hun.* 207, 209. Approved in *Thomas on Mort.* 181.
- **v. People**, 2 *Hill*, 31. Rev'd in 4 *Id.* 384; s. c., 15 *N. Y. Com. L. Law. ed.* 856, with brief note, and (at p. 868) analytic list of cases citing this case. See *People v. Supervisors, &c. of N. Y.*; *Thomas v. Dakin*. Decision in 4 *Hill* explained (Effect of constitutional provision requiring assent of two-thirds of legislature to statute affecting corporations) in *Gifford v. Livingstone*, 2 *Den.* 380, 386, 390; *Morris v. People*, 3 *Id.* 381, 393. Followed with *De Bow v. People*, 1 *Den.* 11 (Effect of authentication of statute, as conclusive evidence of its validity) in *Berry v. Baltimore & Drum Point R. R. Co.*, 41 *Md.* 446; s. c., 20 *Am. R.* 69, 72. Followed in *Osburn v. Staley*, 5 *W. Va.* 85; s. c., 13 *Am. R.* 640, 643, with note collating cases.
- **v. Philips**, 1 *Duer*, 369. Aff'd in 11 *N. Y.* 406.
- Purple v. Horton**, 13 *Wend.* 9; s. c., 27 *Am. Dec.* 167, with note. See *Mapes v. Weeks*. Followed (Evidence to mitigate damages in slander) in *Regnier v. Cabot*, 1 *Gilm. (7 Ill.)* 40; *Thompson v. Bowers*, 1 *Doug. (Mich.)* 327. See (Proof of precise words in action for slander) *Townsend on Slander & Libel*, 622, § 365. See also *Abb. Tr. Ev.* 660. Disting'd (Competency of Masons, &c. as jurors) in *People v. Reyes*, 5 *Cal.* 350.
- Pursell v. Mayor, &c. of N. Y. See *Pursell v. Same*.**
- Pursell v. Mayor, &c. of N. Y., 43 *Super. Ct. (J. & S.)* 348. Rev'd in 85 *N. Y.* 330; abridgment, s. c., as *Pursell v. Same*, 12 *Weekly Dig.* 265. Decision in *Id.* explained (Covenant in lease to pay all assessments) in 1 *Add. on Contr.* 231, n. 1, *Abb. ed.***
- Purvis v. Coleman**, 1 *Bosw.* 321. Aff'd on the merits, in 21 *N. Y.* 111. Decision in *Id.* applied but disting'd (Discharge of innkeeper from liability) in *Classen v. Leopold*, 2 *Sweeny*, 705, 710. Disting'd in *Bendetson v. French*, 46 *N. Y.* 266, 271.
- Pusey v. Bradley**, 46 *How. Pr.* 255; s. c., more fully 1 *Sup'm. Ct. (T. & C.)* 661.
- Putnam v. Broadway & Seventh Ave. R. R. Co.**, 36 *Super. Ct. (J. & S.)* 195. Rev'd in 55 *N. Y.* 108; s. c., 15 *Abb. Pr. N. S.* 383, and 14 *Am. R.* 190. Decision in *Id.* followed (Carrier's duty to protect passengers from violence) in *Weeks v. N. Y., N. H. & H. R. R. Co.*, 72 *N. Y.* 50, 59, 62; *Carpenter v. Boston & Albany R. R. Co.*, 24 *Hun.* 104, 107. Explained (Right of intoxicated person to ride in public car) in *Milliman v. N. Y. Central, &c. R. R. Co.*, 66 *N. Y.* 644.
- **v. Crombie**. See *Kissam v. Hamilton*.
- **v. Heath**, 41 *How. Pr.* 262. Explained in *Jones v. Cook*, 11 *Hun.* 231, as not overruled (Notice of appeal from justice's decision) by *Bigsby v. Warden*, 62 *N. Y.* 27. Followed in *Moran v. McClearn*, 43 *How. Pr.* 77, 79; *Wadley v. Davis, Id.* 83. See *Code Civ. Pro.* 1881, § 3070, n.
- **v. Lewis**, 8 *Johns.* 389. See *Tobey v. Barber*. Followed (Effect of taking note in suspending prior right of action) in *Judge v. Fiske*, 2 *Speer. (So. Car.)* 436; s. c., 42 *Am. Dec.* 380, with note.
- **v. Man**, 3 *Wend.* 202; s. c., 20 *Am. Dec.* 686. Questioned (Conclusiveness of return of service of summons, in action before justice) in *Fitch v. Devlin*, 15 *Barb.* 47.
- **v. Payne**, 13 *Johns.* 312. Explained with

- Hinckley v. Emerson*, 4 *Cow.* 351 (Right of property in dogs) in *People v. Campbell*, 4 *Park.* 386, 392. Reviewed with *Hinckley v. Emerson*, 4 *Cow.* 351; *Loomis v. Terry*, 17 *Wend.* 500; *Maxwell v. Palmerton*, 21 *Id.* 407; *Dunlap v. Snyder*, 17 *Barb.* 566, and other cases (Killing of animals damage feasant) in *Aldrich v. Wright*, 53 *N. H.* 398; s. c., 16 *Am. R.* 339, 360.
- *v. Ritchie*, 6 *Paige*, 390. Disting'd (Allowance for improvements to one occupying land in good faith) in *Gibert v. Peteler*, 38 *Barb.* 516; which was aff'd in 38 *N. Y.* 170, which see. Applied in *Copley v. O'Neil*, 39 *How. Pr.* 46. Approved and applied in *Mickles v. Dillaye*, 17 *N. Y.* 88. Approved in *Dows v. Congdon*, 16 *How. Pr.* 574. Cited, collating cases,—in *McGee v. Wallis*, 57 *Miss.* 638; s. c., 34 *Am. R.* 484. Approved in opinion of *MONCURE, P. J.*, in *Graeme v. Cullen*, 23 *Gratt. (Va.)* 266, 298. Opposed in *Bright v. Boyd*, 1 *Story C. Ct.* 478. See doctrine of *Bright v. Boyd* preferred in *Hatcher v. Briggs*, 6 *Oreg.* 31; s. c., 30 *Am. Dec.* 181. Disapproved in *Herring v. Pollard's Ex'r*, 4 *Humph. (Tenn.)* 362; s. c., 40 *Am. Dec.* 653, with note. Approved in *Warner v. Fountain*, 28 *Wis.* 405. Cited at length in 2 *Am. Dec.* 724, n., as a well considered and leading case.
- *v. Westcott*, 19 *Johns.* 73. Disting'd with *Merry v. Hallet*, 2 *Cow.* 497, on the ground of statutory provisions (Sale of term of years on execution from justice's court) in *Barr v. Doe*, 6 *Blackf. (Ind.)* 335; s. c., 38 *Am. Dec.* 146.
- *v. Wise*, 1 *Hill*, 234; s. c., 37 *Am. Dec.* 309, with note wherein it is said to lay down a doctrine which is undoubtedly that of the later *N. Y.* cases, and is adopted as preferable in *Freeman Co-ten. & Part.* See *Stewart v. Doughty*. Reviewed and followed (Effect of contract to farm on shares) in *Taylor v. Bradley*, 39 *N. Y.* 129, 137. Disapproved with *Dinehart v. Wilson*, 15 *Barb.* 595; *Harrower v. Heath*, 19 *Id.* 331; *Bradish v. Schenck*, 8 *Johns.* 151; *Taylor v. Bradley*, 39 *N. Y.* 129; *Caswell v. Districh*, 15 *Wend.* 379, in *Chicago & West Michigan R'y Co. v. Linard*, 94 *Ind.* 319; s. c., 43 *Am. R.* 155, the earlier and contrary decision of *Stewart v. Doughty*, 9 *Johns.* 108 being followed, and Overseers of Fort Ann v. Overseers of Kingsbury, 14 *Johns.* 365 being also relied on in this connection. Followed with *Bradish v. Schenck*, 8 *Johns.* 251, in *Thompson v. Mawhinney*, 17 *Ala.* 362; s. c., 52 *Am. Dec.* 176, 178, with note. Followed in *Smyth v. Tankersley*, 20 *Ala.* 212; s. c., 56 *Am. Dec.* 193. Explained in 1 *Washb. on Real Prop.* 4 ed. 449, n. 7. Cited with approval with *Berly v. Taylor*, 5 *Hill*, 584 (Right of injured party to waive tort and sue in assumpsit should be liberally extended) in *Norden v. Jones*, 33 *Wis.* 600; s. c., 14 *Am. R.* 782.
- *v. Wyley*, 8 *Johns.* 432. Recognized with *Concklin v. Havens*, 12 *Id.* 314, but disting'd (Right to increase in case of hiring, &c. of animals) in *Kellogg v. Lovely*, 46 *Mich.* 131; s. c., 41 *Am. R.* 151; 12 *Reporter*, 83. Cited approvingly in 2 *Kent Com.* 361, where the principle is discussed.
- Q.
- Quackenbos v. Edgar**, 34 *Super. Ct. (J. & S.)* 333. Aff'd in 61 *N. Y.* 653.
- *v. Sayer*, 4 *Sup'm. Ct. (T. & C.)* 424; mem. s. c., 2 *Hun.* 157.
- Quackenboss v. Clark**, 12 *Wend.* 555. Approved (Assignment of lease) in *Welsh v. Schuyler*, 6 *Daly*, 412, 415. Collated with other cases in *McAdam on Landl. & T.* 2 ed. § 86.
- *v. Southwick*, 41 *N. Y.* 117. Applied (Functions of trustee as separate from his functions as executor) in *Matter of Roosevelt*, 5 *Redf.* 601, 622. Disting'd (Power to remove testamentary trustee) in *Blake v. Sands*, 3 *Id.* 172.
- Quackenbush v. Danks**, 1 *Den.* 128. See *Danks v. Quackenbush*. Approved (State law when such as to impair obligation of contracts) in 1 *Kent Com.* 419, n. b.
- *v. Ehle*, 5 *Barb.* 469. Criticised and disting'd (Effect of agreement to compensate by will) in *Bonesteel v. Van Etten*, 20 *Hun.* 468. Followed in *Eagan v. Kergill*, 1 *Dem.* 464, 468. Criticised in *Browne on Stat. of Frauds*, § 275, n, as opposed to the prevailing authority.
- *v. Johnson*, 55 *How. Pr.* 94. See *Waters v. Shepherd*. Followed with *Cornelius v. Barton*, 12 *Weekly Dig.* 216; *Geib v. Topping*, 83 *N. Y.* 46 (Delivery of referee's report) and *Phipps v. Carman*, 23 *Hun.* 150; 84 *N. Y.* 650 disting'd in *Thornton v. Thornton* 66 *How. Pr.* 119. See *Code Civ. Pro.* 1881, § 1019, n. 7.
- Quain v. Russell**, 8 *Hun.* 319. Mem. of further decision in 12 *Id.* 376. See *Hayes v. Phelan*.
- Quarry Co. v. Bliss**, 10 *Abb. Pr.* 211. Aff'd in 12 *Id.* 470; s. c., as *Shaler & Hall Quarry Co. v. Bliss*, 34 *Barb.* 309; and under latter name, aff'd in 27 *N. Y.* 297.
- Quick v. Stuyvesant**, 2 *Paige*, 84. Applied (Relief against contract, on ground of mistake) in *Miles v. Stevens*, 3 *Penn. St.* 21; s. c., 45 *Am. Dec.* 621, 625, with note.
- Quimbo Appo v. People**, 20 *N. Y.* 531. See *Appo v. People*. Quoted (Nature of writ of prohibition) in *High on Extr. Rem.* 2 ed. § 781, n. 1.
- Quimby v. Vanderbilt**, 17 *N. Y.* 306. See *Bostwick v. Champion*; *Weed v. Saratoga & Schenectady R. R. Co.* Disting'd (Liability of carrier selling ticket for point beyond its own line) in *Milnor v. N. Y. & New Haven R. R. Co.*, 53 *N. Y.* 363, 369. Followed in *Ward v. Vanderbilt*, 4 *Abb. Ct. App. Dec.* 523; *Cary v. Cleveland, &c. R. R. Co.*, 29 *Barb.* 56; *Buffett v. Troy &*



Boston R. R. Co., 40 *N. Y.* 172. Approved in *Williams v. Vanderbilt*, 29 *Barb.* 491, 503. Relied on with *Kessler v. N. Y. Central R. R. Co.*, 7 *Lans.* 62, in *Central R. R. v. Combs*, 70 *Ga.* 533; s. c., 48 *Am. R.* 532. Included with notes in *Thompson v. Carr. of Pass.* 423. Disting'd (Ticket as evidence of contract) in *Barker v. Coffin*, 81 *Barb.* 566, 560. Followed in *Van Burskirk v. Roberts*, 31 *N. Y.* 666. Approvingly cited in *Gorden v. Manchester & Lawrence R. R.*, 52 *N. H.* 596; s. c., 13 *Am. R.* 97, 101.

**Quin v. Hanford**, 1 *Hill*, 84. Followed (Effect of verbal acceptance) in *Walton v. Mandeville*, 50 *Iowa*, 597; s. c., 41 *Am. R.* 123; 13 *Reporter*, 70.

— **v. Lloyd**, 1 *Sweeney*, 253. Rev'd in 41 *N. Y.* 349. Decision in *Id.* reviewed with other cases (Proof of payment or other satisfaction, without having pleaded same) in *Wehle v. Haviland*, 42 *How. Pr.* 407. Applied (Necessity of exception to admission of evidence) in *People v. Sanders*, 3 *Hun*, 19; *Lormore v. Campbell*, 60 *Barb.* 62, 69.

— **v. Mayor, &c. of N. Y.**, 63 *Barb.* 595; s. c., 44 *How. Pr.* 266. Aff'd, it seems, in 53 *N. Y.* 627, on opinion below. Decision in 44 *How. Pr.* followed (Officers employed in N. Y. city—whether local or State) in *Whitmore v. Mayor, &c. of New York*, 5 *Hun*, 195. Approved in *Goettman v. Mayor, &c. of N. Y.*, 6 *Id.* 133. Disting'd (Power of board of appointment in N. Y. city as to salaries of officers) in *Brinck v. Mayor, &c. of N. Y.*, 16 *Id.* 340; *Dolan v. Same*, 6 *Id.* 507. Followed in *Landon v. Mayor, &c. of N. Y.*, 39 *Super. Ct. (J. & S.)* 467, 473.

— **v. Moore**, 15 *N. Y.* 432. Dicta withdrawn (Right of action for causing death) in *Whitford v. Panama R. R. Co.*, 23 *Id.* 465, 489. Contrasted (Measure of damages for causing death) with *Lehman v. City of Brooklyn*, 29 *Barb.* 234, in 8 *South. L. Rev.* 68, 77. Applied with *Oldfield v. N. Y. & Harlem R. R. Co.*, 14 *N. Y.* 318, in *Durkee v. Central Pacific R. R. Co.*, 56 *Cal.* 388; s. c., 38 *Am. R.* 59, a case of mere personal injury.

— **v. Riley**. See *Hanford v. McNair*.

— **v. Skinner**, 49 *Barb.* 128; s. c., 33 *How. Pr.* 229. Rev'd as *Skinner v. Quin*, 43 *N. Y.* 99. See *Reed v. Underhill*. Decision in 49 *Barb.* qualified and disting'd (Effect of power given by will to executors to sell real estate) in *Crittenden v. Fairchild*, 41 *N. Y.* 289, 293. Compare *Kinnier v. Rogers*, 42 *Id.* 531.

**Quincey v. Francis**, 5 *Abb. N. C.* 286. Explained (Attorney's lien as affected by settlement of action) in *McCabe v. Fogg*, 60 *How. Pr.* 489. See *Code Civ. Pro.* § 66, as amended in 1879.

— **v. White**. See *Quincey v. Young*.

— **v. Young**, 5 *Daly*, 44. Appeal dismissed in 53 *N. Y.* 504. Another decision in 5 *Daly*, 327 rev'd in 63 *N. Y.* 370. Decision in 53 *Id.* applied (Review of order denying motion to send back referee's

report) in *Hunt v. Chapman*, 62 *Id.* 335. Decision in 5 *Daly*, 44, applied (Request to find, when to be refused) in *Buswell v. Lincks*, 8 *Id.* 518, 529; *James v. Burchell*, 7 *Id.* 531, 533.

**Quinlan v. City of Utica**, 11 *Hun*, 217. Aff'd, it seems, in 74 *N. Y.* 603, but without opinion. Both decisions followed (Evidence of other casualties, in action for injuries received by falling on sidewalk) in *Avery v. City of Syracuse*, 29 *Hun*, 537; *District of Columbia v. Armes*, 107 *U. S.* 519, 525. See (Costs in action against municipal corporation) *Code Civ. Pro.* 1881, § 3245, n.

**Quinn v. Carr**, 4 *Hun*, 259; s. c., reported in 6 *Sup'm. Ct. (T. & C.)* 402.

— **v. Hardenbrook**, 54 *N. Y.* 83. See *Lynes v. Townsend*; *Van Kleeck v. Reformed Dutch Church*. Disting'd (Effect of will to pass after-acquired realty) in *Lent v. Lent*, 24 *Hun*, 436, 439.

— **v. Lloyd**. See *Gaillard v. Smart*.

— **v. O'Gara**. See *Brooker v. Coffin*.

— **v. People**, 11 *Hun*, 336. Aff'd in 71 *N. Y.* 561; s. c., 27 *Am. R.* 87. Decision in *Id.* explained (What is a dwelling-house) in *Levy v. People*, 80 *Id.* 327, 334. Disting'd as a case of burglary, in *Stearns v. Vincent*, 50 *Mich.* 209; s. c., 45 *Am. R.* 37, 45, a case involving the duties of officers in executing civil process.

— **v. Quinn**, 1 *Sup'm. Ct. (T. & C.)* 437. See *McPherson v. Clark*. Followed (Revocation of will by obliteration) in *Levell v. Quitman*, 25 *Hun*, 538. Collated with *Clark v. Smith*, 34 *Barb.* 140, and other cases in 25 *Am. R.* 35, n.

— **v. Van Pelt**, 36 *Super. Ct. (J. & S.)* 279. Rev'd in 56 *N. Y.* 417, on the question of burden of proof. Further proceeding in 12 *Hun*, 633. Decision in 56 *N. Y.* disting'd (Liability of trustee, &c. to account for neglect) in *Helms v. Goodwill*, 64 *Id.* 642, 644.

— **v. Weed**, 5 *Hun*, 350. See also (Appeal to Supreme Court from county court) *Fish v. Thrasher*, 21 *Id.* 15.

**Quintard v. Newton**, 5 *Robt.* 72. See *Moore v. Noble*. Disapproved (Recovery on warranty, without proof of *scienter*) in *Pomeroy on Rem.* § 559, n. 1.

## R.

**Radcliff v. Mayor, &c. of Brooklyn**, 4 *N. Y.* 195; s. c., 53 *Am. Dec.* 357, with note, wherein it is said to have been much cited. See *Bellinger v. N. Y. Central R. R. Co.*; *Byrnes v. City of Cohoes*; *Chapman v. Albany & Schenectady R. R. Co.*; *Farrand v. Marshall*; *Gardner v. Trustees of Newburgh*; *Hay v. Cohoes Co.* Applied (Right to damages resulting from act authorized by law) in *Story v. N. Y. Elevated R. R. Co.*, 3 *Abb. N. C.* 505; *Corey v. Buffalo, Corning, &c.*

- R. R. Co., 23 *Barb.* 489; *Briesen v. Long Island R. R. Co.*, 31 *Hun.* 112. Referred to with *Gould v. Hudson River R. R. Co.*, 6 *N. Y.* 522; *Bellinger v. N. Y. Central R. R. Co.*, 23 *Id.* 42; *People v. Kerr*, 27 *Id.* 193; *Corey v. Buffalo, & C. R. R. Co.*, 23 *Barb.* 482; *Getty v. Hudson River R. R. Co.*, 21 *Id.* 617; *Ely v. City of Rochester*, 26 *Id.* 133; *Plant v. Long Island R. R. Co.*, 10 *Id.* 26,—as establishing the principle,—in *Arnold v. Hudson River R. R. Co.*, 49 *Id.* 121. Disting'd in *Coster v. Mayor, &c. of Albany*, 52 *Barb.* 281, case of improvements in river basin; which was rev'd in effect in 43 *N. Y.* 415, which see. Disting'd and applied in *Losee v. Buchanan*, 61 *Barb.* 105, 111, case of boiler explosion; which was rev'd in 51 *N. Y.* 479, which see. Disting'd in *Clemence v. City of Auburn*, 66 *Id.* 339, case of personal injury from defective sidewalk. Disting'd in *St. Peter v. Demson*, 58 *Id.* 423, case of blasting. Limited to acts done for public benefit, in *Tinsman v. Belvidere R. R. Co.*, 2 *Dutch. (N. Y.)* 143, 164. Approved with this limitation, in *Quinn v. City of Paterson*, 3 *Id.* 35. Examined in *Goodall v. Milwaukee*, 5 *Wisc.* 42. Fully approved in *Munson v. Mallory*, 36 *Conn.* 165; s. c., 4 *Am. R.* 52. Cited as authority with *Hay v. Cohoes Co.*, 2 *N. Y.* 159, in *Hendershott v. City of Ottumwa*, 46 *Iowa*, 658; s. c., 26 *Am. R.* 182. Cited with approval in *Garland v. Towne*, 55 *N. H.* 55; s. c., 20 *Am. R.* 164, 167. Followed in *American Print Works v. Lawrence*, 3 *Zabr. (N. Y.)* 590; s. c., 57 *Am. Dec.* 420, with note. Applied with *Panton v. Holland*, 17 *Johns.* 92; *Lasala v. Holbrook*, 4 *Paige*, 169, in *Simmons v. City of Camden*, 26 *Ark.* 276; s. c., 7 *Am. R.* 620. Collated with other cases in *Mills Thomp. on High.* 3 ed. 206; also in 26 *Am. R.* 457, n. See cases cited in 53 *Am. Dec.* 321, n. Applied to interference with water-rights in *Ellis v. Duncan*, 21 *Barb.* 285; *Ely v. City of Rochester*, 26 *Id.* 137; *Pixley v. Clark*, 32 *Id.* 274; which was rev'd in 35 *N. Y.* 522, which see. Disting'd (Water-rights) in *Carhart v. Auburn Gas Light Co.*, 22 *Barb.* 308, 310; *Donohue v. Mayor, &c. of N. Y.*, 3 *Daly*, 69. Applied (Water-rights) in *Gould v. Hudson River R. R. Co.*, 12 *Barb.* 616, 631; which was aff'd in 6 *N. Y.* 522, 542, which see. Followed (Water-rights) as conclusive in *Bellinger v. N. Y. Central R. R.*, 23 *N. Y.* 48; see also *Selden v. Del. & Hud. Canal Co.*, 29 *Id.* 642. Disting'd (Water-rights) in *Pettigrew v. Village of Evansville*, 25 *Wisc.* 223; s. c., 3 *Am. R.* 50, 55. Disting'd (Right to lateral support for land) in *Farrand v. Marshall*, 19 *Barb.* 383; 21 *Id.* 415. Quoted and collated with other cases in *McAdam on Landl. & T.* 2 ed. § 222. Quoted and cases cited to the contrary in *Bigal. Cas. on Torts*, 549.
- *v. United Ins. Co.*, 7 *Johns.* 38. Appears to be cited in *Waples Proc. in Rem.* § 301, as not in harmony with numerous other cases cited (Presumption of knowledge by neutral of existence of blockade). Cited in 1 *Kent Com.* 146, n. a, as sustaining the English doctrine of actual blockade. Cited (Diplomatic correspondence as evidence of facts therein recited) in 2 *Taylor on Ex.* 1423, to show that though in England its effect is not clear, yet such evidence is admissible in some American courts.
- Radde v. Whitney**, 4 *E. D. Smith*, 378. Collated with other cases in 58 *Am. Dec.* 358, n. (Effect of levy on personal property as satisfaction of judgment that will discharge surety).
- Radway v. Briggs**, 37 *N. Y.* 253. Followed (Liability for loss resulting from unguarded condition of dock) in *Kennedy v. Mayor, &c. of N. Y.*, 73 *Id.* 365, 368. Limited (Liability of lessor for injury resulting from condition of leased premises) in *Swords v. Edgar*, 59 *Id.* 28, 37.
- Rae, Matter of**, 5 *Hun.* 455. Appeal dismissed, it seems, in 63 *N. Y.* 645, but without opinion.
- Rae v. Beach**. See *Rae v. Harteau*.
- *v. Harteau*, 53 *How. Pr.* 25; s. c., 7 *Daly*, 95. Further decision in *Id.* 100; which was aff'd as *Rae v. Beach*, in 76 *N. Y.* 164. See *Porter v. Kingsbury*.
- *v. Mayor, &c. of N. Y.*, 39 *Super. Ct. (J. & S.)* 192. Appeal dismissed, it seems, in 62 *N. Y.* 631, but without opinion.
- Ragan v. Allen**, 7 *Hun.* 537. See *Lupton v. Lupton*. Followed (Legacy, when charge on real estate) in *Manson v. Manson*, 8 *Abb. N. C.* 123, 127.
- Railway Pass. Assur. Co. v. Warner**, 1 *Sup'm. Ct. (T. & C.) Add.* 21. Rev'd, it seems, in 62 *N. Y.* 651, without concurring in the grounds.
- Rainey v. Laing**, 58 *Barb.* 453. Disting'd (Right of joint stock association to hold real estate) in *Howell v. Earp*, 21 *Hun.* 393. Explained in *Betts v. Betts*, 4 *Abb. N. C.* 317, 396.
- Rainsford v. Rainsford**, 57 *Barb.* 58. Aff'd in 47 *N. Y.* 656, but without opinion.
- Ramaley v. Leland**, 6 *Robt.* 358. Modified in 43 *N. Y.* 539. Decision in *Id.* explained (Inn-keeper's liability for watch worn and used in ordinary manner) in 2 *Parson on Contr.* 149, n. 1, Keller's ed.
- Ramschander v. Hammond**, 2 *Johns.* 200. Explained (Application of statute of limitations to matters of account) in *Green v. Ames*, 14 *N. Y.* 232. Examined with other cases in *Ogden v. Astor*, 4 *Sandf.* 328.
- Ramsay v. Gardner**, 11 *Johns.* 439. Applied (Agent's right to charge principal with loss occasioned in course of his employment) in *Powell v. Trustees of Newburgh*, 19 *Johns.* 287.
- Ramsdell v. Morgan**, 16 *Wend.* 574. Overruled with *Keutgen v. Parks*, 2 *Sandf.* 60 (Purchaser on usury, not a bona fide purchaser) in *Williams v. Tilt*, 36 *N. Y.* 319; so stated in *Huger v. Wilson*, 63 *Barb.* 237.

**Ramsey v. Gould**, 4 *Lans.* 476. Dismissing appeal from *Ramsey v. Erie R'y Co.*, 9 *Abb. Pr. N. S.* 342.

**Ramson v. Mayor, &c. of N. Y.**, 15 *How. Pr.* 145; s. c., more fully, as *Rawson v. Mayor, &c.*, 4 *Abb. Pr.* 342.

**Randall v. Alburtis**, 1 *Hill.* 285. Collated with other cases (Eviction of lessee) in *McAdam on Landl. & T.* 2 ed. § 212.

— **v. Cook**, 17 *Wend.* 53. See *Collins v. Brush*. See (Effect of sale of chattels unaccompanied by delivery) *Smith v. Acker*, 31 *Wend.* 653.

— **v. Crandall**, 6 *Hill.* 342. Collated with other cases (Question of title in action for trespass on highway) in *Mills Thomps. on Highw.* 3 ed. § 29.

— **v. Dusenbury**, 39 *Super. Ct. (J. & S.)* 174. Aff'd, it seems, in 63 *N. Y.* 645, but without opinion. Further proceeding in 51 *How. Pr.* 367; which was aff'd in 41 *Super. Ct. (J. & S.)* 456. See *Lansing v. Lansing*. Decision in 39 *Super. Ct. (J. & S.)* cited with other cases (Right of executors, &c. to create liens orally) in 15 *Am. L. Rev.* 450, citing cases.

— **v. Elwell**, 52 *N. Y.* 521; s. c., 11 *Am. R.* 747. Followed with *Hoyle v. Plattsburg R. R. Co.*, 54 *N. Y.* 314 (Rolling stock as personality) in *Neilson v. Iowa Eastern R. R. Co.*, 51 *Iowa*, 184; s. c., 33 *Am. R.* 127.

— **v. Hall**, *Hill & D.* 239. See (Costs in justices' court) *Code Civ. Pro.* 1881, § 3075, n.

— **v. Parker**, 3 *Sandf.* 69; s. c., 7 *N. Y. Leg. Obs.* 332 with points of counsel. Disapproved (Nature of presumption of fraud in sale, &c. not accompanied with change of possession) in *Groat v. Rees*, 20 *Barb.* 28. Followed (Validity of sale of goods) in *Jones v. O'Brien*, 36 *Super. Ct. (J. & S.)* 58, 63.

— **v. Sackett**, 56 *How. Pr.* 225. Aff'd in effect in 77 *N. Y.* 480.

— **v. Smith**, 1 *Den.* 214. Overruled (Liability of school trustees in making assessment) in *Jewell v. Von Steenburgh*, 58 *N. Y.* 85, 90.

— **v. Van Vechten**, 19 *Johns.* 73; s. c., 10 *Am. Dec.* 193; and *Thomps. Liab. of Off. & A.* 73, with notes. See *Ludlow v. Simond*. Said in 2 *Am. Dec.* 516, n., to be a leading case in *N. Y.* and to have been extensively noticed elsewhere. Disting'd (Liability on contract made by agent) in *Schaefer v. Henkel*, 7 *Abb. N. C.* 12; *Plumb v. Milk*, 19 *Barb.* 77; *Auburn City B'k v. Leonard*, 40 *Id.* 136; *Gage v. Jaqueth*, 1 *Lans.* 212; *Guyon v. Lewis*, 7 *Wend.* 30. Applied in *Bellinger v. Bentley*, 1 *Hun*, 565; *Worrall v. Munn*, 5 *N. Y.* 241; *Bank of Genesee v. Patchin B'k*, 19 *Id.* 315; *Brockway v. Allen*, 17 *Wend.* 41. Explained and applied in *Haight v. Sahler*, 30 *Barb.* 221; *Gram v. Seton*, 1 *Hall*, 278. Followed in *St. Andrew's Bay Land Co. v. Mitchell*, 4 *Fla.* 192; s. c., 54 *Am. Dec.* 340, with note. Disting'd with *Dubois v.*

*Delaware & Hudson Canal Co.*, 4 *Wend.* 285, in *City of Providence v. Miller*, 11 *R. I.* 272; s. c., 23 *Am. R.* 453. Reviewed with *Dubois v. Delaware, &c. Canal Co.*, 4 *Wend.* 288; *Haight v. Sahler*, 30 *Barb.* 218; *Ford v. Williams*, 13 *N. Y.* 577; *Worrall v. Munn*, 5 *Id.* 299; *Lawrence v. Taylor*, 5 *Hill*, 107; *Evans v. Wells*, 22 *Wend.* 324, and other cases in 16 *Western Jur.* 623. Doubted in *Waterman on Sp. Perf.* § 245, n. Discussed in *Ang. & A. on Corp.* § 296, 11 ed.

— **v. Wilkins**, 4 *Den.* 577. Commented on (Effect of non-residence in causing suspension of statute of limitations) in *Campbell v. White*, 22 *Mich.* 178, 192.

**Randell v. Von Ellert**, 4 *Abb. N. C.* 88; s. c., fully reported, in 12 *Hun*, 577; and as *Randell v. Van Ellert*, 54 *How. Pr.* 363. See (Referee's deed) *Code Civ. Pro.* 1881, § 1244, n.

**Randolph v. Boston & Albany R. R. Co.**, 5 *Weekly Dig.* 150. Aff'd, it seems, in 74 *N. Y.* 608.

— **v. Leary**, 3 *E. D. Smith*, 637. Cited (Nature of foreclosure of mechanic's lien as *quasi* proceeding in *rem*) in *Waples Proc. in Rem*, § 619.

— **v. Loughlin**, 48 *N. Y.* 456. See *People v. Spooner*. Explained (Comparison of handwritings) in *Miles v. Loomis*, 10 *Hun*, 372, 377; which was aff'd in 75 *N. Y.* 288, which see. Cited with *Ellis v. People*, 21 *How. Pr.* 356, in 1 *Whart. Com. on Ev.* § 713.

**Rankine v. Elliott**, 14 *How. Pr.* 339. Aff'd in 16 *N. Y.* 377. Decision in *Id.* said to be overruled with *Calkins v. Atkinson*, 2 *Lans.* 15; *Phoenix Warehousing Co. v. Badger*, 67 *N. Y.* 299; *Tracy v. First Nat. B'k of Selina*, 37 *Id.* 523 (Receiver's right to collect subscription),—by *Farnsworth v. Wood*, 91 *N. Y.* 313, but the latter case disapproved in 29 *Abb. L. J.* 365.

**Ranney v. McMullen**, 5 *Abb. N. C.* 246. See (Liability of grantee of mortgaged premises) cases cited in *Id.* 230, n.

— **v. Peyser**, 20 *Hun*, 11. Rev'd in 83 *N. Y.* 1. See Referee's report in 5 *Abb. N. C.* 259, n. See *People ex rel. Day v. Bergen*.

— **v. Stringer**, 4 *Bosw.* 663. Disting'd (Security for costs from non-resident pending appeal) in *Flint v. Van Deusen*, 24 *Hun*, 440, 442.

— **v. Warren**, 13 *Hun*, 11. Further decision in 17 *Id.* 111.

**Ransom, Ex parte**, 3 *Code R.* 148. Approved (What is special proceeding in condemnation proceedings) in *N. Y. Central R. Co. v. Marvin*, 11 *N. Y.* 276.

**Ransom v. Mack**, 2 *Hill*, 587; s. c., 15 *N. Y. Com. L. Law. ed.* 463, with brief note; and 38 *Am. Dec.* 602, with extended note. See *Ireland v. Kip*; *Smedes v. Bank of Utica*. Followed (Sufficiency of notice of protest) in *De La Hunt v. Higgins*, 9 *Abb. Pr.* 422-425; *Beale v. Parrish*, 20 *N. Y.* 407, 410; *Platt v. Drake*, 1 *Doug (Mich.)*

300. Followed with *Sheldon v. Benham*, 4 *Hill*, 129, 133, in *Shelburne Falls Nat. B'k v. Townsley*, 102 *Mass.* 177; s. c., 3 *Am. R.* 445, 449. Collated with other cases in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 501.
- *v. N. Y. & Erie R. R. Co.*, 15 *N. Y.* 415. See *Curtis v. Rochester & Syracuse R. R. Co.* Followed (Damages for mental suffering) in *Matteson v. N. Y. Central R. R. Co.*, 62 *Barb.* 364, 379. Disting'd with *Morse v. Auburn & Syracuse R. R. Co.*, 10 *Id.* 625; *Curtis v. Rochester & Syracuse R. R. Co.*, *Id.* 283, in *Johnson v. Wells*, 6 *Neo.* 224; s. c., 3 *Am. R.* 245, 250.
- *v. Nichols*, 22 *N. Y.* 110. Applied (Husband's right to personality of wife, after her death) in *Burke v. Valentine*, 5 *Abb. Pr. N. S.* 170; *Ryder v. Halse*, 24 *N. Y.* 377. Explained in *Barnes v. Underwood*, 47 *Id.* 359; which rev'd 3 *Lans.* 531, which see. Applied to realty in *Beamish v. Hoyt*, 2 *Robt.* 317. Collated with other cases in *Sharsw. & B. Cas. on Real Prop.* 289.
- *v. Wetmore*, 39 *Barb.* 104. Disting'd (Power of court over amendment of pleadings) in *Bigelow v. Dunn*, 53 *Barb.* 571.
- Rapalee v. Stewart**, 27 *N. Y.* 310. See *Brigham v. Tillinghast*; *Nicholson v. Leavitt*. Discussed (Terms of sale in case of assignment for benefit of creditors) in *Burrill on Assign.* § 224, 4 ed. Applied (Right of one creditor who assented, to repudiate assignment) in *Chafee v. Fourth Nat. B'k of N. Y.*, 71 *Me.* 514; s. c., 36 *Am. R.* 345, 350.
- Rapalje v. Hall**, 1 *Sandf. Ch.* 399. Explained and limited (Charging trustee, &c. with interest) in *Cowing v. Howard*, 46 *Barb.* 579.
- Rapalye v. Rapalye**, 27 *Barb.* 610. Followed and extended (Remainder over upon specific bequest of chattels, void) in *Smith v. Van Nostrand*, 3 *Hun.* 450; which was rev'd in 64 *N. Y.* 278.
- *v. Anderson*, 4 *Hill*, 472. See *Powell v. Waters*. Followed (Purchase of obligation at a discount, with guaranty of payment, when not usurious) in *Sutherland v. Woodruff*, 26 *Hun.* 411.
- *v. Mackie*, 6 *Cow.* 250. Followed and *Russell v. Carrington*, 42 *N. Y.* 118, cited (Effect of sale of undivided part of mass) in *Prescott v. Locke*, 51 *N. H.* 94; s. c., 12 *Am. R.* 55, 63.
- *v. Prince*, 4 *Hill*, 119; s. c., 40 *Am. Dec.* 267, with note wherein are collected citations.
- Raphalsky v. Lynch**, 12 *Abb. Pr. N. S.* 224; s. c., 34 *Super. Ct. (J. & S.)* 31; and as *Raphalsky v. Lynch*, 43 *How. Pr.* 157.
- Raplee v. Arnot**, 4 *Hun.* 423. Aff'd in 69 *N. Y.* 616.
- Rapp v. Williams**, 1 *Hun.* 716; s. c., more fully, 4 *Sup'm. Ct. (T. & C.)* 174. Applied (Restraining summary proceedings by injunction) in *Knox v. McDonald*, 25 *Hun.* 269. Compare *Code Civ. Pro.* § 2265.
- Rappelyea v. Russell**, 1 *Daly*, 214. Disting'd (Liability of estate for services rendered without express agreement) in *Hewett v. Bronson*, 5 *Id.* 1, 4.
- Rapplee v. Adea**, 1 *Sup'm. Ct. (T. & C.)* 126. Explained (Acceptance of goods as required by statute of frauds) in 1 *Benj. on Sales*. § 166, n. 14, *Corbin's* 4 *Am. ed.*
- Rasquin v. Knickerbocker Stage Co.**, 12 *Abb. Pr.* 324; s. c., 21 *How. Pr.* 292. See *McDowell v. Second Ave. R. R. Co.* Opposed (Attorney's right to go on notwithstanding settlement) in *Pulver v. Harris*, 62 *Barb.* 500, 507. Questioned and explained in *Lamont v. Washington & Georgetown R. R. Co.*, 2 *Maack (Dist. of C.)* 502; s. c., 47 *Am. R.* 268.
- Ratcliff v. Wales**, 1 *Hill*, 63. See *Barnes v. Camack*. Approved (When widow may testify concerning matter in which deceased husband was interested) in *Jackson v. Barron*, 37 *N. H.* 494.
- Ratcliffe v. Cary**, 4 *Abb. Ct. App. Dec.* 4; s. c., as *Ratcliffe v. Gray*, 3 *Keyes*, 510.
- Rathbon v. Budlong**, 15 *Johns.* 1. Cited as leading authority (Liability on instrument executed by agent) in *Randall v. Snyder*, 1 *Lans.* 163. Approved with *Pentz v. Stanton*, 10 *Wend.* 276, in *Robertson v. Pope*, 1 *Rich. (So. Car.)* 501; s. c., 44 *Am. Dec.* 267, 270, with note. Included in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 742.
- Rathbone v. Hooney**, 58 *N. Y.* 463. Followed and declared not inconsistent with *Scott v. Onderdonk*, 14 *Id.* 9 (Effect of conveyance upon sale for municipal assessments) in *Marsh v. City of Brooklyn*, 59 *Id.* 280, 284.
- *v. McConnell*, 20 *Barb.* 311. Aff'd in 21 *N. Y.* 466. Decision in *Id.* disting'd (Costs in case presenting question of title); *Powers v. Conroy*, 47 *How. Pr.* 85, being followed in *Boardway v. Scott*, 31 *Hun.* 378.
- *v. Stanton*. See *Cady v. Fairchild*.
- *v. Tucker*, 15 *Wend.* 498. Aff'd in 18 *Id.* 175. Both decisions explained (When credit is given by vendor to agent exclusively) in *Maryland Coal Co. v. Edwards*, 4 *Hun.* 432, 434.
- *v. Warren*. See *King v. Baldwin*.
- Rathbun v. Ingall**, 7 *Wend.* 320. See *Ferris v. Paris*; *Taylor v. Bates*. Disting'd (Necessity of demand before suing) in *Shackleford v. Ward*, 3 *Ala.* 37; s. c., 36 *Am. Dec.* 435. Followed in *Anderson v. Hulme*, 5 *Montana*, 295; s. c., 19 *Reporter*, 439.
- *v. Martin*, 20 *Johns.* 343. Overruled (Liability to trial by court-martial, of militia man that refuses compliance with requisition of president of U. S.) in 12 *Wheat.* 19.
- *v. Northern Cent. R. R. Co.*, 50 *N. Y.* 656. Applied (Limitation of action against foreign corporation) in *Tioga R. R. v. Blossburg, &c. R. R. Co.*, 20 *Wall.* 137, 147, 148, 151. Compare *Code Civ. Pro.* § 390.
- *v. Platner*, 18 *Barb.* 272. Said in *Peck*

- v. Crouse*, 46 *Id.* 157, to have been aff'd by Ct. of App. Disting'd (Validity of deed of trust made to secure debts) in *Morris v. Pearson*, 79 *N. C.* 253; s. c., 28 *Am. R.* 315. Quoted (Preferences) in *Burrill on Assign.* § 169, 4 ed. Explained (Hindrance, fraud and delay) in *Id.* § 337, n. 2. Quoted and collated with other cases (Assigning only part of debtor's property) in *Bishop on Assign.* § 167.
- *v. Rathbun*, 6 *Barb.* 98. Disting'd (Effect of delivery of deed for record, as delivery to grantee) in *Van Valen v. Schemerhorn*, 22 *How. Pr.* 416, 419.
- *v. —*, 40 *How. Pr.* 328. See, in connection therewith (Insanity of parties to divorce suit) *Garnett v. Garnett*, 114 *Mass.* 379; s. c., 19 *Am. R.* 369; *Mordaunt v. Moncrieffe*, *L. R.* 2 *S. C. & D.* 379.
- *v. Ross*, 46 *Barb.* 127. Approved and applied (Evidence of former character) in *Tompkins v. Wadley*, 3 *Sup'm. Ct. (T. & C.)* 424, 429. Applied in *Stevens v. Rodger*, 25 *Hun.* 55.
- Ratzky v. People**, 29 *N. Y.* 124; s. c., 28 *How. Pr.* 112. Followed and explained (Effect of statute changing punishment for crime committed before passage of statute) in *McKee v. People*, 32 *N. Y.* 239. Applied (Power of appellate court on writ of error in criminal cases) in *People v. Ferris*, 32 *How. Pr.* 421.
- Rau v. People**. See *Nevin v. Ladue*.
- Raubitschek v. Blank**, 44 *Super. Ct. (J. & S.)* 564. Aff'd in 80 *N. Y.* 478.
- Rawdon v. Corbin**, 3 *How. Pr.* 416. Explained and qualified (Sufficiency of affidavit for service by publication) in *Peck v. Cook*, 41 *Barb.* 549, 553.
- *v. Redfield*, 2 *Sandf.* 178. Included with notes (Notice of protest) in 2 *Ames Cas. on B. & N.* 407.
- Rawiszer v. Hamilton**, 51 *How. Pr.* 297. Compared (Merger of mortgage in decree of foreclosure) in 20 *Am. L. Reg. N. S.* 685.
- Rawley v. Brown**, 71 *N. Y.* 85. Further decision in 18 *Hun.* 456. Subsequent decision in 11 *Weekly Dig.* 454, where, as appears from 24 *Hun.* 140, opinion was by BOARDMAN, J. Decision in 18 *Id.* disting'd (Necessity of demand, before action to recover goods wrongfully seized under execution) in *Master v. Webb*, 24 *Id.* 90, 92; which rev'd 60 *How. Pr.* 302, which see. Compare 15 *Am. L. Rev.* 378. Decision in 71 *N. Y.* quoted (Possession as evidence of title) in *Sedgw. & W. on Tr. of Tit. to Land*, § 717.
- Bawls v. American Mut. Life Ins. Co.**, 36 *Barb.* 357. Aff'd in 27 *N. Y.* 282; s. c., with note by Prof. DWIGHT, in 3 *Am. L. Reg.* 167. See *St. John. v. Am. Mut. Life Ins. Co.*; *Valton v. National Loan Fund Ass'n Co.* Decision in 27 *N. Y.* disting'd (Evidence of declarations of insured) in *Estes v. World Mut. Life Ins. Co.*, 6 *Hun.* 352; *Swift v. Mass. Mut. Life Ins. Co.*, 63 *N. Y.* 189; but see *Edington v. Mut. Life Ins. Co.*, 67 *Id.* 193. Applied in *Mulliner v. Guardian Mut. Life Ins. Co.*, 1 *Sup'm. Ct. (T. & C.)* 451. Cited, as with the decided weight of authorities, in *Granger's Life Ins. Co. v. Brown*, 57 *Mass.* 308; s. c., 34 *Am. Rep.* 446, with note which see, for comments upon cases cited. Applied (Evidence as to health of insured person) in *Highbee v. Guardian Mut. Life Ins. Co.*, 66 *Barb.* 468. Applied (Hypothetical questions to physician respecting physical condition of insured) in *Edington v. Aetna Life Ins. Co.*, 13 *Hun.* 552. To the contrary see cases cited in *Abb. Tr. Ev.* 494, n. 1. Cited with *Keller v. N. Y. Central R. R. Co.*, 2 *Abb. Ct. App. Dec.* 480 (Facts as to which conclusions of expert are inadmissible) in 1 *Whart. Com. on Ev.* § 436. Applied (Necessity of insurable interest in life) in *Olmsted v. Keyes*, 85 *N. Y.* 593, 600.
- *v. Carr*, 17 *Abb. Pr.* 96. See (Place of trial) *Code Civ. Pro.* 1881, § 982, n.
- *v. Deshler*, 1 *Buff. Super. Ct. (Sheldon)* 48; s. c., 28 *How. Pr.* 66. Aff'd in 4 *Abb. Ct. App. Dec.* 12; s. c., 3 *Keyes*, 572. Decision in *Id.* applied (Effect of conditional sale accompanied with possession, on rights of subsequent bona fide purchaser) in *Bates v. Cunningham*, 12 *Hun.* 29; *Comer v. Cunningham*, 77 *N. Y.* 397. Disting'd in *Farmers' & Mech. Nat. B'k v. Logan*, 74 *Id.* 585. Criticised as not authority for holding that a special property will not authorize an action, in *City Bank v. Rome W. & O. R. R. Co.*, 44 *Id.* 136. Disting'd (Effect of order for delivery of grain) in *Mech. & Trad. B'k v. Farmers', &c. B'k*, 60 *Id.* 49; which rev'd 2 *Sup'm. Ct. (T. & C.)* 402, which see.
- Rawson v. Adams**, 17 *Johns.* 130. Applied (Effect of return by justice, on appeal to county court) in *Barber v. Stetthimer*, 13 *Hun.* 200. Collated with *Edwards v. Campbell*, 23 *Barb.* 423; *Bedell v. Carll*, 33 *N. Y.* 581; *Decker v. Livingston*, 15 *Johns.* 479; *Sayles v. Olmstead*, 66 *Barb.* 590; *Alvord v. Baker*, 9 *Wend.* 323; *Grey v. Grey*, 47 *N. Y.* 552; *Kenney v. Pub. Adm.*, 2 *Bradf.* 319 (Presumption of payment) in 30 *Alb. L. J.* 124.
- *v. Copland*, 3 *Barb. Ch.* 166. Doubted and said to have been overruled by *Ketchum v. Miln. Seld. Notes*, 152 (Set-off of unmatured claim against intestate) in *Jordan v. Shoe & Leather Nat. B'k*, 12 *Hun.* 512, 514. Compared and doubted in *Patterson v. Patterson*, 59 *N. Y.* 574, 581.
- *v. Grow*, 4 *E. D. Smith*, 18. See (Notice of appeal from justice's decision) *Code Civ. Pro.* 1881, § 3064, n.
- *v. Holland*, 5 *Daly*, 155; s. c., 47 *How. Pr.* 292. Aff'd in 59 *N. Y.* 611; s. c., 17 *Am. R.* 394.
- *v. Pennsylvania R. R. Co.*, 2 *Abb. Pr.* *N. S.* 220. Aff'd in 48 *N. Y.* 212. Decision in *Id.* disting'd (Effect of railroad ticket as evidence of contract) in *Elmore v. Sands*, 54 *Id.* 515. Disting'd (*Husband's*

- right to sue for injury to wife's paraphernalia) in *McCormick v. Penn. Cent. R. R. Co.*, 49 *Id.* 303, 317. Followed in *The State of New York*, 7 *Ben.* 450. Explained as not authority for enabling executory contract between husband and wife,— in *Van Order v. Van Order*, 8 *Hun.* 316. Applied (Effect of transfer of personalty from husband to wife) in *Brace v. Gould*, 1 *Sup'm. Ct. (T. & C.)* 227. Reviewed with *Savage v. O'Neill*, 44 *N. Y.* 298; *Thompson v. Loan Comm'rs of Otsego*, 79 *Id.* 54; *Meeker v. Wright*, 76 *Id.* 262; *Seymour v. Fellows*, 77 *Id.* 178 (Unity of husband and wife, as to property rights) in *Armitage v. Mace*, 48 *Super. Ct. (J. & S.)* 107. Decision in 2 *Abb. Pr. N. S.* cited in *Barnum v. Farthing*, 40 *How. Pr.* 25, 31, as conflicting with *Little v. Willetts*, 37 *Id.* 481.
- *v. Turner*, 4 *Johns.* 469. See *Jackson v. Bartlett*; *McElroy v. Mancius*. Disting'd (Action against one as barring action against another) in *Mattlage v. Poole*, 15 *Hun.* 556, 559. Explained in dissenting opinion of *WILDE, J.* in *Campbell v. Phelps*, 1 *Pick. (Mass.)* 62; s. c., 11 *Am. Dec.* 139, 144, with note; citing also *Livingston v. Bishop*, 1 *Johns.* 290.
- *v. Van Riper*, 1 *Sup'm. Ct. (T. & C.)* 370. Compare (Costs against municipal corporation) *Code Civ. Pro.* § 3245.
- Ray v. Birdseye**, 5 *Den.* 619. Aff'g *Birdseye v. Ray*, 4 *Hill.* 158.
- *v. Rowley*, 1 *Hun.* 614; s. c., fully reported, 4 *Sup'm. Ct. (T. & C.)* 43. Cited (Presumption created by averment of jurisdiction) in 2 *Whart. Com. on Ev.* § 1303.
- Raymond, Matter of**, 21 *Hun.* 229. Very brief mem. in *Id.* 586, ordering reargument.
- Raymond v. Bearnard**, 12 *Johns.* 274. See *Ketchum v. Everson*. Followed (Necessity that contract rescinded in part be wholly rescinded) in *Fay v. Oliver*, 20 *Vt.* 118; s. c., 49 *Am. Dec.* 764.
- *v. Hanford*, 3 *Hun.* 612; s. c., reported fully, 6 *Sup'm. Ct. (T. & C.)* 312.
- *v. Howland*, 17 *Wend.* 389. Trial at *nisi prius* reported, in *Anth. N. P.* 308.
- *v. Loyl*, 10 *Barb.* 483. See *Van Valkenburgh v. Watson*. Collated with *Cromwell v. Benjamin*, 41 *Barb.* 558, and other cases (Obligation on parent to maintain child) in 20 *Am. R.* 403, n. Reviewed with *Cromwell v. Benjamin*, 41 *Barb.* 558, 561; *Smith v. Church*, 5 *Hun.* 109, in *Tyler on Inf. & Cov.* 2 ed. § 68, where it is thought to be still an open question in *N. Y.*
- *v. Richmond*, 78 *N. Y.* 351. Further proceedings in 88 *Id.* 671; which aff'd mem. in 23 *Hun.* 523. Decisions in 78 *N. Y.* and 88 *Id.* discussed (Judgment in creditor's action) in *Wait on Fraud. Conv.* § 168,
- *v. Squire*, 11 *Johns.* 47. See *Andrews v. Beecker*. Reviewed with *Jackson v. Burtis*, 14 *Johns.* 391; *Jackson v. Davenport*, 18 *Id.* 295; and *Osgood v. Franklin*, 2 *Johns. Ch.* 1; *Franklin v. Osgood*, 14 *Johns.* 527, disting'd (What constitutes power coupled with interest) in *Mansfield v. Mansfield*, 6 *Conn.* 559; s. c., 16 *Am. Dec.* 76.
- Rayner v. Pearsall**, 3 *Johns. Ch.* 578. Explained and disting'd (Liability of executors, &c. for default of agent) in *McCloskey v. Gleason*, 56 *Vt.* 264; s. c., 48 *Am. R.* 770.
- Raynor v. Hoagland**, 39 *Super. Ct. (J. & S.)* 11. Aff'd, it seems, in 64 *N. Y.* 630, but without opinion.
- *v. Page*, 5 *Sup'm. Ct. (T. & C.)* 684; s. c., reported 2 *Hun.* 652.
- *v. Selmes*, 7 *Lans.* 440. Rev'd in 52 *N. Y.* 579. Decision in *Id.* applied (Relief against mistake in proceedings for judicial sale of land) in *Matter of Jackson*, 6 *Hun.* 513, 515.
- *v. Wilson*, 6 *Hill.* 469. Followed (Effect of conveyance entitled to be recorded, as constructive notice) in *Edwards v. McKernan*, 55 *Mich.* 520, 526. Followed with *Collins v. Torry*, 7 *Johns.* 278; *Jackson v. Pratt*, 10 *Id.* 387 (Defendant not permitted to set up as outstanding title mortgage with which he is not connected) in *Woods v. Hilderbrand*, 46 *Mo.* 284; s. c., 2 *Am. R.* 513. Explained (Surrender of deed) in *Wheeler v. Walden*, 17 *Neb.* 122; s. c., 19 *Reporter*, 17.
- Rea v. McEachron**, 13 *Wend.* 465; s. c., 28 *Am. Dec.* 471, with note containing citations. Applied (Invalidity of judicial sale had without confirmation) in *Stilwell v. Swarthout*, 81 *N. Y.* 109, 114. Followed in *Young v. Keogh*, 11 *Ill.* 644.
- Reab v. McAllister**. See *McAllister v. Reab*.
- *v. Moore*. See *McMillan v. Vanderlip*.
- Read v. City of Buffalo**, 67 *Barb.* 526. Aff'd in effect in 74 *N. Y.* 463.
- *v. —*, 3 *Keyes*, 447. Applied (Effect of acts of officer *de facto*) in *Snyder v. Schrain*, 59 *How. Pr.* 404, 406.
- *v. Decker*, 5 *Hun.* 646. Aff'd on second point in 67 *N. Y.* 182.
- *v. Delaware & Hudson Canal Co.*, 3 *Lans.* 213. Rev'd in 49 *N. Y.* 652.
- *v. French*, 28 *N. Y.* 285. See *Gaillard v. Smart*. Disting'd and explained (Sufficiency of admission of service of summons) in *Maples v. Mackey*, 15 *Hun.* 533, 538. See *Code Civ. Pro.* 1881, § 434, n. Disting'd (Sufficiency of statement on confession of judgment) in *Smith v. Davis*, 29 *Hun.* 306, as inapplicable to affidavit on application for attachment. Quoted (Interference by client with attorney in progress of suit) in 2 *Greenl. on Ev.* 14 ed. § 141, n. a.
- *v. Hurd*, 7 *Wend.* 408. Applied (Time when payment is to be regarded as made, so far as concerns statute of limitations) in *Butts v. Perkins*, 41 *Barb.* 514; *Smith v. Ryan*, 66 *N. Y.* 357; which aff'd 39 *Super. Ct. (J. & S.)* 498, which see. Discussed in *Ang. on Limit.* § 241, 6 ed.
- *v. People*, 86 *N. Y.* 381. Aff'g as it seems, mem. in 24 *Hun.* 383.
- *v. Pratt*. See *Starbuck v. Murray*.

- **v. Smith**, 1 *Hun.* 263; mem. s. c., 3 *Sup'm. Ct. (T. & C.)* 760.
- **v. Spaulding**, 5 *Bosw.* 395. Aff'd in 30 *N. Y.* 630. Both decisions explained (Act of God) in *Ang. on Carr.* § 163, n. a, 5 ed.; *Id.* § 170. Decision in 30 *N. Y.* explained in 2 *Greenl. on Ev.* 14 ed. § 219, n. b.
- **v. Worthington**, 9 *Bosw.* 617. Quoted (General assignment, how to be construed) in *Wait on Fraud. Conv.* § 343.
- Reade v. Commercial Ins. Co.**, 3 *Johns.* 352; s. c., 3 *Am. Dec.* 495. Cited (Right of master of vessel to hypothecate it at port of destination) in *Waples Proc. in Rem.* § 477.
- **v. Livingston**, 3 *Johns.* Ch. 481; s. c., 8 *Am. Dec.* 520, with note. Referred to in *Dyger v. Remerschneider*, 32 *N. Y.* 629, 648, as overruled (Effect of voluntary conveyance as against creditors) in *Babcock v. Eckler*, 24 *Id.* 623. Explained and applied in *Tappan v. Butler*, 7 *Bosw.* 439. Reiterated in *Bayard v. Hoffman*, 4 *Johns.* Ch. 450, 452. Explained in *Seward v. Jackson*, 8 *Cov.* 421. See *Wickes v. Clarke*, 3 *Edw.* 61. Compare *Wood v. Savage*, *Walk. Ch. (Mich.)* 475. Questioned in *Dunlap v. Hawkins*, 59 *N. Y.* 342, 346. Referred to as modified,—in *Cole v. Tyler*, 65 *Id.* 78. See *Savage v. Murphy*, 34 *N. Y.* 508; which aff'd 8 *Bosw.* 75, which see; *Phillips v. Wooster*, 36 *N. Y.* 412; *Case v. Phelps*, 39 *Id.* 164. Disting'd in *Howard v. Williams*, 1 *Bailey L. (So. Car.)* 575; s. c., 21 *Am. Dec.* 483, with note. Disapproved in *Hutchison v. Kelly*, 1 *Rob. (Va.)* 123; s. c., 39 *Am. Dec.* 250, 254; but see opinion of *STANARD, J.*, on p. 262. Followed in *Satterthwaite v. Emley*, 3 *Green (N. J.)* 489; s. c., 43 *Am. Dec.* 618, 620, with note. Relied on in *Winchester v. Charter*, 12 *Allen (Mass.)* 610. Said in 14 *Am. Dec.* 705, n., to have been departed from in *Seward v. Jackson*, 8 *Cov.* 406; but followed in other States, and to have produced much of the diversity of opinion and uncertainty existing. So also referred to in *Waterman on Sp. Perf.* § 341, n., as modified in *Seward v. Jackson*. Compared with other authorities in *Story on Eq. Jur.* §§ 359, 360. Discussed in 4 *Kent Com.* 309, n. b. Commented on in 2 *Id.* 441; *Id.* 442, n. a. Cited approvingly and discussed in *Id.* 173. Commented on in *Schouler on Dom. Rel.* 3 ed. § 187, n. 2. Discussed in *Wait on Fraud. Conv.* §§ 93, 96. Compared (Power of court as to transfer of real estate) in *Dawley v. Brown*, 65 *Barb.* 121.
- **v. Sweetzer**, 6 *Abb. Pr. N. S.* 9. Language of *CLERKE, J.*, approved (Limits of literary and artistic criticism) in 8 *South. L. Rev. N. S.* 173.
- **v. Waterhouse**, 12 *Abb. Pr. N. S.* 255. Aff'd in 35 *Super. Ct. (J. & S.)* 78; which was rev'd in 52 *N. Y.* 587. Decision in *Id.* disting'd (Executors, &c., when personally liable for costs) in *Bedell v. Barnes*, 29 *Hun.* 589. Explained in *Genet v. Davenport*, 58 *N. Y.* 608. Applied in *More v.*

- Darr*, 45 *Super. Ct. (J. & S.)* 155. See *Code Civ. Pro.* 1881, § 3247, n.
- Reading v. Gray**, 37 *Super. Ct. (J. & S.)* 79. See (Duty of vendor of real estate as to discharge of incumbrance) *Rinaldo v. Housmann*, 1 *Abb. N. C.* 312.
- Ready Roofing Co. v. Chamberlin**, 1 *Abb. N. C.* 192; s. c., 6 *Daly*, 521, and more fully 52 *How. Pr.* 123.
- Real, Matter of.** See *Real v. People*.
- Real v. People**, 55 *Barb.* 551; s. c., 8 *Abb. Pr. N. S.* 314. Aff'd in 42 *N. Y.* 270. Previous decision as *Matter of Real*, 7 *Abb. Pr. N. S.* 26; s. c., 55 *Barb.* 186. See points, &c., in *Law Inst. Libr. N. Y. city*. See *Ryan v. People*. Decision in 42 *N. Y.* followed (Opinions as to mental condition) in *Sisson v. Conger*, 1 *Sup'm. Ct. (T. & C.)* 569. Followed (Questioning witness as to his having been in prison) in *Russell v. St. Nicholas Fire Ins. Co.*, 51 *N. Y.* 643. Disting'd in *People v. Brown*, 72 *Id.* 574. Applied in *People v. Courtney*; 31 *Hun.* 199. Reviewed in 16 *Am. L. Rev.* 9. Commented on in 1 *Best on Ev.* § 130, n. a, *Wood's ed.* Followed (Time of adoption of art. 6 of N. Y. Const.) in *People ex rel. Davis v. Gardner*, 45 *N. Y.* 812. Collocated with *People v. Gardner*, 59 *Barb.* 198; 45 *N. Y.* 812; in 23 *Am. L. Reg. N. S.* 259, n.
- Real Estate Trust Co. v. Keech**, 7 *Hun.* 253. Modified and aff'd in 69 *N. Y.* 248; s. c., 25 *Am. R.* 181. Decision in 7 *Hun* followed (Effect of payment to procure extension of time to pay mortgage debt) in *Abrahams v. Claussen*, 52 *How. Pr.* 243; *Langdon v. Gray*, *Id.* 387, 392; *Earle v. Hammond*, 2 *Abb. N. C.* 370. Explained in *Stout v. Rider*, 12 *Hun.* 575.
- Reciprocity Bank, Matter of**, 29 *Barb.* 369; s. c., 17 *How. Pr.* 323. Rev'd in 22 *N. Y.* 9. See *Matter of Empire City Bank*; *Matter of Lee & Co.'s Bank*; *Matter of Oliver Lee & Co.'s Bank*. Decision in 22 *N. Y.* disting'd (Stockholder's liability for debts) in *Wintringham v. Rosenthal*, 25 *Hun.* 550, 582. Explained, and the language qualified (Effect of *L.* 1849, c. 226, respecting liability of stockholders in bank) in *Matter of Hollister Bank*, 23 *N. Y.* 508, 511, 513.
- Reckhow v. Schanek**, 43 *N. Y.* 448. Quoted (Ejectment against tenant at sufferance) in *Sedgw. & W. on Tr. of Tit. to Land*, § 218.
- Rector v. Clark**, 12 *Hun.* 189. Rev'd in 78 *N. Y.* 21. Decision in *Id.* applied (Damages for false return) in *Brooks v. St. John*, 25 *Hun.* 540, 542. Quoted and collocated with other cases (Appeal from commissioners of highways) in *Mills Thomps. on Highw.* 3 ed. 299.
- **v. Pierce**. See *Maloy v. N. Y. Central R. R. Co.*
- Rector of Church of Ascension v. Buckhart**. See *McAlpin v. Powell*.
- Rector of Church of Redeemer v. Crawford**, 5 *Rott.* 100. Rev'd, in 43 *N. Y.* 476.

- Rector, &c. Church of Redemption v. Rector, &c. of Grace Ch.**, 6 *Hun.* 166. Rev'd as to personality, and in all other respects aff'd, in 68 *N. Y.* 570. Subsequent decision in 89 *Id.* 615.
- Rector of St. Mark's Church, Matter of**, 1 *Hun.* 381. Aff'd, it seems, in 74 *N. Y.* 610, but without opinion.
- Rector of Trinity Church v. Higgins**, 4 *Robt.* 1. Rev'd in 48 *N. Y.* 532. Motion for reargument denied in 4 *Robt.* 372. See *Thomas v. Allen*. Decision in 48 *N. Y.* applied (Liability on covenant of tenant to pay taxes, &c.) in *Giles v. Austin*, 38 *Super. Ct. (J. & S.)* 215, 236. Disting'd in *Reading v. Gray*, 37 *Id.* 79, 92. Limited in *Whitman v. Nicol*, 38 *Id.* 528, 531. Included in *Sedgw. Cas. on Dama*, 502. Reviewed with *Port v. Jackson*, 17 *Johns.* 239; *Matter of Negus*, 7 *Wend.* 499, and other cases (Liability on agreement to indemnify) in *Sparkman v. Cove*, 44 *N. J. L.* 252; s. c., 47 *Am. R.* 473, n.
- Redfield v. Middleton**, 7 *Bosw.* 649. Disting'd (Action for injunction) in further decision, in 1 *Abb. Pr. N. S.* 15; s. c., as *Redfield v. Widdleton*, 1 *Robt.* 79.
- **v. Supervisors of Genesee**, *Clarke*, 42. Aff'd in 3 *Ch. Sent.* 92, but without opinion. See *Thomson v. Ebbets*.
- Redlich v. Doll**, 54 *N. Y.* 234. See *Gould v. Segee*; *Mitchell v. Culver*. Reviewed with *Woodworth v. Bank of America*, 19 *Johns.* 391; *Nazro v. Fuller*, 24 *Wend.* 374; *McGrath v. Clark*, 56 *N. Y.* 34, and other cases (Effect of alterations in promissory note) in *Greenfield Savings Bank v. Stowell*, 223 *Mass.* 196; s. c., 25 *Am. R.* 67, 74. Also reviewed with other cases in 10 *Am. Dec.* 271, n.
- Redmond v. Hoge**, 3 *Hun.* 171. Quoted. (Receiver of corporation) in *High on Receiv.* § 306, n. 1.
- **v. Liverpool, &c. Steamship Co.**, 56 *Barb.* 320. Rev'd in 46 *N. Y.* 578; s. c., 7 *Am. R.* 390. Decision in *Id.* applied (When carrier's liability ceases) in *Gleadell v. Thomson*, 35 *Super. Ct. (J. & S.)* 240. Collated with *Witbeck v. Holland*, 45 *N. Y.* 13; *McAndrew v. Whitlock*, 52 *Id.* 40; *Sherman v. Hudson R. R. Co.*, 64 *Id.* 254, and other cases in 8 *Am. Dec.* 215, n., as well considered cases. Said in *Warner v. The Illinois, U. S. Cir. Ct. E. D. Pa.* 18 *Reporter*, 12, to concisely and accurately state the rule. Explained in 2 *Pars. on Contr.* 195, *Keller's ed.*
- **v. Russell**, 12 *Johns.* 153. Applied in dissenting opinion (Removal of cause to U. S. court) in *Chatham Nat. B'k of N. Y. v. Merchants' Nat. B'k of W. Va.*, 4 *Sup'm. Ct. (T. & C.)* 196, 202.
- Redpath v. Vaughan**, 52 *Barb.* 489. Aff'd, it seems, in 48 *N. Y.* 653, but without opinion.
- Reed, Ex parte**, 4 *Hill.* 572. Overruled (Wrongful levy as breach of sheriff's bond) in *People ex rel. Kellogg v. Schuyler*, 4 *N. Y.* 173. Criticised in 46 *Am. Dec.* 514, n., as against sound reason and public policy,—citing also *People ex rel. Kellogg v. Schuyler*. See *Code Civ. Pro.* 1881, § 385, n.
- Reed v. Drake**, 7 *Wend.* 345. Followed (Validity of bond signed by obligor above conditions) in *State v. Wilcox*, 59 *Mo.* 176.
- **v. Farr**, 35 *N. Y.* 113. Explained (*Estoppel in pais* in case of boundary line) in 3 *Washb. on Real Prop.* 4 ed. 89.
- **v. Gannon**, 3 *Daly*, 414. Rev'd in 50 *N. Y.* 345. See *Baker v. Bliss*; *Williamson v. Brown*.
- **v. Gillett**. See *People v. Collins*.
- **v. Girty**. See *Suydam v. Barber*.
- **v. Gordon**, 11 *Cow.* 507. Explained with *Reynolds v. Manning*, 1 *Id.* 228 (Effect of insolvent's discharge) in *American Flask Co. v. Son*, 3 *Abb. Pr. N. S.* 333, 335.
- **v. Keese**, 37 *Super. Ct. (J. & S.)* 269. Aff'd in 60 *N. Y.* 616.
- Reed v. Moore**, 31 *How. Pr.* 264. Dissenting opinion of *Mason, J.*, in *Id.* 369. See *Smith v. Hinds*. Decision on p. 264, compared (Notice of appeal from justice's decision) in *Putnam v. Heath*, 41 *How. Pr.* 262. See *Code Civ. Pro.* 1881, § 3070, n.
- **v. N. Y. Central R. R. Co.**, 56 *Barb.* 493. Rev'd in 45 *N. Y.* 574. See contrary to decision in *Id.* (Evidence of defects other than those producing injury) *Murphy v. N. Y. Central R. R. Co.*, 66 *Barb.* 125. See *Cox v. Westchester Turnp. Co.*, 33 *Id.* 414. See also *Abb. Tr. Ev.* 585.
- **v. Pruyn**, 7 *Johns.* 426; s. c., 5 *Am. Dec.* 287. See *Woodcock v. Bennet*. Questioned with *Sherman v. Boyce*, 15 *Johns.* 443; *Bigelow v. Provost*, 5 *Hill.* 566 (Sheriff's right to make use of execution that has been paid) in *Heilig v. Lemly*, 74 *N. C.* 250; s. c., 21 *Am. R.* 490. Cited as authority with *Sherman v. Boyce*, 15 *Johns.* 444, in *Harwell v. Worsham*, 2 *Humph. (Tenn.)* 524; s. c., 37 *Am. Dec.* 572; *Morris v. Lake*, 9 *Smedes & M. (Miss.)* 521; s. c., 48 *Am. Dec.* 724, with note. Cited as authority in *Ilolt v. Robinson*, 21 *Ala.* 106; s. c., 56 *Am. Dec.* 240. Cited approvingly with *Sherman v. Boyce*, 15 *Johns.* 443, in *Stevens v. Morse*, 7 *Greenl. (Me.)* 36; s. c., 20 *Am. Dec.* 337, 339. Disting'd with *Sherman v. Boyce*, 15 *Johns.* 443, as cases of sheriffs, and *Livingston v. Newkirk*, 3 *Johns.* *Ch.* 318; *Murray v. De Rottenham*, 6 *Id.* 62, cited as authority (Right of trustees, &c. to reimbursement) in *Liddell v. McVickar*, 6 *Halst. (N. J.)* 44; s. c., 19 *Am. Dec.* 369, 378.
- **v. Randall**, 29 *N. Y.* 358. See *Hargous v. Stone*. Doubted and disting'd (Remedy of vendor, &c. for defects in thing sold, &c.) in *Harris v. Rathbun*, 2 *Abb. Ct. App. Dec.* 330. Disting'd in *Wells v. Selwood*, 61 *Barb.* 244; *Day v. Pool*, 52 *N. Y.* 420; which aff'd 63 *Barb.* 514, which see; *Nichols v. Townsend*, 7 *Hun.* 378; *Zuller v. Rogers*, *Id.* 542; *Visscher v. Greenbank Alkali Co.*, 11 *Id.* 160; *Messenger v. Pratt*, 3



- Lans.* 236; *Messmore v. N. Y. Shot & Lead Co.*, 40 *N. Y.* 428; *Foot v. Bentley*, 44 *Id.* 171; *Parks v. Morris Ax & Tool Co.*, 54 *Id.* 590; *Dounce v. Dow*, 57 *Id.* 21. Criticised in *Woodruff v. Peterson*, 51 *Barb.* 255. Applied in *Stafford v. Pooler*, 67 *Barb.* 147; *Pomeroy v. Shaw*, 2 *Daly*, 270; *Neaffie v. Hart*, 4 *Lans.* 5. Explained and applied in *Rust v. Eckler*, 41 *N. Y.* 494. Limited with *Beck v. Sheldon*, 48 *Id.* 365; *Dounce v. Dow*, 64 *Id.* 411; *McCormick v. Sarson*, 45 *Id.* 263, in *McArdle v. Atha*, 29 *Hun.* 219. Explained in *Woodle v. Whitney*, 23 *Wis.* 55; 2 *Benj. on Sales*, § 977, n. 29 (Corbin's 4 *Am. ed.*). With *McCormick v. Sarson*, 45 *N. Y.* 265; *Gaylord Manuf. Co. v. Allen*, 53 *Id.* 215, sought in 30 *Alb. L. J.* 286, to be harmonized with *Day v. Pool*, 52 *N. Y.* 416; *Parks v. Morris Ax & Tool Co.*, 54 *Id.* 587; *Gurney v. Atlantic, &c. R'y Co.*, 58 *Id.* 358.
- *v. Stryker*, 6 *Abb. Pr.* 109. Rev'd in 12 *Id.* 47; s. c., 4 *Abb. Ct. App. Dec.* 26. Decision in *Id.* followed (Misjoinder of causes of action in creditor's suit) in *Royer Wheel Co. v. Fielding*, 31 *Hun.* 274, 281.
- *v. Underhill*, 12 *Barb.* 113. Cited as authority with *Quin v. Skinner*, 49 *Id.* 132 (Effect of power of sale on right of election by devisees) in *Mandlebaum v. McDonnell*, 29 *Mich.* 78; s. c., 18 *Am. R.* 61, 66.
- Reeder v. Sayre**, 6 *Hun.* 562. Aff'd in 70 *N. Y.* 180; s. c., 26 *Am. R.* 567. See *Stewart v. Doughty*; *Thomas v. Nelson*. Decision in 70 *N. Y.* collated with other cases (When relation of landlord and tenant commences) in *McAdam on Land. & T.* 2 ed. § 29.
- *v. Schneider*, 1 *Hun.* 121; s. c., fully reported in 3 *Sup'm. Ct. (T. & C.)* 104.
- Reedy v. Seixas**, 2 *Johns. Cas.* 337; s. c., 1 *N. Y. Com. L. Law. ed.* 536, with brief note (Notice of dishonor).
- Rees v. Overbaugh**, 6 *Cow.* 748. Followed with *Lewis v. Payn*, 8 *Id.* 71 (Effect of alteration or mutilation of deed by stranger) in *Lee v. Alexander*, 9 *B. Mon. (Ky.)* 25; s. c., 48 *Am. Dec.* 412, 414, with note. Cited with *Lewis v. Payn*, 8 *Cow.* 71; *Jackson v. Malin*, 15 *Johns.* 297, in 2 *Taylor on Ev.* 1560, to show that the English doctrine does not prevail in America to its full extent.
- Reeves v. Denicke**, 12 *Abb. Pr. N. S.* 92. Collated with other cases (Right to use of firm name on dissolution) in 35 *Am. R.* 550, n. Collated with *Adams v. Adams*, 7 *Abb. N. C.* 292; *Dethlefs v. Tamsen*, 7 *Daly*, 354, and many other *N. Y.* cases, in 19 *Cent. L. J.* 362.
- *v. Kimball*, 63 *Barb.* 120. Aff'd in 40 *N. Y.* 299.
- Reformed Church of Gallupville v. Schoolcraft**, 5 *Lans.* 206. Rev'd in 65 *N. Y.* 134.
- Reformed Dutch Church v. Brawdow**, 52 *Barb.* 228. Applied (Effect of devise to trustees, &c.) in *Curran v. Sears*, 2 *Redf.* 526, 532. Compare *Betts v. Betts*, 4 *Abb. N. C.* 317, 320.
- *v. Veeder*, 4 *Wend.* 494. See cases collected (Devise to unincorporated church) in 12 *Am. L. Reg. N. S.* 355, n.
- Reformed Protestant Dutch Church v. Brown**, 29 *Barb.* 335; s. c., 17 *How. Pr.* 288. Aff'd in 4 *Abb. Ct. App. Dec.* 31. Subsequent decision in 54 *Barb.* 191. See *Guernsey v. Carver*. Decision in 54 *Barb.* followed (Recovery on one of several claims as barring recovery on remainder) in *Jex v. Jacob*, 19 *Hun.* 105; *Burritt v. Belfy*, 47 *Conn.* 328; *Union R. R., &c. Co. v. Traube*, 59 *Mo.* 355.
- Reid v. Gifford**, 6 *Johns. Ch.* 19. Subsequent decision in *Hoph.* 416. See *Gardner v. Trustees of Newburgh*. Decision in 6 *Johns. Ch.* explained as not overruling *Gardner v. Trustees of Newburgh*, 2 *Id.* 162 (Power of equity to restrain diversion of waters) in *Olmstead v. Loomis*, 9 *N. Y.* 423. Decision in *Hoph.* explained and followed (Exception to rule as to multifariousness) in *Emery v. Erskine*, 66 *Barb.* 14, 20.
- *v. McNaughton*, 15 *Barb.* 168. Said in *Winchell v. Hicks*, 18 *N. Y.* 558, 561, to have been rev'd by Ct. of App.
- *v. Martin*, 4 *Hun.* 590. Approved and applied (Effect of discharge in bankruptcy on debt created by fraud, &c.) in *Wade v. Clark*, 52 *Iowa*, 158; s. c., 35 *Am. R.* 262.
- *v. Payne*, 16 *Johns.* 218; s. c., 8 *Am. Dec.* 311. See *Bank of Geneva v. Howlett*; *Ireland v. Kip*. Referred to as maintaining a rule well established and embracing the case at bar (Sufficiency of notice to indorser) in *Chouteau v. Webster*, 6 *Metc. (Mass.)* 1; s. c., 39 *Am. Dec.* 705, with note.
- *v. Rensselaer Glass Factory*, 3 *Cow.* 393. Aff'd as *Rensselaer Glass Factory v. Reid*, 5 *Id.* 587. See *Pease v. Barber*. Decision in 3 *Cow.* applied (Interest, when recoverable) in *Van Rensselaer v. Jones*, 2 *Barb.* 666; *Holmes v. Rankin*, 17 *Id.* 456; *Gallup v. Perue*, 10 *Hun.* 526. Collated with other cases in 6 *Am. Dec.* 191, n. Compared with other cases in 2 *Sedgw. on Dama.* 7 ed. 170. Decision in 5 *Cow.* explained in *Currie v. White*, 6 *Abb. Pr. N. S.* 381. Dissented from in *Purdy v. Phillips*, 11 *N. Y.* 407. Quoted in *Sedgw. & W. on Tr. of Tit. to Land*, § 670.
- *v. Sprague*, 9 *Hun.* 30. Aff'd in 72 *N. Y.* 457.
- Reilly's Case**, 2 *Abb. Pr. N. S.* 334. Followed (State court without jurisdiction to release U. S. soldier on habeas corpus) in *Re Neill*, 8 *Blatchf. C. Ct.* 156, 163.
- Reilly v. Demestre**, 7 *Weekly Dig.* 437. Aff'd, it seems, in 80 *N. Y.* 659, but without opinion.
- Reimers v. Ridner**. See *Clafin v. Farmers' & Citizens' Bank*.
- Reinach v. Meyer**. See *Taylor v. Atlantic, &c. R. R. Co.*

- Reinmiller v. Skidmore**, 7 *Lans.* 161. Appeal dismissed in 59 *N. Y.* 661.
- Reitz v. Reitz**, 14 *Hun.* 536. Rev'd in 80 *N. Y.* 538. Decision in *Id.* collated and compared with other cases (Parol evidence to establish trust) in *Randall v. Constans*, 33 *Minn.* 329, 336, 338.
- Religious Society in Whitestone v. Stone**, 7 *Johns.* 112; s. c., 4 *N. Y. Com. L. Law.* ed. 266, with brief note. Followed in principle (Validity of subscription and note for religious or educational purposes) in *Amherst Academy v. Cows*, 6 *Pick. (Mass.)* 427; s. c., 17 *Am. Dec.* 387. Explained in *Ang. & A. on Corp.* § 525, 11 ed.
- Relyea v. Beaver**, 34 *Barb.* 547. Aff'd as *Dubois v. Beaver*, in 25 *N. Y.* 123.
- **v. Norris**, 5 *Weekly Dig.* 343. Aff'd, it seems, in 77 *N. Y.* 629, but without opinion.
- Remer v. Downen**. See *Downer v. Remer*.
- Remington v. Palmer**, 4 *Sup'm. Ct. (T. & C.)* 696; mem. s. c., 1 *Hun.* 619. Rev'd in 62 *N. Y.* 31. Compare (Oral evidence to vary written contract) *Van Brunt v. Day*, 8 *Abb. N. C.* 336. Decision in 62 *N. Y.* commented on in *Browne on Stat. of Frauds*, § 117b, 4 ed.
- Remington Paper Co. v. O'Dougherty**, 16 *Hun.* 594. Modified in 81 *N. Y.* 474. See also very brief mem. in *Id.* 650.
- Remsen v. Beekman**, 25 *N. Y.* 557. See *Hoard v. Garner*; *Pain v. Packard*. Disting'd (Discharge of surety by neglect of creditor to proceed against principal on request) in *Field v. Cutler*, 4 *Lans.* 197; *Hunt v. Purdy*, 82 *N. Y.* 486, 490; *Converse v. Cook*, 25 *Hun.* 44, 47; *Marsh v. Dunckel*, *Id.* 167, 169.
- **v. Brinckerhoff**, 26 *Wend.* 325; s. c., 37 *Am. Dec.* 251, 260, with note, wherein it is said to be the leading case in *N. Y.* See *Brinckerhoff v. Remsen*. Disting'd (Proof of execution of will) in *Robinson v. Smith*, 13 *Abb. Pr.* 363. Disting'd with *Mitchell v. Mitchell*, 16 *Hun.* 97; 77 *N. Y.* 596, in *Lane v. Lane*, 95 *Id.* 494. Examined with other cases in *Van Hooser v. Van Hooser*, 1 *Redf.* 368; *Von Hoffman v. Ward*, 4 *Id.* 260. Applied in *Heady's Will*, 15 *Abb. Pr. N. S.* 218; *Whitbeck v. Patterson*, 10 *Barb.* 611; *Lewis v. Lewis*, 13 *Id.* 26; *Brown v. De Selding*, 4 *Sandf.* 16; *Chaffee v. Baptist Missionary Conv.*, 10 *Paige*, 92; *Grant v. Grant*, 1 *Sandf. Ch.* 240. Cited as authority in *Will of John Meurer*, 44 *Wis.* 393; s. c., 28 *Am. R.* 591.
- **v. Conklin**, 18 *Johns.* 447. Overruled in part (Rent in kind, where payable) in *Lush v. Druse*, 4 *Wend.* 313. Commented on with *Lush v. Druse*, in *Livingston v. Miller*, 11 *N. Y.* 80, 91.
- **v. Graves**. See *Kimball v. Newell*.
- **v. People**, 57 *Barb.* 324. Rev'd (Evidence of character in criminal cases) in 43 *N. Y.* 6.
- **v. Remsen**, 2 *Johns. Ch.* 495. Quoted (Examination before master) in 3 *Greenl. on Ev.* 14 ed. § 335, n. 4.
- Renard v. Hargous**, 2 *Duer*, 540. Aff'd in 13 *N. Y.* 259. Decision in *Id.* considered conclusive (Powers of recorder, &c. in *N. Y.* as Supreme Court commissioner) in *People v. Goodwin*, 50 *Barb.* 562, 565.
- **v. Sampson**, 2 *Duer*, 285. Aff'd in 12 *N. Y.* 561. See *Pechner v. Phoenix Ins. Co.*
- **v. Tuller**, 4 *Bosw.* 107. Followed (Operation of composition deeds) in *Hall v. Merrill*, 5 *Bosw.* 266, 273. Disting'd in *Chemical Nat. B'k v. Kohner*, 8 *Daly*, 530, 535.
- Renaud v. O'Brien**, 25 *How. Pr.* 67. Rev'd in 35 *N. Y.* 99.
- Renfrew v. McDonald**, 11 *Hun.* 254. Quoted and discussed (Effect of illegal conveyances as between parties) in *Wait on Fraud. Conv.* § 401.
- Reno v. Pinder**, 24 *Barb.* 423. Rev'd in 20 *N. Y.* 298. With decision in *Id.* see (Contents of summons in justice's court) *Code Civ. Pro.* 1881, § 2877, n.
- Renouil v. Harris**, 1 *Code R.* 125. Subsequent decision in 2 *Id.* 71. Both decisions more fully, 2 *Sandf.* 641. Decision in 2 *Code R.* approved (Annexing case to judgment record) in *Lynde v. Cowenhoven*, 4 *How. Pr.* 327.
- Rensselaer & Saratoga R. R. Co. v. Davis**, 43 *N. Y.* 137. Subsequent decision in 55 *Id.* 145. Decision in 43 *Id.* applied (Extent of power of railroad company to determine as to exercise of right of eminent domain) in *Wallkill Valley R. R. Co. v. Norton*, 12 *Abb. Pr. N. S.* 318; *N. Y. & Canada R. R. Co. v. Gunnison*, 1 *Hun.* 498; *Matter of N. Y. Central R. R. Co.*, 66 *N. Y.* 409. Applied to power of harbor masters, in *Hoelt v. Seaman*, 38 *Super. Ct. (J. & S.)* 62, 72. Disting'd in *Matter of N. Y. & Harlem R. R. Co. v. Kip*, 46 *N. Y.* 553; *Matter of N. Y. Central, &c. R. R. Co.*, 77 *Id.* 259; *Matter of Fowler*, 53 *Id.* 62; *N. Y. Central, &c. R. R. Co. v. Metropolitan Gas-light Co.*, 63 *Id.* 333. Applied (Appeal in proceedings under exercise of right of eminent domain) in *Matter of Commissioners of Central Park*, 61 *Barb.* 46; *Matter of Long Island R. R. Co.*, 45 *N. Y.* 364, 368. Explained in *Matter of Widening Broadway*, 61 *Barb.* 485; *Matter of Commissioners of Central Park*, 50 *N. Y.* 498. Disting'd in *Matter of N. Y. Central, &c. R. R. Co.*, 64 *Id.* 63. Decision in 55 *Id.* followed (Costs in proceedings under general railroad act) in *Matter of Syracuse, Binghamton, &c. R. R. Co.*, 4 *Hun.* 311, 315; *Matter of N. Y., West Shore, &c. R. R. Co.*, 18 *Weekly Dig.* 536. See *Matter of Hudson Avenue*, 6 *Hun.* 373.
- Rensselaer & Washington Plank Road Co. v. Barton**, 16 *N. Y.* 457. See *Jenkins v. Union Turnpike Co.*; *Spear v. Crawford*. Disting'd (Liability on subscription for

- stock) in *Wintringham v. Rosenthal*, 25 *Hun.* 580, 582.
- *v. Wetzel*, 21 *Barb.* 56. Disapproved (Completion of subscription as condition to calls on shares subscribed) in *Peoria & Rock Island R. R. Co. v. Preston*, 35 *Iowa*, 115, 120.
- Rensselaer Glass Factory v. Reid.** See *Reid v. Rensselaer Glass Factory*.
- Renton v. Kelly**, 49 *Barb.* 536. Aff'd in 51 *N. Y.* 633.
- Renwick v. Morris**, 3 *Hill.* 621. Aff'd in 7 *Id.* 575. See *Dudley v. Mayhew*; *Mills v. Hall*. Decision in 3 *Hill* followed (How far public authority will permit maintenance of nuisance) in *Hudson River R. R. Co. v. Loeb*, 7 *Robt.* 418, 426. Decision in 7 *Hill* applied (Statutory remedy, when exclusive) in *Lowry v. Inman*, 6 *Abb. Pr. N. S.* 400. With *Wetmore v. Tracy*, 14 *Wend.* 250, said in 19 *Cent. L. J.* (Will may abate public nuisance) not to support assertion in 1 *Bishop on Crim. L.* 829,—citing as authority *Wood on Nuis.* 755. Quoted and explained (Statutory remedy against nuisance) in *Wood on Nuis.* 2 ed. § 12.
- *v. N. Y. Central R. R. Co.*, 1 *Trans. App.* 47; s. c., 36 *N. Y.* 132; 34 *How. Pr.* 91. Disting'd (Opinion of witness as to hearing) in *Hardenburgh v. Cockcroft*, 5 *Daly*, 79, 83. Explained and applied (Negligence in crossing railroad track) in *Wilcox v. Rome, Watertown, &c. R. R. Co.*, 39 *N. Y.* 365. Followed with *Wilson v. Susquehanna Turnpike Co.*, 21 *Barb.* 68 (Liability for proximate injuries caused by violation of statute) in *Grey's Ex'r v. Mobile Trade Co.*, 55 *Ala.* 387; s. c., 28 *Am. R.* 729, 737.
- *v. Renwick*, 1 *Bradf.* 234. See (Judgment against executor for decedent's debt) *Code Civ. Pro.* 1881, § 2757, n.
- Republic of Mexico v. Arrangois**, 1 *Abb. Pr.* 437. Aff'd as Same *v. De Arangois*, in 5 *Duer*, 643. Another decision in 11 *How. Pr.* 1, aff'd as Same *v. De Arangois*, 5 *Duer*, 634. See *Corwin v. Freeland*; *Hernandez v. Carnobeli*. Decision in 11 *How. Pr.* disapproved (Vacating order of arrest) in *Barret v. Gracie*, 34 *Barb.* 20, 25.
- Regua v. City of Rochester**, 45 *N. Y.* 129; s. c., 6 *Am. R.* 52. See *Mayor, &c. of N. Y. v. Furze*. Applied (Sufficiency of notice to city of defect in street) in *Walker v. City of Lockport*, 43 *How. Pr.* 367. Applied (Evidence of dedication to public use) in *Strong v. City of Brooklyn*, 68 *N. Y.* 16. Disting'd (Municipal liability for defective private bridge) in *Green v. Town of Bridge Creek*, 38 *Wis.* 449; s. c., 20 *Am. R.* 22. Disting'd (Exception, when too general) in *Betz v. Connor*, 7 *Daly*, 554.
- *v. Holmes*, 16 *N. Y.* 193. Further decision in 19 *How. Pr.* 430; which was rev'd in 26 *N. Y.* 338. See *Washington Ins. Co. v. Slee*. Decision in 26 *N. Y.* doubted (Effect of conveyance of land held adversely) in *Bernstein v. Humes*, 60 *Ala.* 582; s. c., 31 *Am. R.* 57.
- *v. Rea*. See *Williamson v. Dale*.
- Retan v. Drew**, 19 *Wend.* 304. Explained with *Hanner v. Wilsey*, 17 *Id.* 91; *Edmonstone v. Thompson*, 15 *Id.* 554 (When suit may be said to be "commenced") in *Johnson v. Comstock*, 6 *Hill*, 10. Overruled in *Hull v. Peters*, 7 *Barb.* 331. Disapproved in *Studwell v. Cooke*, 38 *Conn.* 549.
- Reubens v. Joel**, 13 *N. Y.* 488. Aff'g *Neustadt v. Joel*, 2 *Duer*, 530. See *Andrews v. Durant*. Decision in 13 *N. Y.* applied (Legal and equitable relief in same proceeding) in *N. Y. Ice Co. v. Northw. Ins. Co.*, 10 *Abb. Pr.* 88. Explained and deemed not to conflict with *Crary v. Goodman*, 12 *N. Y.* 266; *Marquat v. Marquat*, *Id.* 336; *Philips v. Gorham*, 17 *Id.* 270,—in *N. Y. Ice Co. v. Northwest Ins. Co.*, 23 *Id.* 357, 360. Explained with *Gould v. Cayuga County Nat. B'k*, 86 *Id.* 76; *Stevens v. Mayor, &c. of N. Y.* 84 *Id.* 296, in *Marie v. Garrison*, 13 *Abb. N. C.* 210, 321. Criticized in 1 *Pomeroy on Eq. Jur.* § 354, n. 1; *Pomeroy on Rem.*, § 60, n. 1. Qualified with *Andrews v. Durant*, 18 *N. Y.* 496 (Right of creditor to attack fraudulent transfer) in *Rinckey v. Stryker*, 28 *Id.* 50.
- Rew v. Barber.** See *Rew v. Barker*.
- *v. Barker*, 2 *Cow.* 408; s. c., 14 *Am. Dec.* 515, with note. Further decision as *Rew v. Barber*, 3 *Cow.* 272; s. c., 8 *N. Y. Com. L. Law. ed.* 121, with brief note. See *Whitbeck v. Van Ness*. Decision in 3 *Cow.* followed (Liability for breach of warranty of title to personal property) in *Bordwell v. Collie*, 45 *N. Y.* 494, 496.
- Rexford v. Knight**, 15 *Barb.* 627. Aff'd in 11 *N. Y.* 308. See *Bloodgood v. Mohawk & Hudson R. R. Co.*; *Brinckerhoff v. Wemple*. Decision in 11 *N. Y.* followed (Nature of title acquired under eminent domain proceedings) in *Brooklyn Park Commissioners v. Armstrong*, 45 *Id.* 234, 242. Applied (When title passes in such proceedings) in *Kennedy v. Indianapolis*, 103 *U. S.* 599, 603.
- *v. Rexford*, 7 *Lans.* 6. Compare (Conclusiveness of acknowledgment of conveyance) *Code Civ. Pro.* § 936.
- *v. Widger*, 3 *Barb. Ch.* 640. Aff'd in 2 *N. Y.* 131. See *Cole v. Savage*. Decision in 2 *N. Y.* disting'd (Relief to mortgagee against prior lien) in *Anderson v. Hunn*, 5 *Hun.* 82. Disting'd (Who is borrower so as to be entitled to relief against usury) in *Schermerhorn v. Am. Life Ins. & Trust Co.*, 14 *Barb.* 166. Applied in *Schermerhorn v. Talman*, 14 *N. Y.* 127; *Allerton v. Belden*, 49 *Id.* 877.
- Reynolds, Ex parte**, 1 *Cai.* 500. Followed (Whom judgment in ejectment is not binding upon) in *Howard v. Kennedy's Ex'rs*, 4 *Ala.* 592; s. c., 39 *Am. Dec.* 307.
- Reynolds, Matter of**, 11 *Hun.* 41. Compare

- (Appointment of guardian by will) *Code Civ. Pro.* § 2851.
- Reynolds v. Champlain Transportation Co.**  
See *Nesmith v. Clinton Fire Ins. Co.*
- **v. Church.** See *Same v. Corp.*
- **v. Commerce Fire Ins. Co.,** 47 *N. Y.* 597. Cited with *Hinneman v. Rosenback*, 39 *Id.* 98; *Collender v. Dinsmore*, 55 *Id.* 206). Explanation of ambiguous expressions in documents by parol evidence) in 2 *Whart. Com. on Ev.* §§ 937, 940. See (Ignorance as equivalent to mistake) *National Life Ins. Co. v. Minch*, 53 *N. Y.* 144. See also *Abb. Tr. Ev.* 269.
- **v. Corp.,** 3 *Cai.* 267. Relied on with *Jackson v. Bartlett*, 8 *Johns.* 361; *Woodcock v. Bennett*, 1 *Cow.* 711 (Effect of irregular execution) in *Morgan v. Evans*, 72 *Ill.* 586; s. c., 22 *Am. R.* 154, 156. Followed with *Reynolds v. Church*, 3 *Cai.* 274; in *Mace v. Dutton*, 2 *Ind.* 309; s. c., 52 *Am. Dec.* 510, 513, with note.
- **v. Darling.** See *Thomas v. Crofut.*
- **v. Fisher,** 48 *Barb.* 146. See (Examination of one refusing certificate of defendant's interest in attached property) *Code Civ. Pro.* 1881, § 651. n.
- **v. Garner.** See *Marcellus v. Countryman.*
- **v. Gilchrist,** 4 *Hun.* 144. Further decision in 9 *Id.* 203.
- **v. Lounsbury,** 6 *Hill.* 534. Disapproved (Sufficiency of declaration in replevin) in *Childs v. Hart*, 7 *Barb.* 370. Disting'd in *Corning v. Corning*, 6 *N. Y.* 102, as not authority for admission of impertinent evidence, and see *White v. Spencer*, 14 *Id.* 250. Applied (Objection to pleadings when to be taken) in *Smith v. Countryman*, 30 *Id.* 677.
- **v. Manning.** See *Reed v. Gordon.*
- **v. Mason,** 54 *How. Pr.* 213. Aff'd in 6 *Weekly Dig.* 531. See *Garrison v. Howe.*
- **v. N. Y. Central, &c. R. R. Co.,** 2 *Sup'm. Ct. (T. & C.)* 644. Rev'd in 58 *N. Y.* 248. See *Button v. Hudson River R. R. Co.*; *Johnson v. Hudson River R. R. Co.* Decision in 58 *N. Y.* applied (Necessity of proof of freedom from contributory negligence) in *Wood v. Village of Andes*, 11 *Hun.* 544; *Cordell v. N. Y. Central, &c. R. R. Co.*, 75 *N. Y.* 332. Explained in *Urquhart v. City of Ogdensburgh*, 23 *Hun.* 76. Followed with *Cordell v. N. Y. Central, &c. R. R. Co.*, 75 *N. Y.* 330, in *Becht v. Corbin*, 92 *Id.* 658. Collated with other cases in 34 *Am. R.* 691, n. Applied (Contributory negligence in children) in *Casey v. N. Y. Central, &c. R. R. Co.*, 6 *Abb. N. C.* 128. Followed in *Thurber v. Harlem, &c. R. R. Co.*, 60 *N. Y.* 326, 336. See other cases collected in 6 *Abb. N. C.* 111, n. Applied (Contributory negligence, as question of law) in *O'Mara v. Delaware, &c. Canal Co.*, 18 *Hun.* 194; *Sutherland v. N. Y. Central, &c. R. R. Co.*, 41 *Super. Ct. (J. & S.)* 29; *Halpin v. Third Ave. R. Co.*, 40 *Id.* 175, 182. Disting'd in *Mahar v. Grand Trunk Ry. Co.*, 19 *Hun.* 34; *Massoth v. Delaware & Hudson Canal Co.*, 64 *N. Y.* 529; which aff'd 6 *Hun.* 314, 316, which see.
- **v. Park,** 5 *Lans.* 149. Rev'd in 53 *N. Y.* 36.
- **v. People,** 17 *Abb. Pr.* 413. Quoted and collated with other cases (Evidence of character of deceased on trial for murder) in *Horrigun & T. Cas. on Self Def.* 685.
- **v. Reynolds,** 3 *Wend.* 244. See *Austin v. Munro.* Cited as settled law (Liability of executors and administrators) in 15 *Am. L. Rev.* 449, citing cases.
- **v. —,** 24 *Wend.* 193. Applied (Effect of adultery on right to dower) in *Schiffer v. Pruden*, 39 *Super. Ct. (J. & S.)* 167, 172; which was aff'd in 64 *N. Y.* 47, which see.
- **v. —,** 5 *Paige*, 161. See *Bear v. Snyder*; *Dunham v. Osborn.* See to the contrary (Dower in land wherein dower has been assigned) *Bear v. Snyder*, 11 *Wend.* 592.
- **v. —,** 16 *N. Y.* 256. See *Tracy v. Tracy.* Applied with *Lupton v. Lupton*, 2 *Johns. Ch.* 623; *Myers v. Eddy*, 47 *Barb.* 263; *Babcock v. Stoddard*, 3 *Sup'm. Ct. (T. & C.)* 207; *Kinnier v. Rogers*, 42 *N. Y.* 531; *Spillane v. Duryea*, 51 *How. Pr.* 260; *Dodge v. Manning*, 11 *Paige*, 334 (Legacy, when chargeable on real estate) *Goddard v. Pomeroy*, 36 *Barb.* 546; *Harrison v. Fly*, 7 *Paige*, 421, being disting'd in *Wiltse v. Shaw*, 29 *Hun.* 195. Followed in *Myers v. Eddy*, 47 *Barb.* 263, 267. Disting'd in *Shulters v. Johnson*, 38 *Id.* 85. Commented on in 3 *Jarm. on Wills*, Rand & T. ed. 427, n. 14.
- **v. Robinson,** 64 *N. Y.* 589. Subsequent decision in 82 *Id.* 103. See *Filer v. N. Y. Central R. R. Co.* Decision in 64 *N. Y.* disting'd (Opinion of witness based on testimony of another witness) in *Seymour v. Fellows*, 77 *Id.* 178, 181. Followed in *Freeman v. Lawrence*, 43 *Super. Ct. (J. & S.)* 288, 291; *Hagadorn v. Conn. Mut. Life Ins. Co.*, 22 *Hun.* 249, 251. Decision in 82 *N. Y.* approved (Parol evidence to vary terms of will) in *Judy v. Gilbert*, 77 *Ind.* 96; s. c., 49 *Am. Dec.* 289. Collated with other cases in 32 *Moak's Eng.* 602, n.
- **v. Root,** 62 *Barb.* 250. Applied (Duty of testator as to disposition of property) in *McLaughlin's Will*, 2 *Redf.* 504, 515.
- **v. Shuler,** 5 *Cow.* 323. See *Anderson v. Nichols*; *Livermore v. Northrup.* Approved (Effect of restoration on right of action for conversion) in *Livermore v. Northrup*, 44 *N. Y.* 107, 112. See also *McCormick v. Penn. Cent. R. R. Co.*, 49 *Id.* 303, 314.
- **v. Tooker,** 18 *Wend.* 591; s. c., 13 *N. Y. Com. L. Law. ed.* 479, with brief note of other cases.
- **v. Ward,** 5 *Wend.* 501. Followed (Surety when discharged by extension of time to principal) in *Osgood v. Whittelsey*,

- 10 *Abb. Pr.* 134, 137. Followed with *Robinson v. Lyle*, 10 *Barb.* 512 (Liability of one described as surety on note) in *Rogers v. Fapp*, *Sup'm. Ct. Tex.* 1881, 13 *Reporter*, 157.
- Rheel v. Hicks**, 25 *N. Y.* 289. Disting'd (Recovery back of money paid under mistake) in *Granger v. Olcott*, 1 *Lans.* 169. Disting'd with *Gardner v. Mayor of Troy*, 26 *Barb.* 423, in *Adams v. Reeves*, 68 *N. C.* 134; s. c., 12 *Am. R.* 627.
- Rhinebeck & Connecticut R. R. Co., Matter of**, 8 *Hun.* 34. Aff'd in 67 *N. Y.* 242. Decision in 8 *Hun* followed (Remedy where order is not entered) in *Stafford v. Ambs*, 8 *Abb. N. C.* 237, 241.
- Rhineland v. Mayor, &c. of N. Y.**, 24 *How. Pr.* 304. Explained (Authority of common council to assess for repaving street) in *Matter of Lewis*, 51 *Barb.* 82, 84.
- Rhode Island Horse Shoe Co. v. Goodenough Horse Shoe Co.**, 1 *Abb. N. C.* 11; s. c., more fully, 52 *How. Pr.* 111.
- Rhodes v. Rhodes**, 3 *Sandf. Ch.* 279. Applied (Effect of payment of consideration, as part performance of parol contract) in *People ex rel. Coppers v. Trustees*, 21 *Hun.* 184, 194. Approved (Performance of services, as entitling to specific performance) in *Pomeroy on Sp. Perf.* § 114, n.
- Rhoner v. First Nat. B'k of Allentown**, 14 *Hun.* 126. See to the contrary (Attachment against foreign national bank) *People's B'k of N. Y. v. Mechanics' Nat. B'k of Newark*, 62 *How. Pr.* 422, citing *Robinson v. Nat. Bk. of Newberne*, 81 *N. Y.* 385. Criticised and disting'd in *Robinson v. Nat. B'k of Newberne*, 19 *Hun.* 477, 480.
- Ricard v. Sanderson**, 41 *N. Y.* 179. Explained (Effect of agreement to pay off mortgage) in *Garnsey v. Rogers*, 47 *Id.* 242. Explained in *Thomas on Mort.* 190. Disting'd (Liability as created by assumption of debt) in *Roe v. Barker*, 82 *N. Y.* 431.
- Ricart v. Townsend**, 6 *How. Pr.* 460. Disting'd (Joinder of surviving partner and deceased partner's executors as defendants) in *Voorhies v. Baxter*, 1 *Abb. Pr.* 43.
- Rice v. Ehele**, 65 *Barb.* 185. Rev'd in 55 *N. Y.* 518. Decision in *Id.* disting'd (Striking out pleading of party in contempt) in *Waiker v. Walker*, 8 *Abb. N. C.* 436, 442. See *Code Civ. Pro.* 1881, § 808, n.
- **v. Harbeson**, 2 *Sup'm. Ct. (T. & C.)* 4. Aff'd in 63 *N. Y.* 493. Decision in 2 *Sup'm. Ct. (T. & C.)* followed (Remedy against estate of decedent on obligation secured by mortgage) in *Thompson v. Sullivan*, 60 *How. Pr.* 71. Decision in 63 *N. Y.* quoted (Marshaling assets in favor of legatees or creditors) in 3 *Jarm. on Wills*, Rand. and T. ed. 527, n. 17.
- **v. Hollenbeck**, 19 *Barb.* 664. See *Baker v. Wheeler*. Disapproved (Remedy for defect of parties plaintiff in justice's court) in *Frazier v. Gibson*, 15 *Hun.* 37, 40.
- **v. King**, 7 *Johns.* 20. See *Brockway v. Kinney*; *Manny v. Harris*. Followed with *Gardner v. Buckbee*, 3 *Cov.* 120 (Identity of form in two actions not necessary in order to render former a bar) in *Coffin v. Knott*, 2 *G. Greene (Iowa)* 582; s. c., 52 *Am. Dec.* 537, 539, with note. Applied in *Marsh v. Pier*, 4 *Rawle (Pa.)* 273; s. c., 26 *Am. Dec.* 131, 139, with note.
- **v. Manley**, 2 *Hun.* 492; s. c., 5 *Sup'm. Ct. (T. & C.)* 14. Rev'd in 66 *N. Y.* 82; s. c., 23 *Am. R.* 30. See *Dung v. Parker*. Decision in 2 *Hun* discussed (Verbal contract, how far valid) in *Browne on Stat. of Frauds*, § 135a, 4 ed. Decision in 66 *N. Y.* quoted and explained in 1 *Benj. on Sales*, § 647, n. 13 (Corbin's 4 *Am. ed.*).
- **v. Mather**. See *Powell v. Waters*.
- **v. Mills**, 7 *Barb.* 337. See (Disqualification of tavern keeper to act as justice) *Code Civ. Pro.* 1881, § 2866, n.
- **v. Peet**, 15 *Johns.* 503. See *Dowdle v. Camp*. Followed and approved (Right to avoid contract by showing one's own disability) in *Barrett v. Buxton*, 2 *Aikens (Vt.)* 167; s. c., 10 *Am. Dec.* 691, with note. Followed in *Bensell v. Chancellor*, 5 *Whart. (Pa.)* 371; s. c., 34 *Am. Dec.* 561, 564, with note; *Owning's Case*, 1 *Bland (Md.)* 370; s. c., 17 *Am. Dec.* 311, with note. See 1 *Fondl. Eq.* 48 G. 2, § 1.
- Riceman v. Havemeyer**, 84 *N. Y.* 647. Collated with other cases (Necessity of proof of freedom from contributory negligence) in 34 *Am. R.* 693, n.
- Rich v. Baker**. See *Thomas v. Crofut*.
- **v. Milk**, 20 *Barb.* 616. See *Shuart v. Taylor*. Overruled with *Chadwick v. Lamb*, 29 *Barb.* 518 (Implication of agreement for possession by mortgagor of chattels) in *Hall v. Sampson*, 35 *N. Y.* 274; and see *Hathaway v. Brayman*, 42 *Id.* 322, 324.
- Richard v. Wellington**, 5 *Hun.* 181. Rev'd in 66 *N. Y.* 308.
- Richards v. Edick**, 17 *Barb.* 260. Criticised as unsupported by authority (Recovery for breach of contract for sale of land) in *Congregation Beth Elohim v. Central Presb. Church*, 10 *Abb. Pr. N. S.* 495. Disapproved in *Griswold v. Sabin*, 51 *N. H.* 167; s. c., 12 *Am. R.* 76. Disting'd (Covenant when implied) in *Bruce v. Fulton Nat. B'k*, 16 *Hun.* 621; *Nowell v. Wheeler*, 4 *Robt.* 255. Applied in *Baldwin v. Humphrey*, 44 *N. Y.* 615.
- **v. Judd**, 15 *Abb. Pr. N. S.* 184. See also (Striking out pleading of party in contempt) *Walker v. Walker*, 8 *Abb. N. C.* 436, 440.
- **v. Millard**, 1 *Sup'm. Ct. (J. & C.)* 247. Rev'd in 56 *N. Y.* 574.
- **v. Northwestern Protestant Dutch Church**, 32 *Barb.* 42. See *Brick Pres. Church, Matter of*; *Windt v. German Reformed Church*. Reviewed with other cases (Rights of lot owners in ceme-

- teries) in *Burke v. Wall*, 29 *La. Ann.* 38; s. c., 29 *Am. R.* 316, 326. Explained as placing the subject on its true basis, in 17 *Am. L. Rev. N. S.* 198.
- *v. Richards*, 2 *Abb. N. C.* 93. Aff'd in 14 *Hun*, 25, and that aff'd in 76 *N. Y.* 186. With decision in *Id.* see (Referee's fees) *Code Civ. Pro.* 1881, § 3297, n.
- *v. Walton*. See *Holbrook v. Murray*.
- *v. Warring*, 39 *Barb.* 42. Aff'd in 4 *Abb. Ct. App. Dec.* 47; s. c., 1 *Keyes*, 576. See *Dean v. Hall*; *Hall v. Newcomb*; *Leonard v. Yredenburgh*; *Moore v. Cross*. Decision in 4 *Abb. Ct. App. Dec.* applied (Liability of indorser of non-negotiable note) in *Thomas v. Murray*, 32 *N. Y.* 609; *Little v. Rawson*, 8 *Abb. N. C.* 253, 258. Followed in *Cromwell v. Hewitt*, 40 *N. Y.* 492. Disapproved in *Burton v. Hansford*, 10 *W. Va.* 470; s. c., 27 *Am. R.* 576. Collated with *Cromwell v. Hewitt*, 40 *N. Y.* 491; *Seymour v. Van Slyck*, 8 *Wend.* 404, and other cases in 13 *Am. Dec.* 55, n.
- *v. Wescott*, 2 *Bosw.* 589. Further decision in 7 *Id.* 6. Decision in 2 *Id.* explained (Liability of carrier of concealed valuables) in *Maguin v. Dinsmore*, 38 *Super. Ct. (J. & S.)* 243, 254; which was rev'd in 62 *N. Y.* 35, which see.
- Richardson v. Abendroth**, 43 *Barb.* 162. Approved (Secretary of corporation is a "servant") in *Williamson v. Wadsworth*, 49 *Id.* 294. Overruled in *Coffin v. Reynolds*, 37 *N. Y.* 640.
- *v. Ainsworth*, 20 *How. Pr.* 521. See (Effect of payment of amount of execution by person indebted to judgment debtor) *Code Civ. Pro.* 1881, § 2450, n.
- *v. Carpenter*, 2 *Sweeny*, 360. Rev'd in 46 *N. Y.* 660. Both decisions disting'd (Presumption of consideration) in *Paine v. Noelke*, 43 *Super. Ct. (J. & S.)* 176, 185.
- *v. City of Brooklyn*, 31 *Barb.* 152. Further decision in 34 *Id.* 569.
- *v. Craig*, 1 *Duer*, 666. Questioned (Necessity that undertaking be signed by plaintiff) in *Leffingwell v. Chave*, 10 *Abb. Pr.* 472; *Bellinger v. Gardner*, 2 *Id.* 441; *Askins v. Hearn*, 3 *Id.* 184.
- *v. Crandall*, 30 *How. Pr.* 134. Rev'd in 47 *Barb.* 335; which was aff'd in 48 *N. Y.* 348.
- *v. Gere*, 21 *Wend.* 156. Disting'd (Return of commission by mail) in *Goodyear v. Vosburgh*, 41 *How. Pr.* 421, 426.
- *v. Haghitt*, 76 *N. Y.* 55; s. c., 32 *Am. R.* 267, with note. See *Burnett v. Snyder*; *Gibson v. Stone*. Followed (Partnership, when not created by sharing profits) in *Curry v. Fowler*, 87 *N. Y.* 33. Collated with *Curry v. Fowler*; *Gibson v. Stone*, 43 *Barb.* 285; *Beudel v. Hettrick*, 35 *Super. Ct. (J. & S.)* 405, in 30 *Abb. L. J.* 27, and thought to conflict with *Leggett v. Hyde*, 58 *N. Y.* 272.
- *v. Kropf*, 5 *Daly*, 385; s. c., 47 *How. Pr.* 286. Aff'd, it seems, in 60 *N. Y.* 634, but without opinion. See (Liability of sureties on undertaking on appeal) *Code Civ. Pro.* §§ 1332, 1333.
- *v. N. Y. Central R. R. Co.*, 45 *N. Y.* 846. See *Johnson v. Hudson River R. R. Co.* Disting'd (Contributory negligence in one crossing track) in *Cordell v. N. Y. Central & H. R. R. Co.*, 70 *N. Y.* 119, 123.
- *v. Northrup*, 56 *Barb.* 105. Disting'd (Mitigation of damages for libel, &c.) in *Palmer v. Lang*, 7 *Daly*, 33. Followed in *Stettin v. Nellis*, 60 *Barb.* 524. Cited as authority in *Jauch v. Jauch*, 50 *Ind.* 135; s. c., 19 *Am. R.* 699.
- *v. —*, 66 *Barb.* 85. Compare (Alleging several trespasses in one count) *Code Civ. Pro.* § 483.
- *v. Root*, 19 *Hun*, 473. See *Gardner v. Gardner*. See (Right to attack as fraudulent, transfer made by intestate) *Barton v. Hosner*, 24 *Hun*, 467.
- Richmond v. Bronson**, 5 *Den.* 55. See *Smith v. Richardson*; *Walrath v. Redfield*. Followed (Interest, in *ex delicto* actions) in *Floyd v. Paul*, 10 *Weekly Cin. L. Bul.* 14.
- *v. Niagara Fire Ins. Co.*, 15 *Hun*, 248. Rev'd in 79 *N. Y.* 230.
- Richmond Gas-light Co. v. Town of Middletown**, 1 *Sup'm. Ct. (T. & C.)* 433. Aff'd in 59 *N. Y.* 228.
- Richmond Turnpike Co. v. Vanderbilt**, 1 *Hill*, 480. Dissented from with *Wright v. Wilcox*, 19 *Wend.* 343 (Master's liability for willful acts of servant) in *Wallace v. Merrimac River, &c. Co.*, 134 *Mass.* 95; s. c., 45 *Am. R.* 301. Approved in *Wood v. Detroit City Ry. Co.*, 52 *Mich.* 404; s. c., 23 *Am. L. Reg. N. S.* 243, with note.
- Richmondville Seminary v. McDonald**, 34 *N. Y.* 379. See to the contrary (Object and application of payment) *Nichols v. Kingdom Iron Ore Co.*, 56 *Id.* 618; *Merritt v. Briggs*, 57 *Id.* 651. See also *Abb. Tr. Ev.* 265.
- Richter v. Poppenhusen**, 39 *How. Pr.* 82. Aff'd in 9 *Abb. Pr. N. S.* 263; s. c., less fully, 42 *N. Y.* 373. See *Jenkins v. De Groot*. Decision in 42 *N. Y.* applied (Liability of representatives of deceased obligor) in *Bonta v. Thurber*, 1 *Sup'm. Ct. (T. & C.)* 646.
- Richtmyer v. Remsen**, 38 *N. Y.* 206. See also (Evidence under general issue in action against officer) *Douglas v. Haberstro*, 25 *Hun*, 262, 264.
- Richtmyer v. Richtmyer**, 50 *Barb.* 55. Compare (Misjoinder of parties plaintiff) *Code Civ. Pro.* § 488, subd. 5.
- Rickard's Case**, 15 *Abb. Pr. N. S.* 6. Compare (Notice to relatives, of application for appointment of guardian) *Code Civ. Pro.* § 2827.
- Rickert v. Snyder**, 9 *Wend.* 416. Applied (Counsel fees as damages in action on covenant against incumbrances, &c.) in *Andrews v. Davison*, 17 *N. H.* 413; s. c., 43 *Am. Dec.* 606, 608, with note.
- Rickets v. Livingston**, 2 *Johns. Cas.* 97; s.

- c., 1 *N. Y. Com. L. Law. ed.* 451; with brief note; also 1 *Am. Dec.* 158, with note, wherein it is said (citing 1 *Redf. on Wills*, 646) to be in harmony with the general current of decisions in this country, except in So. Carolina. Collated with *Clarke v. Bogardus*, 12 *Wend.* 67, and other cases (Effect of legacy to debtor of testator) in *Brunn v. Schuett*, 59 *Wis.* 261; s. c., 48 *Am. R.* 499.
- Ricketts v. Baltimore & Ohio R. R. Co.**, 59 *N. Y.* 637. Aff'g 4 *Lans.* 446. Decision in 59 *N. Y.* followed (Liability of connecting carrier) in *Schiff v. N. Y. Central, &c. R. R. Co.*, 52 *How. Pr.* 91. Decision in 4 *Lans.* overruled in effect (Conclusiveness of bill of lading) in *Bostwick v. Baltimore & Ohio R. R. Co.*, 45 *N. Y.* 712.
- Rider, Matter of.** See *Van Valkenburgh v. Watson*.
- Rider v. Bagley**, 84 *N. Y.* 461. Aff'g *Rider v. Vrooman*, 12 *Hun.* 299.
- **v. Mason**, 4 *Sandf. Ch.* 351. Modified as *Silleck v. Mason*, in 2 *Barb. Ch.* 79.
- **v. Pond**, 28 *Barb.* 447. Rev'd in 19 *N. Y.* 262.
- **v. Powell**, 28 *N. Y.* 310. Criticised but applied (Relief against fraud in execution of written contract) in *Botsford v. McLean*, 45 *Barb.* 488. Applied (Constructing findings to sustain judgment) in *Voorhis v. Voorhis*, 50 *Id.* 125; *Meyer v. Lathrop*, 73 *N. Y.* 321.
- **v. Stryker**, 2 *Hun.* 115; s. c., 4 *Sup'm. Ct. (T. & C.)* 399. Aff'd in 63 *N. Y.* 136.
- **v. Union India Rubber Co.**, 4 *Bosw.* 169. Further decision in 5 *Id.* 85; which was aff'd in 28 *N. Y.* 379. Decision in 4 *Bosw.* followed (Estoppel created by acquiescence in sale) in *Garnar v. Bird*, 57 *Barb.* 277, 289.
- **v. Vrooman**. See *Rider v. Bagley*.
- Ridgeway v. Bulkley**, 7 *How. Pr.* 269. See (Survival of action when sole party dies) *Code Civ. Pro.* 1881, § 757, n.
- Ridgeley v. Johnson**, 11 *Barb.* 527. See *Van Buren v. Cockburn*. Criticised with *Jackson v. Blanshan*, 3 *Johns.* 292; *Jackson v. Davis*, 5 *Cow.* 123; *Lewis v. Laroway*, 3 *Johns. Cas.* 283; *Hewlett v. Cock*, 7 *Wend.* 371; *Willson v. Betts*, 4 *Den.* 201 (Proof enabling ancient deed to be read in evidence) in 1 *Whart. Com. on Ev.* § 199, as not to be sustained on principle.
- Ridlon v. Flanigan**, 12 *Hun.* 115. See (Sheriff's fees) *Code Civ. Pro.* 1881, § 3307, n.
- Rieben v. Hicks**, 3 *Bradf.* 353. Approved (Publication of will) in *Coffin v. Coffin*, 23 *N. Y.* 9, 17.
- Rieser, Matter of**, 19 *Hun.* 202. Said to be sustained by the great weight of authority (Right of firm creditors) in 20 *Am. L. Reg. N. S.* 470, n.
- Riggs v. American Tract Socy.**, 19 *Hun.* 481; s. c., 7 *Abb. N. C.* 433. Rev'd in 84 *N. Y.* 330.
- **v. Murray**, 2 *Johns. Ch.* 565. Rev'd as *Murray v. Riggs*, 15 *Johns.* 571. See *Grover v. Wakeman*. Decision in 2 *Johns. Ch.* criticised at length (Preference among creditors) in *Niolon v. Douglas*, 2 *Hill (So. Car.) Ch.* 443; s. c., 39 *Am. Dec.* 368, 372. Quoted in *Burrill on Assign.* § 163, n. 1, 4 ed. Discussed in *Id.* § 166. Quoted and explained in 3 *Par. on Contr.* 427, n. f. Cited as authority (Reservation in deed, &c.) in *Jones v. Clifton*, 101 *U. S.* 225, 229. Cited approvingly in 2 *Kent Com.* 535. Explained in *Wait on Fraud. Conv.* § 358.
- **v. Pursell**, 66 *N. Y.* 193. Further decision in 74 *Id.* 370. See *Miller v. Collyer*. Decision in 66 *N. Y.* disting'd (Relief of purchaser of real estate) in *Beckenbaugh v. Nally*, 32 *Hun.* 161. Disting'd (Effect of provision for re-sale of mortgaged premises) in *Taylor v. Mayor, &c. of N. Y.*, 83 *N. Y.* 625, a case of provision in contract for completion of work in case of failure by contractor to do so. Decision in 74 *Id.* disting'd (Effect of order as evidence) in *Smith v. Zalinski*, 26 *Hun.* 225.
- **v. Waydell**, 56 *How. Pr.* 247. Aff'd in 17 *Hun.* 515; which was confirmed in 78 *N. Y.* 586. See *McFarren v. St. John*. Decision in 17 *Hun* opposed (Amendment of offer of judgment) in *Eagan v. Moore*, 2 *Civ. Pro. R. (Browne)* 300.
- Righter v. Stall**. See *Stone v. Seymour*.
- Rightmire v. Kimball**, 2 *Hun.* 598; s. c., reported 5 *Sup'm. Ct. (T. & C.)* 95.
- Riker v. Mayor, &c. of N. Y.**, 3 *Daly*, 174. Followed (Extent of powers of assessment commission) in *Astor v. Mayor, &c. of N. Y.*, 37 *Super. Ct. (J. & S.)* 539, 586. Compare *Schuchardt v. Same*, 59 *Barb.* 295; *Embury v. Conner*, 3 *N. Y.* 511.
- Riley v. City of Brooklyn**, 56 *Barb.* 559. Rev'd (Effect of reference, in written contract, to other papers) in 46 *N. Y.* 444.
- **v. City of Rochester**, 13 *Barb.* 321. Rev'd in 9 *N. Y.* 64. See cases cited (What constitutes municipal purpose) in 5 *Abb. N. C.* 468, n.
- Rinaldo v. Hausmann**. See *Rinaldo v. Housmann*.
- **v. Housmann**, 1 *Abb. N. C.* 312; s. c., as *Rinaldo v. Hausmann*, 52 *How. Pr.* 190. To same effect see (Ground for refusal by purchaser to take title) *Pangburn v. Miles*, 10 *Abb. N. C.* 42.
- Rinchey v. Striker**, 28 *N. Y.* 45; s. c., 26 *How. Pr.* 75. Explained (Rights under attachment, as against fraudulent transferee) in *Mechanics' & Trad. B'k v. Dakin*, 50 *Barb.* 593. Followed as conclusive, and *Thurber v. Blanck*, 50 *N. Y.* 80, disting'd, in *Carr v. Van Hoesen*, 26 *Hun.* 316. Applied to mechanics' lien in *Gross v. Daly*, 5 *Daly*, 545; approved as against chattel mortgage in *Parshall v. Eggert*, 54 *N. Y.* 22. Disting'd in *Bowe v. Arnold*, 31 *Hun.* 256. Disting'd as against prior levy, in *Clearwater v. Brill*, 4 *Hun.* 732; as against prior attachment irregularly issued, in *Jacobs v. Hogan*, 15 *Id.* 199. See *Jacobs v. Remsen*, 35 *Barb.* 388; *Thurber v.*

- Blank, 50 *N. Y.* 83. Explained in *Wait on Frand. Conv.* § 59. Applied (Judgment as evidence of debt) in *Ludington's Petition*, 5 *Abb. N. C.* 323.
- Rindge v. Baker**, 57 *N. Y.* 209. See *Keteltas v. Penfold*. Applied (Right to contribution for expense of party-wall) in *Sanders v. Martin*, 2 *Lea (Tenn.)* 213; s. c., 31 *Am. R.* 598, collating *N. Y.* and other cases.
- **v. Judson**, 24 *N. Y.* 64. Followed and approved (When guaranty is to be considered as continuing) in *Tootle v. Elgutter*, 14 *Neb.* 158; s. c., 45 *Am. R.* 103.
- Rindskopf v. Farmers' Loan & Trust Co.**, 58 *Barb.* 36. Limited and disting'd (Breach of covenant in deed) in *Shattuck v. Lamb*, 65 *N. Y.* 505.
- Ring v. City of Cohoes**, 13 *Hun.* 76. Rev'd in 77 *N. Y.* 83; s. c., 33 *Am. R.* 574. With decision in *Id.* see (Liability of municipal corporation for injury to horse resulting from defects in street) *City of Atlanta v. Wilson*, 59 *Ga.* 544; s. c., 27 *Am. R.* 396, with note.
- **v. Gibbs**, 26 *Wend.* 502. Followed (Liability on irregular bond) in *People ex rel. Comm'rs of Charities, &c. of N. Y. v. Lyons*, 7 *Daly*, 182, 184; *Williams v. Hubbard*, 2 *Code R.* 52.
- **v. McCoun**, 3 *Sandf.* 524. Aff'd in 10 *N. Y.* 268.
- **v. Wheeler**, 7 *Cow.* 725; s. c., 9 *N. Y. Com. L. Law. ed.* 278, with brief note.
- Ripley v. Etna Ins. Co.**, 29 *Barb.* 552; s. c. as *Ripley v. Astor Ins. Co.*, 17 *How. Pr.* 444. Rev'd in 30 *N. Y.* 136. See *Mayor, &c. of N. Y. v. Hamilton Fire Ins. Co.* Decision in 30 *N. Y.* Followed (Effect of provision limiting action on policy) in *Roach v. N. Y. & Erie Ins. Co.*, *Id.* 548. Applied (Waiver of condition in policy) in *Underwood v. Farmers' Joint Stock Ins. Co.*, 57 *Id.* 506; *McDermott v. Lycoming Fire Ins. Co.*, 44 *Super. Ct. (J. & S.)* 221, 230. Disting'd in *Van Schoick v. Niagara Fire Ins. Co.*, 68 *N. Y.* 442. Dicta explained in *Dohn v. Farmers' Joint Stock Ins. Co.*, 5 *Lans.* 278.
- **v. Astor Ins. Co.** See *Ames v. N. Y. Union Ins. Co.*; *Ripley v. Etna Ins. Co.*
- **v. Gelston**, 9 *Johns.* 201; s. c., 6 *Am. Dec.* 271. See *Frye v. Lockwood*; *Hall v. Shultz*; *Hearsey v. Prun*; *Williams v. Merle*. Reviewed and disting'd (When payment is compulsory so that money paid may be recovered back) in *Town of Ligonier v. Ackerman*, 46 *Ind.* 552; s. c., 15 *Am. R.* 323, 340. Followed with *Clinton v. Strong*, 9 *Johns.* 370, in *Alston v. Durant*, 2 *Strob. (So. Car.)* 257; s. c., 49 *Am. Dec.* 596, 599, with note. Explained in 2 *Chitty on Contr.* 943, n. <sup>2</sup>, 11 *Am. ed.*
- Risley v. Brown**, 67 *N. Y.* 160. Disting'd (Effect of death of joint obligor) in *Hunt v. Church*, 73 *Id.* 615. Disting'd with *Hauck v. Craighead*, 67 *Id.* 433, in *Smith v. Kibbe*, 31 *Hun.* 390. See *Code Civ. Pro.* 1881, § 758, n.
- **v. Indianapolis, B. & W. R. R. Co.**, 1 *Hun.* 202; s. c., 4 *Sup'm. Ct. (T. & C.)* 13. Rev'd in 62 *N. Y.* 240.
- **v. Phoenix Bank**, 2 *Hun.* 349; s. c., 4 *Sup'm. Ct. (T. & C.)* 563. Further proceedings in 11 *Hun.* 484, and 83 *N. Y.* 318; which latter was aff'd as *Phoenix Bank v. Risley*, 111 *U. S.* 125. See *Field v. Mayor, &c. of N. Y.* Decision in 83 *N. Y.* followed (Operation of check or draft as assignment) in *Coates v. First Nat. B'k of Emporia*, 91 *Id.* 20. Applied (Confiscation proceedings, when invalid for error as to owner) in *Chapman v. Phoenix Nat. B'k of N. Y.*, 85 *Id.* 437, 452. Disting'd in *Decker v. Kitchen*, 26 *Hun.* 173, 175.
- **v. Smith**, 39 *Super. Ct. (J. & S.)* 137. Rev'd in 64 *N. Y.* 576. See *Hutter v. Ellwanger*.
- Ritch, Matter of**, 2 *Redf.* 330. Modified and aff'd as *Buchan v. Rintoul*, 10 *Hun.* 183; and that aff'd in 70 *N. Y.* 1.
- Ritch v. Smith**, 60 *How. Pr.* 13. Aff'd in *Id.* 157.
- Ritchmyer v. Morss**, 3 *Keyes*, 349. Applied (Buildings, when to be regarded as personality) in *Hinkley, &c. Iron Co. v. Black*, 70 *Me.* 473; s. c., 35 *Am. R.* 346, 350.
- Ritten v. Griffith**, 16 *Hun.* 455. Criticised (Service by publication) in *McCully v. Heller*, 66 *How. Pr.* 468. Criticised in *O'Neil v. Bender*, 30 *Hun.* 204, as overruled by *Weil v. Martin*, 24 *Id.* 645. Followed in *Johanning v. Johanning*, 1 *Civ. Pro. R.* 145, n.
- Rittenhouse v. Independent Line of Telegraph**, 1 *Daly*, 474. Aff'd in 44 *N. Y.* 263; s. c., 4 *Am. R.* 673. See *Baldwin v. U. S. Teleg. Co.*; *Breese v. U. S. Teleg. Co.*; *Leonard v. N. Y., &c. Teleg. Co.* Decision in 44 *N. Y.* reviewed with *Elwood v. Western Union Teleg. Co.*, 45 *N. Y.* 549, and other cases (Liability of telegraph company for failure in transmitting message) in *Tyler v. Western Union Teleg. Co.*, 60 *Ill.* 421; s. c., 14 *Am. R.* 38, 42. Followed with *Baldwin v. U. S. Teleg. Co.*, 45 *N. Y.* 744, in *Teleg. Co. v. Griswold*, 37 *Ohio St.* 301, 313. Decision in 1 *Daly* explained in 2 *Pars. on Contr.* 257*w*, n. e. Explained (Measure of damages in action against telegraph company for failure to deliver message) in *True v. International Teleg. Co.*, 60 *Me.* 9; s. c., 11 *Am. R.* 156, 167, with note collating cases. Decision in 44 *N. Y.* disting'd in *Candee v. Western Union Teleg. Co.*, 34 *Wis.* 471; s. c., 17 *Am. R.* 452, 459.
- Ritter v. Phillips**, 34 *Super. Ct. (J. & S.)* 289. Reargument denied in 35 *Id.* 388. Aff'd on the merits in 53 *N. Y.* 586. See *Miller v. Burroughs*. Compared with numerous other authorities (Interest after default) in *Union Inst. for Sav'gs v. City of Boston*, 129 *Mass.* 82, 91.
- **v. Worth**, 1 *Sup'm. Ct. (T. & C.)* 406. Rev'd in 58 *N. Y.* 627. Decision in 1 *Sup'm. Ct. (T. & C.)* explained (Effect of



- excessive assessment) in *Colman v. Shattuck*, 2 *Hun*, 497, 507. Cited (Parol proof to supply defect in acknowledgment) in 2 *Whart. Com. on Ev.* § 1053. Decision in 58 *N. Y.* explained (Effect of two actions in ejectment pending for same cause) in *Sedgw. & W. on Tr. of Tit. to Land*, § 636.
- Ritterband v. Baggett**, 42 *Super. Ct. (J. & S.)* 556; s. c., 4 *Abb. N. C.* 67. Followed (Membership in exchange as subject to claims of creditors) in *Londheim v. White*, 67 *How. Pr.* 426. Compare *Grocer's Bank v. Murphy*, 60 *Id.* 426. Consult *Ebbinghausen v. Worth Club*, 4 *Abb. N. C.* 300. Approved in *Eliot v. Merchants' Exchange, &c.*, 14 *Mo. App.* 234, 240. Collated with *Grocer's Bank v. Murphy*, 60 *How. Pr.* 426; *Sewell v. Ives*, 61 *Id.* 54; *Powell v. Waldron*, 89 *N. Y.* 328; *Platt v. Jones*, 96 *Id.* 24; and conflicting cases in other jurisdictions, in 20 *Cent. L. J.* 444. Approved with *Grocers' Bank v. Murphy*, 60 *How. Pr.* 426; and cases from other States collected in *Smith v. Barclay*, *Super. Ct. Chicago*, 21 *Am. L. Reg. N. S.* 411, with note.
- Rivara v. Ghio**. See *Livingston v. Keirsted*.
- Rivenburgh v. Henness**, 4 *Lans.* 208. Disting'd (Disqualification of judge on ground of affinity, &c.) in *Matter of Dodge and Stevenson Manuf. Co.*, 77 *N. Y.* 101, 111.
- Roach v. Cosine**, 9 *Wend.* 227; s. c., 11 *N. Y. Com. L. Law. ed.* 593, with brief note. Applied (Summary proceedings, when maintainable) in *Sims v. Humphrey*, 4 *Den.* 187. Applied and explained as overruled in part by *Webb v. Rice*, 6 *Hill*, 219,—in *People ex rel. Ainslee v. Howlett*, 13 *Hun*, 141, which was aff'd in 76 *N. Y.* 578, which see. Examined and applied (Evidence to show that absolute deed was intended as security) in *Brown v. Dewey*, 1 *Sandf. Ch.* 66. Examined with other cases (Office of certiorari) in *Morewood v. Hollister*, 6 *N. Y.* 313.
- **v. La Farge**, 43 *Barb.* 616; s. c., 19 *Abb. Pr.* 67. Limited (Right to revive action on supplemental complaint) in *Beach v. Reynolds*, 53 *N. Y.* 1, 6.
- **v. Quick**, 9 *Wend.* 238. Included with notes (Infant's liability for debts of wife) in *Evell Lead. Cases on Inf. &c.* 81.
- Rob v. Moffat**, 3 *Johns.* 257. Disting'd (Requiring stipulation not to sue) in *Faulkner v. Morey*, 22 *Hun*, 379, 385; which was aff'd in 13 *Weekly Dig.* 558; which see.
- Robalina v. Armstrong**, 15 *Barb.* 247. Quoted (Custody of bastard child) in 2 *Bish. on Mar. & D.* § 550, n. 1, 6 ed.
- Robb v. Hackley**, 23 *Wend.* 50. See *People v. Vane*. Approved (Evidence of prior declarations of witness) in *Herrick v. Smith*, 13 *Hun*, 448. Applied in *People v. Finnegan*, 1 *Park.* 150. Followed in *Stolp v. Blair*, 68 *Ill.* 543. Cited with other cases in 12 *Am. L. Reg. N. S.* 3. See cases cited in 1 *Whart. Com. on Ev.* § 570, n.
- **v. MacDonald**, 12 *Abb. Pr.* 213. Followed (Requiring security for costs from non-resident suing in county court) in *Elliott v. Wood*, 5 *Hun*, 594.
- **v. Montgomery**, 20 *Johns.* 15. Applied (Covenants, when independent in contract for sale of land, &c.) in *Champion v. White*, 5 *Cow.* 511; *Paine v. Brown*, 37 *N. Y.* 233; *Sage v. Ranney*, 2 *Wend.* 534; *Harrington v. Higgins*, 17 *Id.* 378; *James v. Burchell*, 82 *N. Y.* 108, 113. Followed with *Champion v. White*, 5 *Cow.* 510, in *Coleman v. Rowe*, 5 *How. (Miss.)* 460; s. c., 37 *Am. Dec.* 164, 167. Applied (Rescission of contract for sale of land) in *Camp v. Morse*, 5 *Den.* 164; *Van Rensselaer v. Miller*, *Hill & D.* 238.
- **v. Stevens**. See *Deveau v. Fowler*.
- Robbins, Matter of**, 20 *Hun*, 530. Rev'd in 82 *N. Y.* 131. Decision in *Id.* followed (Necessity that work for N. Y. City be done by contract) in *Matter of N. Y. Prot. Episc. Pub. School*, *Id.* 606; *Matter of Manhattan Sav'gs Inst.* *Id.* 142, 144; *Matter of Weil*, 83 *Id.* 543, 550; *Matter of Lange*, 85 *Id.* 307, 309. Followed, but point not indicated, in *Matter of Sanger*, 82 *Id.* 607. Disting'd (Street improvements) in *Matter of Barclay*, 91 *Id.* 430, 437.
- Robbins v. Dillaye**, 33 *Barb.* 77. Questioned but aff'd in 2 *Keyes*, 506; s. c., 4 *Abb. Ct. App. Dec.* 71.
- **v. Fuller**, 24 *N. Y.* 570. See *Van Keuren v. Parmelee*. Followed as settled law (Power of partner after dissolution of partnership) in *Gillilan v. Sun Mut. Ins. Co.*, 41 *N. Y.* 376, 379.
- **v. Gorham**, 26 *Barb.* 586. Aff'd in 25 *N. Y.* 588. Both decisions commented on (Effect of failure of witness to attend in answer to subpoena) in *Throop Justice's Man.* 2 ed. 56. See *Code Civ. Pro.* 1851, §§ 2974, n., 2975, n.
- **v. Mount**, 33 *How. Pr.* 24; s. c., 4 *Robt.* 553. See *Casey v. Mann*; *Loose v. Buchanan*. Disting'd (Infant's liability for costs) in *Hewitt v. Warren*, 10 *Hun*, 560, 563. Followed (Liability of owner of leased premises) in *Kaiser v. Hirth*, 36 *Super. Ct. (J. & S.)* 344, 350. Explained in *Wood on Nuis.* 2 ed. § 126.
- **v. Richardson**, 2 *Bosw.* 248. See *De Zeng v. Fyfe*; *N. Y. Marbled Iron Works v. Smith*; *Woodruff v. Dickie*. Followed (Liability on accommodation note) in *Dunn v. Weston*, 71 *Me.* 270; s. c., 36 *Am. R.* 310, 312.
- **v. Wells**, 18 *Abb. Pr.* 191; s. c., more fully, 26 *How. Pr.* 15. Disting'd (Waiver of objection to capacity to sue or be sued) in *Fairweather v. Satterly*, 7 *Robt.* 546. See cases cited (Voluntary associations) in 4 *Abb. N. C.* 311, n.
- Robert v. Dittmas**, 7 *Wend.* 522. Explained (Necessity of filing agreement to refer in claim against estate) in *Bucklin v. Chapin*,

- 53 *Barb.* 488, 494. Applied in *Comstock v. Olmstead*, 6 *How. Pr.* 79. Applied (Duty of executor, &c. to pay claim presented) in *Fort v. Gooding*, 9 *Barb.* 391. Followed (Costs against executor, &c.) in *Carhart v. Blaisdell*, 18 *Wend.* 531. Disting'd in *Harvey v. Skillman's Ex'r*, 22 *Id.* 573.
- **v. Donnell**, 10 *Abb. Pr.* 454. Rev'd in 31 *N. Y.* 446; s. c., 1 *Abb. Pr. N. S.* 4. Subsequent decision in 2 *Daly*, 64, aff'd as *Robert v. Good*, in 36 *N. Y.* 408.
- **v. Good**. See *Robert v. Donnell*.
- **v. Traders' Ins. Co.**, 17 *Wend.* 631. Overruled (Rights of mortgagee under policy) in *Grosvenor v. Atlantic Fire Ins. Co.*, 17 *N. Y.* 391, 396. Reviewed and disting'd with *Ætna Fire Ins. Co. v. Tyler*, 16 *Wend.* 385, in *King v. State Mutual Fire Ins. Co.*, 7 *Cush. (Mass.)* 1; s. c., 54 *Am. Dec.* 683, 690, with note.
- Robert's Case**. So called in *Benedict, &c. Manuf'g Co. v. Thayer*, 21 *Hun.* 614, 616. Reported (Action for money had and received) as *N. Y. Guaranty & Ind. Co. v. Gleason*, in 7 *Abb. N. C.* 334; also (Arrest) as *People ex rel. Roberts v. Bowe*, in 8 *Id.* 234.
- Roberts, Matter of**, 3 *Johns. Ch.* 43. Reviewed with other cases (Commissions to committee of lunatic, &c.) in *Ward v. Ford*, 4 *Redf.* 34, 40. Criticised and qualified in *Matter of Colah*, 6 *Daly*, 51, 62. Cited as authority in *Betts v. Betts*, 4 *Abb. N. C.* 317, 442.
- , 8 *Paige*, 519. See *Packard v. Hill*. Examined (Domicile as affecting will) in *Moultrie v. Hunt*, 23 *N. Y.* 394, 408, 417. Quoted in *Willard on Executors*, 59.
- , 10 *Hun.* 253. Rev'd in 70 *N. Y.* 5; s. c., 53 *How. Pr.* 199. Decision in *Id.* disting'd (Sufficiency of application for discharge of imprisoned debtor) in *Borthwick v. Howe*, 27 *Hun.* 505. See *Code Civ. Pro.* 1881, § 2188, *n.*
- , 8 *Daly*, 95; s. c., 59 *How. Pr.* 136. Overruled (Fraud as bar to discharge from imprisonment) in *Matter of Fowler*, 8 *Daly*, 548, 552.
- , 17 *Hun.* 559. Aff'd in 81 *N. Y.* 62.
- Roberts v. Anderson**, 3 *Johns. Ch.* 371. Rev'd in 18 *Johns.* 515. Decision in 3 *Johns. Ch.* disapproved (Conveyance as affected by stat. 13 Eliz. c. 5, and stat. 27 Eliz. c. 4) in *Oriental B'k v. Haskins*, 3 *Metc. (Mass.)* 332; s. c., 37 *Am. Dec.* 140, with note; *Jackson v. Henry*, 10 *Johns.* 185; *Verplank v. Sterry*, 12 *Id.* 552; *Jackson v. Walsh*, 14 *Id.* 407; *Sterry v. Arden*, 1 *Johns. Ch.* 271, being also followed (Fraudulent conveyances not absolutely void). See *Martin v. Cowles*, 1 *Dev. & B. (N. C.)* 29. Quoted in *Wait on Fraud. Conv.* § 386.
- **v. Berdell**, 61 *Barb.* 37. Aff'd in 15 *Abb. Pr. N. S.* 177.
- **v. Carter**, 9 *Abb. Pr.* 366, *n.*; s. c., 17 *How. Pr.* 341. Further decision in 24 *Id.* 44; which was rev'd in 38 *N. Y.* 107. See *Coster v. Criswold*; *Myers v. Davis*. Decision in 24 *How. Pr.* applied (Attorney's lien for costs, as subject to set-off) in *Sanders v. Gillett*, 8 *Daly*, 184.
- **v. Chenango County Mut. Ins. Co.**, 3 *Hill*, 501. Criticised as extreme with *Murdock v. Chenango Mut. Ins. Co.*, 2 *N. Y.* 210 (Incorporating extrinsic documents in policy of insurance) in *Ruse v. Mutual Benefit Life Ins. Co.*, 23 *Id.* 516, 519.
- **v. Davids**, 12 *Hun.* 394. See (Effect of failure to serve notice of appeal from justice's decision) *Code Civ. Pro.* 1881, § 3049, *n.*
- **v. Dillon**, 3 *Daly*, 50. Commented on as a reluctant decision, and compared with other cases (Rights of purchaser from one lacking title) in 15 *Am. L. Rev.* 376.
- **v. Failis**. See *Dana v. Tucker*.
- **v. Fisher**, 53 *Barb.* 69. Rev'd in 43 *N. Y.* 159; s. c., 3 *Am. R.* 680. Further decision in 65 *Barb.* 303. See *Kelty v. Second Nat. B'k*; *Ontario Bank v. Lightbody*. Decision in 43 *N. Y.* followed (Effect of payment in worthless paper) in *Bruce v. Burr*, 5 *Daly*, 511. Disting'd in *Duden v. Waitzfelder*, 2 *Abb. N. C.* 295, 300. Cited as authority in *Hussey v. Sibley*, 66 *Me.* 192; s. c., 22 *Am. R.* 557. Doubted and criticised in 27 *Am. Dec.* 191, *n.*, as carrying the doctrine to an extreme limit. Quoted and collated with other cases in *McAdam on Landl. & T.* 2 ed. § 153.
- **v. Fowler**, 4 *Abb. Pr.* 263. Disting'd (Rights of assignee of laborer) in *Krauser v. Ruckel*, 17 *Hun.* 463, 466.
- **v. Gee**, 15 *Barb.* 449. See other cases collected (Testimony of parties) in 1 *Abb. N. C.* 362, *n.*
- **v. Jackson**, 1 *Wend.* 478. See *James v. Morey*. Disting'd (Admission of evidence *aliunde* respecting delivery of deed) in *Hubby v. Hubby*, 5 *Cush. (Mass.)* 516; s. c., 52 *Am. Dec.* 742, with note.
- **v. Johnson**, 37 *Super. Ct. (J. & S.)* 157. Aff'd in 58 *N. Y.* 313. Decision in *Id.* applied (Starting of horses as evidence of negligence) in *Dougherty v. Missouri R. Co.*, 9 *Mo. App.* 481, 483. Collated with other authorities (Qualifications of medical experts) in 26 *Alb. L. J.* 365, 486; 27 *Id.* 65, 68.
- **v. McKeel**. See *Roberts v. Mekell*.
- **v. Marsen**. See *Cox v. N. Y. Central R. R. Co.*; *Roberts v. Marson*.
- **v. Marson**, 21 *Hun.* 363. Further decision as *Roberts v. Marsen*, in 23 *Id.* 486.
- **v. Mayor, &c. of N. Y.**, 5 *Abb. Pr.* 41. Followed (Right to enjoin municipal corporation from illegal payment of money) in *Sackett v. City of New Albany*, 88 *Ind.* 473; s. c., 45 *Am. R.* 467.
- **v. Mekell**, 7 *Weekly Dig.* 225. Further proceeding as *Roberts v. McKeel*, *Id.* 388.
- **v. Morgan**, 2 *Cow.* 438. See *Chapman v. Murch*. Explained (What words constitute warranty on sale of chattels) in 1 *Para. on Contr.* 580, *n. n.*

— **v. Morrison.** See Butchers' & Drovers' Bank v. Jacobson.

— **v. Prosser,** 4 *Lans.* 369. Rev'd in 53 *N. Y.* 260. Decision in *Id.* disting'd from Wood v. Henry, 40 *Id.* 124 (Execution against person) in Liddell v. Patton, 7 *Hun.* 198.

— **v. Randel,** 3 *Sandf.* 707; s. c., 9 *N. Y. Leg. Obs.* 144; 5 *How. Pr.* 327. See Olmsted v. Hotailing. Disapproved (Replevin against one that has parted with possession) in Brockway v. Burnap, 16 *Barb.* 311; which rev'd 12 *Id.* 348, which see; Ward v. Woodburn, 27 *Id.* 353; Drake v. Wakefield, 11 *How. Pr.* 107; Nichols v. Michael, 23 *N. Y.* 268. Disting'd in Meacham v. Collignon, 7 *Daly,* 407. Applied in Remin v. Nagle, 1 *Code R. N. S.* 223. Explained and applied (Arrest in replevin) in Pike v. Lent, 4 *Sandf.* 651.

— **v. Roberts,** 7 *Lans.* 56. Aff'd in 55 *N. Y.* 275. Decision in *Id.* collated with McMillan v. Cronin, 13 *Hun.* 68; 75 *N. Y.* 474, and other cases (Right of owner of easement to enter on servient estate for purpose of repairs, &c.) in 23 *Am. L. Reg. N. S.* 242, n.

— **v. Shepard,** 2 *Daly,* 110. See Robinson v. McIntosh. Commented on (Power of partners to make assignment for benefit of creditors) in *Burrill on Assign.* § 85, 4 ed. Quoted (Fraud in case of sales on credit) in *Wait on Fraud. Conv.* § 240.

— **v. Turner,** 12 *Johns.* 232; s. c., 5 *N. Y. Com. L. Law.* ed. 371, with brief note; also 7 *Am. Dec.* 311, with note. Disting'd (Liability as forwarder) in Teal v. Sears, 9 *Barb.* 317, 323, which is approvingly cited in 7 *Am. Dec.* 313, n. Cited as an important case in 2 *Pars. on Contr.* 139, n. k. See also *Id.* 178, n. s. Collated with Platt v. Hibbard, 7 *Cov.* 497; Stannard v. Prince, 64 *N. Y.* 300, and other cases in 24 *Am. Dec.* 146, n. Explained and compared in *Ang. on Carr.* § 94, n. 2, 5 ed. Reviewed with Hollister v. Nowlen, 19 *Wend.* 234, 240, and other cases (Reason of law of common carriage insurance) in Rixford v. Smith, 52 *N. H.* 355; s. c., 13 *Am. R.* 42. Quoted in *Ang. on Carr.* § 153, n. 4, 5 ed.

— **v. White,** 43 *Super. Ct. (J. & S.)* 455. Aff'd in 73 *N. Y.* 375. Previous proceedings in 37 *Super. Ct. (J. & S.)* 168, and 39 *Id.* 272.

**Robertson v. Atlantic Mutual Ins. Co.,** 37 *Super. Ct. (J. & S.)* 442. Subsequent decision in 68 *N. Y.* 192.

— **v. Bennett,** 52 *How. Pr.* 287; s. c., 1 *Abb. N. C.* 476. Further proceeding in 44 *Super. Ct. (J. & S.)* 66.

— **v. Bullions,** 9 *Barb.* 64. Aff'd in 11 *N. Y.* 243. See Baptist Church v. Withersall; Ellwell v. Dodge; Field v. Field. Decision in 11 *N. Y.* followed (What constitutes religious corporation) in Wyatt v. Benson, 4 *Abb. Pr.* 186. Followed with Petty v. Tooker, 21 *N. Y.* 67; Gram v. Prussian Society, 36 *Id.* 161, in Watkins v. Wilcox, 4

*Hun.* 225. Examined at length and followed in Parish of Lelpport v. Tooker, 29 *Barb.* 262; Burrell v. Assoc. Ref'd Church, 44 *Id.* 303; Gram v. Prussia, &c. Society, 36 *N. Y.* 164. Disting'd with Petty v. Tooker, 21 *Id.* 267, in First Reformed Presb. Church v. Bowden, 14 *Abb. N. C.* 356, 360. Applied (Authority of trustees of religious corporation) in Matter of St. Ann's Church, 14 *Abb. Pr.* 427. Approved and applied (Authority of equity to remove officers of corporation) in Belmont v. Erie Ry. Co., 52 *Barb.* 666. Applied (Evidence to show nature of trust for religious purposes) in People ex rel. Coppers v. Trustees, 21 *Hun.* 184. Explained (Powers of religious corporation) in Youngs v. Ransom, 31 *Barb.* 53. See cases collected in 12 *Am. L. Reg. N. S.* 346, n. Explained as not authority for validity of deed to unincorporated religious society,—in Bundy v. Birdsall, 29 *Barb.* 34. Decision in 9 *Id.* applied (Exclusiveness of cognizance by ecclesiastical tribunals of pastoral relation) in Connitt v. Ref'd Prot. Dutch Church, 4 *Lans.* 347. Applied to rights of church members in Gaff v. Greer, 88 *Ind.* 122; s. c., 45 *Am. R.* 442. See cases collected in 9 *Am. L. Reg. N. S.* 222.

— **v. Caw,** 3 *Barb.* 410. Rev'd in 5 *N. Y.* 125.

— **v. Hillman,** 5 *Sup'm. Ct. (T. & C.)* 534; s. c., 3 *Hun.* 244. Aff'd, it seems, in 62 *N. Y.* 644, but without opinion.

— **v. Lain,** 19 *Wend.* 650. Applied (Effect of proceedings against drunkard, &c.) in Sternbergh v. Schoolcraft, 2 *Barb.* 154; Crippen v. Culver, 13 *Id.* 428. Thought with Clark v. Dunham, 4 *Den.* 262; Sternberger v. Schoolcraft, 2 *Barb.* 154, in Heard v. Sack, 81 *Mo.* 610, 617, to rest on some special statute.

— **v. Livingston.** See Van Alen v. Vanderpool.

— **v. Lynch,** 18 *Johns.* 451. Relied on (Admissibility of a copy of copy in evidence) in Goodrich v. Weston, 102 *Mass.* 362; s. c., 3 *Am. R.* 469.

— **v. McGeoch,** 11 *Paige,* 640. See (Retraction of renunciation by executor) *Code Civ. Pro.* 1881, § 2639, n.

— **v. N. Y. & Erie R. R. Co.,** 22 *Barb.* 91. See Carroll v. N. Y. & New Haven R. R. Co.; Eaton v. Delaware, Lackawanna, &c. R. R. Co.; Russell v. Hudson River R. R. Co. Applied (One riding on railroad train, when to be regarded as trespasser) in Lillis v. St. Louis, Kansas City & Northern R. R. Co., 64 *Mo.* 464; s. c., 27 *Am. R.* 255.

— **v. Smith,** 18 *Johns.* 459; s. c., 9 *Am. Dec.* 227. Explained and applied (Effect of recovery against one of joint debtors) in Benson v. Paine, 9 *Abb. Pr.* 29; Waggoner v. Walrath, 24 *Hun.* 443, 445. Applied in McMaster v. Vernon, 3 *Duer,* 254; Olmstead v. Webster, 8 *N. Y.* 414. Disting'd in Hawks v. Hinchcliff, 17 *Barb.* 503. Disting'd with Waggoner v. Walrath, 24 *Hun.*

- 443, in *Decker v. Kitchen*, 26 *Id.* 173, 175. Applied with *Pierce v. Kearney*, 5 *Hill*, 85; *Oakley v. Aspinwall*, 4 *N. Y.* 542; *Suydam v. Barber*, 18 *Id.* 470; *Ehle v. Bingham*, 7 *Barb.* 491, in *Candee v. Smith*, 93 *N. Y.* 349, 352. Approved in *Brown v. Johnson*, 13 *Gratt. (Va.)* 644, 650. Approved in *Wann v. McNulty*, 2 *Gilm. (Ill.)* 355; s. c., 43 *Am. Dec.* 58, 60, with note, as denying the doctrine of the U. S. Supreme Court, in *Shcehy v. Mandeville*, 6 *Cranch*, 253. Followed in *Moale v. Hollins*, 11 *Gill & J. (Md.)* 11; s. c., 33 *Am. Dec.* 684, with note. Followed and fully approved in *Smith v. Black*, 9 *Serg. & R. (Pa.)* 142; s. c., 11 *Am. Dec.* 686; *Penny v. Martin*, 4 *Johns. Ch.* 566, being cited to show that a similar doctrine exists in equity. Approved with *Penny v. Martin*, 4 *Johns. Ch.* 567, in *Ferrall v. Bradford*, 2 *Fla.* 508; s. c., 50 *Am. Dec.* 293, 296, with note. Compare *Collins v. Lemasters*, 1 *Dail. (So. Car.)* 348; *Treasurers v. Bates*, 2 *Id.* 362; *Sheehy v. Mandeville*, 6 *Cranch*, 253. Explained with decisions to the contrary in 1 *Pars. on Contr.* 12.
- **v. United Ins. Co.**, 2 *Johns. Cas.* 250; s. c., 1 *N. Y. Com. L. Law. ed.* 505, with brief note; and 1 *Am. Dec.* 166. Cited (Bottomry bond as affected by insertion of clause of sale) in *Waples Proc. in Rem.*, § 475.
- **v. Vaughn**, 5 *Sandf.* 1. See *Bennett v. Hall*. Referred to as overruled (Sale as disting'd from contract for work and labor) in *Passaic Manuf. Co. v. Hoffman*, 3 *Daly*, 495, 506. Quoted and explained in 3 *Pars. on Contr.* 55 n. u. Commented on in *Browne on Stat. of Frauds*, § 306, 4 ed.
- Robie v. Sedgwick**, 35 *Barb.* 319. Aff'd (Recovery of possession of school-house lot) in 4 *Abb. Ct. App. Dec.* 73; s. c., 5 *Transc. App.* 151.
- Robinson v. Ames**, 20 *Johns.* 146; s. c., 41 *Am. Dec.* 259. Explained (Law of place as affecting commercial paper) in *Hibernia Nat. Bank v. Lacombe*, 84 *N. Y.* 367, 382. Quoted (Notice of dishonor) in *Bigel. on B. & N.* 2 ed. 111. Quoted and collated with other cases in *Redf. & B. Lead. Cas. on B. of Exch.* 441.
- **v. Bank of Attica**, 21 *N. Y.* 406. Disting'd (Effect of transfer by insolvent corporation) in *Dutcher v. Importers' & Trad. Nat. Bank*, 59 *N. Y.* 5, 10. Approved but disting'd in *Paulding v. Chrome Steel Co.*, 94 *Id.* 334, 339. Disting'd in *Excelsior Petroleum Co. v. Embury*, 67 *Barb.* 261, 265.
- **v. Brennan**, 11 *Hun*, 368. Subsequent proceeding in 90 *N. Y.* 208. Also mere mem. in 23 *Hun*, 664.
- **v. Brisbane**, 7 *Hun*, 180. Aff'd in effect in 67 *N. Y.* 606, on same opinion.
- **v. Chamberlain**, 34 *N. Y.* 389. See *Garlinghouse v. Jacobs*; *Losce v. Clute*; *Mayor, &c. of N. Y. v. Furze*; *Weaver v. Devendorf*. Applied (Liability of one contracting to perform work for public) in *Hartford & N. Y. Steamboat Co. v. Mayor, &c. of N. Y.*, 12 *Hun*, 554; *French v. Donaldson*, 1 *Lans.* 294; which was aff'd in 57 *N. Y.* 498, which see; *Stack v. Bangs*, 6 *Lans.* 263; *Conroy v. Gale*, 5 *Id.* 346; *Connors v. Adams*, 13 *Hun*, 429; *Hover v. Barkhoof*, 44 *N. Y.* 117; *Johnson v. Belden*, 47 *Id.* 131; *Fulton Fire Ins. Co. v. Baldwin*, 37 *Id.* 649. Collated with other cases in *Cook Highw. L.* 4 ed. 50. Applied (Right of injured party to enforce contract made with public authorities) in *McMahon v. Second Avenue R. R. Co.*, 11 *Hun*, 350; *Little v. Banks*, 20 *Id.* 146; *City of Brooklyn v. Brooklyn City R'y Co.*, 47 *N. Y.* 485.
- **v. Chemical Nat. B'k of N. Y.**, 10 *Weekly Dig.* 315; mem. s. c., 21 *Hun*, 589. Aff'd in 86 *N. Y.* 404.
- **v. Chittenden**, 7 *Hun*, 133. Rev'd in 69 *N. Y.* 525.
- **v. Crandall**, 9 *Wend.* 426. Approved (Suits by foreign executors, &c.) in *Petersen v. Chemical Bank*, 32 *N. Y.* 21. Included in 1 *Ames Cas. on B. & N.* 825.
- **v. Cropsey**, 2 *Edw.* 138. Aff'd in 6 *Paige*, 480. See *Ketchum v. Evertson*. Decision in 2 *Edw.* approved (Distinction between mortgage and conditional sale) in *Thomas on Mort.* 21. Doctrine discussed in 8 *Am. L. Reg. N. S.* 602.
- **v. Cushman**, 2 *Den.* 149. Approved (Implied promise to pay for services, &c. as between relatives) in *Wilcox v. Wilcox*, 48 *Barb.* 327. Restated and followed in *Ayers v. Hull*, 5 *Kans.* 419.
- **v. Dauchy**, 3 *Barb.* 20. Followed (Presumption as to laws of another State) in *McCulloch v. Norwood*, 36 *Super. Ct. (J. & S.)* 180, 188. Collated with *Stokes v. Macken*, 62 *Barb.* 149; *Abell v. Douglass*, 4 *Den.* 305; *Starr v. Peck*, 1 *Hill*, 270; *Henry v. Root*, 33 *N. Y.* 554; *Paine v. Noelke*, 43 *Super. Ct. (J. & S.)* 176; *Hynes v. McDermott*, 82 *N. Y.* 44; *Savage v. O'Neil*, 44 *Id.* 298; *Thompson v. Ketcham*, 8 *Johns.* 190, and other cases in 19 *Cent. L. J.* 226.
- **v. Flint**, 16 *How. Pr.* 240; s. c., 7 *Abb. Pr.* 393, n. Further decision on the merits in 58 *Barb.* 100.
- **v. Gregory**, 29 *Barb.* 560. Said to have been rev'd by Ct. of App. on ground of invalidity of assignment for want of power to make (Power of partner to make assignment for benefit of creditors),—in *Welles v. March*, 30 *N. Y.* 344. See *Robinson v. McIntosh*. Collated with other cases in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 549.
- **v. International Life Assur. Society**, 42 *N. Y.* 54; s. c., 1 *Am. R.* 490. Limited (Effect of war of rebellion on contract with foreign insurance company) in *Martine v. International Life Ins. Society*, 53 *N. Y.* 339, 344. Reviewed with other cases (Agent's authority to take paper circulating as money) in 15 *Am. Dec.* 131, n.
- **v. Kalbfleisch**, 2 *Hun*, 683; s. c., reported in 5 *Exp'm. Ct. (T. & C.)* 212.

- **v. Kettletas.** See *Whitlock v. Duffield*.
- **v. Kinne.** 1 *Sup'm. Ct. (T. & C.)* 60. Further decision as *Robinson v. Kime*, 70 *N. Y.* 147.
- **v. McIntosh.** 3 *E. D. Smith*, 221. Collated with *Fisher v. Murray*, 1 *Id.* 341; *Kemp v. Carnley*, 3 *Duer*, 1; *National B'k of Baltimore v. Sackett*, 2 *Abb. Pr. N. S.* 286; *Roberts v. Shepard*, 2 *Daly*, 110; *Baldwin v. Tynes*, 16 *Abb. Pr.* 32; *Kelly v. Baker*, 2 *Illt.* 531; *Robinson v. Gregory*, 29 *Barb.* 560; *Palmer v. Myers*, 43 *Id.* 509; *Hitchcock v. St. John*, *Hoffm.* 511; *Sheldon v. Smith*, 28 *Barb.* 593; *Welles v. March*, 30 *N. Y.* 344; *Palmer v. Myers*, 29 *How. Pr.* 8 (Power of partner to make assignment for creditors) in 22 *Am. L. Reg. N. S.* 33, n., citing also *Pettee v. Orser*, 18 *How. Pr.* 442. See also *Coope v. Bowles*, 42 *Barb.* 88. Quoted and explained in *Burrill on Assign.* § 82, 4 ed.
- **v. McManus.** 4 *Lans.* 380. Disting'd ("Due proof" of service of summons) in *People ex rel. Hughes v. Lamb*, 10 *Hun.* 348.
- **v. Marine Ins. Co.**, 2 *Johns.* 323. See *Scott v. Libby*. Said to be overruled (*Pro rata* freight, on acceptance of goods at intermediate port) in *Atlantic Mutual Ins. Co. v. Bird*, 2 *Bosw.* 205.
- **v. National B'k of Newberne**, 19 *Hun.* 477; s. c., 58 *How. Pr.* 306. Aff'd in 81 *N. Y.* 385; s. c., 37 *Am. R.* 508; 2 *Brown's Nat. B'k Cas.* 309; 59 *How. Pr.* 218. See *Central Nat. Bank v. Richland Nat. Bank*; *Rhoner v. First Nat. B'k of Allentown*. Decision in 81 *N. Y.* disting'd (Jurisdiction to grant attachment against national bank in another State) in *Peoples' B'k of N. Y. v. Mechanic's Nat. B'k of Newark*, 62 *How. Pr.* 423.
- **v. N. Y. & Erie R. R. Co.**, 27 *Barb.* 512. Discussed (Liability of railroad company for injuries to private property) in 2 *Add. on Torts*, 249, n., *Wood's ed.*; *Id.* 263, n. Collated with other cases in *Mills Thomps. on Highw.* 3 ed. 441.
- **v. N. Y. Central, &c. R. R. Co.**, 65 *Barb.* 146. Aff'd in 66 *N. Y.* 11; s. c., 23 *Am. R.* 1, with note. Decision in *Id.* followed and applied (Imputing negligence to one riding in conveyance) in *Masterton v. N. Y. Central, &c. R. R. Co.*, 84 *N. Y.* 247, 254; *Gallaghan v. Rome, W. & O. R. R. Co.*, 13 *Weekly Dig.* 395; *Towu of Albion v. Herrick*, 90 *Ind.* 545; s. c., 46 *Am. R.* 230. Disapproved in *Prideaux v. City of Mineral Point*, 45 *Wis.* 513; s. c., 28 *Am. R.* 561, 563, with note. Commented on in 13 *Cent. L. J.* 385-387. Compared with other cases in 17 *Ab. L. J.* 400.
- **v. N. Y. Ins. Co.**, 2 *Cai.* 357. Aff'd in 1 *Johns.* 610. Decision in 2 *Cai.* cited (Limitation of agent's claim for remuneration to particular source) in *Whart. Com. on Ag.* § 324.
- **v. Norris.** 51 *How. Pr.* 442. Aff'd, it seems, in 6 *Hun.* 233.
- **v. Phillips.** 65 *Barb.* 418; s. c., 1 *Sup'm. Ct. (T. & C.)* 151. Aff'd in 56 *N. Y.* 634. Decision in 65 *Barb.* questioned (Requisites of adverse possession) in *Pope v. Hammer*, 74 *N. Y.* 240, 245. Compare *Longendyck v. Anderson*, 59 *How. Pr.* 1.
- **v. Plimpton.** 25 *N. Y.* 484. Disting'd (Liabilities of sureties on appeal) in *Church v. Simmons*, 19 *Hun.* 220. Followed in *Richardson v. Kropf*, 5 *Daly*, 385; *Hamerton v. Hay*, 65 *N. Y.* 384; *Hinckley v. Kreitz*, 36 *Super. Ct. (J. & S.)* 413, 425; which was rev'd in 58 *N. Y.* 583, 586, which see. Applied to property seized on attachment, in *Wright v. Rowland*, 4 *Abb. Ct. App. Dec.* 653. Applied (Form of undertaking on appeal) in *Doolittle v. Diniany*, 31 *N. Y.* 354. Explained and applied (Effect of proceeding on appeal, as continuance of the action) in dissenting opinion in *Wolcott v. Holcomb*, *Id.* 135.
- **v. Raynor.** 36 *Barb.* 128. Rev'd in 28 *N. Y.* 494. Decision in *Id.* applied (Recovery for services rendered in expectation of compensation by will) in *Shakespeare v. Markham*, 10 *Hun.* 326; which was aff'd in 72 *N. Y.* 406, which see; *Bonesteel v. Van Etten*, 20 *Hun.* 471; *Eagan v. Kergill*, 1 *Dem.* 464, 468.
- **v. Ryan.** 25 *N. Y.* 320. See *Phyfe v. Riley*. Explained (Rights under assignment of mortgage) in *Purdy v. Huntington*, 42 *N. Y.* 347. Applied (Rights of purchaser at foreclosure sale) in *Ross v. Boardman*, 22 *Hun.* 530; *Catlin v. Grissler*, 57 *N. Y.* 374. Explained in dissenting opinion in *Gage v. Brewster*, 31 *Id.* 227. Applied in *McCormick v. Knox*, 105 *U. S.* 122, 126, citing *Dale v. McEvers*, 2 *Cov.* 118.
- **v. Sinclair.** 1 *How. Pr.* 106. Disting'd (Use of old affidavit) in *Mojarrieta v. Saenz*, 80 *N. Y.* 547, 551.
- **v. Smith.** 3 *Paige*, 222; s. c., 24 *Am. Dec.* 212, with note containing citations of the case. See *Carpenter v. Danforth*; *Scott v. Depeyster*. Explained (Corporation as party to action for wrong committed by directors) in *Smith v. N. Y. Consolidated Stage Co.*, 13 *Abb. Pr.* 422. Applied in *Greaves v. Gouge*, 16 *Abb. Pr. N. S.* 331; *Gardiner v. Pollard*, 10 *Bosw.* 676; *Wells v. Jewett*, 11 *How. Pr.* 247; *Allen v. N. J. Southern R. R. Co.*, 49 *Id.* 15; *Cunningham v. Pell*, 5 *Paige*, 613. Applied (Stockholders as parties in actions by and against corporations) in *Ithaca Gas-light Co. v. Treman*, 30 *Hun.* 212. Approved (Liability of directors for breach of duty) in *Smith v. Rathbun*, 66 *Barb.* 405. Disting'd in *Van Dyck v. McQuade*, 86 *N. Y.* 46. Applied in *Oakland Bank of Savings v. Wilcox*, 60 *Cal.* 126, 142.
- **v. —.** 13 *Abb. Pr.* 359. See *Brinckenhoof v. Remsen*.
- **v. Stewart.** 10 *N. Y.* 189. Disting'd (Conveyance when fraudulent as against creditors) in *Union Nat. B'k v. Warner*, 12 *Hun.* 308; *Babcock v. Eckler*, 24 *N. Y.* 629.

- **v. Taylor**, 13 *Wend.* 191. Overruled (Effect of discontinuance after defendant has retained attorney) in *Smith v. White*, 7 *Hill*, 520.
- **v. United Ins. Co.**, 2 *Cal.* 280. Aff'd in 1 *Johns.* 592. See *Saidler v. Church*. Decision in 1 *Johns.* denied with *Jumel v. Marine Ins. Co.*, 7 *Id.* 412; *Ogden v. N. Y. Fire Ins. Co.*, 10 *Id.* 177; 12 *Id.* 25 (Effect of acceptance by insured, for his own benefit, of purchase of thing insured, made for account of owner) in *Maryland & Phoenix Ins. Co. v. Bathurst*, 5 *G. & J. (Md.)* 159. Disting'd with *Rogers v. Hosack*, 18 *Wend.* 319 (Effect of abandonment on subsequent action affecting insured interest) in *Clark v. Wilson*, 103 *Mass.* 219; s. c., 4 *Am. R.* 532, 538; where also *Schieffelin v. N. Y. Ins. Co.*, 9 *Johns.* 26, was disting'd.
- **v. Ward**, 8 *Johns.* 86; s. c., 5 *Am. Dec.* 329, with note wherein it is said to be in accordance with the doctrine now generally held (Effect of judgment obtained in another State against one not personally served). See *Rogers v. Coleman*, *Harris (Ky.)* 418; s. c., 3 *Am. Dec.* 733; and *Bartlett v. Knight*, 1 *Mass.* 401; s. c., 2 *Am. Dec.* 86, with note collating cases.
- **v. Weeks**, 6 *How. Pr.* 161. Approved (Assignee of judgment, &c. as affected by payment of execution) in *Richardson v. Ainsworth*, 20 *Id.* 521. See *Code Civ. Pro.* 1881, § 2450, n.
- **v. West**, 1 *Sandf.* 19. Rev'd in 11 *Barb.* 309. Decision in *Id.* overruled in effect (Appearance as waiver of defect in process) in *Clapp v. Graves*, 26 *N. Y.* 421.
- **v. Wheeler**, 25 *N. Y.* 252. Followed (Amendment of complaint at trial) in *Knapp v. Roche*, 37 *Super. Ct. (J. & S.)* 395, 407.
- **v. Wilcox**, 2 *N. Y. Leg. Obs.* 160. Followed (Mortgagee of chattels when entitled to possession on default) in *Willis v. O'Brien*, 35 *Super. Ct. (J. & S.)* 541.
- **v. Wiley**, 19 *Barb.* 157. Rev'd in 15 *N. Y.* 489; but approved in part.
- **v. Williams**, 22 *N. Y.* 380. See *Brinkerhoff v. Marvin*. Disting'd (Effect of mortgage given to secure future advances) in *Ackerman v. Hunsicker*, 21 *Hun.* 57; which was rev'd in 85 *N. Y.* 43, 50, which see; *Bank of Albion v. Burns*, 2 *Lans.* 57. Followed in *Miller v. Lockwood*, 32 *N. Y.* 299. Cited in 20 *Am. Dec.* 660, n, as showing the weight of authority. Explained in 2 *Washb. on Real Prop.* 4 ed. 152. Cited with other cases in 11 *Am. L. Reg. N. S.* 276. Applied (Extraneous proof to explain mortgage) in *Shuler v. Boutwell*, 18 *Hun.* 173.
- Robison v. Lyle**, 10 *Barb.* 512. See *Reynolds v. Ward*. Compared and doubted (Parol evidence of relations of sureties) in 13 *Am. L. Reg. N. S.* 535.
- **v. Robison**, 5 *Lans.* 165. See *Kilpatrick v. Johnson*. Disting'd (Limitation of proceeding against executor by beneficiary in will) in *Cole v. Terpenning*, 25 *Hun.* 482, 485. Applied (Effect of void provision for accumulation on provisions in will) in *McGrath v. Van Stavoren*, 8 *Daly*, 454, 458.
- Roby v. Hallock**, 5 *Abb. N. C.* 86; s. c., 55 *How. Pr.* 412. See (Sham defense) *Code Civ. Pro.* 1881, § 538, n.
- Roche v. Farran**, 12 *N. Y. Leg. Obs.* 121. Said to have been overruled (Examination before trial) in 1 *Civ. Pro. R.* 84, n.
- **v. Ward**, 7 *How. Pr.* 416. Explained and qualified (Sufficiency of affidavit of service by publication) in *Peck v. Cook*, 41 *Barb.* 549.
- Rochester & Genesee Valley R. R. Co. v. Clarke Nat. B'k**, 60 *Barb.* 234. Disting'd (What constitutes officer *de facto*) in *People ex rel. Gilchrist v. Murray*, 73 *N. Y.* 535, 540, which rev'd 8 *Daly*, 347, which see.
- Rochester City Bank v. Elwood**, 21 *N. Y.* 88. Disting'd, and *Ludlow v. Simond*, 2 *Cal. Cas.* 1; *McClusky v. Cromwell*, 11 *N. Y.* 593 approved (Liability of sureties as affected by change of principal's duties) in *Manufacturers' Nat. Bank of Newark v. Dickerson*, 12 *Vroom (N. J.)* 448; s. c., 32 *Am. R.* 237.
- **v. Rapelje**, 12 *How. Pr.* 26. Followed and approved (Taxation of trial fee on decision on demurrer) in *Butchers & Drovers' Bank of Providence v. Jacobson*, 22 *Id.* 471, 473.
- Rochester, Nunda, &c. R. R. Co. v. Commissioners of Mt. Morris**. Reported under *Same v. Cuyler*, 7 *Lans.* 431.
- Rochester Water Commissioners, Matter of**, 66 *N. Y.* 413. See *Matter of N. Y. Central & Hudson River R. R. Co.* See other cases cited (City officers as public agents) in 8 *Abb. N. C.* 283, n.
- Rochester White Lead Co. v. City of Rochester**, 3 *N. Y.* 463; s. c., 53 *Am. Dec.* 316, with note, wherein it is said to have been frequently recognized as a leading authority in *N. Y.* and elsewhere. Compare 53 *Am. Dec.* 357, with note. See *Bailey v. Mayor, &c. of N. Y.*; *Bartlett v. Crozier*; *Gardner v. Trustees of Newburgh*; *Mayor, &c. of N. Y. v. Bailey*; *Mayor, &c. of N. Y. v. Furze*; *Mills v. City of Brooklyn*; *Wilson v. Mayor, &c. of N. Y.* Disting'd (Municipal liability for injury caused by defect in public work) in *Hickok v. Trustees of Plattsburgh*, 15 *Barb.* 442; *Cole v. Trustees of Medina*, 27 *Id.* 218, 221; *Kavanagh v. City of Brooklyn*, 38 *Id.* 237; *Garrison v. Mayor, &c. of N. Y.*, 5 *Bosw.* 503; *Mills v. City of Brooklyn*, 32 *N. Y.* 499. Applied in *Lacour v. Mayor, &c. of N. Y.*, 3 *Duer*, 414; *Bastable v. City of Syracuse*, 8 *Hun.* 587, 593; *Hutson v. Mayor, &c. of N. Y.*, 9 *N. Y.* 169; *Conrad v. Trustees of Ithaca*, 16 *Id.* 173; *Nims v. Mayor, &c. of Troy*, 59 *Id.* 508; *Clemence v. City of Auburn*, 66 *Id.* 341. Disting'd with *Hickok v. Trustees of Plattsburgh*, 16 *N. Y.* 161; *Lee v. Village of Sandy Hill*, 40 *Id.* 442; *Mayor, &c. of N. Y. v. Furze*, 3 *Hill*, 612; *Barton v. City of Syracuse*, 36 *N. Y.* 54; *Bailey v.*

- Mayor, &c. of N. Y., 3 *Hill*, 538; 2 *Den.* 433; *Conrad v. Trustees of Ithaca*, 16 *N. Y.* 159; as cases involving purely private grievances, and *Lloyd v. Mayor, &c. of N. Y.*, 5 *N. Y.* 369; *Storrs v. City of Utica*, 17 *Id.* 104; *Weet v. Trustees of Brockport*, 16 *N. Y.* 161 (said to disapprove *Adsit v. Brady*, 4 *Hill*, 630); *Delmonico v. Mayor, &c. of N. Y.*, 1 *Sandf.* 226, as cases of misfeasance, in *Detroit v. Blakeby*, 21 *Mich.* 84; s. c., 4 *Am. R.* 450, 454; *Hutson v. Mayor, &c. of N. Y.*, 9 *N. Y.* 163; *Davenport v. Ruckman*, 37 *Id.* 568, being also commented upon and disting'd in this connection. Collated with other cases in *Mills Thomps. on Hign.* 3 ed. 209. Included in 2 *Thomps. on Neg.* 673. Applied (Immunity in performance of judicial duties) in *Lange v. Benedict*, 8 *Hun.* 366. Explained (Liability for negligence causing defect in structure) in *Congreve v. Morgan*, 4 *Duer*, 445. Explained (Liability for work done under authority of law) in *Bellinger v. N. Y. Central R. R.*, 23 *N. Y.* 49. Disting'd (Municipal liability for acts or omissions of agents) in *Bryant v. City of St. Paul*, 33 *Minn.* 289, 294.
- Rockfeller v. Donnelly**, 8 *Cow.* 623. See *Chase v. Hinman*; *Gilbert v. Wiman*. Doubted (Liability on contract of indemnity) in *Crippen v. Thompson*, 6 *Barb.* 534; *Aberdeen v. Blackmar*, 6 *Hill*, 324, 326. Explained and followed in *Bancroft v. Winspear*, 44 *Barb.* 213; *Chace v. Hinman*, 8 *Wend.* 457; *Gilbert v. Wiman*, 1 *N. Y.* 555. Explained in *Churchill v. Hunt*, 3 *Den.* 326. Applied in *Johnson v. Gilbert*, 9 *Hun.* 469. Reviewed and relied on with *Chace v. Hinman*, 8 *Wend.* 452, in *Pope v. Hays*, 19 *Tex.* 375. Disapproved in 2 *Sedg. on Meas. of Dama.* 7 ed. 15.
- Rock River Bank v. Hoffman**, 22 *How. Pr.* 250. Rev'd in 14 *Abb. Pr.* 72; s. c., as *Naylor v. Hoffman*, 22 *How. Pr.* 510.
- Rockwell v. Adams**, 6 *Wend.* 467. Rev'd in 16 *Id.* 285. Previous decision in 7 *Cow.* 761. See *Baldwin v. Brown*. Decision in 6 *Wend.* followed (Evidence of corresponding boundary lines, to settle line in dispute) in *Gibson v. Poor*, 21 *N. H.* 440; s. c., 53 *Am. Dec.* 216, 219, with note.
- **v. Brown**, 33 *Super. Ct. (J. & S.)* 380; s. c., 11 *Abb. Pr. N. S.* 400; 42 *How. Pr.* 226. Rev'd in 54 *N. Y.* 210. Subsequent decision as *Rockwell v. McGovern*, 69 *Id.* 294; which aff'd 40 *Super. Ct. (J. & S.)* 118.
- **v. Geery**, 4 *Hun.* 606. Applied (Right of post testamentary child) in *Smith v. Robertson*, 24 *Hun.* 210, 215.
- **v. Hobby**, 2 *Sandf. Ch.* 9. Applied (Creation of lien by implication of law) in *Madison Ave. Church v. Oliver St. Church*, 41 *Super. Ct. (J. & S.)* 369, 388. Explained in *Bowers v. Johnson*, 49 *N. Y.* 432. Disapproved with *Berry v. Mut. Ins. Co.*, 2 *Johns. Ch.* 603 (Equitable mortgage as created by deposit of title deeds) in *Probasco v. Johnson*, 2 *Disney (Ohio)* 96 Approved in *Thomas on Mort.* 25. Explained in 3 *Pars. on Cont.* 281, n. r.
- **v. McGovern**. See *Rockwell v. Brown*.
- **v. Merwin**, 1 *Sweeny*, 484; s. c., 8 *Abb. Pr. N. S.* 330. Aff'd in 45 *N. Y.* 166. Decision in *Id.* explained with *Dubois v. Cassidy*, 75 *Id.* 298; *Sackett v. Newton*, 10 *How. Pr.* 561 (Regularity of receiver's appointment) in *Wright v. Nostrand*, 94 *N. Y.* 31. Explained and applied in *Scroggs v. Palmer*, 66 *Barb.* 505.
- **v. Nearing**, 44 *Barb.* 472. Rev'd in 35 *N. Y.* 302. Decision in *Id.* disting'd (Validity of act providing for seizure of trespassing animals) in *Campbell v. Evans*, 54 *Barb.* 583; which was aff'd in 45 *N. Y.* 358, which see; *Fox v. Dunckel*, 38 *How. Pr.* 138. Explained in *McConnell v. Van Aerman*, 56 *Barb.* 536; *Squares v. Campbell*, 60 *Id.* 393. See 2 *L.* 1867, c. 814. Cited with approval in *Pettit v. May*, 34 *Wis.* 666. Collated with *Campbell v. Evans*, 45 *N. Y.* 356; *Cook v. Gregg*, 46 *Id.* 439, in 33 *Am. R.* 416, n. Relied on with *Campbell v. Evans*; *Cook v. Gregg*, in *Wilcox v. Hemming*, 58 *Wis.* 144; s. c., 46 *Am. R.* 625, 629; *Hart v. Mayor of Albany*, 9 *Wend.* 571, being also referred to as a leading case sustaining legislation of this character. Quoted and explained in *Cooley on Const. Limit.* 5 ed. 447, n. 2.
- **v. Saunders**, 19 *Barb.* 473. See *Silbury v. McCoon*. Doubted (Validity of answer of title in third person in replevin action) in *Stowell v. Otis*, 71 *N. Y.* 36, 38.
- **v. Third Ave. R. R. Co.**, 64 *Barb.* 438. Aff'd and opinion of *INGRAM, J.*, adopted in 53 *N. Y.* 626, without further opinion.
- **v. Tunnelcliff**. See *People v. Humphrey*.
- Roderigas v. East River Savings Inst.**, 48 *How. Pr.* 166. Rev'd in 63 *N. Y.* 460; s. c., 20 *Am. R.* 555. Further decision in 43 *Super. Ct. (J. & S.)* 217; and that aff'd in 76 *N. Y.* 316; s. c., 32 *Am. R.* 309. Decision in 63 *N. Y.* followed (Decision of court having jurisdiction, how far conclusive) in *Chapman v. Phoenix Nat. B'k*, 5 *Abb. N. C.* 127; *Sullivan v. Fosdick*, 10 *Hun.* 182; *Lange v. Benedict*, 73 *N. Y.* 30; *Matter of Cordova*, 4 *Redf.* 67. Disting'd in *Boller v. Mayor, &c. of N. Y.*, 40 *Super. Ct. (J. & S.)* 523, 533. Cited in 33 *Am. Dec.* 239, n., as contrary to other cases there cited. Disapproved in *Johnson v. Beazley*, 65 *Mo.* 250; s. c., 27 *Am. R.* 285. Collated with *Bolton v. Jacks*, 6 *Robt.* 190, and other cases in 30 *Am. R.* 748, n. Explained and disting'd in *D'Arusmont v. Jones*, 4 *Lea (Tenn.)* 251, 253. Criticised and disapproved in *Devlin v. Commonwealth*, 101 *Penn. St.* 273; s. c., 47 *Am. R.* 710; *Thomas v. People*, 107 *Ill.* 517; s. c., 47 *Am. R.* 458. Also disapproved in *Stevenson v. Superior Court*, 62 *Cal.* 60, s. c., 47 *Am. R.* 465, n. Included with note in 15 *Am. L. Reg. N. S.* 205. Criticised in 2 *Whart. Com. on Ev.* § 810.

- Rodermund v. Clark**, 46 *N. Y.* 354. See *Bank of Beloit v. Beale*; *Lloyd v. Brewster*. Disting'd (Election of remedies) in *White v. Whiting*, 8 *Daly*, 23, 25.
- Rodes v. Bronson**, 34 *N. Y.* 649. Dissenting opinion of LEONARD, J., in 41 *Id.* 607, *n.* Rev'd as *Bronson v. Rodes*, in 7 *Wall.* 229; *s. c.*, 36 *How. Pr.* 365, 444. Decision in 34 *N. Y.* followed (Constitutionality of legal tender act) in *Jones v. Smith*, 48 *Barb.* 552, 564.
- Rodgers v. Bonner**, 55 *Barb.* 9. Aff'd in 45 *N. Y.* 379. Decision in *Id.* explained (Judgment lien as incumbrance) in *Fuller v. Scribner*, 16 *Hun.* 132; which was aff'd in 76 *N. Y.* 192, which see. See *Code Civ. Pro.* 1881, § 1671, *n.* Applied (Requisites of seizure by sheriff) in *Union Dime Sav'gs Inst. v. Andariese*, 19 *Hun.* 310, 312. Compare *Code Civ. Pro.* § 649.
- **v. Fletcher**, 13 *Abb. Pr.* 299. See to the contrary (Objection to evidence, when too general) *Dietrick v. Allen*, 25 *Hun.* 66.
- **v. People**, 15 *How. Pr.* 557; *s. c.*, more fully, 3 *Park.* 632. Rev'd in 18 *N. Y.* 9.
- **v. —**, 24 *Hun.* 383. Rev'd, it seems, in 86 *N. Y.* 360. Decision in *Id.* explained (Dwelling house within meaning of law of burglary) in 3 *Greenl. on Ev.* 14 ed. § 81, *n. c.*
- **v. Phillips**, 40 *N. Y.* 519. See *Kein v. Tupper*. Disting'd (Delivery, &c. as required by statute of frauds) in *U. S. Reflector Co. v. Rushton*, 7 *Daly*, 416. Followed in *Cooke v. Millard*, 5 *Lans.* 248; *Allard v. Greasert*, 61 *N. Y.* 5. Approved but disting'd in *Cross v. O'Donnell*, 44 *Id.* 664. Applied in *Hausman v. Nye*, 62 *Ind.* 485; *s. c.*, 30 *Am. R.* 199, citing also *Allard v. Greasert*, 61 *N. Y.* 1; *Shindler v. Houston*, 1 *Id.* 261. Approved in 2 *Whart. Com. on Ev.* § 876. Quoted in 1 *Benj. on Sales*, § 161, *n. r* (Corbin's 4 *Am. ed.*).
- Rodman v. Hedden**. See *Gilbert v. Wiman*.
- **v. Munson**, 13 *Barb.* 63. Aff'd in *Id.* 188. Decision in *Id.* collated with *Champlin v. Champlin*, 3 *Edw.* 571, and other cases (Execution of power of sale before happening of event) in 18 *Cent. L. J.* 437.
- Roe v. Barker**, 17 *Hun.* 84. Aff'd in 82 *N. Y.* 431. See *Leonard v. Vredenburgh*.
- **v. Roe**, 40 *Super. Ct. (J. & S.)* 1. Cited in 1 *Whart. Com. on Ev.* § 706, apparently as conflicting with doctrine there maintained (Propriety of calling upon person whose handwriting is in dispute to write, for purpose of comparison of hands by jury).
- **v. Swart**. See *Little v. Harvey*.
- **v. Swezey**, 10 *Barb.* 247. Disting'd (Proof in action by judgment creditor against heirs at law) in *Blossom v. Hatfield*, 24 *Hun.* 276. Disting'd (Limitation of such action) in *Malloy v. Vanderbilt*, 4 *Abb. N. C.* 127, 131.
- Roebeling v. Duncan**, 8 *Hun.* 502. Aff'd as Anonymous in 67 *N. Y.* 593.
- Roehner v. Knickerbocker Life Ins. Co.**, 4 *Daly*, 512. Aff'd in 63 *N. Y.* 160. Decision in *Id.* disting'd (Effect of provision respecting non-payment of premium) in *Washoe Tool M'fg Co. v. Hibernia Fire Ins. Co.*, 7 *Hun.* 77. Applied in *Wheeler v. Conn. Mut. Life Ins. Co.*, 16 *Id.* 322; which was rev'd in 82 *N. Y.* 533, which see. Disting'd with *Baker v. Union Mut. Life Ins. Co.*, 43 *Id.* 283; *Howell v. Knickerbocker Life Ins. Co.*, 44 *Id.* 276, in *Pendleton v. Knickerbocker Life Ins. Co.*, 12 *Reporter*, 456, 458. Decision in 4 *Daly*, applied in *Heim v. Metropolitan Life Ins. Co.*, 7 *Daly*, 536, 538.
- Rogers, Matter of**, 7 *Cow.* 526. See *Crocker v. Crane*. Disting'd (Mandamus, as remedy) in *People ex rel. Green v. Common Council of Syracuse*, 20 *How. Pr.* 497. See *Code Civ. Pro.* 1881, § 2070, *n.* Followed (Execution of power delegated to several) in *Whiteside v. People*, 26 *Wend.* 644.
- Rogers v. Adriance**, 22 *How. Pr.* 97. Disapproved (Continuance of action by assignee of personal representative) in *Dock v. South Brooklyn Saw Mill Co.*, 6 *Civ. Pro. R. (Browne)* 144. Disapproved in *Robinson v. Brisbane*, 7 *Hun.* 180.
- **v. Arnold**, 12 *Wend.* 30. See (Answer of title in third person in replevin action) *Code Civ. Pro.* 1881, § 1723, *n.*
- **v. Beard**, 20 *How. Pr.* 98. See corrected report of part of this case, in *Id.* 282.
- **v. Benson**, 5 *Johns. Ch.* 431. See *Beach v. Hollister*; *Jackson v. Stevens*. Approved with *Farmers' & Merchants' B'k of Rochester v. Gregory*, 49 *Barb.* 155 (Tenancy by the entirety) in *Marburg v. Cole*, 49 *Md.* 402; *s. c.*, 33 *Am. R.* 266, with note collating cases.
- **v. Bradshaw**, 20 *Johns.* 735. Dictum disapproved (Necessity of provision for compensation on exercise of right of eminent domain) in *Conn. Riv. R. Co. v. County Comm'rs*, 127 *Mass.* 50; *s. c.*, 34 *Am. R.* 341. Approved (Statutory remedy, when exclusive of common law remedy) in *City of Camden v. Allen*, 2 *Dutch. (N. J.)* 398, 404.
- **v. De Forest**, 7 *Paige*, 272. See *Darling v. Rogers*. Rev'd as *Darling v. Rogers*, 22 *Wend.* 483. Compare (Effect of provision in assignment for sale on credit) *Barney v. Griffin*, 2 *N. Y.* 365. Decision in 7 *Paige* collated with other cases in *Bishop on Assign.* § 211.
- **v. Degen**. See *Dodd v. Curry*.
- **v. Dill**, 6 *Hill*, 415. Cited as an unquestioned authority (Sale of infant's real estate) in *Muller v. Struppman*, 6 *Abb. N. C.* 348. Disting'd in *Wood v. Mather*, 38 *Barb.* 480. Explained in 2 *Perry on Trusts*, 3 ed. § 610, *n.* 1, pp. 201, 203.
- **v. Durant**, 2 *Sup'm. Ct. (T. & C.)* 676. Appeal dismissed in 56 *N. Y.* 669. Decision in *Id.* disting'd (Order appointing referee not reviewable) in *Berdell v. Berdell*, 86 *Id.* 519, 521.



- **v. Eagle Fire Ins. Co.**, 9 *Wend.* 611. See Jackson *v. Dunsbagh*. Followed (Conveying freehold estate *in futuro* by deed of bargain and sale) in Bell *v. Scammon*, 15 *N. H.* 381; s. c., 41 *Am. Dec.* 706, 712, with note; Savage *v. Lec.*, 90 *N. C.* 820; s. c., 47 *Am. R.* 523. Quoted and discussed in 3 *Washb. on Real Prop.* 4 ed. 373.
- **v. Hosack**, 18 *Wend.* 319. Rev'g Hosack *v. Rogers*, 6 *Paige*, 415. Subsequent decision as Same *v. Same*, 8 *Id.* 229, aff'd in 25 *Wend.* 313. Decision in 18 *Id.* followed (Requisites of equitable assignment) in Dickenson *v. Phillips*, 1 *Barb.* 459; Hoyt *v. Story*, 3 *Id.* 264; Att'y Gen'l *v. Continental Life Ins. Co.*, 71 *N. Y.* 328; Hawley *v. Ross*, 7 *Paige*, 106. Criticised but followed in Richardson *v. Rust*, 9 *Id.* 244. Followed as settled law in Williams *v. Ingersoll*, 89 *N. Y.* 508, 518. Regarded as settled law in *Ex parte Tremont Nail Co.*, *U. S. Dist. Ct. D. Mass.* 16 *Bankr. Reg.* 448. Applied (Specific lien, when created) to mortgage,—in Otis *v. Sill*, 8 *Barb.* 119. Explained in Seymour *v. Canandaigua, &c. R. R. Co.*, 25 *Id.* 304.
- **v. Howard Ins. Co.** Reported under Same *v. Traders' Ins. Co.*, 6 *Paige*, 583.
- **v. Jones**, 1 *Wend.* 237; s. c., 19 *Am. Dec.* 493. See Gould *v. James*; Hooker *v. Cummings*. Followed (Right of fishery) in Whittaker *v. Burhans*, 62 *Barb.* 237, 240; Trustees of Brookhaven *v. Strong*, 60 *N. Y.* 56, 65. Applied in Robins *v. Ackerly*, 24 *Hun.* 500. Quoted (Municipal by-laws) in Cooley *on Const. Limit.* 5 ed. 242, n. 1.
- **v. King**, 66 *Barb.* 495. Aff'd, it seems, in 55 *N. Y.* 634, but without opinion.
- **v. —**, 8 *Paige*, 210. Disting'd (Consolidation of actions) in Schuehle *v. Reiman*, 86 *N. Y.* 270, 273.
- **v. Kneeland**, 10 *Wend.* 218. Aff'd in 13 *Id.* 114. See Leonard *v. Vredenburg*. Decision in 13 *Wend.* applied (Promise to answer for obligation of another, when original) in Durham *v. Manrow*, 2 *N. Y.* 541. Both decisions reviewed with other cases (Necessity of expressing consideration in guaranty) in Speyers *v. Lambert*, 6 *Abb. Pr. N. S.* 314. Applied in Church *v. Brown*, 21 *N. Y.* 317. Decision in 10 *Wend.* followed in Marquand *v. Hipper*, 12 *Id.* 522. Explained in Douglass *v. Howland*, 24 *Id.* 42. Cited in *Benj. on Sales*, § 232, n. u (Bennett's 4 *Am. ed.*) as sustaining the English doctrine. Approved (What may be implied from language of instrument) and applied to assignment for creditors, in Hutchinson *v. Lord*, 1 *Wis.* 286; s. c., 60 *Am. Dec.* 381, 388, with note. Compare Keep *v. Sanderson*, 2 *Wis.* 42; s. c., 60 *Am. Dec.* 404, 406, with note.
- **v. Laytin**, 80 *N. Y.* 637. Motion for re-argument denied in 81 *Id.* 642.
- **v. Long Island R. R. Co.**, 2 *Lans.* 269; s. c., 38 *How. Pr.* 289. Further proceeding in 1 *Sup'm. Ct. (T. & C.)* 396; which is said in 2 *Id.* IV, to have been aff'd in Ct. of App. See mem. in 56 *N. Y.* 620.
- **v. McElhone**, 12 *Abb. Pr.* 292; s. c., 20 *How. Pr.* 441. See (Vacating order of arrest) *Code Civ. Pro.* 1881, § 568, n.
- **v. McLean**, 31 *Barb.* 304; s. c., 10 *Abb. Pr.* 306. Rev'd in 11 *Id.* 440; and that aff'd in 34 *N. Y.* 536; s. c., 31 *How. Pr.* 279. Decision in *Id.* explained as not authority as to effect of want of appointment of guardian *ad litem*, in McMurray *v. McMurray*, 9 *Abb. Pr. N. S.* 324. See (Proceedings by and against lunatics) *Code Civ. Pro.* § 2340.
- **v. Michigan, So., & N. I. R. R. Co.**, 28 *Barb.* 539. See (Ne exeat) *Code Civ. Pro.* 1881, § 548, n.
- **v. Morton**, 12 *Wend.* 484. Aff'd in 14 *Id.* 575. See Bank of Orleans *v. Barry*.
- **v. Mulliner**. See Earl *v. Camp*.
- **v. Murray**, 3 *Paige*, 390. See Jackson *v. Morse*. Cited as authority with White *v. Carpenter*, 2 *Paige*, 238 (No resulting trust can be created by after advances) in Buck *v. Swazey*, 35 *Me.* 41; s. c., 56 *Am. Dec.* 681.
- **v. Ostrom**, 35 *Barb.* 523. See Dyett *v. Pendleton*. Collated with other cases (Eviction of lessee) in *McAdam on Landl. & T.* § 212.
- **v. Paterson**, 4 *Paige*, 450. See Field *v. Chapman*. Followed with People *ex rel.* Hawley *v. Bennett*, 4 *Paige*, 282 (Right to summarily punish for contempt) in Arnold *v. Commonwealth, Ct. of App. Ky.* May, 1882, 14 *Reporter*, 329. Compare (Constitutionality of statute for compulsory reference) St. Paul, &c. R. R. Co. *v. Gardner*, 19 *Minn.* 132.
- **v. People**, 3 *Park.* 632. Rev'd as People *v. Rogers*, in 18 *N. Y.* 9.
- **v. Rochester & H. R. R.**, 21 *Hun.* 44. Aff'd as Rogers *v. Stephens* in 86 *N. Y.* 623.
- **v. Rogers, Hopk.** 515. Further decision in 1 *Paige*, 188; which was aff'd in 3 *Wend.* 503; s. c., 20 *Am. Dec.* 716. Decision in *Id.* followed (Executor cannot revive barred claim against estate) in Burnett *v. Noble*, 5 *Redf.* 69, 74. Followed and approved in Seig *v. Acord's Executor*, 21 *Gratt. (Va.)* 365; s. c., 8 *Am. R.* 605. Applied (Effect of devise with remainder to him) in Post *v. Post*, 47 *Barb.* 89; Schoonmaker *v. Sheely*, 3 *Den.* 497; Chrystie *v. Phye*, 19 *N. Y.* 354; Matter of Sanders, 4 *Paige*, 297. Approved in Bond *v. McNiff*, 38 *Super. Ct. (J. & S.)* 83, 89. Applied (Personal property specifically bequeathed, when liable for debts) in Nagle *v. McGinnis*, 49 *How. Pr.* 194. Compared with Corwin *v. Merritt*, 3 *Barb.* 341, 347,—in 7 *South. L. Rev. N. S.* 650. Explained (Running of statute of limitations, as affected by devise in trust to pay debts) in Martin *v. Gage*, 9 *N. Y.* 400.
- **v. Ross**, 4 *Johns. Ch.* 388; s. c., 8 *Am. Dec.* 575. See cases collected (Costs in administrative suits) in 6 *Am. L. Reg. N. S.* 20.
- **v. Salmon**, 8 *Paige*, 559. Explained

- (Effect of agreement by vendor in contract for sale of land, to make improvements) as turning on purely equitable considerations, arising out of hardship,—in *Farmers' Loan & Trust Co. v. Hunt*, 16 *Barb.* 519, 522, 529.
- *v. Sinsheimer*, 50 *N. Y.* 646. Reported in 51 *Id.* 680.
- *v. Smith*, 5 *Hun.* 475. Further decision as *Rogers v. Rochester H. & P. C. R. R. Co.*, 21 *Id.* 44; which was aff'd as *Rogers v. Stephens*, in 18 *Weekly Dig.* 177; mem. s. c., 86 *N. Y.* 623. Decision in 5 *Hun* followed (Power of legislature by subsequent act to render valid town bonds illegally issued) in *Horton v. Town of Thompson*, 7 *Id.* 452; which was rev'd in 71 *N. Y.* 513.
- *v. Stephens*. See *Rogers v. Rochester H. & P. C. R. R. Co.*
- *v. Traders' Ins. Co.*, 6 *Paige*, 583. Applied (Interest that entitles one to insurance money) in *Dakin v. Liverpool, &c. Ins. Co.*, 77 *N. Y.* 602. Reviewed and disting'd in *McDonald v. Black's Adm'r*, 20 *Ohio*, 185; s. c., 55 *Am. Dec.* 448.
- *v. Warner*, 8 *Johns.* 119; s. c., 4 *N. Y. Com. L. Law. ed.* 487, with brief note. See *Walsh v. Bailie*; *Whitney v. Groot*. Disting'd (What is to be regarded as continuing guaranty) in *Lowe v. Beckwith*, 14 *B. Monr. (Ky.)* 184; s. c., 58 *Am. Dec.* 659.
- *v. Weir*, 34 *N. Y.* 463. See *Judd v. Fox*. See (Bailee's estoppel to dispute bailor's title) *Germ. Exch. B'k v. Comm'rs of Excise*, 6 *Abb. N. C.* 394, 398, a case of interpleader.
- *v. Wheeler*, 2 *Lans.* 486. Aff'd in 43 *N. Y.* 598. Further decision in 6 *Lans.* 420; which was aff'd in 52 *N. Y.* 262. Decision in 43 *Id.* disting'd (Liability of trustee, &c. operating railroad, for negligence causing injury) in *Cardot v. Barney*, 63 *Id.* 288. Applied in *Kain v. Smith*, 80 *Id.* 472. Explained (Appeal from order sustaining demurrer) in *Coit v. Stewart*, 50 *Id.* 17.
- Roget v. Merritt**, 2 *Cai.* 117. See *Ontario Bank v. Lightbody*. Explained and followed (Effect of payment in worthless money) in *Benedict v. Field*, 4 *Duer*, 154. Relied on with *Markle v. Hatfield*, 2 *Johns.* 455; *Smith v. Smith*, *Id.* 235; *Arnold v. Crane*, 8 *Id.* 79, in *Eagle Bank v. Smith*, 5 *Conn.* 71; s. c., 13 *Am. Dec.* 37, with note. Colated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 803. Explained and applied (Necessity that memorandum required by statute of frauds be signed by both parties) in *Justice v. Lang*, 42 *N. Y.* 453, 502.
- *v. Thurston*, 2 *Johns. Cas.* 248; s. c., 1 *N. Y. Com. L. Law. ed.* 504, with brief note. See to the contrary (Deviation, &c. that avoids marine policy) *Robinson v. Marine Ins. Co.*, 2 *Johns.* 89. Disapproved in *Riggin v. Patapsco Ins. Co.*, 7 *Harr. & J. (Md.)* 279; s. c., 16 *Am. Dec.* 302, 307.
- Roggen v. Avery**, 63 *Barb.* 65. Aff'd in 65 *N. Y.* 592. Decision in *Id.* cited (Validity of unacknowledged deed against subsequent grantee) in *Chamberlain v. Spargur*, 86 *Id.* 603, 606; which aff'd 22 *Hun.* 437, which see.
- Rohrbach v. Aetna Ins. Co.** See *Same v. Germania Fire Ins. Co.*
- *v. Germania Fire Ins. Co.* Reported under *Rohrbach v. Aetna Ins. Co.*, 1 *Sup'm. Ct. (T. & C.)* 339. Former decision rev'd in 62 *N. Y.* 47; s. c., 20 *Am. R.* 451; and latter aff'd, it seems, in 62 *N. Y.* 613. See *Brown v. Cattaraugus County Mut. Ins. Co.*; *Jennings v. Chenango Co. Ins. Co.*; *Rowley v. Empire Ins. Co.*; *Springfield Fire & Marine Ins. Co. v. Allen*. Decision in 62 *N. Y.* 47, applied (What is insurable interest) in *Creighton v. Homestead Fire Ins. Co.*, 17 *Hun.* 50. Applied to right to require re-sale under foreclosure,—in *Goodell v. Harrington*, 76 *N. Y.* 547. Cited with approval with *Herkimer v. Rice*, 27 *N. Y.* 163, in *Spare v. Home Mut. Ins. Co.*, *U. S. Cir. Ct. D. Oreg.* 15 *Reporter*, 615; s. c., 15 *Fed. Rep.* 707. Applied (Right of judgment creditor having lien on single piece of property) in *Vandemark v. Schoonmaker*, 9 *Hun.* 21. Disting'd (Authority, &c. of insurance agent) in *Whited v. Germania Fire Ins. Co.*, 13 *Id.* 194; which was aff'd in 76 *N. Y.* 419, which see. Explained in *Bell v. Lycoming Fire Ins. Co.*, 19 *Hun.* 245, as not overruled by *Van Schoick v. Niagara Ins. Co.*, 68 *N. Y.* 434. Applied in *Alexander v. Germania Fire Ins. Co.*, 66 *Id.* 464, 468. Said in 15 *Am. L. Rev.* 783 (citing cases) to be practically overruled in *Sprague v. Holland Purchase Ins. Co.*, 69 *N. Y.* 128. Decision in 62 *Id.* 613, explained in *Van Schaick v. Niagara Fire Ins. Co.*, 68 *Id.* 441.
- Rolker v. Great Western Ins. Co.**, 8 *Dow.* 222. Rev'd in 3 *Keyes*, 17; s. c., 4 *Abb. Ct. App. Dec.* 76.
- Roll v. Northern Central R'y Co.**, 15 *Hun.* 496. Aff'd, it seems, in 80 *N. Y.* 647, but without opinion.
- Rollin v. Cross**, 45 *N. Y.* 766. Disting'd (Foreclosure of mechanics' lien by assignee of claim) in *Brown v. Gregory*, 18 *Weekly Dig.* 45. Disting'd (Rights of assignee of laborer) in *Krauser v. Ruckel*, 17 *Hun.* 466. Followed (Mechanics' lien as against one having contract of purchase) in *McGraw v. Godfrey*, 56 *N. Y.* 611. Applied as against lessor in *Burkitt v. Harper*, 79 *Id.* 276.
- Rollwagen. Matter of**, 48 *How. Pr.* 289. Aff'd as *Rollwagen v. Rollwagen*, in 3 *Hun.* 121; s. c., 5 *Sup'm. Ct. (T. & C.)* 402; and that aff'd in 63 *N. Y.* 504. Decision in *Id.* cited (Undue influence on testator) in *Merrill v. Rolston*, 5 *Redf.* 220, 234. Applied in *McCoy v. McCoy*, 49 *Id.* 54, 59. Decision in 3 *Hun* disting'd in *Mairs v. Freeman*, 3 *Redf.* 190.
- Rollwagen v. Rollwagen**. See *Matter of Rollwagen*.
- Romain v. Garth**, 5 *Sup'm. Ct. (T. & C.)* 361; s. c., less fully, 49 *How. Pr.* 61; mem. s. c., 3 *Hun.* 214.

**Romaine v. Van Allen**, 26 *N. Y.* 309. See *Suydam v. Jenkin*. Examined and overruled (Rule of damages for conversion) in *Baker v. Drake*, 53 *N. Y.* 211, 213, 222. Relied on by DENIO, Ch. J., in *Scott v. Rogers*, 4 *Abb. Ct. App. Dec.* 157, 162, *n.* Followed in *Lobdell v. Stowell*, 51 *N. Y.* 70, 75; which aff'd 37 *How. Pr.* 91, which see. Disting'd in *Whelan v. Lynch*, 65 *Barb.* 329.

**Roman Catholic German Church of Albany v. Wachter**, 42 *Barb.* 43. See *Lupton v. Lupton*. Followed (Legacy, when charged on real estate) in *Ragan v. Allen*, 7 *Hun*, 539.

**Roman Catholic Orphan Asylum v. Emmons**, 3 *Bradf.* 144. Reviewed with *Mann v. Mann*, 1 *Johns. Ch.* 281; *Pritchard v. Hicks*, *Id.* 270; *Connolly v. Pardon*, *Id.* 291; *Jackson v. Sill*, 11 *Id.* 201, and other cases (Parol evidence to vary will) in *Fitzpatrick v. Fitzpatrick*, 36 *Iowa*, 674; *s. c.*, 14 *Am. R.* 538, 542, 544, 546.

**Rome Exchange Bank v. Eames**, 4 *Abb. Ct. App. Dec.* 83. Discussed (Reservation in grantor's favor in assignment for benefit of creditors) in *Burrill on Assign.* § 350, *n.* 4, 4 ed.

**Romertze v. East River Nat. Bank**, 49 *N. Y.* 577. Rev'g 2 *Sweeny*, 82.

**Rood v. N. Y. & Erie R. R. Co.**, 18 *Barb.* 80. Explained (Presumption as to negligence causing spread of fire from locomotive) in *Fero v. Buffalo & State Line R. R. Co.*, 22 *N. Y.* 209, 212. Cited with *Sheldon v. Hudson River R. R. Co.*, 29 *Barb.* 226; 14 *N. Y.* 218; *Fero v. Buffalo & State Line R. R. Co.*, 22 *Id.* 209; *Field v. N. Y. Central R. R. Co.*, 32 *Id.* 339, as according with the weight of authority,—in *Gandy v. Chicago & N. W. R. R. Co.*, 30 *Iowa*, 420; *s. c.*, 6 *Am. R.* 682, 684. Explained in 2 *Best on Ev.* § 427, *n. a*, Wood's ed. Applied (Rule of compensation for damage resulting from construction of railroad) in *Matter of N. Y. Central, &c. R. R. Co.*, 15 *Hun*, 68. Disting'd (Damages contemplated on conveyance to railroad company) in *Ludlow v. Hudson River R. R. Co.*, 6 *Lans.* 132. Doubted (Rights of one in possession of land, under contract to purchase) in *Van Deusen v. Young*, 29 *Barb.* 17. Followed in *Hay's Admr v. Miller*, 6 *Hun*, 320, 326.

**Roof v. Stafford**, 7 *Cov.* 179. Rev'd in 9 *Id.* 623. Both decisions commented on (Contracts with infants) in 1 *Chitty on Contr.* 194, *n. k*, 11 *Am. ed.* Decision in 7 *Cov.* discussed in 2 *Kent Com.* 237, *n. b*.

**Roome v. Phillips**, 24 *N. Y.* 463. Further decision in 27 *Id.* 357. See *Conklin v. Egerton*. Decision in 27 *N. Y.* explained (Authority of administrator with will annexed, to execute power of sale) in *Humbert v. Wurster*, 22 *Hun*, 405, 407. Commented on in 2 *Perry on Trusts*, 3 ed. § 500, *n.* 3. Applied (Limit of executor's authority as to sale of real estate) in *Russell v. Russell*, 36 *N. Y.* 585.

**Rooney v. Second Ave. R. R. Co.**, 18 *N. Y.* 368. Followed (Attorney's lien on judgment) in *Ely v. Cook*, 2 *Abb. Ct. App. Dec.* 14, 17. Applied in *Zogbaum v. Parker*, 66 *Barb.* 343; *Fox v. Fox*, 24 *How. Pr.* 414. Followed (Attorney's lien for other than costs) in *Hall v. Ayer*, 9 *Abb. Pr.* 221; *Adams v. Fox*, 27 *How. Pr.* 412; *Brown v. Mayor, &c. of N. Y.*, 9 *Hun*, 595. Approved in *Crotty v. MacKenzie*, 52 *How. Pr.* 55; which was aff'd in 42 *Super. Ct.* 194, 199, which see. See *Richardson v. Brooklyn City, &c. R. R. Co.*, 24 *How. Pr.* 323. Discussed with *Ely v. Cook*, 28 *N. Y.* 373; *Dunkin v. Vandenberg*, 1 *Paige*, 626; *Marshall v. Meech*, 51 *N. Y.* 140; and many other cases in *Re Wilson*, *U. S. Dist. Ct. S. D. N. Y.*, 26 *Alb. L. J.* 271. Disapproved in *Forsythe v. Beveridge*, 52 *Ill.* 268; *s. c.*, 4 *Am. R.* 612. Collated with *Bowling Green B'k v. Todd*, 52 *N. Y.* 489, and other cases in *Whart. Com. on Ag.* § 626. See also *Id.* § 629; citing *Pulver v. Harris*, 52 *N. Y.* 73, and other cases as showing limitations on doctrine of such lien. Applied (Attorney as party to proceedings to enforce his claims) in *Murray v. Jibson*, 22 *Hun*, 388.

**Roosevelt v. Bull's Head Bank**, 45 *Barb.* 579. Collated with other cases (Tender, how to be made) in *McAdam on Landl. & T.* 2 ed. § 154.

— **v. Cebra**, 17 *Johns.* 108. Explained with *Mather v. Bush*, 16 *Id.* 233; *Matter of Wendell*, 19 *Id.* 153; *Van Raugh v. Van Arsdaln*, 3 *Cai.* 154 (Effect of discharge under insolvent act) in *Sherrill v. Hopkins*, 1 *Cov.* 103, 106.

— **v. Draper**, 23 *N. Y.* 318. Aff'g 7 *Abb. Pr.* 108; *s. c.*, 16 *How. Pr.* 137; which rev'd *Roosevelt v. Varnum*, 12 *Id.* 469. See *Christopher v. Mayor, &c. of N. Y.*; *Doolittle v. Supervisors of Broome*. Decision in 23 *N. Y.* disting'd (Power of individual tax payer to maintain proceedings to restrain action of public authorities) in *People ex rel. Haskin v. Supervisors of Westchester*, 8 *Abb. Pr. N. S.* 278. Limited in *Mann v. Board of Education*, 53 *How. Pr.* 297. Applied in *Burch v. Cavanaugh*, 12 *Abb. Pr. N. S.* 416; *Comins v. Sup'rs of Jefferson*, 3 *Sup'm. Ct. (T. & C.)* 297; *Roosevelt v. Draper*, 61 *Barb.* 124; *Ayres v. Lawrence*, 63 *Id.* 459; which was rev'd in 59 *N. Y.* 195, which see; *Tift v. City of Buffalo*, 65 *Barb.* 461; *Demarest v. Wickham*, 63 *N. Y.* 324. Disting'd in *Lutes v. Briggs*, 5 *Hun*, 71. See *L. 1872, c. 161*, as explained in *Latham v. Richards*, 15 *Hun*, 133. Applied to action by people in *People v. Mayor, &c. of N. Y.*, 27 *How. Pr.* 35; but see dicta in decision in 7 *Abb. Pr.* and in *People v. Mayor, &c. of N. Y.*, 32 *Barb.* 102, criticised in *People v. Miner*, 2 *Lans.* 409, where decision in 23 *N. Y.* is applied. Explained at length in *Pomeroy on Eq. Jur.* § 266, *n.* 2. Explained (Effect of conveyance taken from city by officer

- thereof) in *People v. Brennan*, 39 *Barb.* 540.
- **v. Fulton**, 7 *Cow.* 107. Explained with *Pelletreau v. Moore*, 9 *Wend.* 493, with reference to provisions of Code (Stay of proceedings by bill of exceptions) in *Jellinghaus v. N. Y. Ins. Co.*, 5 *Bosw.* 678, 680. Explained (Recitals in wills) in 2 *Jarm. on Wills*, Rand. & T. ed. 104, n.
- **v. Gardinier**, 2 *Cow.* 463. See *Franklin v. Talmadge*. Followed and approved (Initials as part of name) in *Hart v. Lindsey*, 17 *N. H.* 235; s. c., 43 *Am. Dec.* 597, with note.
- **v. Linkert**. See *Roosevelt v. Luikert*.
- **v. Luikert**, 3 *Weekly Dig.* 132. Appeal dismissed in *Roosevelt v. Linkert*, 67 *N. Y.* 447.
- **v. Mark**, 6 *Johns. Ch.* 266. See *Cumming v. Hackley*; *Hackley v. Patrick*; *Kane v. Bloodgood*; *Lansing v. Starr*. Explained (Effect of payment of dividend by trustees for creditors, as new promise by debtor) in *Barger v. Durvin*, 22 *Barb.* 69. Followed in *Pickett v. Leonard*, 34 *N. Y.* 176. Discussed with other cases in 1 *Greenl. on Ev.* § 112, n. c. Quoted in 1 *Ang. on Limit.* § 253, 6 ed. Applied (Validity of security wherein amount secured is not specified) in *Robinson v. Williams*, 22 *N. Y.* 384. Explained (Effect of devise in trust, to revive debt barred by statute of limitations) in *Martin v. Gage*, 9 *Id.* 400. Reviewed and followed in *Peck v. Botsford*, 7 *Conn.* 172; s. c., 18 *Am. Dec.* 92, with note. Applied (Surety, when entitled to enforce security taken by him) in *Bank v. Douglass*, 4 *Watts (Pa.)* 95; s. c., 28 *Am. Dec.* 689, with note.
- **v. Roosevelt**, 6 *Hun.* 31. Aff'd, it seems, in 64 *N. Y.* 651, but without opinion.
- **v. Thurman**, 1 *Johns. Ch.* 220. Statement of marginal note corrected (Effect of words "dying without issue") in *Dallam's Lessee*, 7 *Har. & J. (Md.)* 250.
- **v. Varnum**. See *Roosevelt v. Draper*.
- Roosevelt Hospital v. Mayor, &c. of N. Y.**, 18 *Hun.* 582. Aff'd in 84 *N. Y.* 108. See *Buffalo City Cemetery v. City of Buffalo*.
- Root v. French**, 13 *Wend.* 570; s. c., 28 *Am. Dec.* 482, with note, wherein it is shown to have been frequently cited both in N. Y. and elsewhere. See *Day v. Coddington*; *Padgett v. Lawrence*. Explained (Title under fraudulent purchase) in *Hunter v. Hudson River Iron, &c. Co.*, 20 *Barb.* 501; *Tallman v. Terck*, 26 *Id.* 170. Applied in *King v. Phillips*, 8 *Bosw.* 607; *Ash v. Putnam*, 1 *Hill*, 305. Disapproved in *Stevens v. Hyde*, 32 *Barb.* 179. Approved, — but also disapproved as to remedy, in *Cary v. Hotailing*, 1 *Hill*, 313. Applied (Rights of purchaser from fraudulent vendor) in *White v. Bullock*, 4 *Abb. Ct. App. Dec.* 575, 578; *Barnard v. Campbell*, 65 *Barb.* 289; which was aff'd in 58 *N. Y.* 79, which see. Reviewed with other cases in *Weaver v. Barden*, 49 *Id.* 292. Disting'd in *Henry v. Wilkes*, 37 *Id.* 565. Opposed with *Payne v. Cutler*, 13 *Wend.* 605; *Wardell v. Howell*, 9 *Id.* 170; *Rosa v. Brotherson*, 10 *Id.* 85; *Fulton Bank v. Phoenix Bank*, 1 *Hull*, 562; *Coddington v. Bay*, 20 *Johns.* 637; *Dickerson v. Tillinghast*, 4 *Paige*, 215, 222 (Antecedent debt, as valuable consideration) in *Brush v. Scribner*, 11 *Conn.* 388. Examined in *Waggoner v. Cooley*, 17 *Ill.* 245. Approved (Rights of innocent purchaser as against wrongdoer) in *Moyce v. Nervington*, *L. R.* 4 *Q. B. Div.* 32, 35; and see *Ilamet v. Letcher*, 37 *Ohio St.* 356, 358.
- **v. Great Western R'y Co.**, 65 *Barb.* 619; s. c., 1 *Sup'm. Ct. (T. & C.)* 10. Aff'd in 55 *N. Y.* 636. Previous decision in 45 *Id.* 524; which rev'd 2 *Lans.* 199. See *Van Santvoord v. St. John*. Decision in 45 *N. Y.* followed with *Maghee v. Camden, &c. R. R. Co.*, *Id.* 514 (Liability of connecting railroad companies) in *King v. Macon, &c. R. R. Co.*, 62 *Barb.* 160, 174.
- **v. King**, 7 *Cow.* 613. Aff'd as *King v. Root*, in 4 *Wend.* 113. See *Foot v. Tracy*; *Mapes v. Weeks*; *Matson v. Buck*. Decision in 7 *Cow.* disapproved (Evidence of character to mitigate damages, in action for defamation) 1 *Am. L. Reg. N. S.* 173. Collated with *Douglass v. Tousey*, 2 *Wend.* 352; *Inmon v. Foster*, 8 *Id.* 602; *Foot v. Tracy*, 1 *Johns.* 45, and other cases, in 1 *Taylor on Ev.* 365. Decision in 4 *Wend.* followed (Truth as defense to civil action for libel) in *Castle v. Houston*, 19 *Kan.* 417; s. c., 27 *Am. R.* 127. Both decisions cited as authority (Newspaper statements respecting candidates for, or incumbents of office, when actionable *per se*) in *Sweeney v. Baker*, 13 *W. Va.* 158; s. c., 31 *Am. R.* 757, 760.
- **v. Lowndes**, 6 *Hill*, 518. Applied (Proof of repetition in action for slander) in *Bassil v. Elmore*, 65 *Barb.* 631. Compare *Flanders v. Groff*, 25 *Hun.* 554. Applied (Evidence of malice) in *Bush v. Prosser*, 11 *N. Y.* 359. Followed (Proof of other slanderous words than those alleged) in *Keenholts v. Becker*, 3 *Den.* 349. Doubted in *Frazier v. McCloskey*, 2 *Sup'm. Ct. (T. & C.)* 267; which was rev'd in 60 *N. Y.* 338, which see. Explained in 3 *Pars. on Contr.* 168, n. v.
- **v. Sherwood**, 6 *Johns.* 68. See *Fox v. Smith*; *People v. McKay*. Applied with *Blackley v. Sheldon*, 7 *Johns.* 32 (When verdict is final) in *Walters v. Junksins*, 16 *Serg. & R. (Pa.)* 414; s. c., 16 *Am. Dec.* 585, with note; see *Co. Litt.* 227, c. f.
- **v. Stuyvesant**, 18 *Wend.* 257. Cited in illustration (Overruling decisions of court of last resort) in *Butler v. Van Wyck*, 1 *Hill*, 438, 463. Disapproved (Effect of void provision in will on provision otherwise valid) in *Lang v. Ropke*, 5 *Sandf.* 372. Disting'd in *Williams v. Williams*, 8 *N. Y.* 525, 539. Discussed in 4 *Kent-Com.* 281, n. a.

- **v. Taylor**, 20 *Johns*. 137. Applied (Set-off against administration) in *Patterson v. Patterson*, 59 *N. Y.* 577.
- **v. Wright**, 21 *Hun*, 344. Rev'd in 84 *N. Y.* 72; s. c., 38 *Am. R.* 495. See *Edington v. Mut. Life Ins. Co.* Decision in 84 *N. Y.* disting'd (Privilege of communications between attorney and client) in *Sherman v. Scott*, 27 *Hun*, 331.
- Roraback v. Stebbins**, 33 *How. Pr.* 378; s. c., 3 *Keyes*, 62. See *Brittin v. Wilder*. Reviewed with *Watkins v. Abrahams*, 24 *N. Y.* 72, and other cases (Confession of judgment by married woman) in *Tyler on Inf. & Cov.* § 465.
- Rorke v. Russell**, 2 *Lans.* 244. Cited (Action against president of voluntary association) in *Fritz v. Muck*, 62 *How. Pr.* 69, 73.
- Rosa v. Brotherson**, 10 *Wend.* 86. See *Bay v. Coddington*; *Bristol v. Sprague*; *Coddington v. Bay*; *Root v. French*. Referred to as overruled (Discharge of pre-existing debt, as consideration) in *Scott v. Betts*, *Hill & D.* 363, 370; *Depeau v. Wadlington*, 6 *Whart. (Pa.)* 220; s. c., 36 *Am. Dec.* 216, 220, with note. Cited as authority with *Wardell v. Howard*, 9 *Wend.* 170; *Hart v. Palmer*, 12 *Id.* 523; *Coddington v. Bay*, 20 *Johns*. 637, in *Ingerson v. Starkweather*, *Walk. Ch. (Mich.)* 346, 353. Reviewed as overruled in 1 *Ky. L. Rep.* 411.
- **v. Butterfield**, 33 *N. Y.* 665. Followed (Usury in contracts with corporations) in *Stevens v. Watson*, 4 *Abb. Ct. App. Dec.* 305; *Graves v. Lovell*, 38 *Super. Ct. (J. & S.)* 156. Followed as decisive, in *Stewart v. Bramhall*, 74 *N. Y.* 87; which aff'd 11 *Hun*, 140, which see. Explained in *Merchants' Exch. Nat. B'k v. Comm. Warehouse Co.*, 49 *N. Y.* 641; *Strong v. N. Y. Laundry Man'g Co.*, 37 *Super. Ct. (J. & S.)* 283, 286. Applied in *Re Wild*, 11 *Blatchf. Ct. Ct.* 243, 250. Cited with approval in *Freese v. Brownell*, 35 *N. J.* 285; s. c., 10 *Am. R.* 239, 243.
- Rosboro v. Peck**, 48 *Barb.* 92. Disting'd and criticised (Parol evidence to vary consideration) in *Anthony v. Harrison*, 14 *Hun*, 198, 213.
- Roscoe v. Maison**, 7 *How. Pr.* 121. Disapproved (Effect of plaintiff's election to reply) in *Silliman v. Eddy*, 8 *Id.* 122.
- Rose v. Baker**, 13 *Barb.* 230. Criticised and limited (Effect of transfer of debt, to carry additional securities) in *Battle v. Coit*, 26 *N. Y.* 404, 407.
- **v. Boston & Albany R. R. Co.**, 57 *N. Y.* 217. Explained (Liability of railroad company to employe as to care in running train) in *Slater v. Jewett*, 85 *Id.* 61, 71. Explained in *Moak's Underhill's Torts*, 1 *Am. ed.* 62.
- **v. Clark**, 8 *Paige*, 574. See *Fenton v. Reed*; *Foster v. Hawley*; *Starr v. Peck*. Applied (Cobabitation, as furnishing presumption of marriage) in *Jackson v. Claw*, 18 *Johns.* 346; which was followed in *Durand v. Durand*, 2 *Sweeny*, 315, 322. Disting'd in *Machini v. Zanoni*, 5 *Redf.* 492, 495. Quoted in 1 *Bish. on Mar. & D.* § 280, 6 ed.
- **v. Rose**, 4 *Abb. Ct. App. Dec.* 108. See *Hone v. Van Schnick*. See papers, arguments, &c. in No. 56 of Charles O'Connor's "My Own Cases," *L.-w Inst. Libr.* N. Y. city. See to same effect (Limitation over on void term not saved by acceleration) *Rudall v. Warren*, 1 *Deane (Eng. Ecc.)* 306. Quoted in 1 *Jarm. on Wills*, *Rand. & T. ed.* 511, n.
- **v. —**, 11 *Paige*, 166. Approved (Provision for mandamus, as affecting wife's claim to alimony *pendente lite*) in *Collins v. Collins*, 80 *N. Y.* 11.
- **v. Smith**, 4 *Cov.* 17; s. c., 15 *Am. Dec.* 331. See *Brant v. Fowler*; *Wilson v. Abrahams*.
- **v. U. S. Teleg. Co.** See *Young v. Western Union Teleg. Co.*
- Roseboom v. Mosher**, 2 *Den.* 61. See *Conklin v. Egerton*. Examined and applied (Valid execution of discretionary power of sale given by will) in *Taylor v. Morris*, 1 *N. Y.* 341, 349. Quoted in 2 *Perry on Trusts*, 3 ed. § 785.
- **v. Roseboom**, 15 *Hun*, 309. Aff'd in 81 *N. Y.* 356. See *Taggart v. Murray*. Decision in 81 *N. Y.* followed (Meaning of "all" in will) in *Harrison v. Jewell*, 2 *Den.* 37.
- Rosebrooks v. Dinsmore**, 4 *Robt.* 672. Rev'd in 5 *Abb. Pr. N. S.* 59; s. c., 36 *How. Pr.* 138; 4 *Abb. Ct. App. Dec.* 118.
- Rosecrans v. Van Antwerp**, 4 *Johns.* 228. Relied on (Necessity that all of several joint obligees join in assignment of obligation) in *Sanders v. Blain's Adm'rs*, 6 *J. J. Marsh. (Ky.)* 446; s. c., 22 *Am. Dec.* 86.
- Rosekrans v. Rosekrans**, 7 *Lans.* 486. Compare (Wife as party to partition action) *Code Civ. Pro.* § 1538.
- Rosenback Manufacturers' & Builders' Bank**, 10 *Hun*, 148. Aff'd in 69 *N. Y.* 358.
- **v. Salt Springs Nat. B'k**, 53 *Barb.* 495. Criticised as contrary to doctrine of U. S. Sup'm. Ct. (Effect of provision prohibiting tranfer of bank stock by one indebted to bank) in 6 *South. L. Rev. N. S.* 531, n.
- Rosenzweig v. People**, 6 *Lans.* 462; s. c., more fully as *Rosenweig v. People*, 63 *Barb.* 634. See account published at Philadelphia, of proceedings at N. Y. General Sessions, 1872.
- Rosevelt v. Bank of Niagara**, *Hopk.* 579. Aff'd in 9 *Cov.* 409.
- **v. Brown**, 11 *N. Y.* 148. See *Adderly v. Storm*. Applied (Liability of transferee of stock, as stockholder) in *Matter of Empire City Bank*, 18 *N. Y.* 199, 223. Disting'd in *Cutting v. Damerel*, 88 *Id.* 416. Limited in *Wintringham v. Rosenthal*, 25 *Hun*, 581. Followed with *Adderly v. Storm*, 6 *Hill*, 624; *Worrall v. Judson*, 5 *Barb.* 210; *U. S. Trust Co. v. U. S. Fire Ins. Co.*, 18 *N. Y.* 224, in *Magruder v. Colston*, 44 *Md.* 349; s. c., 22 *Am. R.* 47. Explained in *Ang. & A. on Corp.* § 610, n. 2, 11 ed.

- Ross v. Ackerman**, 46 *N. Y.* 210. Disting'd (Usury in discounting one note, not provable by evidence of usury in discounting other notes) in *Pooler v. Curtiss*, 3 *Sup'm. Ct. (T. & C.)* 228, 230. Applied (Contradiction of witness) in *Stape v. People*, 21 *Hun.* 399, 401; which was rev'd in 85 *N. Y.* 390.
- **v. Bedell**, 5 *Duer*, 462. Followed (Requisites of seal) in *Gillespie v. Brooks*, 2 *Redf.* 349, 366. Cited as authority in *Richard v. Boller*, 6 *Daly*, 460, 462.
- **v. Combes**, 37 *Super. Ct. (J. & S.)* 289. Disting'd (Reference in case of several issues) in *Maryott v. Thayer*, 39 *Id.* 417.
- **v. Ferris**, 18 *Hun.* 210. Followed (Discharge of surety on appeal bond) in *Kendall v. Grice*, 1 *Mack. (Dist. of C.)* 279; s. c., 47 *Am. R.* 243.
- **v. Curtiss**, 31 *N. Y.* 606. Aff'g *Ross v. Curtis*, 30 *Barb.* 238. See *Starin v. Town of Genoa*. Decision in 30 *Barb.* disting'd (Liability of one receiving public money as agent) in *Hall v. Lauderdale*, 46 *N. Y.* 70, 77. Decision in 31 *Id.* disting'd in *Biddlecom v. Newton*, 13 *Hun.* 587; *Shepherd's Fold v. Mayor, &c. of N. Y.*, 13 *Weekly Dig.* 572. Compared in *Healey v. Dudley*, 5 *Lans.* 126. Followed as conclusive in *People ex rel. Martin v. Brown*, 55 *N. Y.* 187; *First Nat. B'k of Oxford v. Wheeler*, 72 *Id.* 204.
- **v. Harden**, 42 *Super. Ct. (J. & S.)* 427. Further decisions in 44 *Id.* 26; *Id.* 579; and the latter aff'd in 79 *N. Y.* 84. With decision in *Id.* see (Right to contract for care of property after one's death) *Nat. B'k of Newburgh*, 83 *Id.* 51, 57. Decision in 42 *Super. Ct. (J. & S.)* followed (Ordering exceptions to be heard at General Term, after denying motion for new trial) in *Garner v. Mangam*, 46 *Id.* 365, 368.
- **v. Luther**, 4 *Cov.* 158; s. c., 15 *Am. Dec.* 341, with extended note (What is commencement of action). Commented on in *Ang. on Limit.* § 312, 6 ed.
- **v. Mather**, 47 *Barb.* 582. Rev'd in 51 *N. Y.* 108; s. c., 10 *Am. R.* 562. See *Parker v. Rensselaer & Saratoga R. R. Co.* Decision in 51 *N. Y.* applied (Recovery as on contract, in case of allegations of tort) in *Berrian v. Mayor, &c. of N. Y.*, 15 *Abb. Pr. N. S.* 209; *Peck v. Root*, 5 *Hun.* 549; *People v. Denison*, 19 *Id.* 147; *Dudley v. Scranton*, 57 *N. Y.* 428. Disting'd in *Graves v. Waite*, 59 *Id.* 162; *Greentree v. Rosentstock*, 61 *Id.* 590. Commented on in *Abb. Tr. Ev.* 285, n., citing *Code Civ. Pro.* § 529. Decision in 47 *Barb.* disting'd (Necessity of proof of *scienter*, to establish warranty) in *Littauer v. Goldman*, 72 *N. Y.* 506, 513.
- **v. Mayor, &c. of N. Y.**, 32 *How. Pr.* 164; s. c., 2 *Abb. Pr. N. S.* 266. Limited (Reference in case of long account) in *Batchelor v. Albany City Ins. Co.*, 6 *Id.* 240, 247. Collated with other cases in *Hoffm. on Referees*, 14.
- **v. N. Y. Central, &c. R. R. Co.**, 5 *Hun.* 488. Aff'd in effect, it seems, in 74 *N. Y.* 617, but without opinion. See vol. 493, *Cas. in Ct. of App. Law Inst. Libr. N. Y. city*. Both decisions applied with *Russell v. Hudson River R. R. Co.*, 17 *N. Y.* 184 (Liability of railroad company for injuries received by one transported free of charge) in *Vick v. N. Y. Central, &c. R. R. Co.*, 95 *Id.* 287.
- **v. People**, 5 *Hill*, 294. Applied (Larceny of property intrusted to another for purposes of sale) in *Zink v. People*, 77 *N. Y.* 127.
- **v. Roberts**, 2 *Hun.* 90; s. c., 4 *Sup'm. Ct. (T. & C.)* 318. Aff'd, it seems, in 63 *N. Y.* 652, but without opinion. Compare (When equitable conversion takes effect) *Freeman v. Smith*, 60 *How. Pr.* 311.
- **v. Ross**, 6 *Hun.* 182. See *Soulden v. Van Rensselaer*. Disapproved (Practice on appeal from surrogate's decree) in *Cox v. Schermerhorn*, 18 *Hun.* 16, 18. Approved (Evidence of personal transaction with deceased) in *Marsh v. Gilbert*, 2 *Redf.* 465, 475.
- **v. Sadgbeer**, 21 *Wend.* 166. Applied (Presumption as to validity of contract in restraint of trade) in *Weller v. Hersee*, 10 *Hun.* 431, 433. Cited in *Kellogg v. Larkin*, 3 *Pinn. (Wis.)* 123; 3 *Chand.* 133; s. c., 56 *Am. Dec.* 164. Approved in 2 *Kent. Com.* 467, n. 2, as containing well reasoned conclusions of law.
- **v. Terry**, 63 *N. Y.* 613. Applied (Cause of action when on contract, and not in tort) in *Sparman v. Keim*, 9 *Abb. N. C.* 1, 6. Disting'd (Implied warranty on transfer of written instrument) in *Littauer v. Goldman*, 72 *N. Y.* 506, 511. See to the contrary (Express warranty as precluding implied) *Whitmore v. South Boston Iron Co.*, 2 *Allen (Mass.)* 52; s. c., 1 *Am. L. Reg. N. S.* 403. But see *Abb. Tr. Ev.* 345. See to the contrary (Proof in action for false warranty) *Code Civ. Pro.* 549. See also *Abb. Tr. Ev.* 339.
- **v. Whitefield**, 36 *Super. Ct. (J. & S.)* 50. Aff'd in 56 *N. Y.* 640.
- **v. Wood**, 51 *How. Pr.* 196. Aff'd in 8 *Hun.* 185, which also contains same opinion, and was aff'd in 70 *N. Y.* 8. Decision in *Id.* followed (Relief against former judgment on ground of fraud) and *Dobson v. Pearce*, 12 *Id.* 157, disting'd in *N. Y. Central R. R. Co. v. Harrold*, 65 *How. Pr.* 89. Disting'd in *Verplank v. Van Buren*, 76 *N. Y.* 247, 256.
- Rosse v. Rust**. See *Perine v. Dunn*.
- Rossiter v. Rossiter**, 8 *Wend.* 494; s. c., 24 *Am. Dec.* 62, with note containing citations. See *Dusenbury v. Ellis*. Disting'd (Liability of one contracting as agent) in *Plumb v. Milk*, 19 *Barb.* 78; *Hegeman v. Johnson*, 35 *Id.* 205. Applied in *Sturdivant v. Hull*, 59 *Me.* 172; s. c., 8 *Am. R.* 409. Criticised and questioned with *Palmer v. Stephens*, 1 *Den.* 471; *Dusenbury v. Ellis*, 3 *Johns. Cas.* 70, in *Sheffield v. Ladue*, 16 *Minn.* 388;

- s. c., 10 *Am. R.* 145, and said to be weakened by the later cases of *White v. Madison*, 26 *N. Y.* 117; *Walker v. Bank of State of N. Y.*, 9 *Id.* 582. Cited in *Whart. Com. on Ag.* § 75. Applied (Limit of authority of special agent) in *Holtsinger v. Nat. Corn Exch. B'k*, 6 *Abb. Pr. N. S.* 298. Disting'd in *Wicks v. Hatch*, 62 *N. Y.* 541; *North River B'k v. Rogers*, 22 *Wend.* 651. Applied in *Wood v. McCain*, 7 *Ala.* 800; s. c., 42 *Am. Dec.* 612; 614. Included in 1 *Hare & W. Am. L. Lead. Cas.* 5 ed. 659.
- Roswog v. Seymour**, 7 *Robt.* 427. Collated with other cases (Proceedings for discharge of imprisoned debtor) in *Bishop on Assign.* § 43. Collated with other cases (Necessity that proceedings be "just and fair") in *Id.* § 121.
- Rotan v. Fletcher**. See *Schermerhorn v. Van Volkenburgh*.
- Roth v. Buffalo & State Line R. R. Co.**, 34 *N. Y.* 548. Disting'd (Continuation of carrier's liability as to baggage) in *Curtis v. Avon*, &c. *R. R. Co.*, 49 *Barb.* 154; *Mattison v. N. Y. Central R. R. Co.*, 57 *N. Y.* 559. Followed in *Holdridge v. Utica*, &c. *R. R. Co.*, 56 *Barb.* 192. Relied on, and explained in *Chicago, Rock Island, &c. R. R. Co. v. Boyce*, 73 *Ill.* 510; s. c., 24 *Am. R.* 268. Cited as authority with *Powell v. Meyers*, 26 *Wend.* 591, in *Mote v. Chicago & Northwestern R. R. Co.*, 27 *Iowa*, 22; s. c., 1 *Am. R.* 212. Explained in *Ang. on Carr.* § 114, n. u. 5 ed. Criticised (Reasonable time for continuation of carrier's liability, how determined) in *Lamb v. Camden*, &c. *R. R. Co.*, 2 *Daly*, 473. Doubted in *Burnell v. N. Y. Central R. R. Co.*, 45 *N. Y.* 187.
- **v. Palmer**, 27 *Barb.* 652. Followed with *Masson v. Boret*, 1 *Den.* 69; *Osborne v. Bell*, 5 *Id.* 370; *Kingman v. Hotailing*, 25 *Wend.* 423 (Remedy of vendor of goods obtained tortiously) in *Wigand v. Sichel*, 3 *Keyes*, 120. Disapproved with *Wigand v. Sichel* in *Kellogg v. Turpie*, 93 *Ill.* 265; s. c., 34 *Am. R.* 166. Criticised in 33 *Am. Dec.* 706, n., as anomalous and illogical. Followed (Admissibility of allegations of fraud when not the *gravamen* of the suit) in *Campbell v. Wright*, 21 *How. Pr.* 9, 14.
- **v. Wells**, 41 *Barb.* 194. Aff'd in 29 *N. Y.* 471. Decision in *Id.* followed (Sufficiency of levy) in *Bond v. Willet*, 1 *Abb. Ct. App. Dec.* 169, 173; *Elias v. Farley*, 2 *Id.* 14. Applied (Effect of execution without levy) in *Stewart v. Beale*, 7 *Hun*, 412. Examined at length, in *Hathaway v. Howell*, 54 *N. Y.* 103. Applied (Effect of levy on property subsequently purchased by debtor) in *Hodge v. Adeo*, 2 *Lans.* 319.
- Rounds v. Delaware, Lackawanna, &c. R. R. Co.**, 3 *Hun*, 329; s. c., 5 *Sup'm. Ct. (T. & C.)* 475. Aff'd in 64 *N. Y.* 229; s. c., 21 *Am. R.* 597. See *Higgins v. Watervliet Turnpike Co.*; *Hoffman v. N. Y. Central, &c. R. R. Co.*; *Nicholson v. Erie R'y Co.* Decision in 64 *N. Y.* applied (Liability for servants' tortious acts) in *Peck v. N. Y. Central, &c. R. R. Co.*, 8 *Hun*, 287; *Cohen v. Dry Dock, &c. R. R. Co.*, 69 *N. Y.* 173; *Hoffman v. N. Y. Central, &c. R. R. Co.*, 44 *Super. Ct. (J. & S.)* 4. Disting'd in *Molloy v. N. Y. Central, &c. R. R. Co.*, 10 *Daly*, 453. Cited as authority with *Cohen v. Dry Dock, &c. R. R. Co.*, 69 *N. Y.* 170, as preferable to doctrine in *Vanderbilt v. Turnpike Co.*, 2 *Id.* 479, and other earlier cases,—in *Gilliam v. S. & N. Ala. R. R. Co.*, 70 *Ala.* 270. See also *N. Y.* doctrine approved in 15 *Fed. Rep.* 60, n. Quoted in *Moak's Underhill's Torts*, 1 *Am. ed.* 32. Decision in 5 *Sup'm. Ct. (T. & C.)* explained and commented on in *Add. on Torts*, 590, n. Wood's ed.
- Rouse v. Whited**, 25 *Barb.* 279. Rev'd in 25 *N. Y.* 170. Decision in *Id.* applied (Necessity that admission be taken as entirety) to pleading,—in *Goodyear v. Delavergne*, 10 *Hun*, 537, 539. Disting'd in *Misselbeck v. Greime*, 2 *Sup'm. Ct. (T. & C.)* 660. Applied (Limit of proof of statements explaining what opposite party has called out) to declarations of third persons,—in *Starin v. People*, 45 *N. Y.* 340; *Platner v. Platner*, 78 *Id.* 103. Applied to pamphlet or book,—in *Sturm v. Williams*, 38 *Super. Ct. (J. & S.)* 325, 347. Applied in criminal case, in *People v. Beach*, 87 *N. Y.* 508, 512. Applied (Proof of contradictory statements by witness) to written declarations such as affidavits,—in *Honstine v. O'Donnell*, 5 *Hun*, 472, 474.
- Row v. Pulver**, 1 *Cow.* 246. Applied (Discharge of surety by neglect of creditor to proceed against principal) in *Toles v. Adeo*, 84 *N. Y.* 222, 239.
- **v. Row**, 4 *How. Pr.* 133. Explained (Necessity of notice to parties, of proceedings of commissioners in partition) in *Doubleday v. Newton*, 9 *Id.* 71.
- Rowan v. Kelsey**, 18 *Barb.* 484. Further decision in 2 *Keyes*, 594. Decision in 18 *Barb.* quoted (For what interest ejectment lies) in *Sedgw. & W. on Tr. of Tit. to Land*, §§ 101, 106, 155.
- **v. Lytle**, 11 *Wend.* 616. Compare (Proceedings against tenant at sufferance) *Birdsall v. Phillips*, 17 *Id.* 464. Collated with other cases (Parol assignments and surrenders of leases as affected by statute of frauds) in 2 *Whart. U.m. on Ev.* § 857. Quoted and collated with other cases (Notice to tenant to quit when unnecessary) in *McAdam on Landl. & T.* 2 ed. § 107.
- Rowe v. Smith**, 55 *Barb.* 417; s. c., 38 *How. Pr.* 37. Aff'd in 45 *N. Y.* 230. See *Baum v. Mullen*. Decision in 45 *N. Y.* applied (Married woman's liability for torts, in connection with her separate property) in *Baum v. Mullen*, 47 *Id.* 579. Disapproved in 16 *Western Jurist*, 435. Applied (Disseverance of husband and wife in respect to her separate estate) in *Porter v. McGrath*, 41 *Super. Ct. (J. & S.)* 84, 102.
- **v. Stevens**, 34 *Super. Ct. (J. & S.)* 436;

- s. c., 10 *Abb. Pr. N. S.* 389, and, less fully, 44 *How. Pr.* 10. Further decision on the merits in 35 *Super. Ct. (J. & S.)* 189; which was aff'd in 53 *N. Y.* 621, but without further opinion. See *Peake v. Bell*. Decision in 35 *Super. Ct. (J. & S.)* followed (When broker may act for both parties) in *Spyer v. Fisher*, 37 *Id.* 93, 99. Decisions in 35 *Id.*; 53 *N. Y.* 621; collected with *Joslin v. Cowee*, 56 *Id.* 626; *Pugsley v. Murray*, 4 *E. D. Smith*, 245, and approved in *Bell v. McConnell*, 37 *Ohio St.* 396; s. c., 41 *Am. R.* 528; s. c., 13 *Reporter*, 184. Decision in 34 *Super. Ct. (J. & S.)* distinguishing (Motion for new trial on ground that verdict is unsupported by evidence) in *Peck v. Cohen*, 40 *Id.* 142, 145. See also to the contrary *Halpin v. Third Av. R. R. Co.*, *Id.* 175.
- Rowell v. McCormick.** See *Seeley v. Prichard*.
- Rowland v. Hegeman**, 1 *Hun.* 491; s. c., 3 *Sup'm. Ct. (T. & C.)* 764. Aff'd, it seems, in 59 *N. Y.* 643, but without opinion.
- **v. Mayor, &c. of N. Y.**, 44 *Super. Ct. (J. & S.)* 559. Aff'd in 83 *N. Y.* 372.
- Rowles v. Hoare**, 61 *Barb.* 266. See (Time of motion to vacate attachment) *Code Civ. Pro.* 1881, § 682, n.
- Rowley v. Ball**, 3 *Cow.* 303; s. c., 15 *Am. Dec.* 266; 8 *N. Y. Com. L. Law. ed.* 134, with brief note. Applied (Remedy, in case of lost negotiable paper) in *Green v. Stone, Walk. Ch. (Mich.)* 110. Cited with *Hinsdale v. Bank of Orange*, 6 *Wend.* 378, in 13 *Am. Dec.* 480, n. as indicating the N. Y. doctrine, a doctrine which is referred to in *Daniel on Neg. Inst.* §§ 1478, 1479, as supported by weight of authority. See *Code Civ. Pro.* 1881, § 1917, n. Included in 1 *Redf. & B. Lead. Cas. on B. of Exch.* 680.
- **v. Empire Ins. Co.**, 36 *N. Y.* 550; s. c., 3 *Keyes*, 557; and in full in 4 *Abb. Ct. App. Dec.* 131. See *Ames v. N. Y. Union Ins. Co.*; *Brown v. Cattaraugus County Mut. Ins. Co.*; *Jennings v. Chenango Co. Ins. Co.*; *Masters v. Madison Co. Mut. Ins. Co.*; *Plumb v. Cattaraugus Mut. Ins. Co.*; *Van Allen v. Farmers' Joint Stock Ins. Co.* Disting'd (Effect of statements made to insurance agent) in *Baker v. Home Life Ins. Co.*, 2 *Hun.* 404; *Le Roy v. Market Fire Ins. Co.*, 45 *N. Y.* 83; *Alexander v. Germania Fire Ins. Co.*, 66 *Id.* 467. Applied in *Flynn v. Equitable Life Assur. Soc.*, 7 *Hun.* 390; which was rev'd in 67 *N. Y.* 500, 506, which see; *Taylor v. Mut. Benefit Life Ins. Co.*, 10 *Hun.* 55; in dissenting opinion in *Le Roy v. Market Fire Ins. Co.*, 39 *N. Y.* 95; in *Pitney v. Glen's Falls Ins. Co.*, 65 *Id.* 23. Followed in *Owens v. Holland Purchase Ins. Co.*, 1 *Sup'm. Ct. (T. & C.)* 287; which was aff'd in 56 *N. Y.* 570, by which decision *Rowley v. Ins. Co.*, is said in *Rohrbach v. Germania Fire Ins. Co.*, 62 *Id.* 63, to be much shaken. Disapproved in *Franklin Fire Ins. Co. v. Martin*, 11 *Vroom. (N. J.)* 568; s. c., 29 *Am. R.* 277. Followed in
- Ins. Co. v. Williams*, 39 *Ohio St.* 584; s. c., 48 *Am. R.* 474; 17 *Reporter*, 156, as according with the weight of authority. Reviewed with *Chase v. Ins. Co.*, 20 *N. Y.* 54; *Rohrbach v. Germania Ins. Co.*, 62 *Id.* 47, and other cases in *Planters' Ins. Co. v. Myers*, 55 *Miss.* 479; s. c., 30 *Am. R.* 521, 525, 527, with note. Relied on with *Masters v. Madison Co. Mut. Ins. Co.*, 11 *Barb.* 624; *Sexton v. Montgomery Co. Mut. Ins. Co.*, 9 *Id.* 191; *McEwen v. Montgomery Co. Mut. Ins. Co.*, 5 *Hill*, 101, in *Miller v. Mut. Benefit Life Ins. Co.*, 31 *Iowa*, 216; s. c., 7 *Am. R.* 122, 127, with note collating cases. Approved (Insurance company, how far bound by act of agent) in *May v. Buckeye Mut. Ins. Co.*, 25 *Wis.* 291; s. c., 3 *Am. R.* 76, 82. Cited with other cases in 11 *Am. L. Reg. N. S.* 495. Compared with other cases in 7 *Alb. L. J.* 66; 13 *Id.* 426. Applied (Effect of condition in policy against other insurance) in *McMaster v. Ins. Co. of No. Am.*, 64 *Barb.* 539.
- **v. Gibbs.** See *Carpenter v. Stevens*.
- **v. Stoddard**, 7 *Johns.* 207; s. c., 4 *N. Y. Com. L. Law. ed.* 299, with brief note. Followed with *Harrison v. Close*, 2 *Johns.* 448 (Effect of covenant not to sue one of several obligors) in *Goodnow v. Smith*, 13 *Pick. (Mass.)* 414; s. c., 29 *Am. Dec.* 600, with note. Disting'd (What irregularities are cured by appearing and pleading) in *Beall v. Blake*, 13 *Geo.* 217; s. c., 58 *Am. Dec.* 513.
- **v. Van Benthuyssen**, 16 *Wend.* 369. See *Kane v. Whittick*. Disting'd (Appeal in matters of practice) in *Tripp v. Cook*, 26 *Wend.* 143. Approved in *Fort v. Bard*, 1 *N. Y.* 43, as not overruled.
- Roy v. Thompson**, 1 *Duer.* 636. With this and *Moeller v. Bailey*, 14 *How. Pr.* 339, compare (Dismissal of complaint for neglect to prosecute) *Bowles v. Van Horne*, 11 *Abb. Pr.* 84.
- Royal Ins. Co. v. Noble**, 5 *Abb. Pr. N. S.* 54. Disting'd (Discharge of attachment as to part of property) in *Trow's Printing, &c. Co. v. Hart*, 60 *How. Pr.* 190, 192. See *Code Civ. Pro.* 1881, § 687, n.
- Royce v. Brown**, 3 *How. Pr.* 391. Aff'd, as *Boyce v. Brown*, 7 *Barb.* 80.
- **v. Watrous**, 7 *Daly*, 87. Aff'd in 73 *N. Y.* 597. Decision in 7 *Daly*, explained (Fraud on sale) in 1 *Benj. on Sales*, § 637, n. 3 (Corbin's 4 *Am. ed.*).
- Ruan v. Perry**, 3 *Cal.* 120. See *Fowler v. Aetna Ins. Co.* Said in 53 *Am. Dec.* 183, n., to be a leading authority. (Admissibility of evidence of character in civil actions) and to be cited in nearly every case where the question arises. Overruled in *Fowler v. Aetna Ins. Co.*, 6 *Cow.* 673; *Gough v. St. John*, 16 *Wend.* 646, 653. See also *Norton v. Warner*, 9 *Conn.* 172; *Humphrey v. Humphrey*, 7 *Id.* 116; *Potter v. Webb*, 6 *Greenl. (Me.)* 14. Disapproved in *Porter v. Seiler*, 23 *Penn. St.* 424, 430; *U. S. v. Wood*, 13 *Blatchf. C. Ct.* 252; *Gebhart v. Burk*



- ett, 57 *Ind.* 378; s. c., 26 *Am. R.* 62. Approved in *Barton v. Thompson*, 56 *Iowa*, 571; s. c., 41 *Am. R.* 119, with note; 12 *Reporter*, 687. Collated with *Fowler v. Aetna Fire Ins. Co.*, 6 *Cow.* 673; *Townsend v. Graves*, 3 *Paige*, 445, and other cases in *Simpson v. Westenberger*, 28 *Kans.* 756; *Ruan v. Perry*, being considered as overruled. Referred to with *Fowler v. Aetna Ins. Co.*, 6 *Cow.* 673; *Townshend v. Graves*, 3 *Paige*, 455, in 16 *Cent. L. J.* 206 as overruled in *Gough v. St. John*, 16 *Wend.* 646; *Pratt v. Andrews*, 6 *N. Y.* 493. Referred to as overruled in *Whart. Com. on Ev.* § 47, citing cases. Discussed in 1 *Greenl. on Ev.* 14 ed. § 54, n. 3.
- Ruckman v. Astor**, 3 *Edw.* 373. Rev'd in 9 *Paige*, 517.
- **v. Bryan**, 3 *Den.* 340. Followed (Illegal payment not made valid by promise) in *Ruckman v. Pitcher*, 1 *N. Y.* 392, 409.
- **v. Cowell**. See *Sackett v. Andress*.
- **v. Green**, 9 *Hun.* 225. Quoted (Action for nuisance, where to be brought) in *Wood on Nuis.* 2 ed. § 830.
- **v. Merchants' Louisville Ins. Co.**, 5 *Duer*, 342. Followed with *American Ins. Co. v. Ogden*, 20 *Wend.* 302 (What will justify abandonment) in *Copelin v. Phoenix Ins. Co.*, 46 *Mo.* 211; s. c., 2 *Am. R.* 504, 506.
- **v. Pitcher**, 1 *N. Y.* 392; s. c., with other opinions, 8 *N. Y. Leg. Obs.* 177. Subsequent decision in 13 *Barb.* 556; which was aff'd in 20 *N. Y.* 9. See contrary to decision in 1 *Id.* (Liability of stockholder) *Tarleton v. Baker*, 18 *Verm.* 9.
- Rudd v. Davis**, 3 *Hill*, 287. Aff'd in 7 *Id.* 529.
- Ruddon v. McDonald**, 1 *Bradf.* 352. See *Butler v. Benson*. Said in 1 *Am. Dec.* 386, n., to be, as to its facts, very similar to *Russell v. Falls*, 3 *Harr. & McIl.* (Md.) 457; s. c., 1 *Am. Dec.* 380. (What is sufficient attestation of will in presence of testator). Referred to in 40 *Am. Dec.* 602, n., as being similar in its facts to *Reynolds v. Reynolds*, 1 *Spear's L. (So. Car.)* 253; s. c., 40 *Am. Dec.* 599.
- Rue v. Alter**, 5 *Den.* 119. Disapproved (Statutes of exemption not liberally construed) in 1 *Am. L. Reg. N. S.* 647.
- Ruger v. Heckel**, 21 *Hun.* 489. Aff'd in 85 *N. Y.* 483.
- Rugg v. Rugg**, 21 *Hun.* 383. Aff'd in 83 *N. Y.* 592. See *Pruyn v. Brinkerhoff*. Decision in 83 *N. Y.* explained (Executor who is witness to will not disqualified from testifying to it by *Code Civ. Pro.* § 829) in *Matter of Burke*, 5 *Redf.* 369.
- Ruggles v. Brock**, 6 *Hun.* 164. Followed (Misrepresentation to stockholder as defense against creditor) in *Ryan v. Miami Valley Ry Co.*, 10 *Am. L. Rec.* 263, 278.
- **v. Chapman**, 1 *Hur.* 524. Another decision to same effect in 2 *Sup'm. Ct. (T. & C.)* 600. Both aff'd in 59 *N. Y.* 163. See also *People ex rel. Ruggles v. Chapman*, 64 *Id.* 557.
- **v. Keeler**, 3 *Johns.* 263; s. c., 3 *Am. Dec.* 482. See *Nash v. Tupper*. Examined and followed (Statute of limitations, in case of non-residence) in *Olcott v. Tioga R. R. Co.*, 20 *N. Y.* 210, 223. Followed in *Field v. Dickinson*, 3 *Ark.* 409; s. c., 36 *Am. Dec.* 458; *King v. Lane*, 7 *Mo.* 241; s. c., 37 *Am. Dec.* 187, with note. Quoted in 3 *Pars. on Contr.* 96, n. c.; 2 *Story on Contr.* 5 ed. § 1422, n. 4. See *Code Civ. Pro.* 1881, § 390, n.
- **v. Lawson**, 13 *Johns.* 285; s. c., 7 *Am. Dec.* 375. Commented on (Effect of delivery of deed on condition of grantor dying intestate) in *Stilwell v. Hubbard*, 20 *Wend.* 44. Disting'd in *Nottbeck v. Wilks*, 4 *Abb. Pr.* 315. Disting'd (What is delivery of deed) in *Chadwick v. Neber*, 3 *Greenl. (Me.)* 141; s. c., 14 *Am. Dec.* 222, 225.
- Ruhl v. Phillips**, 2 *Daly*, 45. Rev'd in 48 *N. Y.* 125. Decision in 2 *Daly* disting'd (Authority of partner to make assignment) in *Roberts v. Shepard*, *Id.* 110. Decision in 48 *N. Y.* explained (Fraud in sales upon credit) in *Wait on Fraud. Conv.* § 240.
- Ruloff v. People**, 18 *N. Y.* 179. Rev'd 3 *Park.* 401. See *People v. Videto*. Decision in 18 *N. Y.* explained and disting'd (Proof of death by circumstantial evidence) in *People v. Bennett*, 49 *Id.* 143. Collated with other cases in 29 *Alb. L. J.* 348. Explained in 3 *Greenl. on Ev.* 14 ed. § 30, n. b.; 2 *Best on Ev.* § 446, n. a, Wood's ed.
- **v. —**, 45 *N. Y.* 213; s. c., 11 *Abb. Pr. N. S.* 245; which contains also decision below, which latter decision is also in 5 *Lans.* 261. See *McGarry v. People*. See biography, &c. by E. H. FREEMAN, published at Binghampton, 1871. Also Medico-legal notes by G. BURR; in *N. Y. Med. Leg. Soc. Papers*, vol 1. Also account of life, trial, and execution published at Phila. 1871. Also review of case; by G. A. SAWYERS, published in 1872. Also review of trial in 2 *Alb. L. J.* 161. Applied (Photographs as evidence) in *Cowley v. People*, 83 *N. Y.* 464, 479. Collated with *Cozzens v. Higgins*, 33 *How. Pr.* 439; *Wilkins v. Earle*, 44 *N. Y.* 166, and other cases in 26 *Am. R.* 319. See, also, *Delany v. Errickson*, 10 *Neb.* 492; s. c., 35 *Am. R.* 487. Applied (Cure of error made on trial) in *U. S. v. Snyder*, 14 *Fed. Rep.* 557.
- Rumsey v. People**, 19 *N. Y.* 41. See *Thomas v. Dakin*. Limited (Charge on trial for assault with intent to kill) in *Slatterly v. People*, 58 *N. Y.* 354, 357. Disting'd and limited (Constitutionality of act fixing limits of political district) in *Kinney v. City of Syracuse*, 30 *Barb.* 349, 367. Compare (Constitutionality of act creating Schuyler county) *Lanning v. Carpenter*, 20 *N. Y.* 447. Approved and applied to a similar statute in *Sherry v. Gilmore*, 58 *Wis.* 324, 331. Applied (Sustaining validity of statute by reference to other statutes) in *Smith v. People*, 47 *N. Y.* 341.

**Rundell v. Lakey**, 40 *N. Y.* 513. Followed (Taxation of real estate, how affected by conveyance after assessment and before levy) *Barlow v. St. Nicholas Nat. B'k*, 63 *Id.* 399, being disting'd in *Everson v. City of Syracuse*, 29 *Hun.* 485. Disting'd (Tax, &c. as lien on real estate) in *De Peyster v. Murphy*, 39 *Super Ct. (J. & S.)* 255, 265, which was rev'd in 66 *N. Y.* 622. Referred to in 8 *Am. R.* 297, *n.*, as to the same effect with, and *Kern v. Towsley*, 45 *Barb.* 150, as contrary to *Cochran v. Guild*, 106 *Mass.* 29; *s. c.*, 8 *Am. R.* 296. Doctrine discussed in 1 *Alb. L. J.* 514.

**Rundle v. Moore**, 3 *Johns. Cas.* 36. Cited (Duty of insurance broker to see that insurer is in good market credit at time of insurance) in *Whart. Com. on Ag.* § 205.

**Runk v. St. John**, 29 *Barb.* 585. Collated with *Willitts v. Waite*, 25 *N. Y.* 577; *Kilmer v. Hobart*, 58 *How. Pr.* 452 (Extra-territorial powers of receivers) in 22 *Am. L. Reg. N. S.* 289. Quoted in *High on Receiv.* § 241, *n.* 1.

**Runyan v. Mersereau**, 11 *Johns.* 584; *s. c.*, 6 *Am. Dec.* 393. See *Green v. Hart*. Reaff'd and applied (Mortgage as personal interest) in *Kortright v. Cady*, 21 *N. Y.* 364. Followed (What is good assignment of mortgage) in *Fryer v. Rockefeller*, 63 *Id.* 268, 276.

— **v. Stewart**, 12 *Barb.* 537. See *Jackson v. De Witt*. Compare (Dower in mortgaged premises) *Cooper v. Whitney*, 3 *Hill*, 95. Explained (Dower as against purchase-money mortgage) in *De Lisle v. Herbs*, 25 *Hun.* 485, 487.

**Ruppert v. Union Mut. Life Ins. Co.** See *Hogle v. Guardian Life Ins. Co.*

**Ruse v. Mut. Benefit Life Ins. Co.**, 26 *Barb.* 556. Rev'd in 23 *N. Y.* 516. Motion for re-argument, in 24 *Id.* 653. See *Babcock v. Bonnell*; *St. John v. Am. Mut. Life Ins. Co.* Decision in 23 *N. Y.* applied (Necessity that holder of policy have interest in subject of insurance) in *Freeman v. Fulton Fire Ins. Co.*, 14 *Abb. Pr.* 405. Disting'd in *Frank v. Hampden Ins. Co.*, 1 *Abb. Pr. N. S.* 346. Approved and followed in *Gilbert v. Moose*, 104 *Pa. St.* 74, 79. Reviewed with *St. John v. Mutual Life Ins. Co.*, 13 *N. Y.* 31; *Valton v. National Fund Life Ins. Co.*, 20 *Id.* 32, 38; and other cases in *Missouri Valley Life Ins. Co. v. Sturges*, 18 *Kans.* 93; *s. c.*, 62 *Am. R.* 761, 763. Cited with approval in *Guardian Mut. Life Ins. Co. v. Hogan*, 80 *Ill.* 35; *s. c.*, 22 *Am. R.* 180. Followed with *Freeman v. Fulton Fire Ins. Co.*, 38 *Barb.* 247, in *Singleton v. St. Louis Ins. Co.*, 66 *Mo.* 63; *s. c.*, 27 *Am. R.* 321, 324. Quoted in 2 *Pars. on Contr.* 479, *n. p.* Questioned in 3 *Am. L. Reg. N. S.* 181. Doubted in 57 *Am. Dec.* 94, *n.* Applied (Effect of failure to pay premium when due) in *Howell v. Knickerbocker Life Ins. Co.*, 19 *Abb. Pr.* 219, which was rev'd in 44 *N. Y.* 279, which see. Explained (Pre-

sumption as to laws of another State) in *Bradley v. Mut. Benefit Life Ins. Co.*, 3 *Lans.* 343. Followed (Admissibility of evidence to explain written contract of insurance) in *King v. Enterprise Ins. Co.*, 45 *Ind.* 43, 58. Decision in 26 *Barb.* followed (Entirety of contract for life policy) in *Manhattan Life Ins. Co. v. Warwick*, 20 *Gratt. (Va.)* 614; *s. c.*, 3 *Am. R.* 218.

**Rusher v. Morris**, 9 *How. Pr.* 266. Aff'd at General Term, 1854. Opposed (Joinder of husband with wife as plaintiff in action affecting her separate property) in *Smith v. Kearney*, *Id.* 467; *Ackley v. Tarbox*, 29 *Barb.* 515.

— **v. Sherman**, 28 *Barb.* 416. Collated with other cases (Number of creditors necessary for granting of discharge to insolvent) in *Bishop on Assign.* § 12.

**Russell v. Carrington**, 42 *N. Y.* 118. See *Rapelye v. Mackie*. Applied (Divided ownerships in undivided portion of personal property) in *Lobdell v. Stowell*, 51 *N. Y.* 75. Disting'd in *Higgins v. Delaware, &c. R. R. Co.*, 60 *Id.* 555, 558. Approved in *Hurff v. Hires*, 11 *N. J.* 581, 593. Explained in 1 *Benj. on Sales*, § 396 (Corbin's 4 *Am. ed.*) Compared in *Id.* § 478.

— **v. Cook**, 3 *Hill*, 504. Disting'd (Sufficiency of consideration for promise) in *Geer v. Archer*, 2 *Barb.* 426. Disting'd (Compromise of doubtful claim, as such consideration) in *Morey v. Town of Newfane*, 8 *Id.* 654; *Dolcher v. Fry*, 37 *Id.* 157. Applied in *Palmer v. North*, 35 *Id.* 293; *Organ v. Stewart*, 1 *Hun.* 415; which was rev'd in 60 *N. Y.* 419, which see. Followed in *Adams v. Wilson*, 12 *Metc. (Mass.)* 138; *s. c.*, 45 *Am. Dec.* 240, with note. Disting'd (Necessity that accord be executed) in *Panzerbeiter v. Waydell*, 21 *Hun.* 162.

— **v. Doty**, 4 *Cow.* 576. Overruled (Removing distrainable goods without paying rent) in *Brown v. Fay*, 6 *Wend.* 392; *Coles v. Freeman*, 2 *Hill*, 447.

— **v. Freer**, 56 *N. Y.* 67. See *People v. Bostwick*. Approvingly cited (Effect of surety signing bond conditionally) in 28 *Am. Dec.* 681, *n.* Disting'd in *U. S. v. O'Neill*, *U. S. Civ. Ct. E. D. Wisc.* 19 *Fed. Rep.* 560, 567.

— **v. Gibbs**, 5 *Cow.* 390. See *Nichols v. Ketcham*. Approved (Effect of delay to enforce execution) in *Benjamin v. Smith*, 4 *Wend.* 332. To same effect, in *Ferguson v. Lee*, 9 *Id.* 258. Approved as according with settled law in *Campbell v. Spence*, 4 *Ala.* 543; *s. c.*, 39 *Am. Dec.* 301, 305.

— **v. Hudson River R. Co.**, 5 *Duer*, 39. Rev'd in 17 *N. Y.* 134. See *Halsey v. Sinsebaugh*; *Ross v. N. Y. Central, &c. R. R. Co.* Decision in 17 *N. Y.* followed (Memoranda, as evidence) in *Brown v. Jones*, 46 *Barb.* 411; *Meacham v. Pell*, 51 *Id.* 66; *Stuart v. Binsse*, 7 *Bow.* 197; *Driggs v. Smith*, 45 *How. Pr.* 450; *Thurman v. Mosher*, 1 *Hun.* 349. Applied in *Krom v. Levy*, 47 *How. Pr.* 103. Disting'd

- in *Flood v. Mitchell*, 4 *Hun*, 813. Explained in *Guy v. Mead*, 22 *N. Y.* 466. Applied with *Guy v. Mead*; *Marcy v. Shults*, 29 *Id.* 346, in *Collins v. Rockwood*, 64 *How. Pr.* 57. Applied (Who are co-employees) in *Dana v. N. Y. Central, &c. R. R. Co.*, 23 *Hun*, 477. Applied with *Robertson v. N. Y. & Erie R'y Co.*, 22 *Barb.* 91 (When persons riding on railroad train are not passengers) in *Union Pacific R'way Co. v. Nichols*, 8 *Kans.* 505; s. c., 12 *Am. R.* 475.
- *v. Kinney*, 1 *Sandf. Ch.* 34; s. c., 2 *N. Y. Leg. Obs.* 232. Said in 2 *Sandf. Ch.* 81, n., to have been aff'd in Ct. of Errors, 1845.
- *v. Livingston*, 19 *Barb.* 346. Rev'd in 16 *N. Y.* 515. See *Bostwick v. Champion*; *Hersfield v. Adams*. Decision in 16 *N. Y.* disting'd (Effect of delivery to agent of carrier) in *Fitzsimmons v. Southern Express Co.*, 40 *Ga.* 330; s. c., 2 *Am. R.* 577, 580. Explained in *Ang. on Carr.* § 323, n. a, 6 ed.
- *v. Lytle*, 6 *Wend.* 390; s. c., 22 *Am. Dec.* 537. Dissented from (Requisites of plea of accord and satisfaction) in *Heirn v. v. Carron*, 11 *Smedes & M. (Miss.)* 361; s. c., 49 *Am. Dec.* 65. Disapproved with *Hawley v. Foote*, 19 *Wend.* 516; *Kromer v. Heim*, 75 *N. Y.* 574; *Tilton v. Alcott*, 16 *Barb.* 598 (Effect of new agreement for payment of claim by installments) in *Whitsett v. Clayton*, 5 *Colo.* 476, 478, citing also *B'klyn B'k v. De Grauw*, 23 *Wend.* 342.
- *v. Mayor, &c. of N. Y.*, 2 *Den.* 461. Followed and applied (Liability of municipal corporation for acts or omissions of officer) in *N. Y. Saw-mill Co. v. City of Brooklyn*, 71 *N. Y.* 580, 587; which aff'd 8 *Hun*, 37, which see. Followed (Liability of municipal corporation for loss of property destroyed to prevent spreading of fire) in *People ex rel. Brisbane v. Common Council of Buffalo*, 76 *N. Y.* 567. Applied with *Stone v. Mayor of N. Y.*, 25 *Wend.* 157, in *Field v. City of Des Moines*, 39 *Iowa*, 575; s. c., 18 *Am. R.* 46, 52; *Mayor, &c. of N. Y. v. Lord*, 18 *Wend.* 126, said to have been decided on statutory grounds, being questioned as standing alone. Applied in *Keller v. City of Corpus Christi*, 50 *Tex.* 614; s. c., 32 *Am. R.* 613, 616, with note. Disting'd with *People ex rel. Macey v. Hillsdale Turnpike Co.*, 2 *Johns.* 190 (Statute remedy, when exclusive) in *Heiser v. Mayor, &c. of N. Y.*, 29 *Hun*, 446.
- *v. Meacham*, 16 *How. Pr.* 193. But see (Severance of action) *Code Civ. Pro.* § 511.
- *v. Miner*, 5 *Lans.* 537; s. c., more fully, 61 *Burb.* 534. Disapproved in subsequent decision (What included in auctioneer's compensation) in 25 *Hun*, 114. Cited in *Whart. Com. on Ag.* § 665; *Leeds v. Bowen*, 1 *Robt.* 10, being, however, referred to as holding the contrary.
- *v. Minor*, 22 *Wend.* 659. Followed (When sale of personalty is conditional) in *Thorpe v. Fowler*, 57 *Iowa*, 541, 543. Explained in 1 *Benj. on Sales*, § 338 (Corbin's 4 *Am. ed.*).
- *v. Nicoll*, 3 *Wend.* 112; s. c., 20 *Am. Dec.* 670. Explained (Necessity that signature required by statute of frauds be signed by both parties) in *Justice v. Lang*, 42 *N. Y.* 493, 511. Relied on (Effect of contract for sale of goods, to be delivered on arrival of ship) in *Middleton v. Ballingall*, 1 *Cal.* 446. Explained in 1 *Pars. on Contr.* 561, n. c.
- *v. Packard*, 9 *Wend.* 431. Overruled (When validity of discharge under two-thirds act can be inquired into) in *American Flask Co. v. Son*, 3 *Abb. Pr. N. S.* 333.
- *v. Pistor*, 7 *N. Y.* 171; s. c., 57 *Am. Dec.* 509, with notes (Conveyance of mortgaged premises).
- *v. Rogers*, 10 *Wend.* 473; s. c., 25 *Am. Dec.* 574. Subsequent decision in 15 *Wend.* 351; s. c., 12 *N. Y. Com. L. Law. ed.* 890, with brief note. Decision in *Id.* applied (Effect of signature to composition agreement, when obtained by fraud) in *Smith v. Salomon*, 7 *Daly*, 216, 222. Overruled (Attacking declaration on argument of demurrer to subsequent pleading) in *Auburn & Owasco Canal Co. v. Leitch*, 4 *Den.* 65.
- *v. Ruckman*, 3 *E. D. Smith*, 419. See (Execution of attachment on promissory note) *Code Civ. Pro.* 1881, § 648, n.
- *v. Scott*, 9 *Cow.* 279. Explained (Evidence of possession, to sustain action for injury to real property) in 2 *Greenl. on Ev.* 14 ed. § 616, n. a.
- *v. Weinberg*, 2 *Abb. N. C.* 422; s. c., 53 *How. Pr.* 468. Aff'd in 4 *Abb. N. C.* 184. See (Liability of grantee of mortgaged premises) cases cited in 5 *Id.* 230, n.
- *v. Whipple*, 2 *Cow.* 536. Reviewed with *Kimball v. Huntington*, 10 *Wend.* 675; *Luqueer v. Prosser*, 1 *Hill*, 259; *Sackett v. Spencer*, 29 *Barb.* 180, and other cases in dissenting opinion of FOSTER, J. (What may be regarded as promissory note) in *Currier v. Lockwood*, 40 *Conn.* 349; s. c., 16 *Am. R.* 40. Included in 1 *Ames Cas. on B. & N.* 17.
- *v. Winne*, 37 *N. Y.* 591. Approved (Effect of extrinsic evidence of agreement for mortgagor of chattels to continue in possession) in *Southard v. Pinckney*, 5 *Abb. N. C.* 184, 197. Applied in *Dodds v. Johnson*, 3 *Sup'm. Ct. (T. & C.)* 215, 218. Examined with other cases in dissenting opinion in *Frost v. Warren*, 42 *N. Y.* 209. Collated with *Wood v. Lowry*, 17 *Wend.* 492; *Marston v. Vultee*, 8 *Bosw.* 129, and cases from other States (Effect of actual intent and motive in executing chattel mortgage) in 17 *Am. L. Rev.* 365. Quoted and explained (Effect of debtor's acts void in part) in *Wait on Fraud. Conv.* § 194.
- Russell M'fg Co. v. New Haven Steamboat Co.**, 50 *N. Y.* 121. Further decision reiterating and explaining this in 52 *Id.* 657. See *Lamb v. Camden & Amboy R. R. Co.*

**Russell & Erwin Manuf. Co. v. Armstrong**, 10 *Abb. Pr.* 258, *n.* Aff'd in 12 *Id.* 472.

**Rust v. Eckler**, 41 *N. Y.* 488. Applied (Evidence of warranty on sale of personal property) in *Lawton v. Keil*, 61 *Barb.* 563. Explained and applied (Right to damages for breach of warranty) in *Nichols v. Townsend*, 7 *Hun.* 377.

— **v. Gott**, 9 *Cow.* 169; *s. c.*, 18 *Am. Dec.* 497. See *Bunn v. Riker*. Followed with *Bunn v. Riker*, 4 *Johns.* 438 (Illegality of wagers upon event of election) in *Hickerson v. Benson*, 8 *Mo.* 8; *s. c.*, 40 *Am. Dec.* 115, with note.

— **v. Hauselt**, 56 *How. Pr.* 389; *s. c.*, more fully, 8 *Abb. N. C.* 148. Other proceedings in 41 *Super. Ct. (J. & S.)* 467; 42 *Id.* 573; 69 *N. Y.* 485; 76 *Id.* 614; 81 *Id.* 640. See vols. 414, 493, *Cas.* in *Ct. of App. Law Inst. Libr. N. Y. city.*

**Rutherford v. Aiken**, 2 *Supm. Ct. (T. & C.)* 281. Another decision in 3 *Id.* 60, in action for subsequent acts.

— **v. Graham**, 4 *Hun.* 796. Followed (What is valid assignment of dower) in *Gibbs v. Esty*, 22 *Id.* 266, 269. Compare *Code Civ. Pro.* § 1604.

— **v. Holmes**, 5 *Hun.* 317. Aff'd in 66 *N. Y.* 368. Both decisions quoted and explained (Justice when liable for false imprisonment) in *Moak's Underhill's Torts*, 1 *Am. ed.* 193. See (Power of justice to punish for contempt) *Code Civ. Pro.* 1881, § 2870, *n.*

— **v. Rutherford**, 1 *Den.* 33; *s. c.*, 43 *Am. Dec.* 644, with note collecting citations (Execution, attestation and publication of wills). See *Brinckerhoof v. Remsen*. Approved with *Peck v. Cary*, 27 *N. Y.* 9; Trustees, etc. of Auburn Seminary v. Calhoun, 25 *Id.* 422; *Smith v. Smith*, 2 *Lans.* 266; *Moore v. Moore*, 2 *Bradf.* 261; in *Cheatham v. Hatcher*, 30 *Gratt. (Va.)* 56; *s. c.*, 32 *Am. R.* 650, 658. Commented on in *Willard on Executors*, 107.

**Butter v. Puckhofer**, 9 *Bow.* 638. Disting'd (Effect of infant's appearance without guardian *ad litem*) in *Fairweather v. Satterly*, 7 *Robt.* 546; *McMurray v. McMurray*, 60 *Barb.* 117, 121.

**Ryall v. Kennedy**, 40 *Super. Ct. (J. & S.)* 347. Aff'd as *Kennedy v. Ryall*, in 67 *N. Y.* 379. Further proceeding in 41 *Super. Ct. (J. & S.)* 531; *s. c.*, 52 *How. Pr.* 517. Decision in *Id.* disting'd (Execution against person, in action for personal injury) in *Haines v. Jeroloman*, 2 *Civ. Pro.* *R. (McCarty)* 196.

**Ryan v. Atlantic Mut. Ins. Co.**, 50 *How. Pr.* 321. Aff'd, it seems, on this opinion in 66 *N. Y.* 628. See vol. 377, *Cas.* in *Ct. of App. Law Inst. Libr. N. Y. city.*

— **v. Dox**, 25 *Barb.* 440. Rev'd in 34 *N. Y.* 307. See *Brown v. Lynch*; *Hess v. Fox*; *Vincent v. Germond*. Decision in 34 *N. Y.* applied (Verbal agreement, when valid, notwithstanding statute of frauds) in *Sandford v. Norris*, 4 *Abb. Ct. App. Dec.*

146; *Morrill v. Cooper*, 65 *Barb.* 519; *Church v. Kidd*, 3 *Hun.* 265; *Moyer v. Moyer*, 21 *Id.* 73; *Tomlinson v. Miller*, 3 *Keyes*, 518; *Cornell v. King*, 13 *Weekly Dig.* 327, 329. Followed as conclusive in *Wood v. Fleet*, 36 *N. Y.* 511. Disting'd in *Levy v. Brush*, 45 *Id.* 596; *Wheeler v. Reynolds*, 66 *Id.* 232. Collated and compared with other cases in *Randall v. Constans*, 33 *Minn.* 329, 336. Approved in *Pomeroy on Sp. Perf.* § 144, *n.* Applied (Legal rights, when resulting from void transaction) in *Madison Ave. Church v. Oliver St. Church*, 41 *Super. Ct. (J. & S.)* 386. Applied (Usury in connection with mortgage) in *Fiedler v. Darrin*, 59 *Barb.* 663.

— **v. Fowler**, 24 *N. Y.* 410. See *Wright v. N. Y. Central R. R. Co.* Explained (Liability for injuries to servant from dangerous premises or employments) in 1 *Add. on Torts*, 276, *n.*, 2 *Wood's ed.*

— **v. Lewis**, 3 *Hun.* 429. See (Amendment of pleadings in justice's court) *Code Civ. Pro.* 1881, § 2944, *n.*

— **v. Mayor, &c. of N. Y.**, 50 *How. Pr.* 91. Further decision in 42 *Super. Ct. (J. & S.)* 202.

— **N. Y. Central R. R. Co.**, 35 *N. Y.* 210. See *Field v. N. Y. Central R. R. Co.*; *Sheldon v. Hudson River R. R. Co.* Compared (Extent of liability for spread of fire from locomotive, &c.) with *Field v. N. Y. Central R. R. Co.*, 32 *N. Y.* 339, in *Webb v. Rome, Watertown, &c. R. R. Co.*, 3 *Lans.* 455, which was aff'd in 49 *N. Y.* 427, which see. Followed and *Webb v. Rome, Watertown, &c. R. R. Co.*, *Id.* explained in *Reiper v. Nichols*, 31 *Hun.* 491, 493. Disapproved in *Fent v. Toledo, &c. R'y Co.*, 59 *Ill.* 349; *s. c.*, 14 *Am. R.* 19. Disting'd and questioned in *Kellogg v. Chicago & Northwestern R'y Co.*, 26 *Wis.* 223; *s. c.*, 7 *Am. R.* 69, 78. Followed and approved in *Pennsylvania R. R. v. Kerr*, 62 *Pa.* 353; *s. c.*, 1 *Am. R.* 431, 436. Disting'd in *Gagg v. Vetter*, 41 *Ind.* 228; *s. c.*, 13 *Am. R.* 322, 329. Criticised in *Clemens v. Hannibal & St. Joseph R. R. Co.*, 53 *Mo.* 366; *s. c.*, 14 *Am. R.* 460, 464, as an extreme case. Said not to have been accepted as authority in *N. Y.* (citing *Webb v. Rome, Watertown, &c. R. R. Co.*, 49 *N. Y.* 420) and to be in conflict with numerous other decided cases—in *Milwaukee, &c. R'y Co. v. Kellogg*, 94 *U. S.* 469, 474. Said in 7 *Am. R.* 80, *n.*, to have been dissented from in an Illinois case of June, 1872. Criticised and questioned in *Delaware, Lackawanna & Western R. R. Co. v. Salmon*, 10 *Vroom. (N. J.)* 299; *s. c.*, 23 *Am. R.* 214, 220, 223. Referred to in 6 *Am. R.* 599, *n.*, as being the leading and only case in *N. Y.* which recognizes the doctrine. Said in 38 *Am. Dec.* 77, *n.*, to have been overruled and to be contrary to the whole current of authority. Said to be directly in conflict with every other Ameri-

can and English decision,—in 1 *Thomps. on Negl.* 142. Explained in *Ang. on Carr.* § 567, a, n. a, 5 ed. Disting'd (Liability for consequences of negligent act) in *Munger v. Baker*, 65 *Barb.* 555; *Pollett v. Long*, 56 *N. Y.* 206. Disapproved as contrary to weight of authority,—*Guille v. Swan*, 19 *Johns.* 381; *Vandenburgh v. Truax*, 4 *Den.* 464; *Webb v. Rome*, *Watertown*, &c. *R. R. Co.*, 49 *N. Y.* 420; *Pollett v. Long*, 56 *Id.* 200; *Wasmer v. Delaware*, &c. *R. R. Co.*, 80 *Id.* 212; *Thomas v. Winchester*, 6 *Id.* 397, being approved—in *Billman v. Indianapolis*, *Cincinnati*, &c. *R. R. Co.*, 76 *Ind.* 166; s. c., 40 *Am. R.* 230. Said in *Terre Haute & Indianapolis R. R. Co.*, 96 *Ind.* 346, 355, not to be followed in *N. Y.* Disapproved in *Kuhn v. Jewett*, 33 *N. J. Eq.* 647; s. c., 35 *Am. R.* 649, n. where see cases collated. Discussed and compared in 13 *Am. L. Reg. N. S.* 16.

— *v. People*, 19 *Hun.* 188. Aff'd in 79 *N. Y.* 593. See *People v. Crapo*. Decision in 79 *N. Y.* applied with *Real v. People*, 42 *Id.* 281; *People v. Crapo*, 76 *Id.* 288; *People v. Noelke*, 94 *Id.* 143 (Evidence of commission of crime) and *People v. Casey*, 72 *Id.* 393, followed in *People v. Irving*, 95 *Id.* 541.

— *v. Rochester & Syracuse R. R. Co.*, 9 *How. Pr.* 453. Disting'd (Liability for injury caused by neglect of duty, to person on one's premises) in *Hazman v. Hoboken Land, &c. Co.*, 50 *N. Y.* 60.

— *v. Ward*, 48 *N. Y.* 204. Disting'd (Effect of payment of smaller sum than due) in *Gray v. Barton*, 55 *Id.* 68, 71; *Luddington v. Bell*, 77 *Id.* 138, 143. Cited with *Eaton v. Alger*, 2 *Abb. Ct. App. Dec.* 5; *Smith v. Holland*, 61 *N. Y.* 635; *Hotchkiss v. Mosher*, 48 *Id.* 478 (Correcting receipts by parol) in 2 *Whart. Com. on Ev.* § 1064, as illustrating the rule.

— *v. Wavle*, 4 *Hun.* 804. Appeal dismissed as *Ryan v. Waule*, in 63 *N. Y.* 57.

**Ryckman v. Delavan**, 25 *Wend.* 186. Relied on (Action for libelous publication affecting others than plaintiff) in *Byers v. Martin*, 2 *Colo.* 605; s. c., 25 *Am. L.* 755. Quoted in *Cooley on Const. Limit.* 5 ed. 525, n.

— *v. Gillis*, 6 *Lans.* 79. Rev'd in 57 *N. Y.* 68; s. c., 15 *Am. R.* 464, with note.

**Ryder, Matter of**, 4 *Edw.* 338. Aff'd in 11 *Paige*, 185. See *Matter of Burke*. Decision in 11 *Paige* approved (Mother's right to services of child) in *Furman v. Van Sise*, 56 *N. Y.* 435, 438. Followed (Appropriation of capital of fund for maintenance of children) in *Deen v. Cozzens*, 7 *Robt.* 178, 187. Quoted in 1 *Parson's Contr.* 304, n. k; *Id.* 306, n. m.

**Ryder v. Carpenter**, 8 *Weekly Dig.* 25. Reported as *Ryder v. Gilbert*, in 16 *Hun.* 163.

— *v. Gilbert*. See *Ryder v. Carpenter*.

— *v. Hulse*, 24 *N. Y.* 372. Applied (Rights of husband of wife dying intestate) in *Fry v. Smith*, 10 *Abb. N. C.* 224, 231. Limited in *Barnes v. Underwood*, 47 *N. Y.* 359.

**Ryers, Matter of**, 10 *Hun.* 93. Aff'd in 72 *N. Y.* 1; s. c., 28 *Am. R.* 88. See *Hartwell v. Armstrong*.

**Ryers v. Hedges**, 1 *Hill*, 646. See (Costs against landlord, &c. in ejectment suit) *Farmers' Loan & Trust Co. v. Kursch*, 5 *N. Y.* 558.

**Ryerson v. Willis**, 8 *Daly*, 462. Aff'd in 81 *N. Y.* 277.

**Ryerss v. Rippey**, 25 *Wend.* 432. Aff'd in 4 *Hill*, 468, n.

— *v. Wheeler*, 25 *Wend.* 437. Aff'd in 4 *Hill*, 466. Prior decision in 22 *Wend.* 148. Another decision between same parties, as it seems, in 25 *Wend.* 434. See *Jackson v. Harder*. Decision in 25 *Wend.* discussed (Partition without deed, as affected by statute of frauds) in *Browne on Stat. of Frauds*, § 68, 4 ed. Contrary to decision in 22 *Wend.* see (Effect of variance in alleging proportion of interest of plaintiff in ejectment) *Gillet v. Stanley*, 1 *Hill*, 121; *Cole v. Irvine*, 6 *Id.* 634. And see *Abb. Tr. Ev.* 692. Explained (Effect of declarations of testator, made at time of executing will) in *Morgan v. Burrows*, 45 *Wis.* 211; s. c., 30 *Am. R.* 717, 720. Criticised in 2 *Whart. Com. on Ev.* § 994. Included with note (Evidence of custom, to interpret will) in *Lawson on Usages and Customs*, 351. Followed (Parol evidence to explain description in deed) in *Morton v. Jackson*, 1 *Smedes & M. (Miss.)* 494; s. c., 40 *Am. Dec.* 107, with note.

**Ryghtmyre v. Durham**, 12 *Wend.* 245. Disting'd (Entry of judgment retrospectively) in *Tuomy v. Dunn*, 77 *N. Y.* 515, 517.

**Ryle v. Falk**, 60 *How. Pr.* 516; s. c., 24 *Hun.* 255. Aff'd on opinion of *DAVIS, J.*, below, in 36 *N. Y.* 641, without further opinion. Decision in 24 *Hun.* disting'd (Right of sheriff to poundage on arrest of judgment debtor) in *Flack v. State*, 29 *Hun.* 286; *Bowe v. Campbell*, 2 *Civ. Pro. R. (Browne)* 232.

— *v. Harrington*, 14 *How. Pr.* 59; s. c., more fully, 4 *Abb. Pr.* 423.

## S.

**Sable v. Hitchcock**, 2 *Johns. Cas.* 79. Aff'd in *Id.* 488.

**Sacia v. De Graaf**, 1 *Cow.* 356. Discussed (Persons under disabilities as affected by statute of limitations) in *Ang. on Limit.* § 194, 6 ed.

— *v. O'Connor*, 79 *N. Y.* 260; s. c., 58 *How. Pr.* 440. Further decision, as it seems, in 47 *Super. Ct. (J. & S.)* 53. Decision in 79 *N. Y.* discussed (New trial in ejectment) in *Sedgw. & W. on Tr. of Tit. to Land*, § 600.

**Sackett v. Andross**, 5 *Hill*, 327. See *Kunzler v. Kohaus*. Applied (Prospective construction of statute) in *Vedder v. Alkenbrack*, 6 *Barb.* 328; *Quackenbush v. Danks*,

- 1 *Den.* 131. Disting'd in *Guillotel v. Mayor, &c.* of N. Y., 55 *How. Pr.* 115. Disting'd (Pleading discharge in bankruptcy) in *Cromwell v. Burr*, 59 *Id.* 94. Criticised and disapproved with *Ruckman v. Cowell*, 1 *N. Y.* 505; *Stephens v. Ely*, 6 *Hill*, 607 (Effect of discharge in bankruptcy) in *Reed v. Vaughan*, 15 *Mo.* 137; s. c., 55 *Am. Dec.* 133. Discussed (Right of Congress to pass law for benefit of voluntary debtors) in 3 *Par. on Cont.* 422, n. p.
- *v. Spencer*, 29 *Barb.* 180. See *Russell v. Whipple*. Compare (Testimony of experts to simulated hand) in 21 *Am. L. Reg. N. S.* 425, 428.
- Sackett's Harbor Bank v. Codd**, 18 *N. Y.* 240. See *Tracy v. Talmage*. Explained and disting'd (Money lent recoverable though security void) in *Matter of Jaycox*, 13 *Blatchf. C. Ct.* 70, 79.
- *v. Lewis County Bank*, 11 *Barb.* 213. Explained (Contracts of private corporation, when ultra vires) in *Ang. & A. on Corp.* § 264, 11. ed. Collated with other cases in *Field on Ultra Vires*, 187.
- Sackett Street, Matter of**, 4 *Hun.* 92; s. c., 6 *Sup'm. Ct. (T. & C.)* 347. Aff'd in 74 *N. Y.* 95. See *Matter of Volkening*; *People ex rel. City of Rochester v. Briggs*.
- Sackrider v. McDonald**, 10 *Johns.* 253. Applied with *Pratt v. Petrie*, 2 *Id.* 191 (When officer becomes trespasser *ab initio*) in *Barratt v. White*, 3 *N. H.* 210; s. c., 14 *Am. Dec.* 352, 359, with note.
- Saddlesvene v. Arms**, 32 *How. Pr.* 280. Compare (Attachment for tort) *Code Civ. Pro.* § 635.
- Safford v. Drew**, 3 *Duer*, 627. Followed with *Lucas v. N. Y. Central R. R. Co.*, 21 *Barb.* 245 (Allegations necessary in action to recover damages for death) in *Schwartz v. Judd*, *Sup'm. Ct. Minn.* Oct. 1881, 13 *Reporter*, 82.
- *v. People*, 1 *Park.* 474. Followed (Effect of failure of judge to ask prisoner why sentence should not be pronounced) in *Messner v. People*, 45 *N. Y.* 1. Approved, but limited, in *Jones v. State*, 51 *Miss.* 718; s. c., 24 *Am. R.* 658. Reviewed with other cases (Practice on return to writ of error) in *Mauke v. People*, 74 *N. Y.* 415, 419.
- *v. Safford*. See *Bear v. Snyder*; *Dunham v. Osborn*.
- *v. Stevens*, 2 *Wend.* 158. Followed (Compulsory nonsuit, when not to be allowed) in *Martin v. Webb*, 5 *Ark.* 72; s. c., 39 *Am. Dec.* 363, 367, with note.
- *v. Wyckoff*, 1 *Hill*, 11. Rev'd in 4 *Id.* 442. Decision in *Id.* applied (Rights of bona fide holder of commercial paper, as against banking association) in *Farmers', &c. B'k of Kent Co. v. Butchers' & Drovers' B'k*, 14 *N. Y.* 631; 16 *Id.* 129. See *Curtis v. Leavitt*, 15 *Id.* 168, 222, 260. Decision in 1 *Hill* explained in *Smith v. Strong*, 2 *Id.* 243, 245. Decision in 4 *Id.* re-aff'd (Banking association, when bound by signature of cashier only) in *Barnes v. Ontario B'k*, 19 *N. Y.* 160. Applied to president of railroad,—in *Olcott v. Tioga R. R. Co.*, 27 *Id.* 559. Applied (Presumption as to validity of corporate dealings) in *Chautauque Co. B'k v. Risley*, 19 *Id.* 382. Explained in *Morawetz on Corp.* § 98. Decision in 1 *Hill* re-aff'd and reversal explained (Invalidity of ultra vires contracts) in *Bissell v. Michigan Southern, &c. R. R. Co.*, 22 *N. Y.* 301.
- Sage v. Harpending**, 49 *Barb.* 166 (Stay of warrant in summary proceedings) *Code Civ. Pro.* 1881, § 2262, n.
- *v. Sherman, Hill & D.* 147. Aff'd in 2 *N. Y.* 417. See *Wilkins v. Pearce*. Decision in 2 *N. Y.* disting'd (Effect of ratification of unauthorized act of agent) in *Squier v. Norris*, 1 *Lans.* 287.
- *v. Woodin*, 66 *N. Y.* 578. Cited (Effect of settlement between surviving partners and representatives of deceased partner) in *Story on Partn.* 7 ed. § 347, n.
- Sagory v. Dubois**, 3 *Sandf. Ch.* 466. Approved and applied (Implied promise to pay, created by subscription to stock) in *Palmer v. Lawrence*, 3 *Sandf.* 161, 164. Discussed in *Ang. & A. on Corp.* § 520, 11 ed.
- Sahler v. Signer**, 37 *Barb.* 329. Further decision in 44 *Id.* 606.
- Saidler v. Church**, 1 *Cai.* 297; s. c., 2 *Am. Dec.* 191. Followed with *Abbott v. Broome*, 1 *Cai.* 292; *Robinson v. U. S. Ins. Co.*, 2 *Id.* 280 (Effect of purchase by insurer's agent in preventing recovery for total loss) in *Oliver v. Newburyport Ins. Co.*, 3 *Mass.* 37; s. c., 3 *Am. Dec.* 77, 82, 91.
- Sailly v. Elmore**, 2 *Paige*, 497. See *Clark v. Sickles*.
- St. Amant v. De Beixcedon**, 3 *Sandf.* 703. Approved (Requisites of affidavit for attachment) in *Hill v. Bond*, 22 *N. Y.* 278.
- St. James' Church v. Church of Redeemer**, 45 *Barb.* 356. Explained (Conveyance between corporations, as affected by fact that same trustees act for both) in 1 *Perry on Trusts*, 3 ed. § 207.
- St. John v. American Mut. Fire & Marine Ins. Co.**, 1 *Duer*, 371. Aff'd in 11 *N. Y.* 516. Both decisions examined and followed (Liability of insurer for loss caused by explosion) in *Hayward v. Liverpool & London Fire & Life Ins. Co.*, 7 *Bosw.* 385, 389. Decision in 11 *N. Y.* criticised and disapproved, and *Hayward v. Liverpool & London Ins. Co.*, 7 *Bosw.* 385, disting'd in *Commercial Ins. Co. v. Robinson*, 64 *Ill.* 265; s. c., 16 *Am. R.* 557. Followed (Effect of use of article prohibited by terms of policy) in *Harper v. City Ins. Co.*, 1 *Bosw.* 520, 524. Decision in 1 *Duer* cited as authority with *Hynds v. Schenectady County Mutual Ins. Co.*, 16 *Barb.* 119; *Gates v. Madison County Ins. Co.*, 5 *N. Y.* 469 (Insurance as covering loss occasioned by insurer's negligence) in *Mickey v. Burlington Ins. Co.*, 35 *Iowa*, 174; s. c., 14 *Am. R.* 494.

- **v. American Mut. Life Ins. Co.**, 2 *Duer*, 419; s. c., less fully, 12 *N. Y. Leg. Obs.* 265. Aff'd in 13 *N. Y.* 31. See *Marcus v. St. Louis Mut. Life Ins. Co.*; *Ruse v. Mut. Benefit Life Ins. Co.* Both decisions explained and followed (Assignability of life policy to one having no insurable interest) in *Olmsted v. Keyes*, 85 *N. Y.* 593, 599. Decision in 13 *Id.* with *Living v. Domett*, 25 *Hun*, 150, said in *Cannon v. Northwestern Mut. Life Ins. Co.*, 29 *Hun*, 470, to hold a rule that must be presumed to be the same with that of other States. Approved and followed with *Valton v. Nat. Fund Life Assur. Co.*, 20 *N. Y.* 32; *Rawls v. American Life Ins. Co.*, 36 *Barb.* 357; 27 *N. Y.* 282, in *Clark v. Allen*, 11 *R. J.* 439; s. c., 13 *Am. R.* 496, 500. Collated with *Valton v. Nat. Fund Life Assur. Co.*, 20 *N. Y.* 32; *Olmsted v. Keyes*, 85 *Id.* 593, and other cases in 57 *Am. Dec.* 103, n. Applied to descent to heirs, in *Hutson v. Merrifield*, 51 *Ind.* 24; s. c., 19 *Am. R.* 722. Disapproved with *Valton v. Nat. Fund Life Assur. Co.*, 20 *N. Y.* 32, in *Franklin Fire Ins. Co. v. Hazzard*, 41 *Ind.* 116; s. c., 13 *Am. R.* 313, 316. Disapproved with *Valton v. Nat. Fund Life Assur. Co.*, 20 *N. Y.* 32; in *Warnock v. Davis*, 104 *U. S.* 775. Collated with *Valton v. Nat. Fund Life Assur. Co.*, 20 *N. Y.* 32; *Ruse v. Mut. Benefit Life Ins. Co.*, 23 *Id.* 16, *Olmsted v. Keyes*, 85 *Id.* 593, and authorities from Vt. and R. I. to same effect, and authorities from Mass., Ind., Kans., Ky., Penn. and U. S. Sup'm. Ct. in 18 *Cent. L. J.* 346. Applied (Rights of policy-holders) in *Bewley v. Equitable Life Assur. Soc'y*, 61 *How. Pr.* 344, 347. Followed (Mode of assigning life policy) in *Chapman v. McIlwrath*, 77 *Mo.* 38; s. c., 46 *Am. R.* 1.
- **v. Beers**, 24 *How. Pr.* 377. See (Allegations in verified pleading) *Code Civ. Pro.* 1881, § 524, n.
- **v. Diefendorf**, 12 *Wend.* 261. See *People v. Hardenbergh*.
- **v. Holmes**. See *Holbrook v. Murray*.
- **v. Mayor, &c. of N. Y.**, 6 *Duer*, 315; s. c., 13 *How. Pr.* 527. Further decision in 3 *Bosw.* 483. See *Hay v. Cohoes Co.* Decision in 6 *Duer*, explained (Loss of profits as element of damages in action against tortfeasor) in *Walter v. Post*, 4 *Abb. Pr.* 382, 391. Disting'd in *Morey v. Metropolitan Gas Lt. Co.*, 38 *Super. Ct. (J. & S.)* 185, 188. Decision in 3 *Bosw.* followed (Right of municipal corporation to maintain markets in streets) in *Ely v. Campbell*, 59 *How. Pr.* 333, 335. Approved and applied to hack-stands in *Cincinnati Hotel Co. v. Branshaw, Hamilton Co. O. Distr. Ct.*, 7 *Cin. L. Bul.* 60.
- **v. Palmer**, 5 *Hill*, 599. See *Dyett v. Pendleton*; *Greenvault v. Davis*. Applied (Right to sue on covenant of warranty, &c.) in *Fowler v. Poling*, 6 *Barb.* 171; *Moffat v. Strong*, 9 *Bosw.* 78. Dicta explained in *Shattuck v. Lamb*, 65 *N. Y.* 505. Cited as authority with *Greenvault v. Davis*, 4 *Hill*, 643, in *Green v. Irving*, 54 *Miss.* 450; s. c., 28 *Am. R.* 360, 368.
- **v. Pierce**, 22 *Barb.* 362. Aff'd in 4 *Abb. Ct. App. Dec.* 140. Decision in 22 *Barb.* followed (Uniting several plaintiffs in ejectment) in *Hubbell v. Lerch*, 62 *Id.* 295, 297. See *Code Civ. Pro.* 1881, § 1503, n.
- **v. Roberts**, 6 *Bosw.* 593. Rev'd in 31 *N. Y.* 441.
- **v. St. John's Church**, 15 *Barb.* 346. See *Howe v. Buffalo, &c. R. R. Co.* Overruled in part at least (Implied obligation to indemnify agent) by *Howe v. Buffalo, &c. R. R. Co.*, 38 *Barb.* 124; 37 *N. Y.* 297. See also *Turner v. Jones*, 1 *Lans.* 147.
- **v. Van Santvoord**, 23 *Wend.* 660. Rev'd as *Van Santvoord v. St. John*, in 6 *Hill*, 157. See *Bostwick v. Champion*; *Fairchild v. Slocum*; *Gibson v. Culver*; *Weed v. Saratoga & Schenectady R. R. Co.* Decision in 25 *Wend.* disapproved, and that in 6 *Hill* approved, and *Weed v. Schenectady & Saratoga, &c. R. R. Co.*, 19 *Wend.* 534, reconciled (Liability of carrier for goods marked to point beyond his line) in *Farmers' & Mechanics' Bank v. Champlain Transportation Co.*, 23 *Vt.* 186; s. c., 56 *Am. Dec.* 63, 79; *Ackley v. Kellogg*, 8 *Cov.* 223, being also relied on. See other cases cited in 5 *Am. L. Reg. N. S.* 420. Explained and commented on in *Ang. on Carr.* § 95, 5 ed.; *Id.* n. 3; *Id.* § 281, n. 6.
- **v. West**, 4 *How. Pr.* 329. Approved (Order, when appealable on merits) in *Megrath v. Van Wyck*, 3 *Sandf.* 750.
- St. Joseph's Asylum, Matter of**, 10 *Hun*, 113, n. Modified and aff'd in 69 *N. Y.* 353. Decision in *Id.* applied (Interest on assessments) in *Matter of Miller*, 24 *Hun*, 638; *Matter of Pelton*, 85 *N. Y.* 651. Approved (Mode of assessment for improvements) in *Matter of St. Mark's Church*, 11 *Hun*, 383; *Matter of Hebrew Benev. Soc.*, 70 *N. Y.* 478. Applied (Reduction of assessment for improvement) in *Matter of Auchmuty*, 18 *Hun*, 326.
- St. Lawrence Mut. Ins. Co. v. Paige**, 1 *Hill*, 430. Overruled in effect (Necessity of proof to sustain assessment on premium note) in *Thomas v. Whallon*, 31 *Barb.* 172; *Jackson v. Roberts*, 31 *N. Y.* 304. See to the contrary (Authentication of corporate books) *Union Gold M. Co. v. Rocky M. Nat. B'k*, 2 *Col. Ter.* 565. See also *Abb. Tr. Ev.* 49.
- St. Luke's Home v. Association for Relief of Aged Indigent Females**, 34 *Super. Ct. (J. & S.)* 241. Rev'd (Misnomer of corporation in will) in 52 *N. Y.* 191; s. c., 11 *Am. R.* 697.
- St. Mark's Church, Matter of**, 11 *Hun*, 381. Aff'd, it seems, in 74 *N. Y.* 610, but without opinion.
- St. Nicholas Ins. Co. v. Merchants' Mut. F. & M. Ins. Co.**, 11 *Hun*, 108. Further decision on another point in 83 *N. Y.* 604.

- St. Peter v. Denison**, 58 *N. Y.* 416; s. c. 17 *Am. R.* 258, with note. See *Bailey v. Mayor, &c. of N. Y.*; *Hay v. Cohoes Co.*; *Wilson v. Mayor, &c. of N. Y.* See cases cited (Distinction between trespassers and others, as to injuries caused by negligence) in 6 *Abb. N. C.* 119, n.
- St. Vincent Orphan Asylum v. City of Troy**, 12 *Hun.* 317. Rev'd in 76 *N. Y.* 108; s. c. 32 *Am. R.* 286. Both decisions explained and decision in 76 *N. Y.* followed (Possession under license, not adverse) in *Wiseman v. Lucksinger*, 84 *Id.* 31, 42, 44.
- Salinger v. Simmons**, 2 *Lans.* 325; s. c., more fully, 8 *Abb. Pr. N. S.* 409.
- Salisbury v. Morss**, 7 *Lans.* 359. Aff'd, on this opinion, in 55 *N. Y.* 675.
- **v. Stainer**, 19 *Wend.* 159. See *Holden v. Dakin*. Followed (Implied warranty on sale by sample) in *Barnard v. Kellogg*, 10 *Wall.* 383, 389. Collated with *Leonard v. Fowler*, 44 *N. Y.* 289, and other cases in 24 *Am. R.* 181, n. Reviewed and collated with other cases to same effect, in 22 *Am. L. Reg. N. S.* 242. Explained in 1 *Pars. on Contr.* 583, n. i.
- **v. Van Hoesen**, 3 *Hill*, 77. See *Stillwell v. Mills*. Disting'd with *Brown v. Snell*, 57 *N. Y.* 286 (Action on guardian's bond, when to be brought) in *Behrens v. Rodenburg*, 1 *City Ct.* 93. Limited and explained in *Brown v. Snell*, 57 *N. Y.* 286, 297. Disting'd in *Girvin v. Hickman*, 21 *Hun.* 316. Applied to action on executor's bond,—in *Hood v. Hood*, 85 *N. Y.* 561, 576.
- Salmon v. Allen**, 11 *Hun.* 29. Further proceeding in 75 *N. Y.* 479.
- **v. Stuyvesant**, 16 *Wend.* 321. Opinion of chancellor in 18 *Id.* 262. Decision in *Id.* discussed (Will void in part when void in toto) in 4 *Kent Com.* 281, n. a. Quoted in 1 *Jarm. on Wills*, Rand. & T. ed. 720, n. Commented on in *Id.* 413, n. 1, Bigel. 5 ed.
- Salomon v. Van Praag**, 48 *How. Pr.* 338. Aff'd in 6 *Hun.* 529.
- Salter v. Burt**, 20 *Wend.* 205; s. c., 32 *Am. Dec.* 530, with note containing citations. Included (Negotiable paper falling due on Sunday, when to be presented for payment) in 2 *Ames Cas. on B. & N.* 294.
- **v. Sutherland**. See *Savage v. O'Neil*.
- **v. Utica & Black River R. R. Co.**, 13 *Hun.* 187. Rev'd in 75 *N. Y.* 273. Previous decision in 3 *Sup'm. Ct. (T. & C.)* 800, rev'd in 59 *N. Y.* 631. Subsequent decision in 23 *Hun.* 533 (opinion not reported), aff'd in 86 *N. Y.* 401. Decision in 75 *Id.* disting'd (Negligence in crossing railroad track) in *Kellogg v. N. Y. Central, &c. R. R. Co.*, 79 *Id.* 72, 77. Decision in 86 *Id.* followed (Rate of interest) in *First Nat. B'k of Meadville v. Fourth Nat. B'k of N. Y.*, 89 *Id.* 412. Disting'd in *Prouty v. Lake Shore & M. S. R'y Co.*, 26 *Hun.* 546. •
- **v. Weiner**, 6 *Abb. Pr.* 191. Disting'd (Right to money deposited in lieu of bail) in *Hermann v. Aaronson*, 8 *Abb. Pr. N. S.* 155, wherein *Salter v. Weiner* is said to have been rev'd at General Term. See *Code Civ. Pro.* 1881, § 586, n.
- Salters v. Delaware & Hud. Canal Co.**, 3 *Hun.* 338; s. c., more fully, 5 *Sup'm. Ct. (T. & C.)* 559. See *Dougan v. Champlain Trans. Co.* Disting'd (Master's duty to servant as to machinery) in *Cone v. Delaware, &c. R. R. Co.*, 15 *Hun.* 172, 175.
- **v. Sheppard**. See *Saltus v. Shepard*.
- **v. Tobias**, 3 *Paige*, 338. Applied (Effect of declaratory law on existing rights) in *Koshkonong v. Burton*, 104 *U. S.* 668, 678.
- Salt Springs Nat. Bank v. Burton**, 58 *N. Y.* 430. See *Cornell v. Moulton*. Included (Presentment of note for payment) in 2 *Ames Cas. on B. & N.* 324.
- Saltus, Matter of**, 3 *Keyes*, 500. See history of proceedings, in *Saltus' Estate*, *Tuck.* 230.
- Saltus v. Everett**, 20 *Wend.* 267; s. c., 32 *Am. Dec.* 541, with note; 13 *N. Y. Com. L. Law. ed.* 850, with brief note. See *Mowry v. Walsh*; *Van Buskirk v. Purinton*; *Williams v. Merle*. Applied (Title of owner of personal property, when not divested) in *Brower v. Peabody*, 2 *Abb. Pr.* 218; *Covell v. Hill*, 6 *N. Y.* 379; *Pringle v. Phillips*, 5 *Sandf.* 173. Reviewed with other cases in *Rawles v. Deshler*, 28 *How. Pr.* 69. Referred to in 25 *Am. Dec.* 611, n., as clearly stating the exceptions to the rule, and is shown to lay down doctrines in that connection that are well settled. Cited in *Sargent v. Usher*, 55 *N. H.* 287; s. c., 20 *Am. R.* 208, as containing a forcible discussion of the principle. Applied in *Charles v. Neigelsen*, 15 *Bradw. (Ill.)* 20. Discussed with other cases in 15 *Am. L. Rev.* 383. Explained (Possession of goods as evidence of authority to sell) in *Cook v. Adams*, 1 *Bosw.* 503. Applied in *Hoffman v. Carow*, 22 *Wend.* 318. Criticised, but followed, in *Roberts v. Dillon*, 3 *Daly.* 52. Disting'd in *Bates v. Cunningham*, 12 *Hun.* 26. See *Waggoner v. Cooley*, 1 *Ill.* 245. Disting'd in *Roach v. Turk*, 9 *Heisk. (Tenn.)* 708; s. c., 24 *Am. R.* 360, 363. Applied (Negotiability of bill of lading) to stock certificate,—in *Mechanics' B'k v. N. Y. & New Haven R. R. Co.*, 13 *N. Y.* 628. Explained (Liability for conversion) in *Cobb v. Dows*, 9 *Barb.* 243; which was rev'd in 10 *N. Y.* 335, 339, 343, which see. Disting'd (Rights of bona fide holder of bill of lading) in *Blossom v. Champion*, 28 *Barb.* 225. Applied in *Bassett v. Spofford*, 2 *Daly.* 436.
- **v. Genin**, 3 *Bosw.* 639; s. c., 8 *Abb. Pr.* 253. Aff'd in 10 *Id.* 478; s. c., 19 *How. Pr.* 233.
- **v. Kipp**, 12 *How. Pr.* 342. Examined with other cases (Evidence in mitigation, on assessment of damages) in *Thompson v. Lumley*, 7 *Daly.* 74, 79.
- **v. Ocean Ins. Co.**, 12 *Johns.* 107; s. c., 7 *Am. Dec.* 290. Approved (Duty of mas-



- ter of disabled vessel) in *Treadwell v. Union Ins. Co.*, 6 *Cow.* 270, 274.
- *v.* —, 14 *Johns.* 138. See *Le Roy v. Gouverneur*. Followed with *Neilson v. Columbian Ins. Co.*, 3 *Cal.* 108 (Recovery for total loss) in *Aranzamendi v. Louisiana Ins. Co.*, 2 *La.* 432; s. c., 22 *Am. Dec.* 136, 140, with note. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 732.
- *v. Saltus*, 2 *Lans.* 9. See (Surrogate's power to punish for contempt) *Code Civ. Pro.* 1881, § 2555, n.
- *v. Shepard*, 22 *Hun.* 618; s. c., more fully, as *Salters v. Sheppard*, 11 *Weekly Dig.* 189. Subsequent decision, as it seems, in 89 *N. Y.* 602.
- Samble v. Mechanics' Fire Ins. Co.**, 1 *Hall*, 560. Overruled (Compulsory reference of account) in *Camp v. Ingersoll*, 86 *N. Y.* 433, 437.
- Sammis v. Smith.** See *Fields v. Moul*; *Morse v. Keyes*.
- Sammon v. N. Y. & Harlem R. R. Co.**, 38 *Super. Ct. (J. & S.)* 414. Aff'd in 62 *N. Y.* 251; s. c. 49 *How. Pr.* 348. Decision in *Id.* disting'd (Master's duty to servant as to machinery) in *Cone v. Delaware, &c. R. R. Co.*, 15 *Hun.* 172, 176. Explained with other cases, and disting'd, in *Elmer v. Locke*, 135 *Mass.* 575, 579.
- Sampson v. Buffalo, N. Y., &c. R. R. Co.**, 4 *Sup'm. Ct. (T. & C.)* 600; mem. s. c., 2 *Hun.* 512. Further decision in 13 *Id.* 280. Decision in 4 *Sup'm. Ct. (T. & C.)* followed (Sufficiency of evidence of notice of mechanic's lien) in *Jennings v. Newman*, 52 *How. Pr.* 282.
- Samuel v. Beiger**, 4 *Abb. Pr.* 88; s. c., 24 *Barb.* 163; 13 *How. Pr.* 342. See *Fetridge v. Wells*. Collated with other cases (Injunction against violations of trademarks) in *Thoms. on Prov. Rem.* 263. Explained in *Moak's Underhill's Torts*, 1 *Am. ed.* 633; 2 *Pars. on Contr.* 257*bi*, n. j.
- Samuels v. Evening Mail Assoc.**, 52 *N. Y.* 625. Further decisions in 6 *Hun.* 5; 9 *Id.* 288; which latter was rev'd in 75 *N. Y.* 604, on dissenting opinion of *DAVIS, P. J.* Also abstract of answer in 1 *Abb. N. C.* 152, n. Decision in 6 *Hun.* explained (Damages for libel) in *Hamilton v. Eno*, 16 *Id.* 599.
- Sanborn v. Elizabethport M'fg Co.**, 13 *Abb. Pr.* 432. See (Application to discharge attachment) *Code Civ. Pro.* 1881, § 696, n.
- *v. Lefferts*, 58 *N. Y.* 179; s. c., more fully, 16 *Abb. Pr. N. S.* 42. Disting'd (What is dissolution of corporation, as affecting trustee's liability) in *Bruce v. Platt*, 80 *N. Y.* 379, 389; *Losec v. Bullard*, 79 *Id.* 408.
- Sanchez v. People**, 4 *Park.* 535; s. c., as *People v. Sanchez*, 18 *How. Pr.* 72. Approved, but rev'd on account of act of 1860, in 22 *N. Y.* 147. Decision in *Id.* modified (Competency of jurors, how determined) in *Greenfield v. People*, 6 *Abb. N. C.* 1, 11. Applied (Expert testimony) in *Haggerty v. Brooklyn City, &c. R. R. Co.*, *Id.* 104, 133, n.
- Sander v. Hoffman**, 39 *Super. Ct. (J. & S.)* 307. Rev'd in 64 *N. Y.* 248; s. c., 50 *How. Pr.* 449. Decision in *Id.* approved and disting'd (What constitutes evasion of contract in restraint of trade) in *Smith v. Martin*, 80 *Ind.* 260; s. c., 41 *Am. R.* 808. See also 27 *Alb. L. J.* 24.
- Sanders, Matter of**, 4 *Paige*, 293. Quoted (Rule in Shelley's Case) in 3 *Jarm. on Wills*, Rand. & T. ed. 181, n. 3.
- Sanders v. Bacon**, 8 *Johns.* 485. See *Cowee v. Cornell*. Disting'd (Effect of memorandum on note as part thereof) in *Benedict v. Cowden*, 49 *N. Y.* 396, 404. Followed in *Pool v. McCrary*, 1 *Ga.* 319; s. c., 44 *Am. Dec.* 655, with note.
- *v. Gillespie*, 64 *Barb.* 628. Aff'd in 59 *N. Y.* 250.
- *v. Gillett*, 8 *Daly*, 183. Disting'd with *Garner v. Gladwin*, 12 *Weekly Dig.* 10 (Attorney's lien as subject to right of set-off) in *Naylor v. Lane*, 5 *Civ. Pro. R.* (Browne) 149. See *Code Civ. Pro.* § 66, as amended in 1879.
- Sanderson v. Bowen**, 2 *Hun.* 153; fuller mem. s. c., 4 *Sup'm. Ct. (T. & C.)* 675.
- *v. Morgan*, 25 *How. Pr.* 144. Aff'd in 39 *N. Y.* 231. Decision in *Id.* explained (Effect of war on right of action by resident in enemy's country) in *Kershaw v. Kelsey*, 100 *Mass.* 561; s. c., 1 *Am. R.* 142, 144, citing *Bell v. Chapman*, 10 *Johns.* 185.
- Sandford v. Handy**, 23 *Wend.* 260. Subsequent decision in 25 *Id.* 475. Also subsequent decision respecting contract here involved,—in *Sandford v. Halsey*, 2 *Den.* 235, 245. See *Jeffrey v. Bigelow*; *Tice v. Gallup*. Decision in 23 *Wend.* explained (Liability for false representations on sale of land) in *Clarke v. Baird*, 7 *Barb.* 67. Applied in *Van Epps v. Harrison*, 5 *Hill*, 68. Disapproved in *Holbrook v. Connor*, 60 *Me.* 578; s. c., 11 *Am. R.* 216. Explained in 2 *Pars. on Contr.* 778, n. n. Disting'd (Liability for representations of special agent) in *Scott v. McGrath*, 7 *Barb.* 55. Applied in *Devondorf v. Beardsley*, 23 *Id.* 660; *Sharp v. Mayor, &c. of N. Y.*, 40 *Id.* 271; *Ellis v. Albany City Fire Ins. Co.*, 4 *Lans.* 437. Collated with *Lee v. Village of Sandy Hill*, 40 *N. Y.* 442; *Perkins v. N. Y. Central R. R. Co.*, 24 *Id.* 213, and other cases in *Lewis v. Meier*, *U. S. Cir. Ct. D. Kan.* 14 *Fed. Rep.* 313. Cited with other cases in 11 *Am. L. Rev. N. S.* 497. Commented on in *Bigel. Cns. on Torts*, 25. Discussed in *Id.* 33. Applied (Evidence of cost price, to determine value) in *Smith v. Griffith*, 3 *Hill*, 338.
- *v. Roosa*. See *Ball v. Ryers*; *Marsh v. Lawrence*.
- *v. Sinclair*. See *Stoors v. Kelsey*.
- *v. Supervisors of N. Y.*, 15 *How. Pr.* 172. See (Voluntary associations as corpor-

- ations) 4 *Abb. N. C.* 311, n.; *Betts v. Betts*, *Id.* 317.
- *v. White*, 56 *N. Y.* 359. See (Proceedings where party is unknown) *Code Civ. Pro.* 1881, § 451, n.; 1541, n.
- Sands v. Church**, 6 *N. Y.* 347. Cited as authority (What is necessary, to authenticate judgment) in *Heinemann v. Waterbury*, 5 *Bosw.* 686, 688. Explained (Right to set up usury in mortgage) in *Chamberlain v. Dempsey*, 14 *Abb. Pr.* 246. Applied in *Knickerbocker Life Ins. Co. v. Nelson*, 7 *Abb. N. C.* 182. Followed in *Shankland v. Nelson*, 1 *Tenn. Ch.* 459, 466. Applied (Waiver of illegality in contract) in *Merritt v. Millard*, 3 *Abb. Ct. App. Dec.* 293.
- *v. Codwise*, 4 *Johns.* 536; s. c., 5 *Am. Dec.* 305, with note, wherein it is shown to have been approved by *Storv, J.*, in 2 *Mason*, 296, and in other Federal decisions (Fraudulent conveyance, how far valid). Disting'd in *Somes v. Brewer*, 2 *Pick. (Mass.)* 184; s. c., 13 *Am. Dec.* 406, 411, with note. Applied in *Gilbert v. Hoffman*, 2 *Watts (Pa.)* 66; s. c., 26 *Am. Dec.* 103, with note. Approved (Rights of assignee in bankruptcy, as to fraudulent conveyance made by bankrupt) in *Carr v. Hilton*, 1 *Curt. Ct.* 230. Quoted in *Wait on Fraud. Conv.* § 16. Approved and applied (Right of creditors to maintain proceedings to set aside conveyance) in *Bates v. Bradley*, 24 *Hun.* 84, 87. Followed (Possession by vendor after sale, as evidence of fraud) in *Peck v. Land*, 2 *Ga.* 1; s. c., 46 *Am. Dec.* 368, 375, with note. Approved (Indemnity to *particeps criminis* in case of fraud) in *Brig Ann C. Pratt*, 1 *Curt. Ct.* 340.
- *v. Craft*, 10 *Abb. Pr.* 216. Disting'd (Costs against personal representative) in *Keyser v. Kelly*, 43 *Super. Ct. (J. & S.)* 22, 24.
- *v. Crooke*, 46 *N. Y.* 564. See *L'Amoureux v. Gould*; *Wright v. Hunter*. Followed (Appeal from order granting new trial, in action tried by jury) in *Dickson v. B'dway, &c. R. R. Co.*, 47 *N. Y.* 509; *Arnold v. Robertson*, 50 *Id.* 684. Approved in *Downing v. Kelly*, 48 *Id.* 437.
- *v. Gelston*, 15 *Johns.* 511; s. c., 5 *N. Y. Com. L. Law. ed.* 1177, with note. Disting'd (Acknowledgment that bars statute of limitations) in *Murray v. Coster*, 20 *Johns.* 586. Approved in *Van Keuren v. Parmelee*, 2 *N. Y.* 530; *Henry v. Root*, 33 *Id.* 529. Applied in *Bradley v. Field*, 3 *Wend.* 273; *Allen v. Webster*, 15 *Id.* 288. Reviewed with other cases in *Reigne v. Executors of Desportes*, *Dudley L. (So. Car.)* 119; which was cited with approval in *Coles v. Kelsey*, 2 *Tex.* 541; s. c., 47 *Am. Dec.* 661, 666. Followed and approved in *Fries v. Boisselet*, 9 *Serg. & R. (Pa.)* 128; s. c., 11 *Am. Dec.* 683. Discussed in *Ang. on Limit.* § 214, 6 ed. § 217.
- *v. Graves*, 1 *Sup'm. Ct. (T. & C.) Add.* 13. Rev'd in 58 *N. Y.* 94.
- *v. Hildreth*, 14 *Johns.* 493. See *Gelston v. Hoyt*. Explained (Burden of proof on one claiming under fraudulent conveyance) in *Birely's Ex'rs v. Staley*, 5 *Gill. & J. (Md.)* 432; s. c., 25 *Am. Dec.* 303, 311, with note.
- *v. Hill*, 42 *Barb.* 651. Aff'd in 55 *N. Y.* 18.
- *v. Hughes*, 53 *N. Y.* 287. Disting'd (What constitutes adverse possession) in *Bedell v. Shaw*, 59 *Id.* 46, 49: Commented on in *Sedgw. & W. on Tr. of Tit. to Land*, § 776.
- *v. Kimbark*, 39 *Barb.* 108. Aff'd in 27 *N. Y.* 147.
- *v. N. Y. Life Ins. Co.*, 59 *Barb.* 556. Aff'd in 50 *N. Y.* 626; s. c., 10 *Am. R.* 535. See *Cohen v. N. Y. Mutual Life Ins. Co.*; *Griswold v. Waddington*. Decision in 50 *N. Y.* applied (Delay in payment of premiums, when excused) in *Leslie v. Knickerbocker Life Ins. Co.*, 2 *Hun.* 618. Disting'd in *Wheeler v. Conn. Mut. Life Ins. Co.*, 16 *Id.* 325, which was rev'd in 82 *N. Y.* 551, which see. Decision in 59 *Barb.* opposed in *Tait v. N. Y. Life Ins. Co.*, 1 *Flipp. (U. S.)* 291, 315. Followed (Effect of payment in Confederate money) in *Lester v. Union M'fg Co.*, 5 *Sup'm. Ct. (T. & C.)* 659.
- *v. Roberts*, 8 *Abb. Pr.* 343. See (Effect of supplementary proceedings on after-acquired property) *Code Civ. Pro.* 1881, § 2469, n.
- *v. St. John*, 23 *How. Pr.* 144; s. c., 36 *Barb.* 628. See cases cited (Pleading defense of statute of limitations) in 8 *Abb. N. C.* 197, n., 198, n., 199, n.
- *v. Sanders*, 28 *N. Y.* 416; s. c., 25 *How. Pr.* 82; also with opinions of *Emott, J.*, and *Balcom, J.*, in 26 *N. Y.* 239. Opinions of *Emott, J.*, relied on (What is sufficient publication of notice of assessment on premium note) in *Sands v. Shoemaker*, 4 *Abb. Ct. App. Dec.* 149; *Sands v. Graves*, 58 *N. Y.* 94, 99.
- *v. Son*, 1 *Sup'm. Ct. (T. & C.) Add.* 13. Rev'd, it seems, in 56 *N. Y.* 602.
- *v. Taylor*, 5 *Johns.* 395; s. c., 4 *Am. Dec.* 374; 3 *N. Y. Com. L. Law. ed.* 1057, with brief note. See *Dike of Reitlinger*; *Heermance v. Yeomans*; *Holden v. Dakin*; *Howard v. Hoey*. Disting'd (Contract of sale of personality, when rescinded) in *Healy v. Utly*, 1 *Cow.* 345, 353; and see dissenting opinion *Id.* 354. Examined (Doctrine of implied warranty) in *Gouty v. McCann*, 2 *Chand. (Wisc.)* 37. Disting'd (When title to personal property passes) in *Lacy v. Weaver*, 49 *Ind.* 373; s. c., 19 *Am. R.* 683. Quoted and explained (Measure of damages in action by vendor against vendee) in 3 *Pars. on Contr.* 210, n. t.
- Sanford v. Eighth Ave. R. R. Co.**, 7 *Bosw.* 122. Rev'd in 23 *N. Y.* 343. Decision in *Id.* approved, but criticised in part (Review of questions of fact, in case of trial before jury) in *Parker v. Jervis*, 3 *Abb. Ct. App. Dec.* 452. Explained in *Macy v. Wheeler*, 30 *N. Y.* 238. Disting'd (Liability for wilful injury committed by servant) in *Mali v.*

- Lord, 39 *N. Y.* 383; *Hughes v. N. Y. & New Haven R. R. Co.*, 36 *Super. Ct. (J. & S.)* 227. Followed in *Higgins v. Water-vliet Turnpike Co.*, 46 *N. Y.* 28. Questioned (Exemplary damages for wrongful and malicious act of agent) in *Craker v. Chicago & Northwestern R'y Co.*, 36 *Wis.* 657, 676; s. c., 17 *Am. R.* 504, 512. Applied (When injury done to wrong-doer is actionable) in *Marks v. Borum*, 1 *Bart. (Tenn.)* 87; s. c., 25 *Am. R.* 764, 768.
- *v. Grainger*, 12 *Barb.* 392. Disting'd (Sale of decedent's real estate to pay judgment) in *East River Nat. B'k v. McCaffrey*, 3 *Redf.* 97, 99. See *Code Civ. Pro.* 1881, § 2757, *n.*
- *v. Jackson*, 10 *Paige*, 266. See *Adsit v. Adsit*. Approved with *Smith v. Kniskern*, 4 *Johns. Ch.* 9; *Adsit v. Adsit*, 2 *Id.* 448 (Dower, when barred) in *Lewis v. Smith*, 9 *N. Y.* 517; *Van Arsdale v. Van Arsdale*, 2 *Dutch. (N. J.)* 404. Quoted in 2 *Jarm. on Wills*, Rand. & T. ed. 25, *n.*
- *v. McLean*, 3 *Paige*, 117; s. c., 23 *Am. Dec.* 773, with note. Explained and applied (Right to subrogation) in *Twombly v. Cassidy*, 82 *N. Y.* 155, 159. Disapproved with *Banta v. Garmo*, 1 *Sandf. Ch.* 383, 386 (Effect of unauthorized payment of debt by stranger) in *Neely v. Jones*, 16 *W. Va.* 625; s. c., 37 *Am. R.* 794.
- *v. Mickles*, 4 *Johns.* 224; s. c., 3 *N. Y. Com. L. Law. ed.* 803, with brief note. Explained with *Geortner v. Trustees*, 2 *Barb.* 625 (Power of partners after dissolution) in *Bennett v. Buchan*, 5 *Abb. Pr. N. S.* 412. See *Gillilan v. Sun Mut. Ins. Co.*, 41 *N. Y.* 376. Applied in *Hart v. Woodruff*, 24 *Hun.* 510, 512. Followed with *Lansing v. Gaine*, 2 *Johns.* 300; *Hackley v. Patrick*, 3 *Id.* 538, in *White v. Union Ins. Co.*, 1 *Nott. & McC. (So. Car.)* 556; s. c., 9 *Am. Dec.* 726. See cases collated in 6 *Am. Dec.* 574, *n.* Followed with *Hackley v. Patrick*, 3 *Johns.* 536, in *Humphries v. Chastain*, 5 *Ga.* 166; s. c., 48 *Am. Dec.* 247, with note. Followed (Power of one partner to transfer interest in bills or notes given to firm) in *McIntire v. McLawrin*, 2 *Humph.* (Tenn.) 71; s. c., 36 *Am. Dec.* 300.
- *v. Sanford*, 45 *N. Y.* 723. Subsequent proceedings in 2 *Sup'm. Ct. (T. & C.)* 641; which was aff'd in 58 *N. Y.* 69; s. c., 17 *Am. R.* 206, with note. Other proceedings in 61 *Barb.* 293; s. c., 5 *Lans.* 486; also in 4 *Hun.* 753. See *Williamson v. Williamson*. Decision in 45 *N. Y.* questioned and not followed (What constitutes gift from husband to wife) in *Matter of Ward*, 2 *Redf.* 251. Followed in *Fowler v. Buttery*, 44 *Super. Ct. (J. & S.)* 143, 161. Approved in *Pile v. Pile*, 6 *Lea. (Tenn.)* 508; s. c., 40 *Am. R.* 50. Explained with *City B'k of New Haven v. Perkins*, 29 *N. Y.* 554 (Assailing transfer of chose in action) in *Seeley v. Morgan*, 49 *Super. Ct. (J. & S.)* 346, 355. Disting'd in *Hays v. Southgate*, 10 *Hun.* 511, 514; which was rev'd as *Hays v. Hathorn*, in 74 *N. Y.* 486. Decision in 5 *Lans.* followed (Presumption as to advancement) in *Piper v. Barse*, 2 *Redf.* 19, 23. Decision in 4 *Hun.* cited as authority (Rights of post-testamentary child) in *McCormack v. McCormack*, 60 *How. Pr.* 196, 199. Decision in 61 *Barb.* applied in *Smith v. Robertson*, 24 *Hun.* 210, 214.
- *v. —*, 2 *Hun.* 94; mem. s. c., 4 *Sup'm. Ct. (T. & C.)* 686. Aff'd in 62 *N. Y.* 553. Compare (Limitation of action against personal representative of decedent) *Code Civ. Pro.* § 391.
- *v. White*, 1 *Sup'm. Ct. (T. & C.)* 647; s. c., 46 *How. Pr.* 205. Aff'd in 56 *N. Y.* 359; s. c., less fully, 47 *How. Pr.* 96.
- Sanger v. Vail*, 13 *How. Pr.* 500; s. c., more fully, 4 *Abb. Pr.* 217.
- Sanquirico v. Benedetti*, 1 *Barb.* 315. See *Hamblin v. Dinneford*. Disting'd (Enjoining violation of contract for personal services) in *Daly v. Smith*, 38 *Super. Ct. (J. & S.)* 158, 168.
- Saratoga Co. Bank v. King*, 44 *N. Y.* 87. See *Curtis v. Gokey*; *Maier v. Homan*; *Murray v. Vanderbilt*. Disting'd (Action to enforce illegal agreement) in *Arnot v. Pittston & Elmira Coal Co.*, 2 *Hun.* 591, 594. Commented on (Contracts in restraint of trade) in 2 *Benj. on Sales*, § 815, *n.* 22 (Corbin's 4 *Am. ed.*).
- Saratoga & Schenectady R. R. Co. v. Row*, 24 *Wend.* 74; s. c., 35 *Am. Dec.* 598. Disting'd (Right to rescind contract for fraud) in *Peck v. Brewer*, 48 *Ill.* 59.
- Saratoga & Washington R. R. Co. v. McCoy*, 9 *How. Pr.* 339. Disting'd (Granting costs not asked for in notice of motion) in *Jones v. Cook*, 11 *Hun.* 231.
- Sargent v. —*, 5 *Cow.* 106; s. c., 8 *N. Y. Com. L. Law. ed.* 590, with brief note. Followed (Damages in action for seduction, as compensation for support of illegitimate child) in *Hitchman v. Whitney*, 9 *Hun.* 512. Collated with other cases in *Bigel. Cas. on Torts*, 295. Dictum disapproved (Right of action for seduction) in *Bartley v. Richtmyer*, 4 *N. Y.* 38. Disapproved in *Vossel v. Cole*, 10 *Mo.* 634; s. c., 47 *Am. Dec.* 136. Explained in *Moak's Underhill's Torts*, 1 *Am. ed.* 342.
- Sarjeant v. Blunt*, 16 *Johns.* 74. Disting'd (Liability of agent in trover for parting with property contrary to instructions) in *Lavery v. Snethen*, 68 *N. Y.* 526.
- Sarles v. Mayor, &c. of N. Y.*, 47 *Barb.* 447. Applied (Liability for property carried away by mob) in *Solomon v. City of Kingston*, 24 *Hun.* 562, 564.
- Sarsfield v. Metropolitan Ins. Co.*, 61 *Barb.* 479. Followed (Effect of description of property as dwelling-house, as warranty) in *Browning v. Home Ins. Co. of Columbus*, 6 *Daly.* 522, 524.
- *v. Van Vaughner*, 14 *Abb. Pr.* 297. Rev'd in 38 *Barb.* 444; s. c., 15 *Abb. Pr.* 65.
- Sartos v. Merceques*, 9 *How. Pr.* 188. See

(Rights, &c. of sheriff when liable as bail)  
*Code Civ. Pro.* 1881, § 595, n.

**Sartwell v. Field**, 68 *N. Y.* 341. See (Arrest as substitute for *ne exeat*) *Code Civ. Pro.* 1881, § 551, n.

**Satterlee v. Groat**, 1 *Wend.* 272. See *King v. Lenox*. Disting'd (What constitutes liability as common carrier) in *Chevallier v. Straham*, 2 *Tex.* 115; s. c., 47 *Am. Dec.* 639, 643, with extended note. Cited as a very important case and explained in 2 *Pars. on Contr.* 164, n. d. Explained in *Ang. on Carr.* § 46, 5 ed. Discussed in *Id.* § 72. Explained (Master's liability for servant's negligence) in 1 *Add. on Torts*, 587, n., Wood's ed.

**Satterthwaite v. Vreeland**, 3 *Hun.* 152. Approved (Brokers' commissions, when earned) in *Sibbald v. Bethlehem Iron Co.*, 83 *N. Y.* 378, 385.

**Saul v. Kruger**, 9 *How. Pr.* 569. See (Execution against bailee) *Code Civ. Pro.* 1881, § 1412, n.

**Saunders, Matter of**, 21 *Hun.* 579. Overruled (Who is "party aggrieved" by assessment) in *Matter of Gantz*, 85 *N. Y.* 536, 538.

**Saunders v. Hares**, 44 *N. Y.* 353. Collated with other cases (Enlarging lesser estates into fees) in *Sharsw. & B. Cas. on Real Prop.* 54.

**Sauter v. N. Y. Central, &c. R. R. Co.**, 6 *Hun.* 446. Aff'd in 66 *N. Y.* 50; s. c., 23 *Am. R.* 18, with note. See *Ginna v. Second Ave. R. R. Co.*

**Savacool v. Boughton**, 5 *Wend.* 170; s. c., 21 *Am. Dec.* 181, with note, wherein it is shown to be a leading authority, and to have been frequently approved in *N. Y.* and elsewhere. See *Dominick v. Eacker*; *Duffield v. Horton*; *Earl v. Camp*; *Suydam v. Keyes*. Followed (Immunity of officer executing process) in *Patchin v. Ritter*, 27 *Barb.* 36; *Abbott v. Yost*, 2 *Den.* 86; *Field v. Parker*, 4 *Hun.* 344; *Bradley v. Ward*, 58 *N. Y.* 407; *Parker v. Walrod*, 16 *Wend.* 518. Disting'd in *Jermaine v. Waggener*, 1 *Hill.* 285; *Bulymore v. Cooper*, 2 *Lans.* 76; *Coats v. Darby*, 2 *N. Y.* 521; *Kerr v. Mount*, 28 *Id.* 665; *Earl v. Camp*, 16 *Wend.* 566. Followed as conclusive in *Chegaray v. Jenkins*, 5 *N. Y.* 381. Applied to action of village trustees,—in *Porter v. Purdy*, 29 *Id.* 113. Approved in *Conner v. Long*, 104 *U. S.* 228, 238. Disting'd, and *Earl v. Camp*, 16 *Wend.* 562, followed, in *Beach v. Botsford*, 1 *Doug. (Mich.)* 199; s. c., 40 *Am. Dec.* 45, 47, with note; *Hotchkiss v. McVickar*, 12 *Johns.* 403, 408; *Brooks v. French*, 5 *Wend.* 568, being also cited to sustain the decision. Approved as a leading case and one that has been extensively followed,—in *Nowell v. Tripp*, 61 *Me.* 426; s. c., 14 *Am. R.* 572; *Suydam v. Keyes*, 13 *Johns.* 444, being referred to as overruled by *Savacool v. Boughton*. See *Milburn v. Gilman*, 11 *Mo.* 64, 69. Included in *Bigel. Cas. on Torts*, 241 Applied (Val-

idity of proceedings of court having jurisdiction) in *Lange v. Benedict*, 73 *N. Y.* 35. Disting'd in *Roderigas v. East River Sav'gs Inst.*, 76 *Id.* 323. Applied (Distinction between liability of court and of its ministerial officer) in *Shadbolt v. Bronson*, 1 *Mich.* 89.

**Savage v. Allen**, 59 *Barb.* 291. Aff'd in 54 *N. Y.* 458. Further proceeding in 2 *Sup'm. Ct. (T. & C.)* 474. Effect of decision in 54 *N. Y.* explained in subsequent decision involving same transactions, in 21 *Hun.* 145. Decision in 2 *Sup'm. Ct. (T. & C.)* disting'd (Allowance of costs in judgment on appeal) *Burdett v. Lowe*, 22 *Hun.* 588; 85 *N. Y.* 241; *Parrott v. Sawyer*, 26 *Hun.* 466, being applied in *Jermain v. Lake Shore R. R. Co.*, 31 *Id.* 558.

— **v. Burnham**, 17 *N. Y.* 561. Further decision on other questions as *Savage v. Sherman*, in 87 *Id.* 277. See *Bunn v. Vaughan*. Decision in 17 *N. Y.* followed (Application of statute of uses and trusts to trusts in personality) in *Bunn v. Vaughan*, 1 *Abb. Ct. App. Dec.* 256. Explained in *Curtis v. Smith*, 60 *Barb.* 13. Denied in *Wells v. Wallace*, 2 *Redf.* 62. Disting'd (Suspension of power of alienation) in *Burke v. Valentine*, 5 *Abb. Pr. N. S.* 172; *Matter of Ruppert*, *Tuck.* 487. Applied in *Post v. Hover*, 33 *N. Y.* 597. Approved and applied in preference to *Amory v. Lord*, 9 *Id.* 403,—in *Harrison v. Harrison*, 42 *Barb.* 167, which was aff'd in 36 *N. Y.* 544, which see. Applied with *Van Schryver v. Mulford*, 59 *Id.* 520; *Harrison v. Harrison*, 36 *Id.* 543; *Monarque v. Monarque*, 80 *Id.* 320; in *Leavitt v. Wolcott*, 66 *How. Pr.* 51. Commented on in *Gerard Tit. to Real Est.* 2 ed. 234. Applied (When equitable conversion takes effect) in *Ross v. Roberts*, 2 *Hun.* 93. Followed (Provision in will, when inconsistent with dower) in *Tobias v. Ketchum*, 32 *N. Y.* 327. Followed with *Tobias v. Ketchum*, in *Young v. Boyd*, 64 *How. Pr.* 213, in preference to *Adsit v. Adsit*, 2 *Johns. Ch.* 448.

— **v. Corn Exchange Ins. Co.**, 4 *Bosw.* 1. Aff'd in 36 *N. Y.* 655. Decision in 4 *Bosw.* disting'd (Right of defendant to show title in third person) in *Chapman v. Douglas*, 5 *Daly*, 244, 248.

— **v. Crill**, 19 *Hun.* 4. Aff'd in 80 *N. Y.* 630, on opinion below.

— **v. Gould**, 60 *How. Pr.* 217. Other proceedings in *Id.* 234, 255, 258.

— **v. Howard Ins. Co.** See *Savage v. Long Island Ins. Co.*

— **v. Long Island Ins. Co.**, 43 *How. Pr.* 462. Aff'd as *Savage v. Howard Ins. Co.*, 44 *Id.* 40, which was rev'd in 52 *N. Y.* 502; s. c., 11 *Am. R.* 741. See *Kitts v. Massasoit Ins. Co.* Decision in 52 *N. Y.* applied (What avoids condition in policy against transfer of property) in *Browning v. Home Ins. Co.*, 6 *Daly*, 525; *Euchanan v. Westchester Co. Mut. Ins. Co.*, 61 *N. Y.* 611. Followed in *Miner v. Judson*, 2 *Hun.*

- 441, 443; *Germond v. Home Ins. Co.*, *Id.* 540, 542. Followed in *Oakes v. Manufacturers', &c. Ins. Co.*, 131 *Mass.* 166; *Farmers' Ins. Co. v. Archer*, *Sup'm. Ct. O.* 1881, 10 *Ins. L. J.* 370, 374. Disting'd in *Hammel v. Queen's Ins. Co.*, 54 *Wis.* 72, 79. Applied (Validity of condition against transfer) in *Plath v. Minn. Farmers' Mut. Fire Ins. Ass'n*, 23 *Minn.* 479; s. c., 23 *Am. R.* 697, 700.
- *v. Medbury*, 19 *N. Y.* 32. See *Thomas v. Whallon*. Disting'd (Recovery on note given to insurance company) in *Howland v. Edmonds*, 24 *N. Y.* 307, 310.
- *v. Murphy*, 8 *Bosw.* 75. Aff'd in 34 *N. Y.* 508. Decision in *Id.* followed (Conveyance when fraudulent as to creditors) in *Pendleton v. Hughes*, 65 *Barb.* 141; *Carr v. Breese*, 18 *Hup.* 136; which was rev'd in 81 *N. Y.* 589, which see. Disting'd in *Seaman v. Wall*, 54 *How. Pr.* 49. Followed in *Barhydt v. Perry*, 57 *Iowa*, 416, 420. See to the contrary *Holmes v. Clark*, 48 *Barb.* 237. See also *Abb. Tr. Ev.* 739. Discussed in *Wait on Fraud. Conv.* § 96. Quoted and commented on in *Id.* § 200, n. 2.
- *v. O'Neil*, 42 *Barb.* 374. Rev'd in 44 *N. Y.* 298. See *Rawson v. Pennsylvania R. R. Co.*; *Robinson v. Dauchy*. Decision in 44 *N. Y.* followed with *Salter v. Sutherland*, 4 *Alb. L. J.* 252 (Validity of transfer from husband to wife) in *Sheldon v. Clancy*, 42 *How. Pr.* 190; *Treadwell v. Hoffman*, 5 *Daly*, 212; *Brace v. Gould*, 1 *Sup'm. Ct. (T. & C.)* 228. Applied to preference in assignment,—in *Jaycox v. Caldwell*, 51 *N. Y.* 398. Relied on in *Gill v. Woods*, 81 *Ill.* 64; s. c., 25 *Am. R.* 264, 266. See (Presumption as to law of another jurisdiction) *Davis v. Davis*, 1 *Abb. N. C.* 147.
- *v. Putnam*, 32 *Barb.* 420. Aff'd in 32 *N. Y.* 501.
- *v. Sherman*, 24 *Hun.* 307. Rev'd in part in 87 *N. Y.* 277. See *Savage v. Burnham*.
- Saw Mill Co. v. City of Brooklyn.** See *N. Y. & Brooklyn Saw Mill, &c. Co. v. City of Brooklyn*.
- Sawyer v. Chambers**, 43 *Barb.* 622; s. c., more fully, 44 *Id.* 42. Prior decision in 11 *Abb. Pr.* 110. With decision in *Id.*, and *Webster v. Bond*, 9 *Hun.* 437, compare (When defendant cannot bring in another person as defendant) *The Hudson, U. S. Dist. Ct. S. D. N. Y.* 15 *Fed. Rep.* 162, 174; s. c., 28 *Alb. L. J.* 148, 152.
- *v. Partridge*. Reported under *Mason v. Partridge*, 4 *Hun.* 621. Aff'd in 66 *N. Y.* 633.
- Saxon v. Dodge**, 57 *Barb.* 84. See *Cross v. Huntley*; *Marsh v. Dodge*. Disting'd (Invalidity of patent as defense) in *Marston v. Swett*, 66 *N. Y.* 212; which was rev'd 4 *Hun.* 153, which see. Followed in *Hawks v. Swett*, 4 *Hun.* 146, 151. Referred to in *Jones v. Burnham*, 67 *Me.* 93, 99, as overruled by *Marston v. Swett*, 66 *N. Y.* 206.
- *v. Johnson*, 10 *Johns.* 418; s. c., 4 *N. Y. Com. L. Law. ed.* 1092, with brief note.
- Sayles v. Smith**, 12 *Wend.* 57; s. c., 27 *Am. Dec.* 117, with note containing citations (Validity of acts done on Sunday.) Criticised and explained (Estoppel to assert title to real estate) in *Miller v. Platt*, 5 *Duer*, 272, 281; citing *Swick v. Sears*, 1 *Hill*, 17; *Miller v. Auburn & Syracuse R. R. Co.*, 6 *Id.* 61.
- Sayre v. Cushing**, 7 *Abb. Pr.* 371. Disting'd (Sufficiency of denial on information and belief) in *Meehan v. Harlem Savings Bank*, 5 *Hun.* 440.
- *v. Wisner*, 8 *Wend.* 661. See *Spoor v. Wells*. Followed (Statute, when not construed retrospectively) in *N. Y., Oswego, &c. R. R. Co. v. Van Horn*, 57 *N. Y.* 473, 478.
- Scarborough v. Dady**, 19 *Alb. L. J.* 164. See (Amendment of notice of appeal from justice's decision) *Code Civ. Pro.* 1881, § 3049, n.
- Scattergood v. Wood**, 14 *Hun.* 269. Statement in 20 *Id.* LIV, that it was aff'd Dec. 19, 1879, seems to be erroneous, as *Scattergood v. Wood*, 79 *N. Y.* 263; s. c., 35 *Am. R.* 515, is another case.
- Schafee v. Henkel**, 57 *How. Pr.* 97; s. c., as *Schaefer v. Henkel*, 75 *N. Y.* 378; and 7 *Abb. N. C.* 1. See also (Right of action on instrument executed by agent) *Nicoll v. Burke*, 8 *Id.* 213. Disting'd in *Carley v. Potts*, 24 *Hun.* 571, 574.
- Schaettler v. Gardiner**, 4 *Daly*, 56; s. c., 41 *How. Pr.* 243. Appeal dismissed in 47 *N. Y.* 404. Decision in *Id.* disting'd (Remedy against erroneous judgment) in *Kamp v. Kamp*, 59 *Id.* 213, 213.
- Schafer, Matter of**, 3 *Abb. Pr. N. S.* 234. See (Adjournment by arbitrators) *Code Civ. Pro.* 1881, § 2368, n.
- Schafer v. Reilly**, 50 *N. Y.* 61. Applied (Mechanic's lien, when not defeated by prior mortgage, &c.) in *Gross v. Daly*, 5 *Daly*, 549. Disting'd (Rights of assignee of mortgage) in *Grisser v. Powers*, 53 *How. Pr.* 195; *Gould v. Marsh*, 1 *Hun.* 568. Followed in *Trustees of Union College v. Wheeler*, 61 *N. Y.* 114; *Greene v. Warnick*, 64 *Id.* 225. Applied in *Bank for Savings v. Frank*, 56 *How. Pr.* 407.
- Schaffner v. Reuter**, 37 *Barb.* 44. Disting'd (Validity of transfer of property by husband to wife in payment of debt due her separate estate) in *Briggs v. Mitchell*, 60 *Id.* 288, 316.
- Schanck v. Mayor, &c. of N. Y.**, 10 *Hun.* 124. Aff'd in 69 *N. Y.* 444.
- Schauber v. Jackson**, 2 *Wend.* 11. See to the contrary (Presumption of grant) *Doe v. Butler*, 3 *Id.* 149. See also *Abb. Tr. Ev.* 710. Relied on (What must be shown to disinherit heir-at-law) in *Wright v. Hicks*, 12 *Ga.* 155; s. c., 56 *Am. Dec.* 451.
- Scheib v. Baldwin**, 13 *Abb. Pr.* 469; s. c., 22 *How. Pr.* 278. Opposed (Effect on attach-

- ment, of recovery of judgment) in *Thompson v. Culver*, 15 *Abb. Pr.* 97.
- Scheidt v. Sturgis**, 10 *Bow.* 606. See other cases collected (Application to intervene) in 6 *Abb. N. C.* 306, *n.*
- Scheinzer v. Raymond**, 3 *Weekly Dig.* 2. Aff'd in effect as *Schwinger v. Raymond*, 83 *N. Y.* 192; *s. c.*, 38 *Am. R.* 415.
- Schell, Matter of**, 53 *N. Y.* 263. Further decision in 4 *Hun.* 65.
- , 16 *Hun.* 283. 'Rev'd in 76 *N. Y.* 432.
- Schell v. Erie R. R. Co.**, 4 *Abb. Pr. N. S.* 287; *s. c.*, 35 *How. Pr.* 438; 51 *Barb.* 368. Explained and limited (Restraining prosecution of action pending in same court) in *Erie R'y Co. v. Ramsey*, 57 *Barb.* 449, which was aff'd in 45 *N. Y.* 637, 654, which see. Said to be overruled by *Erie Ry. Co. v. Ramsey*, in *Platt v. Woodruff*, 61 *Id.* 378, 381. Explained (Power to increase stock of railroad corporation) in *Belmont v. Erie R'y Co.*, 52 *Barb.* 669.
- **v. Plumb**, 16 *Abb. Pr. N. S.* 19; *s. c.*, 46 *How. Pr.* 11. Aff'd in 55 *N. Y.* 592. See *Wager v. Schuyler*. Decision in 46 *How. Pr.* followed (Proof of inconsistent statements of witness) in *Clark v. St. James' Church*, 21 *Hun.* 95, 100. Decision in 55 *N. Y.* relied on (Damages on total breach of entire continuing contract) in *Trustees of Howard College v. Turner*, 71 *Ala.* 429; *s. c.*, 46 *Am. R.* 326. Included in *Sedgw. Cas. on Duma.* 507.
- Schelly v. Zink**, 13 *Hun.* 588. For the present statute see (Supersedes) *Code Civ. Pro.* § 572.
- Schemerhorn v. Loines**, 7 *Johns.* 311; *s. c.*, 4 *N. Y. Com. L. Law. ed.* 334, with brief note.
- **v. Vanderheyden**, 1 *Johns.* 139; *s. c.*, 3 *N. Y. Com. L. Law. ed.* 87, with brief notes; also *s. c.*, 3 *Am. Dec.* 304, with note, wherein it is said to be the first reported case in this country on the point herein. See *Fink v. Cox*. Referred to as overruled (Parol proof to vary consideration stated in written contract) in *Frink v. Green*, 5 *Barb.* 457. Followed in *Howes v. Barker*, 3 *Johns.* 509. Disting'd in *Shepherd v. Little*, 14 *Id.* 211. Overruled in *McCrea v. Purmort*, 16 *Wend.* 468. Shown in 3 *Am. Dec.* 306, *n.*, to have been undermined as an authority, the later *N. Y.* cases on this point being collated. Reviewed with *Howes v. Barker*, 3 *Johns.* 506; *Maigley v. Hauer*, 7 *Id.* 341; *Shepherd v. Little*, 14 *Id.* 210; *Bowen v. Bell*, 20 *Id.* 338, and other cases in *Belden v. Seymour*, 8 *Conn.* 304; *s. c.*, 21 *Am. Dec.* 661, 664, with note. See also cases reviewed in dissenting opinion of *HOSMER, C. J.*, and those collated in note. Compare *Jack v. Dougherty*, 3 *Watts (Pa.)* 151; *Duval v. Bibb*, 4 *H. & M. (Va.)* 113; *Epps v. Randolph*, 2 *Call. (Va.)* 103; *Harvey v. Alexander*, 1 *Rand. (Va.)* 219; *Ballard v. Briggs*, 7 *Pick. (Mass.)* 533. Followed (Right of action on promise to third person) in *Barker v. Bucklin*, 2 *Den.* 53; *Coster v. Mayor, &c. of Albany*, 43 *N. Y.* 412. Collated with *Howes v. Barker*, 3 *Johns.* 506; *Maigley v. Hauer*, 7 *Id.* 341; *Hildreth v. Sands*, 2 *Johns. Ch.* 35, the doctrine in *Schemerhorn v. Vanderheyden* being said to have been often re-asserted and never departed from, in *Lawrence v. Fox*, 20 *N. Y.* 268, 271, 276, 279. Disting'd in *Simson v. Brown*, 68 *Id.* 358; *King v. Whitely*, 10 *Paige*, 469. Explained in *Sailly v. Cleveland*, 10 *Wend.* 161. Applied with *Shepard v. Shepard*, 7 *Johns. Ch.* 56; *Barker v. Bucklin*, 2 *Den.* 45; *Judson v. Gray*, 17 *How. Pr.* 289; *Burr v. Beers*, 24 *N. Y.* 178, in *Todd v. Weber*, 93 *Id.* 181. Followed with *Gold v. Phillips*, 10 *Johns.* 412, in *Dearborn v. Parks*, 5 *Greenl. (Me.)* 81; *s. c.*, 17 *Am. Dec.* 206. Followed in *Brown v. O'Brien*, 1 *Rich. (So. Car.)* 268; *s. c.*, 44 *Am. Dec.* 254. Also followed in *Motley v. Manufacturers' Ins. Co.*, 29 *Me.* 337; *s. c.*, 50 *Am. Dec.* 591, as laying down a sound doctrine, especially applicable to contracts of insurance.
- Schenck v. Andrews**, 46 *N. Y.* 589. Limited and explained, on further decision, in 57 *Id.* 133. See *Johnson v. Underhill*. Decision in 46 *N. Y.* disting'd (Exemption of stockholders from liability) in *Brown v. Smith*, 13 *Hun.* 408, 412.
- **v. Campbell**. See *Thompson v. People*.
- **v. Dart**, 22 *N. Y.* 420. Examined with *Clapp v. Fullerton*, 34 *Id.* 190 (Jurisdiction of Supreme Court on appeals from surrogate) in *Marvin v. Marvin*, 4 *Keyes*, 9. Disting'd (Commissions of trustees, &c. on fund including securities) in *Matter of Moffat*, 24 *Hun.* 325, 327.
- **v. Ingraham**, 4 *Hun.* 67. Reported in 5 *Id.* 397.
- **v. Lathrop**, 3 *Hill*, 449. Disting'd as inapplicable under L. 1844, c. 273 (Taxing counsel-fee for attending prepared for trial) in *Boynton v. Dormott*, 3 *How. Pr.* 232.
- **v. Lincoln**, 17 *Wend.* 506. Examined (Effect of giving security for stay of execution, on right of appeal) in *People v. Judges, &c.*, 1 *Mich.* 136.
- **v. McKie**. See *Barnard v. Wheeler*; *Beardsly v. Dickerson*.
- **v. Mayor, &c. of N. Y.**, 40 *Super. Ct. (J. & S.)* 165. Aff'd in 67 *N. Y.* 44. Also different proceeding, *Id.* 581, presenting same question and decided on authority of above.
- Schenectady & Saratoga Plank Road v. Thatcher**, 11 *N. Y.* 102. Followed (Irregularity in proceedings of incorporation, when not to be set up by stockholder) in *Eaton v. Aspinwall*, 3 *Abb. Pr.* 422. Explained (Necessity of notice to subscriber, before action for subscription to stock) in *Eastern Plank Road Co. v. Vaughan*, 20 *Barb.* 162. Followed (Effect of alteration in charter on liability on stock subscription) in *Buffalo & N. Y. City R. R. Co. v. Dudley*, 14 *N. Y.* 348. Applied in *Matter of Lee & Co's B'k*,

- 21 *Id.* 17, to stockholder's liability. Disapproved (Completion of subscription as condition to calls upon shares subscribed) in *Peoria, &c. R. R. Co. v. Presto*, 35 *Iowa*, 115, 121.
- Schepeler v. Eisner**, 3 *Daly*, 11. In effect overruled (Validity of sale made by pledgee without knowledge of pledgor) by *Markham v. Jaudon*, 41 *N. Y.* 235.
- Schepmoes v. Bousson**, 1 *Abb. N. C.* 481; s. c., less fully as *Shepmoes v. Bowsson*, 52 *How. Pr.* 401. Applied (Requisites of application for examination before trial) in *Elmore v. Hyde*, 2 *Abb. N. C.* 130.
- Schep v. Carpenter**, 49 *Barb.* 542. Aff'd in 51 *N. Y.* 602. Decision in *Id.* followed (Right of one receiving accommodation note for antecedent debt) in *Wheeler v. Allen*, 59 *How. Pr.* 118. Decision in 49 *Barb.* cited with *Small v. Smith*, 1 *Den.* 533; *Mohawk Bank v. Corey*, 1 *Hill*, 513; *Purchase v. Matteson*, 6 *Duer*, 87; *De Zeng v. Fyfe*, 1 *Bow.* 335; *Wardell v. Howell*, 9 *Wend.* 170 (Diversion of accommodation paper) in 18 *Cent. L. J.* 290.
- Schermerhorn v. American Life Ins. & Trust Co.**, 14 *Barb.* 131. Modified on appeal as *Schermerhorn v. Talman*, in 14 *N. Y.* 93. Decision in 14 *Barb.* applied (Pound sterling, how paid in our currency) in *Ladd v. Arkell*, 40 *Super. Ct. (J. & S.)* 150, 157.
- **v. Hull**, 13 *Johns.* 270. See (Authority to bind out as apprentice) 1 *R. L.* (1813) 136, § 4, as modified by 2 *R. S.* 154, §§ 5, 6.
- **v. Jenkins**. \* See *Smith v. Sutta*.
- **v. Mayor, &c. of N. Y.**, 3 *How. Pr.* 254; s. c., 6 *N. Y. Leg. Obs.* 232. Opposed (Practice on motion for rehearing) in *Crane v. Crane*, *Id.* 443; *Wilson v. Onderdonk*, 3 *How. Pr.* 319. Sustained, and *Crane v. Crane*; *Wilson v. Onderdonk* overruled, in *Sheldon v. Barnard*, 3 *How. Pr.* 423.
- **v. Merrill**, 1 *Barb.* 511. See (When title to real property passes on execution sale) *Code Civ. Pro.* 1881, § 1440, n.
- **v. Miller**, 2 *Cow.* 439. See *Shumway v. Cooper*. Cited with *Van Duzer v. Van Duzer*, 6 *Paige*, 366; *Sleight v. Read*, 18 *Barb.* 159 (Effect of sale of husband's interest in wife's real estate, on his right as tenant by curtesy) in *Tyler on Inf. & Cov.* 2 ed. § 288, as settling the doctrine.
- **v. Negus**, 1 *Den.* 448. Approved (Validity of partial restraints against alienation) in 57 *Am. Dec.* 495, n. See cases collected in 9 *Am. L. Reg. N. S.* 396.
- **v. Prouty**, 30 *N. Y.* 317. See (Referee's fees) *Code Civ. Pro.* 1881, § 3297, n.
- **v. Schermerhorn**, 1 *Wend.* 119; s. c., 9 *N. Y. Com. L. Law. ed.* 867, with brief note (Power to bind partners).
- **v. —**, 6 *Johns. Ch.* 70. Followed (Effect of gift of income, &c. by will) in *Monarque v. Monarque*, 8 *Abb. N. C.* 102, 115.
- **v. Talman**, 14 *N. Y.* 93. Modifying *Schermerhorn v. American Life Ins. & Trust Co.*, 14 *Barb.* 131. See *Cole v. Savage*; *Curtiss v. Leavitt*. Decision in 14 *N. Y.* disting'd (Relief against usurious incumbrance, &c.) in *Knickerbocker Life Ins. Co. v. Nelson*, 7 *Abb. N. C.* 187, which aff'd 13 *Hun.* 325, which see. Applied in *Bissell v. Kellogg*, 60 *Barb.* 630, which was aff'd in 65 *N. Y.* 432, 438, which see; *Allerton v. Belden*, 49 *Id.* 377; *Wheelock v. Lee*, 64 *Id.* 247. Remarks of *SELDEN, J.*, approved in *Williams v. Fowler*, 22 *How. Pr.* 6. Disting'd (Usury on transfer of securities) in *Kitchel v. Schenck*, 29 *N. Y.* 520. Opinion of *SELDEN, J.*, said to repudiate views of *GARDNER, J.*, in *Dry Dock B'k v. American Life Ins. & Trust Co.*, 3 *N. Y.* 344,—in *Elwell v. Chamberlin*, 31 *Id.* 622—626. Explained (Relief to party to illegal transaction) in *Knowlton v. Congress, &c. Spring Co.*, 57 *Id.* 532; *Bateman v. Robinson*, 12 *Neb.* 506, 513. Collated with *Jackson v. Shafer*, 11 *Johns.* 317; *Hartwell v. Root*, 19 *Id.* 346 (Presumption that public officers do their duty) in 29 *Alb. L. J.* 87.
- **v. Tripp**, 2 *Cai.* 108. Compare (Effect of joint plea of not guilty, in trespass) *Drake v. Barrymore*, 14 *Johns.* 166.
- **v. Van Alen**, 13 *How. Pr.* 82. Disting'd (Reference on reversal of judgment) in *Devlin v. Mayor, &c. of N. Y.*, 6 *Daly*, 386, 389.
- **v. Van Volkenburgh**, 11 *Johns.* 529. Reviewed and explained with *Kennedy v. Strong*, 14 *Id.* 128; *Rotan v. Fletcher*, 15 *Id.* 207; *Duncan v. Spear*, 11 *Wend.* 54 (Proof of property requisite to enable trover to be maintained) in *Turley v. Tucker*, 6 *Mo.* 583; s. c., 35 *Am. Dec.* 449, 453, with note.
- **v. Wood**, 4 *Daly*, 158. Collated with other cases (What cases are referable) in 1 *Abb. N. C.* 110, n.
- Schettler v. Smith**, 41 *N. Y.* 328. Applied (Construction of will) in *Bonard's Will*, 16 *Abb. Pr. N. S.* 202. Reviewed with other cases (Who entitled to accumulations of income) in *Grant v. Grant*, 3 *Redf.* 294.
- Schieb v. Baldwin**, 22 *How. Pr.* 278. Disapproved (When attachment is superseded by judgment) in *Smoot v. Hein*, 1 *Civ. Pro. R.* 208, 210.
- Schieffelin v. Carpenter**, 15 *Wend.* 400. Limited and disting'd (Action during tenancy) in *Agate v. Lowenbein*, 57 *N. Y.* 604, 615.
- **v. Harvey**, 6 *Johns.* 170; s. c., 5 *Am. Dec.* 206. Trial at nisi prius reported in *Anth. N. P.* 76. Discussed (Carrier's liability for embezzlement by third party) in *Ang. on Carr.* § 190, n. 1, 5 ed.
- **v. Hawkins**, 14 *Abb. Pr.* 112. Aff'd in 1 *Daly*, 289. See *Keep v. Lord*. Decision in 14 *Abb. Pr.* collated with other cases (Set-off in action by assignee for creditors) in *Bishop on Assign.* § 818.
- **v. N. Y. Ins. Co.**, 9 *Johns.* 21. See *Gardere v. Columbian Ins. Co.*; *Robinson v.*

- United Ins. Co. Explained (Duty of master of disabled vessel to procure another) in *Saltus v. Ocean Ins. Co.*, 12 *Johns.* 112. Explained in *Ang. on Carr.* § 187, 5 ed. Applied (Extent of liability for peril specified in marine policy) in *McCargo v. New Orleans Ins. Co.*, 10 *Rob. (La.)* 202; s. c., 43 *Am. Dec.* 180, 195, with note.
- *v. Stewart*, 1 *Johns. Ch.* 620; s. c., 7 *Am. Dec.* 507, with note containing citations. See *Dunscumb v. Dunscumb*. Followed (Charging administrator, &c. compound interest) in *Johnson's Adm'r's v. Hedrick*, 33 *Ind.* 129; s. c., 5 *Am. R.* 191; *Paige's Ex'rs v. Holman, Ky. Ct. of App.* 1885, 19 *Reporter*, 591. Explained in 1 *Pars. on Contr.* 123, n. g.
- Schieffer v. Dietz**, 83 *N. Y.* 300. Rev'd *Shiffer v. Dietz*, 53 *How. Pr.* 372, on ground that plaintiff had waived right to rescind; but reversal does not disturb rulings of Special Term on validity of plaintiff's title and deed of reconveyance, as appears from further decision by *LARREMORE, J.*, 1882.
- *v. Pruden*, 30 *Super. Ct. (J. & S.)* 167. Aff'd in 64 *N. Y.* 47. See also *Schiffer v. Dietz*, 83 *Id.* 300, 310.
- Schneider v. McLane**, 36 *Barb.* 495. Aff'd as *Schneider v. McLane*, in 3 *Keyes*, 568; s. c., 4 *Abb. Ct. App.* Dec. 154.
- Schmidt v. Blood**, 9 *Wend.* 268; s. c., 24 *Am. Dec.* 143, with extended note, also s. c., 11 *N. Y. Com. L. Law. ed.* 608, with brief note. Applied (Burden of proof as to warehouseman's negligence) in *Clafin v. Meyer*, 75 *N. Y.* 260, 262. Explained and applied in *Bush v. Miller*, 13 *Barb.* 489. Disting'd in *Coleman v. Livingston*, 36 *Super. Ct. (J. & S.)* 39. Applied to wharfinger, in *Foot v. Storrs*, 2 *Barb.* 329. Explained with cases to the contrary, in 2 *Story on Contr.* 5 ed. § 902, n. 6. Explained in *Ang. on Carr.* § 61, n. 5, 5 ed. Referred to in 42 *Am. Dec.* 257, n., as a leading case (Warehouseman's liens). Questioned (Lien as affected by parting with possession) in *McFarland v. Wheeler*, 26 *Wend.* 478.
- *v. Herfurth*, 5 *Robt.* 124. Cited (Admissibility of prices current, as evidence of market value) in 1 *Whart. Com. on Ev.* § 449.
- *v. United Ins. Co.*, 1 *Johns.* 249; s. c., 3 *Am. Dec.* 319. See *Alexandre v. Sun Mut. Ins. Co.*
- Schmittler v. Simon**, 12 *Weekly Dig.* 474. Reported in 25 *Hun.* 76.
- Schneider v. Armstrong**, 1 *Buff. Super. Ct. (Sheld.)* 379. Compare (Costs in Justices' Courts) *Code Civ. Pro.* §§ 3013, 3014.
- *v. McFarland*, 4 *Barb.* 139. Aff'd in 2 *N. Y.* 459.
- Schnitzer v. Cohen**, 7 *Hun.* 665. See (Necessity that judgment be obtained before action to set aside transfer) *Southard v. Pinckney*, 5 *Abb. N. C.* 184.
- Schoenwald v. Metropolitan Sav'gs B'k**, 33 *Super. Ct. (J. & S.)* 440. Rev'd in 57 *N. Y.* 418. Decision in *Id.* disting'd and limited (Payment to person producing pass-book) in *Allen v. Wm'sburgh Sav'gs B'k*, 69 *Id.* 318.
- Schofield v. Bayard**, 3 *Wend.* 488. Disting'd (Negligence in demanding payment of bill or note) in *Pier v. Heinrichshoffen*, 67 *Mo.* 163; s. c., 29 *Am. R.* 501. Quoted and collated with other cases in *Redf. & B. Lead. Cas. on B. of Exch.* 422.
- *v. Churchill*, 6 *Weekly Dig.* 195. Reported as *Schofield v. Churchill*, 72 *N. Y.* 565.
- *v. Hustis*. See *Schofield v. Churchill*.
- *v. Whitelegge*. See *Schofield v. Whitelegge*.
- Scholey v. Mumford**, 60 *N. Y.* 498. Further decision in 64 *Id.* 521. See *Harmony v. Bingham*. Decision in 60 *N. Y.* applied (Effect of duress on contracts) in *McPherson v. Cox*, 86 *Id.* 472, 479. Followed and disting'd in *Hackley v. Headley*, 45 *Mich.* 569, 575.
- *v. Worcester*. See *Jackson v. Garnsey*.
- Schoolcraft v. Thompson**, 7 *How. Pr.* 446. Rev'd in *Id.* 61.
- Schoonmaker v. Clearwater**, 41 *Barb.* 200. Aff'd as *Chambers v. Clearwater*, in 1 *Abb. Ct. App. Dec.* 341; s. c., 1 *Keyes*, 310.
- *v. Elmendorf*, 10 *Johns.* 49. Reviewed with other cases (Post nuptial choses in action that survive to wife) in *Booz v. Addison*, 2 *Rich. Eq. (So. Car.)* 273; s. c., 46 *Am. Dec.* 43, with note.
- *v. McNally*, 3 *Hun.* 415; s. c., reported fully, 6 *Sup'm. Ct. (T. & C.)* 47.
- *v. Rouse*, 1 *Hun.* 611. Fuller mem. s. c., 4 *Sup'm. Ct. (T. & C.)* 694.
- *v. Sheely*, 3 *Hill.* 165. Aff'd, in 3 *Den.* 485. Both decisions applied (Rule in Shelley's case) in *Bond v. McNiff*, 38 *Super. Ct. (J. & S.)* 83, 88.
- *v. Spencer*, 54 *N. Y.* 363. Followed (Jurisdiction to grant attachment) in *Easton v. Malavazi*, 7 *Daly*, 148. Commented on in *Throop Justice's Man.* 2 ed. 26.
- *v. Vervalen*. See *Smith v. Acker*.
- *v. Wolford*, 20 *Hun.* 166. Disting'd (Effect of admission of improper evidence in probate proceedings) in *Snyder v. Sherman*, 23 *Id.* 139.
- Schouton v. Kilmer**, 8 *How. Pr.* 527. Followed with *Lathrop v. Singer*, 39 *Barb.* 396. (Homestead exemption not applicable to cases of tort) in *Frazier v. Baker, Sup'm. Ct. App. Va.* 1881, 12 *Reporter*, 670.
- Schreyer, Matter of**, 24 *Hun.* 656. Abridgt. s. c., as *Schreyer v. Holborrow*, 12 *Weekly Dig.* 223.
- Schreyer v. Mayor, &c. of N. Y.**, 40 *Super. Ct. (J. & S.)* 255. Aff'd, it seems, in 66 *N. Y.* 656, but no prevailing opinion. Previous decisions in 39 *Super. Ct. (J. & S.)* 1; *Id.* 277.
- Schriv v. Schriver**, 12 *Weekly Dig.* 328. Aff'd in 86 *N. Y.* 575.
- Schroeder v. Gurney**, 10 *Hun.* 413. Aff'd in 73 *N. Y.* 430.
- *v. Hudson River R. R. Co.*, 5 *Duer*, 55. See *Bostwick v. Champion*; *Weed v. Saratoga & Schenectady R. R. Co.* Dictum cor-



- rected (Liability of carrier on contract by agent for transportation beyond line) in *Wait v. Albany & Susquehanna R. R. Co.*, 5 *Lans.* 475, 478.
- *v. Kohlenback*, 6 *Abb. Pr.* 66. Said, in 14 *Abb. Pr. N. S.* 47, *n.*, to be restored as authority (Dismissal of complaint for failure to bring cause to trial) in *Winchell v. Martin*, 14 *Id.* 47.
- Schroepfel v. Corning**, 5 *Den.* 236. Aff'd in 2 *N. Y.* 132. Compare another decision involving same transactions, in 10 *Barb.* 576; aff'd in 6 *N. Y.* 107. Decisions in 5 *Den.*; 6 *N. Y.* followed (Trover, &c. for property received under usurious contract) in *Cousland v. Davis*, 4 *Bosw.* 621. Decision in 6 *N. Y.* applied, in *Matthews v. Coe*, 70 *Id.* 241. Decision in 5 *Den.* applied, in *Wheelock v. Lee*, 15 *Abb. Pr. N. S.* 30; which was rev'd in 64 *N. Y.* 246, which see. Decision in 6 *Id.* applied (What is conversion) in *Covell v. Hill*, *Id.* 383. Decision in 5 *Den.* criticised (Ratification of usurious agreement) in *Smith v. Marvin*, 27 *N. Y.* 143. Compared and limited in 4 *Am. L. Reg. N. S.* 324. Disting'd (Effect of usurious transaction on securities) in *Patterson v. Birdsall*, 64 *N. Y.* 298; *Kellogg v. Adams*, 39 *Id.* 30.
- *v. Shaw*, 5 *Barb.* 580. Aff'd in 3 *N. Y.* 446. See *Pain v. Packard*. Decision in 3 *N. Y.* criticised (Omissions of creditor that discharge surety) in *N. Y. National Exch. B'k v. Jones*, 9 *Daly*, 248. Approved but disting'd in *Trustees of Union College v. Wheeler*, 61 *N. Y.* 110. Applied in *Converse v. Cook*, 25 *Hun.* 45. Collated with *Hayes v. Ward*, 4 *Johns. Ch.* 132; *King v. Baldwin*, 2 *Id.* 562, and other cases, in *Dye v. Dye*, 21 *Ohio St.* 86; *s. c.*, 3 *Am. R.* 40. Followed and fully approved in *Clopton v. Spratt*, 52 *Miss.* 251. Quoted and collated with other cases in 2 *Hare & W. Am. L. Cas.* 5 ed. 408. Quoted in *Story on Eq. Jur.* § 501.
- Schubart v. Harteau**, 34 *Barb.* 447. Criticised in *Mynderse v. Snook*, 1 *Lans.* 483, as containing what is *obiter*, and not law (Right of defendant to set up counterclaim against plaintiff and persons not parties to action). *Briggs v. Briggs*, 20 *Barb.* 477, which is cited as authority in *Schubert v. Harteau*, being explained as not sustaining this dictum.
- Schuchardt v. Mayor, &c. of N. Y.**, 59 *Barb.* 295. See note of further decision in 62 *Id.* 671, confirming opinion of INGRAM, J.
- Schudder v. Shiells**, 17 *How. Pr.* 420. Quoted and collated with other cases (Arrest of agent) in *Thomps. on Prov. Rem.* 30.
- Schufeldt v. Abernethy**, 2 *Duer*, 533. Collated with other cases (Sale on credit by assignee for creditors) in *Dishop on Assign.* § 211. Explained in *Burrill on Assign.* § 224, 4 ed.
- Schutt v. Baker**. See *Passinger v. Thornburn*.
- *v. Large*, 6 *Barb.* 373. Followed (Un-
- recorded instrument as notice) in *Goelet v. McManus*, 1 *Hun.* 306.
- Schultz v. Bradley**, 4 *Daly*, 29. Rev'd in 57 *N. Y.* 646.
- *v. Crane*, 6 *Hun.* 236. Aff'd, it seems, in 64 *N. Y.* 659, but without opinion.
- *v. Hoagland*, 9 *Weekly Dig.* 319. Rev'd in 12 *Id.* 463; *s. c.*, 1 *Civ. Pro. R.* 204.
- *v. Pulver*, 3 *Paige*, 182. Aff'd in 11 *Wend.* 361. Decision in *Id.* disting'd (Including in inventory, assets without the State) in *Sherman v. Page*, 85 *N. Y.* 123, 128; which aff'd 21 *Hun.* 59, 66, which see.
- *v. Whitney*, 17 *How. Pr.* 471. Erroneously reported as decided at General Term. Correctly reported in 9 *Abb. Pr.* 71. Cited (Affidavit by referee as to number of sittings, &c.) in *Brown v. Windmuller*, 26 *Super. Ct. (J. & S.)* 75, 77.
- Schultze v. Rodewald**, 1 *Abb. N. C.* 365. Followed (Striking out answer as sham) in *Roby v. Hallock*, 5 *Id.* 86, 88.
- Schunemaker v. Croseman**, 24 *Hun.* 385. Abridgt. *s. c.*, as *Same v. Crossman*, 12 *Weekly Dig.* 99.
- Schundt v. Calm**, 3 *Abb. L. J.* 389. See (What is "ordinary proceeding in action") *Code Civ. Pro.* § 799.
- Schuschard v. Reimer**, 1 *Daly*, 459. Followed (Right to continuance of action, on death of party) in *Livermore v. Bainbridge*, 61 *Barb.* 358; which aff'd 43 *How. Pr.* 273, which see.
- Schuster v. Metropolitan Board of Health**. See *Mayor, &c. of Hudson v. Thorne*.
- Schuyler v. Hoyle**, 5 *Johns. Ch.* 169. Followed (Power of husband over wife's choses in action) in *Leakey v. Maupin*, 10 *Mo.* 368; *s. c.*, 46 *Am. Dec.* 120, 124. Cited and approved in 2 *Kent Com.* 136. Collated with other cases in *Tyler on Inf. & Cov.* 2 ed. § 255. Included in *Everell Lead. Cas. on Inf. &c.* 357.
- *v. Leggett*, 2 *Cow.* 660. Applied (Effect of parol lease, as tenancy from year to year) in *Taggard v. Roosevelt*, 8 *How. Pr.* 144. Followed with *People v. Rickert*, 8 *Cow.* 226, in *Barlow v. Wainwright*, 22 *Vt.* 79; *s. c.*, 52 *Am. Dec.* 79, with note.
- *v. Marsh*, 37 *Barb.* 350. See (Parties defendant in action to recover real property) *Code Civ. Pro.* 1881, § 1503, *n.*
- *v. Russ*, 2 *Cut.* 202. Applied (Known defects not covered by warranty on sale) in *Allen v. Lee*, 1 *Ind.* 58; *s. c.*, *Smith*, 12; *s. c.*, 48 *Am. Dec.* 352, 354, with note.
- *v. Smith*, 51 *N. Y.* 309. See *Mack v. Burt*. Disting'd (Liability of tenant holding over) in *Smith v. Alt*, 4 *Abb. N. C.* 210. Applied in *Mack v. Burt*, 5 *Hun.* 30; *Dorr v. Barney*, 12 *Id.* 263. Opposed, reviewing conflicting cases, in *Worthington v. Globe Rolling Mill, Super. Ct. Cin. Ohio*, 9 *Am. L. Rec.* 693, 697; *s. c.*, 6 *Cin. L. Bul.* 235. Discussed in *Sedgw. & W. on Tr. of Tit. to Land.* § 380. Disting'd (Implication of contract against intention of parties) in *Hazeltine v. Weld*, 73 *N. Y.* 156, 161.

- Collated with other cases (Decision by referee on issue of law) in *Hoffm. on Referees*, 4.
- **v. Van Der Veer**, 2 *Cai.* 235. Cited (Requisites of award) in 2 *Paras. on Contr.* 592, *n. t.* as an excellent case on this subject.
- Schwarz v. Oppold**, 7 *Daly*, 121. Aff'd in 74 *N. Y.* 307; *s. c.*, 56 *How. Pr.* 156. Decision in *Id.* followed (Power to review decision of Marine Court) in *Farley v. Lyddy*, 8 *Daly*, 514, 517.
- Schwerin v. McKie**, 5 *Robt.* 404. Aff'd 51 *N. Y.* 181; *s. c.*, 10 *Am. R.* 581. See *Lamb v. Camden & Amboy R. R. Co.* Decision in 51 *N. Y.* followed (Duty of keeper of bonded warehouse) in *Ciaflin v. Meyer*, 43 *Super. Ct. (J. & S.)* 1, 8; which was rev'd in 75 *N. Y.* 260. Decision in 5 *Robt.* followed (Burden of proof as to negligence in warehouseman) in *Coleman v. Livingston*, 36 *Super. Ct. (J. & S.)* 32, 35.
- Schwinger v. Hickox**, 1 *Buff. Super. Ct. (Sheld.)* 377; *s. c.*, 46 *How. Pr.* 114. Previous proceeding in 53 *N. Y.* 280. Decision in *Id.* followed (Jurisdiction of action against non-resident) in *Bartlett v. Holmes*, 12 *Hun*, 402, which was aff'd in 75 *N. Y.* 534, which see; *Bartlett v. McNeil*, 60 *Id.* 55. Disting'd in *Gibbs v. Queen Ins. Co.*, 63 *Id.* 131. See *Code Civ. Pro.* 1881, § 1627, *n.* See also (Right to recover back on failure of execution sale) *Id.* § 1479. Cited with *Lawrence v. Cornell*, 4 *Johns. Ch.* 542; *Gardiner v. Mayor, &c. of Troy*, 26 *Barb.* 423; *Martin v. McCormick*, 8 *N. Y.* 331 (Duty to refund money wrongfully received) in *Waples on Proc. in Rem.*, § 127, as applicable to the Government.
- **v. Raymond**, 83 *N. Y.* 192. Aff'g in effect *Scheinzer v. Raymond*, 3 *Weekly Dig.* 2. Decision in 83 *N. Y.* applied with *Inslee v. Hampton*, 8 *Hun*, 230; 11 *Id.* 156 (Recovery for or payment of freight, commissions, &c. when not bar to action for breach of contract, &c.) and *Dunham v. Bower*, 77 *N. Y.* 76; *Collins v. Bennett*, 46 *Id.* 490; *Blair v. Bartlett*, 75 *Id.* 150, disting'd in *Campbell v. Thompson*, 27 *Hun*, 541.
- Scofield v. Adams**, 12 *Hun*, 366. Leave to perfect appeal said in 13 *Id.* VIII. to be granted on terms on April 23, 1878.
- **v. Churchill**, 72 *N. Y.* 565. Aff'g *Schofield v. Hustis*, 9 *Hun*, 157. Decision in 72 *N. Y.* followed (Order of court as evidence in action on bond) in *Titus v. Fairchild*, 49 *Super. Ct. (J. & S.)* 211. Disting'd (Surety as bound by judgment against principal) in *Thomson v. MacGregor*, 9 *Abb. N. C.* 138. Disting'd (Inquiry into surrogate's jurisdiction) in *Browning v. Vanderhoven*, 4 *Id.* 166, 172.
- **v. Day**, 20 *Johns.* 102. Limited with *Martin v. Franklin*, 4 *Id.* 124 (Allowance for exchange) in *Guteman v. Davis*, 3 *Daly*, 120. See *Gunther v. Colin*, *Id.* 125. Followed in *Ladd v. Arkell*, 40 *Super. Ct. (J. & S.)* 150, 155.
- **v. Doscher**, 10 *Hun*, 582. Aff'd in 72 *N. Y.* 491. See *Pattison v. Powers*. Decision in 72 *N. Y.* followed (Effect of failure to obtain leave to sue) in *Farish v. Austin*, 25 *Hun*, 430, 432. Followed (Parties in foreclosure) in *Thorne v. Newby*, 59 *How. Pr.* 120.
- **v. Hernandez**, 47 *N. Y.* 313. Disting'd (Non suit by referee at close of evidence) in *Van Derlip v. Keyser*, 68 *Id.* 445. Disting'd (Review of decision on point that should have been submitted to jury) in *Brookman v. Milbank*, 47 *Id.* 378, 381.
- **v. McGregor**, 2 *Hun*, 679; briefer mem. *s. c.*, in 5 *Sup'm. Ct. (T. & C.)* 688. Aff'd in 63 *N. Y.* 638. Previous decision in 1 *Sup'm. Ct. (T. & C.)* 404.
- **v. Van Syckle**, 23 *How. Pr.* 97. Referred to in *Eaton v. Balcom*, 33 *Id.* 80, as overruled by *Zabriskie v. Smith*, 13 *N. Y.* 322 (Demurrer for defect of parties, in action on joint obligation).
- **v. Whitelegge**, 33 *Super. Ct. (J. & S.)* 179; *s. c.*, 10 *Abb. Pr. N. S.* 104. Aff'd in 49 *N. Y.* 259; *s. c.*, 12 *Abb. Pr. N. S.* 320. See *Pattison v. Adams*. Decision in 33 *Super. Ct.* disting'd (Sufficiency of averment of ownership, in replevin action) in *Simmons v. Lyon*, 35 *Id.* 537. Decision in 49 *N. Y.* disting'd in *Van Der Minden v. Elsas*, 36 *Super. Ct. (J. & S.)* 67; *Chapin v. Merchants' Nat. B'k of Whitehall*, 31 *Hun*, 529. Followed (Effect of denial in answer, to cure defect in complaint) in *Tooker v. Arnoux*, 76 *N. Y.* 401. Disting'd (Necessity of averment of demand and refusal, in replevin action) in *Treat v. Hathorn*, 3 *Hun*, 647, where it is said not to overrule *Levin v. Russell*, 42 *N. Y.* 251. Applied in *Talcott v. Belding*, 36 *Super. Ct. (J. & S.)* 84, 94. Criticised as technical in *Pomeroy on Rem.*, § 550, *n.* See *Code Civ. Pro.* 1881, § 1721, *n.*
- Scott v. Conway**, 53 *N. Y.* 619. See *Zimmerman v. Erhard*. Compare (Husband and wife as partners) *Zimmerman v. Erhard*, 8 *Daly*, 311, 315.
- **v. Delahunt**, 5 *Lans.* 372. Aff'd in 65 *N. Y.* 128. See *Bissell v. Pearce*. Decision in 65 *N. Y.* disting'd (Lien of bailee) in *Jackson v. Kasseall*, 30 *Hun*, 231. Decision in 5 *Lans.* approved and contrasted with *Bissell v. Pearce*, 28 *N. Y.* 252, 11 *White v. Smith*, 15 *Vroom (N. J.)* 105; *s. c.*, 43 *Am. R.* 347.
- **v. Depeyster**, 1 *Edw.* 513. See *Carpenter v. Danforth*. Applied with *Kent v. Quicksilver Mining Co.*, 78 *N. Y.* 159 (Stockholder when estopped to complain of acts of directors) in *Parsons v. Hayes*, 14 *Abb. N. C.* 419. Relied on with *Robinson v. Smith*, 3 *Paige*, 222; *Verplanck v. Mercantile Ins. Co.*, 1 *Edw.* 84; *Butts v. Wood*, 38 *Barb.* 181; 37 *N. Y.* 317; *Franklin Fire Ins. Co. v. Jenkins*, 3 *Wend.* 130 (Liability of directors for mistakes of judgment) in

- Spering's Appeal, 71 *Penn. St.* 11; s. c., 10 *Am. R.* 684, 692. Explained in *Ang. & A. on Corp.* § 314, 11 ed.
- **v. Elmore**, 10 *Hun*, 68. Disapproved (Title to real estate, of receiver in supplementary proceedings) in *Wing v. Disse*, 15 *Id.* 190, 195.
- **v. Gibbs**, 2 *Johns. Cas.* 116; s. c., 1 *N. Y. Com. L. Law. ed.* 457, with brief note.
- **v. Guernsey**, 60 *Barb.* 163. Aff'd in 48 *N. Y.* 106. See *Van Kleeck v. Reformed Dutch Church*; *Woolever v. Knapp*. Decision in 48 *N. Y.* explained (Compensation, as between tenants in common) in *Moak's Underhill's Torts*, 1 *Am. ed.* 382. See also (Adjustment of rents in partition suit) *Code Civ. Pro.* 1881, § 1589, n.
- **v. Guthrie**, 25 *How. Pr.* 512; s. c., more fully, 10 *Bosw.* 408. Quoted and collated with other cases (Firm and individual property as affected by assignment for benefit of creditors) in *Bishop on Assign.* § 187. Explained (Preferences) in *Burrill on Assign.* § 211, n. 6, 4 ed.
- **v. Howard**, 3 *Barb.* 319. See (Time for which judgment is lien on real estate) *Code Civ. Pro.* 1881, § 1251, n.
- **v. Libby**, 2 *Johns.* 336. Examined with *Robinson v. Marine Ins. Co.*, *Id.* 323; *Marine Ins. Co. v. United Ins. Co.*, 9 *Id.* 186; *Williams v. Smith*, 2 *Cal.* 13; *Welch v. Hicks*, 6 *Cow.* 504; *Center v. American Ins. Co.*, 7 *Id.* 564 (Pro rata freight, &c. for voyage partially performed) in *Rossiter v. Chase*, 1 *Doug. (Mich.)* 174.
- **v. Middletown, Unionville, &c. R. R. Co.**, 21 *Hun*, 231. Aff'd, it seems, in 86 *N. Y.* 200.
- **v. Monell**, 1 *Redf.* 431. Discussed (Perpetuities) in 1 *Jurm. on Wills*, Rand. & T. ed. 513, n.
- **v. Nevins**, 6 *Duer*, 672. Disting'd (Reaching surplus income of trust fund in creditor's action) in *Williams v. Thorn*, 70 *N. Y.* 270, 275.
- **v. Ocean Bank**, 5 *Bosw.* 192. Aff'd in 23 *N. Y.* 289. See *Warner v. Lee*. Both decisions followed with *Warner v. Lee*, 6 *N. Y.* 144 (Property in notes, &c. sent to banker) in *Hoffman v. Miller*, 9 *Bosw.* 334, 341. Decision in 23 *N. Y.* applied in *Commercial B'k of Clyde v. Marine B'k*, 6 *Abb. Pr. N. S.* 33, 41. Disting'd in *Metropolitan Nat. B'k v. Loyd*, 25 *Hun*, 101, 103.
- **v. Onderdonk**, 14 *N. Y.* 9. See *Rathbone v. Hooney*; *Townsend v. Mayor*, &c. of *N. Y.* Followed (Removal of assessment, as cloud on title) in *Lewis v. City of Buffalo*, 29 *How. Pr.* 340; *Hatch v. City of Buffalo*, 38 *N. Y.* 277; *Crooke v. Andrews*, 40 *Id.* 549. Disting'd in *Overing v. Foote*, 43 *Id.* 293; *Guest v. City of Brooklyn*, 69 *Id.* 513; *Clark v. Davenport*, 95 *Id.* 477, 485. Limited and disting'd in *Marsh v. City of Brooklyn*, 59 *Id.* 234. Followed in *Allen v. City of Buffalo*, 39 *Id.* 390, as not overruled by unreported decision in *Howell v. City of Buffalo*. Applied to claim of dower, in *Wood v. Seely*, 32 *Id.* 113; to deed, in *Fonda v. Sage*, 48 *Id.* 179, 186.
- **v. Rogers**, 31 *N. Y.* 676. See *Suydam v. Jenkins*. Criticised and disting'd (Damages for conversion) in *Devlin v. Pike*, 5 *Daly*, 93. Disting'd in *Whelan v. Lynch*, 65 *Barb.* 328. Applied in *Price v. Keyes*, 1 *Hun*, 192. Explained in *Baker v. Drake*, 53 *N. Y.* 219; 2 *Sedgw. on Dama.* 7 ed. 380, n. Included in *Sedgw. Cas. on Dama.* 588. Cited (Factor bound to rigid execution of orders) in *Whart. Com. on Ag.* § 259.
- **v. Shaw**. See *Cramer v. Van Alstyne*; *Hildreth v. Ellice*.
- **v. Shufeldt**, 5 *Paige*, 43. Collated with other cases (When marriage may be set aside, as procured by fraud) in 24 *Am. R.* 453, n.; 8 *Abb. N. C.* 204, n. Approved in *Tyler on Inf. & Cov.* 2 ed. § 631.
- **v. Williams**, 23 *How. Pr.* 393. See (Vacating order of arrest) *Code Civ. Pro.* 1881, § 568, n.
- **v. Young**, 4 *Paige*, 542. Cited (Proof of admissions of liability, made as part of negotiations for compromise) in 2 *Whart. Com. on Ev.* § 1090.
- Seonton v. Eislord**, 7 *Johns.* 36; s. c., 4 *N. Y. Com. L. Law. ed.* 241, with brief note. With this case and *Shippey v. Henderson*, 14 *Johns.* 178, compare (Debt due by insolvent sufficient consideration for new promise) *Couch v. Ash*, 5 *Cow.* 265; *Hubert v. Williams*, *Id.* 537. Reviewed with *Shippey v. Henderson*, 14 *Johns.* 178; *Couch v. Ash*, 5 *Cow.* 265; *Hubert v. Williams*, 5 *Id.* 537, and other cases, in *Earnest v. Parke*, 4 *Rawle. (Pa.)* 452; s. c., 27 *Am. Dec.* 280, 284, with note.
- Scovill v. Scovill**, 45 *Barb.* 517. See *Herrick v. Woolverton*. See also (Commencement of action against executor, &c. of one dying within State) *Code Civ. Pro.* 1881, § 403, n.
- Scovill v. Griffith**, 12 *N. Y.* 509. Compare (Extrinsic evidence to explain carrier's receipt) *Blossom v. Griffin*, 13 *Id.* 569.
- Seoville v. Canfield**, 14 *Johns.* 340; s. c., 7 *Am. Dec.* 467. Disting'd with *Van Schaick v. Edwards*, 2 *Johns. Cas.* 363 (Extra-territorial operation of penal statutes) in *Houghton v. Page*, 2 *N. H.* 42; s. c., 9 *Am. Dec.* 30. Applied in *Suffolk Bank v. Kidder*, 12 *Verm.* 464; s. c., 36 *Am. Dec.* 354, with note. Relied on as authority in *Story on Conf. of Laws*, § 621.
- Scranton v. Booth**. See *Sheldon v. Sherman*.
- **v. Clark**, 39 *Barb.* 373. Aff'd in 39 *N. Y.* 220. Decision in *Id.* explained (Warranty of title on sale of chattels) in 1 *Pars. on Contr.* 575, n. e.
- Scranton v. Farmers & Mechanics' Bank**, 33 *Barb.* 527. Aff'd on the merits, in 24 *N. Y.* 424. Decision in *Id.* disting'd (Right of one holding claim as individual, to assign it to himself as executor) in *Schreyer v. Holborrow*, 26 *Hun*, 463.

- Scribner v. Craue**, 2 *Paige*, 147; s. c., 21 *Am. Dec.* 81. Included with notes (Duty of witness altering will) in *Redf. Lead. Cas. on Wills*, 137. Quoted (Personal disabilities of testators) in 1 *Jarm. on Wills*, Rand. & T. ed. 97, n.
- **v. Kelley**, 38 *Barb.* 14. Collated with other cases (Liability of owner or keeper of vicious animal) in 10 *Am. R.* 270, n. Approved and followed with *Fried v. N. Y. Central R. R. Co.*, 25 *How. Pr.* 285; *McKee v. Judd*, 12 *N. Y.* 622; *Butler v. N. Y. & Erie R. R. Co.*, 22 *Barb.* 110, after an extended examination of the authorities (Assignability of right of action for tort affecting property) in *G. H. & S. A. R. R. Co. v. Freeman*, 57 *Tex.* 156, a case of injury of cattle on a railroad.
- Scroggs v. Palmer**, 66 *Barb.* 505. Appeal dismissed, it seems, in 55 *N. Y.* 643.
- Scrugham v. Carter**, 12 *Wend.* 131. See *Smith's Case*. Approved with *Phillips v. Cook*, 24 *Wend.* 389 (Execution against one of two partners) and extended to case of attachment, in *Smith v. Orser*, 42 *N. Y.* 132, 137. Explained in *Morrison v. Blodgett*, 8 *N. H.* 238; s. c., 29 *Am. Dec.* 653, with note. Also explained in 1 *Pars. on Contr.* 209, n. i.
- **v. Wood**, 15 *Wend.* 545; s. c., 12 *N. Y. Com. L. Law. ed.* 509, with brief note. Explained (Effect of deed without delivery, in case of death of grantor) in *Stow v. Miller*, 16 *Iowa*, 460, 463. See cases collated in 16 *Am. Dec.* 44, n.
- Scudder v. Gori**, 18 *Abb. Pr.* 207; s. c., less fully, 3 *Robt.* 629; s. c., 28 *How. Pr.* 155. Further proceeding, in 18 *Abb. Pr.* 223; s. c., 3 *Robt.* 661. The decision in 18 *Abb. Pr.* 207 followed and approved (Costs on motion for new trial) in *Selover v. Wisner*, 37 *How. Pr.* 176; *Stilt v. Rowley*, *Id.* 179. See also *Roussou v. Voutriin*, 41 *Id.* 8. Limited in *Muller v. Higgins*, 13 *Abb. Pr.* 297.
- **v. Van Amburgh**, 4 *Edw.* 29. See *Murray v. Lylburn*. Limited (Extent to which doctrine of *lis pendens* is applicable) in *Holbrook v. N. J. Zinc Co.*, 57 *N. Y.* 616, 630.
- Scully v. Sanders**, 44 *Super. Ct. (J. & S.)* 89. Appeal dismissed in 77 *N. Y.* 598.
- Seaboard & Roanoke R. R. Co. v. Ward**, 18 *Barb.* 595; s. c., more fully, 1 *Abb. Pr.* 46. Disapproved (Right to discontinue) in *Young v. Bush*, 36 *How. Pr.* 240, 242. Applied in *Geenia v. Keah*, 66 *Barb.* 246. Questioned in *Matter of Davis*, 7 *Daly*, 1, 7.
- Seabury v. Hungerford**, 2 *Hill*, 80. See *Bank of Albion v. Smith*; *Dean v. Hall*. Reviewed with other cases (Liability of irregular indorser) in *Hahn v. Hull*, 2 *Abb. Pr.* 355; *Waterbury v. Sinclair*, 7 *Id.* 402; *Ellis v. Brown*, 6 *Barb.* 287, 299. Approved in *Hall v. Newcomb*, 3 *Hill*, 234; 7 *Id.* 419. Applied in *Richards v. Warring*, 4 *Abb. Ct. App. Dec.* 53; *Griswold v. Slocum*, 10 *Barb.* 405.
- Seacord v. Burling**, 5 *Den.* 444. Explained (Necessity of certainty as to time of payment in negotiable note) in 1 *Pars. on Contr.* 249, n. k.
- **v. Morgan**, 17 *How. Pr.* 394. Aff'd in 2 *Keyes*, 636; s. c., 4 *Abb. Pr. N. S.* 249; 35 *How. Pr.* 487.
- Seagar v. Sligerland**, 2 *Cai.* 219. Included (Necessity that custom be moral) in *Lawson on Usages & Customs*, 9, with note.
- Sea Ins. Co. v. Stebbins**. See *Bergh's Case*.
- Seaman, Matter of**, 7 *N. Y. Leg. Obs.* 70. Overruled as *Seaman v. Duryea*, in 10 *Barb.* 523; and that aff'd in 11 *N. Y.* 825.
- Seaman v. Drake**, 1 *Cai.* 9. See *Chichester v. Cande*. Disting'd (Liability of bail) in *Baker v. Curtis*, 10 *Abb. Pr.* 279, 281.
- **v. Duryea**, 10 *Barb.* 523. Aff'd in 11 *N. Y.* 324. Both decisions disting'd (Power of surrogate to compel accounting by guardian) in *Diaper v. Anderson*, 37 *Barb.* 177. Decision in 11 *N. Y.* explained (Exclusiveness of surrogate's jurisdiction as to accounting by executor, &c.) in *Christy v. Libby*, 2 *Daly*, 421. See *Wood v. Brown*, 34 *N. Y.* 343; *Savage v. Olmstead*, 2 *Redf.* 481. Followed (Attachment against guardian) in *Frear's Case*, 15 *Abb. Pr.* 351; *Matter of Callahan*, *Tuck.* 62, 64. Applied to executor, in *Timpson's Estate*, 15 *Abb. Pr. N. S.* 238; but disting'd as to executor, in *Seaman v. Whitehead*, 18 *Hun.* 64; *Matter of Watson*, 5 *Lans.* 473, appeal from which was dismissed in 69 *N. Y.* 545, which see. See *Code Civ. Pro.* 1881, § 2555 n. Applied (Necessity of recital of facts, to confer jurisdiction) in *Matter of Baker*, 11 *How. Pr.* 426.
- **v. Gleckner**, 3 *Hun.* 119. Followed (Right to costs, how determined) in *Powers v. Gross*, 6 *Id.* 234.
- **v. Luce**, 23 *Barb.* 250. See *Hoyt v. Van Alstyne*. Followed (Burden of proof as to what property is exempted) in *Twinam v. Swart*, 4 *Lans.* 263, 265.
- **v. Patten**, 2 *Cai.* 312; s. c., 2 *N. Y. Com. L. Law. ed.* 440, with brief note.
- **v. Stoughton**. See *Bostwick v. Burnett*.
- **v. Whitehead**, 18 *Hun.* 64. Rev'd on another point in 78 *N. Y.* 306. Decision in *Id.* followed (Void order, as subject of motion to vacate) in *Attrill v. Rockaway Beach Imp. Co.*, 25 *Hun.* 376, 382. With decision in 18 *Id.* see (Surrogate's power to punish for contempt) *Code Civ. Pro.* 1881, § 2555, n.
- **v. Whitney**, 24 *Wend.* 260. Disting'd (Right of action by creditor against person with whom funds have been deposited by debtor) in *Murdock v. Aikin*, 29 *Barb.* 59, 66. Disapproved in part in *Putnam v. Farnham*, 27 *Wis.* 187; s. c., 9 *Am. R.* 459.
- Seamen's Friend Society v. Hopper**, 33 *N. Y.* 619. Applied (Insane delusion of testator) in *Merrill v. Rolston*, 5 *Redf.* 253; *Shaw's Will*, 2 *Id.* 107, 127. Included with note in *Redf. Lead. Cas. on Wills*, 228.

- Searing v. Searing**, 9 *Paige*, 283. Followed (Wife's right of survivorship in notes taken by husband) in *Johnson v. Lusk*, 1 *Tenn. Ch.* 3.
- Searle v. Scovell**, 4 *Johns. Ch.* 218. Approved and applied (Liability for extra freight paid, on transhipment of cargo) in *Hugg v. Balt. & Cuba Smelt. & Mining Co.*, 35 *Md.* 414; s. c., 6 *Am. R.* 429.
- Searles v. Cronk**, 38 *How. Pr.* 320. See *Stephens v. Wider*. Compare (Reversal of judgment for defendant, where plaintiff would have been entitled only to nominal damages) in *McConihe v. N. Y. & Erie R. Co.*, 20 *N. Y.* 495; *Stephens v. Wider*, 32 *Id.* 351; *Chase v. Bassett*, 15 *Abb. Pr.* *N. S.* 293.
- **v. Curtis**, 9 *Weekly Dig.* 195. Aff'd, it seems, in 85 *N. Y.* 627, but without opinion.
- Sears v. Brink**, 3 *Johns.* 210; s. c., 3 *Am. Dec.* 475, with note, wherein it is shown to have been indorsed by authority of the highest courts of N. Y. (Necessity of consideration being expressed in promise to pay debt of another) *Browne on Stat. of Frauds*, § 390, being referred to as giving a very accurate statement of the decisions on this question. Questioned, in *Leonard v. Vredenburg*, 8 *Johns.* 25, 37. Elaborately reviewed in *Packard v. Richardson*, 17 *Mass.* 122; s. c., 9 *Am. Dec.* 123, and disapproved, in so far as it adopts the doctrine of *Wain v. Warlters*, 5 *East*, 10, and thought to conflict with the later case of *Leonard v. Vredenburg*, which is approved and criticised at length. But see as to effect of act of 1863—striking out requirement of expression of consideration.—*Evansville Nat. B'k v. Kaufman*, 93 *N. Y.* 273, 278. Cited in *Benj. on Sales*, § 232, n. n. (Bennett's 4 *Am. ed.*) as sustaining the English doctrine. Cited as recognizing distinction between "bargain" and "agreement," in *Id.* § 248, n. 45 (Corbin's 4 *Am. ed.*).
- **v. Conover**, 34 *Barb.* 330. Aff'd in 3 *Keyes*, 113; s. c., 33 *How. Pr.* 324; 4 *Abb. Ct. App. Dec.* 179. Decision in *Id.* distinguishing with *Cook v. Philipps*, 56 *N. Y.* 310; *Moffatt v. Sackett*, 18 *Id.* 22 (Power of appellate court to determine amount of recovery) in *Burling v. Gunther*, 63 *How. Pr.* 68. See to the contrary (Effect of anticipatory refusal to perform contract) *Daniels v. Newton*, 114 *Mass.* 530; s. c., 19 *Am. R.* 384. But see *Abb. Tr. Ev.* 338. Decision in 34 *Barb.* applied (Assignability of contract not personal in its nature) in *Devlin v. Mayor, &c. of N. Y.*, 63 *N. Y.* 8, 18.
- **v. Gearn**, 7 *How. Pr.* 383. See *Smith v. Orser*; *Stoutenburgh v. Vanderburgh*. Explained and reconciled with *Goll v. Hinton*, 3 *Abb. Pr.* 120; *Smith v. Orser*, 43 *Barb.* 178 (Liability of partnership property to attachment for individual debt of co-partner) in *Barry v. Fisher*, 8 *Abb. Pr. N. S.* 369, 379.
- **v. Mack**, 2 *Bradf.* 394. Aff'd in decision that was aff'd as *Sears v. Burnham*, 17 *N. Y.* 445.
- **v. Shafer**, 1 *Barb.* 408. Aff'd in 6 *N. Y.* 268. Decision in *Id.* applied (Proof of undue influence) in *Bergen v. Udall*, 31 *Barb.* 24; *Van Kleeck v. Phipps*, 4 *Redf.* 99, 130. Reviewed with other cases in *Nesbit v. Lockman*, 34 *N. Y.* 171. Cited from in *Harvey v. Sullens*, 46 *Mo.* 147; s. c., 2 *Am. R.* 491.
- Seaton v. Davis**, 1 *Sup'm. Ct. (T. & C.)* 91. Followed (Pleading in action by infant plaintiff) in *Bartholomew v. Lyon*, 67 *Barb.* 86. Discussed in *Sedgw. & W. on Tr. of Tit. to Land*, § 196; *Id.* § 201. Superseded by *Code Civ. Pro.* § 1686.
- Seaver v. Genuer**, 10 *Abb. Pr.* 256. See (Rights, &c. of sheriff when liable as bail) *Code Civ. Pro.* 1881, § 595, n.
- **v. Robinson**, 3 *Duer*, 622. See *Hopkins v. Coburn*. Opposed (Privilege of non-resident witness) in *Merrill v. George*, 23 *How. Pr.* 331, 336.
- Seaving v. Brinkerhoff**, 5 *Johns. Ch.* 329. See *De Caters v. Le Ray De Chaumont*; *Grover v. Wakeman*; *Hyslop v. Clarke*. Discussed (Effect of provision for exaction of releases in assignment for benefit of creditors) in *Burrill on Assign.* § 192, 4 ed.
- Sebring v. Mersereau**, *Hopk.* 501. Aff'd in 9 *Cow.* 344. See *Wotten v. Copeland*.
- Second Avenue M. E. Church, Matter of**, 5 *Hun.* 442. Rev'd in 66 *N. Y.* 395. Decision in *Id.* followed (Invalidity of assessment had without proper valuation) in *Matter of Church of the Holy Sepulchre*, 61 *How. Pr.* 315, 326. Disting'd in *Matter of St. Joseph's Asylum*, 69 *N. Y.* 353, 357; *Matter of Hebrew Ben. Orphan Asylum*, 70 *Id.* 476, 478.
- Second Nat. Bank of Watkins v. Miller**, 2 *Sup'm. Ct. (T. & C.)* 104. Aff'd on somewhat different grounds in 63 *N. Y.* 639. See *Jaques v. Methodist Episcopal Church*; *Yale v. Dederer*. Decision in 63 *N. Y.* followed (Effect of note made by wife to husband) in *Little v. Rawson*, 8 *Abb. N. C.* 253, 258.
- Secor v. Keller**, 4 *Duer*, 416. Cited (When dormant partner must be joined with others as party plaintiff) in *Story on Partn.* 7 ed.: § 241.
- **v. Law**, 9 *Bosw.* 163. Aff'd as *Secor v. Lord*, in 3 *Keyes*, 525; s. c., 4 *Abb. Ct. App. Dec.* 188.
- **v. Sturgis**, 2 *Abb. Pr.* 69. Aff'd in 16 *N. Y.* 548. See *Guernsey v. Carver*. Decision in 16 *N. Y.* followed (Claim, when not indivisible) in *Erie & N. Y. City R. R. Co. v. Patrick*, 2 *Abb. Ct. App. Dec.* 74; *Perry v. Dickerson*, 8 *Abb. N. C.* 474; *McIntosh v. Lown*, 49 *Barb.* 557. Applied in *Mulford v. Hodges*, 10 *Hun.* 81. Reviewed with other cases in *Jex v. Jacob*, 7 *Abb. N. C.* 458. Approved in *Crosby v. Jeroloman*, 37 *Ind.* 264, 277. Disapproved in *Delaney v. Payne*, 101 *Ill.* 325; s. c., 40 *Am. Ll.*

255. Cited as qualifying former N. Y. decisions, and disting'd in *Rosenmueller v. Lampe*, 89 *Ill.* 212; s. c., 31 *Am. R.* 74, with note. Said in *Burritt v. Belfy*, 47 *Conn.* 327, to overrule *Colvin v. Corwin*, 15 *Wend.* 557.
- Security B'k v. Nat. B'k of Commonwealth**, 2 *Hun.* 287. See also (Service of summons on dissolved corporation) *Hetzel v. Tannehill Silver Mining Co.*, 4 *Abb. N. C.* 40.
- **v. Nat. B'k of Republic**, 67 *N. Y.* 458. Cited as authority (Recovery of amount paid on certified check) in *Parke v. Roser*, 67 *Ind.* 500, 503.
- Security Life Ins. & Annuity Co., Matter of**, 11 *Hun.* 96. Appeal dismissed in 71 *N. Y.* 222.
- Sedgwick v. Cleveland**, 7 *Paige*, 287. Qualified (Necessity of bringing in assignee of interest, as party) in *Cleveland v. Boerum*, 24 *N. Y.* 618, 619.
- **v. Hollenback**, 7 *Johns.* 376. See *Greenby v. Wilcocks*. Questioned (What is breach of covenant of warranty, &c.) in *Rea v. Minkler*, 5 *Lans.* 196, 199.
- **v. Stanton**, 18 *Barb.* 473. Aff'd in 14 *N. Y.* 289. See *Harris v. Roof*. Decision in 14 *N. Y.* applied (Invalidity of champertous contract) in *Pease v. Walsh*, 39 *Super. Ct. (J. & S.)* 514, 518. Cited with *Durgin v. Ireland*, 14 *N. Y.* 322; *Voorhees v. Dorr*, 51 *Barb.* 580; *Benedict v. Stuart*, 23 *Id.* 420, in 19 *Cent. L. J.* 402. Approved and applied with *Voorhees v. Dorr*, 51 *Barb.* 580, in *Courtright v. Burns*, *U. S. Cir. Ct. W. D. Mo.* 13 *Reporter*, 261; s. c., 13 *Fed. Rep.* 317,—as indicating the tendency of courts of this country to relax the vigor of the common law doctrine. Held inapplicable to contract made in N. Y., but to be executed in four States, in *Gregerson v. Imlay*, 4 *Blatchf. Ct. Ct.* 503, 508. Quoted in *Benj. on Sales*, § 529, n. p (Bennett's 4 *Am. ed.*); 2 *Chitty on Contr.* 996, n. d, 11 *Am. ed.*
- Seeley v. Engell**, 17 *Barb.* 530, Rev'd in 13 *N. Y.* 542. Decision in *Id.* disting'd (Mode of pleading that note was given for too great a sum by mistake) in *Manufacturers' Nat. B'k v. Russell*, 6 *Hun.* 375.
- **v. N. Y. Nat. Exch. B'k**, 4 *Abb. N. C.* 61; s. c., 2 *Brown's Nat. B'k Cas.* 340; and also with General Term opinion modifying it in 8 *Daly*, 400. Aff'd, it seems, in 78 *N. Y.* 608, but without opinion. Decisions in 8 *Daly* and 78 *N. Y.* applied (Distribution of surplus capital among stockholders) in *Strong v. Brooklyn Cross-Town R. R. Co.*, 93 *Id.* 426.
- Seely v. Pritchard**, 12 *N. Y. Leg. Obs.* 245. Overruled (Power to enlarge time to appeal) in *Sherwood v. Pratt*, 11 *Abb. Pr. N. S.* 115. See also to the contrary *Rowell v. McCormick*, 5 *How. Pr.* 337; *Enos v. Thomas*, *Id.* 361; *Sherman v. Wells*, 14 *Id.* 522.
- Seers v. Fowler**, 2 *Johns.* 272. See *Cunning-*
- ham v. Morrell*. Overruled, with *Havens v. Bush*, 2 *Johns.* 387 (When covenants for payment by installments are independent) in *Cunningham v. Morrell*, 10 *Id.* 203. See *Evans v. Harris*, 19 *Barb.* 416. Disapproved with *Havens v. Bush*, 2 *Johns.* 387, as overruled by *Cunningham v. Morrell*, 10 *Id.* 203, which is fully approved in *Biddle v. Coryell*, 3 *Harr. (N. J.)* 377; s. c., 38 *Am. Dec.* 521, 524; *Johnson v. Wygant*, 11 *Wend.* 49, being explained on this point. Denied in *Leopold v. Salker*, 89 *Ill.* 412; s. c., 31 *Am. R.* 96.
- Segelken v. Meyer**, 14 *Hun.* 593. Relied on and *Thomas v. Bennett*, 56 *Barb.* 197, followed (Action by general guardian to recover debt due ward) in *Hauenstein v. Kull*, 59 *How. Pr.* 24.
- Seguine v. Seguine**, 4 *Abb. Ct. App. Dec.* 491; s. c., 3 *Keyes*, 663. Decision as to extra allowance in 3 *Abb. Pr. N. S.* 442. Decision in 3 *Keyes* applied (Proof of undue influence on testator) in *Tucker v. Field*, 5 *Redf.* 139, 177; *Mairs v. Freeman*, 3 *Id.* 184; *McCoy v. McCoy*, 4 *Id.* 57; *Bicknell v. Bicknell*, 4 *Sup'm. Ct. (T. & C.)* 103. Disting'd in *Van Kleeck v. Phipps*, 4 *Redf.* 99, 131. Followed (Will, when not invalidated by unjust prejudice, &c.) in *McLaughlin's Will*, 2 *Id.* 504, 515. Decision in 3 *Abb. Pr. N. S.* followed (Additional allowance by appellate court) in *Dupuy v. Wurtz*, 3 *Sup'm. Ct. (T. & C.)* 113, 115.
- **v. —**, 2 *Barb.* 385. Commented on (Signing of will by witness) in *Willard on Executors*, 107.
- Seibert v. Erie R. R. Co.**, 49 *Barb.* 583. See other cases collected (Testimony of parties) in 1 *Abb. N. C.* 364, n.
- Seifert v. Schillner**, 62 *How. Pr.* 97. Rev'd in *Id.* 496.
- Seiser v. Mali**. See *Seizer v. Mali*.
- Seixas v. Woods**, 2 *Cai.* 48; s. c., 2 *N. Y. Com. L. Law. ed.* 311, with brief note; 2 *Am. Dec.* 215, with note referring to 1 *Smith's Lead. Cas.* 310, 7 *Am. ed.*, and also citing *Dounce v. Dow*, 64 *N. Y.* 411; *Hawkins v. Pemberton*, 51 *Id.* 198. See *Chapman v. Murch*; *Frost v. Raymond*; *Hawkins v. Pemberton*; *Holden v. Dakin*. Disting'd (Warranty on sale of personal property) in *Carley v. Wilkins*, 6 *Barb.* 561. Followed in *Hotchkiss v. Gage*, 26 *Id.* 142; *Swett v. Colgate*, 20 *Johns.* 203; *Welsb v. Carter*, 1 *Wend.* 139; *Hart v. Wright*, 17 *Id.* 269; 18 *Id.* 449. Explained in *Oneida Manufac. Co. v. Lawrence*, 4 *Cow.* 440, 442. Referred to in *Hawkins v. Pemberton*, 51 *N. Y.* 203, as having been much questioned, and to be no longer regarded as authority. Overruled in *White v. Miller*, 71 *N. Y.* 118, 129. Disting'd as to title in *De Freeze v. Trumper*, 1 *Johns.* 275. Followed in *Kingsbury v. Taylor*, 29 *Me.* 508; s. c., 50 *Am. Dec.* 607, with note. Disapproved in *Wolcott v. Mount*, 9 *Vroom (N. J.)* 496; s. c., 20 *Am. R.* 426. Followed with *De Freeze v. Trumper*, 1 *Johns.* 274; *Holden v.*

- Dakin, 4 *Id.* 421, in *Westmoreland v. Dixon*, 4 *Hayw. (Tenn.)* 223; s. c., 9 *Am. Dec.* 763. Referred to in *Bayard v. Shunk*, 1 *Watts & S. (Pa.)* 92; s. c., 37 *Am. Dec.* 441, with note, as a sound decision, the foundations of which, however, have been sapped by later N. Y. decisions. Discussed in *Henshaw v. Robins*, 9 *Metc. (Mass.)* 83, 89. Criticised at length and disting'd with *Swett v. Colgate*, 20 *Johns.* 196, in *Osgood v. Lewes*, 2 *Harr. & G. (Md.)* 495; s. c., 18 *Am. Dec.* 317, with note. Followed, notwithstanding any departure from rule in N. Y., in *Ryan v. Ulmer*, 108 *Penn.* 332, 339. See also 11 *Am. Dec.* 269, n., examining *White v. Miller*, 71 *N. Y.* 118, and other cases; also 6 *Am. Dec.* 113, n., collating cases. Discussed in 2 *Kent Com.* 479. Cited as a very strong case in 1 *Pars. on Contr.* 580, n.
- Seizer v. Mali**, 32 *Barb.* 76; s. c., as *Seizer v. Mali*, 11 *Abb. Pr.* 129. Rev'g 6 *Id.* 270, n. Decision of General Term said in 41 *N. Y.* 619, to have been rev'd, and that of Special Term aff'd in Ct. of App., Sept. 1869. See *Cazeaux v. Mali*. Principle of decision in 32 *Barb.* approved, but said to have been there misapplied (Liability of stockholder for issue of spurious stock)—in *Bruff v. Mali*, 36 *N. Y.* 206. Explained in *Ang. & A. on Corp.* § 314, n. a, 11 ed.
- Selchaw v. Radde**, and *Same v. Rudde*. See *Butterfield v. Radde*.
- Selden v. Delaware & Hudson Canal Co.**, 24 *Barb.* 362. Further decision in 29 *N. Y.* 634. Decision in 24 *Barb.* compared and doubted (Liability of owner of dangerous premises) in *Loosee v. Buchanan*, 57 *N. Y.* 476, 481, as inconsistent with *Bellinger v. N. Y. Central R. Co.*, 23 *Id.* 47. Collated with other cases in *Bigel. Cas. on Torts*, 499.
- **v. Vermilya**, 2 *Sandf.* 598; s. c., 9 *N. Y. Leg. Obs.* 83, with points of counsel. Rev'd in 3 *N. Y.* 525. Decision in *Id.* collated with other cases (Effect of R. S. on trusts) in *Gerard Tit. to Real Est.* 2 ed. 272. Explained (Closing the trust in case of assignment for benefit of creditors) in *Burrill on Assign.* § 458, 4 ed.
- Seldon v. Hickock**, 2 *Cai.* 166. Approved and followed (Conversion by tenant in common) in *Lobdell v. Stowell*, 51 *N. Y.* 70, 74.
- Seligman v. Dudley**, 14 *Hun.* 186. See (Counterclaim) *Code Civ. Pro.* 1881, § 501, n.
- Sellick v. Adams**, 15 *Johns.* 197. See *Terry v. Chandler*; *Vosburgh v. Teator*. Applied (Effect of award on title to land) in *Cox v. Jagger*, 2 *Cow.* 650. Followed with *Bouck v. Wilber*, 4 *Johns. Ch.* 405, in *Davis v. Havard*, 15 *Serg. & R. (Pa.)* 165; s. c., 16 *Am. Dec.* 537, with note. Explained in 2 *Pars. on Contr.* 700, n. b. Applied (Waiver of formalities respecting award) in *French v. New*, 20 *Barb.* 485; *Gidley v. Gidley*, 65 *N. Y.* 169, 171.
- Sells v. Adm'rs of Hubbell**, 2 *Johns. Ch.* 394. Doubted (Presumption of interest of co-partners in partnership) in *Sterling v. Brightbill*, 5 *Watts (Pa.)* 232; s. c., 30 *Am. Dec.* 304, n., where the subsequent case of *Dorr v. Shaw*, 4 *Johns. Ch.* 17, is also explained.
- Selover v. Coe**, 63 *N. Y.* 438. Explained and applied (Action by judgment creditor against heirs at law) in *Blossom v. Hatfield*, 24 *Hun.* 276. Compare *Code Civ. Pro.* 1881, § 1844, n.
- **v. Wisner**, 37 *How. Pr.* 176. Followed (Costs on motion for new trial) in *Roasso v. Vantrín*, 41 *Id.* 8, 11.
- Sencar v. Woods**, 74 *N. Y.* 615. See (Counterclaim) *Code Civ. Pro.* 1881, § 502, n.
- Seneca County Bank v. Neass**, 5 *Den.* 329. Aff'd in 3 *N. Y.* 442. Decision in 5 *Den.* disting'd (Officer of bank when to be deemed its agent) in *Holden v. N. Y. & Erie B'k*, 72 *N. Y.* 286, 295.
- Seneca Nation of Indians v. Knight**, 19 *N. Y.* 587. Approved in further decision, in 23 *Id.* 498.
- **v. Hammond**, 4 *Hun.* 417; s. c., more fully, 6 *Sup'm. Ct. (T. & C.)* 595.
- Seton v. Low**, 1 *Johns. Cas.* 1; s. c., 1 *N. Y. Com. L. Law. ed.* 219, with brief note. Criticised (Disclosure to underwriter, in case of insurance of contraband of war) in 3 *Kent Com.* 269, n. a.
- Settle v. Van Evrea**, 49 *N. Y.* 280. Applied (Effect of restriction in N. Y. Const. against certain judicial officers acting as referees) in *Countryman v. Norton*, 21 *Hun.* 17, 19.
- Seventeenth St., Matter of**. See *Matter of Mercer St.*; *Wyman v. Mayor, &c. of N. Y.*
- Seventy-sixth St., Matter of**. See *Bowery Extension Case*.
- Sewall v. Allen**, 6 *Wend.* 335. Rev'g *Allen v. Sewall*, 2 *Id.* 327. See *Belger v. Dinsmore*. Decision in 6 *Wend.* criticised, and that in 2 *Id.* preferred (Liability of corporation as carrier of bank-bills) in *Farmers' & Mechanics' B'k v. Champlain Transp. Co.*, 23 *Vt.* 186; s. c., 56 *Am. Dec.* 68. Decision in 6 *Wend.* approved in *Ang. on Carr.* § 101, n. 4; *Citizens' Bank v. Nantucket S. B. Co.*, 2 *Story*, 16, 48. Both decisions explained in 2 *Kent Com.* 609, n.
- **v. Catlin**, 3 *Wend.* 291; s. c., 10 *N. Y. Com. L. Law. ed.* 370, with brief note on privileged communications.
- **v. Fitch**, 8 *Cow.* 215. See *Bennett v. Hall*; *Crookshank v. Burrell*. Disting'd (Sale of goods as disting'd from contract for work and labor) in *Cooke v. Millard*, 65 *N. Y.* 360. Explained in *Benj. on Sales*, § 109, n. y (Bennett's 4 *Am. ed.*). Quoted and discussed in *Brown on Stat. of Frauds*, § 306, 4 ed. Quoted and explained in 2 *Story on Contr.* 5 ed. § 1005, n. 2.
- Seward v. Jackson**, 8 *Cow.* 406. Rev'g 5 *Id.* 67. Subsequent decision affecting deed here involved, in *Van Wyck v. Seward*, 1 *Edw.* 327. See *Bissell v. Hopkins*; *Reade v. Livingston*. Decision in 8 *Cow.* applied (Conveyance, when not fraudulent, as to

- subsequent creditors) in *Tappan v. Butler*, 7 *Bosw.* 489. Followed in *Dybert v. Remerschnider*, 32 *N. Y.* 629, 648; *French v. Holmes*, 67 *Me.* 186, 192; *U. S. D. N. S.* 9, LIII. Incorporated (Presumption as to fraudulent intent in conveyance) in 2 *R. S.* 137, § 4. Quoted in *Burrill on Assign.* § 339, 4 ed. Applied (Requisites of special verdict) in *Eisemann v. Swan*, 6 *Bosw.* 672. Followed (Fraud as question for jury) in *Sturm v. Atlantic Mutual Ins. Co.*, 38 *Super. Ct. (J. & S.)* 281, 324.
- **v. Judges of Dutchess**, 23 *Wend.* 360. Overruled (Power of review on common law *certiorari*) in *Mullins v. People*, 24 *N. Y.* 399.
- **v. Kessler**, 41 *Super. Ct. (J. & S.)* 539. Aff'd in 69 *N. Y.* 623, but without opinion.
- **v. Torrence**, 3 *Hun.* 220; s. c., reported in 5 *Sup'm. Ct. (T. & C.)* 323.
- Sewell v. City of Cohoes**, 11 *Hun.* 626. Aff'd in 75 *N. Y.* 45; s. c., 31 *Am. R.* 418.
- Sexton v. Montgomery Co. Mut. Ins. Co.** See *Rowley v. Empire Ins. Co.*
- **v. Zett**, 56 *Barb.* 119. Aff'd in 44 *N. Y.* 430. See cases in several States collected (Negligence as matter of law) in 13 *Am. L. Reg. N. S.* 297.
- Seybel v. Nat. Currency B'k**, 4 *Abb. Pr. N. S.* 352; s. c., 2 *Daly*, 383. Aff'd in 54 *N. Y.* 288; s. c., 13 *Am. R.* 583, with note.
- Seymour v. Brown**, 19 *Johns.* 44. See *Hurd v. West*. Overruled (Distinction between sale and bailment) in *Hurd v. West*, 7 *Cow.* 752, 756, n. a; *Smith v. Clark*, 21 *Wend.* 83. See *Norton v. Woodruff*, 2 *N. Y.* 153; which aff'd *Baker v. Woodruff*, 2 *Barb.* 520, which see; *Buffum v. Merry*, 3 *Mason*, 478; *Ewing v. French*, 1 *Blackf. (Ind.)* 353; 2 *Kent Com.* 589. Disapproved in *Chase v. Washburn*, 1 *Ohio St.* 244; s. c., 59 *Am. Dec.* 623, with note. Said in 10 *Am. Dec.* 491, n., to have been repeatedly overruled and disapproved. Doubtful in 3 *Am. L. Reg. N. S.* 323. Explained in 2 *Par. on Contr.* 133, n. v. Disting'd and questioned (Inevitable accident, as excuse for non-performance of contract) in *Adams v. Nichols*, 19 *Pick. (Mass.)* 275; s. c., 31 *Am. Dec.* 137, with note.
- **v. Canandaigua, etc. R. R. Co.** See *Andrews v. Newcomb*; *Gardner v. McEwen*; *Otis v. Sill*.
- **v. Cowing**, 4 *Abb. Ct. App. Dec.* 200; s. c., 1 *Keyes*, 535. See *Benton v. Martin*. Disting'd (Oral evidence to explain objects of instrument) in *Willse v. Whitaker*, 22 *Hun.* 242, 244. Applied in *Grierson v. Mason*, 1 *Sup'm. Ct. (T. & C.)* 188.
- **v. Davis**, 2 *Sandf.* 239. Overruled (Effect of subsequent acceptance and receipt, to take sale out of statute of frauds) in *McKnight v. Dunlop*, 5 *N. Y.* 537. So explained in *Sale v. Darragh*, 2 *Hill*, 184, 200. Considered in *Boutwell v. O'Keefe*, 32 *Barb.* 434, 437, and harmonized with *Deming v. Kemp*, 4 *Sandf.* 147; *Sprague v. Blake*, 20 *Wend.* 61; *Baker v. Cuyler*, 12 *Barb.* 667; *McKnight v. Dunlop*, *above*. Dis-
- approved and said to be overruled by *McKnight v. Dunlop*, and to conflict with *Boutwell v. O'Keefe*, in *Gault v. Brown*, 48 *N. H.* 183; s. c., 2 *Am. R.* 210, 213, 216, where *McKnight v. Dunlop*; *Sprague v. Blake*, 20 *Wend.* 61; *Vincent v. Germond*, 11 *Johns.* 283, are cited as showing the law to be established in *N. Y.* Explained (Sale as disting'd from contract for work and labor) in *Benj. on Sales*, § 109, n. y (Bennett's 4 *Am. ed.*).
- **v. Delancey**, 6 *Johns. Ch.* 222. Rev'd in 3 *Cow.* 445; s. c., 8 *N. Y. Com. L. Law. ed.* 183, with brief note; also s. c., 15 *Am. Dec.* 270, with note. Subsequent decision in *Hopk.* 436, aff'd in 5 *Cow.* 714; s. c., 14 *Am. Dec.* 552. See case, &c. published at *N. Y.* in 1827. Reversal explained (Specific performance of contract for sale of land) in *Slocum v. Closson*, *How. App. Cas.* 752. Decision in 3 *Cow.* followed in *Viele v. Troy & Boston R. R. Co.*, 21 *Barb.* 389-393. Decision in 6 *Johns. Ch.* approved, notwithstanding reversal,—in *Hale v. Wilkinson*, 21 *Gratt. (Va.)* 751. Also approved in *Hunt v. Formby*, 43 *Ga.* 79. Discussed in *Pomeroy on Sp. Perf.* §§ 36, n. (p. 54) 194, n. Decision in *Hopk.* criticised (Effect of objection to title, based on suspicion) in *Shriver v. Shriver*, 86 *N. Y.* 575, 584.
- **v. Elmer**, 4 *E. D. Smith*, 199; s. c., more fully, 1 *Abb. Pr.* 412.
- **v. Fellows**, 44 *Super. Ct. (J. & S.)* 124. Aff'd in 77 *N. Y.* 178. See *Rawson v. Penn. R. R. Co.*
- **v. Judd**, 2 *N. Y.* 464. Followed (Appeal from justice's court) in *Kuntz v. Licht*, 8 *Hun.* 14.
- **v. Lewis**, 19 *Wend.* 512. Disting'd (Effect of receipt for money to be endorsed on mortgage) in *Evans v. Wilcox*, 39 *Barb.* 136, 139.
- **v. Minturn**, 17 *Johns.* 169; s. c., 8 *Am. Dec.* 380; also 6 *N. Y. Com. L. Law. ed.* 326, with brief notes. Followed with *Harrison v. Wilcox*, 2 *Johns.* 449; *Boyd v. Hitchcock*, 20 *Id.* 72 (Satisfying debt by payment of less sum than due) in *Geiser v. Kershner*, 4 *Gill. & J. (Md.)* 305; s. c., 23 *Am. Dec.* 566, with note.
- **v. Sturgess**, 26 *N. Y.* 134. See *Mills v. Stewart*. Followed (Implication of contract to make payment on stock) in *Wintringham v. Rosenthal*, 25 *Hun.* 580, 582.
- **v. Van Slyck**, 8 *Wend.* 403. Aff'd as *Stone v. Seymour*, 15 *Id.* 19. See *People v. Jansen*; *Richards v. Warring*; *Stone v. Seymour*. Decision in 8 *Wend.* followed (Liability of indorser of non-negotiable note) in *Richards v. Warring*, 4 *Abb. Ct. App. Dec.* 47, 51. Applied in *Murphy v. Adams*, 71 *Me.* 113; s. c., 36 *Am. R.* 299, 301. Collated with other cases in 1 *Hare & H. Am. Lead. Cas.* 5 ed. 400. Both decisions approved and followed (Application of payments) in *Campbell v. Vedder*, 1 *Abb. Ct. App. Dec.* 295, 303. Explained



(Effect of laches of public officer) in *Hayden v. Agent of Auburn State Prison*, 1 *Sanlf. Ch.* 198. Collated with other cases (Liability of sureties on official bond) in 29 *Abb. L. J.* 488.

— *v. Van Wyck*, 6 *N. Y.* 120. See *Brinckerhoof v. Remsen*. Approved and followed (Testator must publish will in presence of both witnesses) in *Abbey v. Christy*, 49 *Barb.* 276.

— *v. Wilson*, 16 *Barb.* 294. Subsequent decision in 14 *N. Y.* 567; s. c., less fully, 15 *How. Pr.* 355. Also further decision in 19 *N. Y.* 417. See *Porter v. Clark*. Decision in 16 *Barb.* overruled in effect (Action by receiver in supplementary proceedings to set aside fraudulent conveyance) by *Porter v. Williams*, 9 *N. Y.* 142. Decision in 14 *Id.* said to be unshaken by any subsequent adjudication (Testifying as to intent) in *Pope v. Hart*, 35 *Barb.* 630, 636. Disting'd and limited in *Hover v. Barkhoof*, 44 *N. Y.* 113, 117. Disting'd in *Learned v. Ryder*, 61 *Barb.* 557; *Ballard v. Lockwood*, 1 *Daly*, 164; *Blaut v. Gabler*, 8 *Id.* 52. Disting'd with *Supt. of Poor of Cortland v. Supt. of Poor of Herkimer*, 44 *N. Y.* 22, in *Waugh v. Fielding*, 48 *Id.* 681. Applied in *Hubbell v. Alden*, 4 *Lans.* 228; *Supt. of Poor of Cortland v. Supt. of Poor of Herkimer*, 44 *N. Y.* 22, 27; *Bennett v. Smith*, 24 *Hun.* 50, 54. Applied, but limited, in *Foster v. Cronkhite*, 35 *N. Y.* 151. Applied to belief in *Thorn v. Helmer*, 2 *Keyes*, 30; *McKown v. Hunter*, 30 *N. Y.* 628. See also 23 *Moak Eng.* 630, where cases in other States are collected. With *Thurston v. Cornell*, 38 *N. Y.* 281, said in *Columbus v. Dahn*, 36 *Ind.* 330, 334, not to be easily reconciled with *People v. Saxton*, 22 *N. Y.* 809; and *Shaw v. Stine*, 8 *Bosw.* 157. Doubted with *Thurston v. Cornell*, 38 *N. Y.* 281, in *Hathaway v. Brown*, 18 *Minn.* 414, 423. Collated with *Thurston v. Cornell*, 38 *N. Y.* 281; *Fiedler v. Darrin*, 50 *Id.* 437; *Forbes v. Waller* 25 *Id.* 430; *Mathews v. Poultney*, 33 *Barb.* 127; *Waugh v. Fielding*, 48 *N. Y.* 681; *Tracy v. McManus*, 58 *Id.* 257, and other cases in 1 *Whart. Com. on Ev.* § 482. Applied (Proof of fraudulent intent in disposition of property by debtor) in *People v. Kelly*, 35 *Barb.* 461. Decision in 19 *N. Y.* followed (Antecedent debt, as consideration) in *Towsley v. McDonald*, 32 *Barb.* 611; *Archer v. O'Brien*, 7 *Hun.* 148; *Stover v. Eyclesheimer*, 4 *Abb. Ct. App. Dec.* 309, 314. Followed (Validity of transfer of property that has been fraudulently conveyed) and *Wood v. Robinson*, 22 *N. Y.* 564, disting'd in *Murphy v. Briggs*, 89 *Id.* 446.

— *v. Wyckoff*. See *Wilson v. Little*.

*Shader v. Railway Pass. Assur. Co.*, 3 *Hun.* 424; s. c., 5 *Sup'm. Ct. (T. & C.)* 643. Aff'd in 66 *N. Y.* 441; s. c., 23 *Am. R.* 65. Decision in *Id.* collated with other cases

(Effect of use of liquor in cases of life insurance) in 20 *Fed. Rep.* 490, n.

*Shafer v. Guest*, 35 *How. Pr.* 184; s. c., more fully, 6 *Robt.* 264.

*Shaffer v. Lee*, 8 *Barb.* 412. Followed (Damages for breach of agreement to furnish necessities for life) in *Schell v. Plumb*, 55 *N. Y.* 592, 597. Disting'd in *Turner v. Madden*, 62 *Barb.* 480, 482. Explained in 3 *Pars. on Contr.* 188, n. g.

— *v. Mason*, 43 *Barb.* 501; s. c., 29 *How. Pr.* 55; 18 *Abb. Pr.* 286. Aff'd in *Id.* 455. Decision in 29 *How. Pr.* disting'd and limited (Attachment in actions of tort) in *Corson v. Ball*, 47 *Barb.* 452, 455. See *Code Civ. Pro.* 1881, ch. VII, Tit. III, Art. 1, n.

*Shaft v. Phoenix Mut. Life Ins. Co.*, 9 *Hun.* 632. Rev'd, but on points not discussed below, in 67 *N. Y.* 544; s. c., 23 *Am. R.* 138. Previous decision in 6 *Sup'm. Ct. (T. & C.)* 56 n. See *Stevens v. Phoenix Ins. Co.*

*Shakespeare v. Markham*, 10 *Hun.* 311. Aff'd in 72 *N. Y.* 400. See *Gardner v. Gardner*; *Tucker v. Tucker*. Decision in 10 *Hun.* approved and applied (Agreements to compensate by will) in *Eagan v. Kergill*, 1 *Dem.* 464. Decision in 72 *N. Y.* disting'd (Jurisdiction of surrogate to try disputed claim) in *Richardson v. Root*, 19 *Hun.* 475. See also *Code Civ. Pro.* 1881, § 2739, n. See (Additional allowance in surrogate's courts) *Id.* § 2562, n.

*Shaler & Hall Quarry Co. v. Bliss*, 34 *Barb.* 309. Aff'd in 27 *N. Y.* 297. See *Corning v. McCullough*; *Garrison v. Howe*; *Jones v. Barlow*; *Quarry Co. v. Bliss*. Decision in 27 *N. Y.* disting'd (Liability of trustees for corporate debts, arising from failure to file report) in *Carley v. Hodges*, 19 *Hun.* 187. Followed in *Chandler v. Hoag*, 2 *Id.* 614. Applied in *Nimmons v. Tappan*, 2 *Sweeny*, 661; *Reed v. Krese*, 37 *Super. Ct. (J. & S.)* 269, 273. Applied under similar statute in *Conn.*, in *Steam Engine Co. v. Hubbard*, 101 *U. S.* 188, 194.

*Shall v. Green*, 34 *How. Pr.* 418. Aff'd as *Shull v. Green*, in 49 *Barb.* 311.

*Shand v. Hanley*, 71 *N. Y.* 319. Disting'd (Effect of voluntary conveyance to wife by solvent husband) in *Carr v. Breese*, 81 *Id.* 584, 590. Quoted in *Whit. on Fraud. Conv.* § 98. Explained (Deed as security for purchaser) in *Id.* § 192.

*Shank's Case*, 15 *Abb. Pr. N. S.* 38. Rev'd in 2 *Hun.* 226; s. c., as *People ex. rel. Phelps v. Fancher*, 4 *Sup'm. Ct. (T. & C.)* 467.

*Shank v. Shoemaker*, 18 *N. Y.* 489. See *Coughlin v. N. Y. Central, etc. R. R. Co.*; *McDowell v. Second Ave. R. R. Co.* Approved (Attorney's lien as affected by settlement between parties) in *Pulver v. Harris*, 62 *Barb.* 500, 507. Followed in *Christy v. Perkins*, 6 *Daly*, 237, 240; *Sullivan v. O'Keefe*, 53 *How. Pr.* 428; *Ward v. Orton*, 12 *Abb. Pr. N. S.* 447; *McDowell v. Second Ave. R. R. Co.*, 4 *Bosw.* 673.

**Shannon v. Comstock**, 21 *Wend.* 457; s. c., 34 *Am. Dec.* 262, with note, wherein it is said to be a recognized authority as is shown by cases cited from N. Y. and elsewhere (Tender of performance as equivalent to contract). Explained (Diminution of damages in case of breach of contract) in *Costigan v. Mohawk & Hudson R. R. Co.*, 2 *Den.* 609.

**Shapley v. Abbott**, 42 *N. Y.* 443. See *Wake-man v. Sherman*. Followed (Parol agreement not to plead statute of limitations, ineffectual) in *Andrae v. Redfield*, 12 *Blatchf. C. Ct.* 407, 421.

**Sharp, Matter of**, 1 *Sup'm. Ct. (T. & C.)* 427. Aff'd in 56 *N. Y.* 257; s. c., 15 *Am. R.* 415. Decision in *Id.* disting'd (Effect of failure of majority of property owners to sign petition for improvement) in *Matter of Kiernan*, 62 *N. Y.* 457, 459. Followed and approved (Estoppel of one signing petition for improvement) in *Tone v. Columbus*, 39 *Ohio St.* 281; s. c., 48 *Am. R.* 438. See *Bidwell v. City of Pittsburgh*, 85 *Penn. St.* 412; s. c., 27 *Am. R.* 662. Said to be the leading case in 1 *Am. L. J.* 420, where, also, authorities for the contrary doctrines may be found.

**Sharp v. Cropsey**, 11 *Barb.* 224. Disting'd (Liability for support of step-son) in *Hill v. Hanford*, 11 *Hun.* 536, 538.

— **v. Freeman**, 2 *Lans.* 171. Aff'd in 45 *N. Y.* 802.

— **v. Johnson**, 4 *Hill.* 92; s. c., 40 *Am. Dec.* 259, with note, wherein are collected citations. See *Sharp v. Speir*. Cited in illustration (Construction of powers, &c. of municipal corporations in respect to assessments, &c. of private property) in 2 *Kent Com.* 299, n. b; 300, n. a.

— **v. Mayor, &c. of N. Y.**, 9 *Abb. Pr.* 426; s. c., less fully, 18 *How. Pr.* 213. Aff'd in 31 *Barb.* 578; s. c., 19 *How. Pr.* 193. Subsequent decision in 25 *Id.* 389; s. c., more fully, 40 *Barb.* 256. See report by E. T. GERRY, published at N. Y., 1859. See *Mead v. Bunn*; *Swift v. Wells*. Decision in 9 *Abb. Pr.* disting'd (Compulsory reference requiring examination of long account) in *Batchelor v. Albany City Ins. Co.*, 6 *Abb. Pr. N. S.* 240, 245. Collated with other cases in *Hoffm. on References*, 15. Decision in 31 *Barb.* followed (Negligence of attorney as cause for setting aside judgment) in *Elston v. Schilling*, 7 *Robt.* 74; *State v. Jones*, 12 *Mo. App.* 93, 97. Explained (What may be embraced in title of law) in *Coolley on Const. Limit.* 5 ed. 177, n. Decision in 40 *Barb.* questioned (Liability for false representations) in *Marsh v. Falker*, 40 *N. Y.* 573.

— **v. Pratt**, 15 *Wend.* 610. Examined (Execution of power of sale of real estate given to executors by will) in *Taylor v. Morris*, 1 *N. Y.* 341, 350.

— **v. Speir**, 4 *Hill.* 76; s. c., 15 *N. Y. Com. L. Law. ed.* 749, with brief note, and (at p. 755) analytic list of cases citing this

case. See *Jackson v. Roberts*; *Matter of Mayor, &c. of N. Y.* Disting'd and applied (Execution of statutory authority for divesting of title by special proceeding) in *Varick v. Tallman*, 2 *Barb.* 114; *Allen v. Comm'rs of Land-office*, 38 *N. Y.* 318; *Moore v. Mayor, &c. of N. Y.*, 73 *Id.* 238, 249; which rev'd 4 *Hun.* 545, which see. Applied in *Hill v. Draper*, 10 *Barb.* 462; *Burner v. Eastman*, 50 *Id.* 643; *Striker v. Kelly*, 2 *Den.* 330, which rev'd 7 *Hill.* 25, which see. Approved and applied in *Adams v. Saratoga & Washington R. R. Co.*, 10 *N. Y.* 328. Disting'd as to conveyances from State, in *Brady v. Begun*, 36 *Barb.* 539. Cited in illustration in 2 *Kent Com.* 299, n. b; 300, n. a. Followed (Distinctions between taxes and assessments) in *People v. Mayor, &c. of Brooklyn*, 6 *Barb.* 223; 9 *Id.* 551; *Bohde v. Bruner*, 2 *Redf.* 333, 338; *Matter of Ford*, 6 *Lans.* 96; *Hassan v. City of Rochester*, 67 *N. Y.* 533; *Roosevelt Hospital v. Mayor, &c. of N. Y.*, 84 *Id.* 108, 113. Explained in *People v. Mayor, &c. of Brooklyn*, 4 *Id.* 434. Followed with *Sharp v. Johnson*, 4 *Hill.* 92, in *Creighton v. Mason*, 27 *Cal.* 620.

— **v. United Ins. Co.**, 14 *Johns.* 201. Followed (Register of vessel as evidence of ownership) in *Jones v. Pitcher*, 3 *Stew. & F. (Ala.)* 135; s. c., 24 *Am. Dec.* 717, 723; *Wendover v. Hogeboom*, 7 *Johns.* 308, being also applied as bearing on the question. Criticised as not authority in *Paras. on Mar. L.* 45.

**Sharpe v. Freeman**, 2 *Lans.* 171. Aff'd in 45 *N. Y.* 802. Decision in *Id.* applied (Judgment against personal representative, as evidence against heir-at-law) in *Chillingworth v. Freeman*, 67 *Barb.* 380. See also *Malloy v. Vanderbilt*, 4 *Abb. N. C.* 127. See to the contrary, *Steele v. Lineberger*, 59 *Penn. St.* 308; *Stone v. Wood*, 16 *Ill.* 177. But see *Abb. Tr. Ec.* 161. Approved (Effect of admission of evidence by referee, without passing on objection thereto) in *Lathrop v. Bramhall*, 64 *N. Y.* 370. Applied (Right to set aside fraudulent conveyance by intestate) in *Barton v. Hosner*, 24 *Hun.* 467, 469.

**Sharpsteen v. Tillou**, 3 *Cow.* 651. Disting'd (Interest of legatee, when vested) in *Tucker v. Ball*, 1 *Barb.* 101. Applied (Value of power given to executors to sell real estate) in *Slocum v. Slocum*, 4 *Edw.* 617. Explained in *Gourley v. Campbell*, 6 *Hun.* 221. Applied (Extinction of power to sell land) in *Hetzel v. Barber*, 69 *N. Y.* 13.

**Shaughnessy v. Rensselaer Ins. Co.**, 21 *Barb.* 605. Approved with *Devendorf v. Beardsley*, 23 *Id.* 656; *Williams v. Babcock*, 25 *Id.* 109 (Assessments upon premium notes by receiver of insolvent insurance company) in *Embree v. Shidler*, 36 *Ind.* 423.

**Shaver v. Brainard**, 29 *Barb.* 25. Applied (Parties to action to set aside fraudulent conveyance) in *Miller v. Hall*, 40 *Super. Ct.*

- (*J. & S.*) 262, 267. Explained in *Wait on Fraud. Conv.* § 128. See cases collected in 10 *Am. L. Reg. N. S.* 708.
- *v. Ehle*, 16 *Johns.* 201. See *Murray v. Judah*. Disting'd (Sufficiency of admission of making note) in *Bardin v. Stevenson*, 75 *N. Y.* 164, 168.
- *v. McGraw*, 12 *Wend.* 558. Examined and disting'd (Who is actual occupant for purposes of ejectment) in *People v. Ambrecht*, 11 *Abb. Pr.* 97, 102. Applied in *Porter v. McGrath*, 41 *Super. Ct. (J. & S.)* 84, 102. Discussed in *Sedgw. & W. on Tr. of Tit. to Land*, § 242, n. 3.
- *v. Western Union Teleg. Co.*, 57 *N. Y.* 459. Disting'd (Effect of draft, as appropriation of particular fund) in *Brill v. Tuttle*, 81 *Id.* 454, 460.
- Shaw v. Beveridge**, 3 *Hill*, 26. Applied (Rights in pew) to right in market-stall, in *Rose v. Mayor, etc. of Baltimore*, 51 *Md.* 256; s. c., 34 *Am. R.* 307.
- *v. Chester*, 2 *Elw.* 405. Aff'd, as *Shaw v. Coster*, in 8 *Paige*, 339; s. c., 35 *Am. Dec.* 690, with extended note (Interpleader).
- *v. Cook*, 12 *Hun.* 173. Aff'd in 78 *N. Y.* 194. See *Bassett v. Fish*. Decision in 78 *N. Y.* followed (Right of parties brought in by supplemental pleadings to rely on statute of limitations) in *Jeffers v. Cook*, 58 *Cal.* 147, 150.
- *v. Coster*. See *Shaw v. Chester*.
- *v. Crawford*, 10 *Johns.* 236. See *Morgan v. King*. Criticised and disting'd (Stream, when liable to public servitude) in *People v. Platt*, 17 *Id.* 195. Applied to highway on land in *State v. Wilkinson*, 2 *Verm.* 480; s. c., 21 *Am. Dec.* 560, 564. Relied on with *People v. Platt*, 7 *Johns.* 195, in *Moore v. Sanborne*, 2 *Mich.* 519; s. c., 59 *Am. Dec.* 209. Explained and applied with *Morgan v. King*, 35 *N. Y.* 459; 18 *Barb.* 284; 30 *Id.* 9; *Thunder Bay Booming Co. v. Speechly*, 31 *Mich.* 336; s. c., 18 *Am. R.* 184, 190. Collated with other cases in *Mills Thomps. on Highw.* 3 ed. 46.
- *v. Davis*, 55 *Barb.* 389. See to the contrary (Justification of officer executing process) *Underhill v. Reinor*, 2 *Hill.* 319. But see *Abb. Tr. Ev.* 632.
- *v. Dwight*, 16 *Barb.* 536. Further decision in 27 *N. Y.* 244. See *Chautauqua Co. Bank v. White*; *McElwain v. Willis*. Decision in 27 *N. Y.* followed (Execution as basis of creditor's bill) in *Payne v. Sheldon*, 43 *How. Pr.* 1, 4. Reviewed with other cases in 15 *Alb. L. J.* 264.
- *v. Jayne*. See *Eddy v. Beach*.
- *v. Lenke*, 1 *Daly*, 487. Collated with *Lawrence v. Kemp*, 1 *Duer*, 363; *Funk v. Brigaldi*, 4 *Daly*, 359, (Gas fixtures as personal property) in 21 *Am. R.* 80, n. Also collated with *Lawrence v. Kemp*, 1 *Duer*, 363, and other cases in 29 *Am. R.* 403, n.
- *v. McCarty*, 59 *How. Pr.* 487. Rev'd as *People ex rel. Shaw v. McCarty*, 62 *Id.* 152; mem. s. c., 25 *Hun.* 449. See *People ex rel. Jay v. Bennett*.
- *v. People*, 3 *Hun.* 272; s. c., 5 *Sup'm. Ct. (T. & C.)* 439. Aff'd as *People v. Shaw* in 63 *N. Y.* 86, without fully passing on question of evidence. Decision in 3 *Hun* disting'd (Declarations as evidence of present intent) in *Maine v. People*, 9 *Id.* 113, 119.
- *v. Republic Life Ins. Co.*, 67 *Barb.* 586. Aff'd with deductions of premium earned, in 69 *N. Y.* 286. See *Howard v. Daly*. Decision in 69 *N. Y.* followed (Effect of anticipatory refusal to perform contract) in *Phoenix Mut. L. Ins. Co. of Indiana v. Hinesly*, 75 *Ind.* 1, 13. Commented on in *Benj. on Sales*, § 860, n. 9 (Corbin's 4 *Am. ed.*) See cases cited in 36 *Am. R.* 624, n.
- *v. Stine*. See *Seymour v. Wilson*.
- *v. Tobias*, 3 *N. Y.* 188. Explained (Validity of bond executed with fewer sureties than provided by statute) in *People ex rel. Comm'rs of Charities, &c. of N. Y. v. Lyons*, 7 *Daly*, 182, 184.
- *v. White*, 13 *Johns.* 179. See *Humphrey v. Phinney*. Collated with other cases (Valuation of land for dower) in *Sharsw. & B. Cas. on Real Prop.* 399. Referred to with *Dolf v. Bassett*, 15 *Johns.* 21; *Dorchester v. Coventry*, 11 *Id.* 509; *Humphrey v. Phinney*, 2 *Id.* 484; *Walker v. Schuyler*, 10 *Wend.* 481; *Marble v. Lewis*, 53 *Barb.* 432; *Brown v. Brown*, 31 *How. Pr.* 481, in *Tyler on Inf. & Cov.* 2 ed. § 392, as contrary to the prevailing rule.
- Shay v. People**, 4 *Park.* 353; s. c., as *People v. Shay*, 10 *Abb. Pr.* 413; 18 *How. Pr.* 538. Aff'd in 22 *N. Y.* 317. Compare (Whether petit larceny is felony) *Carpenter v. Mills*, 29 *How. Pr.* 473, 475.
- Shea v. Sixth Ave. R. Co.**, 5 *Daly*, 221. Aff'd in 62 *N. Y.* 180; s. c., 20 *Am. R.* 480. See *Higgins v. Watervliet Turnpike Co.* Collated with other cases (Liability of railroad company for willful acts of servants) in 24 *Am. R.* 299, n.
- Shear v. Overseers of Hillsdale**, 13 *Johns.* 496. Overruled (Promise made to overseers of poor whether inuring to successors) in *Grant v. Fancher*, 5 *Cov.* 309.
- Shearman v. Corman**, 22 *How. Pr.* 517. Questioned (Compelling assignee pending suit to become plaintiff) in *Emmet v. Bowers*, 23 *Id.* 300. Disapproved, and the contrary held, in *Packard v. Wood*, 17 *Abb. Pr.* 318.
- *v. Hart*, 14 *Abb. Pr.* 358. See other cases collected (Testimony of parties) in 1 *Abb. N. C.* 863, n.
- *v. —*, 1 *Abb. Pr.* 187. Disting'd (Denial by corporation on information and belief) in *Macauley v. Bromell, &c. Printing Co.*, 14 *Abb. N. C.* 316. Denied (Effect of conjunctive denial) in *Livingston v. Hammer*, 7 *Bosw.* 670, 675; citing *Wall v. Bufalo Water Works*, 18 *N. Y.* 119.
- *v. Niagara Fire Ins. Co.*, 2 *Sweeny*, 470; s. c., 40 *How. Pr.* 393. Aff'd in 46 *N. Y.* 536. Decision in *Id.* reviewed with

- other cases (Waiver by insurer) in dissenting opinion in *Merserau v. Phoenix Mut. Life Ins. Co.*, 66 *Id.* 284. Followed in *Steen v. Niagara F. Ins. Co.*, 61 *How. Pr.* 144, 148.
- Shears v. Solhinger**, 10 *Abb. Pr. N. S.* 287. Disting'd (Insolvent law when suspended by bankrupt law) in *Augsbury v. Crossman*, 10 *Hun*, 389, 395.
- Sheehan v. Huertzel**, 1 *Month. L. Bul.* 63. Rev'd in 46 *Super. Ct. (J. & S.)* 64.
- Sheets v. Wilgus**, 56 *Barb.* 662. Explained (Right of action against carrier for failure to carry) in *Southern Express Co. v. Craft*, 49 *Miss.* 480; s. c., 19 *Am. R.* 4, 9.
- Sheffield v. Rochester & Syracuse R. R. Co.**, 21 *Barb.* 339. Approved as stating the true rule (Care required in one driving across track) in *Mackey v. N. Y. Central R. R. Co.*, 27 *Id.* 528, 541.
- **v. Watson**, 3 *Cal.* 69. Approved (Personal liability of public agent on contract) in *Walker v. Swartwout*, 12 *Johns.* 444. Applied with *Gill v. Brown*, *Id.* 385, in *City of Providence v. Miller*, 11 *R. I.* 272; s. c., 23 *Am. R.* 453.
- Sheldon v. Adams**. Opinion of POTTER, J., in 41 *Barb.* 54; and of BOCKES, J., in 27 *How. Pr.* 179; both opinions being given in 18 *Abb. Pr.* 405. Compare (Joinder of actions) *St. John v. Pierce*, 4 *Abb. Ct. App.* Dec. 140.
- **v. Atlantic Fire, &c. Ins. Co.**, 26 *N. Y.* 460. See *Goit v. Nat. Protection Ins. Co.* Followed (Sufficiency of exception to direction for non-suit) in *Backman v. Jenks*, 55 *Barb.* 473; *Stone v. Flower*, 47 *N. Y.* 569. Applied to direction of verdict for plaintiff, in *Wombough v. Cooper*, 2 *Hun*, 428, 432. Applied (Waiver of provision in policy, by agent of insurer) in *Carroll v. Charter Oak Ins. Co.*, 1 *Abb. Ct. App. Dec.* 321. Disting'd in *Wood v. Poughkeepsie Mut. Ins. Co.*, 32 *N. Y.* 619, 622; but said to apply, in dissenting opinion of DAVIS, J., *Id.* 627. See these two cases reconciled in *Boehen v. Williamsburgh Ins. Co.*, 35 *Id.* 183. Also disting'd in *Walsh v. Hartford Fire Ins. Co.*, 73 *Id.* 11. Cited in *Whart. Com. on Ag.* § 202. See to the contrary authorities cited (Recital in policy, as evidence of payment of, premium) in *Abb. Tr. Ev.* 481, n. 3.
- **v. Barnard**, 1 *Code R.* 82. Approved, and appeal dismissed, in 3 *How. Pr.* 423.
- **v. Benham**, 4 *Hill*, 129; s. c., 50 *Am. Dec.* 271, with note, wherein are collected citations. See *Ireland v. Kip*; *Ransom v. Mack*. Applied (Entries by decedent, as evidence of presentment of note for payment) in *Gawtry v. Doane*, 51 *N. Y.* 84, 91. Applied to entries made by ecclesiastical officer, in *Kennedy v. Doyle*, 10 *Allen (Mass.)* 165. See 1 *Whart. Com. on Ev.* § 654. Dissented from (Sufficiency of notice of protest) in *Van Brunt v. Vaughn*, 47 *Iowa*, 145; s. c., 29 *Am. R.* 468. Included with note in 2 *Ames Cas. on B. & N.* 437.
- **v. Bliss**, 8 *N. Y.* 81. Disapproved as dictum (Effect of provision in will to bar dower) by CLERKE, J., in dissenting opinion in 28 *Barb.* 460. Collated with other cases in *Sharsw. & B. Cas. on Real Prop.* 353.
- **v. Carpenter**, 4 *N. Y.* 579; s. c., 55 *Am. Dec.* 301, with note, (Judgment as bar to subsequent action). See *Edgell v. Hart*.
- **v. Clark**. See *Teel v. Fonda*.
- **v. Dodge**, 4 *Den.* 217. Explained (Preferences in assignment for benefit of creditors) in *Durrill on Assign.* § 179, 4 ed.
- **v. Ferris**, 45 *Barb.* 124. Followed (Presumption of death) in *Matter of Ackerman*, 2 *Redf.* 521, 523.
- **v. Horton**, 53 *Barb.* 23. Aff'd in 43 *N. Y.* 93. Decision in *Id.* disting'd (Waiver of protest and notice) in *Curry v. Van Wagner*, 32 *Hun*, 453.
- **v. Hoy**, 11 *How. Pr.* 11. Superseded (Right of executors, &c. to sue individually) by *Code Civ. Pro.* § 1814.
- **v. Hudson River R. R. Co.**, 14 *N. Y.* 218. Further decision in 29 *Barb.* 226. See *Faucett v. Nichols*; *Rood v. N. Y. & Erie R. R. Co.* Decision in 14 *N. Y.* followed (Proof as to fire being caused by sparks from steam engine) in *Hinds v. Barton*, 25 *N. Y.* 546; *Field v. N. Y. Central R. R. Co.*, 32 *Id.* 339, 347; *Westfall v. Erie R'y Co.*, 5 *Hun*, 76. Followed with *Field v. N. Y. Central R. R. Co.*, 32 *N. Y.* 339, in *Gagg v. Vetter*, 41 *Ind.* 228; s. c., 13 *Am. R.* 322, 344; *Longabaugh v. Virginia City, &c. R. R. Co.*, 9 *Nev.* 271; *K'y Central R. R. Co. v. Barrow*, *Ky. Ct. of App.* 1883, 6 *K'y L. Rep.* 243. Approved with *Field v. N. Y. Central R. R. Co.*, 32 *N. Y.* 339, in *Brusberg v. M. L. S. and W. R. R. Co.*, 55 *Wis.* 106, 112. Reviewed at length with *Field v. N. Y. Central R. R. Co.*, 32 *N. Y.* 339, in *Atchison, Topeka & Santa Fe R. R. Co. v. Stanford*, 12 *Kans.* 354; s. c., 15 *Am. R.* 362, 370; *Ryan v. N. Y. Central R. R. Co.*, 35 *N. Y.* 210, being criticised therein. Applied to defects in sidewalk—in *Quinlan v. City of Utica*, 11 *Hun*, 217, 220. Collated with *Hinds v. Barton*, 25 *N. Y.* 544; and other cases in 1 *Whart. Com. on Ev.* § 360. Decision in 29 *Barb.* examined with other cases) in *Burke v. Louisville & Nashville R. R. Co.*, 7 *Heisk. (Tenn.)* 451; s. c., 19 *Am. R.* 618.
- **v. Paine**. See *Sheldon v. Payne*.
- **v. Parker**, 3 *Hun*, 498. Explained (Title of plaintiff to note) in *Hays v. Southgate*, 10 *Hun*, 511, 514; which was rev'd as *Hays v. Hathorn*, 74 *N. Y.* 486. Included with note in 2 *Ames Cas. on B. & N.* 706.
- **v. Payne**, 7 *N. Y.* 453; s. c., less fully, as *Sheldon v. Paine*, 10 *Id.* 398. Explained and disting'd (Liability of sheriff for acts and omissions of deputy) in *McKinley v. Tucker*, 59 *Barb.* 93, 103. Explained (Conclusiveness of sheriff's return) in dissenting opinion in *Ansonia Brass Co. v.*

- Conner, 62 *How. Pr.* 272, 279. Applied to entries by financial officer, in *City of Chicago v. Gage*, 95 *Ill.* 593; s. c., 35 *Am. R.* 182, 198.
- *v. Sheldon*, 13 *Johns.* 220. See *Moore v. Moore*. Dictum criticised (Right of trustee to purchase trust property at judicial sale) in *Moore v. Moore*, 4 *Sandf.* 37, 49. See *Hoyt v. Martense*, 16 *N. Y.* 231. Applied and approved (Evidence to reduce damages in trover) in *Pierce v. Benjamin*, 14 *Pick. (Mass.)* 356; s. c., 25 *Am. Dec.* 396, with note.
- *v. Sherman*, 42 *Barb.* 368. Aff'd in 42 *N. Y.* 484. Decision in 42 *Barb.* disting'd with *Scranton v. Booth*, 29 *Id.* 171 (Liability on implied agreement to pay) in *Currie v. White*, 6 *Abb. Pr. N. S.* 352, 383. Decision in 42 *N. Y.* collated with other cases (Rights and liabilities of owners of property set adrift by floods, wrecks and other causes) in 55 *Am. Dec.* 508, n.
- *v. Skinner*, 4 *Wend.* 525; s. c., 21 *Am. Dec.* 161, with note (Tender of specific articles.—Conversion by tenant in common).
- *v. Smith*, 23 *Barb.* 593. See *Robinson v. McIntosh*. Collated with other cases (Varying and amending assignment for benefit of creditors) in *Bishop on Assign.* § 251.
- *v. Stryker*, 34 *Barb.* 116; s. c., less fully, 21 *How. Pr.* 323. Further decision, on other points, in 42 *Barb.* 284; s. c., 27 *How. Pr.* 387.
- *v. Van Buskirk*, 2 *N. Y.* 473. Disting'd (Force of tax warrant) as inapplicable to school district collector in *Stroud v. Butler*, 18 *Barb.* 327. Applied in *Evans v. Walsh*, 12 *Vroom (N. J.)* 281; s. c., 32 *Am. R.* 201, 210. See to the contrary (Justification of officer by his process) *Underhill v. Reinor*, 2 *Hill.* 310. But see *Abb. Tr. Ev.* 632.
- *v. Wood*, 2 *Bosw.* 267. Prior decision, as it seems, in 14 *How. Pr.* 18. Decision in 2 *Bosw.* followed (Objection to imperfect execution of commission, when waived) in *Wright v. Cabot*, 89 *N. Y.* 570. Decision in 14 *How. Pr.* approved (Filing exceptions after time prescribed by law) in *Bortle v. Mellen*, 14 *Abb. Pr.* 228. See *Code Civ. Pro.* 1881, § 781, n.
- *v. Wright*, 7 *Barb.* 39. Aff'd in 5 *N. Y.* 497. See *Atkins v. Kinnan*. Decision in 5 *N. Y.* followed (Inquiry into surrogate's jurisdiction) in *Lawrence v. Parsons*, 27 *How. Pr.* 29. Disting'd in *Roderigas v. East River Sav'gs Inst.* 63 *N. Y.* 475; which rev'd 48 *How. Pr.* 171 which see. Followed in *Ryall v. Kennedy*, 40 *Super. Ct. (J. & S.)* 347, 362. Explained at length in *Bolton v. Jacks*, 6 *Robt.* 166, 201, 222. Followed (Effect of decision made by court of general jurisdiction as to jurisdictional facts) in *Diana v. Virginia Fire & M. Ins. Co., U. S. Cir. Ct. E. D. Va.* 13 *Reporter*, 459. Cited in 1 *Kent Com.* 262, n. 1, *Holmes' ed.* with many other authorities. Followed (Sufficiency of notice of proceedings for sale of intestate's estate) in *Rigney v. Coles*, 6 *Bosw.* 479, 488. Applied to execution sale, in *Olcott v. Robinson*, 21 *N. Y.* 153. Applied to mortgage sale, in *Wood v. Terry*, 4 *Lans.* 85. Disting'd in *Sibley v. Waffle*, 16 *N. Y.* 188.
- Shellington v. Howland**, 67 *Barb.* 14. Aff'd in 53 *N. Y.* 371. See *Burr v. Wilcox*; *Johnson v. Underhill*. Decision in 53 *N. Y.* applied (Stockholder's liability as affected by proof of claim against corporation) to proof of claim in bankruptcy, in *Ansonia Brass & Copper Co. v. Babbitt*, 8 *Hun.* 164. Decision in 67 *Barb.* disting'd in *McMaster v. Davidson*, 29 *Hun.* 542, 545. Followed (Return of execution as condition precedent to action to enforce stockholder's liability) in *Ilandy v. Draper*, 23 *Id.* 256, 259.
- Shelton v. Merchants' Despatch Transp. Co.**, 36 *Super. Ct. (T. & C.)* 527. Rev'd in 59 *N. Y.* 258; s. c., 48 *How. Pr.* 257. Decision in *Id.* disting'd (Carrier's right to limit his liability by subsequent bill of lading) in *Wilde v. Merchants' Despatch Trans. Co.*, 47 *Iowa*, 247; s. c., 29 *Am. R.* 479, 481.
- Shepard v. Buffalo, N. Y. & Erie R. R. Co.** See *Cook v. Champlain Transp. Co.*; *Corwin v. N. Y. & Erie R. R. Co.*
- *v. Hoit*, 7 *Hill.* 198. Approved and applied (Action for neglect of official duty to pay over money collected in satisfaction of demand) in *Murdock v. Aikin*, 29 *Barb.* 59, 66.
- *v. O'Neil*. See *Husted v. Dakin*.
- *v. People*, 23 *How. Pr.* 337. Rev'd as *Shepherd v. People*, in 25 *N. Y.* 406; s. c., 24 *How. Pr.* 388. See *Hartung v. People*.
- *v. Rowe*, 14 *Wend.* 260. Criticised in 58 *Am. Dec.* 351, n., as containing inaccurate statements (Effect of levy on personal property as satisfaction of judgment) *Denvey v. Fox*, 22 *Barb.* 522; *Waddell v. Elmendorf*, 5 *Den.* 447; *People v. Hopson*, 1 *Id.* 574; *Taylor v. Ranney*, 4 *Hill.* 621; *Voorhees v. Gros*, 3 *How. Pr.* 262; *Green v. Burke*, 23 *Wend.* 490, and other cases being approved as laying down a better rule.
- *v. Ryers*, 15 *Johns.* 497. Commented on (Ejectment between tenants in common) in *Sedgw. & W. on Tr. of Tit. to Land*, § 276.
- *v. Shepard*, 7 *Johns.* Ch. 57; s. c., 11 *Am. Dec.* 396. See *Hayes v. Kershow*; *Schmerhorn v. Vanderheyden*. Approved and followed (Validity of conveyance from husband to wife) in *Hunt v. Johnson*, 44 *N. Y.* 27, 32, wherein it is said that such conveyance would be invalid at common law; *White v. Wager*, 25 *Id.* 328; *Winans v. Peebles*, 32 *Id.* 423, being disting'd. Followed in *Sayers v. Wall*, 26 *Gratt. (Va.)* 354; s. c., 21 *Am. R.* 303, 311. Approved and said to be a leading American case, in *Johnson v. Vandervoort*, 16 *Neb.* 144. Reviewed with *Garlick v. Strong*, 3 *Paige*, 440; *Neufville v. Thomson*, 3 *Edw.* 32,

- and other cases in *Tyler on Inf. & Cov.* 2 ed. § 558. Included in *Ewell Lead. Cas. on Inf. &c.* 280. Reviewed with other cases in 13 *Abb. L. J.* 110.
- *v. Walker*, 7 *How. Pr.* 46. Overruled in effect (Action in Supreme Court involving less than \$100) by *Marsh v. Benson*, 34 *N. Y.* 358.
- Shephard v. Little**, 14 *Johns.* 210. See *Kip v. Denniston*; *Schemerhorn v. Vanderheyden*. Disting'd (Parol evidence as to consideration of deed) in *Peck v. Mallams*, 10 *N. Y.* 528; *Cagger v. Lansing*, 43 *Id.* 552. Explained in *Bolton v. Jacks*, 6 *Robt.* 235. Followed and explained in *McCrea v. Purmort*, 16 *Wend.* 468, 470. Questioned, as sustained by neither reason nor authority, in *Gist v. Davis*, 2 *Hill Ch. (So. Car.)* 335; s. c., 29 *Am. Dec.* 89, 93. Followed in *Beach v. Packard*, 10 *Vt.* 96; s. c., 33 *Am. Dec.* 185, with note. Followed with *Bowen v. Bell*, 20 *Johns.* 339; *McCrea v. Purmort*, 16 *Wend.* 460; *Bingham v. Weiderwax*, 1 *N. Y.* 509, in *Swafford v. Whipple*, 3 *G. Greene (Iowa)* 261; s. c., 54 *Am. Dec.* 498, with note. Cited as showing the difference between the rule in England and that in America,—with *Bowen v. Bell*, 20 *Johns.* 388; *Whitbeck v. Whitbeck*, 9 *Cov.* 266; *McCrea v. Purmort*, 16 *Wend.* 460, and other cases in 1 *Taylor on Ev.* 112.
- *v. Watrous*, 3 *Cai.* 166. Collated with *Foshay v. Ferguson*, 5 *Hill*, 154, and other cases (Duress of imprisonment or fear thereof) in *Bush v. Brown*, 49 *Ind.* 573; s. c., 19 *Am. R.* 695.
- Shepherd v. Dean**. See *Wicker v. Dresser*.
- *v. Hees*, 12 *Johns.* 433. Followed (Duty of keeping one's cattle within bounds) in *D'Arcy v. Miller*, 86 *Ill.* 102; s. c., 29 *Am. R.* 11, ¶1.
- *v. Hill*, 6 *Lans.* 387. Collated with other cases (Fraud in assignment for benefit of creditors at time of making) in *Bishop on Assign.* § 226.
- *v. Lincoln*. See *Adsit v. Brady*.
- *v. People*, 19 *N. Y.* 537. Subsequent proceeding in 23 *How. Pr.* 337; which was rev'd in 25 *N. Y.* 406; s. c., 24 *How. Pr.* 388. See *Hartung v. People*. Decision in 25 *N. Y.* applied (Mis-trial, when not bar to new trial) in *People v. Reagle*, 60 *Barb.* 545; *King v. People*, 5 *Hun.* 299. Collated with other cases in 21 *Am. Dec.* 507, n. See (Power of court on writ of error in criminal cases) *L.* 1863, c. 226, as applied in *Ratzky v. People*, 29 *N. Y.* 132; *McKee v. People*, 32 *Id.* 243. Followed and dicta therein criticised (Effect of statute changing penalty, enacted subsequent to commission of crime) in *Hartung v. People*, 28 *Id.* 400, 402, 410, 418. Decision in 19 *Id.* followed (What constitutes dwelling within statute against arson) in *Levy v. People*, 19 *Hun.* 383, 386; which was aff'd in 80 *N. Y.* 327, 333, which see.
- *v. Shepherd*, 1 *Hun.* 240; s. c., with authorities cited by counsel, 3 *Sup'm. Ct. (T. & C.)* 715. Aff'd, it seems, in 58 *N. Y.* 644, but without opinion. Decision in 1 *Hun.*, disapproved and Forrest *v. Forrest*, 3 *Bow.* 661, disting'd (Remarriage as affecting alimony) in *Stillman v. Stillman*, 99 *Ill.* 196; s. c., 39 *Am. R.* 21.
- Shepmoes v. Bowsson**, 52 *How. Pr.* 401; s. c., more fully, as *Shepmoes v. Bousson*, 1 *Abb. N. C.* 481, which see above.
- Sheppard v. Hamilton**, 29 *Barb.* 156. Disting'd (Grounds of estoppel) in *McMaster v. Ins. Co. of North. Am.*, 56 *N. Y.* 222, 229.
- *v. Steele*, 3 *Lans.* 417. Aff'd in 43 *N. Y.* 52. Decision in *Id.* explained (Enforcement of claim against vessel under State law) in *Brookman v. Hamill*, *Id.* 558. Reaff'd in *Happy v. Mosher*, 48 *Id.* 317. Followed in *King v. Greenway*, 71 *Id.* 413, 416. Explained in *Wilson v. Lawrence*, 82 *Id.* 409, 411. Compared with other cases in *Poole v. Kermit*, 37 *Super. Ct. (J. & S.)* 114, 120. Followed in the *Scow M. Tuttle v. Buck*, 23 *Ohio St.* 565; s. c., 13 *Am. R.* 270, 273. See to same effect *Foster v. Richard Busted*, 100 *Mass.* 409; s. c., 1 *Am. R.* 125.
- Sheridan v. Andrews**, 3 *Lans.* 129. Aff'd in 49 *N. Y.* 478. Decision in *Id.* discussed (Necessity of *lis pendens* in ejectment) in *Sedgw. & W. on Tr. of Tit. to Land*, § 645. See *Code Civ. Pro.* 1881, § 1670, n. See also (Judgment by default) *Id.* § 1526, n.
- *v. —*, 80 *N. Y.* 648. Subsequent decision in 81 *Id.* 650; and prior decision in *Sheridan v. Jackson*, 72 *Id.* 170; aff'g 10 *Hun.* 89.
- *v. Brooklyn City & Newtown R. R. Co.*, 36 *N. Y.* 39. See *Dickson v. McCoy*. Followed (Liability for negligence not lessened by negligence of another) in *Smith v. British & North Am. Royal M. S. P. Co.*, 86 *N. Y.* 408, 413. Disting'd in *Chipman v. Palmer*, 77 *N. Y.* 51, 55; which aff'd 9 *Hun.* 519, which see. Explained and applied in *Macer v. Third Ave. R. R. Co.*, 47 *Super. Ct.* 461, 465. Disting'd (Negligence in infant) in *Thurber v. Harlem &c. R. R. Co.*, 60 *N. Y.* 326, 335. Applied in *Solomon v. Central Park &c. R. R. Co.*, 1 *Sweeny*, 302; *Costello v. Syracuse &c. R. R. Co.*, 65 *Barb.* 100. See other cases collated in 6 *Abb. N. C.* 110, n. Explained (Duty of passenger on street car to keep himself in safe position) in *Ward v. Central Park &c. R. R. Co.*, 11 *Abb. Pr. N. S.* 414.
- *v. Charlick*, 4 *Daly*, 338. Collated with *Cavanagh v. Dinsmore*, 12 *Hun.* 465; *Stevens v. Armstrong*, 6 *N. Y.* 435, and other cases (Master's liability for servant's negligence) in 29 *Am. R.* 640.
- *v. Genet*, 1 *Civ. Pro. R.* 309, n. Disapproved (Costs to abide event) in *Mott v. Consumers' Ice Co.*, 8 *Daly*, 244; and *Carvey v. Rider*, 2 *Cov.* followed in preference. Followed in *Lydd v. Kenney*, 1 *Civ. Pro. R.* 310, 311, n.
- *v. Houghton*, 6 *Abb. N. C.* 234, mem.

- s. c., 16 *Hun*, 628. Aff'd, except as to costs, in 84 *N. Y.* 643, with mem. of opinion. See *Dan v. Brown*. See (Privileged communication as between attorney and client) *Code Civ. Pro.* 1881, § 835, n.
- **v. House**, 4 *Abb. Ct. App. Dec.* 218; s. c., 4 *Keyes*, 569. Subsequent decisions affecting same premises in *House v. Jackson*, 50 *N. Y.* 161; *House v. McCormick*, 57 *Id.* 310. Explained and qualified (Effect of abrogation of rule in *Shelley's case*) in *Moore v. Littell*, 41 *N. Y.* 66. Collated with numerous other cases (Transfer of interest in expectancy) in 20 *Am. L. Reg. N. S.* 103.
- **v. Jackson**. See *Sheridan v. Andrews*.
- **v. Mayor, &c. of N. Y.**, 8 *Hun*, 424. Rev'd in 68 *N. Y.* 30. Decision in *Id.* disting'd (Right of plaintiff suing on transferred claim) in *Hays v. Hathorn*, 74 *Id.* 486, 490; *Mitander v. Sonneborn*, 29 *Iun*, 407, 409. Followed in *Freeman v. Falconer*, 44 *Super. Ct. (J. & S.)* 132, 135. See followed in *Conway v. Mayor, &c. of N. Y.*, 8 *Daly*, 306, 310, decision in *Sheridan v. Mayor*, there said to have been rendered in March, 1877 (Effect of ratification of claim, to create county charge).
- Sheridan v. Smith**, 2 *Hill*, 538. Disting'd (Waiver of payment of money into court) in *Becker v. Boon*, 61 *N. Y.* 317, 322, 330.
- Sherman v. Am. Bible Society**, 1 *Keyes*, 561. Compare (Devises and bequests to charitable, &c. corporations) *White v. Howard*, 52 *Barb.* 294; *Harris v. Slaght*, 46 *Id.* 470; *Chamberlain v. Chamberlain*, 43 *N. Y.* 424.
- **v. Ballou**, 8 *Cow.* 304. See *Downer v. Eggleston*. Approved with *Decker v. Livingston*, 15 *Johns.* 482; *Hill v. Gibbs*, 5 *Hill*, 56 (Collection of rent by tenants in common) in *Marshall v. Moseley*, 21 *N. Y.* 280, 288. Disting'd (Necessity for account between guardian and ward) in *Smith's Ex'rs v. Wiley*, 22 *Ala.* 396; s. c., 58 *Am. Dec.* 262.
- **v. Boyce**, 15 *Johns.* 443. See *Reed v. Pruyn*; *Woodcock v. Bennet*. Applied (Disqualification of sheriff to execute process for or against himself) in *Holbrook v. Brennan*, 9 *Daly*, 46, 48.
- **v. Burnham**. See *Grant v. Schoonhoven*.
- **v. Conner**, 50 *How. Pr.* 29; s. c., more fully, 16 *Abb. Pr. N. S.* 396.
- **v. Crosby**, 11 *Johns.* 70. Commented on (Declarations against interest) in 1 *Greenl. on Ev.* 14 ed. § 147, n. 1.
- **v. Dodge**. See *Goldsmith v. Osborne*.
- **v. Elder**, 1 *Hill*, 178. Subsequent proceedings in 1 *Id.* 476; which was rev'd in 24 *N. Y.* 381. Decision in *Id.* followed (Liability of wife's property for husband's debts) in *Kluender v. Lynch*, 2 *Abb. Ct. App. Dec.* 549; *Merchant v. Bunnell*, 3 *Id.* 284; *Abbey v. Deyo*, 44 *Barb.* 383. Dictum questioned in *Buckley v. Wells*, 33 *N. Y.* 521. See *Feller v. Alden*, 23 *Wis.* 301,
306. Applied (Recovery by assignee for conversion) in *Genet v. Howland*, 45 *Barb.* 567.
- **v. Felt**, 2 *N. Y.* 186. Approved with *Suydam v. Holden*, *Seld. N. No.* 4, 16 (Jurisdiction of Supreme Court as to actions previously pending in chancery) in *Wegman v. Childs*, 41 *N. Y.* 159, 162. Disting'd (Appeal from decision involving question of practice) in *Lahens v. Fielden*, 15 *Abb. Pr.* 180; *Belknap v. Waters*, 11 *N. Y.* 479. Followed in *Seeley v. Chittenden*, 10 *Barb.* 307. Followed (Appeal from order made on summary application after judgment) in *Jones v. Derby*, 16 *N. Y.* 245; *Bank of Genesee v. Spencer*, 18 *Id.* 152.
- **v. Hudson River R. R. Co.**, 5 *Daly*, 521. Aff'd in 64 *N. Y.* 254. See *Redmond v. Liverpool, &c. Steamship Co.* Decision in 63 *N. Y.* applied (Liability of connecting carriers) in *Isaacson v. N. Y. Central, &c. R. R. Co.*, 25 *Hun*, 350, 353.
- **v. Kane**, 46 *Super. Ct. (J. & S.)* 310. Aff'd in 86 *N. Y.* 57. Decision in *Id.* quoted and explained (Title acquired by adverse possession) in *Sedgw. & W. on Tr. of Tit. to Land*, § 751.
- **v. Kortright**, 52 *Barb.* 267. Disting'd (Evidence of other injuries in actions for negligence) in *Quinlan v. City of Utica*, 11 *Hun*, 217, 219.
- **v. Mayor, &c. of N. Y.**, 1 *N. Y.* 316. Collated with other cases (Change in plan, &c. of municipal contract) in 5 *Abb. N. C.* 48, n.
- **v. Mc Keon**, 8 *Bow.* 103. Aff'd in 38 *N. Y.* 266.
- **v. McNitt**, 2 *Cow.* 452. Explained, in subsequent decision, in 4 *Id.* 85.
- **v. Page**, 21 *Hun*, 59. Aff'd in 85 *N. Y.* 123.
- **v. Parish**, 53 *N. Y.* 483. See ground of decision below stated in 7 *Abb. L. J.* 124. Decision in 53 *N. Y.* disting'd (Parties to action, in case of breach of trust) in *Smith v. Rathbun*, 22 *Hun*, 150, 154. Approved in *Pomeroy on Rem.* § 357, n. 2. Explained and dicta criticised (Liability among co-trustees) in 2 *Pomeroy on Eq. Jur.* 659, n. See cases collected in 15 *Am. L. Rev.* 175, 184.
- **v. Rochester & Syracuse R. R. Co.**, 15 *Barb.* 574. Aff'd in 17 *N. Y.* 153. Decision in *Id.* disapproved (Liability of master to servant for negligence of superior fellow-servant) in *Dobbin v. Richmond and Danville R. R. Co.*, 81 *N. C.* 446; s. c., 31 *Am. R.* 519.
- **v. Wakeman**, 11 *Barb.* 254. Rev'd in 9 *N. Y.* 85.
- **v. Wells**, 14 *How. Pr.* 522. See *Seeley v. Prichard*. Disting'd (Amendment to perfect appeal) in *Zinsser v. Seiler*, 7 *Daly*, 464.
- **v. Wright**, 49 *N. Y.* 227. Applied (Injunction against summary proceedings) in *Landon v. Superv's of Schenectady*,

- 24 *Hun.*, i76. Compare *Code Civ. Pro.* § 2265.
- Sherrad v. Cisco**, 4 *Sandf.* 480. See *Campbell v. Mesier*; *Partridge v. Gilbert*. Followed and approved (Obligation of party-wall owners to re-build) in *Antomarchi's Executor v. Russell*, 63 *Ala.* 356; s. c., 35 *Am. R.* 40, 43; *Campbell v. Mesier*, 4 *Johns. Ch.* 334, being disting'd. Applied with *Partridge v. Gilbert*, 15 *N. Y.* 601, to defective building, in *Pierce v. Dyer*, 109 *Mass.* 374; s. c., 12 *Am. R.* 716, 719. See cases collected in 7 *Am. L. Reg. N. S.* 11. Commented on in *Wood on Nuis.* 2 ed. § 221; *Id.* § 229.
- Sherrill v. Crosby**. See *Dykens v. Townsend*.
- Sherry v. Frecking**, 4 *Duer*, 452. Disapproved (Action against owner of overhanging or projecting premises) in *Aiken v. Benedict*, 39 *Barb.* 400, 402. Collated with other cases in *McAdam on Landl. & T.* 2 ed. § 163. Quoted and explained in *Wood on Nuis.* 2 ed. § 101.
- **v. Lozier**, 1 *Bradf.* 437. Relied on (Subsequent birth of child as implying revocation of will) in *Negus v. Negus*, 46 *Iowa*, 487; s. c., 26 *Am. R.* 157, with note collating *Brush v. Wilkins*, 4 *Johns. Ch.* 516, and other cases.
- **v. Schuyler**, 2 *Hill*, 204. See *Hanmer v. Wilsey*; *Higgins v. Whitney*. Explained (Damages for trespass) in 2 *Greenl. on Ev.* 14 ed. § 635a, n. 3.
- Sherwood v. Agricultural Ins. Co.**, 10 *Hun.* 593. Aff'd in 73 *N. Y.* 447; s. c., 29 *Am. R.* 180.
- **v. American Bible Soc.**, 4 *Abb. Ct. App. Dec.* 227; s. c., 1 *Keyes*, 561. Applied (Recognition of foreign corporation) in *Alward v. Holmes*, 10 *Abb. N. C.* 96, 99. Disting'd (Bequest to corporation, when within rule against perpetuities) in *Chamberlain v. Chamberlain*, 3 *Lans.* 368. Followed (Incapacity of voluntary association to take by bequest) in *Betts v. Betts*, 57 *How. Pr.* 355, n. See cases cited in 4 *Abb. N. C.* 311, n. Collated with other cases in *Gerard Tit. to Real Est.* 2 ed. 301.
- **v. Archer**, 10 *Hun.* 73. Rev'd as *Treadwell v. Archer*, in 76 *N. Y.* 196.
- **v. Barton**, 23 *How. Pr.* 533. Disting'd (When paper signed by partner in firm name obtains validity) in *Gale v. Miller*, 54 *N. Y.* 536, 538.
- **v. Buffalo & N. Y. R. R. Co.**, 12 *How. Pr.* 136. Approved (Necessity of notice to debtor, of supplementary proceedings taken under *Code Pro.* § 294) in *Gibson v. Haggerty*, 37 *N. Y.* 555, 558. See *Code Civ. Pro.* 1881, § 2441, n.
- **v. Johnson**, 1 *Wend.* 443. Disapproved (What is too general a charge of fraud and covin, in plea) in *Hopkins v. Woodward*, 75 *Ill.* 62. Followed in *Huston v. Williams*, 3 *Blackf. (Ind.)* 170; s. c., 25 *Am. Dec.* 84, 89, with note. See dissenting opinion of *McKinney, J.*, citing also *Dorr v. Munsell*, 13 *Johns.* 430; *Dale v. Roosevelt*, 9 *Cow.* 307. Criticised and questioned in 25 *Am. Dec.* 95, n.
- **v. Mercantile Mut. Ins. Co.**, 5 *Hun.* 115. Aff'd in 66 *N. Y.* 630.
- **v. Phillips**, 13 *Wend.* 479. Followed (Continuation of tenancy after expiration of term) in *People ex rel. Chrome Steel Co. v. Paulding*, 23 *Hun.* 91, 94.
- **v. Pratt**, 11 *Abb. Pr. N. S.* 115. Followed (Amendment of notice of appeal, *nunc pro tunc*) in *Mott v. Lansing*, 5 *Lans.* 516.
- **v. Reade**, 8 *Paige*, 633. Rev'd in 7 *Hill*, 431.
- **v. Stone**. See *Wolff v. Koppel*.
- **v. Vandenburg**, 2 *Hill*, 303. See *Sparrow v. Kingman*. Followed with *Browne v. Potter*, 17 *Wend.* 164; *Davis v. Darrow*, 12 *Id.* 65 (Estoppel of one claiming under husband, as against widow claiming dower) in *Pledger v. Ellerbe*, 6 *Rich. L. (So. Car.)* 266; s. c., 60 *Am. Dec.* 123. Followed in *May v. Tillman*, 1 *Mich.* 264.
- Shetzler v. Shetzler**, 2 *Edw.* 584. Quoted (Service of summons or preliminary notice in divorce proceeding) in 2 *Bish. on Mar. & D.* § 311, n. 1, 6 ed.
- Shields v. Niagara Sav'gs B'k**, 3 *Hun.* 477; s. c., 5 *Sup'm. Ct. (T. & C.)* 585. Compare (Summoning talesmen) *Code Civ. Pro.* §§ 1171, 1174.
- **v. Pettée**, 2 *Sandf.* 262. Aff'd in 4 *N. Y.* 122. Decision in 2 *Sandf.* disting'd (Effect of part delivery under contract of sale) in *Catlin v. Tobias*, 26 *N. Y.* 217, 223. Quoted and explained in 8 *Pars. on Contr.* 208, n. p. Decision in 4 *N. Y.* disting'd (Contracts for sales to arrive, when fraudulent) in *Heller v. Herbst*, *N. Y. Daily Reg. Nov.* 12, 1883; *Dike v. Reitlinger*, 23 *Hun.* 241, 243. Quoted and explained in 1 *Pars. on Contr.* 558, n. w; *Benj. on Sales*, § 880, n. 20.
- **v. Shields**, 60 *Barb.* 56. See *Wood v. Wood*. Disting'd (Requiring security from insolvent executors) in *Freeman v. Kellogg*, 4 *Redf.* 218, 225. See *Code Civ. Pro.* 1881, § 2685, n.
- Shiff v. N. Y. Central, &c. R. R. Co.**, 16 *Hun.* 278. Aff'd, it seems, in 81 *N. Y.* 638, on opinion below.
- Shiffer v. Dietz**. See *Schiffer v. Same*.
- Shindler v. Houston**, 1 *Den.* 48. Rev'd in 1 *N. Y.* 261; s. c., 49 *Am. Dec.* 316. Further decision as *Houston v. Shindler*, in 11 *Barb.* 36. See *Rodgers v. Phillips*. Decision in 1 *N. Y.* explained (Delivery required by statute of frauds) in *Woodford v. Patterson*, 32 *Barb.* 630. Held to be a decisive authority, in *Brand v. Focht*, 1 *Abb. Ct. App. Dec.* 185, 187. Followed in *Stone v. Browning*, 13 *Abb. Pr. N. S.* 190; *Ely v. Ormsby*, 12 *Barb.* 571; *Baker v. Cuyler*, *Id.* 669; *Bissell v. Balcom*, 40 *Id.* 101; *Brand v. Brand*, 49 *Id.* 348; *Ham v. Van Orden*, 4 *Hun.* 710; *Hallenbeck v. Cochran*, 20 *Id.* 417. Disting'd in *Gray v. Payne*, 16 *Barb.* 279. Disting'd and applied in *Gray v.*



- Davis, 10 *N. Y.* 292; *Rappleye v. Adees*, 1 *Sup'm. Ct. (T. & C.)* 126, 128. Doctrine re-aff'd in *Pitney v. Glen's Falls Ins. Co.*, 65 *N. Y.* 6, 26. Approved in *Cooke v. Millard*, 5 *Lans.* 243, 249; which was aff'd in 65 *N. Y.* 352, 374, which see. Applied to gift,—in *Allen v. Cowan*, 23 *Barb.* 102. Shown in 49 *Am. Dec.* 334, *n.*, to be recognized as a leading case, both in *N. Y.* and elsewhere; *Woodford v. Patterson*, 32 *Barb.* 630; *Wylie v. Kelly*, 41 *Id.* 594, being explained. Referred to in *Owens v. Lewis*, 46 *Ind.* 488; *s. c.*, 15 *Am. R.* 295, 322, as a leading case. Quoted in *Benj. on Sales*, § 187, *n. a* (Bennett's 4 *Am. ed.*). Explained in 1 *Benj. on Sales*, § 139, *n. 1* (Corbin's 4 *Am. ed.*); *Id.* § 187, *n. 29*; 2 *Story on Contr.* 5 ed. § 1011, *n. 3*. Decision in 1 *Den.* explained in 3 *Pars. on Contr.* 41, *n. n.* Discussed in *Browne on Stat. of Frauds*, §§ 319, 320, 4 ed. Included in *Lawson's Lead. Com. L. Cas. Simplified*, 70.
- Shipley v. Mechanics' B'k**, 10 *Johns.* 484. Explained (Remedy for refusal to transfer stock) in *Cushman v. Thayer M'fg Jewelry Co.*, 7 *Daly*, 330, 332. Followed with *Kortright v. Commercial B'k*, 20 *Wend.* 91; 22 *Id.* 348; *Ex parte Firemen's Ins. Co.*, 6 *Hill*, 243, in *State v. People's Building & Loan Assoc.*, 14 *Vroom (N. J.)* 390; *s. c.*, 13 *Reporter*, 277. Cited as authority with *Ex parte Firemen's Ins. Co.*, 6 *Hill*, 243, in *Kimball v. Union Water Co.*, 44 *Cal.* 173; *s. c.*, 13 *Am. R.* 157. Explained in *Ang. & A. on Corp.* § 351, 11 ed. Quoted in *High on Extr. Rem.* 2 ed. § 313, *n. 3*. Disting'd (Power of equity to protect rights of stockholders) in *Busey v. Hooper*, 35 *Md.* 15; *s. c.*, 6 *Am. R.* 350, 355.
- Shipman's Petition**, 1 *Abb. N. C.* 406. Reviewed with other cases, and compared with § 25 of Assignment Act (Trustees' compromises) 5 *Abb. N. C.* 347, *n.*
- Shipman v. Burrows**, 1 *Hal.* 399. Disting'd with *Hallock v. Miller*, 2 *Barb.* 630; *Tobias v. Harland*, 4 *Wend.* 537; *Linden v. Graham*, 1 *Duer*, 670 (Proof of special damages in slander or libel) in *Bergmann v. Jones*, 94 *N. Y.* 51. Approved and applied to case of injury to property, in *Jutte v. Hughes*, 40 *Super. Ct. (J. & S.)* 126; which was rev'd in 67 *N. Y.* 267.
- **v. Clark**, 4 *Den.* 446. Compared with other cases (Writ of replevin as protection to sheriff) in *Bullis v. Montgomery*, 50 *N. Y.* 352, 355.
- **v. Shafer**, 14 *Abb. Pr.* 449. Disting'd (Arrest of factor) in *Trunninger v. Busch*, 7 *Daly*, 124, 126.
- Shippey v. Henderson**, 14 *Johns.* 178; *s. c.*, 7 *Am. Dec.* 458. See *Scouton v. Eislord*. Explained and applied (Effect of new promise as waiving discharge in bankruptcy) in *Graham v. O'Hern*, 24 *Hun.* 222.
- Shipply v. People**, 12 *Weekly Dig.* 239; *mem. s. c.*, 24 *Hun.* 655. Aff'd in 86 *N. Y.* 375. See *Smith v. People*.
- Shipsey v. Bowery Nat. B'k**, 36 *Super. Ct. (J. & S.)* 501. Rev'd in 59 *N. Y.* 485. Decision in *Id.* applied (Duty of bank as to mode of presentation of paper for collection) in *Indig v. National City B'k of Brooklyn*, 80 *Id.* 100, 104. Disting'd (Title to check deposited with bank) in *Metropolitan Nat. B'k v. Loyd*, 25 *Hun.* 101, 103.
- Shiras v. Morris**, 8 *Cow.* 60. Disting'd (Liability on note, &c. signed for another) in *Rice v. Gove*, 22 *Pick. (Mass.)* 158; *s. c.*, 33 *Am. Dec.* 724, with note.
- Shirley v. Congress Sugar Refinery**, 2 *Edw.* 505. Cited with approval (Creditor taking deed of trust, when protected against vendor's lien) in *Dunlap v. Burnett*, 5 *Smedes & M. (Miss.)* 702; *s. c.*, 45 *Am. Dec.* 269, with note. Explained in 4 *Kent Com.* 154, *n. a.*
- **v. Lambert**, 3 *Edw.* 336. Aff'd as *Shirley v. Shirley*, in 9 *Paige*, 363. Decision in *Id.* said to be obsolete (Ownership by wife of household furniture) in *Fitch v. Rathbun*, 61 *N. Y.* 579, 581.
- Shoe & Leather B'k v. Thompson**, 23 *Hov. Pr.* 253. Aff'd in 18 *Abb. Pr.* 413. Decision in *Id.* followed with *Knickerbocker Life Ins. Co. v. Ecclesine*, 34 *Super. Ct. (J. & S.)* 81 (Right of corporation to sue for libel) in *Mutual Reserve Fund Life Assoc. v. Spectator Co.*, 50 *Id.* 460.
- Shoemaker v. Benedict**, 11 *N. Y.* 176. See *Baker v. Stackpoole*; *Johnson v. Beardslee*; *Van Keuren v. Parmelee*. Explained (Foundation of action, in case of acknowledgment removing bar of statute of limitations) in *Philips v. Peters*, 21 *Barb.* 358. Explained (Authority to make such acknowledgment) in *Barger v. Durvin*, 22 *Id.* 71. Applied in *Pickett v. King*, 34 *Id.* 195, 197; *Pickett v. Leonard*, 34 *N. Y.* 176; *Smith v. Ryan*, 66 *Id.* 356. Applied (Sufficiency of acknowledgment) in *Comm. Mut. Ins. Co. v. Brett*, 44 *Barb.* 492. Limited (Right of one joint debtor to make new promise, &c., that will bar statute of limitations) in *Winchell v. Bowman*, 21 *Id.* 448, 452; *White's B'k of Buffalo v. Ward*, 35 *Id.* 640. Followed in *Payne v. Slate*, 39 *Id.* 636; *Winchell v. Hicks*, 18 *N. Y.* 559. Applied in dissenting opinion in *Payne v. Gardiner*, 29 *Id.* 178. Compare *McClurg v. Howard*, 45 *Mo.* 367. With *Van Keuren v. Parmelee*, 2 *N. Y.* 523, said in 10 *Am. Dec.* 697, *n.*, to be very instructive, and to examine the authorities with critical research. Discussed and quoted in 3 *Pars. on Contr.* 80, *n. v.* Quoted in 2 *Chitty on Contr.* 1252, *n. c'*, 11 *Am. ed.*; 2 *Story on Contr.* 5 ed. § 1431, *n. 3*; *Id.* § 1432, *n. 1*.
- **v. McKee**, 19 *Hov. Pr.* 86. Compare (Husband and wife as witnesses) *Chamberlain v. Dempsey*, 36 *N. Y.* 144; 2 *L.* 1867, *c.* 887.
- Sholl v. Sholl**, 5 *Barb.* 312. Disting'd (Right of legatee whose legacy consists of his debt due to testator, to share in residuary fund) in *Cole v. Covington*, 86 *N. C.* 295; *s. c.*, 41 *Am. R.* 458.

- Shook v. Daly**, 49 *How. Pr.* 366. Followed with *French v. Maguire*, 55 *Id.* 471; *Palmer v. De Witt*, 2 *Sweeny*, 530; 47 *N. Y.* 532, in *Tompkins v. Halleck*, 133 *Mass.* 82; s. c., 13 *Reporter*, 783; 43 *Am. R.* 480, with note (Restraining by injunction representation of play, copy of which has been unlawfully obtained).
- **v. Shook**, 19 *Barb.* 653. Followed (Costs against petitioners in proceedings before surrogate) in *Fosdick v. Delafield*, 2 *Redf.* 392, 405.
- Short v. Barry**, 39 *How. Pr.* 315. Aff'd in 40 *Id.* 211, but without opinion.
- Shorter v. People**, 2 *N. Y.* 193; s. c., 51 *Am. Dec.* 286, with note collecting citations of the case as an authority (Disregarding on error or appeal, immaterial errors committed on trial). Aff'g *People v. Shorter*, 4 *Barb.* 460. Decision in 2 *N. Y.* applied (Killing in self-defense) in *People v. Lamb*, 2 *Abb. Pr. N. S.* 160; *Patterson v. People*, 46 *Barb.* 635; *People v. Shay*, 4 *Park.* 344, 351. Commented on in 1 *Barb. on Crim. L.* 3 ed. 41. Included with note in *Horri-gan & T. Cas. on Self-Defe.* 256.
- Shottenkirk v. Wheeler**, 3 *Johns. Ch.* 275. See *Storrs v. Kelsey*. Followed (Interference by court of equity with judgment at law) in *Emery v. Goodwin*, 13 *Me.* 14; s. c., 29 *Am. Dec.* 475.
- Shotwell v. Few**. See *Bristol v. Burt*.
- **v. Mali**. See *Cazeaux v. Mali*.
- **v. Mott**, 2 *Sandf. Ch.* 46. See *Yates v. Yates*; *Kniskern v. Lutheran Churches*. Questioned (Application of statutes of uses and trusts to charitable uses) in *Holmes v. Mead*, 52 *N. Y.* 332, 337. Collated with *Bascom v. Albertson*, 34 *Id.* 609; *McLoughlin v. McLoughlin*, 30 *Barb.* 458; *Williams v. Williams*, 8 *N. Y.* 525; *Beckman v. Bonsor*, 23 *Id.* 298; *Owens v. Missionary Society*, 14 *Id.* 380, and many other cases (Trusts for charitable uses) in 8 *Stew. (N. J.)* 28, n.
- **v. Murray**, 1 *Johns. Ch.* 512. Disting'd with *Lyon v. Richmond*, 2 *Id.* 51; *Storrs v. Barker*, 6 *Id.* 169 (Relief against mistake of law) in *Culbreath v. Culbreath*, 7 *Ga.* 64; s. c., 50 *Am. Dec.* 375, 383. Disting'd with *Lyon v. Richmond*, in *Lawrence v. Beaubien*, 2 *Bailey (So. Car.)* 623; s. c., 23 *Am. Dec.* 155, 161, with note. Reviewed with *Lyon v. Richmond*; *Storrs v. Barker*, and other cases in *Underwood v. Brockman*, 4 *Dana (Ky.)* 309; s. c., 29 *Am. Dec.* 407, 412. Collated with *Lyon v. Richmond*; *Lyon v. Tallmadge*, 14 *Johns.* 501; *Champlin v. Laytin*, 18 *Wend.* 407; 6 *Paige*, 189; *Storrs v. Barker*; *Clarke v. Dutcher*, 9 *Cow.* 674; *Mowatt v. Wright*, 1 *Wend.* 355; *McCartee v. Teller*, 8 *Id.* 267; *Crosier v. Acers*, 7 *Paige*, 137; *Arthur v. Arthur*, 10 *Barb.* 9; *Gilbert v. Gilbert*, 9 *Id.* 532; *Tilton v. Nelson*, 27 *Id.* 595, and other cases in 15 *Am. R.* 171, n. See doctrine discussed in 3 *Alb. L. J.* 449. Collated with *Clarke v. Dutcher*; *Storrs v. Barker*;
- Lyon v. Richmond*, and other cases in 28 *Alb. L. J.* 7. See also *N. Y.* cases considered in *Id.* 26.
- Shouton v. Kilmer**, 8 *How. Pr.* 527. Relied on with *Lathrop v. Singer*, 39 *Barb.* 396.
- (Debts against which homestead exemption may be claimed) in *Whiteacre v. Rector*, 29 *Gratt. (Va.)* 714; s. c., 26 *Am. R.* 420, 423.
- Shriver v. Shriver**, 24 *Hun*, 658. Abridgt. s. c., as *Schrivier v. Shriver*, 12 *Weekly Dig.* 328. Aff'd in 86 *N. Y.* 575.
- Shuart v. Taylor**, 7 *How. Pr.* 251. Disting'd (Reference on reversal of judgment) in *Devlin v. Mayor, &c. of N. Y.*, 6 *Daly*, 486, 489. Disting'd with *Rich v. Milk*, 20 *Barb.* 616; *Conkey v. Hart*, 14 *N. Y.* 22 (Effect of provision in chattel mortgage for possession by mortgagee) in *Hall v. Samson*, 19 *How.* 481, 487.
- Shufelt v. Shufelt**, 9 *Paige* 137; s. c., 37 *Am. Dec.* 381, with note wherein it is said to state a principle which, though a mere dictum in that case, has nevertheless become settled largely on its authority (Grantee of land subject to mortgage cannot set up usury in the mortgage). Applied to debt included in assignment,—in *Green v. Morse*, 4 *Barb.* 344. Applied to note in *Bullard v. Raynor*, 30 *N. Y.* 200. Followed with *Morris v. Floyd*, 5 *Barb.* 130, in *Cramer v. Lepper*, 26 *Ohio St.* 59; s. c., 20 *Am. R.* 756, with note collating cases.
- Shufflin v. People**, 4 *Hun*, 16; s. c., 6 *Sup'm. Ct. (T. & C.)* 215. Aff'd in 62 *N. Y.* 229; s. c., 20 *Am. R.* 483.
- Shuler v. Douglas**. See *Zimmerman v. Erhard*.
- Shulman v. People**, 14 *Hun*, 516. Aff'd, it seems, in *People v. Shulman*, 76 *N. Y.* 624, but without opinion.
- Shulters v. Johnson**, 38 *Barb.* 80. See *Lupton v. Lupton*. Approved (Charging legacies on real estate) in *Roman Cath. Germ. Church of Albany v. Wachter*, 42 *Barb.* 43, 45. Followed in *Ragan v. Allen*, 7 *Hun*, 537, 539; *Stoddard v. Johnson*, 13 *Id.* 610; *Weld v. Strong*, 54 *How. Pr.* 137. Followed with *Tracy v. Tracy*, 15 *Barb.* 503, 505, in *Knotts v. Bailey*, 54 *Miss.* 235; s. c., 28 *Am. R.* 349, 351.
- Shults v. Andrews**, 54 *How. Pr.* 376. Other proceedings in *Id.* 378, 380.
- Shultz v. Crane**, 6 *Hun*, 236. Aff'd, it seems, in 64 *N. Y.* 659, but without opinion.
- **v. Hoagland**, 9 *Weekly Dig.* 319. Rev'd in 12 *Id.* 463; s. c., 83 *N. Y.* 464. Decision in *Id.* quoted (Burden of proof as to fraud) in *Wait on Fraud. Conv.* § 5, n. 1. Quoted (Fraud in assignment for creditors) in *Id.* § 320. Quoted and explained in *Burrill on Assign.* § 341, 4 ed.
- Shuman v. Strauss**, 34 *Super. Ct. (J. & S.)* 6. Aff'd, in effect, in 52 *N. Y.* 404. Decision in *Id.* disting'd (Discretion as to granting leave to issue execution) in *Kincaid v. Richardson*, 9 *Abb. N. C.* 313, 320. Dis-

- ting'd (Effect of discharge in bankruptcy on debt created by fraud) in *Freiberg v. Popper*, 12 *Hun*, 658, 660.
- Shumway, Ex parte**, 4 *Den*. 258. Questioned (Description of deponent in affidavit) in *People v. Ransom*, 2 *N. Y.* 407.
- Shumway v. Cooper**, 16 *Barb*. 556. Approved (Husband's right to receive wife's property on her death) in *Ransom v. Nichols*, 22 *N. Y.* 110, 113; *Lansing v. Gulick*, 26 *How. Pr.* 250. Reviewed with *Schemerhorn v. Miller*, 2 *Cow*. 439, and other cases in *Tyler on Inf. & Gov.* 2 ed. § 285. Disting'd (Who may call administrator, &c. to account) in *Matter of Ritch*, 2 *Redf.* 330. Followed (Extent of authority of surrogate over, administrators, &c.) in *Savage v. Olmstead*, *Id.* 478, 483.
- **v. Fowler**. See *Duryee v. Dennison*.
- **v. Harmon**, 4 *Hun*, 411; s. c., reported in 6 *Sup'm. Ct. (T. & C.)* 626.
- **v. Shumway**, 1 *Lans.* 474. Aff'd in 42 *N. Y.* 143. Decision in *Id.* quoted (New trials in ejectment) in *Sedgwick & W. on Tr. of Tit. to Land*, §§ 582, 589.
- **v. Stillman**, 4 *Cow*. 292; s. c., 15 *Am. Dec.* 374, with note, wherein it is said to have been approved in many subsequent cases. Subsequent decision in 6 *Wend.* 447. See *Borden v. Fitch*; *Harrod v. Barretto*; *Hitchcock v. Aiken*; *Starbuck v. Murray*. Decision in 6 *Wend.* followed (Conclusiveness of foreign judgment) in *Howard v. Smith*, 42 *How. Pr.* 312. Referred to in *Kinnier v. Kinnier*, 45 *N. Y.* 451, as having been steadily adhered to. Referred to in 44 *Am. Dec.* 343, n., as "laying down the now generally accepted doctrine." Reviewed with *Kerr v. Kerr*, 41 *N. Y.* 272; *Hoffman v. Hoffman*, 46 *Id.* 80, and other cases in 2 *Am. Dec.* 42, n. Decision in 4 *Cow.* applied in *Harrod v. Barretto*, 1 *Hall*, 162. Cited as authority with *Borden v. Fitch*, 15 *Johns.* 145, in *Eaton v. Hasty*, 6 *Neb.* 419; s. c., 29 *Am. R.* 365.
- Shute v. Dorr**, 5 *Wend.* 204. See *Burlingame v. Burlingame*. Disting'd (Verbal agreement, when void, as not to be performed within a year) in *McKinney v. McKinney*, 8 *Daly*, 368, 370. Disting'd (Recovery where contract is void under statute of frauds) in *Van Valkenburg v. Croffut*, 15 *Hun*, 147, 150. Reviewed with other cases in *Towsley v. Moore*, 30 *Ohio St.* 185; s. c., 27 *Am. R.* 434, 437. Applied with *King v. Brown*, 2 *Hill*, 485, in *William Butcher Steel Works v. Atkinson*, 68 *Ill.* 421; s. c., 18 *Am. R.* 560. Explained in 2 *Chitty on Contr.* 852, n. k, 11 *Am. ed.*
- Sibbald v. Bethlehem Iron Co.**, 83 *N. Y.* 378; s. c., 38 *Am. R.* 441. See *Wylie v. Marine Nat. B'k.* Reviewed and relied on with *McClave v. Paine*, 49 *N. Y.* 561 (Broker's commission; when earned) in *Stewart v. Murray*, 92 *Ind.* 543; s. c., 47 *Am. R.* 187.
- Sibell v. Remsen**, 30 *Barb.* 441. Judgment of dismissal aff'd on merits in 33 *N. Y.* 95.
- Sibley v. Howard**, 3 *Den.* 72; s. c., 45 *Am. Dec.* 448, with note, wherein are collected citations (Justice's judgments).
- **v. Waffle**, 16 *N. Y.* 180. Explained (Jurisdiction, as determined by recitals) in *Potter v. Merchants' Bank*, 28 *Id.* 642, 654. See *Code Civ. Pro.* 1881, § 2473, n. Collated with other cases (Proceedings for sale of real estate of decedents, whether proceedings *in rem*) in *Mickel v. Hicks*, 19 *Kans.* 578; s. c., 27 *Am. R.* 161, 165.
- Sieard v. Whale**. See *Smith v. Spinolla*.
- Stee v. Cunningham**, 1 *Cow*. 397. See *Trimble v. Thorne*. Explained and followed (Time within which to present for payment note payable on demand) in *Salmon v. Grosvenor*, 66 *Barb.* 161, 164, 166. Followed with *Losee v. Dunkin*, 7 *Johns.* 70, in *Perry v. Green*, 4 *Harr. (N. J.)* 61; s. c., 38 *Am. Dec.* 536, 538; *Vreeland v. Hyde*, 2 *Hall*, 429, being doubted and also disting'd as within the rule in *Mechanics' Bank of N. Y. v. Griswold*, 7 *Wend.* 165.
- Sickels v. Pattison**, 14 *Wend.* 257; s. c., 28 *Am. Dec.* 527. See *McMillan v. Vanderlip*.
- Sickles v. Gillies**, 35 *Super. Ct. (J. & S.)* 14. Further decision in 45 *How. Pr.* 95.
- **v. Mather**, 20 *Wend.* 72; s. c., 32 *Am. Dec.* 521, with note containing citations (Books of account as evidence). See *Merriell v. Ithaca & Oswego R. R. Co.*
- **v. Richardson**, 14 *Hun*, 110. Explained and applied (Basis of extra allowance) in *Williams v. Western Union Tel. Co.*, 61 *How. Pr.* 305, 308.
- **v. Sullivan**, 5 *Hun*, 569. Compare (Affidavit for attachment to be granted by justice) *Code Civ. Pro.* § 2906.
- Sieger v. Culyer**, 2 *Abb. N. C.* 347. Aff'd, it seems, in 67 *N. Y.* 601, on opinion below.
- Sieman v. Austin**. See *Siemon v. Schurck*.
- Siemon v. Schurck**, 29 *N. Y.* 598. Aff'g *Sieman v. Austin*, 33 *Barb.* 9. See *Gilbert v. Gilbert*. Decision in 29 *N. Y.* applied (Resulting trusts, as affected by 1 R. S. 728, § 51) in *Fairchild v. Fairchild*, 5 *Hun*, 412; which was aff'd in 64 *N. Y.* 476, which see; *Rietz v. Rietz*, 80 *Id.* 538, 542. Approved in *Foot v. Bryant*, 47 *Id.* 551. Dictum as to resulting trust disapproved in *Randall v. Constans*, 33 *Minn.* 329, 337. Decision in 33 *Barb.* followed (Effect of conveyance from trustee to *cestui que trust*, as against creditors) in *Norton v. Mallory*, 1 *Hun*, 502.
- Sigel v. Johns**. See *Kolls v. De Leyer*.
- Sigourney v. Waddle**, 9 *Paige*, 381. Recognized as authority (Attorney's liability for costs of non-resident) in *Wilmot v. Meserole*, 16 *Abb. Pr. N. S.* 308.
- Sikes v. Ransom**, 6 *Johns.* 279. Quoted and explained (Mandamus to inferior courts) in *High on Extr. Rem.* 2 ed. § 199, n. 1.
- Sill v. Rood**, 15 *Johns.* 230. Disting'd with

- Winter v. Livingston, 13 *Id.* 54, and Frisbie v. Hoffnagle, 11 *Id.* 50, disapproved as an insulated case (Defense to action on note given for purchase price) in Lloyd v. Jewell, 1 *Greenl. (Me.)* 352; s. c., 10 *Am. Dec.* 73.
- **v. Village of Corning**, 15 *N. Y.* 297. Approved and followed (Power of legislature to establish local tribunals) in Brandon v. Avery, 22 *Id.* 469, 471; Heidenheimer v. Wilson, 31 *Barb.* 636, 640. Followed in Cœ v. Schultz, 2 *Abb. Pr. N. S.* 198; Cooper v. Schultz, 2 *How. Pr.* 129. Disting'd in dissenting opinion in Metropolitan B'd of Health v. Heister, 37 *N. Y.* 680. Disting'd with People *ex rel.* Wood v. Draper, 15 *Id.* 532; People *ex rel.* McMullen v. Shepard, 36 *Id.* 285, in People *ex rel.* Townsend v. Porter, 90 *Id.* 68. Applied (Jurisdiction of police justice) in People v. Morgan, 5 *Daly*, 161, 180.
- Silleck v. Mason**, 2 *Barb. Ch.* 79. Reported below as Rider v. Mason, 4 *Sandf. Ch.* 351.
- Silliman v. Lewis**. See Arctic Fire Ins. Co. v. Austin; Owen v. Hudson River R. R. Co.
- **v. Tuttle**, 45 *Barb.* 171. Discussed (Derivative evidence) in 2 *Best on Ev.* § 495, n. a, Wood's ed.
- Silmsur v. Redfield**, 19 *Wend.* 21. Explained (Reference in case involving account) in Batchelor v. Albany City Ins. Co., 6 *Abb. Pr. N. S.* 240, 242. Followed in Camp v. Ingersoll, 1 *Civ. Pro. R.* 340, 348.
- Silsbury v. McCoon**, 4 *Den.* 332. Rev'd in 3 *N. Y.* 379. Former proceeding in 6 *Hill*, 425. See Betts v. Lee; Curtis v. Groat; Hyde v. Cookson. Decision in 3 *N. Y.* disting'd (Waiver of right of ownership, as against wrongdoer) in Benedict v. Nat. B'k of Commonwealth, 4 *Daly*, 177. Followed (Distinction between willful and involuntary wrongdoer, as to title acquired by accession) in Hyde v. Cookson, 21 *Barb.* 104. All the decisions examined with Hyde v. Cookson, 21 *Barb.* 92 (Damages in action for recovery of personal property that has increased in value) in Railway Co. v. Hutchins, 32 *Ohio St.* 571; s. c., 30 *Am. R.* 629. Decision in 3 *N. Y.* reviewed with other cases in Foote v. Merrill, 54 *N. H.* 490; s. c., 20 *Am. R.* 151, 153. Approvingly commented on at length in 24 *Am. Dec.* 85, n. Collated with Joslin v. Cowee, 60 *Barb.* 48; Rockwell v. Saunders, 19 *Id.* 483; Hyde v. Cookson, 21 *Id.* 92, and other cases in 26 *Am. R.* 525, n. Quoted and discussed in 3 *Pars. on Contr.* 200, n. p. Reviewed with other cases in 4 *Am. Dec.* 370, n.
- Silva v. Low**, 1 *Johns. Cns.* 184; s. c., 1 *N. Y. Com. L. Law. ed.* 291, with brief note (Implied warranty of seaworthiness).
- Silver v. Bowne**, 55 *N. Y.* 659. Disting'd (Acceptance under statute of frauds) in U. S. Reflector Co. v. Rushton, 7 *Daly*, 410.
- Silver Creek Bank v. Talcott**, 22 *Barb.* 550. Subsequent decision as Oliver Lee & Co.'s Bank v. Talcott, 19 *N. Y.* 146.
- Silver Lake B'k v. North**, 4 *Johns. Ch.* 370. Explained (Enforcing contracts *ultra vires*) in Town of Verona v. Peckham, 66 *Barb.* 113. Relied on in Whitney Arms Co. v. Barlow, 63 *N. Y.* 71. Collated with other cases in *Field on Ultra Vires*, 187. Disting'd (Right of corporation to take mortgage) in Crocker v. Whitney, 71 *N. Y.* 170. Followed in Lathrop v. Commercial B'k, 8 *Dana (Ky.)* 114; s. c., 33 *Am. Dec.* 481, 491, with note. Applied in Gordon v. Preston, 1 *Watts (Pa.)* 385; s. c., 26 *Am. Dec.* 75, with note. Approved in Wroten's Assignee v. Armal, 31 *Gratt. (Va.)* 228, 252; s. c., 2 *Broome's Nat. B'k Cas.* 426. Cited with approval (Right of corporation to hold real estate) in Bank of Michigan v. Niles, 1 *Dong. (Mich.)* 401; s. c., 41 *Am. Dec.* 575, 578. Relied on in Thompson v. Waters, 25 *Mich.* 214; s. c., 12 *Am. R.* 243, 255. Quoted and discussed in *Ang. & A. on Corp.* §§ 157, 265, 11 ed. Followed (Corporate purchase granted in another State is not to be revoked or annulled here) in Merrick v. Van Santvoord, 34 *N. Y.* 222. Applied (Questioning authority of foreign corporation to make loan) in Steam Nav. Co. v. Weed, 17 *Barb.* 381; Pratt v. Short, 53 *How. Pr.* 509. Applied (Right of mortgagee to subrogation to rights of judgment creditor) in Hogg v. Longstreth, 97 *Penn. St.* 255, 259.
- Silverman v. Henant**, 40 *How. Pr.* 88. To same effect (Supplementary proceedings on marshal's return) Muldowney v. Corney, 3 *Daly*, 170. See L. 1864, c. 569, § 2.
- Silvernail v. Cole**. See Bank of Lansingburgh v. Crary.
- Simar v. Canaday**, 53 *N. Y.* 298. See Case v. Boughton; Ellis v. Andrews; Westcott v. Keeler. Followed (Inchoate right of dower, as present interest) in Youngs v. Carter, 50 *How. Pr.* 412; which was aff'd in 10 *Hun*, 198, which see; Babcock v. Babcock, 53 *How. Pr.* 102. Explained and applied in Doty v. Baker, 11 *Hun*, 224. Followed with Witthaus v. Schack, 24 *Id.* 328; Garlick v. Strong, 3 *Pai/e*, 440; Doty v. Baker, 11 *Hun*, 222, in Steele v. Ward, 30 *Id.* 555. Collated with other cases in *Sharsup. & B. Cas. on Real Prop.* 333. Applied (Dower right, as affected by foreclosure) in Ross v. Boardman, 22 *Hun*, 527, 529. Followed (False statements of value when attainable) in Bacon v. Frisbie, 15 *Id.* 26, 28; which was rev'd in 80 *N. Y.* 394. Disting'd and head-note corrected in Ellis v. Andrews, 56 *Id.* 83, n. Discussed with Ellis v. Andrews, in 11 *Am. R.* 218, n. Approved (Remedy for misjoinder of plaintiffs) in Foster v. Foster, 5 *Hun*, 557; Fuller v. Fuller, *Id.* 596. Applied in Rumsey v. Lake, 55 *How. Pr.* 340. Criticised in *Pomeroy on Rem.* § 214, n. 3, and disapproved (Joint actions by husband and wife) in *Id.* § 241, n. 1.
- Simers v. Saltus**, 3 *Den.* 214. Applied (Right of one deriving title under mortgage

- to set up contract made by mortgagor) in *Thompson v. Somerville*, 16 *Barb.* 473. Explained (Title, when acquired under foreclosure sale so as to create eviction) in *Peck v. Knickerbocker Ice Co.*, 18 *Hun.* 186.
- Simmons v. Cloonan**, 2 *Lans.* 346. Rev'd in 47 *N. Y.* 3. Further decision on the merits in 7 *Hun.* 470, aff'd in 81 *N. Y.* 557. See *Lampman v. Milks*; *Parsons v. Johnson*. Decision in 47 *N. Y.* explained (Appurtenances that pass with real property) in *Moak's Underhill's Torts*, 1 *Am. ed.* 432.
- **v. Fairchild**, 42 *Barb.* 404. See also (Necessity that each of several causes of action contain complete statement in itself) *Anderson v. Speers*, 8 *Abb. N. C.* 382, 385.
- **v. Law**, 8 *Bosw.* 213. Aff'd in 3 *Keyes*, 217; s. c., 4 *Abb. Ct. App. Dec.* 241. See *Frith v. Barker*. Decision in 3 *Keyes* distinguishing (Effect of provision in bill of lading, &c. as to loss by theft) in *Spinetti v. Atlas Steamship Co.*, 80 *N. Y.* 71, 80. See other cases collected (Usage to vary contract) in 1 *Abb. N. C.* 472, n.
- **v. Lee**, 66 *Barb.* 557. Aff'd, it seems, in 56 *N. Y.* 676, but without opinion.
- **v. Lyons**, 35 *Super. Ct. (J. & S.)* 554. Aff'd in 55 *N. Y.* 671, on opinion of *MONELL, J.* Decision in 35 *Super. Ct. (J. & S.)* approved (Review of order to amend pleading) in *Schreyer v. Mayor, &c. of N. Y.*, 39 *Id.* 277, 281. See (Alleging title in replevin action) *Code Civ. Pro.* 1881, § 1720, n.
- **v. McElwain**. See *White v. Wager*.
- **v. Sherman**, 30 *How. Pr.* 4. Approved with *Carter v. Werner*, 27 *Id.* 385, but contrary rule reluctantly followed (Practice on appeal from county court) in *Bliss v. Schaub*, 48 *Barb.* 339, 342, in deference to authority of *Monroe v. Monroe*, 27 *How. Pr.* 208; *Whitney v. Wells*, 28 *Id.* 150; *Boughton v. Mitchell*, 29 *Id.* 68; and *Dixon v. Bush*, 42 *Barb.* 72.
- **v. Simmons**, 26 *Barb.* 68. See *Nelson v. McGiffert*. Collated with cases from other jurisdictions and applied (Effect of second will as revocation of first) in *Pickens v. Davis*, *Sup'm. Ct. Mass.* 1883, 16 *Reporter*, 653. Quoted in 1 *Jarm. on Wills*, *Rand. & T. ed.* 366, n. 3.
- **v. Sisson**, 26 *N. Y.* 264. Criticised as dictum (Evidence of conversation of deceased with third person) in *Lobdell v. Lobdell*, 32 *How. Pr.* 1, 14; which was, however, rev'd in 36 *N. Y.* 327. Followed in *Marsh v. Gilbert*, 2 *Redf.* 465, 476. Distinguishing in *Brague v. Lord*, 41 *Super. Ct. (J. & S.)* 193, 196; which was rev'd in 67 *N. Y.* 495; *Ross v. Harden*, 42 *Super. Ct. (J. & S.)* 427, 435. Approved, but criticised in part (Defective answers) in *Pomeroy on Rem.* § 601.
- **v. Vanderbilt**, 22 *Hun.* 479; s. c., fully reported, 59 *How. Pr.* 411.
- Simon v. Kaliske**, 6 *Abb. Pr. N. S.* 224. Collated with other cases (Waiver of tender) in *McAdarr on Landl. & T.* 2 ed. § 154.
- Simonds v. Catlin**, 2 *Cal.* 61. See *Brasher v. Cortlandt*; *Jackson v. Robins*. Followed (Mode of executing power of attorney) in *Stinchfield v. Little*, 1 *Greenl. (Me.)* 231; s. c., 10 *Am. Dec.* 65. Examined (Sufficiency of return by under sheriff) in *Calcutar v. Olcott*, 1 *Mich.* 346. Commented on (Conveyances by operation of law) in *Browne on Stat. of Frauds*, § 77, 4 ed.
- Simons v. De Barre**, 6 *Abb. Pr.* 188. Aff'd in 8 *Id.* 269.
- **v. Monier**, 29 *Barb.* 419. Followed (Liability of employer for negligence of person called in by servant to assist temporarily) in *Pennsylvania Co. v. Gallagher*, 40 *Ohio St.* 637; s. c., 48 *Am. R.* 689.
- Simons v. Spencer**, 15 *Wend.* 548. Dicta overruled (Recovery against stockholder, by another stockholder, creditor of the company) in *Bailey v. Bancker*, 3 *Hill*, 188.
- Simpkins v. Low**, 49 *Barb.* 382. Aff'd in 54 *N. Y.* 179.
- Simpson v. Brewster**, 9 *Paige*, 245. Followed (Stay of proceedings for non-payment of costs of former action) in *Bolton v. Corse*, 47 *Super. Ct.* 493.
- **v. Buck**, 5 *Lans.* 337. See *Gray v. Durand*. Reviewed with *Williams v. Hutchinson*, 5 *Barb.* 122; *Furman v. Van Sise*, 56 *N. Y.* 435, and other cases (Right of mother to custody and services of infant child after father's death) in *Tyler on Inf. & Cov.* 2 ed. § 181, as showing prevailing American doctrine.
- **v. Burch**, 4 *Hun.* 315. Applied (Substituted service when ordered) in *McCarthy v. McCarthy*, 16 *Id.* 546, 548. Distinguishing (Effect of omission to serve summons within specified time after granting attachment) in *Blossom v. Estes*, 84 *N. Y.* 614, 618.
- **v. Gerard**. See *Bush v. Cole*.
- **v. Griffin**, 9 *Johns.* 131. Included (Indorser's remedy against maker) in 2 *Ames Cus. on B. & N.* 84.
- **v. Hornbeck**, 3 *Lans.* 53. Followed (Liability to person imprisoned under erroneous proceedings) in *Fischer v. Langbein*, 10 *Abb. N. C.* 128, 141. Applied to taking of goods, in *Day v. Beach*, 46 *Super. Ct. (J. & S.)* 460, 465. Quoted and commented on in *Wait on Fraud. Conv.* § 444.
- **v. McKay**, 3 *Sup'm. Ct. (T. & C.)* 65. Further decision in 3 *Hun.* 316; mem. s. c., 5 *Sup'm. Ct. (T. & C.)* 706.
- **v. Moore**, 30 *Barb.* 637. See *Clarkson v. Clarkson*. Distinguishing (Right to increased value of capital fund, as between life-tenant and remainderman) in *Matter of Pollock*, 3 *Redf.* 100, 113. Explained in 2 *Perry on Trusts*, 3 ed. § 545, n. 1, p. 84; *Id.* 88, n.
- **v. Patten**, 4 *Johns.* 422. Explained with *Jackson v. Rayner*, 12 *Id.* 291 (Effect of parol agreement to pay debt of another) in *Barker v. Bucklin*, 2 *Den.* 45, 56.
- **v. Rhinelanders**, 20 *Wend.* 103. See

- to the contrary (Reviewing evidence on certiorari) *Niblo v. Post*, 25 *Id.* 280. See *Anderson v. Prindle*, 23 *Id.* 616; *Benjamin v. Benjamin*, 5 *N. Y.* 383; *Morewood v. Hollister*, 6 *Id.* 309.
- Sims v. Brown**, 6 *Sup'm. Ct. (T. & C.)* 5. Aff'd, it seems, in 64 *N. Y.* 660, but without opinion. Decision in 6 *Sup'm. Ct. (T. & C.)* applied with *Hearsey v. Prime*, 7 *John.* 181 (Effect of claim made by third party to money in hands of agent) and *Hoover v. Greenbaum*, 61 *N. Y.* 305 disting'd, in *Peyser v. Wilcox*, 64 *How. Pr.* 525.
- **v. Sims**, 12 *Hun.* 231. Rev'd in 75 *N. Y.* 466. Decision in *Id.* applied (Statutory disqualification of witness without effect out of State) to statutory prohibition against marriage, in *Van Voorhis v. Brintnall*, 86 *Id.* 18, 36. Criticised in *Am. L. Rev. N. S.* 166, 179.
- Simson v. Brown**, 6 *Hun.* 251. Rev'd in 68 *N. Y.* 355. See *Garnsey v. Rogers*. Decision in 68 *N. Y.* disting'd (Right of one not party to contract, to benefits thereof) in *Bean v. Edge*, 84 *Id.* 510, 514. Approved and statement of *FOLGER, J.*, adopted, in *Austin v. Seligman, U. S. Cir. Ct. S. D. N. Y.* 18 *Fed. Rep.* 522. Followed (Release of contract created by assumption of mortgage) in *Gilbert v. Sanderson*, 56 *Iowa*, 349, 352.
- **v. Hart**, 1 *Johns. Ch.* 91. Rev'd as *Simson v. Hart*, in 14 *Johns.* 61. See *Dale v. Cooke*; *Le Guen v. Gouverneur*. Decision in 1 *Johns. Ch.* followed, notwithstanding reversal (Equitable release against judgment at law) in *Anderson v. Roberts*, 18 *Johns.* 534; *Holmes v. Remsen*, 7 *Johns. Ch.* 289. Quoted in 1 *High on Inj.* 2 ed. § 237, n. 3. Decision in 14 *Johns.* applied (Set-off in case of insolvency) in *Perry v. Chester*, 12 *Abb. Pr. N. S.* 137; *Lindsay v. Jackson*, 2 *Paige*, 584. Doubted in *Howe v. Sheppard*, 2 *Sum.* 415, *et seq.* See *Green v. Darling*, 5 *Mason*, 201. Followed (Effect of decision on motion, as *res adjudicata*) in *Arden v. Patterson*, 5 *Johns. Ch.* 52; *Belmont v. Erie R'y Co.*, 52 *Barb.* 645. Explained in *Dwight v. St. John*, 25 *N. Y.* 206. Cited with approval (Power of courts of law to set off judgments against each other) in *Scott v. Rivers*, 1 *Stew. & P. (Ala.)* 24; s. c., 21 *Am. Dec.* 646, with note.
- **v. Hart**. See *Simpson v. Hart*.
- **v. Satterlee**, 6 *Hun.* 305. Aff'd in 64 *N. Y.* 657.
- Sinclair v. Jackson**, 8 *Cow.* 543. Applied (Recitals in written instrument, as evidence) in *Demeyer v. Legg*, 18 *Barb.* 20; *Atlantic Dock Co. v. Leavitt*, 54 *N. Y.* 40. Disting'd in *Selden v. Vermilya*, 3 *Id.* 536. Applied (Execution of power delegated to several) in *Hertell v. Van Buren*, 3 *Edw.* 26. Explained as decided before *R. S.*,—in *Leggett v. Hunter*, 19 *N. Y.* 456.
- **v. Tallmadge**, 35 *Barb.* 602. See *Brown v. Weber*; *Champlin v. Rowley*. Applied (Effect of clause in building contract, providing for arbitration) in *Hurst v. Litchfield*, 39 *N. Y.* 380. Cited with approval (Effect of substantial performance of contract) in *Gladius v. Black*, 50 *Id.* 145, 148.
- Siney v. N. Y. Consolidated Stage Co.**, 28 *How. Pr.* 481; s. c., more fully, 18 *Abb. Pr.* 435.
- Singer v. People**, 13 *Hun.* 418. Aff'd, it seems, in 75 *N. Y.* 608, but without opinion.
- **v. Singer**, 17 *Abb. Pr.* 66, n.; s. c., more fully, 41 *Barb.* 139. Cited as authority (Setting aside decree of divorce for fraud) in *Rush v. Rush*, 46 *Iowa*, 648; s. c., 26 *Am. R.* 179.
- Sipperly v. Baucus**, 24 *N. Y.* 46. Followed (Surrogate's power to open decree) in *Campbell v. Thatcher*, 54 *Barb.* 384, 387; *Bailey v. Stewart*, 2 *Redf.* 224. Disting'd in *Strong v. Strong*, 3 *Id.* 479, 485.
- Sisson v. Barrett**, 6 *Barb.* 199. Aff'd in 2 *N. Y.* 406. With these decisions and *Hubbard v. Gurney*, 64 *N. Y.* 457; *Barry v. Ransom*, 12 *Id.* 462 see (Oral evidence to show relation of parties) *Fraley v. Starr*, 17 *West. Jur.* 193; s. c., 16 *Weekly Dig.* 388; *Cummings v. Kent, Humilton Co. O. Distr. Ct.* 12 *Am. L. Rev.* 163.
- **v. Conger**, 1 *Sup'm. Ct. (T. & C.)* 564. See *Jackson v. Kniffen*; *Livingston v. Keirsted*. See cases cited to the contrary (Testator's declarations) in *Abb. Tr. Ev.* 124, n. 9.
- **v. Hibbard**, 10 *Hun.* 420. Aff'd in 75 *N. Y.* 542.
- **v. Willard**, 25 *Wend.* 373. Relied on (What may be proved under general issue in *assumpsit*) in *Falconer v. Smith*, 18 *Pa. St.* 130; s. c., 55 *Am. Dec.* 611; *Gaw v. Wolcott*, 10 *Pa. St.* 43.
- Sistare v. Cushing**. See *Smith v. Mulock*.
- Sisters of Charity v. Kelly**, 7 *Hun.* 290. Rev'd in 67 *N. Y.* 409. Motion to correct remittitur denied in 68 *Id.* 628. See *First Nat. B'k of Meadville v. Fourth Nat. B'k of N. Y.* Decision in 67 *N. Y.* followed (Necessity that testator's signature be at end of will) in *Matter of O'Neil*, 91 *Id.* 516. Approved and applied in *Hewitt v. Hewitt*, 5 *Redf.* 271, 275. Disting'd with *McGuire v. Kerr*, 2 *Bradf.* 257; *Heady's Will Case*, 15 *Abb. Pr. N. S.* 211; *Conboy v. Jennings*, 1 *Sup'm. Ct. (T. & C.)* 622, in *Brady v. McCrossin*, 5 *Redf.* 432. Decision in 68 *N. Y.* applied (Costs on appeal to Court of Appeals) in *People ex rel. Morris v. Randall*, 8 *Daly*, 81.
- Sixth Avenue R'y Co. v. Gilbert Elevated R. R.**, 41 *Super. Ct. (J. & S.)* 480. Rev'd in 43 *Id.* 292; s. c., 3 *Abb. N. C.* 372. Other proceedings in *Id.* 53; 71 *N. Y.* 430. See *Milhau v. Sharp*; *People ex rel. Morris v. Randall*. Decision in 71 *N. Y.* followed but criticised (Effect of appeal to stay proceedings to enforce judgment appealed from) in *Troy & Boston R. R. Co. v. Boston, Hoosic Tunnel, &c. R'y Co.*, 57 *How. Pr.* 185. Disting'd in *Gardner v. Gardner*, 62 *Id.* 265, 267; which rev'd 24 *Hun.* 627, 629, which see. With decis-

- ion in 8 *Abb. N. C.* 372, compare (Compensation to owners adjacent to railroad) Washington Cemetery v. Prospect Park, &c. R. R. Co., 4 *Id.* 15.
- *v. Kerr*, 45 *Barb.* 138. Aff'd in 28 *How. Pr.* 382. Decision in *Id.* followed (Injunction against injury to real property) in Swett v. City of Troy, 17 *Abb. Pr. N. S.* 100, 105.
- Sixty-fifth Street, Matter of.** See Bowery Extension Case.
- Sizer v. Miller**, 1 *Hill*, 227. Said in Pope v. Hart, 35 *Barb.* 635, to be overruled (Evidence as to intent to cheat or defraud) by Seymour v. Wilson, 14 *N. Y.* 567.
- Skellinger v. Yendes**, 12 *Wend.* 306. Applied (Effect of defects in statutory bond) in People ex rel. Comm'rs of Charities, &c. of N. Y. v. Lyons, 7 *Daly*, 182, 187.
- Skelton v. Brewster**, 8 *Johns.* 376. Discussed (Guaranties) in *Browne on Stat. of Frauds*, § 169, 4 ed.
- *v. Scott*, 18 *Hun.* 375. Explained (Allegations as to appointment, in action to foreclose mortgage given by executor) in Kingsland v. Stokes, 25 *Id.* 107, 109.
- Skidmore v. Collier**, 8 *Hun.* 50. Cited (Liability of surviving partner who carries on partnership business) in *Story on Partn.* 7 ed. § 343.
- *v. Davies*, 10 *Paige*, 316. Followed (Power of surrogate to vacate decree) in Bailey v. Stewart, 2 *Redf.* 212, 225. Collated with other cases in *Willard on Executors*, 50.
- *v. Laughland*, 1 *Month. L. Bul.* 71. Compare (Sheriff's fees for keeper) *Code Civ. Pro.* § 3307, subd. 7.
- *v. Romaine*, 2 *Bradf.* 122. Collated with other cases (Liability of insane persons on contracts) in 55 *Am. Dec.* 431, n. See (Judgment against executor for decedent's debt) *Code Civ. Pro.* 1881, § 2757, n.
- Skilding v. Warren**, 15 *Johns.* 270. See Herrick v. Carman. Disting'd (Liability of accommodation party to note) in De Zeng v. Fyfe, 1 *Bosw.* 337; Bank of Rutland v. Buck, 5 *Wend.* 69. Applied (Maker of note, as witness in action by indorsee against indorser) to prior endorser in Powell v. Waters, 17 *Johns.* 181; also to indorser, in action against maker, in McFadden v. Maxwell, *Id.* 191; Tuthill v. Davis, 20 *Id.* 287. Opposed with Hubby v. Brown, 16 *Johns.* 70, in Pierce v. Butler, 14 *Mass.* 303.
- Skinner v. Dayton**, 2 *Johns. Ch.* 526. Rev'd in Skinner v. White, 17 *Johns.* 357. Subsequent decision in 19 *Id.* 513; s. c., 10 *Am. Dec.* 286, rev'g 5 *Johns. Ch.* 351. See Buckley v. Buckley; Ketcham v. Clark; Ludlow v. Simond; Smith v. Mulock; Yates v. Lansing. Explained and applied (Parol authority to partner to execute deed) in Gram v. Seton, 1 *Hall*, 262, 284. Decision in 19 *Johns.* disapproved in Hart v. Withers, 1 *Penr. & W. (Pa.)* 285; s. c., 21 *Am. Dec.* 382, with note. Reporter's head-note criticised in 1 *Pars. on Contr.* 110, n. b. Explained (Dissolution of partnership before expiration of contract) in *Id.* 195, n. l.
- *v. Powers*, 1 *Wend.* 451; s. c., 9 *N. Y. Com. L. Law. ed.* 977, with brief note. Approved (Evidence sufficient to justify slander) in Burford v. Wible, 32 *Penn.* 95. See *Code Civ. Pro.* § 535.
- *v. Quin*, 43 *N. Y.* 99. Rev'g Quin v. Skinner, 49 *Barb.* 128; s. c., 33 *How. Pr.* 229. Decision in 43 *N. Y.* followed (Effect of devise of realty subject to power of sale) in Hetzell v. Barber, 6 *Hun.* 534, 540.
- *v. Stuart*, 39 *Barb.* 206; s. c., 24 *How. Pr.* 489; more fully, 15 *Abb. Pr.* 391; partly rev'g 13 *Id.* 442. Decision in 39 *Barb.* explained (Equitable relief in aid of attachment) in Greenleaf v. Mumford, 30 *How. Pr.* 31. Approved in Mechanics', &c. Bank v. Dakin, 51 *N. Y.* 519, 523. Compared with other cases (Action in name of attaching creditor, in aid of attachment) in Lupton v. Smith, 5 *Sup'm. Ct. (T. & C.)* 274.
- *v. Valentine*, 3 *Sup'm. Ct. (T. & C.)* 40. Aff'd in 59 *N. Y.* 473.
- Skinnion v. Kelley**, 18 *N. Y.* 355. Referred to as overruled (Collaterally questioning sufficiency of affidavit for attachment) in Easton v. Malavazi, 7 *Daly*, 148. Disting'd in Kelly v. Archer, 48 *Barb.* 72.
- Slack v. Brown**, 13 *Wend.* 390. See (Payment of amount of tender into court) *Code Civ. Pro.* 1881, § 732, n.
- *v. Heath*, 4 *E. D. Smith*, 95; s. c., 1 *Abb. Pr.* 331. We are informed that this decision was aff'd by Ct. of App. June, 1860. Decision in 4 *E. D. Smith* disting'd (Undertaking in replevin) in Hager v. Clute, 10 *Hun.* 447, 450.
- Slade v. Van Vechten**, 11 *Paige*, 21. Applied (Effect of purchase of trust property by trustee) in Colburn v. Morton, 1 *Abb. Ct. App. Dec.* 385. Applied (Assignee for creditors, when not to be considered as bona fide purchaser) in Van Heusen v. Radcliff, 17 *N. Y.* 583. Applied (Priority of lien of execution before levy) in Warner v. Paine, 3 *Barb. Ch.* 631; Ray v. Birdseye, 5 *Den.* 624. Disting'd in Mumper v. Rushmore, 79 *N. Y.* 19, 22.
- *v. Warren*, 1 *N. Y.* 431; s. c., more fully, 3 *How. Pr.* 295.
- Slater v. Mersereau**, 5 *Daly*, 445. Aff'd in 64 *N. Y.* 138. See City of Buffalo v. Holloy. Decision in 64 *N. Y.* approved and disting'd (Liability for injury occasioned by separate negligence of two or more) in Chipman v. Palmer, 77 *Id.* 51, 54.
- *v. Wilcox*, 57 *Barb.* 604. See to the contrary (Opinion of witness) Graves v. Moses, 13 *Minn.* 335. But see *Abb. Tr. Ev.* 347.
- Slatter v. Carroll**, 2 *Sandf.* 573. Discussed (*Lex loci* as affecting assignment of real estate for creditors) in *Burrill on Assign.* § 304, 4 ed.
- Slattery v. People**, 3 *Sup'm. Ct. (T. & C.)*

- 669; mem. s. c., 1 *Hun*, 311. Aff'd in 58 *N. Y.* 354.
- Slawson v. Conkey**, 1 *Abb. Pr.* 228. Rev'd, it seems, as *Slawson v. Conkey*, in 10 *How. Pr.* 57.
- **v. Watkins**, 2 *Abb. N. C.* 366, n. Rev'd in 44 *Super. Ct. (J. & S.)* 73, and this confirmed in 86 *N. Y.* 597.
- Slawson v. Albany R'y Co.**, 1 *Hun*, 438; s. c., as *Slawson v. Same*, 3 *Sup'm. Ct. (T. & C.)* 768. Aff'd in 60 *N. Y.* 606.
- Slee v. Bloom**, 5 *Johns. Ch.* 366. Rev'd in 19 *Johns.* 456; s. c., 10 *Am. Dec.* 273. Further decision in 20 *Johns.* 669. See *Briggs v. Penniman*; *Philips v. Wickham*. Decision in 5 *Johns. Ch.* followed with *People v. Manhattan Co.*, 9 *Wend.* 362; *Vernon Society v. Hills*, 6 *Cow.* 23 (Forfeiture of corporate franchises to be enforced only by the State) in *State v. Fourth N. H. Turnpike*, 15 *N. H.* 162; s. c., 41 *Am. Dec.* 690, 692, with note. Followed with *People v. Runkle*, 9 *Johns.* 147 (Corporation when not dissolved by failure to exercise its functions) in *Cahill v. Kalamazoo Mut. Ins. Co.*, 2 *Doug. (Mich.)* 124; s. c., 43 *Am. Dec.* 457, 464, with note. Followed in *Attorney-General v. Stevens*, 1 *Sart. Ch. (N. J.)* 369; s. c., 22 *Am. Dec.* 526; *Meads v. Walker*, *Hopk.* 587; *Haight v. Day*, 1 *Johns. Ch.* 18, being disting'd as cases of corporations having no legal existence. Followed with *People v. Washington & Warren Bank*, 6 *Cow.* 216; *Bank of Poughkeepsie v. Ibbotson*, 24 *Wend.* 479; *Briggs v. Penniman*, 8 *Cow.* 337, in *State v. Real Estate Bank*, 5 *Ark.* 595; s. c., 41 *Am. Dec.* 109, 119. Cited as authority in *Commonwealth v. Cullen*, 13 *La. St.* 133; s. c., 53 *Am. Dec.* 450, 456, with note. Considered with other cases in *John v. Farmers' & Mechanics' Bank*, 2 *Blackf. (Ind.)* 367; s. c., 20 *Am. Dec.* 119, 121. Decision in 20 *Johns.* examined with *Moss v. Oakley*, 2 *Hill*, 265; *Moss v. McCullough*, 5 *Id.* 131; *Moss v. Averell*, 10 *N. Y.* 449 (Judgment against corporation as evidence against stockholder) in *Belmont v. Coleman*, 21 *N. Y.* 96; which aff'd 1 *Bosw.* 188, 197, which see. Re-aff'd in *Moss v. McCullough*, 7 *Barb.* 279, 285. Approved in *Peckham v. Smith*, 9 *How. Pr.* 436, 438. Reviewed with other decisions and approved in *Miller v. White*, 57 *Barb.* 504, 508; *Conklin v. Furman*, 8 *Abb. Pr. N. S.* 161, 164. Compared in *McMahon v. Macy*, 51 *N. Y.* 155, 162. Decisions in 5 *Johns. Ch.* and 20 *Johns.* explained at length in *Strong v. Wheaton*, 38 *Barb.* 619. Decision in 20 *Johns.* applied, and that in 19 *Id.* disting'd in *Hovey v. Ten Broeck*, 3 *Robt.* 324. Decision in 19 *Johns.* explained in *Bonaffe v. Fowler*, 7 *Paige*, 579. Decision in 19 *Johns.* disting'd (Presumption of dissolution of corporation) in *Huguenot Nat. B'k v. Studwell*, 6 *Daly*, 13, 17; *Bank of Niagara v. Johnson*, 8 *Wend.* 654; *Kincaid v. Dwinelle*, 59 *N. Y.* 548, 553; *Barclay v. Talman*, 4 *Edw.* 128; *Brinckerhoff v. Brown*, 7 *Johns. Ch.* 225; *Bradt v. Benedict*, 17 *N. Y.* 96. Followed in *Briggs v. Penniman*, 8 *Cow.* 331; *Losce v. Bullard*, 79 *N. Y.* 408; *Bruce v. Platt*, 80 *Id.* 387. Explained with *Briggs v. Penniman*, 8 *Cow.* 387, in *Regents v. Williams*, 9 *Gill & J. (Md.)* 365; s. c., 31 *Am. Dec.* 72, 107. Reviewed and explained with *Penniman v. Briggs*, *Hopk.* 343; 8 *Cow.* 387; *Brinckerhoff v. Brown*, 7 *Johns. Ch.* 217; *Bradt v. Benedict*, 17 *N. Y.* 93, in *Dewey v. St. Albans Trust Co.*, 56 *Vt.* 476; s. c., 48 *Am. R.* 803. Disting'd in *Society for E. U. M. v. M. C. & B. Co.*, 1 *Sart. Ch. (N. J.)* 157; s. c., 21 *Am. Dec.* 41, 45, with note. Discussed in *Morawetz on Corp.* § 638. Cited in 2 *Kent Com.* 311, as not to be applied beyond precise facts on which it rested. See cases cited in 9 *Am. Dec.* 92, n. Applied (Liability of stockholder in action for contribution) in *Aspinwall v. Torrance*, 1 *Lans.* 383. Applied (Jurisdiction of equity in winding up insolvent corporations) in *Sands v. Kimbark*, 39 *Barb.* 120. Applied (Liability of stockholders, when several) in *Matter of Hollister Bank*, 27 *N. Y.* 397. Decisions in 5 *Johns. Ch.*; 19 *Johns.*; 20 *Id.* reviewed at length with other cases (Nature of stockholder's liability) in *Lowry v. Inman*, 2 *Sweeney*, 131. Decision in 20 *Johns.* applied in *Witherhead v. Allen*, 23 *Barb.* 667. Discussed in *Ang. & A. on Corp.* § 615, 11 ed. Explained (Validity of corporate by-laws) in *Id.* § 342, 11 ed.
- **v. Manhattan Co.**, 1 *Paige*, 48. Explained (Effect of assignment of mortgage) in *Campbell v. Parker*, 9 *Bosw.* 328; *Graydon v. Church*, 7 *Mich.* 36, 60. Criticised in *Hoyt v. Martense*, 8 *How. Pr.* 197; which was rev'd in 16 *N. Y.* 233, which see. Disting'd and limited in *Bloomer v. Sturges*, 58 *Id.* 163, 176. Explained in *Thomas on Mort.* 433. Applied (Effect of foreclosure of prior mortgage without making junior incumbrancer party) in *Walsh v. Rutgers Fire Ins. Co.*, 13 *Abb. Pr.* 37. Explained in *Winslow v. McCall*, 32 *Barb.* 246. Explained and applied with *Hoyt v. Martense*, 16 *N. Y.* 231; *Dalton v. Smith*, 86 *Id.* 176, in *First Nat. B'k of Jeffersonville, Ind. v. Ohio Falls Car & Locomotive Works*, *U. S. Cir. Ct. D. Ind.* 20 *Fed. Rep.* 65, 69. Disting'd (Distinction between mortgage and conditional sale) in *Morrison v. Brand*, 5 *Daly*, 40, 42. Explained (Items that mortgagee may charge against estate) in 2 *Washb. on Real Prop.* 4 ed. 220.
- Sleeper v. Van Middlesworth**, 4 *Den.* 431. Applied (Evidence of bad character) in *Stevens v. Rodger*, 25 *Hun.* 55.
- Sleight v. Kane**, 1 *Johns. Cas.* 76. Relied on (When war operates to suspend operation of statute of limitations) in *Coleman v. Holmes*, 44 *Ala.* 124; s. c., 4 *Am. R.* 121.
- **v. Rhineland**, 1 *Johns.* 192. Rev'd in *Sleight v. Hartshorne*, 2 *Id.* 531.
- Sleight v. City of Kingston**, 11 *Hun.* 594.



- Appeal dismissed, it seems, in 73 *N. Y.* 592, but without opinion.
- **v. Read**, 9 *How. Pr.* 278. Aff'd in 18 *Barb.* 159. See Schermerhorn v. Miller.
- Slingerland v. Bennett**, 4 *Hun.* 277. Reported in 6 *Sup'm. Ct. (T. & C.)* 446. Rev'd in 66 *N. Y.* 611. See Thompson v. Hall.
- **v. Morse**, 8 *Johns.* 474; s. c., 4 *N. Y. Com. L. Law ed.* 609, with brief note. Prior decision in 7 *Johns.* 463. See Coit v. Houston; Leonard v. Vredenberg; Newton v. Galbraith. Decision in 7 *Johns.* explained and approved, though said to be obscurely reported (Collateral undertaking under statute of frauds) in Mallory v. Gillet, 21 *N. Y.* 412, 424, 444. Discussed in *Browne on Stat. of Frauds*, § 209, 4 ed. Decision in 8 *Johns.* explained (Duty as to tender of specific articles) in Sheldon v. Skinner, 4 *Wend.* 528. Disting'd in La Farge v. Rickert, 5 *Id.* 191. Followed in Case v. Green, 5 *Watts (Pa.)* 262; s. c., 30 *Am. Dec.* 311, with note. Approved in Barney v. Bliss, 1 *D. Chip. (Vt.)* 399; s. c., 12 *Am. Dec.* 696, with note. Decision in 8 *Johns.* with Coit v. Houston, 3 *Johns. Cas.* 243, denied (Passing of property on mere tender and refusal) in Weld v. Hadley, 1 *N. H.* 329. See, also, Heirn v. Carron, 11 *Smedes & M. (Miss.)* 361, 366. Discussed in 2 *Chitty on Contr.* 1202, n. n, 11 *Am. ed.* Explained in 2 *Pers. on Contr. n. v; Id. n. w.*
- **v. Stewart**, 13 *Johns.* 255. Followed (Necessity that levy be made during life of execution) in Hathaway v. Howell, 54 *N. Y.* 112.
- Sloan v. Casé**, 10 *Wend.* 370; s. c., 25 *Am. Dec.* 569, with extended note (How return of execution may be compelled).
- **v. N. Y. Central R. R. Co.**, 45 *N. Y.* 125. See Johnson v. Johnson; Whiting v. Barney. Applied (Privilege as to professional communications) in Pearsall v. Elmer, 5 *Redf.* 181, 188; Grattan v. Metropolitan Life Ins. Co., 80 *N. Y.* 281, 298. Disting'd (Opinions as evidence) in Haggerty v. Brooklyn City, &c. R. R. Co., 6 *Abb. N. C.* 129, 131, n. Commented on in *Whart. Com. on Ev.* § 15.
- **v. Van Wyck**, 36 *Barb.* 335. Rev'd in unreported decision. Subsequent decision in 47 *Id.* 634, aff'd in 4 *Abb. Ct. App. Dec.* 250; s. c., 5 *Transc. App.* 98.
- Sloane v. Elmer**, 1 *Hun.* 310. Rev'd in 64 *N. Y.* 201.
- **v. Livermore**, 14 *Hun.* 29. See (Necessity of allegations of fraud in affidavit for order of arrest) *Code Civ. Pro.* 1881, § 550, n.
- Slocum v. Barry**, 34 *How. Pr.* 320. Aff'd in 38 *N. Y.* 46; s. c., more fully, 4 *Abb. Pr. N. S.* 399.
- **v. Despard**, 8 *Wend.* 615. Disapproved (Effect of plea that answers only part of count) in Root v. Woodruff, 6 *Hill.* 418, 421.
- **v. English**, 2 *Hun.* 78; s. c., 4 *Sup'm. Ct. (T. & C.)* 266. Aff'd in 62 *N. Y.* 494. See (Limit of time within which to apply for sale of decedent's real estate) *Code Civ. Pro.* 1881, § 2750, n.
- **v. Hooker**, 12 *Barb.* 563; s. c., 10 *N. Y. Leg. Obs.* 49; 6 *How. Pr.* 167. Rev'd on ground that election of infant alone could avoid contract, in 13 *Barb.* 536. See Van Bramer v. Cooper. Decision in 13 *Barb.* compared with other cases (Non-joinder of infant defendant) in *Ewell Lead. Cas. on Inf. &c.* 244.
- **v. United Ins. Co.**, 1 *Johns. Cas.* 151. See (Right of insured to abandon, as determined by information possessed at time) cases cited under Mumford v. Church.
- Sloman v. Great Western R'y Co.**, 6 *Hun.* 546. Rev'd in 67 *N. Y.* 208. Decision in *Id.* disting'd (Carrier's liability for merchandise checked like baggage) in Blumantle v. Fitchburg R. R. Co., 127 *Mass.* 322; s. c., 34 *Am. R.* 376; but compare reporter's note at p. 379.
- Slosson v. Beadle**. See Bagley v. Peddie.
- **v. Lynch**, 28 *How. Pr.* 417. See Wright v. Trustees of Meth. Epis. Church. Approved (Who included as next of kin) in Betsinger v. Chapman, 24 *Hun.* 15, 18.
- Sluby v. Champlin**, 4 *Johns.* 461. See Mott v. Doughty. Followed as conclusive (Nature of action on demand barred by statute of limitations but reviewed by new promise) in Lord v. Shaler, 3 *Conn.* 132; s. c., 8 *Am. Dec.* 160, with note. Discussed in *Ang. on Limit.* § 214, 6 ed.
- Slyater v. Williams**, 1 *Sweeny*, 215. Followed (Necessity of proof of demand and refusal in action for goods wrongfully detained) in Talcott v. Belding, 36 *Super. Ct. (J. & S.)* 84, 93.
- Small v. Bixley**, 18 *Wend.* 514. Overruled (Costs in replevin where both parties succeeded) in Johnson v. Fellows, 6 *Hill.* 353.
- **v. Edrick**. See Fairbanks v. Wood.
- **v. Herkimer Manuf. Co.**, 2 *N. Y.* 330. See Spear v. Crawford. Examined (Liability of subscribers to corporation stock) in Dexter & Mason Plank-road Co. v. Miller, 3 *Mich.* 102.
- **v. Ludlow**, 1 *Hill.* 189. Rev'd in 20 *N. Y.* 155.
- **v. Smith**, 1 *Den.* 583. See Schepp v. Carpenter. Cited as authority (Recovery on accommodation paper negotiated contrary to intent of accommodation party) in Bowman v. Van Kuren, 29 *Wis.* 209; s. c., 9 *Am. R.* 555. Applied to conditional acceptance in Merritt v. Duncan, 7 *Heisk. (Tenn.)* 156; s. c., 19 *Am. R.* 612. Included in *Bigel. on B. & N.* 2 ed. 449; *Redf. & B. Lead. Cas. on B. of Exch.* 264. Collocated with other cases in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 423.
- **v. Wheaton**, 4 *E. D. Smith*, 306; s. c., more fully, 2 *Abb. Pr.* 175.
- Smart v. Bement**, 4 *Abb. Ct. App. Dec.* 253. See also (Co-defendants in foreclosure) Newman v. Dickson, 1 *Abb. N. C.* 307.

- *v. Haring*, 14 *Hun.* 276. Modifying and aff'g *Smart v. Haring*, 52 *How. Pr.* 505.
- Smedberg v. More**, 26 *Wend.* 238; s. c., 14 *N. Y. Com. L. Law. ed.* 1070, with brief note.
- Smedes v. Bank of Utica**, 20 *Johns.* 372; s. c., 6 *N. Y. Com. L. Law. ed.* 1048, with brief note. Aff'd in 3 *Cow.* 662. Decision in 20 *Johns.* explained with *Ransom v. Mack*, 2 *Hill*, 537 (Sufficiency of notice to indorser) in *West River Bank v. Taylor*, 7 *Bosw.* 466, 478. Followed in *Bank of Vergennes v. Cameron*, 7 *Barb.* 149; *Down v. Planters' Bank*, 1 *Smedes & M. (Miss.)* 261; s. c., 40 *Am. Dec.* 92, with note. Collated with other cases in 1 *Hare & W. Am. Leatl. Cas.* 5 ed. 488. Examined with other cases (Duty of collecting bank) in *State B'k of Troy v. B'k of Capitol*, 17 *Abb. Pr.* 369. Followed in *McKinster v. B'k of Utica*, 9 *Wend.* 48. Disting'd in *Allen v. Merchants' B'k of N. Y.*, 15 *Id.* 487. Followed in *Thompson v. B'k of So. Car.*, 3 *Hill (So. Car.)* 77; s. c., 1 *Riley*, 81; s. c., 30 *Am. Dec.* 354, 356. Followed with *Bank of Utica v. McKinster*, 11 *Wend.* 473; *Allen v. Suydam*, 20 *Id.* 321, in *Tyson v. State Bank*, 6 *Blackf. (Ind.)* 225; s. c., 38 *Am. Dec.* 139, with note. Quoted and collated with other cases in *Holcombe Lead. Cas. on Com. Law*, 23. Stated to have been generally followed,—in 3 *Am. L. Reg. N. S.* 273.
- *v. Hooghtaling*, 3 *Cai.* 48; s. c., 2 *Am. Dec.* 250. Approved (Interest beyond penalty of bond) in *Mower v. Kip*, 6 *Paige*, 88, 93; *Lyon v. Clark*, 8 *N. Y.* 153. Cited with *Clark v. Bush*, 3 *Cow.* 151; *Brainard v. Jones*, 18 *N. Y.* 35, in *Wyman v. Robinson*, 73 *Me.* 384; s. c., 40 *Am. R.* 360; 14 *Reporter*, 270, as in harmony with the great majority of the leading American authorities.
- Smethurst, Matter of**, 4 *How. Pr.* 369; s. c., 3 *Code R.* 55; 2 *Sandf.* 724. See (Power of judge to punish disobedience of order in supplementary proceedings) *Shepherd v. Dean*, 3 *Abb. Pr.* 424. Explained in *Dresser v. Van Pelt*, 15 *How. Pr.* 25. Cited as authority in *Tremain v. Richardson*, 68 *N. Y.* 618. Applied (Order in supplementary proceedings is not court order) in *Hulsaver v. Wiles*, 11 *How. Pr.* 451.
- Smiles v. Hastings**, 24 *Barb.* 44. Aff'd as *Smyles v. Hastings*, 22 *N. Y.* 217. Decision in 24 *Barb.* applied (Right of way by necessity) in *Simmons v. Sines*, 4 *Abb. Ct. App. Dec.* 247. Disting'd (Effect of reference to map in conveyance of land bounded on highway) in *Gloyer v. Shields*, 32 *Barb.* 379.
- Smillie v. Quinn**, 2 *Month. L. Bul.* 32. Aff'd in 25 *Hun.* 332, and that aff'd in 90 *N. Y.* 492. See *Eadie v. Slimmon*.
- Smith's Estate**, 1 *Bradf.* 224. See *Fitzpatrick v. Brady*.
- Smith, Matter of**, 16 *Johns.* 102. See *Mat-*
- ter of Chipman*. Overruled (Seizure of partnership property for debt of individual partner) by *Smith v. Orser*, 42 *N. Y.* 132. See *Goll v. Hinton*, 8 *Abb. Pr.* 120, and cases cited. Reviewed with other cases in *Winston v. Ewing*, 1 *Ala.* 129; s. c., 34 *Am. Dec.* 768, with note. Followed with *Crane v. French*, 1 *Wend.* 313, in *Morrison v. Blodgett*, 8 *N. H.* 238; s. c., 29 *Am. Dec.* 653, 660, with note. Citing also *Scrugham v. Carter*, 12 *Wend.* 131, in this connection. Included in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 563. Reporter's note cited approvingly in 3 *Kent. Com.* 65, n. b.
- , 65 *Barb.* 283. Rev'd in 52 *N. Y.* 526. Decision in *Id.* followed (Validity of assessment of improvements made without publication required by statute) in *Matter of Burmeister*, 76 *Id.* 177; *Matter of Phillips*, 60 *Id.* 16, 24. Disting'd in *Matter of Burke*, 62 *Id.* 227. Disting'd and limited in *Matter of Folsom*, 56 *Id.* 63; which aff'd 2 *Sup'm. Ct. (T. & C.)* 56, which see. See other authorities cited in 20 *Am. L. Reg. (N. S.)* 4.
- Smith v. Acker**, 23 *Wend.* 653. Applied (Conveyance, &c. when fraudulent as unaccompanied by change of possession) in *Russell v. Lasher*, 4 *Barb.* 242; *Otis v. Sill*, 8 *Id.* 109; *Hull v. Carnley*, 2 *Duer*, 109; *Robeson v. Ford*, 3 *Edw.* 441; *Cole v. White*, 26 *Wend.* 522, 538. Explained in *Edgell v. Hart*, 13 *Barb.* 388; which was aff'd in 9 *N. Y.* 218, which see; *Hanford v. Artcher*, 4 *Hill*, 274 (and see *Vance v. Phillips*, 6 *Id.* 436); *Judson v. Gardner*, 4 *N. Y. Leg. Obs.* 427; *Randall v. Parker*, 3 *Sandf.* 72; *Spies v. Eoyd*, 1 *E. D. Smith*, 448. Commented on by MULLETT, J., in *Griswold v. Sheldon*, 4 *N. Y.* 594. Reviewed with other cases and applied in *Butler v. Van Wyck*, 1 *Hill*, 440. Approved in *Oliver v. Eaton*, 7 *Mich.* 108, 114. See *Hughes v. Cory*, 20 *Iowa*, 399, 410. Said in *Jones on Chat. M.* § 401 (citing also *Levy v. Welsh*, 2 *Edw.* 438), to be still recognized as authority in *N. Y.*, but to have its force evaded by untenable distinction. Reviewed with *Cole v. White*, 26 *Wend.* 511; *Hanford v. Artcher*, 4 *Hill*, 271; *Vance v. Phillips*, 6 *Hill*, 433; *Mitchell v. West*, 55 *N. Y.* 107; *Tilson v. Terwilliger*, 56 *Id.* 273; *Hollacher v. O'Brien*, 5 *Hun.* 277; *Schoonmaker v. Vervalen*, 9 *Id.* 138, and their result stated in 6 *Am. Dec.* 287, n. Applied (Liability for wrongful levy on mortgaged property) to partnership property, in *Atkins v. Saxton*, 77 *N. Y.* 201. Applied (Review of finding as to fraudulent intent) in *Ruhl v. Phillips*, 2 *Daly*, 46.
- *v. Adams*, 6 *Paige*, 435. Explained and disapproved (Rights in sub-surface springs) in *Trustees of Delhi v. Youmans*, 50 *Barb.* 316, 319.
- *v. Aetna Life Ins. Co.*, 4 *Lans.* 545. Aff'd in 49 *N. Y.* 211.
- *v. Allen*, 18 *Johns.* 245. See *DeMott*

- v. McMullen*; *Wilson v. Burr*. Followed (When, after severance of joint interest, one of those jointly interested is competent witness for the other) in *Morse v. Green*, 18 *N. H.* 32; s. c., 38 *Am. Dec.* 471.
- *v. American Coal Co.*, 7 *Lans.* 317. Followed (Payment of dividends to one in whose name stock stands) in *Brisbane v. Delaware, L. & W. R. R. Co.*, 25 *Hun.* 438, 440.
- *v. American Inst. of N. Y.*, 7 *Daly*, 526. See (Appeal from N. Y. City court to Common Pleas) *Code Civ. Pro.* 1881, § 3192, *n.*
- *v. Amer. Life Ins. & Trust Co., Clarke*, 307. Criticised and not followed (Injunction to stay proceedings under bill or decree in chancery) in *Montgomery v. Whitworth*, 1 *Tenn. Ch.* 174, 177, 181.
- *v. Argall*, 6 *Hill*, 479. Aff'd in 3 *Den.* 485.
- *v. Aylesworth*, 40 *Barb.* 104. Quoted and collated with other cases (Action on negotiable paper against maker) in *Redf. & B. Lead. Cas. on B. of Exch.* 494.
- *v. Barse*. See *Camp v. Root*.
- *v. Beattie*, 31 *N. Y.* 542. Explained (Effect of bill of sale, absolute on face, but intended as security) in *Thomas on Mort.* 433.
- *v. Belden*, 2 *Hun.* 681; s. c., 5 *Sup'm. Ct. (T. & C.)* 695. Appeal-dismissed in 60 *N. Y.* 642, but without opinion. Further proceeding in 3 *Hun.* 622.
- *v. Bell*, 2 *Cal. Cas.* 153; s. c., 3 *Johns. Cas.* 611. Though in conflict with *Dupuy v. U. S. Ins. Co.*, 3 *Johns. Cas.* 182, yet followed (Rate of deduction in estimating technical total loss) in *Deblois v. Ocean Ins. Co.*, 16 *Pick. (Mass.)* 303; s. c., 28 *Am. Dec.* 245, 251, with note. Included in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 690.
- *v. Benson*, 1 *Hill*, 176. See *Pierrepont v. Barnard*. Disting'd (When building may be regarded as chattel) in *Richtmyer v. Morss*, 4 *Abb. Ct. App. Dec.* 55, 58; *Fisher v. Saffer*, 1 *E. D. Smith*, 612. Applied to machinery, in *Godard v. Gould*, 14 *Barb.* 666; *Sheldon v. Edwards*, 35 *N. Y.* 282; to salt kettles, in *Ford v. Cobb*, 20 *N. Y.* 349. Explained as to fence, in *Mott v. Palmer*, 1 *Id.* 571. Examined and followed in *Myrick v. Bill*, *Sup'm. Ct. Dak.* Oct. 1883, 17 *Northw. Rep.* 268. Quoted and collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 563.
- *v. Birdsall*, 9 *Johns.* 328. Explained and doubted (Fees chargeable by sheriff) in *Croft v. Brandt*, 58 *N. Y.* 106, 114, which aff'd 5 *Daly*, 124, 127, which see.
- *v. Bodine*, 1 *Hun.* 309. Further proceeding in 74 *N. Y.* 30.
- *v. Bowen*, 35 *N. Y.* 83. Applied (Effect of conveyance in violation of trust) in *Clark v. Jacobs*, 56 *How. Pr.* 530.
- *v. Brackett*, 36 *Barb.* 571. See exemption of real property) *Code Civ. Pro.* 1881, § 1404, *n.*
- *v. Brady*, 17 *N. Y.* 173. See *Champlin v. Rowley*; *McMillan v. Vanderlip*; *Phillip v. Gallant*. Applied (Effect of substantial failure to perform contract, on right to recovery) in *Harris v. Rathbun*, 2 *Abb. Ct. App. Dec.* 332; *Preusser v. Florence*, 4 *Abb. N. C.* 137; *Cunningham v. Jones*, 20 *N. Y.* 487; *Catlin v. Tobias*, 26 *Id.* 222; *McNeal v. Clement*, 2 *Sup'm. Ct. (T. & C.)* 365; *Guidet v. Mayor, &c. of N. Y.*, 36 *Super. Ct. (J. & S.)* 557, 561; *Bonesteel v. Mayor, &c. of N. Y.*, 22 *N. Y.* 162, 166; *Cassidy v. Le Fevre*, 57 *Barb.* 313, 323. Disting'd in *Otis v. Cusack*, 43 *Id.* 548; *Smith v. Coe*, 2 *Hill.* 369; *Payne v. Hodge*, 7 *Hun.* 614; *Morrell v. Irving Fire Ins. Co.*, 33 *N. Y.* 447, 457; *Stewart v. Keteltas*, 36 *Id.* 393; *Avery v. Willson*, 81 *Id.* 341, 345. Approved in *Glacius v. Black*, 50 *Id.* 145, 148. Reviewed with other cases in *Jenkins v. Wheeler*, 37 *How. Pr.* 469. Explained and applied in *Crane v. Knubel*, 34 *Super. Ct. (J. & S.)* 455. Explained by *Dwight, Referee*, in *Marie v. Garrison (MS.)* as turning on the fact that the action was at law. Compare *Nolan v. Whitney*, 88 *N. Y.* 648; *Woodward v. Fuller*, 80 *Id.* 312. Cited as authority with *Wyckoff v. Méyers*, 44 *N. Y.* 145; *Stewart v. Keteltas*, 36 *Id.* 392 (Effect of provision in building contract for opinion of third person) in *Moore v. Kerr*, 65 *Cal.* 519, 521. Compare to the contrary, *Hayward v. Leonard*, 7 *Pick. (Mass.)* 181; *Smith v. Congregational Meeting House*, 8 *Id.* 178; *Britton v. Turner*, 6 *N. H.* 481. Collated with other cases in 19 *Am. Dec.* 280, *n.* Applied (Effect of agreement to arbitrate) in *Del. & Hud. Canal Co. v. Pa. Coal Co.*, 50 *N. Y.* 264. Limited in *Whiteman v. Mayor, &c. of N. Y.*, 21 *Hun.* 117; *Mark v. National F. Ins. Co., of N. Y.*, 24 *Id.* 565, 568.
- *v. Briggs*, 3 *Den.* 73. Disting'd (Effect of certificate of architect, &c. provided for by building contract) in *Smith v. Gugerty*, 4 *Barb.* 624; *Stewart v. Keteltas*, 36 *N. Y.* 393. Applied in *Adams v. Mayor, &c. of N. Y.*, 4 *Duer*, 308. Applied to agreement to arbitrate, in *Del. & Hud. Canal Co. v. Pa. Coal Co.*, 50 *N. Y.* 264.
- *v. Bruckerhoff*, 8 *Barb.* 519. Aff'd in 6 *N. Y.* 305.
- *v. British & N. A. R. M. S. Packet Co.*, 46 *Super. Ct. (J. & S.)* 86. Aff'd in 86 *N. Y.* 408.
- *v. Britton*, 45 *How. Pr.* 428. Subsequent decision in 2 *Sup'm. Ct. (T. & C.)* 498.
- *v. Brown*. See *Swift v. Wells*.
- *v. Bull*, 17 *Wend.* 323. Applied (Action for personal injury happening out of State) in *Leonard v. Columbia Steam Nav. Co.*, 84 *N. Y.* 48, 52.
- *v. Burtis*, 6 *Johns.* 197; s. c., 5 *Am. Dec.* 218. Subsequent decision in 9 *Johns.* 174. See *La Frombois v. Jackson*. Decision in 6 *Johns.* followed with *Smith v. Lorillard*, 10 *Id.* 355; *Jackson v. Myers*,

- 3 *Id.* 388; *Jackson v. Harder*, 4 *Id.* 202 (Requisites of adverse possession) in *Herbert v. Herbert, Breese*, (*Ill.*) 354; s. c., 12 *Am. Dec.* 192. Quoted in *Sedgw. & W. on Tr. of Tit. to Land*, § 723. Decision in 9 *Johns.* relied on with *Jackson v. Parker*, 3 *Johns. Cas.* 124, in *Dewey v. McLain*, 7 *Kans.* 126; s. c., 12 *Am. R.* 418. Cited with *Jackson v. Ellis*, 13 *Johns.* 118, in *Rung v. Shoneberger*, 2 *Watts. (Pa.)* 23; s. c., 26 *Am. Dec.* 95. 101, with note as showing the law in N. Y. as compared with that in Pa. Commented on in *Ang. on Limit.* § 390, n. 4, 6 ed. Explained (Cotenancy) in *Id.* § 436. Quoted (Disabilities with respect to real property) in *Id.* § 480.
- *v. Cheetham*, 3 *Cal.* 57. See *Dana v. Tucker*. Overruled (Using affidavits of jurors to impeach verdict) in *Dana v. Tucker*, 4 *Johns.* 487. Disapproved in *Goodman v. Cody*, 1 *Wash.* 329; s. c., 34 *Am. R.* 810, with note. Reviewed with *Dana v. Tucker*, 4 *Johns.* 487, and other cases, in *Cluggage v. Swan*, 4 *Binn. (Pa.)* 150; s. c., 5 *Am. Dec.* 400; *Newton v. Booth*, 13 *Verm.* 320; s. c., 37 *Am. Dec.* 596. See cases cited in 1 *Am. Dec.* 38, n.
- *v. Christopher*, 3 *Hun.* 585; s. c., 6 *Sup'm. Ct. (T. & C.)* 288; more fully, 16 *Abb. Pr. N. S.* 332. Compare (Proof of claim by executor against estate) *Code Civ. Pro.* § 2789.
- *v. Church*. See *Raymond v. Loyl*.
- *v. City of Albany*, 7 *Lans.* 14. Aff'd in 61 *N. Y.* 444.
- *v. City of Rochester*, 13 *Hun.* 214. Aff'd in 76 *N. Y.* 506. See *Maxmilian v. Mayor, &c. of N. Y.* Decision in 76 *N. Y.* disting'd (Liability of municipal corporation for negligence of servant or agent) in *Hardy v. City of Brooklyn*, 90 *Id.* 435. Approved with *Mayor, &c. of Albany v. Cunliff*, 2 *Id.* 165, in *Cummings v. City of Syracuse*, 79 *Ind.* 491; s. c., 41 *Am. R.* 618. Cited with *Maxmilian v. Mayor, &c. of N. Y.*, 62 *N. Y.* 160; *Conrad v. Trustees of Ithaca*, 16 *Id.* 158, in 19 *Cent. L. J.* 213, n.
- *v. Clark*, 21 *Wend.* 83; s. c., 13 *N. Y. Com. L. Law. ed.* 1022, with brief note; also s. c., 34 *Am. Dec.* 213, with note, wherein are collected citations. Said to be still authority, notwithstanding reversal in *Ct. of Errors* (Distinction between bailment and sale) in *Baker v. Woodruff*, 2 *Barb.* 520. 523. Approved in *Norton v. Woodruff*, 2 *N. Y.* 153, 157. Explained in 2 *Pars. on Contr.* 133, n. v. Doctrine discussed and authorities cited in 3 *Am. L. Reg. N. S.* 825.
- *v. Coe*, 2 *Hill.* 365. Aff'd in 29 *N. Y.* 666. Decision in *Id.* disting'd (Presumption on appeal, in aid of findings) in *Meyer v. Amidon*, 45 *Id.* 169, 173. Applied in dissenting opinion in *Valentine v. Conner*, 40 *Id.* 248, 257.
- *v. —*, 36 *Super. Ct. (J. & S.)* 570. Aff'd in 55 *N. Y.* 678. Previous decision in 33 *Super. Ct. (J. & S.)* 480.
- *v. Colvin*, 17 *Barb.* 157. See (Passing of title on execution sale) *Code Civ. Pro.* 1881, § 1440, n.
- *v. Compton*, 20 *Barb.* 262. Approved (Effect of pendency of proceedings in arbitration, on subsequently instituted action) in *Knaus v. Jenkins*, 11 *Vroom (N. J.)* 288; s. c., 29 *Am. R.* 237, 241.
- *v. Cooley*, 5 *Daly*, 401. Collated with other cases (Grounds on which award may be set aside) in 25 *Am. R.* 46, n.
- *v. Cooper*, 5 *Abb. N. C.* 274. Collated with other cases (Use of partnership name on dissolution) in 35 *Am. R.* 550, n.
- *v. Corbiere*, 3 *Bow.* 634. Disting'd (Requiring stipulation not to sue) in *Faulkner v. Morey*, 22 *Hun.* 379, 385.
- *v. Countryman*, 30 *N. Y.* 655. Disting'd (Striking out pleadings on trial) in *Schuyler v. Smith*, 51 *Id.* 809, 817, a case of judgment rendered on the pleadings. Applied (Effect of fraudulent representations to purchaser) in *Hammond v. Pennock*, 61 *Id.* 151.
- *v. Crocheron*, 2 *Edw.* 501. See to the contrary (Impeachment of judgment) *Mattingly v. Nye*, 8 *Wall.* 370. See also *Abb. Tr. Ev.* 741.
- *v. Crouse*, 24 *Barb.* 433. Approved and applied (Liability on undertaking on appeal) in *Robinson v. Plimpton*, 25 *N. Y.* 484, 486. Followed as decisive in *Doolittle v. Dinniny*, 31 *Id.* 350, 353. Disting'd in *Hinckley v. Kreitz*, 58 *Id.* 583, 588; which rev'd 36 *Super. Ct. (J. & S.)* 413, 424, which see. Explained in dissenting opinion in *Wolcott v. Holcomb*, 31 *N. Y.* 136.
- *v. Cutler*, 10 *Wend.* 590; s. c., 25 *Am. Dec.* 580. Followed (Effect of misconduct, &c. of arbitrator) in *Fudickar v. Guardian Mut. Life Ins. Co.*, 37 *Super. Ct. (J. & S.)* 358, 378.
- *v. Dann*, 6 *Hill.* 543. See *Douglass v. Howland*. Criticised and limited (Liability of guarantor, as affected by usage of trade) in *Stewart v. Ranney*, 26 *How. Pr.* 279, 284. Disapproved, in *Appleton v. Parker*, 81 *Mass.* 173, 177. Approved (Necessity of notice of acceptance to make contract of guaranty binding) in *Wilcox v. Draper*, 12 *Neb.* 138, 150. Quoted in 2 *Story on Contr.* 5 ed. § 1193, n. 3. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 109.
- *v. Dunning*, 61 *N. Y.* 249. Followed (Allegations in action on contract against married woman) in *Willsey v. Hutchins*, 10 *Hun.* 505; *Broome v. Taylor*, 13 *Id.* 343, which was rev'd in 76 *N. Y.* 566, which see.
- *v. Exchange Fire Ins. Co.*, 40 *Super. Ct. (J. & S.)* 492. We understand that on further trial plaintiff recovered.
- *v. Falconer*, 11 *Hun.* 481. Aff'd, it seems, in 79 *N. Y.* 633, but without opinion.

- **v. Felt**, 50 *Barb.* 612. Aff'd, it seems, in 51 *N. Y.* 642, but without opinion.
- **v. Felton**, 43 *N. Y.* 419. Applied (Equitable set-off) in *Perry v. Chester*, 12 *Abb. Pr. N. S.* 138; *Davidson v. Alfaro*, 16 *Hun.* 359; *Smith v. Fox*, 48 *N. Y.* 674; *Shipman v. Lansing*, 25 *Hun.* 290, 292. Disting'd in *Westlake v. Bostwick*, 35 *Super. Ct. (J. & S.)* 256, 261; *Munger v. Albany City Nat. B'k*, 85 *N. Y.* 580, 587, 589. Explained in dissenting opinion in *Seymour v. Dunham*, 24 *Hun.* 98. Collated with other cases in *Bishop on Assign.* § 318.
- **v. Fowle**, 12 *Wend.* 9. Dictum disapproved (Necessity that record must show jurisdiction) in *Hart v. Seixas*, 21 *Id.* 39, 46.
- **v. Frankfield**, 13 *Hun.* 489. Aff'd in 77 *N. Y.* 414. Compare prior decision involving same facts in *Bostwick v. Frankfield*, 11 *Hun.* 476.
- **v. Frost**, 42 *Super. Ct. (J. & S.)* 87. Aff'd in 70 *N. Y.* 65. Previous proceeding in 39 *Super. Ct. (J. & S.)* 389.
- **v. Gardner**, 42 *Barb.* 356. Applied (Effect of foreclosure in dower interest if wife not made a party) in *Ross v. Boardman*, 22 *Hun.* 527, 529. See authorities reviewed (Effect of foreclosure on mortgage as a lien) in 20 *Am. L. Reg. N. S.* 685.
- **v. Glens Falls Ins. Co.**, 66 *Barb.* 556. Further decision in 62 *N. Y.* 85. Decision in *Id.* followed, and *National Life Ins. Co. v. Minch*, 53 *Id.* 144 cited (Settlement as waiver of breach of warranty in policy) in *Stache v. St. Paul Fire & Marine Ins. Co.*, 49 *Wis.* 89; s. c., 35 *Am. R.* 772, with note. Fully approved in *Godchaux v. Merchants' Mut. Ins. Co.*, 34 *La. Ann.* 238. See also *Rokes v. Amazon Ins. Co.*, 51 *Md.* 512; s. c., 34 *Am. R.* 323.
- **v. Grant**, 17 *How. Pr.* 381. Examined with other cases (Amendment of case) in *O'Gorman v. Kamak*, 5 *Daly*, 517, 519.
- **v. Griffith**, 3 *Hill*, 333. See *Suydam v. Jenkins*. Applied (Damages in action against carrier) in *Kent v. Hudson River R. R. Co.*, 22 *Barb.* 290; but see *Jones v. N. Y. & Erie R. R. Co.*, 29 *Id.* 641. Followed in *Shaw v. South Carolina R. R. Co.*, 5 *Rich. L. (So. Car.)* 462; s. c., 57 *Am. Dec.* 68. Quoted and explained in 3 *Pars. on Contr.* 194, n. a. Included in *Seigler Cas. on Dama.* 104. Disting'd (Evidence of value) in *Wells v. Kelsey*, 15 *Abb. Pr.* 58; *Flannagan v. Maddin*, 81 *N. Y.* 623. Applied in *Richmond v. Bronson*, 5 *Den.* 57; *Sturm v. Williams*, 38 *Super. Ct. (J. & S.)* 345. Relied on in *Kountz v. Kirkpatrick*, 72 *Penn. St.* 376; s. c., 13 *Am. R.* 687, 694.
- **v. Gugerty**. See *Tinney v. N. Y. Steamboat Co.*
- **v. Hall**, 67 *N. Y.* 48. See (Counterclaim) *Code Civ. Pro.* 1881, § 501, n.
- **v. Hart**, 11 *How. Pr.* 203. Referred to as superseded (Appeal from order of county judge in supplementary proceedings) in *Crounse v. Whipple*, 34 *Id.* 333.
- **v. Haviland** (a case referred to in *Deveau v. Fowler*, 2 *Paige*, 400). Disting'd (Effect of transfer by administrator of deceased partner, of interest in partnership effects, to surviving partner) in *Wilson v. Soper*, 13 *B. Monr. (Ky.)* 411; s. c., 56 *Am. Dec.* 573.
- **v. Helmer**, 7 *Barb.* 416. See *Bloodgood v. Mohawk & Hudson River R. R. Co.* Explained and followed (Sufficiency of provision for compensation for taking land by right of eminent domain) in *Chapman v. Gates*, 54 *N. Y.* 132, 145.
- **v. Hicks**, 5 *Wend.* 48; s. c., 10 *N. Y. Com. L. Law. ed.* 767, with brief note citing cases (Contribution).
- **v. Hill**, 22 *Barb.* 656. Collated with other cases (Opinion of value) in 36 *Am. R.* 437, n.
- **v. Hinds**, 30 *How. Pr.* 187. Disting'd with *Reed v. Moore*, 31 *Id.* 264 (Specifications in notice of appeal to county court) in *Hotchkiss v. Banks*, 36 *Id.* 61. See *Young-hause v. Fingar*, 47 *N. Y.* 99.
- **v. Holbrook**, 16 *Abb. L. J.* 33. Aff'd in 82 *N. Y.* 562, without passing on question of evidence.
- **v. Holland**. See *Ryan v. Ward*.
- **v. Holmes**, 19 *N. Y.* 271. Applied (Mode of taking objection that action is premature) in *Mack v. Burt*, 5 *Hun.* 28, 31.
- **v. Isaacs**, 37 *Super. Ct. (J. & S.)* 3. Rev'd in 58 *N. Y.* 680.
- **v. Jackson**, 2 *Edw.* 28. See *Swaine v. Perine*. Disapproved (Dower in real estate held for partnership purposes) in *Duhring v. Duhring*, 20 *Mo.* 174. Said in *Story on Partn.* 7 ed. § 94, to be unsupported by other cases. Disapproved (Survivorship in real estate purchased with joint funds for partnership purposes) in 3 *Kent Com.* 39, n. b. See (Change of partnership realty to personality by agreement of partners) *Collumb v. Read*, 24 *N. Y.* 505. Opinion quoted in 1 *Pars. on Contr. n. j.*
- **v. Jaues**, 20 *Wend.* 192. Included (Diligence in charging indorser) in 2 *Ames Cas. on B. & N.* 292.
- **v. Jenks**, 1 *Den.* 580. Rev'd in 3 *Id.* 592; s. c., 1 *N. Y.* 90.
- **v. Joyce**, 12 *Barb.* 21. See (Contents of summons in justice's court) *Code Civ. Pro.* 1881, § 2877, n.
- **v. Kane**, 2 *Paige*, 303. Relied on (Liability of separate property of married woman) in *Callahan v. Patterson*, 4 *Tex.* 61; s. c., 51 *Am. Dec.* 712, with note.
- **v. Kearney**, 9 *How. Pr.* 466. Approved (Joinder of husband and wife as plaintiff in action affecting her separate property) in *Ackley v. Tarbox*, 29 *Barb.* 512, 515.
- **v. —**, 2 *Barb. Ch.* 533. Applied (Retaining against legatee, &c., indebted to the estate) to one indebted to personal represen-

- tative, in *Haskin v. Teller*, 3 *Redf.* 322. Approved and applied in *Wilson v. Kelly*, 16 *So. Car.* 216, 219; s. c., 14 *Reporter*, 346.
- **v. Kerr**, 3 *N. Y.* 144. See cases collected (Effect of previous authority or subsequent ratification to bind firm by partner's deed) in 8 *Am. L. Reg. N. S.* 268.
- **v. —**, 1 *Barb.* 155. Aff'g 1 *Edm.* 190.
- **v. Kingsley**. See *Ferris v. Douglass*.
- **v. Knapp**, 30 *N. Y.* 581. See *Elwood v. Gardner*. Disting'd (Right to arrest, as affected by matter in complaint inconsistent with such right) in *Redfield v. Frear*, 9 *Abb. Pr. N. S.* 452; *Short v. Barry*, 39 *How. Pr.* 326. Applied in *Elwood v. Gardner*, 10 *Abb. Pr. N. S.* 257, 262; *Madge v. Puig*, 71 *N. Y.* 609.
- **v. Kniskern**, 4 *Johns. Ch.* 9. See *Sanford v. Jackson*. Approved (Dower, when barred) in *Van Arsdale v. Van Arsdale*, 2 *Dutcher (N. J.)* 404.
- **v. Lasher**, 5 *Johns. Ch.* 247. Applied (Duty of defendant to answer as to his information and belief) in *Skinner v. Deming*, 2 *Ind.* 558; s. c., 54 *Am. Dec.* 463, with note.
- **v. Law**, 21 *N. Y.* 296. Cited with other cases (Notice of corporate election) in 12 *Am. L. Reg. N. S.* 549.
- **v. Lee**, 2 *Sup'm. Ct. (T. & C.)* 591. Applied (When deposit in trust constitutes gift) in *Martin v. Funk*, 75 *N. Y.* 139.
- **v. Leland**, 2 *Duer*, 497. Disting'd (Liability for price of goods furnished to third person) in *Rogers v. Verona*, 1 *Bosw.* 417, 419. See other cases collected (Testimony of parties) in 1 *Abb. N. C.* 364, n.
- **v. Lewis**, 3 *Johns.* 157; s. c., 3 *Am. Dec.* 469. See *Smith v. Lowry*. Disting'd (When action will lie for suborning witnesses) in *Rice v. Coolidge*, 121 *Mass.* 393; s. c., 23 *Am. R.* 279, 282. Followed in *Cunningham v. Brown*, 18 *Verm.* 123; s. c., 46 *Am. Dec.* 140, with note.
- **v. Lockwood**, 10 *Johns.* 366. Rule said to be changed by statute (Judgment on set-off against personal representative),—in *Patterson v. Patterson*, 59 *N. Y.* 574, 586.
- **v. Lorillard**, 10 *Johns.* 338. See *Smith v. Burtis*. Explained (Right of prior possessor of land, as against one having no title) in *Jackson v. Denn*, 5 *Conn.* 200, 202. Declared a leading case and followed in *Clute v. Voris*, 31 *Barb.* 511, 514. See *Lull v. Davis*, 1 *Mich.* 81. Explained in *Ang. on Limit.* § 389, 6 ed. Quoted in *Sedg. & W. on Tr. of Tit. to Land*, § 694.
- **v. Lowry**, 1 *Johns. Ch.* 320. Followed with *Smith v. Lewis*, 3 *Johns.* 157 (Conclusiveness of judgment of court of competent jurisdiction) in *Homer v. Fish*, 1 *Pick. (Mass.)* 435; s. c., 11 *Am. Dec.* 218, with note.
- **v. Luce**, 14 *Wend.* 237. Examined with other cases (Sufficiency of affidavit to justify warrant of attachment, &c.) in *Mosher v. People*, 5 *Barb.* 578; *Morgan v. Avery*, 7 *Id.* 661.
- **v. Ludlow**, 6 *Johns.* 267. See *Hackley v. Patrick*; *Van Keuren v. Parmelee*. Reviewed with other cases, and the contrary held (Power of one partner after dissolution, to create or revive debt against his late partners) in *Wilson v. Torbert*, 3 *Stew. (Ala.)* 296; s. c., 21 *Am. Dec.* 632, with note. Followed in *Greenleaf v. Quincy*, 12 *Me.* 11; s. c., 28 *Am. Dec.* 145, with note, but said to be at variance with *Hackley v. Johnson*, 3 *Johns.* 536; *Walden v. Sherburne*, 15 *Id.* 409. Disapproved in *Tate v. Clements*, 16 *Fla.* 339; s. c., 26 *Am. R.* 714. Followed with *Johnson v. Beardslee*, 15 *Johns.* 3, in *Bound v. Lathrop*, 4 *Conn.* 336; s. c., 10 *Am. Dec.* 147, as applicable to maker of note. See cases cited in 6 *Am. Dec.* 574, n. Discussed in *Ang. on Limit.* § 260, 6 ed.; 1 *Greenl. on Ev.* 14 ed. § 112, n. c.
- **v. Lusher**, 5 *Conn.* 688. Disting'd (Effect of partnership paper in hands of partner) in *Gale v. Miller*, 54 *N. Y.* 536, 538. Followed in *Bonnaffe v. Fenner*, 6 *Smedes & M. (Miss.)* 212; s. c., 45 *Am. Dec.* 278, with note. Followed (Effect of note payable to order of the maker) in *Rambo v. Metz*, 5 *Strobb. L. (So. Car.)* 108; s. c., 53 *Am. Dec.* 694, with note.
- **v. Lyke**, 13 *Hun.* 204. Applied (Good-faith as defense to proceeding for enticing away) in *Johnston Harvester Co. v. Meinhardt*, 9 *Abb. N. C.* 393, 400.
- **v. Lynes**, 3 *Sandf.* 203. Rev'd in 5 *N. Y.* 41. Decision concerning undertakings on appeal, in 2 *Id.* 569; s. c., 4 *How. Pr.* 209. See *Palmer v. Hand*; *Steelyards v. Singer*. Decision in 5 *N. Y.* explained and applied (Conditional sales of personal property) in *Fleeman v. McKean*, 25 *Barb.* 482; *Matthews v. Hobby*, 48 *Id.* 170. Followed as decisive in *Hammett v. Linneman*, 48 *N. Y.* 402. Disting'd in *Ballard v. Burgett*, 47 *Barb.* 650; which was aff'd in 40 *N. Y.* 318, which see; *Morey v. Medbury*, 10 *Hun.* 540, 543; *Farmers', &c. Nat. B'k v. Logan*, 74 *N. Y.* 568, 584. Applied in *Wait v. Green*, 35 *Barb.* 590; which was aff'd in 36 *N. Y.* 557, which see; *Lees v. Richardson*, 2 *Hilt.* 172; *Comer v. Cunningham*, 77 *N. Y.* 397, 399; *Parker v. Baxter*, 86 *Id.* 586, 593. See authorities collected in *Lucio v. McCabe*, 49 *Conn.* 141, 148; s. c., 21 *Am. L. Reg. N. S.* 217, with note also collecting authorities. Cited with *Strong v. Taylor*, 2 *Hill.* 326; *Herring v. Hoppock*, 15 *Id.* 409, and other cases in 13 *Am. Dec.* 451, n., as settling the rule.
- **v. McAllister**, 14 *Barb.* 434. Explained and doubted (Necessity of enclosure to constitute adverse possession) in *Armstrong v. Risteau*, 5 *Md.* 256; s. c., 59 *Am. Dec.* 115, 127.
- **v. McCluskey**, 45 *Barb.* 610. Applied (Effect of destruction by fire of buildings on premises contracted to be sold) in *Wicks v.*

- Bowman, 5 *Daly*, 225, 232. Disapproved (Liability of assignee of vendor in contract for sale of land) in *Youmans v. Edgerton*, 91 *N. Y.* 403, 411.
- *v. McDonald*, 50 *How. Pr.* 519; s. c., 52 *Id.* 117; and, more fully, 1 *Abb. N. C.* 350. Approved (Compelling production of books and papers) in *McGuffin v. Dinsmore*, 4 *Id.* 241, 245. See to the contrary *Martin v. Spofford*, 3 *Id.* 125.
- *v. Maine*, 25 *Barb.* 33. Cited (Effect of admissions by decedent as binding on his personal representatives) in 2 *Whart. Com. on Eo.* § 1158, n.
- *v. Marvin*, 25 *How. Pr.* 317; s. c., more fully, 27 *N. Y.* 137. See *Condit v. Baldwin*. Approved (Usury in contract made by agent) in *Palmer v. Call*, *U. S. Cir. Ct. D. Iowa*, 12 *Reporter*, 195, citing cases. Compared in 4 *Am. L. Reg. N. S.* 324.
- *v. Masten*, 15 *Wend.* 270. Approved and applied (Evidence of plaintiff's connection with other woman in action for criminal conversation) in *Shattuck v. Hammond*, 46 *Vt.* 466; s. c., 14 *Am. R.* 631.
- *v. Mayor, &c. of N. Y.*, 1 *Daly*, 219. Aff'd in 37 *N. Y.* 518. See *Conner v. Mayor, &c. of N. Y.* Explained (Basis of right of official to compensation) in *McVeany v. Mayor, &c. of N. Y.*, 80 *N. Y.* 185, 190, 192. Disting'd in *Dolan v. Mayor, &c. of N. Y.*, 68 *Id.* 274, 283. Followed in *People ex rel. Ryan v. French*, 24 *Hun*, 263. Fully approved with *Conner v. Mayor, &c. of N. Y.*, 5 *N. Y.* 285, in *Auditors of Wayne Co. v. Benoit*, 20 *Mich.* 176; s. c., 3 *Am. R.* 382. Followed with *Conner v. Mayor, &c. of N. Y.* in *Comm'rs of Saline Co. v. Anderson*, 20 *Kans.* 298; s. c., 27 *Am. R.* 171. Collated with *People v. Tieman*, 30 *Barb.* 193; *Dolan v. Mayor, &c. of N. Y.*, 68 *N. Y.* 279, and other cases, in note to *Memphis v. Woodward*, 12 *Heisk. (Tenn.)* 499; s. c., 27 *Am. R.* 750, which also cited *People v. Tieman*.
- *v. —*, 1 *Hun*, 56. Followed (Invalidity of municipal ordinance increasing salaries of police justices in N. Y. city) in *McGinnis v. Mayor, &c. of N. Y.*, 6 *Daly*, 416, 418.
- *v. —*, 4 *Hun*, 637; s. c., more fully, 6 *Sup'm. Ct. (T. & C.)* 685. Aff'd in 66 *N. Y.* 295; s. c., 23 *Am. R.* 53. See *Mills v. City of Brooklyn*; *Wilson v. Mayor, &c. of New York*. Decision in 6 *Sup'm. Ct. (T. & C.)* explained (Liability for overflow of sewers) in *Moak's Underhill's Torts*, 1 *Am. ed.* 476.
- *v. —*, 4 *Hun*, 644; s. c., more fully, 67 *Barb.* 223.
- *v. —*, 6 *Daly*, 401. Aff'd in 68 *N. Y.* 552. Decision in *Id.* explained and applied (What is taxable as real estate) in *People ex rel. N. Y. Elev. R. R. Co. v. Comm'rs of Taxes of N. Y.*, 82 *Id.* 459, 462, which aff'd 19 *Hun*, 460, 464, which see. Explained (Removal of cloud on title of other property than real estate) in *Mayor, &c. of N. Y. v. Union Ferry Co.*, 55 *How. Pr.* 144.
- *v. —*, 4 *Sandf.* 221. Aff'd in 10 *N. Y.* 504.
- *v. Mechanics & Traders' Fire Ins. Co.*, 29 *How. Pr.* 384. Reported in 32 *N. Y.* 399. Followed with *O'Neil v. Buffalo Fire Ins. Co.*, 3 *Id.* 122 (Effect of present representations as continuing warranties) in *U. S. Fire & Marine Ins. Co. v. Kimberly*, 34 *Md.* 224; s. c., 6 *Am. R.* 325. Cited as a strong case in 33 *Am. R.* 834, n., where are collected many cases *pro* and *con*.
- *v. Miller*, 14 *Wend.* 188. Rev'd in 16 *Id.* 425.
- *v. —*, 6 *Robt.* 157, 413; s. c., 6 *Abb. Pr. N. S.* 234. Rev'd in 43 *N. Y.* 171; s. c., 3 *Am. R.* 690. Further decision in 52 *N. Y.* 545. See *Willets v. Phoenix Bank*. Decision in 43 *N. Y.* disting'd (Effect of delay in presenting negotiable security for payment) in *Syracuse, &c. R. R. Co. v. Collins*, 1 *Abb. N. C.* 47, 51. Applied in *First Nat. Bk. of Meadville v. Fourth Nat. Bk. of N. Y.*, 24 *Hun*, 242; and see *Same v. Same*, 16 *Id.* 332; 77 *N. Y.* 320. Applied in *Butterton v. Roope*, 3 *Lea (Tenn.)* 215; s. c., 31 *Am. R.* 633, 636. Explained in 2 *Benj. on Sales*, § 1083, n. 19 (Corbin's 4 *Am. ed.*). Decision in 52 *N. Y.* included in 2 *Ames Cas. on B. & N.* 313.
- *v. —*, 25 *N. Y.* 619. Disting'd with *Gram v. Cadwell*, 5 *Cow.* 489; *Carrington v. Croker*, 37 *N. Y.* 336 (Payment that will stop running of statute of limitations) in *First Nat. B'k of Milwaukee v. Smith*, 26 *Hun*, 221. Compare (Payment of judgment to sheriff by other than judgment debtor) *Code Civ. Pro.* § 2446.
- *v. Moffat*, 1 *Barb.* 65. See *Capet v. Parker*. See to the contrary (Injunction against summary proceedings) *Capet v. Parker*, 3 *Sandf.* 662; *James v. Stuyvesant*, *Id.* 665, n.
- *v. Mulock*, 1 *Robt.* 569. Collated with *Marquand v. N. Y. Manuf. Co.*, 17 *Johns.* 525; *Skinner v. Dayton*, 19 *Id.* 513, 538; *Sistare v. Cushing*, 4 *Hun*, 503; *Bishop v. Breckles*, *Hoffm.* 534, and other cases (Right of one partner to dissolve partnership for time limited) in *Story on Partn.* 7 ed. § 275, n.
- *v. Mumford*, 9 *Cow.* 26. See *Hale v. Angel*. Explained (Necessity of showing jurisdiction over person) in *Turner v. Roby*, 3 *N. Y.* 193.
- *v. N. Y. & Harlem R. R. Co.*, 6 *Duer*, 225. Aff'd in 19 *N. Y.* 127. Decision in *Id.* approved (Obligation of carrier to adopt new inventions and improvements) in *Ky Central R. R. Co. v. Thomas*, 79 *Ky.* 160, 172. Collated with other cases in 2 *Redf. Am. Railw. Cas.* 437.
- *v. N. Y. & Oswego Midland R. R. Co.*, 63 *N. Y.* 58. Applied (Duty of railroad company to erect farm crossings) in *Jones v. Seligman*, 81 *Id.* 190, 198.

- **v. N. Y. Central R. R. Co.**, 43 *Barb.* 225. Said in 41 *N. Y.* 620, to have been aff'd in Ct. of App. Dec. 1869. See *Bostwick v. Champion*; *Jackson v. Potter*; *Van Santvoord v. St. John*; *Weed v. Saratoga & Schenectady R. R. Co.* Disting'd (Liability of common carriers beyond their own route) in *Root v. Great Western R'y Co.*, 2 *Lans.* 199, 204. Followed in *Shriver v. Sioux City & St. Paul R. R. Co.*, 24 *Minn.* 506; s. c., 31 *Am. R.* 353, 356. Cited with approval in *Laughlin v. Chicago & Northwestern R'y Co.*, 28 *Wis.* 204; s. c., 9 *Am. R.* 493, 498, as the only case in point found; *McDonald v. Western R. R. Co.*, 34 *N. Y.* 501, being also cited in this connection. Applied (Burden of proof as to carrier's negligence) in *Lamb v. Camden & Amboy R. R. & Co.*, 2 *Daly*, 463. Collated with *Jackson v. Potter*, 4 *Wend.* 672; *Watkins v. Earle*, 44 *N. Y.* 172; *Nixon v. Palmer*, 10 *Barb.* 175; *Cooper v. Dedrick*, 22 *Id.* 516 (Presumption as to facts once shown to exist) in 28 *Abb. L. J.* 285.
- **v. —**, 4 *Abb. Ct. Dec.* 262; s. c., 4 *Keyes*, 180. Approved (Contracts of sale as disting'd from those of work and labor) in *Passaic Manuf. Co. v. Hoffman*, 3 *Daly*, 506. Applied in *Flint v. Corbitt*, 6 *Id.* 430; *Bates v. Coster*, 1 *Hun*, 402. Reviewed with other cases in dissenting opinion in *Parsons v. Loucks*, 48 *N. Y.* 25. Doctrine explained in *Cooke v. Millard*, 65 *Id.* 361. Cited in *Benj. on Sales*, § 109, n. u (Bennett's 4 Am. ed.); *Id.* § 109, n. y.
- **v. —**, 29 *Barb.* 132. Aff'd by divided court, in 24 *N. Y.* 222. See *Welles v. Same*. Decision in 24 *N. Y.* disting'd (Carrier's exemption from liability by express contract) in *Blair v. Erie R. Co.*, 66 *Id.* 316; *Kirkland v. Dinsmore*, 2 *Hun*, 46, 51. Explained in *Railroad Co. v. Lockwood*, 17 *Wall*, 357, 365. Dissented from with *Magnin v. Dinsmore*, 56 *N. Y.* 168; *Mynard v. Syracuse, Binghamton, &c. R. R. Co.*, 7 *Hun*, 399, in *Chicago, St. Louis, &c. R. R. Co. v. Moss*, 60 *Miss.* 100; s. c., 45 *Am. R.* 428. Criticised in *Lawson's Contr. of Carr.* §§ 28, 128, 220. Collated with other cases in *Thomps. on Carr. of Pass.* 401. See 8 *Abb. L. J.* 305.
- **v. N. Y. Consolidated Stage Co.**, 28 *How. Pr.* 208. Disting'd (Who may be appointed receiver) in *Chamberlain v. Greenleaf*, 4 *Abb. N. C.* 92, 95.
- **v. Niver**, 2 *Barb.* 180. See *Lounsbery v. Snyder*. Explained (Substitution of parol for written leases) in 1 *Washb. on Real Prop.* 4 ed. 549.
- **v. Oliphant**, 2 *Sandf.* 306. Previous proceeding in 7 *N. Y. Leg. Obs.* 17.
- **v. Olssen**, 4 *Sandf.* 711. Qualified (Effect of admission of part of plaintiff's claim) in *Dusenberry v. Woodward*, 1 *Abb. Pr.* 443. Rule herein said in *Wireman v. Remington Sewing Machine Co.*, 36 *Super. Ct. (J. & S.)* 316, to be changed by amendment in 1857:
- **v. Orser**, 43 *Barb.* 187. Aff'd in 42 *N. Y.* 132. See *Scars v. Gearn*. Decision in 43 *Barb.* disting'd and explained (Attachment of partnership credit and balances) in *Barry v. Fisher*, 8 *Abb. Pr. N. S.* 369, 393. Decision in 42 *N. Y.* disting'd in *Weston v. Conant*, 1 *City Ct.* 224. As to case of special partner, see *Harris v. Murray*, 28 *N. Y.* 574. Decision in 43 *Barb.* collated with other cases in *Thomps. on Pro. Rem.* 372. See *Code Civ. Pro.* 1881, § 693, n.
- **v. Paton**, 6 *Bosw.* 145. Aff'd in 31 *N. Y.* 66.
- **v. People**, 47 *N. Y.* 330. Applied (Statute, when not regarded as repealed by implication) in *People ex rel. Stiner v. Morrison*, 78 *Id.* 89.
- **v. —**, 53 *N. Y.* 111. See *Hildebrand v. Same*. Disting'd (What is larceny) in *Zink v. People*, 6 *Abb. N. C.* 413, 431, which rev'd 16 *Hun*, 399, which see. Relied on with *Shippy v. People*, 86 *N. Y.* 375; *Hildebrand v. People*, 56 *Id.* 394; *Justices v. Henderson*, 90 *Id.* 12; in *Grunson v. State*, 89 *Ind.* 533; s. c., 46 *Am. R.* 178; with note collating *Weyman v. People*, 4 *Hun*, 511; 62 *N. Y.* 623, and other cases. Applied in *Collins v. Ralli*, 20 *Hun*, 251, 254. Compare *People v. Rae*, 66 *Cal.* 423, 427.
- **v. —**, 9 *Hun*, 446. Rev'd in 69 *N. Y.* 175.
- **v. Pettie**, 7 *Hun*, 334. Rev'd in 70 *N. Y.* 13. Decision in *Id.* explained (Delivery of more than is required in case of sale) in 2 *Benj. on Sales*, § 1030, n. 17 (Corbin's 4 Am. ed.). Explained (Remedies against the goods) in *Id.* § 1180, n. 5.
- **v. Randall**, 3 *Hill*, 495. Approved but disting'd (Direction as to return to commission to take testimony) in *Goodyear v. Vosburgh*, 41 *How. Pr.* 421, 426. See *Code Civ. Pro.* 1881, § 2980, n.
- **v. —**, 67 *Barb.* 377. See (Costs in action against executor, &c.) *Code Civ. Pro.* 1881, § 3246, n.
- **v. Rathbun**, 13 *Hun*, 47. Rev'd in 75 *N. Y.* 122. Previous decision in 66 *Barb.* 402.
- **v. Richardson**, 3 *Cai.* 219. Explained (Damages in action against carrier) in *Watkinson v. Laughton*, 8 *Johns.* 213, 216. These two cases, with *Richmond v. Bronson*, 5 *Den.* 55, examined in *Lakman v. Grinnell*, 5 *Bosw.* 625, 631-639.
- **v. Rogers**, 17 *Johns.* 340. Followed (Effect of acceptance of partner's note for partnership debt) in *Vernam v. Harris*, 1 *Hun*, 451.
- **v. Rowley**, 66 *Barb.* 502. Approved in effect (Fear of legal proceedings, as duress that will avoid contract) in *Herbst v. Manss*, *Cin. Super. Ct.* 5 *Cin. L. Bul.* 1038, 1041.
- **v. Ryan**, 39 *Super. Ct. (J. & S.)* 489. Aff'd in 66 *N. Y.* 352; s. c., 23 *Am. R.* 60. See *Winchell v. Hicks*. Decision in 66 *N. Y.* followed (Who may make payment, to take deb out of statute of limitations) in *Kelly v. Weber*, 27 *Hun*, 8.



- **v. Sanborn**, 11 *Johns.* 59; s. c., 5 *N. Y. Com. L. Law. ed.* 60, with brief note.
- **v. Sanger**, 3 *Barb.* 360. Rev'd on ground that error in boundary did not, as matter of law, constitute actual occupancy) in 4 *N. Y.* 577.
- **v. Saratoga County Mut. Fire Ins. Co.**, 1 *Hill*, 497. Subsequent decision in 3 *Id.* 508. Both decisions applied (Effect of condition in policy against assignability thereof) in *Ferree v. Oxford Fire & Life Ins. Co.*, 67 *Pa. St.* 373; s. c., 5 *Am. R.* 436. Decision in 1 *Hill* cited as authority for waiver of the condition, in *Stolle v. Aetna Fire & Marine Ins. Co.*, 10 *W. Va.* 546; s. c., 27 *Am. R.* 593, with note. Disting'd as wholly inapplicable, in *Clark v. N. E. Mut. Fire Ins. Co.*, 6 *Cush. (Mass.)* 342; s. c., 53 *Am. Dec.* 44, 46, with note, case of alienation of a portion of insured property.
- **v. Schanck**. See *Stafford v. Rice*.
- **v. Scholtz**, 68 *N. Y.* 41. Disting'd (Fee when vested in executors by will) in *Robert v. Corning*, 23 *Hun*, 299, 303.
- **v. Schulting**, 14 *Hun*, 52. Quoted (Complainants in creditor's actions) in *Wait on Fraud. Conv.* § 108, n. 1.
- **v. Sergeant**, 4 *Sup'm. Ct. (T. & C.)* 684; s. c., 2 *Hun*, 107; and more fully, 67 *Barb.* 243.
- **v. Shaw**, 12 *Johns.* 257. Doubted (Process as protection) in *Savacool v. Boughton*, 5 *Wend.* 176. Disting'd in *Day v. Bach*, 46 *Super. Ct. (J. & S.)* 460, 466.
- **v. Slade**, 57 *Barb.* 637. See *Hoyt v. Van Alstyne*. Approved (Proof of exemption from execution) in *Reinecke v. Flecke*, 35 *Super. Ct. (J. & S.)* 491, 496. Disting'd in *Snyder v. Davis*, 1 *Hun*, 350, 352. See *Code Civ. Pro.* 1881, § 1391, n.
- **v. Smith**, 4 *Paige*, 271. Followed (Effect of misdescription of legatee in will) in *Klein v. Hayck*, 5 *Redf.* 210, 212. Explained (Costs in action for adjudication on will) in *Downing v. Marshall*, 37 *N. Y.* 393. Disapproved (Presumption as to sufficiency of assets in suit against executor) in *Dugan v. Gittings*, 3 *Gill. (Md.)* 138; s. c., 43 *Am. Dec.* 306, 319, with note.
- **v. —**, 4 *Paige*, 432; s. c., 27 *Am. Dec.* 75, with note wherein it is shown not to have been fully recognized in subsequent *N. Y.* decisions (Condonation and recrimination in defense to divorce proceeding). See *Jackson v. Potter*.
- **v. —**, 2 *Johns.* 235; s. c., 3 *Am. Dec.* 410, with note wherein it is shown to be well recognized in the Federal courts as an authority. See *Crandall v. Bradley*; *Roget v. Merritt*; *Van Raugh v. Van Arsdaln*. Applied (Contract, when to be governed by law of place of performance) in *Hibernia Nat. Bk. v. Lacombe*, 84 *N. Y.* 367, 376. Followed with *Van Raugh v. Van Arsdaln*, 3 *Cal.* 154 (Extra-territorial effect of discharge under insolvent laws) in *Mitchel v. McMillan*, 3 *Mart. (La.)* 676; s. c., 6 *Am. Dec.* 690, 695. Disting'd (Form of action on contract for the payment of stipulated sum in property) in *Snell v. Kirby*, 3 *Mo.* 21; s. c., 22 *Am. Dec.* 456.
- **v. —**, 4 *Johns. Ch.* 281. Followed (Liability of guardian who invests without due security) in *Torry v. Frazer*, 2 *Reif.* 486, 489. Commented on in 1 *Story on Contr.* 5 ed. § 379, n. 2.
- **v. —**, 1 *Edw.* 255. Approved (Allowance of alimony *pendente lite* in divorce cases when marriage is disputed) in *Brinckley v. Brinckley*, 50 *N. Y.* 184, 192.
- **v. —**, 15 *How. Pr.* 165. See *Macondray v. Wardle*. Disapproved (Testimony of parties in divorce case) in *Marsh v. Potter*, 30 *Barb.* 506, 519.
- **v. —**, 14 *Abb. Pr.* 130; s. c., 23 *How. Pr.* 134. Aff'd in 14 *Abb. Pr.* 468.
- **v. —**, *Hoffm.* 506. Rev'd in 10 *Paige*, 470.
- **v. —**, 4 *Wend.* 468. See *Bagley v. Peddie*. Disting'd (Contracts in restraint of trade) in *Sander v. Hoffman*, 39 *Super. Ct. (J. & S.)* 307, 311, which was rev'd in 64 *N. Y.* 248.
- **v. —**, 25 *Wend.* 405. Explained (Effect of failure to specify in contract place for payment of money) in subsequent note in 2 *Hill*, 351. Decision in *Id.* followed in *Hoys v. Tuttle*, 8 *Ark.* 124; s. c., 46 *Am. Dec.* 309, 311.
- **v. —**, 56 *How. Pr.* 316; s. c., 20 *Hun*, 559, n. Aff'd in *Id.* 555.
- **v. —**, 2 *Lans.* 266. See *Rutherford v. Rutherford*.
- **v. Spalding**, 30 *How. Pr.* 339. Explained (Granting relief not asked for in notice of motion) in *Jones v. Cook*, 11 *Hun*, 231.
- **v. Spinolla**, 2 *Johns.* 198. See *Van Raugh v. Van Arsdaln*. Followed with *Sicard v. Whale*, 11 *Johns.* 194 (Remedy on contract, as governed by *lex fori*) in *Atwater v. Townsend*, 4 *Conn.* 47; s. c., 10 *Am. Dec.* 97.
- **v. Starr**, 4 *Hun*, 123; s. c., 6 *Sup'm. Ct. (T. & C.)* 387. Appeal dismissed in 70 *N. Y.* 155.
- **v. Stewart**, 6 *Johns.* 46; s. c., 5 *Am. Dec.* 186. Disting'd (Right of one in possession of land under parol agreement to purchase) in *Harris v. Frink*, 2 *Lans.* 35; *Thompson v. Bower*, 60 *Barb.* 463, 477. Approved with *Jackson v. Rowan*, 9 *Johns.* 330; *Jackson v. Kingsley*, 17 *Id.* 158, in *Harle v. McCoy*, 7 *J. J. Marsh. (Ky.)* 318; s. c., 23 *Am. Dec.* 407. Followed with *Bancroft v. Wardwell*, 13 *Johns.* 489 (Liability in action for use and occupation) in *Butler v. Cowles*, 4 *Ohio*, 205; s. c., 19 *Am. Dec.* 612, with note.
- **v. Stickney**. See *People v. Vane*.
- **v. Sutts**, 2 *Johns.* 9. Disting'd with *Van De Veer v. Stanton*, 1 *Cow.* 82; *Schemerhorn v. Jenkins*, 7 *Johns.* 373 (Review of nonsuit) as cases of compulsory nonsuits,—in *Ewing v. Glidwell*, 3 *How. (Miss.)* 332; s. c., 34 *Am. Dec.* 96, with note.

- **v. Sweeny**, 35 *N. Y.* 291. Disting'd (Effect of husband's acts in binding wife) in *Squier v. Norris*, 1 *Lans.* 282, 287. Criticised as extreme (Subsequent ratification of submission to arbitration made without authority) in 30 *Am. Dec.* 627, n. See *Code Civ. Pro.* 1881, § 2365, n.
- **v. Tallcott**, 21 *Wend.* 202; s. c., 18 *N. Y. Com. L. Law. ed.* 1064, with brief note. Explained (Joint actions) in 1 *Pars. on Contr.* 20, n. v.
- **v. Thompson**. See *People v. Ransom*.
- **v. Townsend**, 25 *N. Y.* 479. Approved and applied (Authority of husband to bind wife by mortgage as security for future advances) in *Bank of Albion v. Burns*, 2 *Lans.* 52, 57. Disting'd (Construction of collateral obligation to pay indebtedness) in *Merchant's Nat. B'k v. Hall*, 18 *Hun.* 176.
- **v. Tracy**, 36 *N. Y.* 79. See *Nelson v. Cowing*. Cited (Authority of agent making sale, to warrant) in *Whart. Com. on Ag.* §§ 124, 188; 2 *Benj. on Sales*, § 945, n. 16 (Corbin's 4 *Am. ed.*).
- **v. Underdunk**, 1 *Sandf. Ch.* 579. Disting'd (Effect of oral agreement for sale of land) in *Glass v. Hulbert*, 102 *Mass.* 24; s. c., 3 *Am. R.* 418, 424. Compare *Beardsley v. Duntley*, 69 *N. Y.* 588. Commented on in *Browne on Stat. of Frauds*, § 475, 4 ed.
- **v. Van Dursen**, 15 *Johns.* 343. Dictum overruled (Effect of devise of lands held adversely) in *Jackson v. Varick*, 7 *Cow.* 238, 248; 2 *Wend.* 166.
- **v. Van Loan**, 16 *Wend.* 659; s. c., 12 *N. Y. Com. L. Law. ed.* 1232, with brief note, citing conflicting authorities.
- **v. Van Nostrand**, 3 *Hun.* 450; s. c., as *Smith v. Van Ostrand*, 5 *Sup'm. Ct. (T. & C.)* 664. Rev'd in 64 *N. Y.* 278. See *Tyson v. Blake*. Decision in 64 *N. Y.* disting'd (Life-tenant as trustee for remaindermen) in *Bliven v. Seymour*, 88 *Id.* 469, 478; *Wager v. Wager*, 21 *Hun.* 93, 95; *Montfort v. Montfort*, 24 *Id.* 120. Followed in *Flanagan v. Flanagan*, 8 *Abb. N. C.* 413, 416, 422. Applied (Remainder, when limited on bequest) in *Fry v. Smith*, 10 *Id.* 224, 227.
- **v. Van Ostrand**. See *Smith v. Van Nostrand*.
- **v. Velle**, 60 *N. Y.* 106. Explained and compared (Interest as damages) in *White v. Miller*, 78 *Id.* 393, 397. Disting'd (Limitation of action for services) in *Gustine v. Stoddard*, 23 *Hun.* 99, 102. Disting'd (Effect of continuance in employment after fixed term) in *Creasey v. Amazon Ins. Co., Hamilton Co. O. Distr. Ct.* 12 *Weekly L. Bul.* 155.
- **v. Wait**, 4 *Barb.* 28. Approved with *Idley v. Bowen*, 11 *Wend.* 227; *Shultz v. Shultz*, 35 *N. Y.* 653; *Nelson v. McGiffert*, 3 *Barb. Ch.* 158 (Inability to revoke without testamentary capacity) in *Rich v. Gilkey*, 73 *Me.* 595, 600. See (Proof of lost will) *Code Civ. Pro.* 1881, § 1865, n.
- **v. Ware**, 13 *Johns.* 257. See *Ehle v. Judson*; *Geer v. Archer*; *Nash v. Russell*; *Wilson v. Burr*. Disting'd with *Ehle v. Judson*, 24 *Wend.* 97 (Sufficiency of moral consideration, to support express promise) in *Goulding v. Davidson*, 26 *N. Y.* 605, 610. Limited with *Gray v. Hook*, 4 *Id.* 449, in *Melchoir v. McCarty*, 31 *Wis.* 252; s. c., 11 *Am. R.* 605. Applied in *Kenan v. Holloway*, 16 *Ala.* 53; s. c., 50 *Am. Dec.* 162, 164, with note. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 188. Explained in 1 *Pars. on Contr.* 432, n. t.
- **v. Webb**. See *Paige v. Cagwin*.
- **v. Weeks**, 26 *Barb.* 463. Questioned (Recovery back of part of debt for which judgment has been had) in *Farrington v. Ballard*, 40 *Id.* 512, 515. Overruled in *Binck v. Wood*, 43 *Id.* 315.
- **v. Wilcox**, 19 *Barb.* 581. Aff'd in 25 *Id.* 341; and that aff'd in 24 *N. Y.* 353. Decision in 25 *Barb.* disting'd (Validity of contract for service to be performed on Sunday) in *Merritt v. Earle*, 31 *Id.* 38, 42. Compare *Lindenmuller v. People*, 33 *Id.* 548, 569, 577. Decision in 19 *Id.* explained in 2 *Pars. on Contr.* 759, n. g. Decision in 24 *N. Y.* applied (Effect of publication of advertisement in Sunday paper) in *Shaw v. Williams*, 87 *Ind.* 159.
- **v. Wright**, 1 *Cai.* 43; s. c., 2 *Am. Dec.* 162, with note, wherein it is shown to be a leading authority. Followed with *Lenox v. Union Ins. Co.*, 3 *Johns. Cas.* 178 (Goods shipped on deck as subjects of general average) in *Cram v. Aiken*, 13 *Me.* 229; s. c., 29 *Am. Dec.* 503. Criticised, but followed, in *Doane v. Keating*, 12 *Leigh. (Va.)* 391; s. c., 37 *Am. Dec.* 671, 673.
- **v. —**, 5 *Sandf.* 113. Aff'd on further grounds in 1 *Abb. Pr.* 243; s. c., 4 *Abb. Ct. App. Dec.* 274. See *Champion v. Bostwick*. Decision in 4 *Abb. Ct. App. Dec.* cited (Liability of one who shares in profits to third persons as partner) in *Story on Partn.* 7 ed. § 50, n.
- **v. —**, 4 *Hun.* 652; s. c., more fully, 6 *Sup'm. Ct. (T. & C.)* 694. Limited (Effect of provision in contract for services, for submission to judgment of third person) in *Whiteman v. Mayor, &c. of N. Y.*, 21 *Hun.* 117, 121.
- **v. —**, 24 *Barb.* 170; s. c., 12 *How. Pr.* 555. Rev'd in 27 *Barb.* 621. See *Adsit v. Brady*; *Bartlett v. Crozier*. Decision in 24 *Barb.* collated with other cases (Action against commissioners of highway for failure to repair) in *Cook Highw. L.* 4 ed. 50.
- **v. Wyckoff**, 4 *Edw.* 543. Aff'd in 4 *Ch. Sent.* 18, without prejudice to appellant's right to object, that O. was not made a party, unless complainants should amend.
- Smyth v. Knickerbocker Life Ins. Co.**, 21 *Hun.* 241. Aff'd in 84 *N. Y.* 589.
- **v. Munroe**, 19 *Hun.* 550. Aff'd in 84 *N. Y.* 354.
- Snebly v. Conner**, 7 *Weekly Dig.* 93. Aff'd as *Snebly v. Conner*, 78 *N. Y.* 218. See *Wright v. Hunter*.

- Snedeker v. Snedeker**, 18 *Hun.* 355. Rev'd as *Bergen v. Snedeker*, 8 *Abb. N. C.* 50; s. c., as *Bergen v. Carman*, 79 *N. Y.* 146.
- **v. Warring**, 12 *N. Y.* 170. See *Voories v. McGinnis*. Followed (Rights between mortgagor and mortgagee as to fixtures) in *Adams v. Beadle*, 47 *Iowa*, 439; s. c., 29 *Am. R.* 487. Reviewed with other cases (Erections on land, when to be regarded as fixtures) in *State Savings B'k v. Kircheval*, 65 *Mo.* 682; s. c., 27 *Am. R.* 310.
- Snell v. Loucks**. See *Bowen v. Bell*.
- **v. Rich**, 1 *Johns.* 305. See to the contrary (Authority of pilot of vessel) *Martin v. Farnsworth*, 41 *How. Pr.* 59. Explained (Liability for collision of vessels) in *Ang. on Carr.* § 664, 5 ed.
- Snelling v. Howard**, 7 *Robt.* 400. Aff'd in 51 *N. Y.* 373. Decision in *Id.* cited (Several persons acting as agents, when jointly liable) in *Whart. Com. on Ag.* § 144.
- Sniffen v. Koechling**, 45 *Super. Ct. (J. & S.)* 61. Aff'd in 84 *N. Y.* 677, but without opinion.
- Snook, Matter of**, 2 *Hill.* 566. See *Franklin v. Talmadge*. Applied (Right to change one's name) in *England v. N. Y. Publishing Co.*, 8 *Daly*, 375, 381; *David v. Williamsburgh City F. Ins. Co.*, 83 *N. Y.* 265, 269.
- Snow v. Columbian Ins. Co.**, 48 *Barb.* 469. Rev'd in 48 *N. Y.* 625. Decision in *Id.* explained and followed (What is not breach of condition against use of port) in *Wheeler v. N. Y. Mut. Ins. Co.*, 35 *Super. Ct. (J. & S.)* 249.
- **v. Judson**, 38 *Barb.* 210. Disting'd (Liability for libel relating to business) in *Hovey v. Rubber Tip Pencil Co.*, 57 *N. Y.* 116, 126.
- **v. Williams**, 16 *Hun.* 468. Explained (Polluting streams) in *Moak's Underhill's Torts*, 1 *Am. ed.* 486.
- Snowden v. Noah**, *Hopk.* 347; s. c., 14 *Am. Dec.* 547. See (Enjoining publication of rival newspaper) *American Grocer v. Grocer Pub. Co.*, 25 *Hun.* 398, 401.
- Snyder v. Andrews**, 6 *Barb.* 43. Approved with *Green v. Telfair*, 20 *Id.* 11; *Hunt v. Bennett*, 19 *N. Y.* 173 (Province of jury in libel case) in *Pittock v. O'Neill*, 63 *Penn. St.* 253; s. c., 3 *Am. R.* 544, 548. Quoted in *Bigel. Cas. on Torts*, 109.
- **v. Collins**, 12 *Hun.* 383. Disting'd (Costs to abide event) in *Sheridan v. Genet*, 1 *Civ. Pro. R.* 310, n. Applied in *Lotti v. Krakaner*, *Id.* 312, 316, n.
- **v. Davis**, 1 *Hun.* 350; s. c., 3 *Sup'm. Ct. (T. & C.)* 596; 47 *How. Pr.* 147. See (Exemption from execution in case of judgment for another article of exempt property) *Code Civ. Pro.* 1881, § 1391, n.
- **v. Farmer's Ins. & Loan Co.**, 13 *Wend.* 92. Aff'd in 16 *Id.* 481. See *Jefferson Ins. Co. v. Cotheal*.
- **v. Neefus**, 53 *Barb.* 63. I am informed by counsel that on re-argument this decision was so modified that it can hardly be considered as a precedent. The final decision has not been reported.
- **v. Plass**, 28 *N. Y.* 476. Applied (Jurisdiction as determined by intention of officer) in *Matter of Fuller*, 21 *Hun.* 497, 499.
- **v. Sponable**, 1 *Hill.* 567. Aff'd in 7 *Id.* 427. See *Sterry v. Arden*.
- **v. Warren**, 2 *Cow.* 518; s. c., 14 *Am. Dec.* 519. Discussed (Computation of time with which to take proceedings) in *Ang. on Limit.* § 51, 6 ed.
- Soffe v. Gallagher**, 3 *E. D. Smith*, 507. Collated with other cases (Note or bill taken for debt) in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 303.
- Soher v. Fargo**, 1 *Hun.* 312. Reported in 47 *How. Pr.* 288.
- Solinger v. Earle**, 45 *Super. Ct. (J. & S.)* 80. Re-argument denied in *Id.* 604. Aff'd in 82 *N. Y.* 393; s. c., 60 *How. Pr.* 116. Decision in *Id.* explained (Recovery of money paid on illegal contract) by *Dwignt, Refree*, in *Marie v. Garrison*. Decision approved, but doubts therein suggested concerning certain cases, criticised as unfounded,—in 2 *Pomeroy on Eq. Jur.* 460, n.
- **v. Patrick**, 7 *Daly*, 408. Compare (Affidavit to obtain attachment in *N. Y.* district court) *Code Civ. Pro.* § 2906, subd. 1.
- Solms v. Rutgers Fire Ins. Co.**, 8 *Bosw.* 578. Rev'd in 5 *Abb. Pr. N. S.* 201; s. c., 3 *Keyes*, 416. See *Conover v. Mut. Ins. Co. of Albany*. Decision in 3 *Keyes* applied (Reformation of policy after loss) in *Van Tuyl v. Westchester Fire Ins. Co.*, 67 *Barb.* 76. Applied (Evidence of intent to insure property anew) in *Shearman v. Niagara Fire Ins. Co.*, 40 *How. Pr.* 399; which was aff'd in 46 *N. Y.* 531, which see.
- Somerset, &c. Savings B'k v. Huyck**, 33 *How. Pr.* 323. Followed (Who deemed householder, for purpose of bail) by *LAWRENCE, J.*, as never having been rev'd or questioned,—in unreported case at *Sup'm. Ct. Chambers*, Sept. 1880.
- Son v. People**, 12 *Wend.* 344. Quoted (Sentence in prisoner's absence) in 1 *Bennet & H. Cas. on Crim. L.* 395.
- Soper v. Buffalo & Roch. R. R. Co.**, 19 *Barb.* 310. Followed (Corporation when bound by acts and declaration of directors, &c.) in *Alleghany Work House v. Moore*, 95 *Pa. St.* 408, 412.
- Sorghan v. City of Brooklyn**, 3 *Hun.* 562; s. c., less fully, 6 *Sup'm. Ct. (T. & C.)* 316. Aff'd in 62 *N. Y.* 339.
- Sorley v. Brewer**, 18 *How. Pr.* 276. Aff'd in 1 *Daly*, 79.
- Souillard v. Dias**, 9 *Paige*, 393. Disting'd as not applicable under *Code Pro.* § 121 (Effect of death of party to action) in *Livermore v. Bainbridge*, 43 *How. Pr.* 273.
- Soulden v. Van Rensselaer**, 9 *Wend.* 293. Prior decision in 3 *Id.* 472. Decision in 9 *Id.* applied (Restoring competency of witness by release of liability) in *Mott v. Small*, 20 *Id.* 218. Collated with *McCea v.*

- Purmort, 16 *Wend.* 477; Phillips v. Peters, 21 *Barb.* 351; Watkins v. Stevens, 4 *Id.* 168; Carshore v. Huyck, 6 *Id.* 585; Bloodgood v. Bruen, 8 *N. Y.* 362; Ross v. Ross, 6 *Hun.* 80 (What is acknowledgment sufficient to remove bar of statute of limitation) in 35 *Am. R.* 417, *n.* Decision in 3 *Wend.* explained (Pleading statute) in *Ang. on Limit.* § 290, 6 ed.
- Soule v. Chase**, 1 *Robt.* 222; s. c., 1 *Abb. Pr. N. S.* 48. Rev'd in 39 *N. Y.* 342. See Donnelly v. Corbett; McMenemy v. Murray; Murray v. De Rottenham. Decision in 1 *Robt.* explained (Sufficiency of proof of notice, to justify discharge under two-thirds act) in Lewis v. Page, 8 *Abb. Pr. N. S.* 200, 204.
- South Baptist Socy. of Albany v. Clapp**, 18 *Barb.* 35. A better practice suggested (Power of religious corporation to make mortgage without leave of court) in 4 *Abb. N. C.* 52, *n.*
- Southard v. Benner**, 7 *Daly*, 40. Aff'd in 72 *N. Y.* 424; s. c., more fully, as Southard v. Pinckney, 5 *Abb. N. C.* 184. See Coope v. Bowles; Estes v. Wilcox; Griswold v. Sheldon. Decision in 72 *N. Y.* disting'd (Effect of provision in chattel mortgage allowing mortgagor to sell) in Brackett v. Harvey, 91 *Id.* 214. Collated with authorities from different States in 31 *Am. R.* 178, *n.* See 20 *Alb. L. J.* 506. Followed (Action by assignee for creditors to set aside fraudulent transfer) notwithstanding Stewart v. Platt, 101 *U. S.* 738, —in Brackett v. Harvey, 25 *Hun.* 502; Olney v. Tanner, *U. S. Cir. Ct. S. D. N. Y.* 17 *Reporter*, 8. Applied to administrator in Barton v. Hosner, 24 *Hun.* 467, 471. See Hard v. Milligan, 8 *Abb. N. C.* 58. Compare 22 *Alb. L. J.* 60, 81, citing Pillsbury v. Kington, 31 *N. J. Eq.* 619. Disting'd (Such transfer when fraudulent *per se*) in Webber v. Truax, 1 *City Ct.* 247, 249.
- **v. Boyd**, 51 *N. Y.* 177. Disting'd (Validity of contract for personal influence with official body) in McKee v. Cheney, 52 *How.* Pr. 144.
- **v. Pinckney**. See Southard v. Benner.
- **v. Rexford**, 6 *Cov.* 254. See People v. Mather. See (Limit of cross-examination with view to affect credibility) La Beau v. People, 33 *How. Pr.* 75. Explained in Gt. Western Turnpike Co. v. Loomis, 32 *N. Y.* 137. Followed in Fries v. Brugler, 7 *Halst. (N. J.)* 79; s. c., 2 *Am. Dec.* 52, with long note. Explained and limited (Evidence to affect damages in action for breach of promise to marry) in Kniffen v. McConnell, 30 *N. Y.* 285, 291. Said never to have been questioned, in Thorn v. Knapp, 42 *Id.* 475. Quoted and explained in 2 *Pars. on Contr.* 69, *n. j.* Followed (Offer to marry, as a defense) in Kelly v. Renfro, 9 *Ala.* 325; s. c., 44 *Am. Dec.* 441, 443, with note.
- Southern Central R. R. Co. v. Town of Moravia**, 61 *Barb.* 180. Followed (Right to interest, as barred by receipt of principal) in Middaugh v. City of Elmira, 23 *Hun.* 80.
- Southern Life & Trust Co. v. Packer**, 17 *N. Y.* 51. Reviewed with other cases (Effect of prohibition against setting up usury by corporations) in Strong v. N. Y. Laundry M'fg Co., 37 *Super. Ct. (J. & S.)* 279, 282.
- Southwick, Matter of**. See McDowell v. Second Ave. R. R. Co.
- Southwick v. First Nat. B'k of Memphis**, 20 *Hun.* 349. Rev'd in 84 *N. Y.* 420; s. c., 61 *How. Pr.* 164. Prior decision, as it seems, in 7 *Hun.* 96. See Mayor, &c. of N. Y. v. Erben. Decision in 7 *Hun.* explained with respect to subsequent legislation (Attachment against national banks) in Rhoner v. First Nat. Bank of Allentown, 14 *Id.* 126; Central Nat. B'k v. Richland Nat. B'k, 52 *How. Pr.* 136; Robinson v. Nat. B'k or New Berne, 19 *Hun.* 477. Decision in 84 *N. Y.* disting'd (Demand as condition precedent to liability) in Robinson v. Nat. B'k of New Berne, 95 *Id.* 637, 643.
- **v. Hayden**. See Ensign v. Webster.
- **v. Sax**, 9 *Wend.* 122. Collated with other cases (Surety's liability as affected by extending or discharging security) in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 404.
- **v. Southwick**, 1 *Sweeny*, 47. Further decision in 9 *Abb. Pr. N. S.* 109; s. c., 2 *Sweeny*, 234, aff'd in 49 *N. Y.* 510. Decision in *Id.* cited at length with Tilton v. Beecher (2 *Abb. Off. Rep.* 48, 116) (Husband and wife as witnesses, in suits affecting each other) in 1 *Whart. Com. on Ev.* § 431, *n.*
- Southworth v. Bennett**, 58 *N. Y.* 659. Commented on (Questions tending to disgrace witness) in 1 *Best on Ev.* § 130, *n. a*, Wood's ed. Compare (Appeal after denial of new trial or interlocutory judgment) *Code Civ. Pro.* § 1336.
- **v. Curtis**, 6 *How. Pr.* 271. See (Notice to defendant in default) *Code Civ. Pro.* 1881, § 1219, *n.*
- **v. Sheldon**, 7 *How. Pr.* 414. Explained (Terms of sale under assignment for benefit of creditors) in *Burrill on Assign.* § 224, 4 ed.
- Souverbeye v. Arden**, 1 *Johns. Ch.* 240. Subsequent decision as Sterry v. Arden, *Id.* 261, involving same transactions. See Pechner v. Phoenix Ins. Co. Decision in 1 *Johns. Ch.* 240, followed (Delivery of deed) in Rose v. Rose, 7 *Barb.* 176; Blight v. Schenck, 10 *Penn. St.* 265; s. c., 51 *Am. Dec.* 478, with note; Peavey v. Tilton, 18 *N. H.* 151; s. c., 45 *Am. Dec.* 365, with note; Buffum v. Green, 5 *N. H.* 71; s. c., 20 *Am. Dec.* 562, with note. Applied in McLean v. Button, 17 *Barb.* 453; Scringham v. Wood, 15 *Wend.* 547. Disting'd in Jacobs v. Alexander, 19 *Barb.* 245; Fisher v. Hall, 41 *N. Y.* 422; Bell v. Farmers' B'k of Ky., 11 *Bush (Ky.)* 34; s. c., 21 *Am. R.*

205. Disting'd with *Bunn v. Winthrop*, 1 *Johns. Ch.* 337, in *Wood v. Ingraham*, 3 *Strobh. Eq. (So. Car.)* 105; s. c., 51 *Am. Dec.* 671, with note. Disting'd in *Hibbard v. Smith*, *Sup'm. Ct. Cal.* 1884, 4 *Pac. Rep.* 480. Explained in 16 *Am. Dec.* 41, n. See 4 *Kent Com.* 456. Applied (Effect of voluntary conveyance or settlement) in *Schrader v. Baker*, 65 *Barb.* 615. Followed as conclusive with *Bunn v. Winthrop*, 1 *Johns. Ch.* 329, in *Jones v. Jones*, 6 *Conn.* 111; s. c., 16 *Am. Dec.* 35, 38, with valuable note. Followed in *Cecil v. Beaver*, 28 *Iowa*, 241; s. c., 4 *Am. R.* 174. Quoted in 1 *Chitty on Contr.* 4, n. r., 11 *Am. ed.* Both decisions disting'd and discussed in *Hulick v. Scovil*, 4 *Gilm. (Ill.)* 159, 179.
- Souzer v. De Meyer**, 2 *Paige*, 574. Quoted (Application of statute of limitations to trusts) in *Ang. on Limit.* § 1691, 6 ed.
- Soverhill v. Saydam**, 2 *Sup'm. Ct. (T. & C.)* 460. Aff'd on the merits, in 59 *N. Y.* 140.
- Spader v. Davis**, 5 *Johns. Ch.* 280. Aff'd in *Hadden v. Spader*, 20 *Johns.* 554. See *Storm v. Waddell*. Decision in 5 *Johns. Ch.* explained (Creditor's remedy against non-leviable property) in *Donovan v. Finn*, *Hoph.* 77; *Egberts v. Pemberton*, 7 *Johns. Ch.* 210; *Pettit v. Candler*, 3 *Wend.* 621. See *Storm v. Waddell*, 2 *Sandf.* *Ch.* 511.
- **v. N. Y. Elev. R. R. Co.**, 3 *Abb. N. C.* 467. Compare (Compensation to owners adjacent to railroad) *Washington Cemetery v. Prospect Park, &c. R. R. Co.*, 4 *Id.* 15. Collated with other cases (*Contracts ultra vires*) in *Id.* 59, n.
- Spaulding v. Hallenbeck**, 30 *Barb.* 292. Subsequent decision as *Spaulding v. Hallenbeck*, 39 *Id.* 79; which was aff'd in 35 *N. Y.* 204. Decision in *Id.* examined with other cases (Effect of acceptance of deed to bind grantee by covenants therein) in *Atlantic Dock Co. v. Leavitt*, 54 *Id.* 39.
- **v. Rosa**, 71 *N. Y.* 40. Explained (Effect of impossibility of performance of contract) in 2 *Pars. on Contr.* 672, n. 1 (Keller's ed.).
- **v. Spalding**. See *Berrien v. Westervelt*.
- **v. Vandercook**, 2 *Wend.* 431. Explained (Evidence to support plea of tender) in 2 *Pars. on Contr.* 638, n. s.
- Span v. Ely**, 8 *Hun.* 255. Disting'd (Liability for injuries sustained by servant) in *Thaler v. Long Beach, &c. Co.*, 13 *Weekly Dig.* 288. Referred to (Liability for damages caused by wrongful act or negligence) in 57 *Am. Dec.* 462, n., as a case where it is not easy to see the applicability of *Thomas v. Winchester*, 6 *N. Y.* 391.
- Sparmann v. Keim**, 44 *Super. Ct. (J. & S.)* 163. Rev'd in 9 *Abb. N. C.* 1; s. c., 83 *N. Y.* 245. Another proceeding in 6 *Abb. N. C.* 353. Decision in 83 *N. Y.* disting'd (Character of action, as determined by allegations of fraud in complaint) in *Bowman v. Purtell*, 47 *Super. Ct. (J. & S.)* 403, 408.
- Sparrow v. Kingman**, 1 *N. Y.* 242. Subsequent decision as *Kingman v. Sparrow*, in 12 *Barb.* 201. See *Osterhout v. Shoemaker*. Decision in 1 *N. Y.* explained and applied (Estoppel of grantee to dispute grantor's title as against claim of dower, &c.) in *Averill v. Wilson*, 4 *Barb.* 184, 189; *Finn v. Sleight*, 8 *Id.* 406. Cited in *Tyler on Inf. & Cov.* 2 ed. § 436, as maintaining a better doctrine than that of *Bancroft v. White*, 1 *Cai.* 185; *Sherwood v. Vandenburg*, 2 *Hill*, 203, and other cases. Discussed in 1 *Washb. on Real Prop.* 4 ed. 239. Quoted (*Stare decisis*) in *Cooley on Const. Limit.* 5 ed. 65, n. 1.
- Spaulding v. Hallenbeck**. See *Spaulding v. Hallenbeck*.
- **v. People**, 7 *Hill*, 301. Aff'g *People ex rel. Backus v. Spalding*, 10 *Paige*, 284; s. c., 2 *N. Y. Leg. Obs.* 232. Aff'd in 4 *How. (U. S.)* 21.
- **v. Strang**, 36 *Barb.* 310. Aff'g 32 *Id.* 235. Rev'd in 37 *N. Y.* 135 (where opinion of FULLERTON, J., is given); s. c., 38 *Id.* 9 (where opinion of PARKER, J., is given). Decision in 36 *Barb.* explained and disting'd (Assignment for creditors, as affected by prior compromise agreement) in *Low v. Graydon*, 50 *Id.* 414, 428; *Renard v. Maydore*, 25 *How. Pr.* 178. Decision in 37 *N. Y.*; 38 *Id.* explained (Effect of provision for preferences) in *Haydock v. Coope*, 53 *Id.* 68, 74. Explained in *Burrill on Assign.* § 178, n. 4, 4 ed. With decision in 38 *N. Y.* and *Wakeman v. Grover*, 4 *Paige*, 23; 11 *Wend.* 187, compare *Bennett v. Ellison*, 23 *Minn.* 242; *Hall v. Denison*, 17 *Vt.* 310. See 16 *Am. Dec.* 340, n., citing *Bump on Fraud. Conv.* 428. Decision in 38 *N. Y.* quoted in *Burrill on Assign.* § 192, n. 2, 4 ed. Decisions in 37 *N. Y.*; 36 *Barb.* discussed in *Burrill on Assign.* § 360, 4 ed. Decision in 32 *Barb.* collated with other cases (Reserving benefit for assignor) in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 82.
- Spear v. Crawford**, 14 *Wend.* 20; s. c., 28 *Am. Dec.* 513, with note containing citations. Cited as authority with *Palmer v. Lawrence*, 3 *Sandf.* 161 (Liability as to subscription to stock) in *Busey v. Hooper*, 35 *Id.* 15; s. c., 6 *Am. R.* 350, 359. Cited as authority with *Rensselaer & N. W. P. R. Co. v. Barton*, 16 *N. Y.* 460; *Small v. Herkimer Manuf. Co.*, 2 *Id.* 335; *Dayton v. Borst*, 31 *Id.* 437; *Hartford & N. H. R. R. Co. v. Cogswell*, 5 *Hill*, 384, in *Jackson v. Traer*, 64 *Iowa*, 469, 480. Quoted in *Ang. & A. on Corp.* § 519, 11 ed.
- **v. Downing**, 12 *Abb. Pr.* 437. Disting'd (Presumption of consideration) in *Paine v. Noelke*, 43 *Super. Ct. (J. & S.)* 176, 185.
- **v. Hart**, 3 *Robt.* 420. Disting'd (Title to dividends) in *Herrman v. Maxwell*, 47 *Super. Ct. (J. & S.)* 347, 351, a case of a pledge.
- **v. Myers**, 6 *Barb.* 445. Followed (Effect of receipt of note for precedent debt, to constitute one a *bona fide* holder) in *Ches.*

- brough v. Wright, 41 *Id.* 28, 32. Cited with *Starin v. Kelly*, 36 *Super. Ct. (J. & S.)* 370; *Farrington v. Frankfort B'k*, 31 *Barb.* 190; *Stewart v. Small*, 2 *Id.* 566, in 35 *Am. Dec.* 568, n., as showing the inclination of the N. Y. courts to be against an extension of the doctrine of Bank of St. Albans v. Gilliland, 23 *Wend.* 311, which is said not to have received the approbation given to *Coddington v. Bay*, 20 *Johns.* 637.
- *v. Pratt*, 2 *Hill*, 582. Included (Acceptance of bill of exchange) in *Bigel. on B. & N.* 2 ed. 32; 1 *Ames. Cas. on B. & N.* 165; *Redf. & B. Lead. Cas. on B. of Exch.* 41, with note.
- *v. Smith*. See *Dennis v. Cummins*.
- *v. Tinkham*, 2 *Barb. Ch.* 214. Disting'd (Bequest of residue for life) in *Hill v. Hill*, 2 *Lans.* 43, 48.
- *v. Wardell*, 1 *N. Y.* 144. Commented on and followed (Rights gained by pursuing creditor under non-imprisonment act) in *Hall v. Kellogg*, 12 *Id.* 325, 330; and *People ex rel. Latorre v. O'Brien*, 6 *Abb. Pr.* N. S. 63, 67.
- Spears v. Lake Shore & M. S. R. R. Co.** See *Mallory v. Tioga R. R. Co.*
- *v. Mathews*, 6 *Hun*, 489. Rev'd in 66 *N. Y.* 127.
- *v. Mayor, &c. of N. Y.*, 10 *Hun*, 160. Appeal from subsequent proceeding dismissed in 72 *N. Y.* 442. See *Astor v. Hoyt*.
- Speiglemyer v. Crawford**, 6 *Paige*, 254. Applied (Subrogation of surety to position of judgment creditor) in *Townsend v. Whitney*, 75 *N. Y.* 431.
- Spelman v. Fisher Iron Co.**, 56 *Barb.* 151. Disting'd (Liability of master to servant for injury done in course of employment) in *Thaler v. Long Beach, &c. Co.*, 13 *Weekly Dig.* 288. Explained in 1 *Add. on Torts*, 277, n., Wood's ed. See (Liability resulting from use of explosives) *Smith v. Oxford Iron Co.*, 13 *Vroom (N. J.)* 535; s. c., 36 *Am. R.* 535, 542.
- *v. Terry*, 8 *Hun*, 205. Aff'd in 74 *N. Y.* 448. Decision in *Id.* disting'd (Effect of prior decision as bar) in *Jex v. Jacob*, 7 *Abb. N. C.* 452, 459.
- Spence v. Baldwin**, 59 *How. Pr.* 375. Aff'd, as it seems, as *Spencer v. Baldwin*, in 22 *Hun*, 618.
- *v. Lindo*, 19 *Abb. L. J.* 179. Collated with other cases (Evidence as to handwriting) in 35 *Am. R.* 635, n.
- *v. White*, 1 *Johns. Cas.* 102. Followed (Attorney's lien as subject to set-off) in *Sanders v. Gillett*, 8 *Daly*, 184.
- Spencer v. Ballou**, 18 *N. Y.* 327. Followed (Liability for failure to charge indorser) in *Lake v. Artisan's B'k*, 17 *Abb. Pr.* 236; *West River B'k v. Taylor*, 34 *N. Y.* 140. Applied (Effect of taking note for precedent debt) in *Bank of State of N. Y. v. Vanderhorst*, 1 *Robt.* 216.
- *v. Barnett*, 35 *N. Y.* 94. Applied (Time within which to file mechanics' lien) in *Gates v. Buddensick*, 6 *Abb. N. C.* 367, 370; *Tiley v. Thousand Island Hotel Co.*, 9 *Hun*, 424, 428; *Goodale v. Walsh*, 2 *Sup'm. Ct. (T. & C.)* 312. Disting'd in *Haden v. Buddensick*, 6 *Daly*, 3, 6; *Chase James*, 10 *Hun*, 506, 508.
- *v. Blackman*, 9 *Wend.* 167. Approved (What constitutes conversion) in *Lavery v. Snethen*, 68 *N. Y.* 524. Collated with *Murray v. Burling*, 10 *Johns.* 172; and many other cases in 15 *Am. Dec.* 151, n.
- *v. Carr*, 45 *N. Y.* 406. Included (Es-toppel of infant) in *Ewell Lead. Cas. on Inf. &c.* 222.
- *v. Cuyler*, 9 *Abb. Pr.* 382. Approved (Early return of execution at request of plaintiff, not a foundation for supplementary proceedings) in *Farquaharson v. Kimball*, 9 *Id.* 385, 387, n. See *Forbes v. Waller*, 25 *N. Y.* 430. Quoted and cases cited to the contrary (Receiver in judgment creditor's action) in *High on Receiv.* § 404, n. 1.
- *v. Field*, 10 *Wend.* 87; s. c., 11 *N. Y. Com. L. Lav. ed.* 787, with brief note. Disting'd (Liability on contract made by agent) in *Worrall v. Munn*, 5 *N. Y.* 246; *Nicoll v. Burke*, 45 *Super. Ct. (J. & S.)* 78. Explained in *Union India Rubber Co. v. Tomlinson*, 1 *E. D. Smith*, 379.
- *v. Halstead*, 1 *Den.* 606. Further decision as *Halstead v. Spencer*, *How. App. Cas.* 319, where the plaintiff obtained judgment. See *Clark v. Marsiglia*.
- *v. Harvey*, 17 *Wend.* 489. Approved (Effect of indorser's taking security, as dispensing with demand and notice) in *Seacord v. Miller*, 13 *N. Y.* 55, 58.
- *v. Rogers' Locomotive Works*, 13 *Abb. Pr.* 180. Explained (Vacating attachment after judgment) in *Zeregal v. Benoist*, 33 *How. Pr.* 129.
- *v. —*, 8 *Bosw.* 612; s. c., 17 *Abb. Pr.* 110. Compare (Jurisdiction over foreign corporation) *Code Civ. Pro.* §§ 263, 264, 1780.
- *v. Sampson*, 1 *Cai.* 498; s. c., 2 *N. Y. Com. L. Lav. ed.* 242, with brief note.
- *v. Saratoga & Washington R. R. Co.* See *Bort v. Smith*.
- *v. Southwick*, 9 *Johns.* 314. Subsequent decision in 10 *Id.* 259, rev'd in 11 *Id.* 573.
- *v. Tilden*, 5 *Cow.* 144. See *Bagley v. Peddie*. Explained (Distinction between liquidated damages and penalty) in *Nobles v. Bates*, 7 *Cow.* 307.
- *v. Tobey*, 22 *Barb.* 260. Disting'd (Effect of agreement for sale of land as giving right of possession) in *Miller v. Ball*, 64 *N. Y.* 286, 294.
- *v. Utica & Schenectady R. R. Co.*, 5 *Barb.* 337. Denied (Necessity of affirmative proof of absence of negligence in one run over by locomotive) in *Johnson v. Hudson River R. R. Co.*, 6 *Duer*, 633, 639.
- Sperling v. Conner**, 46 *Super. Ct. (J. & S.)* 562. Aff'd in 84 *N. Y.* 651, but without opinion.

- **v. Levy**, 10 *Abb. Pr.* 426. Another proceeding in 1 *Daly*, 95.
- Sperry v. Miller**, 16 *N. Y.* 418. Followed (Combining separate charges of judge) in *Knickerbocker v. People*, 57 *Barb.* 365, 374.
- **v. Reynolds**, 5 *Lans.* 407. Rev'd in 65 *N. Y.* 179. Decision in 5 *Lans.* followed (Effect of unauthorized appearance for defendant in justice's court) in *Roberts v. Burrell*, 3 *Sup'm. Ct. (T. & C.)* 30, 32. Decision in 65 *N. Y.* followed in *Andrews v. Long*, 19 *Hun.* 303.
- Speyer v. Colgate**, 4 *Hun.* 622; s. c., more fully, 67 *Barb.* 192.
- **v. Stern**, 2 *Sweeny*, 516. Cited with *Newcomb v. Griswold*, 24 *N. Y.* 298; *Gaffney v. People*, 50 *Id.* 223; *Stephens v. People*, 19 *Id.* 549 (Cross-examination respecting contents of written instrument) in 1 *Whart. Com. on Ev.* § 68.
- Speyers v. Lambert**, 1 *Sweeny*, 335; s. c., 6 *Abb. Pr. N. S.* 309; 37 *How. Pr.* 315. Disapproved (Requisites of promise to answer for debt of another) in *Castle v. Beardsley*, 10 *Hun.* 343, 346. See also *Abb. Tr. Ev.* 471.
- Spicer v. Ayers**, 53 *How. Pr.* 405. Prior decision in 2 *Sup'm. Ct. (T. & C.)* 626. See *Estes v. Wilcox*. See (Necessity that judgment be obtained before action to set aside transfer) in *Southard v. Pinckney*, 5 *Abb. N. C.* 184.
- **v. Norton**, 13 *Barb.* 542. Said in *Wood v. Wheelock*, 25 *Id.* 625, to have been aff'd in Ct. of App.
- **Spies v. Boyd**, 1 *E. D. Smith*, 445. Commented on (Reservations in assignment for benefit of creditors) in *Burrill on Assign.* § 350, n. 4, 4 ed.
- **v. Gilmore**, 1 *N. Y.* 321. See *Hall v. Newcomb*; *Herrick v. Carman*; *Taylor v. Snyder*. Examined with other cases (Liability of irregular indorser) in *Hahn v. Hall*, 2 *Abb. Pr.* 356. Explained in *Waterbury v. Sinclair*, 6 *Id.* 28 (and see *Same v. Same*, 7 *Id.* 403); *Moore v. Cross*, 23 *Barb.* 538, which was aff'd in 19 *N. Y.* 230, which see; *Richards v. Warring*, 4 *Abb. Ct. App. Dec.* 47, 52. Followed in *Ellis v. Brown*, 6 *Barb.* 288; *Cottrell v. Conklin*, 4 *Duer*, 50.
- **v. Joel**, 1 *Duer*, 669. Approved (Constructive fraud not ground of arrest) in *Birchell v. Strauss*, 8 *Abb. Pr.* 53, 56; *People v. Kelly*, 35 *Barb.* 444, 455, 462. Explained (Failure to make disposition of surplus in assignment for benefit of creditors) in *Burrill on Assign.* § 208, n. 2, 4 ed.
- Spinnette v. Atlas Steamship Co.**, 14 *Hun.* 100. Rev'd in 80 *N. Y.* 71.
- Spinner v. N. Y. Central, &c. R. R. Co.**, 6 *Hun.* 600. Aff'd in 67 *N. Y.* 153. Previous decision in 2 *Hun.* 421; s. c., 4 *Sup'm. Ct. (T. & C.)* 595.
- Spooner v. Brooklyn City R. R. Co.**, 31 *Barb.* 419. Confirmed on further decision in 36 *Id.* 217, which was rev'd in 54 *N. Y.* 230; s. c., 13 *Am. R.* 570.
- **v. Keeler**, 51 *N. Y.* 536. Applied (Abatement of action by death, as affected by verdict that is set aside) in *Cox v. N. Y. Central, &c. R. R. Co.*, 4 *Hun.* 178.
- Spoor v. Holland**, 8 *Wend.* 445; s. c., 24 *Am. Dec.* 37, with note. Approved (Damages in trover by one having special property) in *Chadwick v. Lamb*, 29 *Barb.* 518, 522.
- **v. Wells**, 3 *Barb. Ch.* 199. Applied with *Sayre v. Wisner*, 8 *Wend.* 661 (Effect of passage of statute of limitations, on existing rights) in *Parker v. Kane*, 4 *Wiss.* 18.
- Sprague v. Birdsall**, 2 *Cow.* 419; s. c., 7 *N. Y. Com. L. Law. ed.* 834, with brief note (Money paid under mistake). Explained as to statute here involved, in *Cayuga Bridge Co. v. Stout*, 7 *Cow.* 33.
- **v. Blake**, 20 *Wend.* 61; s. c., 13 *N. Y. Com. L. Law. ed.* 777, with brief note. See *Seymour v. Davis*. Applied (Implied agreement as to quality on executory contract of sale) in *Hamilton v. Ganyard*, 34 *Barb.* 206; *Lawton v. Keil*, 61 *Id.* 566. Disting'd in *Keeler v. Vandervere*, 5 *Lans.* 315. Explained in 2 *Benj. on Sales*, § 977, n. 29 (Corbin's 4 *Am. ed.*). Re-aff'd (Effect of subsequent acceptance of goods sold, under statute of frauds) in *McKnight v. Dunlop*, 5 *N. Y.* 543. Reviewed with other cases in *Hunter v. Wetsell*, 57 *Id.* 375, 378.
- **v. Butterworth**, 22 *Hun.* 502. Appeal dismissed in 84 *N. Y.* 649, but without opinion.
- **v. Cadwell**, 12 *Barb.* 516. Disting'd (Cross-examining witness as to declarations made out of court) in *Briggs v. Wheeler*, 16 *Hun.* 584.
- **v. Duel. Clarke**, 90. Aff'd in 11 *Paige*, 480. Decision in *Clarke* collated with *Jackson v. Van Dusen*, 5 *Johns.* 154; *Allen v. Public Adm'r*, 1 *Bradf.* 378, and many other authorities (Presumption of continuance of sanity or insanity) in 28 *Alb. L. J.* 326.
- **v. Kneeland**. See *Hurd v. West*.
- **v. Shed**. See *McCarty v. McPherson*.
- **v. Western Union Tel. Co.**, 6 *Daly*, 200. Aff'd in 67 *N. Y.* 590, on opinion of *Daly*, Ch. J. Intervening decision as to dismissing appeal in 64 *Id.* 658. See *Griffin v. Colver*; *Young v. Western Union Tel. Co.*
- Sprights v. Hawley**, 39 *N. Y.* 441. Aff'd *Dudley v. Hawley*, 40 *Barb.* 397. See *Dudley v. Hawley*. Decision in 39 *N. Y.* disting'd (Evidence of conversion) in *Turner v. Brown*, 6 *Hun.* 331, 337.
- Spraker v. Cook**, 16 *N. Y.* 567. Applied (Removal, by summary proceedings, of one in possession of premises, after execution sale thereof) in *People ex rel. Higgins v. McAdam*, 84 *Id.* 287, 293.
- **v. Van Alstyne**, 18 *Wend.* 200; s. c., 13 *N. Y. Com. L. Law. ed.* 345, with brief note. Rev'g *Van Alstyne v. Spraker*, 13 *Id.* 578. Decision in 18 *Wend.* followed (Fee by implication) in *Heard v. Horton*, 1 *Den.*

165. Commented on and considered extreme in *Burlingham v. Biding*, 21 *Wend.* 463.
- Spring v. Sandford**, 7 *Paige*, 550. Followed (Sufficiency of title, on sale of decedent's real estate) in *Bogert v. Bogert*, 45 *Barb.* 123.
- Springer v. Dwyer**, 58 *Barb.* 189. Rev'd in 50 *N. Y.* 19. Decision in *Id.* followed (Answer, when to be liberally construed) in *Van Brunt v. Day*, 8 *Abb. N. C.* 336, 541; *Hammond v. Earle*, 58 *How. Pr.* 438. Disting'd in *Dubois v. Hermance*, 56 *N. Y.* 674.
- Springfield M. & F. Co. v. Allen**, 43 *N. Y.* 389. Disting'd (Effect of transfer of insured property) in *Savage v. Long Island Ins. Co.*, 43 *How. Pr.* 464; which was aff'd in 44 *Id.* 52; which was rev'd in 52 *N. Y.* 508, which see. Cited with approval in *Loy v. Home Ins. Co.*, 24 *Minn.* 315; s. c., 31 *Am. R.* 346. Disting'd in *Hammel v. Queen's Ins. Co.*, 54 *Wis.* 72, 79. Disting'd (Insurer's right to subrogation to rights of mortgagee), in *Ulster Co. Sav'gs Inst. v. Decker*, 11 *Hun.* 515, 519. Reviewed with other cases (What constitutes insurable interest) in *Rohrbach v. Germania Fire Ins. Co.*, 62 *N. Y.* 45, 57. Discussed and cited as authority with *Rohrbach v. Germania Fire Ins. Co.*; *Herkimer v. Rice*, 27 *N. Y.* 163, in *Spare v. Home Mut. Ins. Co.*, *U. S. Cir. Ct. D. Oreg.* 22 *Am. L. Reg. N. S.* 409.
- Springsteen v. Powers**, 3 *Robt.* 483. Followed (Power to enjoin summary proceedings) in *Landon v. Superv's of Schenectady*, 24 *Hun.* 75, 77.
- Springstein v. Schermerhorn**, 12 *Johns.* 357. Denied (Estoppel of grantee to deny grantor's title) in *Sparrow v. Kingman* 1 *N. Y.* 242, 251. Disting'd (Estoppel to set up claim under lease) in *Millard v. Mc Mullin*, 68 *Id.* 353.
- Sprong v. Boston & Albany R. R. Co.**, 3 *Sup'm. Ct. (T. & C.)* 54. Aff'd in 58 *N. Y.* 56.
- Squire v. Central Park, &c. R. R. Co.**, 36 *Super. Ct. (J. & S.)* 436. Pronounced unsound (Negligence of child, as precluding recovery) in *Moak's Underhill on Torts*, 291.
- **v. Flynn**, 8 *Barb.* 169. Dissented from (Criterion for issuing execution) in *Masten v. Scovill*, 6 *How. Pr.* 313, 316.
- **v. Young**, 1 *Bosw.* 690. See (Discontinuance of supplementary proceedings) *Code Civ. Pro.* 1881, § 2454, *n.*
- Squires' Case**, 12 *Abb. Pr.* 38. Applied (Right to discharge on habeas corpus) in *Lagrange's Case*, 14 *Abb. Pr. N. S.* 341. Explained in *Matter of Lampert*, 21 *Hun.* 158.
- Squires v. Abbott**, 61 *N. Y.* 630. Followed (Continuance of lien on vessel) in *King v. Greenway*, 71 *Id.* 413, 418.
- **v. Brown**, 22 *How. Pr.* 35. See *Corn-*
- ing v. McCullough*. Followed (Evidence in action to charge trustee of corporation) in *Miller v. White*, 59 *Barb.* 484, 448.
- Staats v. Bristow**, 73 *N. Y.* 264. Followed (Validity of attachment in action against firm) in *Donnell v. Williams*, 21 *Hun.* 216, 219. Disting'd in *Buckingham v. Swezey*, 25 *Id.* 85.
- **v. Hudson River R. R. Co.**, 39 *Barb.* 298; s. c., 23 *How. Pr.* 463. Statement in 32 *Id.* 614, that judgment was rev'd in Ct. of App. is erroneous. Decision in 3 *Keyes*, 196; s. c., 33 *How. Pr.* 139, was on appeal in another case.
- **v. Ten Eyck**, 3 *Cal.* 111; s. c., 2 *N. Y. Com. L. Law. ed.* 550, with brief note; also s. c., 2 *Am. Dec.* 254. See *Pitcher v. Livingston*. Followed (Damages for breach of covenant of warranty) in *Cox v. Strode*, 2 *Bibb. (Ky.)* 269; s. c., 5 *Am. Dec.* 608. Cited approvingly in *Guthrie v. Russell*, 46 *Iowa*, 269; s. c., 26 *Am. R.* 135, 137. Followed with *Pitcher v. Livingston*, 4 *Johns.* 1, in *Logan v. Moulder*, 1 *Ark.* 313; s. c., 33 *Am. Dec.* 338, 344, with note; *Hennings v. Withers*, 3 *Brev. (So. Car.)* 458; s. c., 6 *Am. R.* 589. Followed with *Pitcher v. Livingston*; *Bennet v. Jenkins*, 13 *Johns.* 50, in *Davis v. Smith*, 5 *Ga.* 274; s. c., 48 *Am. Dec.* 279, 289, with note. Followed with *Pitcher v. Livingston*, 4 *Johns.* 1; *Bennett v. Jenkins*, 13 *Id.* 50; *Baldwin v. Munn*, 2 *Wend.* 399,—in *Swafford v. Whipple*, 3 *G. Greene. (Iowa)* 261; s. c., 54 *Am. Dec.* 498. To the contrary, see *Horsford v. Wright*, *Kirby (Conn.)* 3; *Gore v. Brazier*, 3 *Mass.* 523. See also *Marston v. Hobbs*, 2 *Id.* 433; *Caswell v. Wendell*, 4 *Id.* 108. Said in 1 *Am. Dec.* 9, *n.* to have been followed generally, except in *Mass.*, *Maine*, *Conn.*, *Vt.* and *La.* Included with note in *Sedgw. Cas. on Dama.* 4. See (Counsel fees in such action) *Turner v. Miller*, 42 *Tex.* 418; s. c., 19 *Am. R.* 47. Relied on with *Freeman v. Clute*, 3 *Barb.* 426; *Blanchard v. Ely*, 21 *Wend.* 342; *Driggs v. Dwight*, 17 *Id.* 71; *Griffin v. Colver*, 16 *N. Y.* 490; *Leonard v. N. Y. Tel. Co.*, 41 *Id.* 565; *Masterton v. Mayor, &c. of Brooklyn*, 7 *Hill*, 61; *Davis v. Talcott*, 14 *Barb.* 611, (Damages for loss of profits) in *Western Union Tel. Co. v. Graham*, 1 *Col.* 230; s. c., 9 *Am. R.* 136, 144.
- Stackpole v. Robbins**, 47 *Barb.* 212. Aff'd, it seems, in 48 *N. Y.* 644, but without opinion.
- Stacks v. N. Y. Central, &c. R. R. Co.**, 79 *N. Y.* 464. Applied with *Barker v. Savage*, 45 *Id.* 191 (Contributory negligence in one run over by railroad car) in *Harnett v. Bleecker St., &c. R. R. Co.*, 49 *Super. Ct. (J. & S.)* 185. Followed in *Tolman v. Syracuse, &c. R. R. Co.*, 31 *Hun.* 397, 402. Followed (Negligence of defendant, and concurring negligence of plaintiff, as questions of law) in *Urquhart v. City of Ogdensburg*, 13 *Weekly Dig.* 108.



**Stacy, Matter of**, 10 *Johns*. 328. See *Matter of Ferguson*. Followed (Evasive return to writ of habeas corpus) in *Rivers v. Mitchell*, 57 *Iowa*, 193, 197. Approved (Power to enforce obedience by military authorities to writ of habeas corpus) in *Matter of Keeler*, *Hempt.* 306, 310.

**Stacy v. Farnham**. See *Berrien v. Westervelt*; *Cutler v. Rathbone*.

— **v. Graham**, 3 *Duer*, 444. Aff'd in 14 *N. Y.* 492.

**Stafford v. Bacon**, 25 *Wend.* 384. A further and directly contrary decision in 1 *Hill*, 532; s. c., 37 *Am. Dec.* 366. See explanation in 2 *Hill*, 353. Decision in 1 *Id.* followed (Effect of promise to pay debt that has been discharged) in *Dusenbury v. Hoyt*, 36 *Super. Ct. (J. & S.)* 94, 97. Compare *Crans v. Hunter*, 28 *N. Y.* 389. Followed in *Warren v. Whitney*, 24 *Me.* 561; s. c., 41 *Am. Dec.* 406. Applied as according with the preponderance of authority, in *Ingersoll v. Martin*, 58 *Md.* 67, 76. Compare *Valentine v. Foster*, 1 *Metc. (Mass.)* 520. Examined in 20 *Cent. L. J.* 387, citing cases *pro* and *con*.

— **v. Bryau**, 1 *Paige*, 239. Aff'd in 3 *Wend.* 532. Further proceedings in 2 *Paige*, 45. Decision in 3 *Wend.* followed (Acknowledgment to remove bar of statute of limitations) in *Martin v. Broach*, 6 *Ga.* 21; s. c., 5 *Am. Dec.* 306, with note. Discussed in *Ang. on Limit.* § 238, 6 ed. Decision in 2 *Paige* questioned (Decree of affirmance, as bar to review for newly discovered evidence) in *Longworth v. Sturges*, 4 *Ohio*, 690. Collated with other cases in 20 *Am. Dec.* 162, n. Decision in 1 *Paige* explained (Sufficient commencement of suit, so as to prevent statute of limitations from running) in *Ang. on Limit.* § 332, 6 ed.

— **v. Ingersoll**, 3 *Hill*, 38. Applied (Construction of remedial statute) in *Lowry v. Inman*, 6 *Abb. Pr. N. S.* 400.

— **v. Low**, 16 *Johns.* 67. See *Moakeley v. Riggs*. Relied on with *Beekman v. Hale*, 17 *Johns.* 134 (Distinction between proposition to guarantee, and actual undertaking) in *McMillan v. Bull's Head Bank*, 32 *Ind.* 11; s. c., 2 *Am. R.* 323. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 108.

— **v. Mayor, &c. of Albany**, 6 *Johns.* 1. Subsequent decision in 7 *Id.* 541. See *Matter of Beekman St.* Both decisions explained (Liability of corporation in assumpsit) in *Ang. & A. on Corp.* § 379, 11 ed.

— **v. Rice**, 5 *Cow.* 23. Collated with *Bank of Utica v. Hillard*, 5 *Id.* 153; *Williams v. Walbridge*, 3 *Wend.* 415; *White v. Kibling*, 11 *Johns.* 128; *Tuthill v. Davis*, 20 *Id.* 285; *Paige v. Cagwin*, 7 *Hill*, 361; *Bailey v. Wakeman*, 2 *Den.* 220; *Booth v. Swezey*, 8 *N. Y.* 276; *Smith v. Shank*, 18 *Barb.* 344, and other cases (Competency of indorser as witness, to impeach validity of negotiable paper) in 22 *Am. R.* 93, n.

— **v. Richardson**, 15 *Wend.* 302. See *Ferrie v. Paris*. Disting'd with *Hickok v. Hickok*, 13 *Barb.* 632 (Running of statute of limitations, in favor of attorney who has collected money) in *Bronson v. Munson*, 29 *Hun.* 54, 59. Followed in *Cook v. Rives*, 13 *Smedes & M. (Miss.)* 328; s. c., 53 *Am. Dec.* 88; *McDowell v. Potter*, 8 *Pa. St.* 189; s. c., 49 *Am. Dec.* 503, with note. Discussed in *Ang. on Limit.* § 181, 6 ed. Collated with other cases in *Throop Justice's Man.* 2 ed. 188. See *Code Civ. Pro.* 1881, § 410, n.

— **v. Roof**, 9 *Cow.* 626. Applied (Rescission of contract made by infant) in *Chapin v. Shafer*, 49 *N. Y.* 407, 412. Followed and approved in *Carr v. Clough*, 26 *N. H.* 280; s. c., 59 *Am. Dec.* 345. Referred to as a leading case in *Tyler on Inf. & Cov.* 2 ed. § 29,—citing also *Bool v. Mix*, 17 *Wend.* 119. Cited in *Benj. on Sales*, § 31, n. p. (Corbin's 4 *Am. ed.*) as the leading case. Included with notes in *Ewell Lead. Cas. on Inf. &c.* 92.

— **v. Van Rensselaer**, *Hopk.* 569. Aff'd in 9 *Cow.* 316. Both decisions reviewed and approved (Assignment of chose in action, as affected by latent equities) in *Bush v. Lathrop*, 22 *N. Y.* 535, 543, in opposition to dicta to the contrary, in *Beebe v. Bank of N. Y.*, 1 *Johns.* 52; *Murray v. Lylburn*, 2 *Johns. Ch.* 441; *Livingston v. Dean*, *Id.* 479; *James v. Morey*, 2 *Cow.* 246. Decision in 9 *Id.* disting'd in *Moore v. Metropolitan Nat. B'k*, 55 *N. Y.* 41, 48. Disting'd (Mortgagee's equitable right to priority) in *Granger v. Crouch*, 86 *Id.* 494, 499.

**Stages' Case**, 5 *City Hall Recorder*, 177. Collated with other cases (Liability of infants for crime) in 1 *Bennett & H. Cas. on Crim. L.* 75.

**Stagg v. Jackson**, 2 *Barb. Ch.* 86. Aff'd in 1 *N. Y.* 206. See *Dodge v. Pond*. Decision in 1 *N. Y.* applied (Equitable conversion of realty into personality) in *Graham v. Livingston*, 7 *Hun.* 14. Disting'd in *Matter of Hunter*, 3 *Redf.* 175. Both decisions followed in *Ingrem v. Mackey*, 5 *Id.* 357, 360. Applied (Functions of executor as trustee) in *Meeker v. Crawford*, *Id.* 357, 360. Followed as decisive in *Hood v. Hood*, 85 *N. Y.* 561, 570, 577. Explained in *Willard on Executors*, 435. Dicta in 1 *N. Y.* disapproved (Power of spiritual courts at common law, over proceeds of sale of real estate) in *Matter of Vandervoort*, 1 *Redf.* 273.

**Staiger v. Schultz**, 4 *Abb. Ct. App. Dec.* 293; s. c., 3 *Abb. Pr. N. S.* 377; 3 *Keyes*, 614. Applied (Discretion as to discontinuance without costs) in *De Barante v. Deyermant*, 41 *N. Y.* 355, 358. Applied (Discretion as to costs in equity action) in *Woodford v. Bucklin*, 14 *Lun.* 445.

**Stainsby v. Frazer's Metallic Lifeboat Co.**, 3 *Daly*, 98. Cited (Capacity to ratify act of agent) in *Whart. Com. on Ag.* § 64.

**Stalker v. McDonald**, 6 *Hill*, 98; s. c., 40 *Am. Dec.* 389, with note, wherein it is shown to have been extensively cited in *N. Y.* See *Bank of Salina v. Babcock*; *Bay v. Coddington*; *Coddington v. Bay*; *De Zeng v. Fyfe*; *Padgett v. Lawrence*. Applied (Rights of one receiving negotiable paper for antecedent debt) in *Spear v. Myers*, 6 *Barb.* 448; *Wright v. Delafield*, 23 *Id.* 520; *Prentiss v. Graves*, 33 *Id.* 625; *Cardwell v. Hicks*, 37 *Id.* 463; *Crandall v. Vickery*, 45 *Id.* 162; *Clark v. Ely*, 2 *Sandf. Ch.* 172; *Holbrook v. Mix*, 1 *E. D. Smith*, 158. Disting'd in *De Zeng v. Fyfe*, 1 *Bow.* 337; *White v. Springfield B'k*, 3 *Sandf.* 225; *Youngs v. Lee*, 12 *N. Y.* 555; *Curtis v. Leavitt*, 15 *Id.* 196; *Fenty v. Pritchard*, 2 *Sandf.* 155; *Lathrop v. Morris*, 5 *Id.* 9. Reviewed with other cases and applied in *Farrington v. Frankfort B'k*, 31 *Barb.* 189. Applied to mortgage,—in *Pickett v. Barron*, 29 *Id.* 508. Doubted in *R. R. Co. v. Nat. B'k*, 102 *U. S.* 14, 25. Followed in *Allaire v. Hartshorne*, 1 *Zab. (N. J.)* 655; s. c., 47 *Am. Dec.* 175, 178, with note. Questioned in *McCasky v. Sherman*, 24 *Conn.* 612; citing *White v. Springfield Bank*, 3 *Sandf.* 222. Reviewed with *Lawrence v. Clark*, 36 *N. Y.* 128; *Weaver v. Barden*, 49 *Id.* 286; *Atlantic B'k v. Franklin*, 55 *Id.* 236; *Barnard v. Campbell*, 58 *Id.* 77; *Moore v. Ryder*, 65 *Id.* 438, in 9 *Am. Dec.* 272, n., and said to fully sustain the doctrine of *Coddington v. Bay*, 20 *Johns.* 637, though the contrary view in *Swift v. Tyson*, 16 *Pet.* 1, is said to prevail generally elsewhere in the *U. S.* Discussed in 3 *Kent Com.* 81, n. b. Included in *Redf. & B. Lead. Cas. on B. of Exch.* 169; 1 *Ames Cas. on B. & N.* 651; *Bigel. on B. & N.* 2 ed. 464. Discussed in *Id.* 497. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 239. Quoted and commented on in *Holcombe Lead. Cas. on Com. L.* 233. Applied (Rights of one who has paid only part of consideration) in *Huff v. Wagner*, 63 *Barb.* 218, 230.

**Stall v. Catskill Bank**, 18 *Wend.* 466. Approved (Power of partner to bind firm as sureties, &c.) in *Fielden v. Labens*, 6 *Abb. Pr. N. S.* 341, 347. Examined with other cases in *St. Nicholas Nat. B'k v. Savery*, 45 *Super. Ct. (J. & S.)* 101. Followed with *Everingham v. Ensworth*, 7 *Wend.* 326, in *Mutual Nat. B'k v. Richardson*, 33 *La. Ann.* 1316. Cited at length in 13 *Am. Dec.* 115, n., as clearly stating the doctrine of the cases. Applied (Liability of firm for false representations of agent employed by one member) in *Chemung Nat. B'k v. Bradner*, 44 *N. Y.* 687. Applied to certification by officer of bank, in *Farmers', &c. B'k v. Butchers' & Drovers' B'k*, 14 *Id.* 629; 16 *Id.* 136.

**Stallknecht v. Penn. R. R. Co.**, 53 *How. Pr.* 305. Aff'd in 13 *Hun.* 451.

**Staubro v. Hopkins**, 28 *Barb.* 265. Cited (Right to examine witness as to religious

belief) in 1 *Whart. Com. on Ev.* § 543, as reaching a different conclusion from that of *Commonwealth v. Burke*, 16 *Gray (Mass.)* 33.

**Standard v. Williams**, 10 *Wend.* 599. Explained (Renewal of motion without leave of court) in *Mitchell v. Allen*, 12 *Id.* 290.

**Standard Oil Co. v. Amazon Ins. Co.**, 14 *Hun.* 619. Aff'd in 79 *N. Y.* 506.

— **v. Triumph Ins. Co.**, 3 *Hun.* 591; s. c., more fully, 6 *Sup'm. Ct. (T. & C.)* 300. Aff'd in 64 *N. Y.* 85. See *Cronkite v. Wells*. See also (Insurance broker's authority) *Brueck v. Phoenix Ins. Co.*, 21 *Hun.* 542, 545, 548.

**Standish v. Parmely**, 1 *Sup'm. Ct. (T. & C.)* 40. Aff'd on this opinion in 56 *N. Y.* 640.

**Stanley v. Webb**, 4 *Sandf.* 21. Disting'd (Privilege as to publication of court proceedings) in *Ackerman v. Jones*, 37 *Super. Ct. (J. & S.)* 42, 54. Disapproved in *McBee v. Fulton*, 47 *Md.* 403; s. c., 28 *Am. R.* 474. Collated with other cases in *Bigel. Cas. on Torts*, 167.

**Stannard v. Mattice**, 7 *How. Pr.* 4. Approved with *Treadwell v. Fassett*, 10 *Id.* 134; *Meads v. Gleason*, 13 *Id.* 309; *Boston Locomotive Works v. Wright*, 15 *Id.* 253 (Verification by attorney) in *Soutter v. Mather*, 14 *Abb. Pr.* 441.

— **v. Prince**. See *Roberts v. Turner*.

**Stanton v. Allen**, 5 *Den.* 434. See *Chappel v. Brockway*; *Hartford & N. H. R. R. Co. v. N. H. R. R. Co.* Disting'd (Validity of agreement to prevent competition) in *Marsh v. Russell*, 66 *N. Y.* 293; which rev'd 2 *Lans.* 340, 342, which see; *Hatch v. Am. Union Tel. Co.*, 9 *Abb. N. C.* 223, 233. Reviewed and collated with other cases in 16 *West. Jur.* 325, 329. Applied (Invalidity of instrument given to execute illegal contract) in *Morris' Run Coal Co. v. Barclay Coal Co.*, 68 *Penn. St.* 173; s. c., 8 *Am. R.* 159, 168. Collated with *Gray v. Hook*, 4 *N. Y.* 459, and other cases (Rights under executory and executed illegal contracts) in 30 *Am. R.* 106, n.

— **v. Camp**, 4 *Barb.* 274. Cited as authority (Liability on contract executed by agent) in *Whitney v. Wyman*, 101 *U. S.* 392, 395. Cited with *De Witt v. Walton*, 9 *N. Y.* 571; *Hill v. Bannister*, 8 *Cow.* 31, in *Whart. Com. on Ag.* §§ 291, 292, 296. Collated with other cases in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 761.

— **v. Crosby**, 9 *Hun.* 370. See to the contrary (Impeaching jurisdiction) *Luckenbach v. Anderson*, 47 *Penn. St.* 123; *Adams v. Saratoga & W. R. R. Co.*, 10 *N. Y.* 323. And see *Abb. Tr. Ev.* 539.

— **v. Ellis**, 16 *Barb.* 319. Aff'd, but grounds of decision below questioned, in 12 *N. Y.* 575; s. c., 64 *Am. Dec.* 512, with brief note. Decision in 12 *N. Y.* disting'd (Effect of want of jurisdiction to grant discharge to insolvent) in *Dieckerhoff v. Ahlborn*, 2 *Abb. N. C.* 375; *Rusher v. Sherman*, 28 *Barb.* 420. Followed in

- Lewis v. Page, 8 *Abb. Pr. N. S.* 204; Hale v. Sweet, 40 *N. Y.* 99; Morrow v. Freeman, 61 *Id.* 515, 518.
- v. King, 8 *Hun.* 4. Aff'd, it seems, in 69 *N. Y.* 609, but without opinion. Another proceeding in 76 *Id.* 585. Decision in 8 *Hun.* explained (Liability of trust estates for goods and services) in 15 *Am. L. Rev.* 456. With decision in 76 *N. Y.* see (Limit of costs on motion) *Code Civ. Pro.* 1881, § 3251, n.
- v. Kline, 16 *Barb.* 9. Rev'd in 11 *N. Y.* 196.
- v. Miller, 1 *Sup'm. Ct. (T. & C.)* 23; s. c., 65 *Barb.* 58. Rev'd in 58 *N. Y.* 192. Further decision in 14 *Hun.* 383, aff'd in 79 *N. Y.* 620. Decision in 58 *Id.* reviewed (Effect of deed deposited in escrow in case of contract to convey land) in Campbell v. Thomas, 42 *Wis.* 437; s. c., 24 *Am. R.* 427, 431.
- v. Pritchard, 4 *Hun.* 266. Disting'd (Damages for cutting down timber) in Firmin v. Firmin, 9 *Id.* 572.
- Stape v. People, 21 *Hun.* 399. Rev'd in 85 *N. Y.* 390. Decision in *Id.* disting'd (Evidence of reports as to character) in Gulerette v. McKinley, 27 *Hun.* 320.
- Stapenhorst v. Am. Manuf. Co., 15 *Abb. Pr. N. S.* 355; s. c., 46 *How. Pr.* 510. See in connection therewith (Liability of landlord for negligence, to lessee of part of building) in Glickauf v. Maurer, 75 *Ill.* 289; s. c., 20 *Am. R.* 238.
- v. Wolff, 35 *Super. Ct. (J. & S.)* 25. Aff'd in 65 *N. Y.* 596.
- Staples v. Anderson, 3 *Robt.* 327. Approved (Fraudulent concealment by landlord, as defense to action for rent) and Meeks v. Bowerman, 1 *Daly*, 99, disapproved in Rhineland v. Seaman, 13 *Abb. N. C.* 455, n. Quoted and collated with other cases in *McAdam on Landl. & T.* 2 ed. § 73.
- v. Fairchild, 3 *N. Y.* 41; s. c., less fully, 3 *Code R.* 132. Explained (Jurisdiction to grant attachment) in Renard v. Hargous, 2 *Duer*, 551. Followed in Payne v. Young, 8 *N. Y.* 159; Van Alstyne v. Erwine, 11 *Id.* 338, 341. Applied (Jurisdiction of officers, &c. of limited jurisdiction) in Roderigas v. East River Savgs Inst., 63 *Id.* 464. Disting'd (Sufficiency of statements as to residence) in Lachaise v. Marks, 4 *E. D. Smith*, 617.
- v. Goodrich, 21 *Barb.* 317. Applied with numerous other authorities) Effect of recovery for part of entire demand) in Burritt v. Bulfy, 47 *Conn.* 323, 326.
- v. Gould, 5 *Sandf.* 411. Aff'd in 9 *N. Y.* 520. See Merritt v. Millard.
- Starbird v. Barrows, 2 *Hun.* 108; s. c., more fully as Starbird v. Barrows, 4 *Sup'm. Ct. (T. & C.)* 686. Aff'd in 62 *N. Y.* 615. Previous decision as Starbird v. Barrows, 38 *Id.* 230.
- Starbuck v. Murray, 5 *Wend.* 148; s. c., 21 *Am. Dec.* 172, with note collating approvals thereof. See Hunt v. Hunt. Followed (Conclusiveness of judgment rendered in another State) in Noyes v. Butler, 6 *Barb.* 620; Howard v. Smith, 42 *How. Pr.* 312; Kinnier v. Kinnier, 45 *N. Y.* 539. Disting'd in Holbrook v. Murray, 5 *Wend.* 162. Disapproved with Shumway v. Stillman, 6 *Wend.* 447; Borden v. Fitch, 15 *Johns.* 121; Andrews v. Montgomery, 19 *Id.* 162, in Wilcox v. Kasseck, 2 *Mich.* 172; citing Read v. Pratt, 2 *Hill*, 64. Followed with Borden v. Fitch, 15 *Johns.* 121, in Pennywit v. Foote, 27 *Ohio St.* 600; s. c., 22 *Am. R.* 340, 350. Followed with Mervin v. Kumbel, 23 *Wend.* 293, in Bowler v. Huston, 30 *Gratt. (Va.)* 266; s. c., 32 *Am. R.* 673, 678. Followed and approved notwithstanding contrary decisions, in McCauley v. Hargroves, 48 *Ga.* 50; s. c., 15 *Am. R.* 660. Approved in Marx v. Fore, 51 *Mo.* 69; s. c., 11 *Am. R.* 432, 434, with note. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 644. Explained and dicta criticised in *Freeman on Judgm.* § 133. Applied (Inquiry into jurisdiction) in Adams v. Saratoga, &c. R. R. Co., 10 *N. Y.* 333; Bolton v. Jacks, 6 *Robt.* 198. Explained in Ferguson v. Crawford, 70 *N. Y.* 262; Mervin v. Kumbel, 23 *Wend.* 302. Approved in Sears v. Terry, 26 *Conn.* 273. Disting'd in Newcomb's Executors v. Newcomb, 13 *Bush (Ky.)* 544; s. c., 26 *Am. R.* 222, 235. Compared and cases cited in 6 *Am. L. Reg. N. S.* 11.
- Starin v. Kelly, 47 *Super. Ct. (J. & S.)* 288. Aff'd in 88 *N. Y.* 418. Prior decision in 36 *Super. Ct. (J. & S.)* 366. See Spear v. Myers.
- v. Town of Genoa, 23 *N. Y.* 439. Previous decision as Gould v. Town of Venice, 29 *Barb.* 442. See Allen v. Brown; Bank of Rome v. Village of Rome; Gould v. Town of Sterling. Followed (Validity of town bonds) in Town of Venice v. Breed, 65 *Barb.* 601; Town of Venice v. Woodruff, 62 *N. Y.* 465; Horton v. Town of Thompson, 71 *Id.* 523. Explained in People ex rel. N. Y. & Canada R. R. Co. v. Hutton, 18 *Hun.* 121. Disting'd in Pierce v. Wright, 45 *How. Pr.* 7; People ex rel. Martin v. Brown, 55 *N. Y.* 186. Reiterated, and reporter's note explained, in People v. Mead, 24 *N. Y.* 114, 124. Commented on and disting'd with Murdock v. Aiken, 29 *Barb.* 59; Ross v. Curtiss, 31 *N. Y.* 606; People v. Mead, 24 *Id.* 114, in People v. Mead, 36 *Id.* 224, 228. Applied in Scipio v. Wright, 101 *U. S.* 665, 675. Disapproved with Gould v. Town of Sterling, 23 *N. Y.* 456, in Steines v. Franklin County, 48 *Mo.* 167; s. c., 8 *Am. R.* 87, 91; Town of Venice v. Murdock, 92 *U. S.* 494; s. c., 18 *Am. R.* 264. Compare 7 *South. L. Rev. N. S.* 229. Applied (Statute when not invalid, as delegating legislative authority) in Bank of Chenango v. Brown, 26 *N. Y.* 471. Examined and approved with Barto v. Himrod, 8 *Id.* 483; Bank of Rome v. Village of Rome, 18 *Id.* 37; 19 *Id.* 20; Gould v. Town of

- Sterling, 23 *Id.* 456, in *Clark v. City of Rochester*, 28 *Id.* 605, 633. Compared, and *People v. Lawrence*, 6 *Hill*, 244, deemed overruled (Recovery from town, of sum appropriated for special purpose) in *Healey v. Dudley*, 5 *Lans.* 126.
- Staring v. Bowen**, 6 *Barb.* 109. See to the contrary (When probate is not evidence) *Telford v. Barney*, 1 *Greene (Iowa)* 575; *Stevenson v. Huddeson*, 13 *B. Mon. (Ky.)* 299; but see *Abb. Tr. Ev.* 110.
- Stark v. Boswell**, 6 *Hill*, 405; s. c., 41 *Am. Dec.* 752, with note wherein are collected citations (Evidence of declarations of former owner).
- Starks v. Bates**, 12 *How. Pr.* 465. Applied (Change of venue) in *Gifford v. Town of Gravesend*, 8 *Abb. N. C.* 248.
- **v. People**, 5 *Den.* 106. Followed (Evidence to show hostility of witness to party against whom he is called) in *Newton v. Harris*, 6 *N. Y.* 346.
- Starr v. Child**, 20 *Wend.* 149. Rev'd in 4 *Hill*, 369. Decision in 20 *Wend.* collated with other cases (Grants of highways bounded on navigable streams) in *Mills Thomp. on Highw.* 3 ed. 49.
- **v. Ellis**. See *Gardner v. Astor*.
- **v. Peck**, 1 *Hill*, 270. See *Cheney v. Arnold*; *Fenton v. Reed*; *Robinson v. Dauchy*. Disapproved (Proof of marriage) in *Caujolle v. Ferrie*, 26 *Barb.* 185; which aff'd 4 *Bradf.* 28, 87, and was aff'd in 23 *N. Y.* 107, which see. Dicta explained in *Cheney v. Arnold*, 15 *Id.* 347. Disting'd in *Davis v. Brown*, 1 *Redf.* 262. Relied on with *Fenton v. Reed*, 4 *Johns.* 51; *Rose v. Clark*, 8 *Paige*, 573; *Jackson v. Claw*, 18 *Johns.* 347, in *Blanchard v. Lambert*, 43 *Iowa*, 228; s. c., 22 *Am. R.* 245, 248. Approved with *Clayton v. Wardell*, 4 *N. Y.* 230; *Caujolle v. Ferrie*, 23 *Id.* 90; *O'Gara v. Eisenlohr*, 38 *Id.* 296; *Foster v. Hawley*, 8 *Hun.* 63; *Jackson v. Claw*, 18 *Johns.* 346, in *Williams v. Williams*, 46 *Wis.* 464; s. c., 32 *Am. R.* 722. Explained in 2 *Para. on Contr.* 77 n. v. Discussed in 2 *Add. on Contr.* 848, n., *Abb. ed.*
- **v. Trustees of Rochester**, 6 *Wend.* 564. Disting'd (Power of review in condemnation proceedings) in *Matter of Kings Co. Elev. R'y Co.*, 82 *N. Y.* 95, 102. Examined with other cases (Validity of street opening proceedings) in *Buell v. Trustees of Lockport*, 11 *Barb.* 606. Applied (*Certiorari*, to whom to issue) in *People v. Hill*, 65 *Id.* 170, 174; *People ex rel. Corwin v. Walter*, 68 *N. Y.* 409. Followed (Who may allow common law writ of *certiorari*) in *Gardner v. Comm'rs of Highways of Warren*, 10 *How. Pr.* 182. Examined with other cases (Power of court on *certiorari*) in *Birdsall v. Phillips*, 17 *Wend.* 469.
- **v. Vanderheyden**, 9 *Johns.* 253; s. c., 6 *Am. Dec.* 275. See *Evans v. Ellis*.
- **v. Winegar**, 3 *Hun.* 491. Explained (Measure of damages in case of accession or confusion of goods) in 3 *Para. on Contr.* 169, n. 1, *Keller's ed.*
- State B'k of Troy v. Bank of the Capitol**. See *Mead v. Engs.*
- State of Illinois v. Delafield**, 8 *Paige*, 527. See *Delafield v. State of Illinois*. Disting'd (Validity of bonds issued by public authority) in *Gould v. Town of Sterling*, 23 *N. Y.* 465.
- State of Indiana v. Woram**, 6 *Hill*, 33. Applied (*Estoppel* to assert invalidity of corporate contract) in *Steam Nav. Co. v. Weed*, 17 *Barb.* 381. Explained in *Town of Verona v. Peckham*, 66 *Id.* 103, 113. Disting'd in *N. Y. State Loan and Trust Co. v. Helmer*, 77 *N. Y.* 64, 71. Collated with other cases in *Field on Ultra Vires*, 187. Quoted in *Morawetz on Corp.* § 103, n. 1.
- State of Michigan v. Phoenix Bank**, 4 *Bosw.* 363. Further decision in 7 *Id.* 20, modified on appeal, in 33 *N. Y.* 9. Decision in *Id.* applied (Collaterally impeaching audit and allowance obtained by fraud) in *Brennan v. Mayor, &c. of N. Y.*, 8 *Daly*, 426, 433; *People v. Tweed*, 50 *How. Pr.* 443. Applied to judicial decision in *People v. Eddy*, 57 *Barb.* 602. Disting'd in *Verplanck v. Van Buren*, 11 *Hun.* 328, 332; which was rev'd in effect in 76 *N. Y.* 247.
- State of N. Y. v. City of Buffalo**, 2 *Hill*, 434. Explained (Effect of bond taken by official without authority) in *Webb v. Albertson*, 4 *Barb.* 52. Applied in *Richardson v. Crandall*, 30 *How. Pr.* 140; which was rev'd in 48 *N. Y.* 348, 365, which see; *Superv'rs of Rensselaer v. Bates*, 17 *Id.* 245. Applied to contract for payment of money in *Alger v. Miller*, 56 *Barb.* 232. Applied (Implied powers of municipal corporation) in *Reynolds v. Mayor, &c. of Albany*, 8 *Id.* 601; *Ketchum v. City of Buffalo*, 21 *Id.* 303; which was aff'd in 14 *N. Y.* 375, which see. Disting'd (Ratification of unauthorized act of public agent) in *Richardson v. Crandall*, 47 *Barb.* 367.
- Staunton v. Parker**, 19 *Hun.* 55. See *Whiting v. Barney*. Disapproved (Power of representatives of deceased to waive protection of physician's professional knowledge) in *Pearsall v. Elmer*, 5 *Redf.* 181, 185. Followed (Effect of agreement to renounce exemption) in *Ellicott v. Chamberlin*, 38 *N. J. Eq.* (11 *Stew.*) 604; s. c., 48 *Am. R.* 327.
- Steam Navigation Co. v. Weed**, 17 *Barb.* 378. Disting'd (Liability on contract *ultra vires*) in *N. Y. State Loan & Trust Co. v. Helmer*, 77 *N. Y.* 64, 71. Followed in *State Board of Agriculture v. Citizens' Street R'y Co.*, 47 *Ind.* 407; s. c., 17 *Am. R.* 702, 707. Collated with other cases in *Field on Ultra Vires*, 186. Quoted in *Morawetz on Corp.* § 105.
- Stearns v. Gage**, 79 *N. Y.* 102. See *Baker v. Bliss*. Questioned (Constructive notice)

- in 23 *Alb. L. J.* 126. Discussed in *Wait on Fraud. Conv.* §§ 375, 378.
- *v. Marsh*, 4 *Den.* 227. Applied (Necessity of notice before sale by pledgee) in *Lewis v. Graham*, 4 *Abb. Pr.* 110; *Wheeler v. Newbould*, 16 *N. Y.* 400. Disting'd in *Milliken v. Dehon*, 27 *Id.* 375.
- *v. Tappin*, 5 *Duer*, 294. Followed (Basis of action on debt, in case of new promise after discharge) in *Dusenbury v. Hoyt*, 36 *Super. Ct. (J. & S.)* 94, 97.
- *v. Welsh*, 50 *How. Pr.* 186. Aff'd in 7 *Hun*, 676.
- Stebbins v. Brown**, 65 *Barb.* 272. Further proceeding in *Id.* 274. See *Fudickar v. Guardian Mut. Life Ins. Co.*; *Gray v. Fisk*.
- *v. East Society of M. E. Church of Rochester*, 12 *How. Pr.* 410. Overruled with *Hoppeck v. Donaldson*, 12 *Id.* 141; *Grandal v. Finn*, 13 *Id.* 418 (Sufficiency of statement on confession of judgment) in *Acker v. Acker*, 1 *Abb. Ct. App. Dec.* 1, and cases there cited. See *Moody v. Townsend*.
- *v. Globe Ins. Co.*, 2 *Hall*, 632. Disting'd (Effect of alterations in insured premises) in *Merriam v. Middlesex Mut. Fire Ins. Co.*, 21 *Pick. (Mass.)* 162; s. c., 32 *Am. Dec.* 252.
- *v. Hall*, 29 *Barb.* 524. Explained (Liability of grantee of mortgaged premises) in 3 *Washb. on Real Prop.* 4 ed. 489.
- *v. Phoenix Ins. Co.*, 3 *Paige*, 350. See (Rights of transferee of corporate stock) in *McNeil v. Tenth Nat. B'k*, 46 *N. Y.* 325, 332. Explained in *McCready v. Rumsey*, 6 *Duer*, 574, 581. Reviewed with *Mechanic's B'k v. New Haven R. Co.*, 13 *N. Y.* 622, 624, 626, and other cases, in *Lockwood v. Mechanics' Nat. Bank*, 9 *R. I.* 308; s. c., 11 *Am. R.* 253, 264. Followed with *Gilbert v. Manchester Iron Co.*, 11 *Wend.* 627, in *Reed v. Copeland*, 50 *Conn.* 472; s. c., 47 *Am. R.* 663.
- *v. Sherman*, 1 *Sandf.* 510. Reviewed with other cases (Promise to pay pre-existing debt, as affected by discharge in bankruptcy) in *Nelson v. Stewart*, 54 *Ala.* 115; s. c., 25 *Am. R.* 660. Followed in *Graves v. McGuire*, 79 *Ky.* 532, 536.
- Stedman v. Feidler**, 25 *Barb.* 605. Aff'd in 20 *N. Y.* 437. Decision in *Id.* approved as clearly in accordance with the authorities (Power of executors, &c. to authorize master or ship's husband to act) in *Gum v. Frost*, *U. S. Distr. Ct. S. D. N. Y.* 1880, 4 *Fed. Rep.* 745, 748.
- Steele v. Benham**, 21 *Hun*, 411. Rev'd in 84 *N. Y.* 634.
- *v. Southwick*, 9 *Johns.* 214. Approved (Requisites of libel) in *Cooper v. Greeley*, 1 *Den.* 341, 347. See *Parker v. Mitchell*, 31 *Barb.* 461. Disting'd in *Colby v. Reynolds*, 6 *Vt.* 489; s. c., 27 *Am. Dec.* 574. Applied and *Stone v. Cooper*, 2 *Den.* 293, approved in *Tillson v. Robbins*, 63 *Me.* 295; s. c., 28 *Am. R.* 50, 55. Cited with *People v. Crosswell*, 3 *Johns. Cas.* 354, in 2 *Kent Com.* 16, n. d. Collated with other cases in *Bigel. Cas. on Torts*, 108. Included with notes in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 125.
- *v. Western Inland Lock Nav. Co.*, 2 *Johns.* 283. Explained (Liability for damage caused by work done under authority of statute) in *Hickox v. City of Cleveland*, 8 *Ohio*, 543; s. c., 32 *Am. Dec.* 730, with note. Followed (Presumption that damages assessed for excavations in land include damages for all the injuries) in *Aldrich v. Cheshire R. R. Co.*, 21 *N. H.* 359; s. c., 53 *Am. Dec.* 212, with note.
- *v. Whipple*, 21 *Wend.* 103; s. c., 13 *N. Y. Com. L. Law. ed.* 1029, with brief note. Commented on and explained (What is usurious loan of credit) in *Ketchum v. Barber*, 4 *Hill*, 224, 234. Examined and doubted, and head-note corrected, in *Van Dusen v. Howe*, 21 *N. Y.* 531, 533.
- Steelyards v. Singer**, 2 *Hilt.* 96. Disapproved (Effect of conditional sale as to subsequent purchaser) in *Ballard v. Burgett*, 47 *Barb.* 646, 652; *Rawls v. Deshler*, 28 *How. Pr.* 66, 73. Cited with *Smith v. Lynes*, 5 *N. Y.* 41; *Haggerty v. Palmer*, 6 *Johns. Ch.* 437; *Keeler v. Field*, 1 *Paige*, 312; *Herring v. Hoppeck*, 15 *N. Y.* 409; *Beavers v. Lane*, 6 *Duer*, 232; *Wait v. Green*, 35 *Barb.* 585; *Ludden v. Hazen*, 31 *Id.* 650; *Bonesteel v. Flack*, 41 *Id.* 435; *Powell v. Preston*, 1 *Hun*, 513,—as indicating the *N. Y.* doctrine,—in *Lewis v. McCabe*, 49 *Conn.* 141; s. c., 15 *Reporter*, 141; 21 *Am. L. Reg. N. S.* 217, with note collating cases. Thought in 32 *Am. Dec.* 554, n., not to be in accord with *Neidig v. Eifler*, 18 *Abb. Pr.* 353.
- Steere v. Miller**, 28 *How. Pr.* 266. Aff'd in 30 *Id.* 7. See (Fees to party attending as witness) *Code Civ. Pro.* 1881, § 3288, n.
- *v. Steere*, 5 *Johns. Ch.* 1; s. c., 9 *Am. Dec.* 256. See *Botsford v. Burr*. Examined with *Jackson v. Moore*, 6 *Conn.* 706 (What creates trust) in *Pratt v. Ayer*, 3 *Chand. (Wisc.)* 286. Followed with *Botsford v. Burr*, 2 *Johns. Ch.* 405; *Boyd v. McLean*, 1 *Id.* 582, in *Pritchard v. Brown*, 4 *N. H.* 397; s. c., 17 *Am. Dec.* 431, with note. See 2 *Fonb. Eq. ch. V*, § 1, p. 118, n. c. Discussed in *Browne on Stat. of Frauds*, §§ 99, 108, 4 ed. Quoted in 1 *Perry on Trusts*, 3 ed. § 82, n. 7.
- Steers v. Liverpool, N. Y., &c. Steamship Co.**, 57 *N. Y.* 1; s. c., 15 *Am. R.* 453, with note. See *Cole v. Goodwin*; *Lamb v. Camden & Amboy R. R., &c. Co.*
- Steinbach v. La Fayette Fire Ins. Co.**, 54 *N. Y.* 90. Applied (Effect of presence on insured premises, of hazardous articles placed there in the ordinary course of business) in *St. Nicholas Ins. Co. v. Merchants' Ins. Co.*, 11 *Hun*, 114. Explained in *Steinbach v. Relief Ins. Co.*, 12 *Hun*, 643; 77 *N. Y.* 500. See to the contrary *Same v. Same*, 13 *Wall.* 183. Collated with *Hall v. Ins. Co. of No. America*, 58 *N. Y.* 292, in 33

- Am. R.* 781, *n.*, as with the weight of authority. Compare 15 *Am. L. Rev.* 768, citing other cases.
- **v. Relief Fire Ins. Co.**, 12 *Hun.* 640. Aff'd in 77 *N. Y.* 498; *s. c.*, 33 *Am. R.* 655. See also (Decision in prior action) in 13 *Wall.* 183.
- Steinberg v. Manhattan R'y Co.**, 46 *Super. Ct. (J. & S.)* 216. Explained (Requiring security for costs from guardian *ad litem*) in *Meredeth v. Forty-second St. &c. R. R. Co.*, 1 *Civ. Pro. R.* 15, *n.*
- Steinfeld v. Levy**, 16 *Abb. Pr. N. S.* 26. Approved (Effect, contract of marriage based on immoral consideration) in *Hanks v. Naglee*, 54 *Cal.* 51; *s. c.*, 35 *Am. R.* 67, with note.
- Steinweg v. Erie R'y Co.**, 43 *N. Y.* 123. See *Wells v. Steam Nav. Co.* Applied (Contract, when insufficient to release carrier from liability for negligence) in *Mynard v. Syracuse, &c. R. R. Co.*, 71 *N. Y.* 184; *Magnin v. Dinsmore*, 56 *Id.* 168, 174. Followed in *Michigan Southern, &c. R. R. Co. v. Heaton*, 37 *Ind.* 448; *s. c.*, 10 *Am. R.* 89, 95. Approved in *New Orleans, &c. R. R. Co. v. Faler*, *Sup'm. Ct. Miss.* 1876, 10 *Reporter*, 811. Applied (Duty of carrier to use approved appliances) in *Bevier v. Delaware, &c. Canal Co.*, 13 *Hun.* 258. Explained and applied in *Caldwell v. N. J. Steamboat Co.*, 47 *N. Y.* 287.
- Stelle v. Palmer**, 7 *Abb. Pr.* 181. See (Vacating order of arrest) *Code Civ. Pro.* 1881, § 568, *n.*
- Stent v. Continental Nat. B'k**, 5 *Abb. N. C.* 88. Followed with *Metraz v. Pearsall*, *Id.* 90; *Brotherton v. Downey*, 21 *Hun.* 436 (Denials on information and belief) and *Hautemann v. Gray*, 5 *Civ. Pro. R. (Browne)* 224, *n.*, disting'd in *Henderson v. Manning*, *Id.* 221. See *Code Civ. Pro.* 1881, § 524, *n.*
- Stenton v. Jerome**, 54 *N. Y.* 480. See *Markham v. Jandon*; *Murray v. Toland*. Applied (Conclusiveness of account stated) in *Harrison v. Ayers*, 18 *Hun.* 337.
- Stephens, Matter of**, 11 *Weekly Dig.* 344. Reported as *Stephens v. Marshall*, 23 *Hun.* 641.
- Stephens v. Baird**, 9 *Cov.* 274. Reviewed with other cases (*Estoppel in pais*) in *Brown v. Wheeler*, 17 *Conn.* 345; *s. c.*, 44 *Am. Dec.* 551.
- **v. Beard**, 4 *Wend.* 604. Disapproved (Damages for breach of contract of sale) in *Taylor v. Read*, 4 *Paige*, 561, 569. Followed in *Lawrence v. Miller*, 86 *N. Y.* 131, 140.
- **v. Board of Education of Brooklyn**, 3 *Hun.* 712; *s. c.*, 6 *Sup'm. Ct. (T. & C.)* 148. Subsequent decision in 79 *N. Y.* 183; *s. c.*, 35 *Am. R.* 511. Decision in *Id.* followed (Recovery of money paid by mistake) in *Southwick v. First Nat. B'k of Memphis*, 84 *N. Y.* 420, 435.
- **v. Browning**, 1 *Code R.* 123. Doubted (Execution against personal property) in *Stoutenburgh v. Vandenburg*, 7 *How. Pr.* 229.
- **v. Buffalo & N. Y. City R. R. Co.** See *Jackson v. Dunlap*.
- **v. Casbacker**, 8 *Hun.* 116. See *Garnsey v. Rogers*. Applied (Release of grantee from liability for mortgage) in *Devlin v. Murphy*, 5 *Abb. N. C.* 242, 245. Disapproved in *Whiting v. Gearty*, 14 *Hun.* 498, 501. Questioned in *Ranney v. McMullen*, 5 *Abb. N. C.* 246, 257. Overruled in *Douglas v. Wells*, 18 *Hun.* 88, 91. Doubted in *Thomas on Mort.* 195.
- **v. De Conto**, 7 *Robt.* 343. Applied (Protection in use of name of newspaper) in *American Grocer v. Grocer Pub. Co.*, 25 *Hun.* 393, 404.
- **v. Ely**. See *Sackett v. Andross*.
- **v. Fox**, 17 *Hun.* 435. Aff'd in 83 *N. Y.* 313. Decision in *Id.* followed (Judgment against corporation, as evidence of stockholder's liability) in *Doctor v. Guggenheim, N. Y. Daily Reg.* Feb. 20, 1884.
- **v. People**, 4 *Park.* 396. Aff'd in 19 *N. Y.* 549. See *Speyer v. Stern*. Decision in 19 *N. Y.* applied (Contradiction of witness) in *Hobby v. Hobby*, 64 *Barb.* 285. Explained in *Romertze v. East River Nat. Bank*, 49 *N. Y.* 577, 581; which rev'd 2 *Sweeny*, 82, 91, which see. Applied (Effect of material omission in record) in *Graham v. People*, 63 *Barb.* 479. Explained (What may be reviewed on writ of error) in *Willis v. People*, 32 *N. Y.* 720. Approved (Presumption that accused person was present throughout his trial) in 28 *Am. Dec.* 631, *n.*, as consistent with reason and authority. Decision in 4 *Park.* applied with *Lowenberg v. People*, 5 *Id.* 414; *Cancemi v. People*, 16 *N. Y.* 501 (Evidence of character in criminal cases) in *State v. Northrup*, 48 *Iowa*, 583; *s. c.*, 30 *Am. R.* 408, 410.
- **v. —**, 71 *N. Y.* 527. Corrected in 72 *Id.* 621.
- **v. Santee**, 51 *Barb.* 532. Rev'd in 49 *N. Y.* 35. See *Courtwright v. Stewart*. Decision in 51 *Barb.* disting'd (Necessity of entering justices' judgment on docket) in *Christopher v. Van Liew*, 57 *Id.* 17, 29. Disapproved in *Goodrich v. Sullivan*, 1 *Sup'm. Ct. (T. & C.)* 191, citing *Fish v. Emerson*, 44 *N. Y.* 380. Compare *Code Civ. Pro.* § 3015. Decision in 49 *N. Y.* explained (What is judicial act) in *Youmans v. Simmons*, 7 *Hun.* 468. Disting'd (When title passes on sale) in *Hurd v. Cook*, 75 *N. Y.* 454, 459.
- **v. Vroman**, 18 *Barb.* 250. Rev'd in 16 *N. Y.* 381. Decision in *Id.* cited (Effect of hearsay evidence reported by party to the suit) in 1 *Whart. Com. on Ev.* § 176.
- **v. Waite**, 10 *Weekly Dig.* 421; *mem. s. c.*, 21 *Hun.* 406. Aff'd in 12 *Weekly Dig.* 9; *briefcr mem.* in 84 *N. Y.* 653.
- **v. Wider**, 32 *N. Y.* 351. See to same effect (Affirmance of judgment for defendant that should have been for plaintiff

- with nominal damages) *McConihe v. N. Y. & Erie R. R. Co.*, 20 *Id.* 495. See to the contrary, *Searles v. Cronk*, 88 *How. Pr.* 320.
- Stephenson v. Hall**, 14 *Barb.* 222. Reviewed with other cases (Prerogative of those having direction of schools, over scholars) in *Ferriter v. Tyler*, 48 *Vt.* 444; s. c., 21 *Am. R.* 133, 148. Applied in *Dritt v. Snodgrass*, 66 *Mo.* 286; s. c., 27 *Am. R.* 343, 347.
- **v. N. Y. & Harlem R. R. Co.**, 2 *Duer*, 341. Disapproved as contrary to authority and to general practice of railroad companies (Extent of implied authority of railroad superintendent) in *Marquette, &c. R. R. Co. v. Taft*, 28 *Mich.* 289, 300. Explained and compared in 1 *Add. on Contr.* 7, n. 1., *Abb. ed.*; *Id.* 93, n. 1.
- Sterling v. Jaudon**, 48 *Barb.* 459. See *Hanks v. Drake*. Overruled (Broker's right to buy or sell for deficiency in margin) in *Markham v. Jaudon*, 41 *N. Y.* 235, 243.
- Stern v. O'Connell**, 35 *N. Y.* 104. Disting'd and limited (Effect of filing *lis pendens*) in *Lamont v. Cheshire*, 65 *Id.* 39.
- Sternberger v. McGovern**, 4 *Daly*, 456. Rev'd in 56 *N. Y.* 12; s. c., 15 *Abb. Pr.* N. S. 257. Decision in *Id.* applied (Right to relief, as established by allegations of complaint) in *Seeley v. N. Y. Nat. Exch. B'k*, 8 *Daly*, 400, 405; *Knapp v. Roche*, 37 *Super. Ct. (J. & S.)* 395, 404. Compare *Wheelock v. Lee*, 5 *Abb. N. C.* 72, 75.
- Sterne v. Goep**, 20 *Hun*, 396. Aff'd in 84 *N. Y.* 641, but without opinion.
- Sternfels v. Clark**, 2 *Hun*, 122; s. c., 4 *Sup'm. Ct. (T. & C.)* 396. Aff'd, it seems, in 70 *N. Y.* 608, but without opinion.
- Sternhaus v. Schmidt**, 5 *Abb. Pr.* 66. Followed (Defective undertaking offered on appeal) and *Parfitt v. Warner*, 13 *Id.* 471, disregarded in *Dinkel v. Wehle*, 61 *How. Pr.* 160.
- Sterry v. Arden**, 1 *Johns. Ch.* 261. Aff'd in 12 *Johns.* 536; s. c., 7 *Am. Dec.* 348, with note. See *Roberts v. Anderson*. Decision in 12 *Johns.* applied (Proof of delivery of deed) in *Lawrence v. Farley*, 24 *Hun*, 293, 295. Explained in *Church v. Gilman*, 15 *Wend.* 660. Disting'd in *Rogers v. Carey*, 47 *Mo.* 232; s. c., 4 *Am. R.* 322. Disting'd with *Phoenix v. Dey*, 5 *Johns.* 412; *Doe v. Roe*, 1 *John. Cas.* 402 (Effect of declarations of person on rights of those claiming under him) in *Chadwick v. Weber*, 3 *Greenl. (Me.)* 141; s. c., 14 *Am. Dec.* 222. Decisions in 1 *Johns. Ch.* 12 *Johns.* followed (Marriage, as valuable consideration to support ante-nuptial settlement) in *Herring v. Wickham*, 29 *Gratt. (Va.)* 628; s. c., 26 *Am. R.* 405, 410, 418. Decision in 1 *Johns. Ch.* quoted in *Wait on Fraud. Conv.* § 212. Followed (Effect of voluntary conveyance as against subsequent purchaser) in *Anderson v. Green*, 7 *J. J. Marsh. (Ky.)* 448; s. c., 23 *Am. Dec.* 417, with note. Explained in 4 *Kent Com.* 463. Decisions in 1 *Johns. Ch.* & 12 *Johns.*; reviewed in
- Lancaster v. Dolan*, 1 *Rawle (Pa.)* 231; s. c., 18 *Am. Dec.* 625, with note. Decision in 1 *Johns. Ch.* examined with *Tuttle v. Jackson*, 6 *Wend.* 213; *Wiswall v. McGown*, 2 *Barb.* 270; *Snyder v. Sponable*, 1 *Hill*, 567 (What will put purchaser on inquiry) in *Parker v. Kane*, 4 *Wisc.* 16. Decision in 12 *Johns.* applied (Impeaching voluntary conveyance) in *Jackson v. Town*, 4 *Cow.* 603; *Seward v. Jackson*, 8 *Id.* 436, 449. Explained and applied in *Babcock v. Eckler*, 24 *N. Y.* 633. Commented on (Fraud in law and in fact) in *Burrill on Assign.* § 333, 4 ed.
- Stettheimer v. Meyer**, 33 *Barb.* 215. Applied (Who is holder for value of note made for special purpose) in *Bank of State of N. Y. v. Vanderhorst*, 32 *N. Y.* 553, 558; which aff'd 1 *Robt.* 217, which sec.
- Steuben County B'k v. Alberger**, 14 *Hun*, 379; s. c., more fully, 55 *How. Pr.* 481. Rev'd in 75 *N. Y.* 179; s. c., 56 *How. Pr.* 345. Further decision in 78 *N. Y.* 252. See *Yates v. North*. Decision in 75 *N. Y.* disting'd (Proof on application to vacate attachment) in *Godfrey v. Godfrey, Id.* 435. See *Code Civ. Pro.* 1881, § 683, n. Explained (Right to move against attachment) in *Trow's Printing, &c. Co. v. Hart*, 60 *How. Pr.* 191. Disting'd in *Tim v. Smith*, 93 *N. Y.* 87. Followed in *Smith v. Davis*, 29 *Hun*, 306.
- Stevens v. Adams**, 23 *Wend.* 57. Aff'd in 26 *Id.* 451.
- **v. Armstrong**, 6 *N. Y.* 435. See *Blake v. Ferris*; *Mayor, &c. of N. Y. v. Bailey*; *Sheridan v. Charlick*. Followed (Liability for negligence of person not one's servant) in *McCullough v. Shoneman*, 105 *Pa. St.* 169, 172. Quoted in 2 *Chitty on Contr.* 860, n. 1<sup>2</sup>, 11 *Am. ed.* Explained in 1 *Add. on Contr.* 589, n., *Wood's ed.*
- **v. Barringer**, 13 *Wend.* 639. Collated with other cases (Interest while injunction against paying principal continues) in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 643.
- **v. Beekman**, 1 *Johns. Ch.* 318. See *Jerome v. Ross*. Quoted and explained (Injunction against trespass) in 1 *High on Inj.* 2 ed. § 724, n. 5.
- **v. Benton**, 2 *Lans.* 156. See points of counsel in 89 *How. Pr.* 13.
- **v. Brennan**, 79 *N. Y.* 254. See numerous cases cited (Rights of purchaser from fraudulent vendee) in 15 *Am. L. Rev.* 386.
- **v. Buffalo, &c. R. R. Co.**, 31 *Barb.* 590. Followed (Rolling stock as personalty) in *Beardsley v. Ontario B'k, Id.* 619, 636; *Hoyle v. Plattsburgh, &c. R. R. Co.*, 54 *N. Y.* 321; which rev'd 51 *Barb.* 61, which aff'd 47 *Id.* 109, which see; *Randall v. Elwell*, 52 *N. Y.* 521, 525. See 2 *L.* 1868, c. 779.
- **v. Commercial Mut. Ins. Co.**, 26 *N. Y.* 297. Aff'd 6 *Duer*, 594. See *Fernandez v. Great Western Ins. Co.* Decision in 26 *N. Y.* followed (Violation of marine policy by sailing toward prohibited port) in *Snow v. Columbian Ins. Co.*, 48 *Barb.* 469, 478.

- **v. Cooper**, 1 *Johns. Ch.* 425; s. c., 7 *Am. Dec.* 499, with note containing citations. See *Fleming v. Gilbert*. Approved (Inadmissibility of parol evidence to vary legal import of written contract) in *Webb v. Rice*, 6 *Hill*, 219; *Towner v. Lucas*, 13 *Gratt. (Va.)* 705. Disting'd in *Kimball v. Myers*, 21 *Mich.* 276; s. c., 4 *Am. R.* 487. Reviewed with *Botsford v. Burr*, 2 *Johns. Ch.* 416, and other cases (Discharge of written agreement by parol) in *Boyce v. McCullough*, 3 *Watts & S. (Pa.)* 42; s. c., 39 *Am. Dec.* 85, 37, with note. Applied (Duty of creditor having lien on two funds) in *Ingalls v. Morgan*, 10 *N. Y.* 188. Disting'd (Effect of release of part of mortgaged premises) in *Stuyvesant v. Hone*, 1 *Sandf. Ch.* 429. Disting'd (Stay of mortgagee's remedy, in order to settle question of contribution) in *Brinckerhoff v. Lansing*, 4 *Johns. Ch.* 77. Discussed in 2 *Washb. on Real Prop.* 4 ed. 201.
- **v. Hauser**, 1 *Robt.* 50. Rev'd in 39 *N. Y.* 302. With decision in *Id.* see to the contrary (Evidence of grantor's title in ejectment suit) cases cited in *Abb. Tr. Ev.* 705, n. 3.
- **v. Howard**, 12 *Johns.* 195. Explained (Right of action by mother of bastard child against overseers of poor for its maintenance) in *Rockefeller v. Donnelly*, 8 *Cow.* 623, 651.
- **v. Hyde**, 32 *Barb.* 171. Explained and applied (Duty of one seeking to rescind contract for fraud) in *Gould v. Cayuga, &c. Nat. B'k*, 21 *Hun*, 293, 301. Applied (Rescission of contract of sale procured by fraud) in *Bliss v. Cottle*, 32 *Barb.* 324; *Pearse v. Pettis*, 47 *Id.* 282. Followed (Necessity of demand before suit) in *Talcott v. Biding*, 36 *Super. Ct. (J. & S.)* 84, 98.
- **v. Judson**, 4 *Wend.* 471. Quoted (Plea of fraud in actions on specialty) in 2 *Pars. on Cont.* 783, n. d.
- **v. Lockwood**, 13 *Wend.* 644; s. c., 28 *Am. Dec.* 492, with note containing citations. See *Guernsey v. Carver*. Disting'd (Former recovery as bar) in *Perry v. Dickerson*, 85 *N. Y.* 345, 348. Applied with numerous other authorities in *Burritt v. Bilfy*, 47 *Conn.* 323, 326.
- **v. Mayor, &c. of N. Y.**, 46 *Super. Ct.* 274. Aff'd in 84 *N. Y.* 296. See *Miner v. Same*; *Reuben v. Joel*.
- **v. People**, 1 *Hill*, 261. Explained (Meaning of term "conviction") in *U. S. v. Watkinds*, *U. S. Cir. Ct. D. Oreg.* 1881, 11 *Reporter*, 560; citing *Smith v. Commonwealth*, 14 *Serg. & R. (Pa.)* 69, to the contrary.
- **v. Phoenix Ins. Co.**, 41 *N. Y.* 149. Prior decision in 24 *How. Pr.* 517. Decision in 41 *N. Y.* applied (Effect of removal of cause to U. S. court) in *Chamberlain v. Am. Nat. Life & Trust Co.*, 11 *Hun*, 373. Disting'd in *Cooke v. State Nat. B'k of Boston*, 1 *Lans.* 505. Explained in *Bell v. Dix*, 49 *N. Y.* 237. Cited as a conclusive authority with *Holden v. Putnam Fire Ins. Co.*, 46 *Id.* 4; *Bell v. Dix*, 49 *Id.* 237; *Shaft v. Phoenix Life Ins. Co.*, 67 *Id.* 544, in 3 *South. L. Rev. N. S.* 234. Decision in 24 *How. Pr.* opposed (Citizenship of corporations) in *Kranshaar v. New Haven Steamboat Co.*, 7 *Robt.* 356, 373. Decision in 41 *N. Y.* followed, and *N. Y. Piano Co. v. New Haven Steamboat Co.*, 2 *Abb. Pr.* *N. S.* 357, denied in *De Camp v. N. J. Mut. Life Ins. Co.*, 2 *Sweeny*, 481, 489. Decision in 24 *How. Pr.* disapproved with *N. Y. Piano Co. v. New Haven Steamboat Co.*, 2 *Abb. Pr. N. S.* 358; but *Denniston v. N. Y. & New Haven R. R. Co.*, 1 *Hilt.* 62; *Fisk v. Chicago, Rock Island, &c. R. R. Co.*, 3 *Abb. Pr. N. S.* 454, cited with approval, in *Knorr v. Home Ins. Co. of N. Y.*, 25 *Wis.* 143; s. c., 3 *Am. R.* 26.
- **v. Rodger**, 12 *Weekly Dig.* 361. Fuller mem. in 25 *Hun*, 361.
- **v. Rowe**, 3 *Den.* 327. Overruled (Damages against sheriff for failure to return execution) in *Ledyard v. Jones*, 7 *N. Y.* 550.
- **v. Stevens**, 2 *Hun*, 470. See *Coutant v. Schuyler*. Criticised (Delivery as requisite of gift *causa mortis*) in *Stephenson's Adm'r v. King*, 81 *Ky.* 425, 430.
- **v. —**, 2 *Redf.* 265. Another proceeding in 3 *Id.* 507.
- **v. Veriane**, 2 *Lans.* 90. Overruled (Effect of offer of judgment in foreclosure cases) in *Bathgate v. Haskins*, 63 *N. Y.* 264. Compared with *Bathgate v. Haskins*, in *Thomas on Mort.* 313. Disting'd (Review of referee's decision as to costs on foreclosure) in *Rogers v. Ivers*, 23 *Hun*, 424, 428.
- **v. Wheeler**, 27 *Barb.* 658. Explained (Stoppage *in transitu*) in 2 *Benj. on Sales*, § 1271, n. 19 (Corbin's 4 *Am. ed.*).
- **v. Wilson**, 6 *Hill*, 512. Aff'd in 3 *Den.* 472. See *Jennings v. Merrill*. Both decisions examined (Rights of one obtaining possession of goods from factor) in *Bonito v. Mosquera*, 2 *Bosw.* 432. Explained and criticised in *Price v. Wisconsin Marine & Fire Ins. Co.*, 43 *Wis.* 267, 289. Decision in 3 *Den.* disting'd in *Bates v. Cunningham*, 12 *Hun*, 26.
- Stevenson, Matter of**, 3 *Paige*, 420. Followed (Effect of conveyance in trust to two or more, some of whom refuse to accept) in *Williams v. Otey*, 8 *Humph. (Tenn.)* 563; s. c., 47 *Am. Dec.* 632, 635.
- Stevenson v. Lesley**, 49 *How. Pr.* 229. Modified and aff'd in 9 *Hun*, 637; which was modified in 70 *N. Y.* 512. Decision in *Id.* followed (Devise to several in single clause, when construed as in severalty) in *Monarque v. Monarque*, 8 *Abb. N. C.* 102, 115. Decision in 49 *How. Pr.* discussed in 1 *Jarm. on Wills*, *Rand. & T. ed.* 513, n.
- **v. Maxwell**, 2 *Sandf. Ch.* 273. Rev'd in 2 *N. Y.* 408. Decision in *Id.* explained and applied (Necessity of tender before



- proceeding to enforce contract for sale of land) in *Freeseon v. Bissell*, 63 *Id.* 168, 171.
- Steves v. Oswego & Syracuse R. R. Co.**, 18 *N. Y.* 422. Adhered to (Effect of negligence in one injured at railroad crossing) in *Wilds v. Hudson River R. R. Co.*, 24 *Id.* 430, 433, 439. Cited with other cases in 14 *Am. L. Reg. N. S.* 294.
- Steward v. Hotchkiss**, 2 *Cow.* 634. Followed (Striking out defense as sham, on ground of falsity) in *McCarty v. O'Donnell*, 7 *Robt.* 431, 436; *Fellows v. Muller*, 38 *Super. Ct. (J. & S.)* 137, 139.
- **v. Wells**, 6 *Barb.* 79. Disting'd (Liability for unlawful levy committed or authorized by agent) in *Clark v. Woodruff*, 83 *N. Y.* 518, 526.
- **v. Winters**, 4 *Sandf. Ch.* 587. See *Douglass v. Wiggins*. Included with note (Injunction against breach of contract) in *Larson Lead. Cas. in Eq. Simplified*, 132. Quoted in 2 *High on Inj.* 2 ed. § 1142, n. 1.
- Stewart v. Ackley**. See *Jackson v. Garnsey*.
- **v. Ahrenfeldt**, 4 *Den.* 189. Disting'd (Necessity that accord be executed) in *Panzerbeiter v. Waydell*, 21 *Hun.* 162. Disting'd (Compromise of doubtful claim, as consideration for promise) in *Morey v. Town of Newfane*, 8 *Barb.* 653. Applied in *Palmer v. North*, 35 *Id.* 293.
- **v. Atkins**. See *Howell v. Denniston*.
- **v. Beale**, 7 *Hun.* 405. Aff'd, it seems, in 68 *N. Y.* 629, but without opinion.
- **v. Beebe**, 28 *Barb.* 34. Explained (Allegation of receivership in action by receiver) in *High. on Receiv.* § 233, n. 2.
- **v. Bramhall**, 11 *Hun.* 139. Aff'd in 74 *N. Y.* 85.
- **v. Brown**, 37 *N. Y.* 350. Applied (Exemption of partnership, &c. property) in *Newton v. Howe*, 29 *Wis.* 531; s. c., 9 *Am. R.* 616. Denied in *Gaylord v. Imhoff*, 26 *Ohio St.* 317; s. c., 20 *Am. R.* 762. Relied on in dissenting opinion of *Cole, J.*, in *Russell v. Lennon*, 39 *Wis.* 570; s. c., 20 *Am. R.* 60. See numerous contrary decisions cited in *Story on Partn.* 7 ed. § 97, n. Collated with other cases in 27 *Am. R.* 246, n.
- **v. Doughty**, 9 *Johns.* 107. See *Bank of Lansingburgh v. Crary*; *Foot v. Colvin*; *Green v. Armstrong*; *Putnam v. Wise*; *Taylor v. Bradley*. Overruled (Effect of agreement to work land on shares) in *Taylor v. Bradley*, 4 *Abb. Ct. App. Dec.* 363, 371, 373. Doubted in *Putnam v. Wise*, 1 *Hill*, 234, 245. Disting'd in *Caswell v. Districh*, 15 *Wend.* 379. Reviewed with *Jackson v. Brownell*, 1 *Johns.* 267 (both said to be overruled by later and better considered cases); *Caswell v. Districh*, 15 *Wend.* 379; *Putnam v. Wise*, 1 *Hill*, 234; *Dinehart v. Wilson*, 15 *Barb.* 595, and other cases, in *Herskell v. Bushnell*, 37 *Conn.* 36; s. c., 9 *Am. R.* 299, 303. Dissented from with *Austin v. Sawyer*, 9 *Cois.* 39 (Rights of purchaser of growing crop) in *Brittain v. McKay*, *Ired. (N. C.)* 265; s. c., 35 *Am. Dec.* 738, with note. Approved in *Johnson v. Smith*, 8 *Penr. & W. (Pa.)* 496; s. c., 24 *Am. Dec.* 339, with note. Followed with *Whipple v. Foot*, 2 *Johns.* 418 (Growing crops as subject to levy and sale under execution) in *Smith v. Fritt*, 1 *Dev. & B. (N. C.)* 241; s. c., 28 *Am. Dec.* 565, with note. Cited with *Reeder v. Sayre*, 70 *N. Y.* 180, and other cases (Rights as to emblements) in 40 *Am. R.* 96, n.
- **v. Eden**, 2 *Cai.* 121; s. c., 2 *Am. Dec.* 222, with note wherein it is shown to have been extensively noticed by writers on negotiable instruments, and well supported as an authority. Explained (Sufficiency of proof of presentment of note for payment) in *Taylor v. Snyder*, 3 *Den.* 145, 149. Followed in *Taylor v. Branch*, 1 *Stev. & P. (Ala.)* 249; s. c., 23 *Am. Dec.* 293. Disting'd with *Ogden v. Cowley*, 2 *Johns.* 275, in *Galpin v. Hard*, 3 *McCord (So. Car.)* 394; s. c., 15 *Am. Dec.* 640, with note.
- **v. Howard**, 15 *Barb.* 26. See *Columbia Ins. Co. v. Force*. Disting'd (Effect of giving bail, as waiver of right to question authority to arrest) in *Knickerbocker Life Ins. Co. v. Ecclesine*, 6 *Abb. Pr. N. S.* 9, 25.
- **v. Hutchins**, 13 *Wend.* 485. Aff'd in 6 *Hill*, 143.
- **v. James**, 38 *Super. Ct. (J. & S.)* 56. Rev'd in *Id.* 366.
- **v. Keteltas**, 9 *Bow.* 261. Aff'd in 36 *N. Y.* 388. See *Smith v. Brady*.
- **v. Lisenard**, 26 *Wend.* 255; s. c., 14 *N. Y. Com. L. Law. ed.* 1075, with brief note of conflicting cases. See statement by L. Stewart published at *N. Y.* 1844. Disapproved (Appeal from surrogate's decision as to probate of will) in *Alston v. Jones*, 10 *Paige*, 98. Commented on (Capacity necessary in testator) in *De lafield v. Parish*, 25 *N. Y.* 9-29, by which it is regarded as qualified,—in *Ean v. Snyder*, 46 *Barb.* 230. See also criticism in 1 *Redf.* 204, n. Reviewed with *Van Alst v. Hunter*, 5 *Johns. Ch.* 148, in *Cornwell v. Riker*, 2 *Dem.* 354. Disapproved in *Irish v. Newell*, 62 *Ill.* 196; s. c., 14 *Am. R.* 79, 84. Commented on in *Euwell Lead. Cas. on Inf., &c.*, 655, n.; *Redf. Lead. Cas. on Wills*, 158, 309; *Willard on Executors*, 86; 1 *Jarm. on Wills*, Rand. & T. ed. 93, n. Cited with *Culver v. Haslam*, 7 *Barb.* 314; *De Witt v. Barley*, 13 *Id.* 530; 9 *N. Y.* 371; 17 *Id.* 340; *De lafield v. Parish*, 25 *Id.* 37; *Clapp v. Fullerton*, 34 *Id.* 190; *Clarke v. Sawyer*, 3 *Sandf. Ch.* 357, and many other cases (Competency of non-expert testimony on question of sanity) in dissenting opinion of *Doe, J.*, in *State v. Pike*, 49 *N. H.* 399; s. c., 6 *Am. R.* 533, 545, as showing the unanimous weight of authority in this country as well as in England.
- **v. McGuin**, 1 *Cow.* 99. Followed with *Elting v. Vanderlyn*, 4 *Johns.* 239 (Forbear-

- ance as good consideration for promise) in *Giles v. Ackles*, 9 *Pa. St.* 147; s. c., 49 *Am. Dec.* 551.
- *v. McMartin*, 5 *Barb.* 438. See *Tompkins v. Fonda*. Explained (Application of income of trust fund to claims of creditors) in *Hann v. Van Voorhis*, 5 *Hun.* 426. Examined with other cases in dissenting opinion in *Graff v. Bonnett*, 31 *N. Y.* 28. Followed in *Campbell v. Foster*, 35 *Id.* 367. See cases cited in 16 *Abb. N. C.* 29, n. Explained (Application of dower right to payment of judgment) in *Moak v. Coats*, 33 *Barb.* 499. See cases cited in 14 *Am. Dec.* 542, n.
- *v. Munroe*, 56 *How. Pr.* 193. Compare (Pleading in partition) 1 *R. S.* 318; *Code Civ. Pro.* §§ 1533, 1542.
- *v. Morton*, 8 *Abb. Pr.* 429. See (Appeal from judgment, &c.) *Code Civ. Pro.* 1881, § 1294, n.
- *v. Patrick*, 68 *N. Y.* 450. Discussed (Ejectment against husband and wife) in *Sedg. & W. on Tr. of Tit. to Land*, § 255.
- *v. Phoenix Fire Ins. Co.* See *Unger v. Peoples' Fire Ins. Co.*
- *v. Petrie*, 55 *N. Y.* 621. Disting'd (Effect of agreement for interest on interest) in *Young v. Hill*, 67 *Id.* 170. See cases reviewed in 16 *Alb. L. J.* 252.
- *v. Powers*, 38 *Super. Ct.* (6 *J. & S.*) 56. Rev'd as *Stewart v. James*, *Id.* 366.
- *v. Ranney*, 23 *How. Pr.* 205. Rev'd in 26 *Id.* 279.
- *v. Saratoga & Whitehall R. R. Co.*, 12 *How. Pr.* 435. Explained (Effect of appeal from order, as stay of proceedings) in *Valton v. National Loan Fund Life Assurance Soc.*, 19 *Id.* 515, 517. Disapproved in *Hicks v. Smith*, 4 *Abb. Pr.* 285, 288; which was approved, in *Christy v. Libby*, 3 *Abb. Pr. N. S.* 423.
- *v. Schultz*, 33 *How. Pr.* 3. Aff'd in 50 *Barb.* 192; s. c., 3 *Abb. Pr. N. S.* 383; 34 *How. Pr.* 31.
- *v. Small*, 2 *Barb.* 559. See *Spear v. Myers*. Examined and followed (What is parting with value for note) in *Farrington v. Frankfort Bank*, 31 *Barb.* 183, 192.
- *v. Smith*, 17 *Wend.* 517. Disting'd (Sufficient proof of service of summons to support justice's jurisdiction) in *Reno v. Pinder*, 20 *N. Y.* 298, 306.
- *v. —*, 39 *Barb.* 167. Modified and overruled, in part, in 4 *Abb. Ct. App. Dec.* 306; s. c., 1 *Keyes*, 59.
- *v. Smithson*, 1 *Hilt.* 119. Collated with other cases (Injunction against violations of trade-mark) in *Thomps. on Prov. Rem.* 263. Explained in 2 *Pars. on Contr.* 257, *bn.*, n. o, 257, *bo.*, n. p.
- *v. Stewart*, 7 *Johns. Ch.* 229. Disting'd (Who entitled to personal property of married woman, on her death) in *Baldwin v. Carter*, 17 *Conn.* 201; s. c., 42 *Am. Dec.* 735, 737, with note.
- *v. Trustees of Hamilton College*, 2 *Den.* 403. Examined (Liability on subscrip-
- tion made with others to raise fund) in *N. Y. Exchange Co. v. De Wolf*, 5 *Bosw.* 593, 607, 613, 617.
- *v. Wallis*, 30 *Barb.* 344. See (Effect of action by less than full number of public body) *Colman v. Shattuck*, 2 *Hun.* 497, 503.
- *v. Wells*, 6 *Barb.* 79. See *Allen v. Crary*. Explained (Liability for unlawful levy by sheriff) in *Chapman v. Douglas*, 5 *Daly*, 244, 250. Disapproved, in *Richardson v. Reed*, 1 *Gray (Mass.)* 441.
- Stidham v. Sanford*, 36 *Super. Ct. (J. & S.)* 341. Aff'd, it seems, in 58 *N. Y.* 674, on opinion below.
- Stief v. Hart*, 1 *N. Y.* 20. See *Phillips v. Cook*. Criticised and disting'd (Right of sheriff to take property pledged by debtor) by *SUTHERLAND, J.*, in *Wood v. Orser*, 25 *Id.* 348, 356; by *INGRAHAM, J.*, in *Harris v. Murray*, 28 *Id.* 574, 576. See *Code Civ. Pro.* 1881, § 1412, n.
- Stiles v. Stewart*, 12 *Wend.* 473; s. c., 27 *Am. Dec.* 142, with extended note. Explained (Pleading judgments of justices, &c.) in *Turner v. Roby*, 3 *N. Y.* 193.
- Still v. Hall*. See *Batterman v. Pierce*.
- *v. Holbrook*, 23 *Hun.* 517. Collated with other cases (Statute of limitations as bar to partnership accounting) in *Story on Partn.* 7 ed. § 233, n.
- Stillman v. Mitchell*, 2 *Robt.* 523. Aff'd as *Lyon v. Mitchell*, 36 *N. Y.* 235, and see dissenting opinion, *Id.* 682. • See *Knapp v. Wallace*.
- Stillwell v. N. Y. Central, &c. R. R. Co.* See *Brown v. Same*. Discussed (Derivative evidence) in 2 *Best on Ev.* § 495, n. a, *Wood's* ed.
- Stillwell v. Carpenter*, 1 *Sup'm. Ct. (T. & C.)* 615. Rev'd in 59 *N. Y.* 414; which was modified in 2 *Abb. N. C.* 238; mem. s. c., 62 *N. Y.* 638. Decision in *Id.* followed (New evidence on appeal) in *Porter v. Waring*, 2 *Abb. N. C.* 237. Applied (Disregarding imperfection in pleading, on appeal) in *Hudson v. Swan*, 7 *Id.* 332. Cited in 2 *Whart. Com. on Ev.* § 838. Applied (Jurisdiction of surrogate to try claim) in *Westervelt v. Westervelt*, 46 *Super. Ct. (J. & S.)* 298, 304. See *Boughton v. Flint*, 5 *Abb. N. C.* 215, and *Id.* n. Cited (Necessity of evidence of two witnesses to counterveil denial by defendant) in 1 *Whart. Com. on Ev.* § 487, n. as showing the rule prevailing in *N. Y.* Decision in 59 *N. Y.* disting'd (Jurisdiction of surrogate to interfere with judgments of other courts) in *Archer v. Furniss*, 4 *Redf.* 88, 94.
- *v. Coope*, 4 *Den.* 225. Followed and authorities collected *pro* and *con* (Effect of new promise as barring operation of discharge in bankruptcy) in *Knapp v. Hoyt*, 57 *Iowa*, 591, 595.
- *v. Doughty*, 2 *Bradf.* 311. Followed (Life tenant, how far liable for expense of improvements) in *Gillispie v. Brooks*, 2 *Redf.* 349, 364.
- *v. Hasbrouck*, 1 *Hill.* 561. Disap-

- proved (Sufficiency of denial of new promise to pay debt) in *Tracy v. Rathbun*, 3 *Barb.* 548.
- *v. Hubbard*, 20 *Wend.* 44. Applied (Sufficiency of delivery of deed) in *Jacobs v. Alexander*, 19 *Barb.* 247.
- *v. Mills*, 19 *Johns.* 304. Limited (Remedy on bond of guardian, &c.) in *Brown v. Snell*, 57 *N. Y.* 286, 297. Explained in *Girvin v. Fickman*, 21 *Hun.* 316. Applied in *Hood v. Hood*, 85 *N. Y.* 561, 576. Applied with *People v. Barnes*, 12 *Wend.* 492; *Salisbury v. Van Hoesen*, 3 *Hill*, 77; *People v. Corlies*, 1 *Sandf.* 228; *Annett v. Kerr*, 28 *How. Pr.* 324; *Hood v. Hood*, 85 *N. Y.* 561, in *Scofield v. Adriance*, 1 *Dem.* 196.
- *v. Staples*, 6 *Duer*, 63. Rev'd in 19 *N. Y.* 401. See *De Forest v. Fulton Fire Ins. Co.* Decision in 19 *N. Y.* followed (Right to benefit of policy taken out by agent) in *Waring v. Indemnity Fire Ins. Co.*, 45 *N. Y.* 606, 612.
- Stimpson v. Reynolds**, 14 *Barb.* 506. See *Foster v. Pettibone*. Deemed overruled (Officer's liability in replevin) in *Manuing v. Keenan*, 9 *Hun.* 680, 689.
- Stimson v. Wrigley**, 10 *Weekly Dig.* 10. Aff'd in 86 *N. Y.* 332. Decision in *Id.* quoted (Fraud in retention of possession by vendor) in *Wait on Fraud. Conv.* § 265.
- Stinde v. Ridgway**, 55 *How. Pr.* 301. Subsequent decision affecting same will, as Matter of *Ridgway*, 4 *Redf.* 226.
- Stinemets v. Ainslie**, 4 *Den.* 573. Explained (Bankruptcy as defense to lease) in 3 *Parv. on Contr.* 507, n. 1.
- Stiner v. Stiner**, 58 *Barb.* 643. Aff'd, it seems, in 49 *N. Y.* 679, but without opinion. Compare (Liability for interference by third person with negotiation of contract) in *Ashley v. Dixon*, 48 *Id.* 430.
- Stinson v. N. Y. Central, &c. R. R. Co.**, 32 *N. Y.* 333. See *Poucher v. N. Y. Central, &c. R. R. Co.* Disting'd (Liability for injury to shipper of freight) in *Poucher v. N. Y. Central, &c. R. R. Co.*, 49 *N. Y.* 263.
- Stitt v. Little**, 63 *N. Y.* 427. Disting'd (Liability for false representations) in *Bradner v. Strang*, 23 *Hun.* 445, 447. Applied in *Morehouse v. Yeager*, 71 *N. Y.* 595.
- *v. Rowley*, 37 *How. Pr.* 179. Followed (Costs on application for new trial) in *Rouso v. Vontrin*, 41 *Id.* 8, 11.
- Stockbridge's Assignment**, 7 *Abb. N. C.* 395; s. c., as Matter of *Stockbridge & Martin*, 58 *How. Pr.* 128.
- Stockbridge & Martin, Matter of.** See *Stockbridge's Assignment*.
- Stocker v. Partridge**, 2 *Robt.* 193. Said in 41 *N. Y.* 620 to have been aff'd in Ct. of App. Dec. 1869.
- Stockham v. Jones**, 10 *Johns.* 21. Approved (Defendant in tort, not served with process, as competent witness) in *Entriiken v. Brown*, 32 *Penn.* 364. Commented on and cases cited to the contrary in 1 *Greenl. on Ev.* 14 ed. § 358, n. 5.
- Stockwell v. Phelps**, 34 *N. Y.* 863. Disting'd (Recovery of emblements after judgment in ejectment) in *Samson v. Rose*, 65 *Id.* 419. Cited with approval in *Page v. Fowler*, 39 *Cal.* 412; s. c., 2 *Am. R.* 462, 461. Discussed in *Sedgw. & W. on Tr. of Tit. to Land*, § 683.
- *v. Veitch*, 38 *Barb.* 650; s. c., more fully, 15 *Abb. Pr.* 412. Cited with approval (Right of action for property taken by virtue of tax warrant) in *Power v. Kindschi*, 58 *Wis.* 530; s. c., 46 *Am. R.* 652. Followed in *Travers v. Inslee*, 19 *Mich.* 98.
- Stoddard v. Clarke**, 9 *Abb. Pr. N. S.* 310. Approved (Costs in case of two or more causes of action in one complaint) in *Watson v. Gardiner*, 50 *N. Y.* 671. Thought in 29 *Moak Eng.* 780, n. to overrule *Dresser v. Wickes*, 2 *Abb. Pr.* 460; *Pennell v. Wilson*, 5 *Robt.* 668.
- *v. Hart*, 23 *N. Y.* 556. Quoted (Creation of mortgage by deposit or pledge of title deeds) in 2 *Washb. on Real Prop.* 4 ed. 85, 108.
- *v. Holmes*, 1 *Cow.* 245. See (Cost in justice's court) *Code Civ. Pro.* 1881, § 3075, n.
- *v. Long Island R. R. Co.* See *Welles v. N. Y. Central R. R. Co.*
- *v. Whiting*, 1 *Abb. L. J.* 122. Rev'd in 46 *N. Y.* 627. Decision in *Id.* followed (Conveyance, when to be regarded as mortgage) in *Carr v. Carr*, 52 *Id.* 259. Disting'd in *Fullerton v. McCurdy*, 55 *Id.* 637, 639. Followed (Conveyance of equitable interest as affected by recording acts) as the prevailing doctrine, in *Edwards v. McKerman*, 55 *Mich.* 520, 524. Dicta explained (Nature of estate of mortgagor) in *Odell v. Montross*, 68 *Id.* 499, 506. Applied (Effect of failure of case to contain any of the evidence) in *Beard v. Sinnott*, 35 *Super. Ct. (J. & S.)* 65. Explained in *Porter v. Mc Grath*, 41 *Id.* 98.
- Stokes v. Brown**, 2 *Sweeny*, 457. Explained (Vendor's obligation to give notice of delivery) in *Woolner v. Hill*, 47 *Super. Ct. (J. & S.)* 470, 475.
- *v. Corporation of N. Y.* See *Bush v. Seabury*.
- *v. Landgraff*, 17 *Barb.* 608. See *Amoskeag Manuf. Co. v. Spear*. Approved (Words only denoting nature of articles not to be appropriated as trade-marks) in *Wolfe v. Goulard*, 18 *How. Pr.* 68. Considered and followed, in *Congress & Empire Spring Co. v. High Rock Congress Spring Co.*, 57 *Barb.* 534, 552; which was however rev'd in 10 *Abb. Pr. N. S.* 348. Followed in *Taylor v. Gillies*, 59 *N. Y.* 331, 335. Approved with *Amoskeag Man'fg Co. v. Spear*, 2 *Sandf.* 599, in *Candee v. Deere*, 54 *Ill.* 439; s. c., 5 *Am. R.* 125, 143, as according with the weight of authority. Collated with other cases in *Thomps. on Prov. Rem.* 261.
- *v. People*, 53 *N. Y.* 164. See account

- of proceedings at N. Y. Oyer and Terminer published at N. Y. in 1873. Also at Phila. in 1873. See address to jury on final trial by L. Tremain, published at N. Y. 1875. Also appeal papers in Sup'm. Ct. and in Ct. of App. are in two volumes in Law Inst. Libr. N. Y. city. Applied (Admissibility on trial for murder, of threats made by deceased) in *Shaw v. People*, 3 *Hun*, 279. Applied in action on life policy, in *Yale v. Travelers' Ins. Co.*, 2 *Sup'm. Ct. (T. & C.)* 223. Included with note in *Horrigan & T. Cus. on Self Def.* 927. Followed and approved (Presumption of malice from killing) in *Hadley v. State*, 55 *Ala.* 31, 38. Compare speech of JAS. T. BRADY in case of Savannah Privateers, *Snyder's Great Sp.* 351. Approved and contrasted with other cases in 17 *Am. L. Rev.* 892, 914. Followed (Power of legislature to change mode of challenging jurors) in *Weston v. People*, 6 *Hun*, 141.
- Stone v. Browning**, 49 *Barb.* 244. Rev'd in 51 *N. Y.* 211; s. c., 13 *Abb. Pr. N. S.* 188; 44 *Hov. Pr.* 131. Further decision in 68 *N. Y.* 598. Decision in 51 *Id.* disting'd (Acceptance under statute of frauds) in *U. S. Reflector Co. v. Rushton*, 7 *Daly*, 410. Followed in *Heermance v. Taylor*, 14 *Hun*, 150; *Brewster v. Taylor*, 39 *Super. Ct. (J. & S.)* 159, 166. Decision in 68 *N. Y.* collated with *Caulkins v. Hellman*, 47 *Id.* 452; *Allard v. Greaseart*, 61 *Id.* 5, and cases from other States, in *Taylor v. Mueller*, 30 *Minn.* 343, 346. Quoted in 1 *Benj. on Sales*, § 139, n. 1 (Corbin's 4 *Am. ed.*). Cited (Sufficiency of note or memorandum) in *Id.* § 232, n. u (Bennett's 4 *Am. ed.*) as sustaining the English doctrine.
- **v. Cooper**, 2 *Den.* 293. See *Steele v. Southwick*. Collated with other cases (Liellous words) in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 132.
- **v. Flower**, 47 *N. Y.* 566. Applied (Effect of failure to request submission of question to jury) in *Wombough v. Cooper*, 2 *Hun*, 428, 432; *Miner v. Mayor*, &c. of N. Y., 37 *Super. Ct. (J. & S.)* 171, 202; *Hagaman v. Burr*, 41 *Id.* 423, 426.
- **v. Frost**, 6 *Lans.* 440. Aff'd in 61 *N. Y.* 614. Decision in *Id.* disting'd (Return of purchase which proves utterly valueless) as inapplicable to negotiable paper,—in *Littauer v. Goldman*, 72 *Id.* 506, 514.
- **v. Hooker**, 9 *Cov.* 154. Followed (Validity of promise to indemnify against trespass) in *Marcy v. Crawford*, 16 *Conn.* 549; s. c., 41 *Am. Dec.* 158.
- **v. Mayor, &c. of N. Y.**, 25 *Wend.* 157. (See *Russell v. Mayor of N. Y.* Applied (Construction of statute resting on legislative discretion) in *Hyatt v. Taylor*, 51 *Barb.* 635. Explained and applied (Liability for loss of property destroyed by public officers to prevent spread of fire) in *Russell v. Mayor, &c. of N. Y.*, 2 *Den.* 469. Followed as conclusive in *People ex rel. Brisbane v. Common Council of N. Y.*, 76 *N. Y.* 562.
- Relied on with *Baldwin v. City of Buffalo*, 35 *N. Y.* 375; *Swift v. City of Poughkeepsie*, 37 *Id.* 511; *People v. Assessors of Brooklyn*, 39 *Id.* 81; *People v. Assessors of Albany*, 40 *Id.* 154; *People v. Board of Police*, 39 *Id.* 506; *Bank of Commonwealth v. Mayor, &c. of N. Y.*, 43 *Id.* 184 (Questions for review on certiorari) in *Milwaukee Iron Co. v. Schubel*, 29 *Wis.* 444; s. c., 9 *Am. R.* 591.
- **v. Seymour**, 15 *Wend.* 19. Aff'g *Seymour v. Van Slyck*, 8 *Id.* 403. With these decisions and *Davis v. Fargo, Clarke*, 470; *Righter v. Stall*, 3 *Sandf. Ch.* 608; *Allen v. Culver*, 3 *Den.* 284, see (Application of payments) cases cited in 1 *Abb. N. Y. Dig.* 223, n.
- **v. Wood**, 7 *Cov.* 453; s. c., 9 *N. Y. Com. L. Law. ed.* 185, with brief note; 17 *Am. Dec.* 529, with note. See *Kiersted v. Orange & Alexandria R. R. Co.* Disting'd (Liability on contract executed by agent) in *Plumb v. Milk*, 19 *Barb.* 78. Applied in *Barker v. Mechanic Ins. Co.*, 3 *Wend.* 94, 99; *Guyon v. Lewis*, 7 *Id.* 30; *Spencer v. Field*, 10 *Id.* 90. Included in *Lawson's Lead. Com. L. Cas. Simplified*, 145.
- Stoneman v. Erie R'y Co.**, 1 *Buff. Super. Ct. (Sheldon)* 286. Aff'd in 52 *N. Y.* 429. Decision in *Id.* collated with other cases (Carrier's liability for extra baggage) in 34 *Am. R.* 379, n.
- Stoney v. American Life Ins. & Trust Co.**, 4 *Edw.* 332. Rev'd in 11 *Paige*, 635. Head-note of *Id.* criticised but approved in part (Effect of negotiable security of corporation issued without authority) in *Farmers' & Mechanics' Bank v. Butchers' & Drovers' Bank*, 14 *N. Y.* 623, 631. Decision followed with *Bissell v. Michigan Southern, &c. R. R. Co.*, 22 *Id.* 289, in *Auerbach v. Le Sueur Mill Co.*, 28 *Minn.* 291; s. c., 41 *Am. R.* 285; 13 *Reporter*, 50. Explained in *Morawetz on Corp.* § 98.
- Stoors v. Kelsey**, 2 *Paige*, 418. Examined with *Sanford v. Sinclair*, 8 *Id.* 373; *McElwain v. Willis*, 9 *Wend.* 560; *Shottenkirk v. Wheeler*, 3 *Johns. Ch.* 275 (Remedy for execution improperly returned unsatisfied) in *Albany City Bank v. Dorr, Walk. Ch. (Mich.)* 324.
- Storey v. Salomon**, 6 *Daly*, 531. Aff'd as *Story v. Same*, 71 *N. Y.* 520. See *Bigelow v. Benedict*.
- Storm v. Davenport**, 1 *Sandf. Ch.* 135. See *Bayard v. Hoffman*. Discussed (Delaying collection of securities in case of assignment for benefit of creditors) in *Burrill on Assign.* § 230, 4 ed.
- **v. Livingston**, 6 *Johns.* 44. Followed (Demand, as condition precedent to liability of purchaser of goods wrongfully sold on execution) in *Twinam v. Swart*, 4 *Lans.* 263, 268. Explained as turning solely on want of demand, in *Antwerp v. Newman*, 2 *Cov.* 543, 546.
- **v. Mann**, 4 *Johns. Ch.* 21. Discussed (Injunction in action of ejectment) in

*Sedgwick & W. on Tr. of Tit. to Land*, § 627.

— **v. Waddell**, 2 *Sandf. Ch.* 494; s. c., 3 *N. Y. Leg. Obs.* 367. See *Clarkson v. De Peyster*. Cited at length and followed (Jurisdiction of equity as to creditor's suits) in *Shainwald v. Lewis*, *U. S. Dist. Ct. D. Cal.* 6 *Fed. Rep.* 769. Commented on with *Spader v. Davis*, 5 *Johns. Ch.* 280, in 2 *Kent Com.* 443, n. e. Commented on at length and approved (Lien created by creditor's suit) in 1 *Id.* 247, n. a.

— **v. Woods**, 11 *Johns.* 110. See *Bliss v. Ball*; *Whipple v. Foot*. Limited (Effect of leaving property levied on, in possession of debtor) in *Rew v. Barber*, 3 *Cow.* 272, 279, to cases where the creditor interferes and directs delay. To similar effect, see *Russell v. Gibbs*, 5 *Id.* 890.

**Storms v. Ruggles**, *Clarke*, 148. Overruled (Necessity of renewal of execution, for filing of creditor's bill after five years) in *Cornif v. Stebbins*, 1 *Barb. Ch.* 589, 591. Denied in *Walker v. Donovan*, 6 *Daly*, 553.

— **v. Snyder**, 10 *Johns.* 109. Discussed (What are contracts affecting land within meaning of statute of frauds) in *Browne on Stat. of Frauds*, § 231, n. 6, 4 ed.

**Storrs v. Barker**, 6 *Johns. Ch.* 166; s. c., 10 *Am. Dec.* 316, with extended note. See *Brown v. Bowen*; *Shotwell v. Murray*. Explained (Estoppel to enforcement of legal title) and held not to be overruled by *Brewster v. Striker*, 2 *N. Y.* 19; *Chautauque County Bank v. White*, 6 *Id.* 236,—in *Tilton v. Nelson*, 27 *Barb.* 595, 602, 606. Explained in dissenting opinion in *Mattoon v. Young*, 2 *Hun.* 559, 567. Disting'd in *Trenton Banking Co. v. Duncan*, 86 *N. Y.* 221, 229. Relied on in *Dunley v. Rector*, 10 *Ark.* 211; s. c., 50 *Am. Dec.* 242, with note. Approved and applied with *Wendell v. Van Rensselaer*, 1 *Johns. Ch.* 354, in *Maryland Sav'gs Inst'n v. Schroeder*, 8 *Gill & J. (Md.)* 93; s. c., 29 *Am. Dec.* 528, 532. Reviewed with *Brinkerhoff v. Lansing*, 4 *Johns. Ch.* 70, and other cases, in *Campbell v. Smith*, 3 *Inst. (N. J.)* 140; s. c., 14 *Am. Dec.* 400, 411. Discussed in 3 *Washb. on Real Prop.* 4 ed. 84. Applied (Effect of mistake of law) in *McCartee v. Teller*, 8 *Wend.* 295. Relied on in *Zollman v. Moore*, 21 *Gratt. (Va.)* 313, 329. Doctrine discussed in 3 *Alb. L. J.* 450. Cited in 2 *Whart. Com. on Ev.* § 1144, n.

— **v. City of Utica**, 17 *N. Y.* 104. See *Blake v. Ferris*; *City of Buffalo v. Holloway*; *Congreve v. Smith*; *Hutson v. Mayor, &c. of N. Y.*; *Pack v. Mayor, &c. of N. Y.*; *Rochester White Lead Co. v. City of Rochester*. Disting'd (Municipal liability for injury resulting from condition of street) in *Kavanagh v. City of Brooklyn*, 38 *Barb.* 237. Followed in *Dressell v. City of Kingston*, 32 *Hun.* 533. Applied to liability of individual.—in *Sexton v. Zett*, 44 *N. Y.* 432. Explained in *Gardner v. Bennett*,

38 *Super. Ct. (J. & S.)* 197, 200. Followed in *Mayor, &c. v. O'Donnell*, 53 *Md.* 110; s. c., 36 *Am. R.* 395; *Russell v. Inhabitants of Columbia*, 74 *Mo.* 480, 491. Collated with other cases in *Mills Thomps. on Highw.* 3 ed. 90. Explained and applied (Liability for contractor's negligence) in *O'Rourke v. Hart*, 7 *Bosw.* 514. Examined at length in *Sulzbacher v. Dickie*, 6 *Daly*, 469, 471. Examined and compared with *Blake v. Ferris*, 5 *N. Y.* 48; *Pack v. Mayor, &c. of N. Y.*, 8 *Id.* 222; *City of Buffalo v. Holloway*, 7 *Id.* 493; *Congreve v. Smith*, 18 *Id.* 79; *Kelley v. Mayor, &c. of N. Y.*, 11 *Id.* 432, in *Creed v. Hartmann*, 29 *N. Y.* 591, 593; which aff'd 8 *Bosw.* 428, which see. Disting'd in *McCafferty v. Spuyten Duyvil, &c. R. R. Co.*, 61 *N. Y.* 182; *Cuff v. Newark & N. Y. R. R. Co.*, 35 *N. J.* 17; s. c., 10 *Am. R.* 205, 211, citing *Pack v. Mayor, &c. of N. Y.*, 8 *N. Y.* 222. Approved with *Irvin v. Wood*, 4 *Robt.* 138; *Congreve v. Morgan*, 18 *N. Y.* 84; *Hart v. Mayor, &c. of Albany*, 9 *Wend.* 607; *Dybert v. Schenck*, 23 *Id.* 446, in *City of Lincoln v. Walker*, *Sup'm. Ct. Nebr.* 1884, 20 *Northw. Rep.* 113. Relied on in *Palmer v. City of Lincoln*, 5 *Neb.* 136; s. c., 25 *Am. R.* 470, 474. Approved and applied in *Whitney v. Clifford*, 46 *Wis.* 138; s. c., 32 *Am. R.* 703. Collated with other cases in 2 *Thomp. on Negl.* 906. Discussed and cases cited in 3 *Am. L. Reg. N. S.* 316. See 20 *Alb. L. J.* 164. Explained in *Cooley on Const. Limit.* 5 ed. 309.

**Story v. Dayton**, 22 *Hun.* 450. Re-argument granted, it seems, in 23 *Id.* 528, but without opinion.

— **v. Elliot**, 8 *Cow.* 27; s. c., 18 *Am. Dec.* 423, with note. See *Butler v. Kelsey*. Followed (Effect of judicial act done on Sunday) in *Shearman v. State*, 1 *Tex. Ct. App.* 215; s. c., 28 *Am. R.* 402, 404, citing also *Houghtaling v. Osborn*, 15 *Johns.* 119; *Vanderwerker v. People*, 5 *Wend.* 530. Followed (Validity of acts regulating observance of Sabbath) in *Ex parte Andrews*, 18 *Cal.* 681.

— **v. Furman**, 25 *N. Y.* 214. See *Walker v. Crain*. Applied (Nature of stockholder's liability) in *Pfohl v. Simpson*, 50 *How. Pr.* 343. Explained and limited (Enforcing liability of stockholders, in case of insolvency of corporation) in *Hurd v. Tallman*, 60 *Barb.* 272, 286; *Lowry v. Inman*, 2 *Sweeny*, 117, 135. Followed with doubts (Power of receiver of corporation to enforce such liability) in *Calkins v. Atkinson*, 3 *Lans.* 12, 16. Disting'd with *Calkins v. Atkinson*, 2 *Lans.* 12, in *Mason v. N. Y. Silk M'fg Co.*, 27 *Hun.* 307. Disting'd and *Cuykendall v. Corning*, 88 *N. Y.* 129, followed in *Farnsworth v. Wood*, 91 *Id.* 308. Disting'd in *Dutcher v. Marine Nat. Bank*, 12 *Blatchf. Ct. Ct.* 435. Applied with *Lee v. Tillotson*, 24 *Wend.* 337; *People v. Murray*, 5 *Hill*, 468 (Estoppel to

- assert invalidity of statute, &c.) in *Bidwell v. City of Pittsburgh*, 85 *Penn. St.* 412; s. c., 27 *Am. R.* 662.
- **v. Hamilton**, 20 *Hun*, 133. Aff'd in 86 *N. Y.* 428.
- **v. Lovett**, 1 *E. D. Smith*, 153. Cited (Production of attesting witnesses) in 1 *Whart. Com. on Ev.* § 725, as showing extreme applications of rule.
- **v. N. Y. Elevated R. R. Co.**, 3 *Abb. N. C.* 478. Rev'd in 11 *Id.* 236; s. c., 90 *N. Y.* 122. See *Kellinger v. Forty-second St., &c. R. R. Co.*; *People v. Kerr*. Decision in 11 *Abb. N. C.* followed (Right to compensation for impairment of easement) in *Tiffany v. U. S. Illuminating Co.*, 67 *How. Pr.* 73; *Peysen v. N. Y. Elevated R. R. Co.*, 12 *Id.* 276. Approved and followed in application to riparian rights,—in *Van Dolsen v. Mayor, &c. of N. Y.*, *U. S. Cir. Ct. S. D. N. Y.* 17 *Fed. Rep.* 817. Cited with *Griffin v. Martin*, 7 *Barb.* 297; *Milhau v. Sharp*, 15 *Id.* 201; *Craig v. Rochester, &c. R. R. Co.*, 39 *Id.* 494; *Davis v. Mayor, &c. of N. Y.*, 14 *N. Y.* 509; *Williams v. N. Y. Central R. R. Co.*, 16 *Id.* 97; *Bloomfield Gas Lt. Co. v. Calkins*, 62 *Id.* 386, and, to the contrary, *People v. Kerr*, 27 *Id.* 188, in 19 *Cent. L. J.* 382. With decision in 3 *Abb. N. C.* compare (Compensation to owners of property adjacent to railroad) *Washington Cemetery v. Prospect Park, &c. R. R. Co.*, 4 *Id.* 15. Collated with other cases (*Contracts ultra vires*) in *Id.* 59, n.
- **v. N. Y. & Harlem R. R. Co.** See *Farrrell v. Calkins*; *Masterton v. Mayor, &c. of Brooklyn*.
- **v. Salomon**. See *Storey v. Salomon*.
- Stoughton v. Lynch**, 1 *Johns. Ch.* 467. Subsequent decision in 2 *Id.* 209. See *Beacham v. Eckford*. Decision in 1 *Johns. Ch.* cited at length (Liability of partner for excess in exercise of his authority) in *Story on Partn.* 7 ed. § 173, n. Decision in 2 *Johns. Ch.* followed (Time from which to charge interest on balance due from partner) in *Holden v. Peace*, 4 *Ired. Eq. (N. C.)* 223; s. c., 45 *Am. Dec.* 514, 516, with note.
- Stout v. People**, 4 *Park* 71. Further decision in *Id.* 132.
- **v. Rider**, 12 *Hun*, 574. Followed (Effect of usurious acts of one only of several trustees) in *Van Wyck v. Walters*, 16 *Id.* 209. Explained in *Moak's Underhill's Torts*, 1 *Am. ed.* 556.
- **v. Woodward**, 5 *Hun*, 340. Aff'd, it seems, in 71 *N. Y.* 590, but without opinion.
- Stoutenburgh v. Vandenburg**, 7 *How. Pr.* 229. Overruled with *Sears v. Gearn*, *Id.* 383 (Attachment of partnership property for debt of one partner) in *Goll v. Hinton*, 8 *Abb. Pr.* 120. Collated with other cases in *Thomps. on Prov. Rem.* 371.
- Stouvenel v. Stephens**, 26 *How. Pr.* 244. Further decision in 2 *Daly*, 319. Decision in *Id.* cited with *McCartee v. Camel*, 1 *Barb. Ch.* 456 (Proof of time of death of person absent for seven years) in 2 *Wart. Com. on Ev.* § 1276, as agreeing with the preponderance of authority.
- Stover v. Eycleshimer**, 46 *Barb.* 84. Aff'd in 3 *Keyes*, 620; s. c., 4 *Abb. Ct. App. Dec.* 309. Decision in *Id.* explained (Sale of expectancy in equity) in 1 *Benj. on Sales*, § 82, n. 6 (Corbin's 4 *Am. ed.*). Compare cases cited to the contrary in 20 *Am. L. Reg. N. S.* 101.
- **v. People**. See *McGarrey v. Same*.
- Stow v. Hamlin**, 11 *How. Pr.* 452. Cited (Burden of proof on attorney suing for compensation) in *Whart. Com. on Ag.* § 616.
- **v. Tift**, 15 *Johns.* 458; s. c., 8 *Am. Dec.* 266; 5 *N. Y. Com. L. Law. ed.* 1157, with brief note. Applied (Effect of purchase money mortgage) in *Andrews v. Wolcott*, 16 *Barb.* 24; *Dusenbury v. Hulbert*, 59 *N. Y.* 544. Explained and applied in *Hitchcock v. Northw. Ins. Co.*, 26 *N. Y.* 71, citing *Tallman v. Farley*, 1 *Barb.* 280; *Cunningham v. Knight*, *Id.* 399. Disting'd (Estoppel to claim dower) in *Sherwood v. Vandenburg*, 2 *Hill*, 308. Applied (Two instruments, when to be regarded as part of one agreement) in *Hanford v. Rogers*, 41 *Barb.* 20. Relied on with *Jackson v. Dunsbath*, 1 *Johns. Cas.* 92, 95, in dissenting opinion of ELLSWORTH, J., in *Osborn v. Phelps*, 19 *Conn.* 63; s. c., 48 *Am. Dec.* 132, 142, with note. Explained with *Jackson v. De Witt*, 5 *Cow.* 316 (Dower in mortgaged premises) in *Wheeler v. Morris*, 2 *Boss.* 524, 531. Disting'd and questioned in *Mills v. Van Voorhies*, 10 *Abb. Pr.* 152, 156; which rev'd 23 *Barb.* 125, 140, which see. Applied in *Kittle v. Van Dyck*, 1 *Sandf. Ch.* 80. Explained in *Coates v. Cheever*, 1 *Cow.* 478; *Bell v. Mayor, &c. of N. Y.*, 10 *Paige*, 57. Followed in *Eslava v. Leprotre*, 21 *Alu.* 504; s. c., 56 *Am. Dec.* 266, 278. Applied in *McCauley v. Grimes*, 2 *Gill & J. (Md.)* 318; s. c., 20 *Am. Dec.* 424, with note. See 3 *Bac. Abr. Dower (C)* § 2, p. 208 (n); *Co. Litt.* 31a-31b (3); 4 *Kent. Com.* 39; 1 *Cruise Dig. (Dower)* p. 157, § 24 (a). Commented on in *Sharsw. & B. Cas. on Real Prop.* 325.
- Stowell v. Chamberlain**, 3 *Sup'm. Ct. (T. & C.)* 374. Aff'd in 60 *N. Y.* 272. Decision in *Id.* explained (Former recovery as bar) in *Jex v. Jacob*, 7 *Abb. N. C.* 452, 459; *Candee v. Burke*, 10 *Hun*, 355. Applied in *Ferguson v. Mass. Life Ins. Co.*, 22 *Id.* 320, 326; *Dawley v. Brown*, 79 *N. Y.* 397.
- **v. Haslett**, 5 *Lans.* 380. Modified in 57 *N. Y.* 637, as *Stowell v. Hazlett*, by granting new trial on which plaintiff recovered. Subsequent decision as *Stowell v. Hazlett*, 3 *Hun*, 555, aff'd, it seems, in 66 *N. Y.* 635.
- **v. Otis**, 71 *N. Y.* 36. See (Allegation of title in third person in action for chattel) *Code Civ. Pro.* 1881, § 1723, n.
- Straiton v. N. Y. & New Haven R. R. Co.**, 2 *E. D. Smith*, 184. See *Bostwick v. Champion*. Approved (Partnership between

- carriers) in *Ætna Ins. Co. v. Wheeler*, 5 *Lans.* 480, 482.
- Strang v. Ferguson**, 14 *Johns.* 161. Opposed (Power of arbitrators to award costs) in *Gordon v. Tucker*, 6 *Greenl. (Me.)* 254. See *People v. Newell*, 13 *Barb.* 86, 91.
- Strange v. Longley**, 3 *Barb. Ch.* 650. Applied (Rights of representative of judgment creditor) in *Walker v. Donovan*, 6 *Daly*, 552, 556.
- Stratton v. People**, 20 *Hun*, 288. Aff'd in 81 *N. Y.* 629.
- Straus, Matter of**. See *Matter of Allen*.
- Straus v. Schwarzwalden**. See *Delamater v. Russell*.
- Streety v. Wood**, 15 *Barb.* 105. Followed with *Van Wyck v. Aspinwall*, 17 *N. Y.* 190; *Lewis v. Chapman*, 16 *Id.* 369; *Vanderzee v. McGregor*, 12 *Wend.* 545; *Klinck v. Colby*, 46 *N. Y.* 427 (Privilege as to communications addressed to official bodies, &c.), in *Landis v. Campbell*, 79 *Mo.* 433, 440. See also *Isham v. Fullager*, 14 *Abb. N. C.* 363.
- Strickland v. Harger**, 16 *Hun*, 465. Aff'd, it seems, in 81 *N. Y.* 623, on opinion below.
- Strickland v. Woolworth**, 3 *Sup'm. Ct. (T. & C.)* 286. See *Dygart v. Schenck*. Discussed (Liability of owner of fee for interfering with highway) in *Wood on Nuis.* 2 ed. 281.
- Striker, Matter of**, 10 *Hun*, 308. Aff'd, it seems, in 71 *N. Y.* 603, but without opinion.
- , 23 *Hun*, 647. Aff'd in 85 *N. Y.* 629, but without opinion.
- Striker v. Kelly**, 7 *Hill*, 9. Rev'd in 2 *Den.* 323. See *Matter of Canal St.*; *Patchin v. Trustees of Brooklyn*. Decision in 7 *Hill* applied (Statute directing proceedings of public officers, when directory) in *People v. Cook*, 14 *Barb.* 292; *People v. Carpenter*, 24 *N. Y.* 86, 93; but see *People v. Gardner*, *Id.* 587. Followed, notwithstanding reversal, in *Doughty v. Hope*, 3 *Den.* 252, 599. See *Treadwell v. Commissioners of Hancock*, 11 *Ohio St.* 190. Questioned (What is unlawful taking of private property for public use) in *Jordan v. Hyatt*, 3 *Barb.* 281. Applied in *Litchfield v. McComber*, 42 *Id.* 292. Denied in *People v. Mayor, &c. of Brooklyn*, 6 *Id.* 223; Same *v. Same*, 9 *Id.* 548. Re-aff'd in Same *v. Same*, 4 *N. Y.* 437, as unaffected on this point by reversal. Both decisions applied (Jurisdiction of court in proceedings to acquire land for railroad purposes) in *Matter of N. Y. & Oswego Midland R. R. Co.*, 40 *How. Pr.* 339; *Matter of Canal and Walker Sts.*, 12 *N. Y.* 410. Decision in 2 *Den.* applied with *Patchin v. Trustees of Brooklyn*, 2 *Wend.* 377; *Matter of Canal St.*, 11 *Id.* 154, in *Matter of Cooper*, 22 *N. Y.* 67, 83. Followed (Proof of regularity of tax sale) in *Leggett v. Rogers*, 9 *Barb.* 412; *Varick v. Tallman*, 2 *Id.* 117; *Sanders v. Leavey*, 38 *Id.* 73; *Beekman v. Bigham*, 5 *N. Y.* 368.
- *v. Mott*, 28 *N. Y.* 82. Prior decisions arising under same will, in 2 *Paige*, 387; *Brewster v. Striker*, 2 *N. Y.* 19. Subsequent decisions in *Union Nat. B'k v. Kupper*, 63 *Id.* 617; *Smith v. Scholtz*, 68 *Id.* 41, 54. See collection of papers in this case, with marginal annotations, &c. in No. 53 of Charles O'Connor's "My Own Cases," in *Law Inst. Libr. N. Y. city*. Decision in 2 *Paige* explained (Nature of power given by executors by will to sell real estate) in *Catton v. Taylor*, 42 *Barb.* 581. Applied (Who may not bring partition suit) in *Wood v. Clute*, 1 *Sandf. Ch.* 202. Decision in 28 *N. Y.* disting'd (Validity of title to real estate, derived from one claiming under will) in *Favill v. Roberts*, 50 *Id.* 222, 227. Explained (Alienability of heir's interest) in *Brevort v. Grace*, 53 *Id.* 259.
- *v. —*, 6 *Wend.* 465. Explained (Waiver of bond in proceedings before justice) in *Randall v. Crandall*, 6 *Hill*, 342. Approved and followed (Error to reverse void judgment) in *Abrams v. Jones*, 4 *Wisc.* 808.
- Strong v. City of Brooklyn**. See *Heard v. Same*.
- *v. Elliott*. See *Van Vechten v. Pad-dock*.
- *v. Lee*, 44 *How. Pr.* 60. Aff'd in 2 *Sup'm. Ct. (T. & C.)* 441.
- *v. N. Y. Firemen Ins. Co.*, 11 *Johns.* 323. Cited approvingly (Doctrine of adjustment of general average loss) in 3 *Kent Com.* 244.
- *v. N. Y. Laundry M'fg Co.*, 37 *Super. Ct. (J. & S.)* 279. Explained (Effect of statute forbidding defense of usury to corporations) in *Graves v. Lovell*, 35 *Id.* 154, 156.
- *v. Place*, 33 *How. Pr.* 114; s. c., with the dissenting opinion of *MONELL, J.*, 4 *Robt.* 385. Rev'd in 51 *N. Y.* 627.
- *v. Skinner*, 4 *Barb.* 546. See *Methodist Epis. Church v. Jaques*. Disting'd (Effect of ante-nuptial agreement between husband and wife) in *Wright v. Wright*, 59 *Barb.* 505. Quoted in *Ewell Lead. Cas. on Inf. &c.* 275.
- *v. Smith*, 3 *Cal.* 160. Overruled with *Tucker v. Ladd*, 7 *Cow.* 450 (Traverse to as many facts as are necessary to make one point) in *Tubbs v. Caswell*, 8 *Wend.* 130; *Satterlee v. Sterling*, 8 *Cow.* 233. See *O'Brien v. Saxon*, 2 *B. & C.* 908; *Selby v. Bardons*, 3 *B. & Ad.* 9; *Robinson v. Raley*, 1 *Burr.* 316 (and note thereto in *Smiths' Lead. Cas.* 247, 248); *Vivian v. Jenkin*, 3 *Ad. & El.* 741.
- *v. Spronl*, 4 *Daly*, 326. Rev'd in 53 *N. Y.* 497. Decision in *Id.* followed (Judgment on frivolous answer) in *Grocers' Bank v. O'Rourke*, 6 *Hun*, 18, 21.
- *v. Stebbins*, 5 *Cow.* 210. Followed (Strict construction of penal statutes) in

- Verona, &c. Cheese Factory v. Murtaugh, 4 *Lans.* 17, 23.
- **v. Stewart**, 4 *Johns. Ch.* 167. Cited with other cases (Parol evidence to explain purpose of deed) in 11 *Am. L. Reg. N. S.* 691.
- **v. Strickland**, 32 *Barb.* 284. See Murray v. Judson. Followed (Effect of including usurious mortgage, in assignment for creditors) in Chapin v. Thompson, 23 *Hun.* 12, 18.
- **v. Strong**, 1 *Abb. Pr. N. S.* 233; s. c., in part 1 *Robt.* 719. Subsequent decision in 1 *Abb. Pr. N. S.* 358. Decision in 3 *Robt.* disting'd (Pleading in actions of divorce) in Mitchell v. Mitchell, 61 *N. Y.* 398, 410. Decision in 1 *Abb. Pr. N. S.* 358, followed (Counsel fees, &c. to wife in action against her for divorce for adultery) in Clark v. Clark, 7 *Robt.* 284.
- **v. Taylor**, 2 *Hill.* 326. See Smith v. Lynes. Disting'd (Effect of conditional sales, &c.) in Comer v. Cunningham, 77 *N. Y.* 391, 399. Applied with Haggerty v. Palmer, 6 *Johns. Ch.* 437, in Michigan State Bank v. Hastings, 1 *Doug. (Mich.)* 225; s. c., 41 *Am. Dec.* 549, 566, with note. Applied with Van Hoozer v. Cory, 34 *Barb.* 9, in Goodell v. Fairbrother, 12 *R. I.* 233; s. c., 34 *Am. R.* 631.
- **v. Tompkins**, 8 *Johns.* 98. Included (Action on note by sheriff, who was prohibited by law from taking title thereto) in 1 *Ames Cas. on B. & N.* 350.
- **v. Wheaton**, 38 *Barb.* 616. Followed (Enforcing individual liability of stockholders) in Quigley v. Walter, 2 *Suceny*, 175, 180, as applicable to trustees. Compared (Judgment against corporation, as evidence against stockholder) in McMahon v. Macy, 51 *N. Y.* 155, 163. Cited with approval (Meaning of word "obligation") in Exchange B'k v. Ford, 7 *Colo.* 314, 318.
- **v. Wilkin**, 1 *Barb. Ch.* 9. Disregarded as *obiter dictum* (Power of married woman to make will) in Wadhams v. American Home Missionary Society, 12 *N. Y.* 415, 423. Examined (Validity of ante-nuptial settlement and power to disaffirm) in Wetmore v. Kissam, 3 *Bosw.* 321, 325.
- Stroud v. Frith.** See Coit v. Commercial Ins. Co.
- **v. Tilton**, 3 *Keyes*, 139. Explained and cases collected (Books of account as evidence) in Burke v. Wolfe, 38 *Super. Ct. (J. & S.)* 263, 270.
- Struppman v. Muller**, 52 *How. Pr.* 211. Another proceeding in 55 *Id.* 427; s. c., in part, 43 *Super. Ct. (J. & S.)* 38. Also another proceeding as Struffmann v. Muller, 74 *N. Y.* 594.
- Struthers v. Pearce**, 51 *N. Y.* 357. Further proceeding in *Id.* 365. See People v. Albany & Susquehanna R. R. Co. Applied (Basis of extra allowance) in Browning v. Vanderhoven, 4 *Abb. N. C.* 166, 171; Potter v. Farrington, 24 *Hun.* 552; Weaver v. Ely, 83 *N. Y.* 89, 91. Applied (Power of partner to take renewal of lease) in Mitchell v. Reed, 61 *Id.* 123, 130, 133.
- Stryker v. Bergen**, 15 *Wend.* 490. See Noyes v. Hewitt. Followed (Certiorari to justices' courts) in Noyes v. Hewitt, 18 *Wend.* 141, 145.
- **v. Cassidy**, 10 *Hun.* 18. Rev'd in 76 *N. Y.* 50; s. c., 32 *Am. R.* 262, with note. See Balch v. N. Y. & Oswego Midland R. R. Co. Decision in 76 *N. Y.* applied (Who entitled to mechanic's lien) in Mining Co. v. Cullins, 104 *U. S.* 176.
- Stuart v. Binsse**, 3 *Bosw.* 657; s. c., somewhat differently reported in 4 *Id.* 616.
- **v. Close**, 1 *Wend.* 438. Rev'd in 4 *Id.* 95.
- **v. Columbian Fire Ins. Co.**, 1 *Daly*, 471. Rev'd in 3 *Abb. L. J.* 96.
- **v. Hawley**, 22 *Barb.* 619. Doubted (Negligence in setting fire to rubbish) in Hay's Adm'r v. Miller, 6 *Hun.* 320, 323.
- **v. Kissam**, 2 *Barb.* 493. Rev'd in 11 *Id.* 271. With decision in *Id.* see (Liability in more than one capacity for decedent's debts) *Code Civ. Pro.* 1881, § 1860, n. Decision in 2 *Barb.* cited as still authority (What words necessary, to create trust for separate use of married woman) in Tyler on Inf. & Cov. 2 ed. § 347.
- **v. Mechanics' & Farmers' Bank**, 19 *Johns.* 496. Dissected from (Disqualification of judge for interest) in Washington Ins. Co. v. Price, *Hopk.* 5; Place v. Butter-nuts, &c. Man'g Co., 28 *Barb.* 505. Applied in People v. Edmonds, 15 *Id.* 531; Matter of Ryers, 72 *N. Y.* 12. Compared in Matter of Dodge & Stevenson Man'g Co., 77 *Id.* 108. Disting'd in Converse v. McArthur, 17 *Barb.* 412; Jewett v. Albany City B'k, *Clarke*, 186. Applied (Intent as element of usury) in Slosson a. Duff, 1 *Barb.* 435; Thomas v. Murray, 32 *N. Y.* 609. Explained in Robbins v. Dillaye, 2 *Keyes*, 512; Pratt v. Adams, 7 *Puige*, 646.
- **v. Palmer**, 10 *Hun.* 23. Aff'd in 74 *N. Y.* 183; s. c., 30 *Am. R.* 289. Decision in *Id.* disting'd (Necessity of notice of assessment) in Matter of De Peyster, 50 *N. Y.* 565, 572. Approved and supported in Gatch v. City of Des Moines, 63 *Iowa*, 718, 722.
- Studwell v. Charter Oak Ins. Co.**, 17 *Hun.* 602. Further proceeding in 19 *Id.* 127. Decision in *Id.* "not concurred in" (Preference on calendar of action on policy) in Wells v. Watertown Fire Ins. Co., 21 *Id.* 409. Disting'd in McKee v. Metropolitan Life Ins. Co., 25 *Id.* 584. Overruled (Action on life policy as affected by provisions of *Code Civ. Pro.* § 1778) in *N. Y. Life Ins. Co. v. Universal Life Ins. Co.*, 88 *N. Y.* 424, 428.
- **v. Shapter**, 54 *N. Y.* 249. Applied (Infant's liability for fraudulent representation) in Hewitt v. Warren, 10 *Hun.* 560, 563; Kobbe v. Price, 14 *Id.* 56. Followed in Wieland v. Kobick, 110 *Ill.* 18.



- **v. Terrett**, 4 *Bosw.* 520. Followed (Liability on acceptance) in *Gallagher v. Nichols*, 60 *N. Y.* 438, 445.
- Sturges v. Allis**, 10 *Wend.* 354. Explained (Recovery of amount paid on subsequently reversed judgment) in *Lott v. Swezey*, 29 *Barb.* 87, 89, 93.
- **v. Vanderbilt**. See *Sturgis v. Drew*.
- Sturgis v. Drew**, 11 *Hun.* 136. Modified as *Sturges v. Vanderbilt*, 73 *N. Y.* 384. See *McCulloch v. Norwood*.
- **v. Law**. See *Baker v. Hoag*.
- **v. N. Y. Steam Nav. Co.**, 35 *Super. Ct. (J. & S.)* 251. Aff'd in 62 *N. Y.* 625.
- **v. Spofford**, 52 *Barb.* 436. Rev'd in part in 45 *N. Y.* 446. Subsequent decision in 58 *Id.* 103. See *Commissioners of Pilots v. Spofford*. Decision in 45 *N. Y.* disting'd (Limit of recovery for statutory penalties) in *Suydam v. Smith*, 52 *Id.* 383, 388; *Hintermister v. First Nat. B'k of Chittenango*, 64 *Id.* 212, 217. Collated with *Fisher v. N. Y. Central, &c. R. R. Co.*, 46 *Id.* 644; *Suydam v. Smith*, 52 *Id.* 383, in 27 *Am. R.* 722, *n.* Decision in 58 *N. Y.* followed (Award of costs, in case of question of title) in *Boardway v. Scott*, 31 *Hun.* 378.
- Sturm v. Atlantic Mut. Ins. Co.**, 38 *Super. Ct. (J. & S.)* 281. Aff'd in 63 *N. Y.* 77. Compare *Sturms v. Williams*, 38 *Super. Ct. (J. & S.)* 325, a decision affecting policy on same vessel.
- Sturtevant v. Ballard**, 9 *Johns.* 337; *s. c.*, 6 *Am. Dec.* 281, with note; 4 *N. Y. Com. L. Law. ed.* 789, with brief note. See *Barrow v. Paxton*; *Beals v. Guernsey*. Explained (Fraud in retention of possession of chattels sold or mortgaged) in *Bissell v. Hopkins*, 3 *Cow.* 166, 188. But see *Divver v. McLaughlin*, 2 *Wend.* 596; *Collins v. Brush*, 9 *Id.* 198. See also 2 *R. S.* 136, §§ 5, 6, 8; *Cunningham v. Freeborn*, 11 *Wend.* 240; 2 *Kent Com.* 528. Followed in *Rocheblave v. Potter*, 1 *Mo.* 561; *s. c.*, 14 *Am. Dec.* 305, with note. Approvingly cited in *Hundley v. Webb*, 3 *J. J. Marsh. (Ky.)* 644; *s. c.*, 20 *Am. Dec.* 189, 195, with note. Denied in *Haven v. Low*, 2 *N. H.* 13; *s. c.*, 9 *Am. Dec.* 25. Discussed in *Burrill on Assign.* § 339, 4 ed. Explained in 1 *Story on Contr.* 5 ed. § 666, *n.* 2. Quoted in *Wait on Fraud Conv.* § 246, *n.* 1.
- **v. Brewer**, 9 *Abb. Pr.* 414; *s. c.*, 17 *Hov. Pr.* 571. Aff'd in 4 *Bosw.* 628.
- **v. Orser**, 24 *N. Y.* 538. Cited approvingly (Stoppage in transitu) in *Benj. on Sales*, § 858, *n. h* (Bennett's 4 *Am. ed.*).
- **v. Sturtevant**, 20 *N. Y.* 39. Explained (Extrinsic evidence of purpose of absolute conveyance) in *Horn v. Keteltas*, 46 *Id.* 610. Applied in *Barrett v. Carter*, 3 *Lans.* 70.
- Stuyvesant v. Grissler**, 12 *Abb. Pr. N. S.* 6. See (Redemption by creditor of lessee in summary proceedings for land) *Code Civ. Pro.* 1881, § 2257, *n.*
- **v. Hall**. See *Same v. Hone*.
- **v. Hone**, 1 *Sandf. Ch.* 419. Aff'd in *Stuyvesant v. Hall*, 2 *Barb. Ch.* 151. Both decisions approved (Effect of registration as to prior parties) in 2 *Pomeroy Eq. Jur.* 99, *n.* Decision in 2 *Barb. Ch.* applied (Effect of conveyance entitled to be recorded, as constructive notice) in *Edwards v. McKenna*, 55 *Mich.* 520, 526.
- **v. Mayor of N. Y.**, 7 *Cow.* 588. See *Presbyterian Church v. City of N. Y.*; *Vanderbilt v. Adams*. Approved and applied (Power of municipality to order use of private property so as to prevent its becoming a nuisance) in *Goddard v. Town of Jacksonville*, 15 *Ill.* 588; *s. c.*, 60 *Am. Dec.* 773, with note.
- **v. —**, 11 *Paige*, 414. Cited with *Spaulding v. Hallenbeck*, 35 *N. Y.* 204 (Distinction between condition and covenant) in *Blanchard v. Detroit, Lansing, &c. R. R. Co.*, 31 *Mich.* 43; *s. c.*, 18 *Am. R.* 142, 148.
- **v. Pearsall**, 15 *Barb.* 244. See *Adriance v. Mayor, &c. of N. Y.*; *Christopher v. Mayor, &c. of N. Y.* Disting'd (Enjoining action of municipal authorities) in *People v. Mayor, &c. of N. Y.*, 32 *Barb.* 102, 110.
- **v. Tompkins**, 9 *Johns.* 61. Aff'd in 11 *Id.* 569.
- Stuyvesant B'k v. National Mech. B'k'g Assoc.**, 7 *Lans.* 197. Applied (Title to check deposited with bank) in *Metropolitan Nat. B'k v. Loyd*, 25 *Hun.* 101, 106.
- Stymets v. Brooks**, 10 *Wend.* 206. Reviewed with other cases (Effect of execution issued after death of one of parties to action) in *Stewart v. Nuckols*, 15 *Ala.* 225; *s. c.*, 50 *Am. Dec.* 127, 129, with note. Compare *Wendell v. Tainter*, 4 *Watts (Pa.)* 283.
- Sudlow v. Knox**, 7 *Abb. Pr. N. S.* 411; *s. c.*, 4 *Abb. Ct. App. Dec.* 326. See *N. Y. & New Haven R. R. Co. v. Ketcham*. Followed (Appeal from order in proceeding to punish for contempt) in *Erie R'y Co. v. Ramsey*, 45 *N. Y.* 637, 643; *Brinkley v. Brinkley*, 47 *Id.* 40, 45. Same rule said in 20 *Am. L. Reg. N. S.* 431, to prevail in Wisconsin. Approved with *Matter of Seeley*, 6 *Abb. Pr.* 217 (Punishment for contempt committed before referee) in *U. S. v. Anonymous*, *U. S. Cir. Ct. W. D. Tenn.* 21 *Fed. Rep.* 770. Commented on in *Hoffm. on References*, 48.
- Suffern v. Townsend**, 9 *Johns.* 35. Disting'd (Effect of agreement for sale of land as giving right of possession) in *Miller v. Ball*, 64 *N. Y.* 286, 294.
- Sullivan v. Alexander**, 19 *Johns.* 233. Followed (Difference between variances verbal, and those substantial, in form of sheriff's bonds) in *Smith v. Allen*, 1 *Saxt. (N. J.)* 43; *s. c.*, 21 *Am. Dec.* 33, with note. Approved (Right of sheriff to confine person that has been admitted to jail liberties) in *U. S. v. Noah*, 1 *Paine*, 375.
- **v. Decker**, 1 *E. D. Smith*, 699. Applied (Parties in proceeding to foreclose

- mechanic's lien) in *Gross v. Daly*, 5 *Daly*, 340, 551.
- *v. Fosdick*, 10 *Hun*, 173. See cases col-  
lated (Rate of interest after breach of con-  
tract to pay money) in 47 *Am. R.* 74, *n.*
- *v. Judah*, 4 *Paige*, 444. Cited as au-  
thority (Power to allow damages sus-  
tained by reason of injunction) in *Leavitt*  
*v. Dabney*, 9 *Abb. Pr. N. S.* 380. Com-  
pared (Effect of punishment for disobedi-  
ence to injunction) in *People v. Compton*, 1  
*Duer*, 522.
- *v. Mayor, &c. of N. Y.*, 45 *How. Pr.*  
152. Opinion as to unconstitutionality of  
act in question disapproved, but judgment  
aff'd on other grounds in 53 *N. Y.* 652; *s. c.*,  
47 *How. Pr.* 491. Subsequent proceeding  
in 48 *Id.* 238. Decision in 53 *N. Y.* explained  
and applied (Effect of act prohibiting crea-  
tion of new officers) in *Sweeney v. Mayor*,  
&c. of *N. Y.*, 5 *Daly*, 274, 276. Disting'd  
in *Costello v. Mayor, &c. of N. Y.*, 63 *N. Y.*  
49. Applied (Title of local bill) in *Wenz-  
ler v. People*, 58 *Id.* 526. Applied (Distinc-  
tion between public officer and employee) in  
*People ex rel. Donahue v. French*, 12 *Hun*,  
256.
- *v. People*, 1 *Park.* 347. Rev'd (What  
is premeditated design to kill) in *People v.*  
*Sullivan*, 7 *N. Y.* 396.
- *v. Sullivan*, 4 *Hun*, 198; *s. c.*, 6 *Sup'm.*  
*Ct. (T. & C.)* 433. Rev'd in 66 *N. Y.* 37.  
See *Pollock v. Pollock*. Decision in 66 *N.*  
*Y.* disting'd (Right of remaindermen, &c.  
to maintain partition) in *Wager v. Wager*,  
23 *Hun*, 439, 441. Followed while *Morse v.*  
*Morse*, 85 *N. Y.* 57, is applied, and *Blakely v.*  
*Calder*, 15 *Id.* 617; *Howells v. Mills*, 56 *Id.*  
226, disting'd in *Hughes v. Hughes*, 11 *Abb.*  
*N. C.* 37. Compare *Code Civ. Pro.* § 1533.  
See 13 *Alb. L. J.* 378.
- Sumner v. Buel**, 12 *Johns.* 475. Questioned  
(Right of action for libel affecting class of  
persons) in *Ryckman v. Delavan*, 25 *Wend.*  
186, 202.
- Sunderland v. Loder**, 5 *Wend.* 58. Ex-  
plained (Effect of taking body in execution)  
in *Penn. v. Remsen*, 24 *How. Pr.* 504. Fol-  
lowed in *Kœing v. Steckel*, 36 *Super. Ct.*  
(*J. & S.*) 167; which was aff'd in 53 *N. Y.*  
475, 477, which see; *Wakeman v. Lyons*, 9  
*Wend.* 243.
- Sunderlin v. Wyman**, 1 *Sup'm. Ct. (T. & C.)*  
Add. 17. Further decision in 10 *Hun*,  
493.
- Sun Mt. Ins. Co. v. Davis**, 1 *Robt.* 602; *s.*  
*c.*, more fully, 3 *Id.* 254.
- *v. Mayor, &c. of N. Y.*, 5 *Sandf.* 10.  
Aff'd in 8 *N. Y.* 241. Compare similar  
proceedings between same parties in 8  
*Barb.* 450. Decision in 5 *Sandf.* approved  
(Constitutionality of statute imposing tax)  
in *People v. Supervisors of Orange*, 27 *Barb.*  
575, 587. Decision in 8 *N. Y.* followed as  
conclusive (Taxation of Mutual Insurance  
Companies) in *People v. Supervisors of N. Y.*,  
16 *Id.* 426. Applied (Title of local bill) in  
*Devlin v. Mayor, &c. of N. Y.*, 63 *Id.* 22;  
*Freeman v. Panama R. R. Co.*, 7 *Hun*, 124.  
Disting'd in *People v. Hills*, 35 *N. Y.* 453;  
*People v. Allen*, 42 *Id.* 417. Applied (Dis-  
tinction between public and private statute)  
in *Bretz v. Mayor, &c. of N. Y.*, 3 *Abb. Pr.*  
*N. S.* 481; *Smith v. Mayor, &c. of N. Y.*, 34  
*How. Pr.* 510; *People v. Supervisors of*  
*Chautauqua*, 43 *N. Y.* 18.
- Superintendent of Poor of Cortland v.**  
**Same of Herkimer.** See *Scymour v. Wil-*  
*son*.
- Supervisors of Albany v. Dorr**, 25 *Wend.* 440.  
Aff'd in 7 *Hill*, 583. See *Looney v. Hughes*;  
*Swartwout v. Mechanics' B'k of N. Y.*  
Overruled (Liability of officers entrusted  
with public funds) in *Muzzy v. Shattuck*, 1  
*Den.* 233, 235. See *U. S. v. Prescott*, 3  
*How. (U. S.)* 578; *Inhabitants of New*  
*Providence v. McEachron*, 33 *N. J.* 341.  
Referred to as in effect overruled by *Muzzy*  
*v. Shattuck*, 1 *Den.* 233,—in *Commissioners*  
*of Hennepin Co. v. Jones*, 18 *Minn.* 199.
- *v. Durant*, 9 *Paige*, 182. Rev'd in 26  
*Wend.* 66.
- Supervisors of Allegany v. Van Campen**, 3  
*Wend.* 48. Applied (Effect of official bond  
containing provisions not required by statu-  
te) in *U. S. v. Mynderse*, 11 *Blatchf. C.*  
*Ct.* 1, 6. Referred to as authority in *U. S.*  
*v. Bradley*, 10 *Pet.* 343; which was fol-  
lowed and approved in *Polk v. Plummer*, 2  
*Humph. (Tenn.)* 500; *s. c.*, 37 *Am. Dec.*  
566.
- Supervisors of Chenango v. Birdsall**, 4  
*Wend.* 453. Applied (Competency of party  
to record, as witness) in *Safford v. Lawrence*,  
6 *Barb.* 570. Disting'd (Effect of action of  
supervisors in passing on accounts) in *Sup-*  
*ervisors of Richmond v. Wandel*, 6 *Lans.*  
40, *n.* Disting'd in *People ex rel. Hotch-*  
*kiss v. Sup'rs of Broome*, 65 *N. Y.* 228;  
*People v. Sup'rs of Montgomery*, 67 *Id.*  
109, 114; *People ex rel. Lawrence v. Sup'rs*  
*of Westchester*, 73 *Id.* 173, 178.
- Supervisors of Delaware v. Foote**, 65 *N. Y.*  
586. Further decision in 9 *Hun*, 527.
- Supervisors of Monroe v. Budlong**, 51  
*Barb.* 493. Applied (Support of insane  
wife) in *Goodale v. Brockner*, 25 *Hun*, 621,  
623.
- *v. Otis.* See *Atlantic & Pacific Tel. Co.*  
*v. Barnes*; *People v. Jansen*.
- Supervisors of Onondaga v. Briggs**, 2 *Hill*,  
135. Aff'd in 2 *Den.* 26. Decision in *Id.*  
applied (Effect of allowance by supervisors)  
in *People v. Stout*, 23 *Barb.* 344; *People v.*  
*Sup'rs of Schenectady*, 35 *Id.* 417. Dis-  
ting'd in *People ex rel. Hasbrouck v. Sup'rs*  
*of N. Y.*, 21 *How. Pr.* 328; *Sup'rs of Rich-*  
*mond v. Van Clief*, 1 *Hun*, 456; *Sup'rs of*  
*Richmond v. Ellis*, 59 *N. Y.* 620, 626; *Peo-*  
*ple v. Sup'rs of Montgomery*, 67 *Id.* 109,  
114. Applied to action of State auditors,  
— in *People of Michigan v. Phoenix B'k*, 4  
*Bosw.* 381; to summary proceedings, in  
*White v. Coatsworth*, 6 *N. Y.* 143. Decis-  
ions in 2 *Den.*; 2 *Hill*, disting'd in *People ex*  
*rel. Hotchkiss v. Sup'rs of Broome*, 65 *N.*

- Y. 228.** Disting'd (Effect of voluntary payment of claim) in *Meyer v. Clark*, 2 *Daly*, 503; *Allen v. Mayor, &c. of N. Y.*, 4 *E. D. Smith*, 409. Disting'd (Conclusiveness of taxation of bill) in *Cook v. Stilson*, 3 *Barb.* 340. Applied in *Pittman v. Mayor, &c. of N. Y.*, 3 *Hun*, 373.
- **v. —**, 3 *Den.* 173. Applied (Costs, by what law governed) to interest, in *Salter v. Utica & Black River R. R. Co.*, 86 *N. Y.* 401, 404. Applied to trustees' commissions in *Savage v. Sherman*, 24 *Hun*, 307, 311.
- Supervisors of Rensselaer v. Bates**, 17 *N. Y.* 242. Applied (Liability of sureties on official bond) to administration bond, in *Field v. Van Cott*, 5 *Daly*, 308, 311.
- Supervisors of Richmond v. Ellis**, 59 *N. Y.* 620. Approved (Recovery of money paid by public officer) in *McGinnis v. Mayor, &c. of N. Y.*, 6 *Daly*, 416, 418. Disting'd in *People v. Denison*, 19 *Hun*, 148. Applied in *People v. Starkweather*, 42 *Super. Ct. (J. & S.)* 334. Followed (What is voluntary payment by such officer) in *Donohue v. Mayor, &c. of N. Y.*, 10 *Hun*, 38.
- **v. Van Clief**, 1 *Hun*, 454; s. c., 3 *Sup'm. Ct. (T. & C.)* 453. Aff'd, it seems, in 60 *N. Y.* 645. Another proceeding in 16 *Abb. Pr. N. S.* 97.
- **v. Wandel**, 6 *Lans.* 33. Aff'd on this opinion in 59 *N. Y.* 645.
- Supervisors of Saratoga v. Deyoe**, 15 *Hun*, 526. Rev'd in 77 *N. Y.* 219; s. c., 57 *How. Pr.* 134. Effect of decision in *Id.* qualified in subsequent decision as Supervisors of Saratoga v. Seabury, 11 *Abb. N. C.* 461.
- Supervisors of Schuyler v. Bank of Havana**, 5 *Hun*, 649. Aff'd, it seems, in 76 *N. Y.* 593, but without opinion.
- Supervisors of Sullivan v. Dimmick**, 18 *Wend.* 538. Overruled (Allowance to district attorney for subpoena tickets) in 2 *Den.* 26, 36.
- Susquehanna Bank v. Supervisors of Broome**, 25 *N. Y.* 312. See *Hartwell v. Armstrong*; *Heywood v. City of Buffalo*. Disting'd (Injunction to restrain collection of illegal tax) in *Lutes v. Briggs*, 5 *Hun*, 71. Followed in *Western R. R. Co. v. Nolan*, 48 *N. Y.* 519. Applied to restraint of application of proceeds of tax collected, — in *Kilboarne v. St. John*, 59 *Id.* 21, 26.
- Susquehanna & Bath Turnpike R. Co. v. People**, 15 *Wend.* 267. Followed (Remedy against company for failure to repair road) in *Syracuse & Tully Plank Road Co. v. People*, 66 *Barb.* 25, 29.
- Sussdorff v. Schmidt**, 55 *N. Y.* 319. See (Costs in case of transfer, &c. of cause of action) *Code Civ. Pro.* 1881, § 3247, n.
- Sutherland v. Brush**, 7 *Johns. Ch.* 17; s. c., 11 *Am. Dec.* 383, with note wherein it is said to have been limited (Power of executor to use funds of estate for his own benefit) by *Field v. Schieffelin*, 7 *Johns.* 150,
159. See *Bates v. Underhill*. Denied in *Colt v. Lasnier*, 9 *Conn.* 320, 328. Applied (Responsibility for acts of co-executor) in *Lacey v. Davis*, 5 *Relf.* 301, 305. Disting'd in *Bates v. Underhill*, 3 *Id.* 372. See cases collected in 15 *Am. L. Rev.* 175.
- **v. N. Y. Central, &c. R. R. Co.**, 41 *Super. Ct. (J. & S.)* 17. Compared (Negligence in approaching railroad crossing) in *Leonard v. N. Y., &c. R. R. Co.*, 42 *Id.* 223, 232.
- **v. Rose**, 47 *Barb.* 144. See (Exceptions) *Code Civ. Pro.* 1881, § 992, n.
- **v. Sheffield**, 2 *Wend.* 293. Explained (Duty as to payment of costs by party that has obtained relief on condition of such payment) in *Hoadley v. Cuyler*, 10 *Id.* 593.
- Sutliff v. Forgey**, 1 *Cow.* 89. Aff'd in 5 *Id.* 713. See *Jackson v. Stevens*; *Mick v. Mick*. Both decisions commented on (Dower as affected by alienage) in *Priest v. Cummings*, 16 *Wend.* 617, 620; 20 *Id.* 338, 359. Collated with other cases in *Sharsw. & B. Cas. on Real Prop.* 302.
- Sutphen v. Fowler**, 9 *Paige*, 280. Explained (Specific performance of contract relating to land in foreign country) in 3 *Pars. on Contr.* 378, n. a.
- Sutton v. Davis**, 6 *Hun*, 237. Appeal dismissed in 64 *N. Y.* 633.
- **v. N. Y. Central, &c. R. R. Co.**, 4 *Hun*, 760. Rev'd in 66 *N. Y.* 243. See *Nicholson v. Erie R'y Co.* Decision in 66 *N. Y.* disting'd (Effect of negligence in crossing track) in *Cordell v. N. Y. Central, &c. R. R. Co.*, 70 *Id.* 119, 124. Commented on in *Moak's Underhill's Torts*, 1 *Am. ed.* 264. Approved in *Thomps. on Neglig.* 455.
- **v. Ray**, 72 *N. Y.* 482. Compare (Determination on appeal from surrogate) *Code Civ. Pro.* § 2587.
- Suydam v. Barber**, 6 *Duer*, 34. Rev'd in 18 *N. Y.* 468. Further decision as *Reed v. Girty*, 6 *Boss.* 567. See *Robertson v. Smith*. Compare (Effect of foreign judgment on right of arrest) *Code Civ. Pro.* § 552.
- **v. Bartle**, 9 *Paige*, 294. Applied (Allowing proceedings for recovery of mortgage debt pending foreclosure) in *Collins' Petition*, 6 *Abb. N. C.* 227, 232; *Equitable Life Ins. Soc. v. Stevens*, 63 *N. Y.* 345; *Scofield v. Doscher*, 72 *Id.* 494; *Schaaf v. O'Brien*, 8 *Daly*, 182.
- **v. Clark**, 2 *Sandf.* 133. See *Trevor v. Wood*. Explained (Variance between bought and sold notes) in 1 *Pars. on Contr.* 544, n. g; 1 *Benj. on Sales*, 301, n. 18 (*Corbin's* 4 *Am. ed.*).
- **v. Holden**. See *Sherman v. Felt*.
- **v. Jenkins**, 3 *Sandf.* 614. See *Carpenter v. Stevens*; *Matthews v. Coe*. Questioned (Measure of damages for conversion, &c.) in *Spicer v. Waters*, 65 *Barb.* 227, 235. Approved and followed with *Brizsee v. Maybee*, 21 *Wend.* 144, in *Twinnam v. Swart*, 4 *Lans.* 263, 270. Disting'd in *Allen v. Fox*, 51 *N. Y.* 567. Com-

- pared in *Devlin v. Pike*, 5 *Daly*, 85, 91. Approved and followed in *Wells v. Kelsey*, 37 *N. Y.* 146; *Baker v. Drake*, 53 *Id.* 211, 224. Approved in *Scott v. Rogers*, 31 *Id.* 676, 679. Followed and approved in *Sturges v. Keith*, 57 *Ill.* 451; s. c., 11 *Am. R.* 28, 31. Said to disapprove *West v. Wentworth*, 3 *Cow.* 82; *Clark v. Pinney*, 7 *Id.* 681, and with *Smith v. Griffith*, 3 *Hill*, 333; *Romaine v. Van Allen*, 26 *N. Y.* 309; *Wilson v. Mathews*, 24 *Barb.* 295; *Scott v. Rogers*, 31 *N. Y.* 676, followed in *Page v. Fowler*, 39 *Cal.* 412; s. c., 2 *Am. R.* 462, 468. Included in *Sedgw. Cas. on Dama.* 561. Quoted in 3 *Pars. on Cont.* 196, n. i; 201, n. g. See *Code Civ. Pro.* 1881, § 1735, n.
- **v. Keys**, 13 *Johns.* 444. See *Savacool v. Boughton*. Overruled (Protection of ministerial officer) in *Savacool v. Boughton*, 5 *Wend.* 170, 176; *Chegaray v. Jenkins*, 5 *N. Y.* 376, 382. Denied and said to have been overruled in *Savacool v. Boughton*, 5 *Wend.* 170,—in *Sprague v. Birchard*, 1 *Wis.* 457; s. c., 60 *Am. Dec.* 393, with note.
- **v. Marine Ins. Co.**, 1 *Johns.* 181; s. c., 3 *N. Y. Com. L. Law. ed.* 105, with brief notes; 3 *Am. Dec.* 307, with note. Relied on and *Fontaine v. Phoenix Ins. Co.*, 11 *Johns.* 293, disting'd (What is sufficient ground for abandonment in *Bosley v. Chesapeake Ins. Co.*, 3 *Gill & J. (Md.)* 450; s. c., 22 *Am. Dec.* 337, 342, 345.
- **v. Morris Canal & Banking Co.**, 5 *Hill*, 491, n. Aff'd in 6 *Id.* 219. Decision in *Id.* collated with other cases (Effect of loan by corporation for illegal transactions) in *Field on Ultra Vires*, 187.
- **v. Smith**. See *Brown v. Treat*; *Sturgis v. Spofford*.
- **v. Suydam**, 11 *How. Pr.* 518. Followed (Examination of party) in *Watson v. Gage*, 12 *Abb. Pr.* 215.
- **v. Westfall**, 4 *Hill*, 211. Rev'd in 2 *Den.* 205. Decision in *Id.* explained (Liability of surety in bill or note) and disting'd from *Griffith v. Reed*, 21 *Wend.* 902, in *Wright v. Garlinghouse*, 26 *N. Y.* 539, 543.
- Svenson v. Atlantic Mail S. S. Co.**, 33 *Super. Ct. (J. & S.)* 277. Aff'd in 57 *N. Y.* 108.
- Swaine v. Perine**, 5 *Johns. Ch.* 482; s. c., 9 *Am. Dec.* 318. Followed (Conveyance by husband, when fraudulent as against wife's right of dower) in *Thayer v. Thayer*, 14 *Verm.* 107; s. c., 39 *Am. Dec.* 211, 214, with extended note; *Holmes v. Holmes*, 3 *Paige*, 363, though a reversed case, being cited with approval. Followed in *Kelly v. McGrath*, 70 *Ala.* 75; s. c., 45 *Am. R.* 75, 79. Doubted in *Butler v. Butler*, 21 *Kans.* 521; s. c., 30 *Am. R.* 444. Explained in 1 *Washb. on Real Prop.* 4 ed. 217. Applied (Dower in mortgaged premises) in *Eaton v. Simonds*, 14 *Pick. (Mass.)* 98; s. c., 5 *Am. Dec.* 234, n. Followed with *Smith v. Jackson*, 2 *Edw.* 28; *Titus v. Neilson*, 5 *Johns. Ch.* 452; *Tabele v. Tabele*, 1 *Id.* 45; *Haw-*
- ley v. Bradford*, 9 *Paige*, 201; *Vartie v. Underwood*, 18 *Barb.* 561, in *Bank of Commerce v. Owens*, 31 *Md.* 320; s. c., 1 *Am. R.* 60, 63. Cited with other cases in *Tyler on Inf. & Cov.* 2 ed. § 894, as holding a rule more reasonable than that of other cases cited. Applied with *Haviland v. Bloom*, 6 *Johns.* 178 (Nature of wife's interest in property received by husband as her trustee) in *State v. Reigart*, 1 *Gill (Md.)* 1; s. c., 39 *Am. Dec.* 628, 635, with note. Disapproved with *Hale v. James*, 6 *Johns. Ch.* 258 (Right of widow claiming dower, to profits) in *Tod v. Baylor*, 4 *Leigh (Va.)* 517.
- Swan v. Saddlemire**, 8 *Wend.* 676. See *Jackson v. Anderson*; *Jackson v. Page*; *Woodcock v. Bennett*. Disapproved (Effect of execution on satisfied judgment) in *Hoffman v. Strohecker*, 7 *Watts (Pa.)* 86; s. c., 32 *Am. Dec.* 740, with note.
- Swanson v. Cooke**, 45 *Barb.* 574. Applied (Rate of exchange, when not allowed as damages) in *Ladd v. Arkill*, 49 *Super. Ct. (J. & S.)* 150, 156.
- Swart v. Service**, 21 *Wend.* 36; s. c., 34 *Am. Dec.* 211, with note wherein it is shown to have been frequently cited and followed both in *N. Y.* and elsewhere (Parol evidence to show absolute deed to be mortgage). Overruled in *Webb v. Rice*, 6 *Hill*, 219.
- Swarthout v. Curtis**. See *Same v. Swarthout*.
- **v. Swarthout**, 7 *Barb.* 354. Aff'd in *Swarthout v. Curtis*, 5 *N. Y.* 301. Another decision in 4 *Id.* 415. Decision in *Id.* recognized and applied (What is final judgment, for purposes of appeal) in *Tompkins v. Hyatt*, 19 *Id.* 534; *Heineman v. Waterbury*, 5 *Bosw.* 686, 689. Compared with other cases in 60 *Am. Dec.* 430, n.
- **v. N. J. Steamboat Co.**, 46 *Barb.* 222. Aff'd in 48 *N. Y.* 209.
- Swartwont v. Mechanics' B'k of N. Y.**, 5 *Den.* 55. See *Lewis v. Park Bank*. Collated with *Supervisors of Albany v. Dorr*, 25 *Wend.* 446; 7 *Hill*, 583; *Muzzy v. Shattuck*, 1 *Den.* 233; and other cases (Nature of liability of public officer whose duty it is to receive money) in *Perley v. County of Muskegon*, 32 *Mich.* 132; s. c., 20 *Am. R.* 637, 639, 642.
- Swasey v. Vanderheyden**, 30 *Johns.* 33; s. c., 4 *N. Y. Com. L. Law. ed.* 923, with brief note. Overruled (Effect of negotiable note given by infant) in *Goodsell v. Myers*, 3 *Wend.* 478; and see *Dubose v. Wheddon*, 4 *McCord (So. Car.)* 221. Referred to in *Tyler on Inf. & Cov.* 2 ed. § 13, as contrary to later authorities, citing *Goodsell v. Myers*, 3 *Wend.* 499, and other cases from *N. Y.* and elsewhere. See also cases cited in § 16.
- Sweatman, Matter of**, 1 *Cow.* 144. Approved (Effect of judgment erroneous in part, and valid in part) in *Taff v. State*, 39 *Conn.* 84. Cited as authority (Vacating

- order of commitment for non-payment of money) in *Hendryx v. Fitzpatrick*, *U. S. Cir. Ct. D. Mass.* 17 *Chic. L. N.* 6.
- Sweeney v. Prior**, 44 *Super. Ct. (J. & S.)* 337. Aff'd, it seems, in 80 *N. Y.* 626, but without opinion. See vol 538, *Cas. in Ct. of App.*, Law Inst. Libr. *N. Y. city*.
- Sweeney v. Mayor, &c. of N. Y.**, 5 *Daly*, 274. Aff'd, it seems, in 58 *N. Y.* 625, but without opinion. These decisions disting'd and doubted (Who is court officer) in *Wines v. Mayor, &c. of N. Y.*, 9 *Hun*, 660. Followed in *Moser v. Mayor, &c. of N. Y.*, 21 *Id.* 164; *Rowland v. Mayor, &c. of N. Y.*, 83 *N. Y.* 372, 377; which aff'd 44 *Super. Ct. (J. & S.)* 560, which see.
- **v. Sturges**, 12 *Weekly Dig.* 74. Reported as *Sweeney v. Sturges*, 24 *Hun*, 162.
- Sweet v. Barney**, 24 *Barb.* 533. Aff'd in 23 *N. Y.* 335. Decision in *Id.* applied (Duty of carrier as to delivery) in *Price v. Oswego & Syracuse R. R. Co.*, 58 *Barb.* 606. Followed (What is delivery to bank) in *Hotchkiss v. Artisans' B'k*, 2 *Abb. Ct. App. Dec.* 405. Explained and disting'd in *Howard v. S. S. Co.*, 83 *N. C.* 158; s. c., 35 *Am. R.* 571.
- **v. Bartlett**, 4 *Sandf.* 661. Explained and applied (Mode of enforcing attorney's lien) in *Crotty v. McKenzie*, 42 *Super. Ct. (J. & S.)* 192, 195, 201..
- **v. Bean**, 3 *Sup'm. Ct. (T. & C.)* 772; s. c., more fully, 67 *Barb.* 91.
- **v. Buffalo N. Y., &c. R'y Co.**, 13 *Hun*, 643. Aff'd in 79 *N. Y.* 293. Decision in *Id.* applied (Nature of estate in land taken for public purposes) in *Tift v. City of Buffalo*, 82 *Id.* 204, 213. With decision in 13 *Hun* see (What is a municipal\* purpose) cases cited in 5 *Abb. N. C.* 468, n.
- **v. Chapman**, 53 *How. Pr.* 253. Previous proceeding in 7 *Hun*, 576. See *Powell v. Waters*. Decision in 7 *Hun* disting'd (Necessity that usury be pleaded) in *Haywood v. Jones*, 10 *Id.* 501. Included in 1 *Ames Cas. on B. & N.* 604.
- **v. Chase**, 2 *N. Y.* 73. Followed (Vesting of legacy in widow) in *Edsall v. Waterbury*, 2 *Redf.* 48, 51.
- **v. Geisenhainer**. See *Arcularius v. Geisenhainer*.
- **v. Hulbert**, 51 *Barb.* 312. Applied (Validity of statute authorizing municipal corporation to issue bonds for railroad purposes) in *People ex rel. Dunkirk, &c. R. R. Co. v. Batchellor*, 53 *N. Y.* 128, 143. Denied in *Comm'rs of Leavenworth County v. Miller*, 7 *Kans.* 479; s. c., 12 *Am. R.* 425, 443. Approved (Nature of statutory power exercised by judge, of appointment to office or position of trust) in *Walker v. City of Cincinnati*, 21 *Ohio St.* 14; s. c., 8 *Am. R.* 24, 34.
- **v. Ingerson**, 12 *How. Pr.* 331. Disapproved (Joinder of causes of action) in *Pomeroy on Rem.* § 467.
- **v. Jacobs**, 6 *Paige*, 355; s. c., 31 *Am. Dec.* 252, with note containing citations. Disting'd (Parol evidence to establish resulting trust) in *Pinnock v. Clough*, 10 *Vt.* 500; s. c., 42 *Am. Dec.* 521, 526, with note. Collated and compared with other cases in *Randall v. Constans*, 33 *Minn.* 329, 336.
- **v. Sweet**. See *Macondray v. Wardle*. See (Answer in matrimonial action) *Code Civ. Pro.* 1881, § 1757, n.
- **v. Titus**, 4 *Hun*, 639; s. c., more fully, 67 *Barb.* 327.
- **v. Tuttle**, 10 *How. Pr.* 40. Aff'd in 14 *N. Y.* 465. See *Walsh v. Kelly*. Decision in *Id.* re-aff'd (Defenses that are to be included in single answer) in *Gardner v. Clark*, 21 *N. Y.* 399, 401. Followed (Question calling for witness' opinion) in *Murray v. Deyo*, 10 *Hun*, 3, 6; *Lewis v. Rogers*, 34 *Super. Ct. (J. & S.)* 75; *Rocke v. Meiner*, *Id.* 158, 161. Disting'd in *Nicolay v. Unger*, 80 *N. Y.* 54, 57. Applied (Effect of former judgment rendered on merits) in *Sheldon v. Edwards*, 35 *Id.* 289. See to the contrary (Evidence as to on whose behalf services are rendered, &c.) *Nichols v. Kingdom Iron Ore Co.*, 56 *Id.* 618; *Merritt v. Briggs*, 57 *Id.* 651. See also *Abb. Tr. Ev.* 265.
- **v. Van Wyck**, 3 *Barb. Ch.* 647. See *Poillon v. Martin*. Disting'd (Rights of bona fide purchaser of non-negotiable chose in action) in *Moore v. Metropolitan Nat. B'k*, 55 *N. Y.* 41, 49.
- Sweeting v. Turner**. See *Whitney v. Ferris*.
- Sweetman v. Prince**, 62 *Barb.* 256. Rev'd in 26 *N. Y.* 224. Decision in *Id.* explained and approved with *Burt v. Dewey*, 40 *Id.* 283 (Recovery on breach of warranty for title) in *Bordwell v. Collie*, 45 *Id.* 494; which aff'd 1 *Lans.* 144, which see. Applied in *Matheny v. Mason*, 73 *Mo.* 677, 683. Decision in 62 *Barb.* quoted in *Benj. on Sales*, § 627, n. i (Bennett's 4 *Am. ed.*)
- Swenarton v. Hancock**, 22 *Hun*, 38. Aff'd in 9 *Abb. N. C.* 326; mem. s. c., 84 *N. Y.* 653. Another proceeding in 22 *Hun*, 43.
- Swett v. Colgate**, 20 *Johns.* 196; s. c., 11 *Am. Dec.* 266. See *Chapman v. Murch*; *Hawkins v. Pemberton*; *Holden v. Dakin*; *Seixas v. Woods*. Disting'd (Warranty on sale of chattels) in *Carley v. Wilkins*, 6 *Barb.* 561. Applied in *Duffee v. Mason*, 8 *Cow.* 26; *Welsh v. Carter*, 1 *Wend.* 189. Questioned in *Hawkins v. Pemberton*, 51 *N. Y.* 198, 204. Overruled in *White v. Miller*, 71 *Id.* 118, 129. Quoted in 2 *Story on Contr.* 5 ed. § 1062, n. 3. Discussed in 2 *Kent Com.* 479.
- Swick v. Sears**, 1 *Hill*, 17. See *Brown v. Bowen*; *Sayles v. Smith*. Limited (Construction of reservation in deed) in *Clark v. Cottrell*, 42 *N. Y.* 527, 529. Explained in 2 *Pars. on Contr.* 795, n. r.
- Swift v. Beers**, 3 *Dem.* 70. Disting'd and *Mann v. Eckford*, 15 *Wend.* 502, applied

- (Recovery on guaranty of void instrument) in *Purdy v. Peters*, 35 *Barb.* 239, 249.
- *v. City of Poughkeepsie*, 37 *N. Y.* 512. Prior decision under *Foster v. Van Wyck*, 4 *Abb. Pr. N. S.* 469. See *Barhyte v. Shepherd*; *Stone v. Mayor, &c. of N. Y.* Decision in 37 *N. Y.* followed (Recovery of money received on tax based on erroneous assessment) in *Genesee Valley Nat. B'k v. Supervisors of Livingston Co.*, 53 *Barb.* 223, 233; *Newman v. Supr's of Livingston*, 1 *Lans.* 478; which was modified in 45 *N. Y.* 684, which see; *Buffalo, &c. R. R. Co. v. Supr's of Erie*, 48 *Id.* 100. Disting'd in *Chapman v. City of Brooklyn*, 40 *Id.* 381; *Bank of Commonwealth v. Mayor, &c. of N. Y.*, 43 *Id.* 186. Disting'd (Erroneous assessment when not to be questioned) in *Hopkins v. Mason*, 61 *Barb.* 471; *Cruger v. Dougherty*, 43 *N. Y.* 122. Reviewed with other cases (What is reviewable on *certiorari*) in *People v. Board of Police*, 39 *Id.* 515.
- *v. City of Williamsburgh*, 24 *Barb.* 427. Discussed (Grades of municipal government) in *Cooley on Const. Limit.* 5 ed. 255, n.
- *v. Hart*, 12 *Barb.* 530. Limited (Sufficiency of refiling of chattel mortgage) in *Marsden v. Cornell*, 62 *N. Y.* 215, 219; which aff'd 2 *Hun.* 451, which see. Compare *Thomas on Mort.* 500. With this decision and *Newell v. Warner*, 44 *Barb.* 268, compare, for construction of similar Ohio statute, *Biteler v. Baldwin*, 42 *Ohio St.* 125.
- *v. Hosmer*, 3 *How. Pr.* 284. Explained (Effect of unverified pleading) in *Bragg v. Bickford*, 4 *Id.* 21.
- *v. Mass. Mut. Life Ins. Co.*, 3 *Hun.* 551. Rev'd on another point in 63 *N. Y.* 186; s. c., 20 *Am. R.* 522. Former decision in 2 *Sup'm. Ct. (T. & C.)* 302. See *Luby v. Hudson River R. R. Co.*; *Valton v. Nat. Fund Life Assurance Co.* Decision in 63 *N. Y.* disting'd (Declarations of assured, as evidence) in *Edington v. Mut. Life Ins. Co.*, 67 *Id.* 193; *Edington v. Aetna Life Ins. Co.*, 13 *Hun.* 543, 548; which was rev'd in 77 *N. Y.* 564. Followed in *Estes v. World Mut. Life Ins. Co.*, 6 *Hun.* 349, 352. See 14 *Abb. L. J.* 176. Disting'd as to statements *after* issuing of policy, in 34 *Am. R.* 448, n.
- *v. Mayor, &c. of N. Y.*, 17 *Hun.* 518. Rev'd in 83 *N. Y.* 528. Decision in *Id.* disting'd (Right of action against city of N. Y.) in *Phillips v. Mayor, &c. of N. Y.*, 13 *Weekly Dig.* 426.
- *v. Prouty*, 6 *Hun.* 94. Aff'd in 64 *N. Y.* 545.
- *v. Wells*, 2 *How. Pr.* 79. Approved with *Smith v. Brown*, 3 *Id.* 9; *Miller v. Hooker*, 2 *Id.* 171; *Dickinson v. Mitchell*, 19 *Abb. Pr.* 286; *Sharp v. Mayor, &c. of N. Y.*, 18 *How. Pr.* 213; *Cameron v. Freeman, Id.* 310 (Compulsory references when not to be granted in cases of accounts) in *McMartin v. Bingham*, 27 *Iowa*, 234; s. c., 1 *Am. R.* 265, 268.
- Swinerton v. Columbian Ins. Co.**, 9 *Bosw.* 361. Rev'd in 37 *N. Y.* 174. Decision in *Id.* applied (Judicial notice of governmental proceedings) in *Prince v. Skillin*, 71 *Me.* 361; s. c., 36 *Am. R.* 325, 328.
- Switzer v. Valentine**, 4 *Duer*, 96. Explained (Liability of wife's separate estate) in *Cheeseborough v. House*, 5 *Id.* 125, 129.
- Swords v. Edgar**, 44 *How. Pr.* 139. Further decision without opinion in 1 *Sup'm. Ct. (T. & C.) Add.* 23; which was aff'd in 59 *N. Y.* 28. Decision in *Id.* disting'd (Lessor's liability as to condition of premises) in *Ryan v. Wilson*, 87 *Id.* 471. Compared in *Walsh v. Mead*, 8 *Hun.* 387. Applied to occupant in *Homer v. Everett*, 47 *Super. Ct. (J. & S.)* 298, 300. Disting'd in *Higgins v. General Transatlantic Co.*, 18 *Weekly Dig.* 259, a case of shipowners. Followed in *Reichenbacher v. Pahnmeier*, 8 *Bradw. (Ill.)* 219. Approved in *Shindelbeck v. Moon*, 32 *Ohio St.* 262; s. c., 30 *Am. R.* 584, 590. Cited with *Walsh v. Mead*, 8 *Hun.* 387, in 50 *Am. Dec.* 792, n., as holding a doctrine contrary to that prevailing in some jurisdictions. Collated with other cases in 1 *Thomps. on Neg.* 322.
- *v. Owen*, 34 *Super. Ct. (J. & S.)* 277; s. c., with points of counsel, 43 *How. Pr.* 176. Disting'd (Effect of illegal use of firm name) in *Bulls' Head Bank v. McFeeters*, 41 *Super. Ct. (J. & S.)* 218. Disting'd with *O'Toole v. Garvin*, 1 *Hun.* 92, in *Ryan v. Hardy*, 26 *Id.* 176. Collated with *Hallet v. Norion*, 14 *Johns.* 273; *Pennington v. Townsend*, 7 *Wend.* 276; *Griffith v. Wells*, 3 *Den.* 226; *Ferdon v. Cunningham*, 20 *How. Pr.* 154; *Best v. Bauder*, 29 *Id.* 489, and other cases (Effect of contract entered into in violation of statute) in 25 *Am. R.* 675, n.
- Sykes v. Delaware, L. & W. R. R. Co.**, 25 *Hun.* 61. Abridgt. s. c., 12 *Weekly Dig.* 430.
- *v. Halstead*, 1 *Sandf.* 483. Discussed (Liability for goods furnished wife where husband turns her away) in 1 *Pars. on Contr.* 350, n. j.
- Sylvester v. Ralston**, 31 *Barb.* 286. Followed (Recovery for use and occupation) in *Thompson v. Bower*, 60 *Id.* 463, 479.
- *v. Reed*, 3 *Edw.* 296. Stated in *Mathews v. Neilson, Id.* 346, to have been aff'd on appeal.
- Syracuse, B. & N. Y. R. R. Co. v. Collins**, 3 *Lans.* 29. Aff'd in effect in 57 *N. Y.* 641; s. c., 1 *Abb. N. C.* 47. Decision in *Id.* followed (Time when assignment for creditor takes effect) in *Brennan v. Willson*, 7 *Daly*, 59, 61; which was aff'd in 4 *Abb. N. C.* 279, 287, which see. Followed with *Brennan v. Willson*, 71 *N. Y.* 502, in *Warner v. Jaffray*, 96 *Id.* 248.

**Syracuse Chilled Plow Co. v. Wing**, 20 *Hun*, 506. Aff'd in 85 *N. Y.* 421.

**Syracuse, Phoenix & O. R. R. Co. v. Gere**, 4 *Hun*, 392. Disting'd (Payment on stock) in *Tasker v. Wallace*, 6 *Daly*, 364, 367.

**Syracuse Sav'gs B'k v. Town of Seneca Falls**, 21 *Hun*, 304. Aff'd in 86 *N. Y.* 317. Decision in 21 *Hun* approved and followed (Validity of town bonds) in *Rich v. Town of Seneca Falls*, *U. S. Cir. Ct. N. D. N. Y.* 12 *Reporter*, 677.

## T.

**Taacks v. Schmidt**, 18 *Abb. Pr.* 307. Questioned (Damages by reason of injunction) in *Allen v. Brown*, 5 *Lans.* 511, 514.

**Tabele v. Tabele**. See *Swaine v. Perine*. Rule herein said to be changed by *R. S.* (Allowance for costs in estimating widow's dower in surplus or foreclosure) in *Taylor v. Bentley*, 3 *Redf.* 41.

**Taber v. Delaware, L. & W. R. R. Co.**, 4 *Hun*, 765. Aff'd in 71 *N. Y.* 489.

**Tabor v. Bradley**, 18 *N. Y.* 109. Disting'd (What passes as appurtenant to deed) in *Babcock v. Utter*, 1 *Abb. Ct. App. Dec.* 38; *Green v. Collins*, 20 *Hun*, 476; *Voorhees v. Burchard*, 55 *N. Y.* 98, 106.

— **v. Robinson**, 36 *Barb.* 483. Applied (Rights of purchaser intermediate contract for sale of land and performance) in *Wicks v. Bowman*, 5 *Daly*, 225, 231.

**Taddiken v. Cantrell**, 69 *N. Y.* 597. Aff'g decision, mem. of which see, in 2 *Weekly Dig.* 572, as *Todicker v. Cantrell*. See proceedings between same parties in 1 *Hun*, 710. Decision in *Id.* disting'd (Failure of attachment, for omission to serve summons) in *Simpson v. Burch*, 4 *Id.* 315, 317. Approved in *Blossom v. Estes*, 84 *N. Y.* 614, 618.

**Taft v. Brewster**, 9 *Johns.* 334; s. c., 6 *Am. Dec.* 280; 4 *N. Y. Com. L. Law. ed.* 787, with brief note. See *Kiersted v. Orange & Alexandria R. R. Co.*; *Mott v. Hlicks*. Applied (Individual liability of agent, &c. signing contract) in *Whitford v. Laidler*, 25 *Hun*, 136, 140. Followed in *McClure v. Bennett*, 1 *Blackf. (Ind.)* 189; s. c., 12 *Am. Dec.* 223, with note. See cases cited in 2 *Am. Dec.* 513, n. Discussed in *Ang. & A. on Corp.* § 296, 11 ed.

— **v. Chapman**, 50 *N. Y.* 445. Disting'd (Estoppel as against *bona fide* purchaser) in *Voorhees v. Olmstead*, 3 *Hun*, 744, 755.

— **v. Sergeant**, 18 *Barb.* 320. See *Jackson v. Carpenter*. Followed (Effect of affirmation after majority, of contract made as infant) in *Anderson v. Soward*, 40 *Ohio St.* 325; s. c., 48 *Am. R.* 687. Explained and cases cited to the contrary, in *Exwell Lead. Cas. on Inf. &c.* 177. See to the contrary, authorities cited in *Abb. Tr. Ev.* 796, n.

— **v. Wright**, 2 *Sup'm. Ct. (T. & C.)* 614;

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s. c., 47 *How. Pr.* 1. Aff'd, it seems, in 59 *N. Y.* 636, but without opinion.

**Taggard v. Gardner**, 2 *Sandf.* 667. See (Fees to party attending as witness) *Code Civ. Pro.* 1881, § 3288, n.

— **v. Roosevelt**, 2 *E. D. Smith*, 100. Said not to be supported by other *N. Y.* cases (Application of provision of statute of frauds respecting agreements not to be performed within a year) in *Browne on Stat. of Frauds*, 272, n.

**Taggart v. Murray**, 53 *N. Y.* 233. Subsequent decision involving same will, as *Jenkins v. Fahey*, 11 *Hun*, 351; which was rev'd in 73 *N. Y.* 355. Decision in 53 *Id.* reviewed with other cases (Meaning of word "heirs" in will) in *Thurber v. Chambers*, 4 *Hun*, 726. Disting'd (Limitation of absolute gift to life estate) in *Colt v. Heard*, 10 *Id.* 189, 193. Applied (Reconciling repugnant clauses in will) in *Clark v. Jacobs*, 56 *How. Pr.* 529; *Brown v. Cleveland*, 58 *Id.* 299. Disting'd, and *Roseboom v. Roseboom*, 81 *N. Y.* 356, applied in *Temple v. Sammis*, 48 *Super. Ct. (J. & S.)* 324.

**Taintor v. Hemingway**, 18 *Hun*, 458. Aff'd in 83 *N. Y.* 610, on opinion below.

— **v. Prendergast**, 3 *Hill*, 72; s. c., 15 *N. Y. Com. L. Law. ed.* 518, with brief note. Applied (Effect of contract made by agent) in *Wiener v. Whipple*, 53 *Wis.* 298; s. c., 40 *Am. R.* 775; 13 *Reporter*, 63. Included with notes in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 755. Explained (Effect of agent's contract, as to foreign principal) in 1 *Benj. on Sales*, § 237, n. 37 (Corbin's 4 *Am. ed.*). Discussed in 1 *Pars. on Contr.* 96, n. b. Cited in *Whart. Com. on Ag.* § 793.

**Talbot v. Bank of Rochester**, 1 *Hill*, 295. See *Graves v. American Exch. B'k*. Applied (Recovery of amount paid on forged indorsement) in *Johnson v. First Nat. B'k of Hoboken*, 6 *Hun*, 125. Followed in *Buckley v. Second Nat. B'k of Jersey City*, 35 *N. J.* 400; s. c., 10 *Am. R.* 249.

**Talcot v. Commercial Ins. Co. of N. Y.**, 2 *Johns.* 124; s. c., 3 *Am. Dec.* 406; 3 *N. Y. Com. L. Law. ed.* 325, with brief note. See *Patrick v. Hallett*. Followed (Presumption of unseaworthiness) in *Rugely v. Sun Mutual Ins. Co.*, 7 *La. Ann.* 279; s. c., 56 *Am. Dec.* 603.

**Talcott v. Belding**, 46 *How. Pr.* 419; s. c., more fully, 36 *Super. Ct. (J. & S.)* 84.

— **v. Harris**, 18 *Hun*, 567. Applied (Fraudulent debt, as affected by discharge in bankruptcy) in *Argall v. Jacobs*, 21 *Id.* 114.

— **v. Rosenberg**, 8 *Abb. Pr. N. S.* 287. Thought (Power of appellate court to permit amendment of return made below) in 13 *Am. Dec.* 176, n., to express what is the better and prevailing opinion, and to accord with *De Armond v. Adams*, 25 *Ind.* 455.

— **v. Rosenthal**, 22 *Hun*, 573. See *Wilson v. Britton*. Explained (Fraud in assignments for benefit of creditors) in *Burrill on Assign.* § 351, n. 2, 4 ed.

- Tallcot v. Moore**, 6 *Hun*, 106. Compare (Infringement of name) *Robertson v. Berry*, 50 *Md.* 591.
- Tallmadge v. East River Bank**, 26 *N. Y.* 105. Another decision in 2 *Duer*, 614, on motion for injunction. See *Hunter v. Trustees of Sandy Hill*. Decision in 26 *N. Y.* applied (Implied agreement against erections on adjoining premises) in *Musgrave v. Sherwood*, 23 *Hun*, 669, 683. Col- lated with other cases in *McAdam on Landl. & T.* 2 ed. § 98.
- **v. Fishkill Iron Co.**, 4 *Barb.* 382. See *Briggs v. Penniman*. Disting'd (Limit of liability of stockholders, &c.) in *Van Cott v. Van Brunt*, 82 *N. Y.* 535, 542.
- **v. Penoyer**, 35 *Barb.* 120. Disting'd and explained (Liability of firm on obliga- tion incurred by individual partner) in *Ontario Bank v. Hennessey*, 48 *N. Y.* 551.
- **v. Richmond**, 9 *Johns.* 85. Rev'd in 16 *Id.* 307.
- **v. Stockholm**, 14 *Johns.* 343. Applied (Relief against default) in *Security B'k v. B'k of Commonwealth*, 2 *Hun*, 287, 292.
- **v. Wallis**, 25 *Wend.* 107. See *Burton v. Stewart*. Applied (Eviction under para- mount title, as producing failure of consid- eration for promise to pay) in *Dunning v. Leavitt*, 85 *N. Y.* 30, 34. Disting'd with *Whitney v. Lewis*, 21 *Wend.* 131; *Kennedy v. Newman*, 1 *Sandf.* 187 (Proof of breach of covenant of seisin, &c.) in *Potter v. Kit- chen*, 5 *Bosw.* 566, 575.
- Tallman v. Atlantic Fire & Marine Ins. Co.**, 29 *How. Pr.* 71. Rev'd in 33 *Id.* 400; s. c., 3 *Keyes*, 87; 4 *Abb. Ct. App. Dec.* 345.
- **v. Bresler**, 65 *Barb.* 369. Aff'd in 56 *N. Y.* 635, on opinion below. Re-argu- ment denied in 58 *Id.* 123.
- **v. Farley**, 1 *Barb.* 280. See *Stow v. Tift*. Disting'd (Preference as between equitable lien on land and judgment) in *Cook v. Kraft*, 60 *Barb.* 409.
- **v. Franklin**. See *Talman v. Same*.
- **v. Green**, 3 *Sandf.* 437. Criticised as extreme with *White v. Seaver*, 25 *Barb.* 235 (Liability for attempt to deceive pur- chasers) in *Sherman v. Johnson*, 56 *Id.* 59, and as having been much shaken by *Haight v. Hayt*, 19 *N. Y.* 472.
- **v. Hinman**, 10 *How. Pr.* 89. Applied (Appeal from order affecting substantial right) in *Young v. Bloomer*, 22 *Id.* 384.
- **v. Syracuse, B. & N. Y. R. R. Co.**, 4 *Keyes*, 128. Applied with *City of Brook- lyn v. Brooklyn City R. R. Co.*, 47 *N. Y.* 475 (Neglect of public authorities, as ex- cuse for failure of company to perform duty) in *Hayes v. Mich. Cent. R. R. Co.*, 111 *U. S.* 228, 241.
- **v. Turck**. See *Barrett v. Warren*.
- **v. White**. See *Varick v. Tallman*.
- Talmadge v. Reusselaer & Saratoga R. R. Co.**, 13 *Barb.* 493. Discussed (Effect of provision in statute of frauds respecting agreements not to be performed in a year) in *Browne on Stat. of Frauds*, § 270a, 4 ed.
- Talmage v. Hunting**, 39 *Barb.* 654. Aff'd in 29 *N. Y.* 447. Decision in *Id.* explained and applied (Liability for encroachment on highways) in *Doughty v. Brill*, 3 *Keyes*, 612. Decision in 39 *Barb.* applied in *Marvin v. Pardee*, 64 *Id.* 353.
- **v. Pell**, 7 *N. Y.* 328. Prior decision in 9 *Paige*, 410. See *Cram v. Hendricks*; *Gillet v. Moody*; *People ex rel. Attorney General v. Utica Ins. Co.* Decision in 7 *N. Y.* applied (Limitations on power of busi- ness corporations to make investments) in *Berry v. Yates*, 24 *Barb.* 211; *Bank Com- m'rs of N. Y. v. St. Lawrence B'k*, 7 *N. Y.* 516; *Talmage v. Pell*, 14 *Id.* 169. Ap- proved in *Farmers' and Mechanics' Bank v. Baldwin*, 23 *Minn.* 198; s. c., 23 *Am. R.* 688. Disting'd in *Pape v. Capitol Bank of Topeka*, 20 *Kans.* 440; s. c., 27 *Am. R.* 183, 185. Relied on with *First Nat. B'k of Lyons v. Ocean Nat. B'k*, 60 *N. Y.* 278, in *Weckler v. First Nat. B'k of Hagerstown*, 42 *Md.* 581; s. c., 20 *Am. R.* 95, citing *Van Leaven v. First Nat. B'k of Kingston*, 54 *N. Y.* 671. Applied (Effect of con- tract *ultra vires*) in *Bissell v. Michigan Southern, &c. R. R. Co.*, 22 *N. Y.* 303. Explained (Receiver as representative of creditors) in *McHarg v. Donnelly*, 27 *Barb.* 103. Applied (Validity of assignment of mortgage, made to secure performance of illegal contract) in *Dewitt v. Brisbane*, 16 *N. Y.* 513. Disting'd in *Kellogg v. Adams*, 39 *Id.* 31; *Nichols v. Weed Sewing Machine Co.*, 27 *Hun*, 200, 206. Questioned, but followed (Banking associations as moneyed corporations) in *Curtis v. Leavitt*, 15 *N. Y.* 9, 47, 133, 183, 188, 247. Overruled in *Leavitt v. Blatchford*, 17 *Id.* 521, 530, 542. Decision in 9 *Paige* disting'd (Sub- stitution of receiver or assignee as party) in *Platt v. McMurray*, 63 *How. Pr.* 149.
- Talman v. Franklin**, 3 *Duer*, 395. Rev'd as *Tallman v. Same*, 14 *N. Y.* 584. Decision in *Id.* disting'd (Parol evidence to show locality of land contracted to be sold) in *Holmes v. Evans*, 48 *Miss.* 247; s. c., 12 *Am. R.* 372. Disting'd (Incorporation of one document with another to make mem- orandum as required by statute of frauds) in *Brown v. Whipple*, 58 *N. H.* 229; s. c., 47 *Am. R.* 533, n.
- **v. Smith**. See *Dane v. Mallory*.
- Tamisier v. Cassard**, 17 *Abb. Pr.* 187. Disting'd (Denial of plaintiffs' title to note) in *Hays v. Southgate*, 10 *Hun*, 511, 514; which was rev'd in *Hays v. Hathorn*, 74 *N. Y.* 486.
- Tannenbaum v. Cristalar**, 5 *Daly*, 141. Applied (Liability on joint undertaking) in *Davis v. Van Buren*, 6 *Id.* 391, 397.
- Tanner v. Bank of Fox Lake**, 23 *How. Pr.* 399. Aff'd as *Turner v. Bank of Fox Lake*, in 3 *Keyes*, 425.
- **v. Hills**, 44 *Barb.* 428. Rev'd in 48 *N. Y.* 662, but without opinion.
- **v. Livingston**, 12 *Wend.* 83. See *Caulkins v. Harris*; *Pitcher v. Livingston*. Approved (Effect of devise to person for life,



- and then to his heirs) in *Schoonmaker v. Sheely*, 3 *Den.* 485, 489. Explained in *Bond v. McNiff*, 38 *Super. Ct. (J. & S.)* 83, 90; *Butler v. Huestis*, 68 *Ill.* 594; s. c., 18 *Am. R.* 589, 594.
- *v. Trustees of Albion*, 5 *Hill.* 121; s. c., 40 *Am. Dec.* 337, with note wherein are collected citations. Doubtful but followed (*Bowling-alley* as a nuisance) in *Updike v. Campbell*, 4 *E. D. Smith*, 570, 575. Discussed in *Wood on Nuis.* 2 ed. § 43.
- Tappan, Matter of**, 54 *Barb.* 225; s. c., with points of counsel, 36 *How. Pr.* 390.
- **Tappan v. Brown**, 9 *Wend.* 175. Discussed (Agreements in respect to public offices) in 3 *Kent Com.* 455, n. b.
- *v. Ely*, 15 *Wend.* 362. See *Cowee v. Cornell*. Disting'd (Effect of memorandum on note) in *Benedict v. Cowden*, 49 *N. Y.* 396, 404.
- *v. Gray*, 9 *Paige*, 507. Aff'd in 7 *Hill*, 259. Decision in 9 *Paige* applied (Restraining exercise of duties of office) in *People ex rel. Wood v. Draper*, 4 *Abb. Pr.* 339; Mayor, &c. of N. Y. *v. Conover*, 5 *Id.* 179. Disting'd in *Palmer v. Foley*, 36 *Super. Ct. (J. & S.)* 14, 17. Explained in *High. on Receiv.* § 21, n. 1. Approved (Tenure of officer holding over) and said to be in harmony with cases in other States,—in *Smoot v. Somerville*, 59 *Md.* 84, 88.
- Tappen v. Kain**, 12 *Johns.* 120. Overruled (Inventory as test of or falsity of *plene administravit*) in *Willoughby v. McCluer*, 2 *Wend.* 609.
- Tarbel v. Bradley**, 7 *Abb. N. C.* 273. Aff'd in effect in *Tarbell v. West*, 86 *N. Y.* 280. Decision in *Id.* applied (Rights of partnership creditor as against mortgage executed by one partner individually) in *Norwalk Nat. B'k v. Sawyer*, 38 *Ohio St.* 339, 343.
- Tarbell v. Griggs**, 3 *Paige*, 207; s. c., 23 *Am. Dec.* 790, with note. Explained (Sufficiency of judgment of another State or of U. S. court, to sustain creditor's bill) in *McCartney v. Bostwick*, 32 *N. Y.* 53, 63. Followed in *Davis v. Bruns*, 23 *Hun.* 648. Approved with *Davis v. Bruns*, in *Claffin v. McDermott*, *U. S. Cir. Ct. S. D. N. Y.* 14 *Reporter*, 8; s. c., 12 *Fed. Rep.* 375. Followed in *Walser v. Seligman*, *U. S. Cir. Ct. S. D. N. Y.* 14 *Reporter*, 425.
- *v. West*. See *Tarbel v. Bradley*.
- Tarrant v. Ware**, 35 *N. Y.* 425. Approved with *Nelson v. McGiffert*, 3 *Barb. Ch.* 158; *Jauncey v. Thorne*, 2 *Id.* 40 (Sufficiency of proof of execution and attestation of will) in *Cheatham v. Hatcher*, 30 *Gratt. (Va.)* 56; s. c., 32 *Am. R.* 650.
- Tausig v. Hart**, 49 *N. Y.* 301. Further decision in 58 *Id.* 425. Also another proceeding in 33 *Super. Ct. (J. & S.)* 157. See *Bank of Beloit v. Beale*. Decision in 49 *N. Y.* cited (Effect of sale made by agent in violation of authority) in *Whart. Com. on Ag.* § 235. Decision in 58 *N. Y.* cited (Duties of stockbrokers) in *Id.* §§ 702, n., 717.
- Taxpayers of Greene, Matter of**, 38 *How. Pr.* 515. Overruled (Petitioner's right to withdraw in town bonding proceedings) in *People ex rel. Irwin v. Sawyer*, 52 *N. Y.* 296, 302.
- Taylor, Ex parte**. See *People v. Dixon*.
- Taylor, Matter of**, 9 *Paige*, 611. Referred to as stating what is the well-settled rule (Proof of marriage by declarations and admissions) in 22 *Am. Dec.* 162, n., where also are collated (p. 161, n.) *Jackson v. Claw*, 18 *Johns.* 346, and other cases (Proof by cohabitation and reputation).
- Taylor Will Case**, 10 *Abb. Pr. N. S.* 301. Cited (Opinions founded on photographic copies of handwriting) in 1 *Whart. Com. on Ev.* § 720. Explained in 2 *Best on Ev.* § 513, n. a, Wood's ed.
- Taylor v. Allen**, 36 *Barb.* 294. Opposed and qualified (Effect of receipt of new bill, &c. to discharge indorser) in *Eisner v. Keller*, 3 *Daly*, 485, 490.
- *v. Atlantic Mut. Ins. Co.*, 2 *Bosw.* 106. Further decision on the merits, in 9 *Id.* 369, aff'd in 37 *N. Y.* 275. Decision in *Id.* applied (Liability for wharfage) in *Walsh v. N. Y. Floating Dry Dock Co.*, 8 *Daly*, 388. Approved (Duty as between lessees of pier and the city as to repairs, &c.) in *Hartford & N. Y. Steamboat Co. v. Mayor, &c. of N. Y.*, 12 *Hun.* 550, 554.
- *v. Atlantic &c. R. R. Co.*, 55 *How. Pr.* 275. Other proceedings in 57 *Id.* 9; *Id.* 26. See also decisions involving same subject matter,—as *Reinach v. Meyer*, 55 *How. Pr.* 283; *Matter of U. S. Rolling Stock Co.*, *Id.* 286.
- *v. Baldwin*, 10 *Barb.* 582. Aff'd in *Id.* 626. Both decisions disting'd (Charging expense of improvements made on property held in common) in *Prentice v. Janssen*, 79 *N. Y.* 489.
- *v. Bates*, 5 *Cow.* 376. See *Ferris v. Paris*. Explained (Demand, as affecting liability of attorney for moneys collected) in *Lyle v. Murray*, 4 *Sandf.* 590, 594. Followed with *Ex parte Ferguson*, 6 *Cow.* 596; *Rathbun v. Ingals*, 7 *Wend.* 320, in *Krause v. Dorrance*, 10 *Penn. St.* 462; s. c., 51 *Am. Dec.* 496, with note. Followed in *Anderson v. Hulme*, 5 *Montana*, 295; s. c., 19 *Reporter*, 439. Discussed in *Ang. on Limit.* § 181, 6 ed.
- *v. Barnes*, 69 *N. Y.* 430. Explained (Statute of limitations in case of torts) in *Moak's Underhill's Torts*, 1 *Am. ed.* 67.
- *v. Betsford*, 13 *Johns.* 487. See *Thayer v. Van Vleet*. Disting'd and criticised as extreme (Effect of private deliberation by justice with jury) in *Whitney v. Crim*, 1 *Hill*, 61. Followed in *Moody v. Pomeroy*, 4 *Den.* 115.
- *v. Bradley*, 39 *N. Y.* 129. See *Putnam v. Wise*. Followed (Evidence to show loss of profits) in *Day v. N. Y. Central R. R. Co.*, 22 *Hun.* 412, 417. Applied in *Washburn v. Hubbard*, 6 *Lans.* 14. Followed (Opinions of witnesses as to prospective

- profits) in *Reed v. McConnell*, 17 *Weekly Dig.* 575. See on this point *GROVER, J.'s*, opinion in 1 *Atb. L. J.* 389, and explanation in *Id.* 265. Disting'd (Damages for breach of contract of hiring) in *Howard v. Daly*, 61 *N. Y.* 362, 372. Criticised in *Cummings v. Hausen*, 63 *How. Pr.* 351. Discussed and approved with *Jackson v. Brownell*, 1 *Johns.* 267; *Stewart v. Doughty*, 9 *Id.* 107; *Overseers of Fort Ann v. Overseers of Kingsbury*, 14 *Id.* 365 (Effect of contract for letting land on shares) in *Strain v. Gardner*, 61 *Wis.* 174, 180.
- **v. Bryden**, 8 *Johns.* 173. See *Hitchcock v. Aiken*. Overruled (Effect of judgment of another State) in *Andrews v. Montgomery*, 19 *Johns.* 162.
- **v. Bullen**, 6 *Conn.* 624. See *Moakeley v. Riggs*. Disting'd (Liability of guarantor, as affected by failure to proceed against estate of principal) in *Schmitz v. Langhaar*, 88 *N. Y.* 503.
- **v. Carpenter**, 11 *Paige*, 292. Aff'd in 2 *Sandf. Ch.* 603. Decision in *Id.* followed (Who entitled to protection of trademark) in *Godillot v. Hazard*, 44 *Super. Ct. (J. & S.)* 427, 431. Collated with other cases in *Bigel. Cas. on Torts*, 70; *Thomps. on Prov. Rem.* 260. Decision in 11 *Paige* quoted and explained in 2 *Pars. on Contr.* 257b, n. gg.
- **v. Charter Oak Life Ins. Co.**, 8 *Abb. N. C.* 331; s. c., 59 *How. Pr.* 468. Aff'd in 9 *Daly*, 489.
- **v. Church**, 1 *E. D. Smith*, 279; s. c., 10 *N. Y. Leg. Obs.* 87. Rev'd in 8 *N. Y.* 452. Decision in *Id.* followed (Privileged character of communications made by mercantile agency) in *Sunderlin v. Bradstreet*, 46 *Id.* 188, 190. Collated with other cases in 18 *Fed. Rep.* 220, n.; *Bigel. Cas. on Torts*, 173. Explained (Damages in libel) in 2 *Greenl. on Ev.* 14 ed. § 254, n. a.
- **v. Delancy**, 2 *Cai. Cas.* 143. Applied (Effect of change in phraseology of statute on revision) in *Croswell v. Crane*, 7 *Barb.* 195; *James v. Patten*, 8 *Id.* 348. Applied (Right of next of kin to administration) in *Lathrop v. Smith*, 35 *Id.* 66. Reviewed with other cases (Appealable orders) in *Rowley v. Van Benthuysen*, 16 *Wend.* 374.
- **v. Dodd**, 2 *Sup'm. Ct. (T. & C.)* 88. Aff'd in 58 *N. Y.* 335. See *Lupton v. Lupton*. Decision in 58 *N. Y.* applied (Real estate, when not chargeable with payment of legacies) in *Spillane v. Duryea*, 51 *How. Pr.* 261; *Kalbfleisch v. Kalbfleisch*, 67 *N. Y.* 363. Applied to payment of debts in *Rice v. Harbeson*, 63 *Id.* 500.
- **v. Faas**, 14 *Hun.* 166. See (Necessity as to allegations in complaint, in order to obtain order of arrest for fraud). *Code Civ. Pro.* 1881, § 549, n.
- **v. Fleet**, 1 *Barb.* 471. Rev'd in 4 *Id.* 95. Decision in 1 *Id.* quoted (Contracts as avoided by fraud) in 2 *Pars. on Contr.* 769, n. o; 2 *Chitty on Contr.* 1039, n. 2, 11 *Am. ed.*; *Waterman on Sp. Perf.* § 314, n.
- **v. Gardner**. See *Belding v. Conklin*.
- **v. Gillies**, 5 *Daly*, 285. Aff'd in 59 *N. Y.* 331; s. c., 17 *Am. R.* 333. See *Caswell v. Davis*. Decision in 59 *N. Y.* disting'd (Phrase that may be appropriated as trademark) in *Potter v. McPherson*, 21 *Hun.* 559, 567.
- **v. Grant**, 35 *Super. Ct. (J. & S.)* 353. Re-argument denied in 36 *Id.* 259.
- **v. Guest**, 45 *How. Pr.* 276. Rev'd in 58 *N. Y.* 262.
- **v. Heath**, 4 *Den.* 592. Collated with other cases (Attachment in case of non-residence) in *Throop Justice's Man.* 2 ed. 26.
- **v. Hoey**, 36 *Super. Ct. (J. & S.)* 402. Aff'd, it seems, in 58 *N. Y.* 677, but without opinion.
- **v. Hopper**, 2 *Hun.* 646; s. c., 5 *Sup'm. Ct. (T. & C.)* 173. Aff'd in 62 *N. Y.* 649.
- **v. Hutton**, 18 *Abb. Pr.* 16; s. c., more fully, 43 *Barb.* 195. See *Leavitt v. Yates*.
- **v. Kelly**, 5 *Hun.* 115. Relied on with other cases (Delivery necessary to consummation of gift) in *Walker v. Crews*, 73 *Ala.* 412; s. c., 48 *Am. R.* 788, n. See *Grymes v. Hone*, 49 *N. Y.* 17, and other cases collated in same note.
- **v. Ketchum**, 35 *How. Pr.* 289. Disting'd (Withdrawal of special question from jury) in *Ebersole v. Northern Cent. R'y Co.*, 23 *Hun.* 114, 117.
- **v. Marshall**. See *Phoenix v. Dey*.
- **v. Mayor, &c. of N. Y.**, 5 *Daly*, 485. Overruled in 67 *N. Y.* 87, a decision based on same facts. See *Fisher v. Same*. Decision in 67 *N. Y.* followed (Interest on overdue claims against city of N. Y.) in *Paul v. Mayor, &c. of N. Y.*, 7 *Daly*, 144, 146.
- **v. —**, 4 *E. D. Smith*, 559. Limited (Liability of lessor of pier) in *Swords v. Edgar*, 59 *N. Y.* 28, 37.
- **v. —**, 20 *Hun.* 292. Aff'd in 82 *N. Y.* 10.
- **v. Morris**, 1 *N. Y.* 341. Explained (Authority of executors before qualifying) in *Humbert v. Wurster*, 22 *Hun.* 405, 407.
- **v. People**, 6 *Park.* 347. Commented on (Prescription as jurisdiction for nuisance) in *Wood on Nuis.* 2 ed. § 711.
- **v. Perkins**, 26 *Wend.* 124. Disting'd (Effect of making advances to carry on business) in *McClune v. Cain*, 2 *Keyes*, 203, 209.
- **v. Persse**, 15 *How. Pr.* 417. This case must be regarded as overruled (Right to bring creditor's action where supplementary proceedings can be taken)
- **v. Porter**, 4 *Hill*, 140; s. c., 40 *Am. Dec.* 274, with note wherein it is shown to have been very extensively cited both in *N. Y.* and elsewhere; also s. c., 15 *N. Y. Com. L. Law. ed.* 773, with brief note of other cases, and (at p. 777) analytic list of cases citing this case. See *Beckman v. Saratoga & Schenectady R. R. Co.*; *Wynhamer v. People*. Applied (Limits of legislative power to take away vested rights of prop-

- erty) in *People v. Sup'rs of Westchester*, 4 *Barb.* 73; *White v. White*, 5 *Id.* 481; *People v. Mayor, &c. of Brooklyn*, 9 *Id.* 552; *People v. Toynbee*, 20 *Id.* 199; *Powers v. Bergen*, 6 *N. Y.* 368; *Matter of Deansville Cemetery Assoc.*, 66 *Id.* 571. Approved in *Embury v. Conner*, 3 *Id.* 517. Disting'd in *Norsworthy v. Bergh*, 16 *How. Pr.* 319. Relied on in *Atkins v. Town of Randolph*, 31 *Vt.* 226. Cited with approval in *Hanson v. Vernon*, 27 *Iowa*, 28; s. c., 1 *Am. R.* 215, 231 (where it is said to be cited with approval in *Sedgw. on Const. L.* 155, and to be followed with approval in *Bankhead v. Brown*, 25 *Iowa*, 540). Quoted in 3 *Washb. on Real Prop.* 4 ed. 214. Applied (What is due process of law) in *Matter of Janes*, 30 *How. Pr.* 454; *Rockwell v. Nearing*, 35 *N. Y.* 305; *People ex rel. Town of Rochester v. Deyoe*, 2 *Sup'm. Ct. (T. & C.)* 148. Approved and applied in *Lavin v. Emigrant Industrial Sav'gs B'k*, 18 *Blatchf. C. Ct.* 1, 22. Examined in *Hubbard v. People*, 4 *Mich.* 129. Followed (Meaning of expression "law of the land") in *East Kingston v. Towle*, 48 *N. H.* 57; s. c., 2 *Am. R.* 174, 178. Cited with approval in 2 *Kent Com.* 13, n. b. Disting'd (Effect of statute authorizing laying out of private road) in *People v. Parker*, 6 *Hill*, 48. Followed in *Osborn v. Hart*, 24 *Wis.* 89; s. c., 1 *Am. R.* 161. See to same effect *Wild v. Deig*, 43 *Ind.* 455; s. c., 13 *Am. R.* 399, with note. Said in 22 *Am. Dec.* 693, n., to be a leading case. See *N. Y. Const.* 1846, art. 1, § 7.
- *v. Ranney*, 4 *Hill*, 619. See *Green v. Burke*; *Shepard v. Rowe*. Followed (Effect of record of satisfaction of judgment) in *Booth v. Farmers' & Mechanics' Nat. Bank*, 4 *Lans.* 301, 308.
- *v. Read*, 4 *Paige*, 561. Compare (Effect of part performance of contract for delivery of goods) *Stephens v. Beard*, 4 *Wend.* 604.
- *v. Rennie*, 35 *Barb.* 272. Cited (Judicial notice of officers to be elected at stated elections in other States) in 1 *Whart. Com. on Ev.* § 337, n.
- *v. Root*, 4 *Abb. Ct. App. Dec.* 382; s. c., 4 *Keyes*, 335. Disting'd in part (Individual counterclaims in action to enforce joint liability) in *Clegg v. Amer. Newsp. Union*, 60 *How. Pr.* 498, 505.
- *v. Snyder*, 3 *Den.* 145; s. c., 45 *Am. Dec.* 457, with note wherein it is said to be recognized as a leading case. Opinion of PARKER, J., directing non-suit is in 4 *N. Y. Leg. Obs.* 16. Decision in 3 *Den.* examined (Place of presentment of note, &c. for payment) in *Spies v. Gilmore*, 1 *N. Y.* 321, 326, 328. Approved in *Foster v. Julien*, 24 *Id.* 28, 30, 37, 39. Compare *Niagara District Bank v. Fairman, &c. Man'g Co.*, 31 *Barb.* 403, 406. Followed in *King v. Crowell*, 61 *Me.* 244; s. c., 14 *Am. R.* 560. Applied in *Herrick v. Baldwin*, 17 *Minn.* 209; s. c., 10 *Am. R.* 161. Included in 2 *Ames Cas. on B. & N.* 338; *Bigel. on B. & N.* 2 ed. 227; *Redf. & B. Lead. Cas. on B. of Exch.* 313. Reviewed with *Spies v. Gilmore*, 1 *N. Y.* 321, 328, and other cases, in 13 *Am. Dec.* 346, n.
- *v. Trask*, 7 *Cow.* 249. Reviewed with other cases (Process as protection) in *Hall v. Munger*, 5 *Lans.* 100, 107, where *Landt v. Hiltz*, 19 *Barb.* 283, was said not to be overruled by *Kerr v. Mount*, 28 *N. Y.* 659; *Lyon v. Yates*, 52 *Barb.* 237.
- *v. Troncoso*, 76 *N. Y.* 599. See to same effect (Attachment as affected by failure to reasonably serve summons) *Blossom v. Estes*, 84 *Id.* 614, 618.
- *v. Wendel*, 4 *Bradf.* 324. Criticised (Liability of decedent's general estate for payment of mortgage debt) in *Williams v. Eaton*, 3 *Redf.* 506.
- *v. Wing*, 23 *Hun.* 233. Rev'd in 84 *N. Y.* 471.
- Teachout v. People**, 41 *N. Y.* 7. See *Hendrickson v. People*. Disting'd (Admissibility of admissions made by accused person) in *Murphy v. People*, 63 *N. Y.* 590, 597. See *People v. Montgomery*, 13 *Abb. Pr. N. S.* 208. Approved in *U. S. v. Graff*, 14 *Blatchf. C. Ct.* 381, 386.
- Teal v. Woodworth**. See *Jackson v. Vanderheyden*.
- Teall v. Barton**, 40 *Barb.* 137. Examined with *Fero v. Buffalo, &c. R. R. Co.*, 22 *N. Y.* 209; *Kelsey v. Barney*, 12 *Id.* 425; *Johnson v. Hudson River R. R. Co.*, 20 *Id.* 65; *Hegeman v. Western R. R. Co.*, 15 *Id.* 9 (Degree of care to be exercised in employment that may result in injury to others) in *Gagg v. Vetter*, 41 *Ind.* 228; s. c., 13 *Am. R.* 322, 332, 340.
- *v. Felton*, 3 *Barb.* 512. Aff'd in 1 *N. Y.* 587; s. c., 49 *Am. Dec.* 352, with note wherein are collected citations. Decision in *Id.* aff'd in 12 *How. (U. S.)* 284. Followed (Enforcing liability under Federal laws in State courts) in *Claffin v. Houseman*, 93 *U. S.* 130, 142. Applied with *Cooke v. State Nat. B'k of Boston*, 52 *N. Y.* 96, in *First Nat. B'k of Montpelier v. Hubbard*, 49 *Vt.* 1; s. c., 24 *Am. R.* 97.
- *v. Sears*, 9 *Barb.* 317. See *Roberts v. Turner*. Explained (Common carrier's liability as warehouseman) in 2 *Pars. on Contr.* 178, n. s.
- *v. Van Wyck*, 10 *Barb.* 376. Explained (Sufficiency of search for missing paper) in *Josuez v. Conner*, 7 *Daly*, 448, 455.
- Tebbetts v. Dowd**, 23 *Wend.* 379. Explained (Evidence from which to infer due demand and notice of non-payment of note) in *Clift v. Rodger*, 25 *Hun.* 39, 42. Followed in *Whiteford v. Burckmyer*, 1 *Gill (Md.)* 127; s. c., 39 *Am. Dec.* 640, 652, with note; *Tobey v. Berly*, 26 *Ill.* 426.
- Tebo v. Baker**, 16 *Hun.* 182. Aff'd in 77 *N. Y.* 33.
- Teed v. Morton**, 60 *N. Y.* 502. Applied (Construction of words of survivorship in bequests of personalty) in *Vincent v. Newhouse*, 83 *Id.* 505, 511.

- **v. Valentine**, 65 *N. Y.* 471. See to the contrary (Impeachment of judgment in creditor's action) *Mattingly v. Nye*, 8 *Wall.* 370. See also *Abb. Tr. Ev.* 741. Commented on in *Wait on Fraud. Conv.* § 270.
- Teel v. Fouda**, 4 *Johns.* 304. Cited as authority with *Bennet v. Hurd*, 3 *Id.* 438; *Sheldon v. Clark*, 1 *Id.* 513 (Negating exception in statute) in *Attorney-general v. Oakland County B'k*, *Walk. Ch. (Mich.)* 95.
- Teerpenning v. Corn Exch. Ins. Co.**, 43 *N. Y.* 279. See cases cited (Opinion of value) in 36 *Am. R.* 438, *n.*
- Tefft v. Munson**, 63 *Barb.* 31. Aff'd in 57 *N. Y.* 97.
- Temple v. Hawley**, 1 *Sandf. Ch.* 153. Cited approvingly (Female infant binding her real estate by marriage settlement) in 4 *Kent Com.* 55, *n. d.*
- Templeton v. People**, 3 *Hun.* 357; *s. c.*, 6 *Sup'm. Ct. (T. & C.)* 81. Aff'd, it seems, as *People v. Templeton*, in 60 *N. Y.* 643, but without opinion.
- Ten Broeck v. Paige**, 6 *Hill*, 267. Applied (Several bills of costs) in *Williams v. Casady*, 22 *Hun.* 180, 183.
- **v. Reynolds**, 13 *How. Pr.* 462. Followed (Attachment for costs against guardian *ad litem*) in *Wice v. Commercial Fire Ins. Co.*, 8 *Daly*, 71.
- **v. Sloo**, 13 *How. Pr.* 28. Dicta explained (Compelling assignment to receiver in supplementary proceedings) in *Clan Ransald v. Wyckoff*, 41 *Super. Ct. (J. & S.)* 527.
- Ten Eick v. Simpson**, 1 *Sandf. Ch.* 244. See *Pierce v. Delamater*. Disting'd (Right of subsequent mortgagee, &c., to money due on contract for sale of land) in *Trustees of Union College v. Wheeler*, 61 *N. Y.* 88, 108.
- Ten Eyck v. Craig**, 2 *Hun.* 452; *s. c.*, 5 *Sup'm. Ct. (T. & C.)* 65. Aff'd in 62 *N. Y.* 406. Decision in *Id.* disting'd (Rights as mortgagee in possession) in *Knolls v. Barnhart*, 71 *Id.* 480.
- **v. Holmes**, 3 *Sandf. Ch.* 428. Followed with *Clark v. Ely*, 2 *Id.* 166 (Sureties, when not to be reimbursed from securities in their hands) in *Kelly v. Herrick*, 131 *Mass.* 373, 375.
- **v. Simpson**. See *Ten Eick v. Simpson*.
- Tenney v. Mautner**, 24 *Hun.* 340. Reported in 1 *Civ. Pro. R.* 64.
- Tenny v. Filer**, 8 *Wend.* 568. Explained (Jurisdiction of justice to render judgment on confession) in *Stone v. Williams*, 40 *Barb.* 322, 324. Followed in *Spear v. Carter*, 1 *Mich.* 19; *s. c.*, 48 *Am. Dec.* 688, 690, with note; and in same case *Low v. Rice*, 8 *Johns.* 409; *Clayton v. Per Dun*, 13 *Id.* 218; *Blin v. Campbell*, 14 *Id.* 432; *Henry v. Cuyler*, 17 *Id.* 471, were followed (Consent not sufficient to confer jurisdiction).
- Tenth Nat. Bank of N. Y. v. Darragh**, 1 *Hun.* 111. Fully reported in 3 *Sup'm. Ct. (T. & C.)* 138.
- **v. Mayor, &c. of N. Y.**, 4 *Hun.* 429. Aff'd, it seems, in 80 *N. Y.* 660, on opinion below. See vol. 538, *Cas. in Ct. of App. Law Inst. Libr. N. Y. city.*
- Terboss v. Williams**, 5 *Cow.* 407. Aff'd in 2 *Wend.* 148.
- Terhune v. Terhune**, 40 *How. Pr.* 258. Questioned (Right of adulterous wife, who has been ill-treated by husband, to limited divorce) in *Doe v. Doe*, 23 *Hun.* 19, 22. Superseded by *L.* 1881, c. 702, am'd'g *Code Civ. Pro.* § 1770.
- Terpening v. Skinner**, 30 *Barb.* 373. Aff'd in effect on further decision in 29 *N. Y.* 505.
- Terrett v. Brooklyn Improvement Co.**, 18 *Hun.* 6. Subsequent decision in 23 *Id.* 294, rev'd in 87 *N. Y.* 92, which in effect rev'd that in 18 *Hun.*
- **v. Cowenhoven**, 11 *Hun.* 320. Aff'd on re-argument, and also on appeal as *Territt v. Cowenhoven*, in 79 *N. Y.* 400. Decision in 11 *Hun.* applied (Prior decision, how far a bar) in *Masten v. Olcott*, 24 *Id.* 587, 589.
- **v. Crombie**, 6 *Lans.* 82. Aff'd with a modification in 55 *N. Y.* 683. See *Cooper v. Whitney*.
- Terry v. Chandler**, 16 *N. Y.* 354. Followed with *Jackson v. Van Corlaer*, 11 *Johns.* 123; *Jackson v. Ogden*, 7 *Id.* 238 (Effect of agreement between adjoining land owners as to boundary) in *Smith v. Hamilton*, 20 *Mich.* 433; *s. c.*, 4 *Am. R.* 398. Cited with approval with *Sellick v. Addams*, 15 *Johns.* 197; *Jackson v. Gager*, 5 *Cow.* 383; *Robertson v. McNeil*, 12 *Wend.* 573, 583, in *Leunox v. Hendricks*, 11 *Oreg.* 33, 37.
- **v. Dayton**, 31 *Barb.* 519. Rev'd on appeal to Ct. of App. as to claim of administrator, but aff'd on question of advancement.
- **v. Hunter**, 3 *How. Pr.* 183. See (Origin of distinction between General and Special term) 1 *Abb. N. Y. Dig.* 122, *n.*
- **v. Jewett**, 17 *Hun.* 395. Aff'd in 78 *N. Y.* 338. Decision in *Id.* explained and applied (Negligence in one crossing track) in *Brassell v. N. Y. Central, &c. R. R. Co.*, 84 *Id.* 241, 245. Disting'd (Duty as to ringing bell, &c. at crossing) in *Mitchell v. N. Y. Central, &c. R. R. Co.*, 13 *Weekly Dig.* 319. Both decisions disting'd (Negligence of person killed on railroad, when question for jury) in *Parsons v. N. Y. Central, &c. R. R. Co.*, 17 *Id.* 479.
- **v. Rubel**, 12 *N. Y. Leg. Obs.* 138. Examined (Discovery and inspection) in *Pegram v. Carson*, 10 *Abb. Pr.* 340, 342.
- **v. Wait**, 47 *How. Pr.* 52; *mem. s. c.*, 48 *N. Y.* 657. Re-aff'd in 56 *Id.* 91.
- **v. Wheeler**, 25 *N. Y.* 520. Applied (When title passes on sale of chattels) in *McNamara v. Edmister*, 11 *Hun.* 601; *Hurf v. Hires*, 11 *Vroom (N. J.)* 581; *s. c.*, 29 *Am. R.* 282, 286. Explained in *Benj. on Sales*, § 315, *n. f* (Bennett's 4 *Am. ed.*); 2 *Id.* § 309, *n.* 3 (Corbin's 4 *Am. ed.*).

See also *Id.* § 323, 330. Further explained in *Id.* § 468, n. 3. Explained (Parol evidence to explain receipt) in *Howard v. Norton*, 65 *Barb.* 161, 167. Disting'd (What passes as incident to purchase by executory contract) in *Currie v. White*, 6 *Abb. Pr. N. S.* 382.

— *v. Wiggins*, 2 *Lans.* 272. Aff'd in 47 *N. Y.* 512. See *Tyson v. Blake*. Decision in 47 *N. Y.* explained (Effect of limitation on life estate given by will) in *Flanagan v. Flanagan*, 8 *Abb. N. C.* 413, 418, 421. Applied in *Fry v. Smith*, 10 *Id.* 224, 227; *Wager v. Wager*, 96 *N. Y.* 164, 173; *Colt v. Heard*, 10 *Hun.* 189, 192. Disting'd in *Cohen v. Cohen*, 4 *Redf.* 48, 52. Collated with other cases in *Sharsw. & B. Cas. on Real Prop.* 64.

**Terwilliger v. Beals.** See *Cooley v. Betts*.

— *v. Brown*, 59 *Barb.* 9. Aff'd in 44 *N. Y.* 237. See (Purchase by executor of real estate sold for debts) *Code Civ. Pro.* 1881, § 2774, n.

— *v. Wands*, 25 *Barb.* 313. Aff'd in 17 *N. Y.* 54. See *Beach v. Ranney*. Applied with *Wilson v. Goit*, 17 *N. Y.* 442 (Damage to support action for words not defamatory *per se*) in *Shafer v. Ahalt*, 48 *Id.* 171; s. c., 30 *Am. R.* 456, 458. Approved and followed in *Knight v. Blackford*, 3 *Mackey*, 177, 181; *Prime v. Eastwood*, 45 *Ins.* 640, 642.

**Thalimer v. Brinkerhoff**, 20 *Johns.* 386. Rev'd in 3 *Cow.* 623; s. c., 15 *Am. Dec.* 303, with extended note. Subsequent decisions in 6 *Cow.* 90; 4 *Wend.* 394; s. c., 21 *Am. Dec.* 155. Decision in 20 *Johns.* disting'd with *De Groot v. Van Duzer*, 20 *Wend.* 390; *Nellis v. Clark*, *Id.* 24 (Who may plead illegality of contract) in *Merritt v. Millard*, 5 *Bosw.* 645, 650. Decision in 3 *Cow.* approved (Foundation of law of maintenance) in *Sedgwick v. Stanton*, 14 *N. Y.* 296. Applied in *Campbell v. Jones*, 4 *Wend.* 310. Doubted in *Bernstein v. Humes*, 60 *Ala.* 582; s. c., 31 *Am. R.* 52, 57. Decision in 6 *Cow.* cited with other cases (When letter will be presumed to have been mailed) in 2 *Whart. Com. on Ev.* § 1330.

**Thatcher v. Bank of State of N. Y.**, 5 *Sandf.* 121. Disting'd and doubted (Liability of bank for acts of paying-teller) in *East River Nat. Bank v. Gove*, 57 *N. Y.* 597, 602.

— *v. Morris*, 11 *N. Y.* 437. See *Commonwealth of Kentucky v. Bassford*. Compared (Burden of proving law of foreign State, where validity of contract there made is in question) in *Flagg v. Baldwin*, 38 *N. J. Eq.* (11 *Stew.*) 219; s. c., 48 *Am. R.* 308.

**Thaule v. Krekeler**, 17 *Hun.* 338. Rev'd on the merits in 81 *N. Y.* 428.

**Thayer v. Clark**, 48 *Barb.* 243. Aff'd in 4 *Abb. Ct. App. Dec.* 391.

— *v. Lewis*, 4 *Den.* 269. Applied (Requisites of complaint in action brought in name of public officer to enforce penalty) in *Hess v. Appell*, 62 *How. Pr.* 314.

— *v. Manly*, 8 *Hun.* 550. Modified in 73 *N. Y.* 305. Decision in *Id.* applied with *Mechanics' & Traders' B'k v. Farmers' & Mechanics' B'k*, 60 *Id.* 40; *Whelan v. Lynch*, *Id.* 469; *Ormsby v. Vermont Copper Mining Co.*, 56 *Id.* 623; *Tyng v. Commercial Warehouse Co.*, 58 *Id.* 308 (Damages for breach of agreement to return or replace property) in *Barker v. Smith*, 1 *Dem.* 290, 293.

— *v. Marsh*, 11 *Hun.* 501. Aff'd in 75 *N. Y.* 340. See cases cited (Estoppel of grantee of mortgaged premises to deny mortgagor's liability) in 5 *Abb. N. C.* 230, n.

— *v. Overseers of Hamilton*, 5 *Hill.* 443. Approved (Acquittal on one complaint, as bar to new proceeding for same matter) but disting'd with regard to conviction, in *Stowell v. Overseers of Volney*, 5 *Den.* 98, 101. Collated with other cases in 56 *Am. Dec.* 221, n.

— *v. Rock*, 13 *Wend.* 53. See *Dowdle v. Camp*. Explained (Effect of parol contract partly within statute of frauds) in *Browne on Stat. of Frauds*, § 141, 4 ed.; 3 *Pars. on Contr.* 18, n. g. Cited in 2 *Whart. Com. on Ev.* 866.

— *v. Van Fleet*, 5 *Johns.* 111. Reviewed with *Bunn v. Croul*, 10 *Id.* 239; *Taylor v. Betsford*, 13 *Id.* 487; *Benson v. Clark*, 1 *Cow.* 258; *Neil v. Abel*, 24 *Wend.* 185; *Plunkett v. Appleton*, 51 *How. Pr.* 469; *Mahoney v. Decker*, 18 *Hun.* 365; *Watertown Bank v. Mix*, 51 *N. Y.* 559 (Communications between judge and jury) in *Wiggins v. Downer*, 67 *How. Pr.* 65. Referred to in *Read v. Cambridge*, 124 *Mass.* 567; s. c., 26 *Am. R.* 690, 692, as overruled by *Taylor v. Betsford*, 13 *Johns.* 487.

— *v. Willet*, 5 *Bosw.* 344; s. c., 9 *Abb. Pr.* 325. Followed (Right of attaching creditor to impeach transfer for fraud) in *Fallon v. McGunn*, 7 *Bosw.* 141, 145. See *Rinchey v. Striker*, 28 *N. Y.* 45.

**Theological Seminary of Auburn v. Calhoun**, 38 *Barb.* 148; s. c., with points of counsel, 62 *Id.* 381. Rev'd in 25 *N. Y.* 422. Decision in *Id.* followed (Proof of publication of will on testimony of one witness) in *Norton v. Norton*, 2 *Redf.* 6, 15.

— *v. Cole*, 18 *Barb.* 360. Further decision in 20 *Id.* 321.

**Therasson v. People**, 20 *Hun.* 55. Rev'd in 82 *N. Y.* 238.

**Thieme v. Gaus**, 24 *Hun.* 236. Abridgt. s. c., as *Thieme v. Gaus*, 12 *Weekly Dig.* 76.

**Third Nat. Bk. v. Blake**, 73 *N. Y.* 260. Compare (Effect of note charging separate estate, as a mortgage) *Mears v. Kearney*, 1 *Abb. N. C.* 303.

**Third Street, Matter of.** See *Matter of Beekman St.*

**Thirty-Second Street, Matter of.** See *Matter of Mercer St.*

**Thomas, Matter of**, 10 *Abb. Pr. N. S.* 114.

- See (Effect of decision denying application for discharge of imprisoned debtor, as *res adjudicata*) *People ex rel. Eldridge v. Fancher*, 1 *Hun*, 27.
- Thomas v. Achilles**, 16 *Barb.* 491. Disapproved (Right of mutual insurance company to divide its risks into classes) in *Sheldon v. Roseboom*, 29 *Id.* 309, *n.*
- **v. Allen**, 1 *Hill*, 145. See *Gilbert v. Wiman*; *Matter of Negus*. Disting'd (Liability on indemnity bond) in *Crippen v. Thompson*, 6 *Barb.* 535; *Bancroft v. Winspear*, 44 *Id.* 215. Applied in *Wright v. Whiting*, 40 *Id.* 239. Disting'd in *Beers v. Shannon*, 73 *N. Y.* 292, 302. Approved in *Churchill v. Hunt*, 3 *Den.* 321, 323. Compare *Lathrop v. Atwood*, 21 *Conn.* 125. Applied in *Furnas v. Durgin*, 119 *Mass.* 500; *s. c.*, 20 *Am. R.* 341, with note collating *Rector of Trinity v. Higgins*, 48 *N. Y.* 532.
- **v. Bennett**, 56 *Barb.* 197. See *Segelken v. Meyer*. Followed (Guardian's right of action) in *Hauenstein v. Kull*, 59 *How. Pr.* 25. Approved in *Pomeroy on Rem.* § 182.
- **v. Crofut**, 14 *N. Y.* 474. Reviewed with *Rich v. Baker*, 3 *Den.* 80; *Evertson v. Sawyer*, 2 *Wend.* 507; *Wright v. Douglass*, 2 *N. Y.* 373; *Cook v. Travis*, 20 *Id.* 400; *Nellis v. Lathrop*, 22 *Wend.* 121; *Reynolds v. Darling*, 42 *Barb.* 418; *Holman v. Holman*, 66 *Id.* 215; *Wilson v. Davol*, 5 *Bosw.* 619 (Effect of sheriff's deed, by relation from day of sale) in 15 *Am. Dec.* 250, *n.*
- **v. Crosswell**, 7 *Johns.* 264; *s. c.*, 5 *Am. Dec.* 269; 4 *N. Y. Com. L. Law. ed.* 318, with brief note. Disapproved with *Inman v. Foster*, 8 *Wend.* 602 (Evidence of other publications, to show malice) in *Root v. Lowndes*, 6 *Hill*, 518, 521. Compare *Taylor v. Kneeland*, 1 *Doug. (Mich.)* 75. Explained in 3 *Pars. on Contr.* 168, *n. v.*
- **v. Dakin**, 22 *Wend.* 9. See (Banking associations as corporations) *Gifford v. Livingston*, 2 *Den.* 382, 390. Explained in *People v. Assessors of Watertown*, 1 *Hill*, 616. Compare *Warner v. Beers*, 23 *Wend.* 103; *Green v. Graves*, 1 *Doug. (Mich.)* 358. Quoted in *Morawetz on Corp.* § 3, *n.* 3, § 9. Reviewed with *Warner v. Beers*, 23 *Wend.* 103; *People v. Purdy*, 2 *Hill*, 31; *Purdy v. People*, 4 *Id.* 384; *De Bow v. People*, 1 *Den.* 9; *Commercial B'k v. Sparrow*, 2 *Id.* 97; *People v. Supervisors of Chenango*, 8 *N. Y.* 317, 327; *People v. Devlin*, 33 *Id.* 269; *People v. Comm'rs of Highways*, 54 *Id.* 276; *De Camp v. Eveland*, 19 *Barb.* 81; *Rumsey v. People*, 19 *N. Y.* 41, and other cases (Power of court to go behind authentication of statute) in 51 *Am. Dec.* 616, *n.*, where the course of decision in *N. Y.* is thought to be somewhat unsatisfactory. Discussed in 3 *Am. L. Reg. N. S.* 345.
- **v. Dickinson**, 14 *Barb.* 90. Rev'd in 12 *N. Y.* 364. Subsequent decision in 23 *Barb.* 431. Decision in 12 *N. Y.* followed (Effect of parol agreement to pay for lands sold and conveyed) in *Ely v. McNight*, 30 *How. Pr.* 101. Decision in 23 *Barb.* approved and disting'd (Damages for breach of contract to transfer property in exchange for other) in *Kirschmann v. Lediard*, 61 *Id.* 573, 579.
- **v. Douglass**. See *Howell v. Denniston*.
- **v. Fleury**, 26 *N. Y.* 26. See *Phillip v. Gallant. Limited* (Effect of provision in building contract for certificate of performance) in *Whiteman v. Mayor, &c. of N. Y.*, 21 *Hun*, 117, 121. See to the contrary, *Milner v. Field*, 5 *Exch.* 829. But see *Abb. Tr. Ev.* 372.
- **v. Hubbell**, 18 *Barb.* 9. Rev'd in 15 *N. Y.* 405. Further decision in 35 *Id.* 120. See *Bartlett v. Campbell*. Decision in 15 *N. Y.* disting'd (Judgment against sheriff as conclusive against surety) in *Fay v. Ames*, 44 *Barb.* 334. Followed in *People ex rel. Tuthill v. Russell*, 25 *Hun*, 524, 526. Applied to agreement to indemnify against suits,—in *Bridgeport Fire, &c. Co. v. Wilson*, 7 *Bosw.* 434; which was rev'd in 34 *N. Y.* 281, which see.
- **v. Kelsey**, 30 *Barb.* 268. See *Brinkerhoff v. Marvin*. Disting'd (Mortgage to secure advances) in *Ackerman v. Hunsicker*, 21 *Hun*, 53, which was rev'd in 85 *N. Y.* 43.
- **v. Kenyon**, 1 *Daly*, 132. Explained (Nuisance as created by flowing water on lands) in *Wood on Nuis.* 2 ed. § 105.
- **v. Kircher**, 15 *Abb. Pr. N. S.* 342. See (Discontinuance of supplementary proceedings) *Code Civ. Pro.* 1881, § 2454, *n.*
- **v. Leland**, 24 *Wend.* 65. See *People ex rel. Griffing v. Mayor of Brooklyn*; *Town of Guilford v. Supervisors of Chenango*. Applied (Power of legislature to authorize local tax) in *Clarke v. City of Rochester*, 5 *Abb. Pr.* 126; *Benson v. Mayor, &c. of Albany*, 24 *Barb.* 254; *Davidson v. Mayor, &c. of N. Y.*, 27 *How. Pr.* 351; *People v. Mayor, &c. of Brooklyn*, 4 *N. Y.* 437; *Howell v. City of Buffalo*, 37 *Id.* 271; *People ex rel. Crowell v. Lawrence*, 41 *Id.* 141; *Town of Duaneburgh v. Jenkins*, 57 *Id.* 189. Followed in *Sharpless v. Mayor, &c. of Phila.*, 21 *Penn. St.* 147; *s. c.*, 59 *Am. Dec.* 759, 781, with note. Disting'd with *People ex rel. Albany & Susquehanna R. R. Co. v. Mitchell*, 45 *Barb.* 208, in *State v. Tappan*, 29 *Wis.* 664; *s. c.*, 9 *Am. R.* 622. Disting'd in *People v. Town of Salem*, 20 *Mich.* 452; *s. c.*, 4 *Am. R.* 400, 419. Approved in *Crawford v. County of Linn*, 11 *Oreg.* 482, 491. Discussed in *Cooley on Const. Limit.* 5 ed. 285, *n.* 1. Commented on ("Law of the land") in *Id.* 470, *n.*
- **v. Leonard**, 11 *Wend.* 53. Applied (Amendment of clerical error in complaint, &c.) in *Tasker v. Wallace*, 6 *Daly*, 364, 366.
- **v. McDaniel**, 14 *Johns.* 185; *s. c.*, 5 *N. Y. Com. L. Law. ed.* 826, with brief note. Disting'd (What is sufficient accord and satisfaction) in *Stockton v. Frey*, 4

- Gill (Md.)* 406; s. c., 45 *Am. Dec.* 138, 144, with note.
- *v. Murray*, 34 *Barb.* 157. Rev'd in 32 *N. Y.* 605. Decision in *Id.* followed (Loan when not made usurious by exaction of security) in 40 *Id.* 248, 252.
- *v. Nelson*, 69 *N. Y.* 118. Followed (Validity of verbal lease for more than a year) and *Reeder v. Sayre*, 70 *Id.* 181; *Laughran v. Smith*, 75 *Id.* 205, disting'd in *Prial v. Entwistle*, 10 *Daly*, 398. Collated with other cases (When relation of landlord and tenant commences) in *McAdam on Landl. & T.* 2 ed. § 29.
- *v. Payne*, 2 *Sweeny*, 605. Aff'd in 47 *N. Y.* 675, but without opinion.
- *v. People*, 34 *N. Y.* 351. Applied (Sufficiency of allegations as to false pretenses, in indictment) in *People ex rel. Phelps v. Oyer and Terminer of N. Y.*, 83 *Id.* 436, 449.
- *v. —*, 67 *N. Y.* 218. Disting'd (Juror as disqualified by opinion) in *Greenfield v. People*, 6 *Abb. N. C.* 1, 11. Applied in *Balbo v. People*, 80 *N. Y.* 484, 494, 496; *Abbott v. People*, 86 *Id.* 460, 468. Followed in *State v. Hoyt*, 47 *Conn.* 520. See cases cited in 20 *Am. L. Reg. N. S.* 117, n. Compare *Points of Law in Guiteau's Case*, p. 82 (Boston: Little, Brown & Co., 1881).
- *v. Quintard*, 5 *Duer*, 80. Disting'd (Worthlessness of patent as defense to action for value of patent interest) in *Hawks v. Swett*, 4 *Hun*, 146, 151.
- *v. Real*, 6 *Wend.* 503. Applied (What constitutes "account" that may be referred) in *Camp v. Ingersoll*, 86 *N. Y.* 433, 436.
- *v. Robinson*, 3 *Wend.* 267. Discussed (Action on foreign judgment) in 2 *Chitty on Contr.* 1177, n. b, 11 *Am. ed.* Commented on in *Ang. on Limit.* § 85, 6 ed.
- *v. Roosa*, 7 *Johns.* 461. Reviewed with *Barns v. Graham*, 4 *Cow.* 452, and other cases (Nature and effect of contracts to make payment in specific articles) in *Roberts v. Beatty*, 2 *Penr. & W. (Pa.)* 63; s. c., 21 *Am. Dec.* 410, 417, with note.
- *v. Rumsey*. See *Livingston v. Bishop*.
- *v. Tanner*, 14 *How. Pr.* 426. Followed (Effect of opinion as authorizing entry of judgment) in *Weyman v. Nat. Broadway B'k*, 59 *Id.* 332.
- *v. Thomas*, 18 *Hun*, 481. See (Amendments in case of appeal from justice's decision) *Code Civ. Pro.* 1881, § 3049, n.
- *v. Thompson*, 2 *Johns.* 471. See (Effect of provision in will in favor of debtor, as satisfaction of debt) *Clarke v. Bogardus*, 12 *Wend.* 68. Reviewed with other cases (Effect of making debtor or his representative the creditor's executor) in *Griffith v. Chew*, 8 *Serg. & R. (Pa.)* 17; s. c., 11 *Am. Dec.* 556, 560.
- *v. Todd*, 6 *Hill*, 340. See *Ontario Bank v. Lightbody*. Applied (Effect of receiving counterfeit bills in payment) to altered check, in *Redington v. Woods*, 45 *Cal.* 406; s. c., 13 *Am. R.* 190, 201. Included in 2 *Ames Cas. on B. & N.* 633.
- *v. Whallon*, 31 *Barb.* 172. Followed with *Bangs v. Gray*, 12 *N. Y.* 477; *Herkimer Co. Mut. Ins. Co. v. Fuller*, 14 *Barb.* 373; *Matter of Bangs*, 15 *Id.* 264; *Savage v. Medbury*, 19 *N. Y.* 32; *Bangs v. Duckinfield*, 18 *Id.* 592 (Assessment on premium note) in *Pacific Mut. Ins. Co. v. Guse*, 49 *Mo.* 329; s. c., 8 *Am. R.* 132, with note. Approved in *Embree v. Shideler*, 36 *Ind.* 423.
- *v. Wilson*, 6 *Hill*, 257. See (Right of non-resident to sue as poor person) *Anonymous*, 10 *Abb. N. C.* 81.
- *v. Winchester*, 6 *N. Y.* 397; s. c., 57 *Am. Dec.* 455, with note. See *Losee v. Clute*; *Ryan v. N. Y. Central R. R. Co.* Disting'd (Liability for remote results of negligence) in *Seizer v. Mali*, 11 *Abb. Pr.* 131; *Blackwell v. Wiswall*, 24 *Barb.* 361; *Norton v. Wiswall*, 26 *Id.* 627; *Burke v. De Castro*, 11 *Hun*, 357; *Loop v. Litchfield*, 42 *N. Y.* 351, 357; *Losee v. Clute*, 57 *Id.* 494, 497. Applied in *Barney v. Burnsterbinder*, 64 *Barb.* 213; *Cross v. Sackett*, 2 *Bosw.* 648; *Cook v. N. Y. Floating Dry Dock Co.*, 1 *Hilt.* 445; *Bruff v. Mali*, 36 *N. Y.* 206; *Smith v. N. Y. & Harlem R. R. Co.*, 19 *Id.* 130. Applied with *Coughry v. Globe Woolen Co.*, 56 *Id.* 124, and *Loop v. Litchfield*, 42 *Id.* 351; *Losee v. Clute*, 51 *Id.* 494, disting'd in *Devlin v. Smith*, 89 *Id.* 470. Followed and applied in *Norton v. Sewall*, 106 *Mass.* 143; s. c., 8 *Am. R.* 298. Applied in *French v. Vining*, 102 *Mass.* 132; s. c., 3 *Am. R.* 440. Reviewed with other cases in *DelaWare, Lackawanna, & C. R. R. Co. v. Salmon*, 10 *Vroom (N. J.)* 299; s. c., 23 *Am. R.* 220, 223; *Railway Co. v. Staley*, 41 *Ohio St.* 118; s. c., 47 *Am. R.* 385, n. Explained in 1 *Benj. on Sales*, § 646, n. 12 (Corbin's 4 *Am. ed.*). Discussed in 2 *Add. on Torts*, 401, n., *Wood's ed.* Included in *Lawson's Lead. Com. L. Cas. Simplified*, 219. Included with note in 1 *Thomps. on Negl.* 224; *Bigel. Cas. on Torts*, 602.
- *v. Woods*. See *Moakeley v. Riggs*.
- Thompson, Ex parte**, 4 *Bradf.* 154. Explained with *Hubbard v. Hubbard*, 12 *Barb.* 148 (Validity of nuncupative will) in *Botsford v. Krake*, 1 *Abb. Pr. N. S.* 112, 119. Included with notes in *Redf. Lead. Cas. on Wills*, 688. Commented on in 1 *Jarm. on Wills*, Rand. & T. ed., 240, n.
- Thompson, Matter of**, 1 *Wend.* 43. Examined with other cases (Domicil) in *Von Hoffman v. Ward*, 4 *Redf.* 244, 258. Doctrine explained and cases cited in 3 *Am. L. Reg. N. S.* 258.
- , 41 *Barb.* 237; s. c., less fully, 1 *Redf.* 490, but with surrogate's opinion. Cited (Remedy against trustee) in 15 *Am. L. Rev.* 457.
- , 11 *Paige*, 453. Collated with *Lowell v. Quitman*, 88 *N. Y.* 377; *Lathrop v.*

- Dunlap, 4 *Hun*, 213, and other cases (What amounts to revocation of will) in 45 *Am. R.* 338, *n.*
- Thompson v. Allen**, 7 *Lans.* 459. Collated with other cases (Actions by adjoining owners against commissioners of highways) in *Cook Highw. L.* 4 ed. 99.
- **v. Ashton**, 14 *Johns.* 816. See *Holden v. Dakin*. Followed (Implied warranty) in *Barnard v. Kellogg*, 10 *Wall.* 383. Reviewed with other cases in *Lawson on Usages & Customs*, 307.
- **v. Berry**, 3 *Johns. Ch.* 395. Aff'd in 17 *Johns.* 436. Decision in 3 *Johns. Ch.* applied (Relief against usurious security) in *Bartholomew v. Yaw*, 9 *Paige*, 166.
- **v. Blanchard**, 2 *N. Y.* 561. Subsequent decision in proceeding between same parties, in 3 *Id.* 335, and, as it seems, in 4 *Id.* 303. Decision in 2 *Id.* disting'd (Effect of appeal as stay of proceedings) in *Burrall v. Vanderbilt*, 6 *Abb. Pr.* 70, 74. Decision in 3 *N. Y.* followed (Necessity of consideration for statutory undertaking) in *Doolittle v. Dininny*, 31 *Id.* 350; *Bildersee v. Aden*, 12 *Abb. Pr. N. S.* 324, 327. Disting'd in *Post v. Doremus*, 60 *N. Y.* 371, 375. Applied to guaranty in *Speyers v. Lambert*, 6 *Abb. Pr. N. S.* 318. Explained in *Browne on Stat. of Frauds*, § 393, *n.* 1, 4 ed. Disting'd (Undertaking, when invalid, as not authorized by statute) in *Mittnacht v. Gschwend*, 1 *City Ct.* 360. Decision in 4 *N. Y.* disting'd (Estoppel to assert claim to property) in *Sparks v. Leavy*, 19 *Abb. Pr.* 369; *Wooster v. Sherwood*, 25 *N. Y.* 287. Approved but disting'd in *Penfield v. Dunbar*, 64 *Barb.* 253. Applied in *Hibbard v. Stewart*, 1 *Hill.* 208; *Barnett v. Zacharias*, 24 *Hun*, 304, 306. Explained in 2 *Parsonson Contr.* 795, *n. r.* Applied (Removal of presumption of fraudulent intent in case of sale, &c. unaccompanied with change of possession) in *Hollacher v. O'Brien*, 5 *Hun*, 280. Applied (Right to contradict one's own witness) in *Coulter v. Am. Merchants' Union Exp. Co.*, 56 *N. Y.* 585, 589.
- **v. Bower**, 60 *Barb.* 463. Quoted (Action for mesne profit and damages) in *Sedgw. & W. on Tr. of Tit. to Land*, § 652.
- **v. Brown**, 4 *Johns. Ch.* 619. See *Osgood v. Franklin*. Disting'd (Liability of executors, &c. for loss) in *Ackerman v. Emott*, 4 *Barb.* 637; *Litchfield v. White*, 3 *Sandf.* 551. Applied in *Hogan v. De Peyster*, 20 *Barb.* 117; *Weston v. Ward*, 4 *Redf.* 435; *Sheerin v. Public Adm'r*, 2 *Id.* 421, 426. Approved and followed in *Fudge v. Durn*, 51 *Mo.* 264. Cited as authority (Right of creditor of deceased to equitable aid in discovery of assets) in *Kennedy v. Creswell*, 101 *U. S.* 641, 646. Applied with other cases (Determining in one proceeding rights of those claiming interest in decedent's estate) in *Kettle v. Crary*, 1 *Paige*, 419, *n.* Explained (Preference as among judgment creditors of decedent) in *Ainslie v. Radcliff*, 7 *Id.* 446. Cited as authority (Continuance of partnership after partner's death, for benefit of infants) in *Powell v. North*, 3 *Ind.* 392; *s. c.*, 56 *Am. Dec.* 513, with note collating cases.
- **v. Burhans**, 61 *Barb.* 260. Rev'd in 61 *N. Y.* 52. Further decision in 15 *Hun*, 580, rev'd in 79 *N. Y.* 93. Decision in 61 *Id.* quoted and explained (Adverse possession under color of title) in *Sedgw. & W. on Tr. of Tit. to Land*, §§ 732, 774. Decision in 79 *N. Y.* applied (Insufficiency of occasional entry, &c. as possession that will support ejectment) in *Ozark Land Co. v. Leonard*, *U. S. Cir. Ct. E. D. Ark.* 20 *Fed. Rep.* 881. Quoted in *Sedgw. & W. on Tr. of Tit. to Land*, §§ 719, 769, 774. See *Code Civ. Pro.* 1881, § 370, *n.*
- **v. Button**, 14 *Johns.* 84. See *Felter v. Mulliner*; *Pangburn v. Patridge*. Limited and applied (Replevin as remedy to obtain goods that are in custody of law) in *Clark v. Skinner*, 20 *Johns.* 465, 469; *Dunham v. Wyckoff*, 3 *Wend.* 280. Criticised as standing alone,—citing *Pangburn v. Patridge*, 7 *Johns.* 140; *Co. Lit.* 145, *b*; and other authorities to the contrary,—in *Smith v. Huntington*, 3 *N. H.* 76; *s. c.*, 14 *Am. Dec.* 331. Disting'd with *Gardner v. Campbell*, 15 *Johns.* 401, in *Kellogg v. Churchill*, 2 *N. H.* 412; *s. c.*, 9 *Am. Dec.* 104. Followed with *Cresson v. Stout*, 17 *Johns.* 116; *Pangburn v. Patridge*, 7 *Id.* 142,—in *Philips v. Harriss*, 3 *J. J. Marsh. (Ky.)* 122; *s. c.*, 19 *Am. Dec.* 166, with note. Followed in *Dodd v. McCraw*, 8 *Ark.* 83; *s. c.*, 46 *Am. Dec.* 301.
- **v. Carmichael**. See *Thompson v. Clendenning*.
- **v. Clark**, 4 *Hun*, 164. See (Effect of notice of *lis pendens*) *Code Civ. Pro.* 1881, § 1671, *n.* Discussed in *Sedgw. & W. on Tr. of Tit. to Land*, § 645. Discussed (Judgment in ejectment when not conclusive) in *Id.* 673. Compare *Code Civ. Pro.* § 1524.
- **v. Clendenning**, 1 *Sandf. Ch.* 387. Further proceedings as *Thompson v. Carmichael*, in 4 *N. Y. Leg. Obs.* 134. Decision in 1 *Sandf. Ch.* discussed (Perpetuities) in 1 *Jarm. on Wills*, Rand. & T. ed. 513, *n.*
- **v. Commissioners for Loaning, &c.**, 16 *Hun*, 86. Rev'd in 79 *N. Y.* 54. Before word "judgment" in last line of *Id.* 63, insert "order reversed and."
- **v. Culver**, 24 *How. Pr.* 286. Followed (Attachment not superseded by judgment) in *Smoot v. Heim*, 1 *Civ. Pro. R.* 208, 210. Applied (Vacating attachment after judgment) in *Zeregal v. Benoist*, 33 *How. Pr.* 134; *Bowen v. First Nat. B'k of Medina*, 34 *Id.* 410.
- **v. Davies**. See *Doolin v. Ward*; *Jones v. Caswell*.
- **v. Egbert**, 3 *Sup'm. Ct. (T. & C.)* 474; *s. c.*, 1 *Hun*, 484. Explained (Partnership lands) in 1 *Collyer on Partn.* § 114, *n.* 2,



Wood's Am. ed. Cited in *Story on Partn.* 7 ed. § 94.

— *v. Erie R'y Co.*, 45 *N. Y.* 468. See *Wayland v. Tysen*. Disting'd (Striking out pleading) in *Walker v. Walker*, 82 *N. Y.* 260, 264. Followed (Striking out answer as sham) in *Claffin v. Jaroslowski*, 64 *Barb.* 463; *Webb v. Foster*, 45 *Super. Ct. (J. & S.)* 312. Disting'd in *Kay v. Churchill*, 10 *Abb. N. C.* 83, 85. Followed (Judgment on part of answer, as frivolous) in *Strong v. Sproul*, 53 *N. Y.* 497, 499; *Grocers' Bank v. O'Rourke*, 6 *Hun.* 18, 21. Disting'd (Necessity, &c. of having common stockholders represented, in action by preferred stockholders to compel payment of dividend) in *Chase v. Vanderbilt*, 62 *N. Y.* 315.

— *v. Fargo*, 58 *Barb.* 575. Rev'd in 49 *N. Y.* 188; s. c., 44 *How. Pr.* 176; 10 *Am. R.* 342. Further decision in 48 *How. Pr.* 93; mem. s. c., 2 *Hun.* 379; 4 *Sup'm. Ct. (T. & C.)* 665, aff'd in 63 *N. Y.* 479. See *Krulder v. Ellison*. Decision in 49 *N. Y.* criticised as extreme, and as decided on peculiar facts (Duty of carrier as to delivery) in 8 *Am. Dec.* 218, n. Explained (Consignor's right of action against carrier) in 7 *South. L. Rev. N. S.* 275.

— *v. Gregory*, 4 *Johns.* 81; s. c., 4 *Am. Dec.* 255. Followed with *Miller v. Auburn & Syracuse R. R. Co.*, 6 *Hill.* 61; *Mumford v. Whitney*, 15 *Wend.* 381 (Invalidity of parol license coupled with interest in land) in *Woodward v. Seely*, 11 *Ill.* 157; s. c., 50 *Am. Dec.* 445, with note. Approved with same cases in *Hazelton v. Putnam*, 3 *Chand. (Wisc.)* 122.

— *v. Hall*, 45 *Barb.* 214. Followed (Parol evidence to vary writing) in *Pohalski v. Mutual Life Ins. Co.*, 36 *Super. Ct. (J. & S.)* 234, 250. Applied (Discharge of surety by neglect to proceed against principal) in *Field v. Cutler*, 4 *Lans.* 197. Disting'd with *Slingerland v. Bennett*, 6 *Sup'm. Ct. (T. & C.)* 446 (Opinions as to insolvency) in *York v. People*, 31 *Hun.* 446.

— *v. Hewitt*, 6 *Hill.* 254. See *Kellogg v. Schuyler*. Explained with *Kellogg v. Schuyler*, 2 *Den.* 73 (Effect of discharge in bankruptcy) in *Clark v. Rowling*, 3 *N. Y.* 216, 223. Limited in *Johnson v. Fitzhugh*, 3 *Barb. Ch.* 360, 363.

— *v. Hickey*, 59 *How. Pr.* 434; s. c., more fully, 8 *Abb. N. C.* 159.

— *v. Jenks*, 2 *Abb. Pr. N. S.* 229. Overruled (Clerk's exclusive power to issue execution on justice's judgment) by *Brush v. Lee*, 36 *N. Y.* 49, but restored by 2 *L.* 1870, p. 1832, c. 741, § 3. See *Code Civ. Pro.* 1881, § 3017, n. See to the contrary (Effect of written acknowledgment to revive judgment) *Code Civ. Pro.* § 376.

— *v. Kessel*, 30 *N. Y.* 383. See also (Amendment as to name) *N. Y.*, &c. *Milk Pan Co. v. Remington Agric. Works*, 25 *Hun.* 475 (and see dissenting opinion *Id.* 481). Applied (Review of referee's find-

ings) in *Marsh v. Holbrook*, 3 *Abb. Ct. App. Dec.* 179. Disting'd (Amendment of judgment) in *Grant v. Griswold*, 21 *Hun.* 511.

— *v. Ketcham*, 8 *Johns.* 190; s. c., 5 *Am. Dec.* 332. See *Bank of Albion v. Smith*; *Fitzburgh v. Runyon*; *Freeman v. Adams*; *Pechner v. Phoenix Ins. Co.*; *Robinson v. Dauchy*. Criticised (Presumption as to foreign law) in *Throop v. Hatch*, 3 *Abb. Pr.* 26. Applied in *Wright v. Delafield*, 23 *Barb.* 515; *Sherrill v. Hopkins*, 1 *Cow.* 108. See *Cutler v. Wright*, 22 *N. Y.* 486. See many authorities collected, in 6 *Cow.* 499, n. Followed with *Holmes v. Broughton*, 10 *Wend.* 75, in *Brush v. Scribner*, 11 *Conn.* 888; s. c., 29 *Am. Dec.* 303, 320, with note. Applied (Parol evidence to control effect of negotiable paper) in *Dunning v. Pratt*, 4 *Duer.* 336; *Norton v. Coons*, 6 *N. Y.* 41. Cited in *Brown v. Wiley*, 20 *How. (U. S.)* 442. Applied (Time of payment of note) in *Sice v. Cunningham*, 1 *Cow.* 407. Explained and applied (Law of place as controlling validity of contract) in *Graham v. First Nat. B'k of Norfolk*, 20 *Hun.* 329. Reviewed with other cases in *Milliken v. Pratt*, 125 *Mass.* 374; s. c., 28 *Am. R.* 241, 245, as showing the general current of authorities, English and American. Applied in *Stiekney v. Jordan*, 58 *Me.* 106; s. c., 4 *Am. R.* 251; *Bank of Louisiana v. Williams*, 46 *Miss.* 618; s. c., 12 *Am. R.* 319, 321. See doctrine explained in *Tyler on Inf. & Cov.* 2 ed. § 4.

— *v. Leastedt*, 3 *Hun.* 395; s. c., as *Thompson v. Seastedt*, 6 *Sup'm. Ct. (T. & C.)* 78. See *Jauncey v. Thorne*.

— *v. Lockwood*, 15 *Johns.* 256. Followed (Validity of bond exacted by officer without authority) in *Benedict v. Bray*, 2 *Cal.* 251; s. c., 56 *Am. Dec.* 333. Applied with *Germond v. People*, 1 *Hill.* 343, in *Caffrey v. Dudgeon*, 38 *Ind.* 512; s. c., 10 *Am. R.* 126, 130. Included with notes (Who may urge duress) in *Ewell Lead. Cas. on Inf. &c.* 789.

— *v. Lumley*, 1 *Abb. N. C.* 254; s. c., less fully, 50 *How. Pr.* 105. Aff'd in 64 *N. Y.* 631, on opinion of Loew, J., below. Further decision in 7 *Daly*, 74. With decision in 1 *Abb. N. C.* 254, compare (Affidavit on information and belief) *Lambert v. People*, 6 *Id.* 181. Decision in 7 *Daly* applied (Effect of judgment absolute on appeal) in *Rust v. Hauselt*, 8 *Abb. N. C.* 148, 155.

— *v. Mayor, &c. of N. Y.*, 3 *Sandf.* 487. Aff'd in 11 *N. Y.* 115. Compare (Proof of notice of claim, to establish adverse title) *Humbert v. Trinity Church*, 24 *Wend.* 587.

— *v. Menek*, 22 *How. Pr.* 431. Rev'd in 2 *Keyes*, 82; s. c., 4 *Abb. Ct. App. Dec.* 400.

— *v. N. Y. & Harlem R. R. Co.*, 3 *Sandf. Ch.* 625. Approved (Implied authority of corporation) in *Jones v. Guaranty & Indemnity Co.*, 101 *U. S.* 622. Explained (Private corporations, how created) in *Ang. & A. on Corp.* § 82, 11 ed.

- **v. Nixon**, 3 *Edw.* 457. See cases cited (Choses in action as subject to creditor's bill) in 14 *Am. Dec.* 531, *n.*; 16 *Abb. N. C.* 21, *n.*
- **v. People**, 6 *Hun.* 135. Followed (Transfer of indictment. Challenge to array) in *Weston v. People*, *Id.* 140. Followed (Removal of indictment) in *Leighton v. People*, 10 *Abb. N. C.* 261, 265.
- **v. —**, 3 *Park.* 208. Reviewed with other cases (Practice on return to writ of error) in *Manke v. People*, 74 *N. Y.* 415, 420. Collated with *Schenck v. Campbell*, 11 *Abb. Pr.* 292, and other cases (Meaning of word "house") in 22 *Am. Dec.* 144, *n.*
- **v. —**, 23 *Wend.* 537. Followed (Quo warranto, as remedy to determine question of forfeiture of corporate charter) in *State v. Real Estate Bank*, 5 *Ark.* 595; *s. c.*, 41 *Am. Dec.* 100, 111, with note.
- **v. Quimby**, 2 *Bradf.* 449. Aff'd in *Thompson v. Thompson*, 21 *Barb.* 107. Decision in 2 *Bradf.* commented on (Execution and attestation of will) in 1 *Jarm. on Wills*, Rand. & T. ed. 228, *n.* 24.
- **v. Rose**, 8 *Cow.* 266. Explained and applied (Covenant to pay for erections, when running with the land) in *Weyman's Ex'rs v. Ringold*, 1 *Bradf.* 59.
- **v. Schermerhorn**, 9 *Barb.* 152. Aff'd in 6 *N. Y.* 92; *s. c.*, 55 *Am. Dec.* 385, with note containing citations. See *Birdsall v. Clark*. Decision in 6 *N. Y.* disting'd (Delegation of powers of municipal corporation) in *City of Brooklyn v. Breslin*, 57 *Id.* 591, 594; *Edwards v. City of Watertown*, 24 *Hun.* 426, 428. Followed in *Birdsall v. Clark*, 73 *N. Y.* 73, 77.
- **v. Seastedt**. See *Thompson v. Leastedt*.
- **v. Sherrard**, 35 *Barb.* 593; *s. c.*, 12 *Abb. Pr.* 427; less fully, 22 *Hov. Pr.* 155. See *Guernsey v. Powers*. Disapproved (Appointment of receiver in action to recover real estate) in *Ireland v. Nichols*, 37 *Hov. Pr.* 222, 231. Disting'd in *Mitchell v. Barnes*, 22 *Hun.* 194, 198. Explained in *Sedgw. & W. on Tr. of Tit. to Land*, § 614.
- **v. Skinner**. See *Jackson v. Robins*.
- **v. Sloan**, 23 *Wend.* 77. Disting'd (Effect of negotiable paper payable in specific kind of money) in *Pardee v. Fish*, 60 *N. Y.* 265, 270. Disapproved as contrary to current of authority,—in *Black v. Ward*, 27 *Mich.* 191; *s. c.*, 15 *Am. R.* 162, 164; citing also, *Ehle v. Chittenango B'k*, 24 *N. Y.* 548. Included with note in *Redf. & B. Lead. Cas. on B. of Exch.* 1; *Bigel. on B. & N.* 2 ed. 1. Disting'd (Sense in which words in written instrument are to be understood) in *Willmering v. McGaughey*, 30 *Iowa*, 205; *s. c.*, 6 *Am. R.* 673, 676. Compared (Evidence of custom, to determine negotiability of note) in 4 *Am. L. Reg. N. S.* 345.
- **v. Stevens**, 62 *N. Y.* 634. Disting'd (Proof of publication of will) in *Heath v. Cole*, 15 *Hun.* 100, 104. Applied in *Mairs v. Freeman*, 3 *Redf.* 195; *Von Hoffman v. Ward*, 4 *Id.* 260.
- **v. Taylor**. See *Thomson v. Same*.
- **v. Van Vechten**, 5 *Abb. Pr.* 448. Rev'd in 6 *Bosc.* 373. Subsequent decision in 27 *N. Y.* 568. Decision in *Id.* approved but disting'd (Effect of chattel mortgage not filed, as against creditors) in *Parshall v. Egert*, 54 *Id.* 18, 22; which rev'd 52 *Barb.* 373, which see. Applied in *Stewart v. Beale*, 7 *Hun.* 413, 416; *Fraser v. Gilbert*, 11 *Id.* 634, 637; *Bost v. Staple*, 61 *N. Y.* 71, 79. Disting'd in *Matter of Collins*, 12 *Blatchf. C. Ct.* 548, 550. Applied to fraudulent mortgage, in *Brackett v. Harvey*, 25 *Hun.* 502, 504. Explained and applied (Right of chattel mortgagee, relief against other liens) in *Anderson v. Hunn*, 5 *Id.* 82.
- **v. Wood**, 1 *Hill.* 91. See *Howard v. Daly*. Dictum disapproved (Rights of servants wrongfully discharged) in *Howard v. Daly*, 61 *N. Y.* 362, 372; *Moody v. Leverich*, 14 *Abb. Pr. N. S.* 145, 149. See cases collected (Severance of cause of action) in 7 *Am. L. Reg. N. S.* 148.
- Thomson, Matter of**. Reported under *Thompson v. Taylor*, 71 *N. Y.* 217.
- Thomson v. Bank of British N. A.**, 45 *Super. Ct. (J. & S.)* 1. Aff'd in 82 *N. Y.* 1. See *Payne v. Gardner*.
- **v. Ebbets**, *Hopk.* 272. Disting'd (Interpleader in case of double taxation) in *Dorn v. Fox*, 61 *N. Y.* 271. Criticised as unsound in 35 *Am. Dec.* 700, *n.*, doubting *Redfield v. Supervisors*, *Clarke*, 42; *Mohawk, &c. R. R. Co. v. Clute*, 4 *Paige*, 384.
- **v. MacGregor**, 45 *Super. Ct. (J. & S.)* 197. Rev'd in 9 *Abb. N. C.* 138; *s. c.*, more fully, 81 *N. Y.* 592. Compare (Proper plaintiff in action on official bond) *Code Civ. Pro.* § 1888.
- **v. Thomson**, 1 *Bradf.* 24. Followed (Amendment of executor's inventory of assets, when not ordered) in *Greenough v. Greenough*, 5 *Redf.* 192. See *Code Civ. Pro.* 1881, § 2715, *n.*
- **v. —**, 55 *Hov. Pr.* 494. Followed as decisive (Appointment of testamentary guardian by father without mother's consent, in *Fitzgerald v. Fitzgerald*, 24 *Hun.* 371.
- **v. Taylor**, 1 *Hun.* 274. Aff'd as *Thompson v. Taylor*, in 72 *N. Y.* 32. Previous proceeding in 71 *Id.* 217; also further one in 13 *Hun.* 201.
- **v. Tracy**, 60 *N. Y.* 31. Criticised (Definition of writ of prohibition) in 12 *Am. Dec.* 604, *n.*
- **v. Wilcox**, 7 *Lans.* 376. Disting'd (Effect of misdescription of property contained in notices of *lis pendens*, and the like) in *Watson v. Wilcox*, 39 *Wis.* 643; *s. c.*, 20 *Am. R.* 63.
- Thorn v. Blanchard**, 5 *Johns.* 508. Followed (Privilege as to words spoken or written in legal, &c. proceeding) in *Forbes v. Johnson*, 11 *B. Monr. (Ky.)* 48, 51.

- Disting'd in *Bodwell v. Osgood*, 3 *Pick. (Mass.)* 379; s. c., 15 *Am. Dec.* 228. Compared with Pennsylvania doctrine in 2 *Kent Com.* 22. Collated with other cases and explained in *Bigel. Cas. on Torts*, 172.
- *v. Helmer*, 4 *Abb. Ct. App. Dec.* 408; s. c., 2 *Keys*, 27. Disting'd (Waiver of fraud) in *People v. Stephens*, 71 *N. Y.* 527, 556. Disting'd (Evidence as to intent) in *Learned v. Ryder*, 5 *Lans.* 539, 541.
- *v. Hicks*, 7 *Cow.* 697. See *Wendover v. Hogeboom*. Cited\* (Liability of mortgagee out of possession, for services rendered, or necessities furnished vessel) in 3 *Kent Com.* 136.
- *v. Knapp*, 42 *N. Y.* 474. See *Johnson v. Jenkins*. Included (Exemplary damages in action for breach of promise to marry) in *Selgw. Cas. on Dama.* 766.
- *v. Nott*, 1 *Sup'm. Ct. (T. & C.) Add.* 22. Applied (Disregarding small error in amount of assessment) in *Colman v. Shattuck*, 2 *Hun.* 497, 507.
- *v. Smith*, 21 *Wend.* 365. Explained (Admissions by partner, as binding on partnership) in 2 *Collyer on Partn.* § 702, n. 4, *Wood's Am. ed.*
- Thornal v. Pitt**, 36 *Super. Ct. (J. & S.)* 379. Rev'd on ground that question whether plaintiff acted as broker of defendant should have been submitted to jury, in 58 *N. Y.* 683.
- Thorne v. Cramer**, 15 *Barb.* 112. Disapproved by *Bradley v. Baxter*, *Id.* 122; *Barto v. Himrod*, 8 *N. Y.* 483 (Validity of law passed, subject to popular vote) in *Bull v. Read*, 13 *Gratt. (Va.)* 78, 83, 97. See *Corning v. Green*, 23 *Barb.* 33. Approved in *Mesheier v. State*, 11 *Ind.* 482.
- *v. Deas*, 4 *Johns.* 84; s. c., 3 *N. Y. Com. L. Law. ed.* 752, with brief note, saying it is the leading American case. Relied on (Liability for non-feasance, &c. in gratuitous undertaking) in *Morrison v. Orr*, 3 *Stew. & P. (Ala.)* 49; s. c., 23 *Am. Dec.* 319, with note; *Gill v. Middleton*, 105 *Mass.* 477; s. c., 7 *Am. R.* 548. Questioned and qualified in 2 *Pars. on Mar. L.* 471, n. Discussed in 2 *Pars. on Contr.* 99, 103, n. f.; *Ang. on Carr.* § 19, n. 1, 5 ed. Explained in 1 *Chitty on Contr.* 60, n. t, 11 *Am. ed.*
- Thornton v. Payne**, 5 *Johns.* 74. Quoted (Agreements for future leases as distinguished from present contracts) in 1 *Washb. on Real Prop.* 4 ed. 450, n. 3.
- *v. St. Paul & Chicago R. R. Co.*, 45 *How. Pr.* 416. Further proceedings in 6 *Daly*, 511.
- Thorp v. Burling**, 11 *Johns.* 285. Applied (Liability in trover, of one innocently receiving possession) in *Dudley v. Hawley*, 40 *Barb.* 404. Cited as authority (Agent obeying illegal orders cannot defend on account of agency) in *Whart. Com. on Ag.* § 542.
- *v. Keokuk Coal Co.*, 47 *Barb.* 439. Aff'd in 48 *N. Y.* 253. See *Hamill v. Gillespie*. Decision in 48 *N. Y.* explained (Obligation created by assumption of mortgage) in *Douglass v. Wells*, 18 *Hun.* 93. Applied in *Whiting v. Gearty*, 14 *Id.* 501. Disting'd in *Vrooman v. Turner*, 69 *N. Y.* 280, 285; *Dunning v. Leavitt*, 85 *Id.* 30, 36 (and see dissenting opinion, *Id.* 38). Discussed in *Real Estate Trust Co. v. Balch*, 45 *Super. Ct. (J. & S.)* 534. Followed in *Dean v. Walker*, 107 *Ill.* 540; s. c., 47 *Am. R.* 467. Questioned in *Thomas on Mort.* 191. Applied (Right to enforce agreement made with third person) in *Claflin v. Ostrom*, 54 *N. Y.* 584.
- *v. Ross*, 4 *Abb. Ct. App. Dec.* 416. See (Oral evidence to vary written contract for services) as to verbal limit of cost on written order, *Hooper v. Taylor*, 4 *E. D. Smith.* 486; *Carl v. Spofford*, 45 *N. Y.* 61. But see *Abb. Tr. Ev.* 364.
- *v. Woodhull*, 1 *Sandf. Ch.* 411. Not followed (Effect of payment of stock subscription by check) in *Excelsior Grain Binding Co. v. Stayner*, 61 *How. Pr.* 456, 458. Explained (Transfer of stock) in *Ang. & A. on Corp.* § 568, 11 ed.
- Thorpe v. Baulch**, 3 *Abb. Pr.* 13. Disapproved (Extension of time to answer, without affidavit of merits) in *Romaine v. Cornwell*, 11 *Abb. Pr. N. S.* 430.
- *v. N. Y. Central, &c. R. R. Co.*, 13 *Hun.* 70. Aff'd in 76 *N. Y.* 402; s. c., 32 *Am. R.* 325. Compare (Liability of railroad company in regard to sleeping cars) *Kinsley v. Lake Shore & Michigan Southern R. R. Co.*, 125 *Mass.* 54; s. c., 28 *Am. R.* 200.
- *v. White*, 13 *Johns.* 53. See *McMillan v. Vanderlip*. Questioned (Recovery on contract of service before expiration of period agreed on) in *Heim v. Wolf*, 1 *E. D. Smith.* 70, 73.
- Thrasher v. Bentley**, 2 *Sup'm. Ct. (T. & C.)* 309. Aff'd in 1 *Abb. N. C.* 39; mem. s. c., 59 *N. Y.* 649. Decision in *Id.* followed (Giving of bond as prerequisite to validity of assignment for creditors) in *Brennan v. Willson*, 7 *Daly*, 59, 61; which was aff'd in 71 *N. Y.* 502, 506, which see; *Von Hein v. Elkus*, 8 *Hun.* 519; *Worthy v. Benhaur*, 13 *Id.* 177. Disting'd in *Rennie v. Bean*, 24 *Id.* 123, 127, a case of failure of assignee to accept. Followed (Assignment under State law, how affected by Federal bankruptcy law) in *Lowenstein v. Flauraud*, 53 *How. Pr.* 467. Explained in *Boese v. Locke*, 17 *Hun.* 275; which was rev'd in 78 *N. Y.* 479, which see. Disting'd in *Bostwick v. Burnett*, 11 *Hun.* 301. Decision in 2 *Sup'm. Ct. (T. & C.)* disting'd (Vendee's right to recover back payments on rescission of contract of sale) in *Tice v. Zinsser*, 76 *N. Y.* 549, 553.
- Throop v. Cheeseman**, 16 *Johns.* 264. Followed (Calls of patent as affected by survey) in *Newman v. Foster*, 3 *How. (Miss.)* 383; s. c., 34 *Am. Dec.* 98, 101, with note.

- Thurber v. Blanck**, 50 *N. Y.* 80. See *Mechanics' & Traders' Bank v. Dakin*; *Rinchev v. Stryker*. Compared (Right of attachment creditor to assail fraudulent transfer) in *Gross v. Daly*, 5 *Daly*, 541, 546, a case of mechanics' lien. Compare to the contrary *Mechanics'*, &c. *B'k v. Dakin*, 51 *N. Y.* 519; but see *Same v. Same*, 8 *Hun*, 431; 54 *N. Y.* 681. Followed in *Conner v. Weber*, 12 *Hun*, 580, 583; *Smith v. Longmire*, 24 *Id.* 257, 259. Followed with *Smith v. Longmire*, in *Milliken v. Dart*, 26 *Id.* 24. Followed with *Castle v. Lewis*, 78 *N. Y.* 131; *Mechanics'*, &c. *B'k v. Dakin*, 8 *Hun*, 431; and *Mechanics'*, &c. *B'k v. Dakin*, 51 *N. Y.* 519, disregarded in *Venable v. N. Y. Bowery Fire Ins. Co.*, 49 *Super. Ct. (J. & S.)* 481. Followed in *Talbott v. Randall*, *Sup'm. Ct. New Mexico*, 1885, 19 *Reporter*, 848. See *Code Civ. Pro.* 1881, ch. VII, tit. III, art. 2, n. Discussed in *Wait. on Fraud. Conv.* § 86.
- **v. Chambers**, 4 *Hun*, 721. Aff'd in 66 *N. Y.* 42. Another proceeding in 60 *Id.* 29. See *Gill v. Brouwer*.
- **v. Harlem Bridge, &c. R. R. Co.**, 60 *N. Y.* 326. Applied (Non-suits in action for negligence) in *Cornwall v. Mills*, 44 *Super. Ct. (J. & S.)* 45, 50. See cases collected (Contributory negligence of child) in 6 *Abb. N. C.* 110, n.
- **v. Townsend**, 22 *N. Y.* 517. Approved (Power of Supreme Court on appeal from inferior court) in *Baker v. Remington*, 45 *Id.* 323, 327. Disting'd as to review of report of commissioners in condemnation proceedings, in *Matter of Kings Co. Elev. Ry. Co.*, 82 *Id.* 95, 102. Collated with other cases (Curtesy as affected by statute) in *Shaw. & B. Cas. on Real Prop.* 289.
- Thurman v. Wells**, 18 *Barb.* 500. Overruled (Assignability of claim for damages arising from conversion of personal property) in *McKee v. Judd*, 12 *N. Y.* 622, 626. See *Butler v. N. Y. & Erie R. R. Co.*, 22 *Barb.* 110.
- Thurst v. West**, 31 *N. Y.* 210. Shown with *Bank of Beloit v. Beale*, 34 *Id.* 472; *Marsden v. Cornell*, 62 *Id.* 215, in 11 *Am. Dec.* 524, n., to be in harmony with the weight of authority, including that of U. S. *Sup'm. Ct.* (Effect of judgment for plaintiff in trespass or trover to vest title to goods in defendant).
- Thurston v. Cornell**, 38 *N. Y.* 281. See *Seymour v. Wilson*. Disting'd (Evidence of intent) in *Learned v. Ryder*, 61 *Barb.* 557; *Dillon v. Anderson*, 43 *N. Y.* 236. Followed in *More v. Deyoe*, 22 *Hun*, 208, 223. Explained and applied in *Bayliss v. Cockcroft*, 81 *N. Y.* 363, 371. Disting'd (Usury as determined by agreement for additional compensation for trouble and expense) in *Van Tassel v. Wood*, 12 *Hun*, 390.
- **v. King**, 1 *Abb. Pr.* 126. See (Execution after creditor's death) *Code Civ. Pro.* 1881, § 1376, n.
- Tibbetts v. Blood**, 21 *Barb.* 650. Followed (Parties in actions in behalf of or against association) notwithstanding doubts raised in *Austin v. Searing*, 16 *N. Y.* 116—in *Dewitt v. Chandler*, 11 *Abb. Pr.* 459, 470; *Poultney v. Bachman*, 10 *Abb. N. C.* 252, 254. See cases cited in 4 *Abb. N. C.* 311, n.
- Tibbits, Ex parte**, 6 *Cow.* 551, n. Rev'd in 17 *Wend.* 571. See *Child v. Starr*. Decision in 17 *Wend.* examined (Right of fisheries) and result of decision stated, in *People v. Canal Appraisers*, 33 *N. Y.* 461, 478.
- Tibbles v. O'Connor**, 28 *Barb.* 538. Disting'd (Liability for costs of appeal, when covered by statutory undertaking) in *Hinckley v. Kreitz*, 58 *N. Y.* 588, 588.
- Tibbs v. Morris**, 44 *Barb.* 138. Approved (Duty of party to set up equitable defense in action) in *Giles v. Austin*, 38 *Super. Ct. (J. & S.)* 215, 243.
- Tice v. Annin**, 2 *Johns. Ch.* 125. Applied (Liability of purchaser of mortgaged premises) in *Cox v. Wheeler*, 7 *Waige*, 258.
- **v. Gallup**, 2 *Hun*, 446. Disapproved with *Nelson v. Cowing*, 6 *Hill*, 336 (Authority to sell as giving authority to warrant) in *Cooley v. Perrine*, 12 *Vroom (N. J.)* 332; s. c., 32 *Am. R.* 210; citing also *Jeffrey v. Bigelow*, 13 *Wend.* 518; *Sandford v. Handy*, 23 *Id.* 250. Collated with *Nelson v. Cowing*, and other cases, in 22 *Am. L. Reg. N. S.* 553, 555.
- **v. Tice**, 3 *Hun*, 553. Rev'd in 68 *N. Y.* 614, on the facts, but without opinion.
- **v. Zinsser**, 13 *Hun*, 366. Rev'd in 76 *N. Y.* 549.
- Ticknor v. Kennedy**, 3 *Abb. Pr. N. S.* 387. Rev'd in 4 *Id.* 417. With latter decision see (Judgment against joint debtors in justice's court) *Code Civ. Pro.* 1881, § 3021, n. Collated with other case and commented on in *Throop Justices' Man.* 2 ed. 71.
- Tiedemann v. Ackerman**, 16 *Hun*, 307. Aff'd in 84 *N. Y.* 677, but without opinion.
- Tiernan v. Wilson**, 6 *Johns. Ch.* 411. See *Groff v. Jones*; *Howell v. Baker*; *Woods v. Monell*. Applied (Effect of fraud in conducting judicial sale) in *King v. Platt*, 2 *Abb. Ct. App. Dec.* 532; *Hackley v. Draper*, 60 *N. Y.* 93; 4 *Sup'm. Ct. (T. & C.)* 620. See *O'Donnell v. Lindsay*, 39 *Super. Ct. (J. & S.)* 531. Followed and approved with *Groff v. Jones*, 6 *Wend.* 522, in *Reed v. Carter*, 3 *Blackf. (Ind.)* 376; s. c. 26 *Am. Dec.* 422, with note.
- Tierney v. N. Y. Central, &c. R. R. Co.**, 10 *Hun*, 569; s. c., more fully, 67 *Barb.* 538. Aff'd in 76 *N. Y.* 305. See *Place v. Union Express Co.*
- Tiffany v. Bowerman**, 2 *Hun*, 643. Examined and approved (Supplementary pleadings, when allowed) in *Prouty v. Lake Shore & M. S. R. R. Co.*, 85 *N. Y.* 272, 276. Applied with *McMahon v. Allen*, 12 *How. Pr.* 39, and *Corbin v. Knapp*, 5 *Hun*, 197; *Fincke v. Rourke*, 20 *Id.* 264, disting'd in *Holly v. Graf*, 29 *Id.* 443.
- **v. Clark**, 1 *Sup'm. Ct. (T. & C.) Add.*

9. Aff'd with modification in 58 *N. Y.* 682.
- *v. Driggs*, 11 *Johns.* 253. Disting'd (Remedies, in case of penalty given by statute) in *Blatchley v. Moser*, 15 *Wend.* 217.
- *v. Farr*, 1 *Sup'm. Ct. (T. & C.) Add.* 16. Aff'd, it seems, in 63 *N. Y.* 644, but without opinion.
- *v. Lord*, 65 *N. Y.* 310. Disting'd (Time of objection to bond given on granting attachment by justice) in *Northrup v. Garrett*, 17 *Hun.* 497. Disting'd (Who may object to defect in statutory bond) in *People v. Groat*, 22 *Id.* 164. See *Code Civ. Pro.* 1881, §§ 2908, *n.*, 3169, *n.*
- *v. St. John*, 5 *Lans.* 153. Aff'd in 65 *N. Y.* 314; *s. c.*, 22 *Am. R.* 612.
- *v. Warren*, 37 *Barb.* 571. Disting'd (Effect of unfiled chattel mortgage as against creditors) in *Fraser v. Gilbert*, 11 *Hun.* 634, 637.
- Tift v. Horton**, 53 *N. Y.* 377. Followed (What is personal property though annexed to realty) in *Sisson v. Hibbard*, 10 *Hun.* 420, 424; which was aff'd in 75 *N. Y.* 542, 546, which see; *Kinsey v. Bailey*, 9 *Hun.* 452. Approved in *Jones on Chut. M.* § 132. Examined and disting'd, in *Henderson v. Ownby*, 56 *Tex.* 647; *s. c.*, 42 *Am. R.* 691; 14 *Reporter*, 446.
- *v. Porter*, 8 *N. Y.* 516. Explained and followed (Legacy, when general and not specific) in *Osborne v. McAlpine*, 4 *Redf.* 1, 3.
- *v. Tift*, 4 *Den.* 175. Followed (Liability of parent for acts of minor) in *Schlossberg v. Lahr*, 60 *How. Pr.* 450; *Edwards v. Crane*, 13 *Kan.* 348; *Hagerty v. Powers*, 66 *Cal.* 368; *s. c.*, 19 *Reporter*, 395.
- Tighe v. Pope**, 16 *Hun.* 180. Applied (Amendment as to name of party) in *N. Y. & Co. Milk Pan Co. v. Remington Agric. Works*, 25 *Id.* 475, 477 (and see dissenting opinion, *Id.* 480).
- Tilley v. Hudson River R. R. Co.**, 24 *N. Y.* 471; *s. c.*, 23 *How. Pr.* 363. Further decision in 29 *N. Y.* 252. See *Weed v. Panama R. R. Co.* Both decisions followed with *McIntyre v. N. Y. Central R. R. Co.*, 37 *N. Y.* 287 (Damages for negligence causing death) in Board of Comm'rs of *Howard v. Legg*, 93 *Ind.* 523; *s. c.*, 47 *Am. R.* 390. Decision in 29 *N. Y.* included in *Sedgw. Cas. on Dama.* 796.
- Tillinghast v. King**. See *Franklin v. Underhill*.
- Tillman v. Lausing**, 4 *Johns.* 45. Overruled (Sheriff's liability for escape) in *Barry v. Mandell*, 10 *Id.* 563.
- *v. Wheeler*, 17 *Johns.* 326; *s. c.*, 6 *N. Y. Com. L. Law. ed.* 382, with brief note. See *Hall v. Newcomb*; *Herrick v. Carman*; *Moakeley v. Riggs*. Explained (Liability of irregular indorser) in *Hahn v. Hull*, 2 *Abb. Pr.* 354. Referred to as undisturbed by later cases,—in *Lester v. Paine*, 39 *Barb.* 619. Followed in *Phelps v. Vischer*, 50 *N. Y.* 69, 73. Dissented from with *Herrick v. Carman*, 12 *Johns.* 159, in *Martin v. Boyd*, 11 *N. H.* 385; *s. c.*, 35 *Am. Dec.* 601.
- Tillotson v. Boyd**. See *Jumel v. Jumel*.
- *v. Cheetham*, 2 *Johns.* 63. Rev'd in 5 *Id.* 430. Another decision in 3 *Id.* 56; *s. c.*, 3 *Am. Dec.* 459; also in 4 *Id.* 50. See *Bissell v. Cornell*. Dictum in 2 *Johns.* explained (Challenge to sheriff's jury) in *Joannes v. Fisk*, 3 *Robt.* 710; citing 2 *R. S.* 286, § 58. Explained (Power of sheriff on inquest of damages) in *Obart v. Letson*, 2 *Harr. (N. J.)* 78; *s. c.*, 34 *Am. Dec.* 182, with note. Decision in 3 *Johns.* explained (Evidence in mitigation on assessment of damages) in *Thompson v. Lumley*, 7 *Daly*, 74, 79. Relied on (Exemplary damages) in *Goddard v. Grand Trunk R'way Co.*, 57 *Me.* 202; *s. c.*, 2 *Am. R.* 39, 48. Explained in *Fay v. Parker*, 53 *N. H.* 342; *s. c.*, 16 *Am. R.* 270, 273. Examined with *Wort v. Jenkins*, 14 *Johns.* 352; *Cook v. Ellis*, 6 *Hill*, 466, in *McWilliams v. Bragg*, 3 *Wisc.* 429. Discussed in 2 *Greenl. on Ev.* 14 ed. § 253, *n.* 2.
- *v. Hudson River R. R. Co.*, 15 *Barb.* 406. Aff'd in 9 *N. Y.* 575.
- *v. Wolcott*, 48 *N. Y.* 188. Applied (Exempt property, how far protected from claims of creditors) in *Cooney v. Cooney*, 65 *Barb.* 525. Explained in *Wait on Fraud. Conv.* § 46, *n.* 5. See *Code Civ. Pro.* 1881, § 1394, *n.*
- *v. Preston*. See *Fake v. Eddy*.
- Tillou v. Kingston Mut. Ins. Co.**, 7 *Barb.* 570. Modified in 5 *N. Y.* 405. See *Traders' Ins. Co. v. Robert*. Decision in 5 *N. Y.* applied (Effect of assignment of policy, with assent of insured) in *Grosvenor v. Atlantic Fire Ins. Co.*, 5 *Duer*, 523, 532, 537; which was rev'd in 17 *N. Y.* 398, which see. (As to effect of latter decision see *Springfield F. & M. Ins. Co. v. Allen*, 43 *Id.* 398.) Explained at length in *Buffalo Steam Engine Works v. Sun Mut. Ins. Co.*, 17 *Id.* 409. Explained in *Manley v. Ins. Co. of No. Am.*, 1 *Lans.* 130. Disting'd (Rights of mortgagee in policy) in *Merwin v. Star Fire Ins. Co.*, 7 *Hun.* 661. Declared overruled in *Humphry v. Hartford Fire Ins. Co.*, 15 *Blatchf. Ct. Ct.* 504, 522. Error in headline corrected and explained (Effect of transfer of interest in policy as between partners) in *Hoffman v. Aetna Ins. Co.*, 32 *N. Y.* 405, where decision in 7 *Barb.* and *Wilson v. Genesee Mutual Ins. Co.*, 16 *Id.* 571 were followed.
- *v. Sparks*, 9 *How. Pr.* 465. See *Calkins v. Brand*. See (Increased costs) *Code Civ. Pro.* 1881, § 3258, *n.*
- Tilman v. Keane**, 1 *Abb. Pr. N. S.* 23. Compare (What is "more favorable judgment") *Pike v. Johnson*, 47 *N. Y.* 1.
- Tilson v. Terwilliger**, 56 *N. Y.* 273. See *Luby v. Hudson River R. R. Co.*; *Smith v. Acker*. Explained and followed (Requisites of change of possession on sale of chattels) in *Einstein v. Chapman*, 42 *Super. Ct. (J. & S.)* 144, 148. Collated with other cases

- in 6 *Am. Dec.* 288, *n.* Followed with *Vrooman v. King*, 86 *N. Y.* 479 (Admissibility of declarations of one in possession) and *Adams v. Davidson*, 10 *Id.* 309, limited in *Roebor v. Bowe*, 30 *Hun.* 379.
- Tilton v. Alcott**, 16 *Barb.* 598. See *Russell v. Lytle*. Explained (Necessity that accord be executed) in *Panzerbeiter v. Waydell*, 21 *Hun.* 162.
- **v. Beecher**, 59 *N. Y.* 176; *s. c.*, 17 *Am. R.* 337. See *Southwick v. Southwick*; *Wood v. Wood*. There are many publications bearing on this case, some of which are as follows: *N. Y. Tribune* edition, *N. Y.* 1875.—Also account with notes, in 2 vols. by A. Abbott, *N. Y.* 1875.—Downfall of H. W. Beecher, Tilton's statement, &c., *N. Y.* 1874.—Beecher-Tilton invest'g, *Phila.* 1874.—The Beecher-Tilton scandal, with Mrs. Woodhull's statement in 1 vol., *Brooklyn*, 1874.—The veil removed, *N. Y.* 1874.—Beecher trial; a review of the evidence, *N. Y.* 1875.—Case of Rev. E. D. Fanfield, a review of his review, by R. R. Raymond, *N. Y.* 1874.—Uncontradicted testimony in Beecher Case, *N. Y.* 1876.—Wickedness in high places, by Rev. E. B. Fanfield, 2 ed. in 1 vol., *Mansfield*, 1874.—The Beecher trial; a review, *N. Y.* 1875.—Opening address by B. F. Tracy, *N. Y.* 1875.—Review in 10 *Abb. L. J.* 161; also in 2 *Cent. L. J.* 126, 159, 189, 221, 272, 319, 400, 445, 463; also in 2 *South L. Rev. N. S.* 288. Explained (Bill of particulars) in *Orvis v. Dana*, 1 *Abb. N. C.* 268, 279. Applied in *Stiebeling v. Lockhaus*, 21 *Hun.* 458, in *Dwight v. Germania Ins. Co.*, 22 *Id.* 167, 172. Disting'd in *Higenbotam v. Green*, 25 *Id.* 214, 217. Approved in *Mitchell v. Mitchell*, 61 *N. Y.* 414, an action for divorce for adultery. Followed with *Jones v. Platt*, 60 *How. Pr.* 278; *Stiebeling v. Lockhaus*, 21 *Hun.* 457; *Winchell v. Martin*, 14 *Weekly Dig.* 458; *Wood v. Wood*, 2 *Paige*, 108, in *Shaffer v. Holm*, 28 *Hun.* 264. A decision made herein at the B'k'n City Ct. Circ. is discussed (Plaintiff's wife as witness for defendant in action for *crim. con.*) in 1 *Best on Ev.* § 98, *n. a*, *Wood's ed.*
- **v. Hamilton Fire Ins. Co.**, 14 *How. Pr.* 363; *s. c.*, more fully, 1 *Bosw.* 367.
- **v. Nelson**, 27 *Barb.* 595. See *Brown v. Bowen*; *Shotwell v. Murray*. Discussed (*Estoppel in pais*) in 3 *Washb. on Real Prop.* 4 ed. 83.
- **v. Ormsby**, 10 *Hun.* 7. Aff'd, it seems, in 70 *N. Y.* 609, but without opinion. Decision in 10 *Hun.* applied (Finding of surrogate as adjudication of title) in *Westervelt v. Westervelt*, 46 *Super. Ct. (J. & S.)* 298, 304.
- **v. U. S. Life Ins. Co.**, 52 *How. Pr.* 179; *s. c.*, 1 *Abb. N. C.* 348. Said in *Elmore v. Hyde*, 2 *Id.* 120, 135, to have been aff'd at General Term. Another proceeding in 8 *Daly*, 84.
- Tim v. Tim**, 16 *Abb. Pr. N. S.* 39; *s. c.*, 47 *How. Pr.* 253. Disting'd (Complaint in divorce) in *Mitchell v. Mitchell*, 61 *N. Y.* 398, 412.
- Timan v. Leland**, 6 *Hill*, 237. Followed (Effect of release by nominal plaintiff to bar action by true owner) in *Hart v. Western R. R. Co.*, 13 *Metc. (Mass.)* 99; *s. c.*, 46 *Am. Dec.* 719, 724, with note.
- Timmerman v. Morrison**, 14 *Johns.* 369. See (Costs in justice's court) *Code Civ. Pro.* 1881, § 3074, *n.*
- Timmons v. Nelson**, 66 *Barb.* 594. Explained (Delivery of less than is required in case of sale) in 2 *Benj. on Sales*, § 1032, *n.* 19 (Corbin's 4 *Am. ed.*).
- Timon v. Claffy**, 45 *Barb.* 438. Said in 41 *N. Y.* 619, to have been aff'd in Ct. of App. March, 1869. Compare (Proof of lost will) *Schultz v. Schultz*, 35 *N. Y.* 653; *Harris v. Harris*, 26 *Id.* 433.
- Tindal v. Jones**. See *Lemen v. Wood*.
- Tinkham v. Borst**, 15 *How. Pr.* 204. Aff'd in part, and rev'd in part, in 31 *Barb.* 407. Further decision on demurrer to answer in 24 *How. Pr.* 246. See *Hastings v. Drew*.
- **v. Erie R'y Co.**, 53 *Barb.* 393. Followed (Right of corporation to take real estate) in *Curran v. Sears*, 2 *Redf.* 526, 536.
- Tinkom v. Purdy**, 5 *Johns.* 345. Criticised as extreme, but approved as correct (Power of officer to adjourn public sale) in *Richards v. Holmes*, 18 *How. (U. S.)* 143. See cases cited in 26 *Am. Dec.* 537, *n.*
- Tinney v. Boston & Alb. R. R. Co.**, 62 *Barb.* 218. Aff'd in 52 *N. Y.* 632, but without opinion. See *Warner v. Erie R'y Co.*
- **v. N. J. Steamboat Co.**, 5 *Lans.* 507. Collated with *Downs v. Sprague*, 1 *Abb. Ct. App. Dec.* 480; *Price v. Powell*, 3 *N. Y.* 322; *Lane v. Wilcox*, 55 *Barb.* 615; *Smith v. Gugerty*, 4 *Id.* 619; *Bearss v. Copley*, 10 *N. Y.* 93, and numerous other cases (Specialty, when such as to justify examination of one of its practitioners as expert) in 1 *Whart. Com. on Ev.* § 444.
- Tinson v. Welch**, 7 *Robt.* 392. Aff'd in 51 *N. Y.* 244. Decision in *Id.* explained (Questions for review, on appeal from order granting new trial) in *Clark v. Mechanics' Nat. B'k of N. Y.*, 8 *Daly*, 481, 502.
- Tipton v. Feitner**, 20 *N. Y.* 423. See *McMillan v. Vanderlip*. Applied (Contract of sale, when to be executed distributively) in *Swift v. Opdyke*, 43 *Barb.* 277; *Aldrich v. Pyatt*, 64 *Id.* 391, 395. Explained in 2 *Benj. on Sales*, § 855, *n.* 2 (Corbin's 4 *Am. ed.*).
- Tisdale v. Jones**, 38 *Barb.* 523. Disting'd (Validity of contract between husband and wife, before marriage) in *Wright v. Wright*, 59 *Id.* 505.
- Titford v. Knott**, 2 *Johns. Cas.* 211; *s. c.*, 1 *N. Y. Com. L. Law. ed.* 490, with brief note (Testimony to disputed handwriting).
- Titus v. Glens Falls Ins. Co.**, 81 *N. Y.* 410. Followed (Owner holding insurance policy how affected by breach of condition by mortgagee) in *Doran v. Franklin Fire Ins. Co.*, 86 *Id.* 635. Disting'd (Defense by in-

- surance company, when waived by recognition of validity of policy) in *Graham v. Firemen's Ins. Co.*, 9 *Daly*, 341, 348; which was aff'd in 87 *N. Y.* 69, 78, which see. Followed in *Hollis v. State Ins. Co.*, 65 *Iowa*, 454, 459.
- *v. Great Western Turnp. Co.*, 5 *Lans.* 250. Aff'd in 61 *N. Y.* 227. See *Clafin v. Farmers' & Citizens' Bank*; *N. Y. & New Haven R. R. Co. v. Schuyler*. Decision in 61 *N. Y.* collated with other cases (Liability as to over-issue of stock) in *Citizens' Nat. B'k v. Cincinnati, New Orleans, &c. R'y Co.*, *Super. Ct. Cin. O.* 11 *Weekly L. Bul.* 86.
- *v. Lewis*, 3 *Barb.* 70. See (Effect of redemption on prior execution sale) *Code Civ. Pro.* 1881, § 1448, *n.*
- *v. Neilson*, 5 *Johns. Ch.* 452. See *Jackson v. Willard*; *Swaine v. Perine*. See (Dower right as affected by foreclosure during lifetime of husband) *Bell v. Mayor, &c. of N. Y.*, 10 *Paige*, 55; *Denton v. Nanny*, 8 *Barb.* 618. Relied on with *Bell v. Mayor of N. Y.*, 10 *Paige*, 49; *Frost v. Peacock*, 4 *Edw.* 678, in *Newhall v. Lynn Five Cents Sav. B'k*, 101 *Mass.* 428; *s. c.*, 3 *Am. R.* 387, 390. Explained in 1 *Wash. on Real Prop.* 4 ed. 300.
- *v. Relyea*, 3 *Abb. Pr.* 177; *s. c.*, partly reported, 16 *How. Pr.* 371. See dissenting opinion of *ROSEKRANS, J.*, in 17 *Id.* 265.
- *v. Sumner*, 44 *N. Y.* 266. Disting'd (Evidence of repitition of slander) in *Frazier v. McCloskey*, 60 *Id.* 388.
- *v. Weeks*, 37 *Barb.* 186. Discussed (Perpetuities) in 1 *Jarm. on Wills*, *Rand. & T.* ed. 512, *n.*
- Tobey v. Barber**, 5 *Johns.* 68; *s. c.*, 4 *Am. Dec.* 326. See *Berry v. Robinson*; *Coddington v. Bay*; *Johnson v. Weed*. Applied (Effect of receiving note in payment) in *Buswell v. Poiner*, 37 *N. Y.* 313. Disting'd in *Soffe v. Gallagher*, 3 *E. D. Smith*, 517; *N. Y. State B'k v. Fletcher*, 5 *Wend.* 87. Approved and applied in *Parrott v. Colby*, 6 *Hun.* 55, 58. Followed with *Johnson v. Weed*, 9 *Johns.* 310; *Putnam v. Lewis*, 8 *Id.* 389, in *Glenn v. Smith*, 2 *Gill & J. (Md.)* 493; *s. c.*, 20 *Am. Dec.* 452, 459, with note. Followed with *Putnam v. Lewis*, 8 *Johns.* 389, in *Barelli v. Brown*, 1 *McCord (So. Car.)* 449; *s. c.*, 10 *Am. Dec.* 683. Explained (Parol evidence to explain receipt) in *Egleston v. Knickerbacker*, 6 *Barb.* 464. Applied in *Southwick v. Hayden*, 7 *Cow.* 335. Included in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 245.
- *v. Webster*, 3 *Johns.* 463. See *Campbell v. Arnold*. See to the contrary (Right of lessee to maintain trespass for wrong done while tenant is in actual possession) *Starr v. Jackson*, 11 *Mass.* 519.
- Tobias v. Harland**, 4 *Wend.* 537. See *Shipman v. Burrows*. Applied (Liability for slanderous words affecting business) in *Havemeyer v. Fuller*, 10 *Abb. N. C.* 9, 13.
- *v. Ketchum*, 36 *Barb.* 304. Rev'd in 32 *N. Y.* 319. See *Savage v. Burnham*. Decision in 32 *N. Y.* applied (Trust, as created by authority given in will to rent, &c.) in *Killam v. Allen*, 52 *Barb.* 608. Disting'd (Fee, when vested in executors by will) in *Robert v. Corning*, 23 *Hun.* 299, 303.
- *v. Rogers*, 13 *N. Y.* 59. Disting'd (Liability of co-surety) in *Johnson v. Harvey*, 84 *Id.* 363, 366.
- Todd v. Birdsall**, 1 *Cow.* 260; *s. c.*, 13 *Am. Dec.* 522, with extended note wherein it is said to have been repeatedly aff'd in *N. Y.*, citing cases (Capacity of public officers or corporations of being sued).
- *v. City of Troy*, 61 *N. Y.* 506. Aff'g 61 *Barb.* 580. See *Walsh v. Mead*. Decision in 61 *N. Y.* applied (Necessity of notice to create municipal liability for condition of street) in *Sweet v. Village of Gloversville*, 12 *Hun.* 304. Applied (Liability for injury resulting from icy condition of walk) in *Evers v. Hudson River Bridge Co.*, 18 *Id.* 145. Disting'd in *Moore v. Gadsden*, 87 *N. Y.* 84, 88. Followed in *Taft v. City of Troy*, 18 *Weekly Dig.* 478.
- *v. Crookshanks*, 3 *Johns.* 432. Compare to the contrary (Trover for note that has been paid) *Buck v. Kent*, 3 *Vt.* 99, and cases cited. See *Pierce v. Gilson*, 9 *Id.* 221; 3 *Starkie on Ev.* 1503.
- *v. Kerr*. See *Kinnier v. Kinnier*.
- *v. Ladden*, 41 *How. Pr.* 230. See (Compelling witness to attend) *Code Civ. Pro.* 1881, § 886, *n.*
- Todicker v. Cantrell**. See *Taddiken v. Cantrell*.
- Toffey v. Williams**, 3 *Hun.* 217; *s. c.*, reported in 5 *Sup'm. Ct. (T. & C.)* 294.
- Tolan v. Conover**, 1 *Hun.* 495; *s. c.*, 4 *Sup'm. Ct. (T. & C.)* 677; *s. c.*, fully reported 16 *Abb. Pr. N. S.* 210.
- Tole v. Hardy**. See *Beecker v. Beecker*.
- Toler v. Adee**, 9 *Weekly Dig.* 211. Rev'd as *Toles v. Adee*, 84 *N. Y.* 222, on ground that laches was a defense.
- Toles v. Adee**. See *Toler v. Adee*.
- *v. Hazen*, 57 *How. Pr.* 516. Limited (Limit of damages in action for wrongful discharge) in *Everson v. Powers*, 60 *Id.* 167.
- Toll v. Hiller**, 11 *Paige*, 228. Applied (Compound interest, when to be recovered) in *Young v. Hill*, 6 *Hun.* 613, 617.
- *v. Thomas*, 15 *How. Pr.* 315. Further decision, relative to right to appeal, in 18 *Id.* 324.
- Tolley v. Greene**, 2 *Sandf. Ch.* 91. Criticised (Agreements when within statute of frauds, as not to be performed in a year) in *Browne on Stat. of Frauds*, § 276, *n.* 6, 4 ed.
- Tomlinson v. Borst**, 30 *Barb.* 42. Explained and cases collected (Books of account as evidence) in *Burke v. Wolfe*, 38 *Super. Ct. (J. & S.)* 263, 270. Disting'd

- with *Larue v. Rowland*, 7 *Barb.* 110, in *Long v. Taylor*, 29 *Hun.* 127.
- *v. Mayor, &c. of N. Y.*, 23 *How. Pr.* 452. Rev'd in 44 *N. Y.* 601.
- *v. Miller*, 7 *Abb. Pr. N. S.* 364; s. c., 1 *Buff. Super. Ct. (Sheldon)* 197. Said in *Id.* 208, n., to have been aff'd by Ct. of App. in Dec. 1869. Prior decision in 3 *Keyes*, 517, which was applied (Exceptions not available as such, in equity) in *Consolidated Fruit Jar Co. v. Mason*, 7 *Daly*, 64, 69.
- *v. Van Vechten*, 6 *How. Pr.* 199. Approved (Sufficiency of personal service made out of State) in *Brooklyn Trust Company v. Bulmer*, 49 *N. Y.* 84.
- Tompkins v. Brown**, 1 *Den.* 247. See *Van Keuren v. Parmelee*. Approved (Proof in action founded on new promise, after claim is barred) in *Chandler v. Glover*, 32 *Penn.* 509.
- *v. Dudley*, 25 *N. Y.* 272. Disting'd (Effect of accidental destruction of subject matter of building contract) in *Niblo v. Binsse*, 3 *Abb. Ct. App. Dec.* 379; which rev'd 44 *Barb.* 60, which see. See dissenting opinion of CLERKE, J., in *Dexter v. Norton*, 55 *Id.* 287, a case of contract for sale of goods. Reviewed with other cases (Necessity of strict performance of contract) in *Jenkins v. Wheeler*, 37 *How. Pr.* 470.
- *v. Elliot*, 5 *Wend.* 496; s. c., 10 *N. Y. Com. L. Law. ed.* 926, with brief note, citing other cases. Disting'd (Covenants, as dependent or independent) in *DeLafield v. DeGrauw*, 9 *Bosw.* 9; *Grant v. Johnson*, 5 *N. Y.* 253; *Kellam v. McKinstry*, 69 *Id.* 269. Explained in *Woodsworth v. Curtiss*, 7 *Wend.* 115.
- *v. Fonda*, 4 *Paige*, 448. Followed with *Stewart v. McMartin*, 5 *Barb.* 438 (Right of dower, when liable in equity) and *Moak v. Coats*, 33 *Id.* 498, explained in *Payne v. Becker*, 87 *N. Y.* 153, 157; which rev'd 22 *Hun.* 283, which see. See cases cited in 14 *Am. Dec.* 542, n.; 16 *Abb. N. C.* 21, n.
- *v. Greene*, 21 *Hun.* 257. Aff'd, it seems, in 82 *N. Y.* 619, on opinion below.
- *v. Hyatt*, 19 *N. Y.* 534. Further decision in 28 *Id.* 347. Former decision disting'd (Necessity of final judgment before appeal to Court of Appeals) in *Clark v. Brooks*, 2 *Abb. Pr. N. S.* 399; *Smith v. Lewis*, 1 *Daly*, 455. Applied to appeal to General Term, in *Heinemann v. Waterbury*, 5 *Bosw.* 690. Applied (What is not final judgment) in *Belmont v. Ponvert*, 3 *Robt.* 697.
- *v. Ives*, 30 *How. Pr.* 13. Aff'd in 36 *N. Y.* 75; s. c., 3 *Abb. Pr. N. S.* 267. Decision in *Id.* disting'd (Mode of determining right to costs, in case of offer of judgment) in *Bathgate v. Haskins*, 63 *N. Y.* 267.
- *v. Lee*, 2 *Sup'm. Ct. (T. & C.)* 589. Aff'd in 59 *N. Y.* 662. Decision in *Id.* applied (Effect of conflict between findings of fact and opinion) in *James v. Burchell*, 7 *Daly*, 531, 533.
- *v. Purcell*, 12 *Hun.* 662. Applied (Effect of docketing U. S. court judgment in office of county clerk) in *Goodyear Dental Vulcanite Co. v. Friselle*, 22 *Id.* 174.
- *v. Tyson*, 16 *Barb.* 456. Explained (Distinction between chattel mortgage and pledge) in *Thomas on Mort.* 432.
- *v. Wadley*, 3 *Sup'm. Ct. (T. & C.)* 424. Applied (Limit, as to time, of evidence of bad character) in *Stevens v. Rodger*, 25 *Hun.* 54, 56. Explained (Evidence of plaintiff's unchastity in actions for seduction and breach of promise to marry) in *Moak's Underhill's Torts*, 1 *Am. ed.* 89.
- Tonawanda R. R. Co. v. Munger**, 5 *Den.* 255; s. c., 49 *Am. Dec.* 239, with note wherein it and other cases are shown to be at variance with *Macon, &c. R. R. Co. v. Lester*, 30 *Ga.* 914; *Kerwhacker v. Cleveland, &c. R. R. Co.*, 3 *Ohio St.* 182; *Murray v. So. Car. R. R. Co.*, 10 *Rich. (So. Car.)* 227, and many other cases cited. Decision in 5 *Den.* approved on further decision in 4 *N. Y.* 349; s. c., 53 *Am. Dec.* 384, with note, wherein it is said to have been frequently cited as authority. See *Bush v. Brainard*; *Owen v. Hudson River R. R. Co.* Decision in 5 *Den.* disting'd (*Cattle, &c. straying*, how far to be regarded as trespassers) in *Griffin v. Martin*, 7 *Barb.* 303; *Hardenburgh v. Lockwood*, 25 *Id.* 12. Applied in *Terry v. N. Y. Central R. R. Co.*, 22 *Id.* 583; *Bowman v. Troy & Boston R. R. Co.*, 37 *Id.* 518; *Searles v. Cronk*, 33 *How. Pr.* 325; *Clark v. Syracuse, &c. R. R. Co.*, 11 *Barb.* 114. Followed and approved in *Williams v. Michigan Central R. R. Co.*, 2 *Mich.* 259; s. c., 55 *Am. Dec.* 59. Decision in 4 *N. Y.* applied in *Mentges v. N. Y. & Harlem R. R. Co.*, 1 *Hilt.* 426; *Hance v. Cayuga, &c. R. R. Co.*, 26 *N. Y.* 432. For effect of subsequent statutory provisions, see *Corwin v. N. Y. & Erie R. R. Co.*, 13 *Id.* 46. Discussed in *Ang. on Carr.* § 567, c. n. 1, 5 ed. Both decisions disapproved in *Needham v. San Francisco R. R.*, 37 *Cal.* 417. Followed in *Maynard v. Boston & Maine R. R.*, 115 *Mass.* 458; s. c., 15 *Am. R.* 119. Collated with other cases in 1 *Thomps. on Negl.* 529. Decision in 4 *N. Y.* applied (Contributory negligence in case of injury to children) in *Honegsberger v. Second Avenue R. R. Co.*, 2 *Abb. Ct. App. Dec.* 381. Dissented from, in *Rauch v. Lloyd*, 31 *Penn.* 358, 370. Explained and approved (Liability of railroad company for injury to one lawfully on its premises) in dissenting opinion of EARL, C., in *Eaton v. Delaware, L. & W. R. R. Co.*, 57 *N. Y.* 396. Applied to one injured in unfinished building, in *Roulston v. Clark*, 3 *E. D. Smith*, 373. Commented on in *Gonzales v. N. Y. & Harlem R. R. Co.*, 39 *How. Pr.* 415. Explained (Effect of contributory negligence) in *Carroll v. N. Y. & New Haven R. R. Co.*, 1 *Duer*, 581.



- Tone v. Brace**, *Clarke*, 503. Approved in subsequent decision in 11 *Paige*, 566. See *Kinney v. Watts*.
- **v. Mayor, &c. of N. Y.**, 6 *Daly*, 343. Subsequent decision in 70 *N. Y.* 157. See *McKay v. City of Buffalo*. See (Liability of municipal corporation for neglect, &c. of board) cases cited in 8 *Abb. N. C.* 281, *n.*
- Toner v. Mayor, &c. of N. Y.**, 1 *Abb. N. C.* 302. Compare (Stenographer's notes) *Code Civ. Pro.* § 1007.
- Tonnele, Matter of**. See *Tonnele v. Hall*.
- Tonnele v. Hall**, 4 *N. Y.* 140. Aff'g 5 *N. Y. Leg. Obs.* 254. Decision in 4 *N. Y.* applied (Effect of instrument referred to in will) in *Brown v. Clark*, 77 *Id.* 377. Disting'd in *Matter of O'Neil*, 91 *Id.* 516. Followed in *Gerrish v. Gerrish*, 8 *Oreg.* 351; *s. c.*, 34 *Am. R.* 585. Compare *Peters v. Siders*, 126 *Mass.* 135; *s. c.*, 30 *Am. R.* 671. Applied to written guaranty, under statute of frauds, in *Church v. Brown*, 21 *N. Y.* 330. Applied (Sufficiency of signature to will, required by statute) to constable's return, in *Reno v. Pinder*, 20 *Id.* 301. Discussed in *Willard on Executors*, 99. Commented on in 1 *Jarm. on Wills*, Rand. & T. ed. 228, *n.* 24.
- Toof v. Bently**, 5 *Wend.* 276. See *Gold v. Bissel*. Followed and approved with *Farr v. Smith*, 9 *Wend.* 338 (Requisites of process emanating from courts of limited and inferior jurisdiction) in *Stevens v. Chouteau*, 11 *Mo.* 382; *s. c.*, 49 *Am. Dec.* 92.
- Tooker v. Arnoux**, 76 *N. Y.* 397. Applied (Requisites of complaint in action to establish liability on negotiable paper) in *Clift v. Rodger*, 25 *Hun.* 39, 43.
- **v. Rinaldo**, 11 *Hun.* 154; *s. c.*, more fully, 2 *Abb. N. C.* 334, *n.*
- Tooley v. Bacon**, 8 *Hun.* 176. Aff'd in 70 *N. Y.* 34.
- Toopey v. Williams**. See *Hawkins v. Hoffman*.
- Toppan v. Heath**, 1 *Paige*, 293. Explained as superseded by subsequent legislation (Equitable relief against award) in *Bissell v. Morgan*, 56 *Barb.* 369, 372.
- Topping v. Lynch**, 2 *Robt.* 484. Followed (Requisites of change of possession on sale, &c. of chattels) in *Steele v. Benham*, 84 *N. Y.* 634, 638.
- **v. Root**, 5 *Cow.* 404. Explained (Duty as to readiness to perform contract) in 2 *Chitty on Contr.* 1071, *n. g.*, 11 *Am. ed.*
- Torrance v. Conger**, 1 *Sup'm. Ct. (T. & C.)* Ad. 18. Aff'd in 55 *N. Y.* 680.
- Torrey v. Bank of Orleans**, 9 *Paige*, 649. Aff'd in 7 *Hill*, 260. See *Davoue v. Fanning*; *Marsh v. Pike*. Decision in 9 *Paige* applied (When interest disqualifies to purchase at mortgage sale) in *Van Horne v. Eyerson*, 13 *Barb.* 529; *Fulton v. Whitney*, 5 *Hun.* 20; *Hilton v. Bissell*, 1 *Sandf. Ch.* 407, 411; *Bennett v. Austin*, 81 *N. Y.* 308, 337. Collated with *Gardner v. Ogden*, 22 *Id.* 327; *Jewett v. Miller*, 10 *Id.* 402, 405; *Duncomb v. N. Y., Housatonic & N. R. R. Co.*, 84 *Id.* 190, 199, with other cases from *N. Y.* and other jurisdictions (Disability of trustee to make contracts in two capacities) in *Peason v. Concord R. R. Co.*, *Sup'm. Ct. N. H.* 1883, 28 *Alb. L. J.* 367. Explained in *Ang. & A. on Corp.* § 312, 11 ed. Applied (Recitals in deed, as evidence) in *Demeyer v. Legg*, 18 *Barb.* 20; *Atlantic Dock Co. v. Leavitt*, 54 *N. Y.* 40.
- **v. Black**. See *Torry v. Black*.
- **v. Shaw**, 3 *Edw.* 356. Explained (Descent to collaterals) in 4 *Kent Com.* 409, *n. a.*
- **v. Torrey**, 14 *N. Y.* 430. Disting'd (Effect of conveyance to husband and wife) in *Meeker v. Wright*, 76 *Id.* 262, 269. Reviewed with *Jackson v. McConnell*, 19 *Wend.* 175, and other cases in *Hall v. Stephens*, 65 *Mo.* 670; *s. c.*, 27 *Am. R.* 302, 308. Followed (Necessity of notice to quit to tenant for another life holding over) in *Seaton v. Davis*, 1 *Sup'm. Ct. (T. & C.)* 94.
- Torry v. Black**, 1 *Sup'm. Ct. (T. & C.)* 42; *s. c.*, as *Torrey v. Black*, 65 *Barb.* 414. Rev'd in 58 *N. Y.* 185. Compare (Seal as evidence of consideration) *Code Civ. Pro.* § 840. Compare (Guardian's action for trespass) *Id.* §§ 468, 2840.
- Totten v. Phipps**, 52 *N. Y.* 354. Disting'd (Negligent leaving open of trap-door) in *Donnelly v. Jenkins*, 9 *Daly*, 41. Explained in *Moak's Underhill's Torts*, 1 *Am. ed.* 268. Disting'd (Contributory negligence) in *Heidinger v. Hine*, 18 *Weekly Dig.* 404; *Brenstein v. Mattson*, 10 *Daly*, 336.
- Toulandon v. Lachenmeyer**, 6 *Abb. Pr. N. S.* 215. See (Running of statute of limitations in case of non-residence) *Code Civ. Pro.* 1881, § 390, *n.*
- Tournade v. Hagedorn**, 5 *Sup'm. Ct. (T. & C.)* 288; *s. c.*, as *Tournade v. Methfessel*, 3 *Hun.* 144. See *Manhattan Brass Manuf. Co. v. Sears*. Cited (Rights of third persons in case of partnership being declared void for fraud) in *Story on Partn.* 7 ed. 282, *n.*
- Tousley v. Barry**, 16 *N. Y.* 497. Limited (Effect of admission of former owner of chattels, &c.) in *Schenck v. Warner*, 37 *Barb.* 261, 363. Applied in *Savage v. Murphy*, 8 *Boss.* 87. Followed as conclusive in *Honstine v. O'Donnell*, 5 *Hun.* 473. Cited in 2 *Whart. Com. on Ev.* § 1163.
- Tower v. Utica, &c. R. R. Co.**, 7 *Hill*, 47; *s. c.*, 43 *Am. Dec.* 36, with note wherein are collected citations; also *s. c.*, 16 *N. Y. Com. L. Luv. ed.* 506, with brief note. See *Weeks v. N. Y., New Haven, &c. R. R. Co.* Followed as authoritative and as having been universally recognized (Carrier's liability as to articles retained in passengers' possession) in *Welch v. Pullman Palace Car Co.*, 16 *Abb. Pr. N. S.* 354. Disting'd in *Weeks v. N. Y., New Haven, &c. R. R. Co.*, 72 *N. Y.* 62; *Gore v. Norwich & N. Y. Transp. Co.*, 2 *Daly*, 255; *McKee v. Owen*,

- 15 *Mich.* 135. Applied in *Gleason v. Goodrich Transp. Co.*, 32 *Wis.* 85; s. c., 14 *Am. R.* 716, 721; *Clark v. Burns*, 118 *Mass.* 275; s. c., 19 *Am. R.* 456, with note collating cases. Explained in *Ang. on Curr.* § 140, 5 ed.; 2 *Pars. on Contr.* 176, n. o.
- Towle v. Covert**, 15 *Abb. Pr. N. S.* 193. Disting'd (Jurisdiction of city courts) in *Gemp v. Pratt*, 7 *Daly*, 197, 200.
- **v. Forney**, 4 *Duer*, 164. Aff'd in 14 *N. Y.* 423. For decisions affecting same estate, see *Clarke v. Davenport*, 1 *Bosw.* 95; *Towle v. Remsen*, 70 *N. Y.* 303, 307; *Towle v. Palmer*, 1 *Robt.* 437; s. c., in part, 1 *Abb. Pr. N. S.* 81; *Towle v. Tolan*, 1 *Robt.* 473; *Towle v. Smith*, 2 *Id.* 489. Decision in 14 *N. Y.* followed with *Clarke v. Davenport*, as to validity of title here involved, in *Suydam v. Williamson*, 24 *How. (U. S.)* 427. Followed (Validity of law authorizing sale of real estate of infants) in *Leggett v. Hunter*, 19 *N. Y.* 463.
- **v. Palmer**. See *Towle v. Forney*.
- **v. Remsen**. See *Towle v. Forney*.
- **v. Smith**. See *Towle v. Forney*.
- **v. Tolan**. See *Towle v. Torney*.
- Town v. Needham**. See *Parkhurst v. Van Cortlandt*.
- **v. Safeguard Ins. Co.**, 4 *Bosw.* 683. Disapproved (Latitude of examination on supplementary proceedings) in *Clapp v. Lathrop*, 23 *How. Pr.* 423, 425, 443.
- **v. Stetson**, 5 *Abb. Pr. N. S.* 218. See *Messerole v. Tynberg*. See cases collected (Signs which cannot be used as trademarks) in 10 *Am. L. Reg. N. S.* 707. Explained in 2 *Pars. on Contr.* 257, *bb*, n. e.
- Town of Chautauqua v. Gifford**, 8 *Hun.* 152. Disting'd (Right of action in favor of town) in *Gleason v. Youmans*, 9 *Abb. N. C.* 107, 111.
- Town of Duaneburgh v. Jenkins**, 46 *Barb.* 294. Rev'd in effect in 57 *N. Y.* 177. Previous decision in 40 *Barb.* 574. Decision in 57 *N. Y.* deemed overruled (Power of legislature to validate town bonds that have been irregularly issued) in *Hardenbergh v. Van Keuren*, 16 *Hun.* 22. See *Rogers v. Rochester, &c. R. R. Co.*, 21 *Id.* 44, 46; *Williams v. Town of Duaneburgh*, 66 *N. Y.* 129, 131. Compared in *Thompson v. Perrine*, 103 *U. S.* 806, 813. Discussed in *Cooley on Const. Limit.* 5 ed. 287, n. Applied (Creation of new remedy to enforce existing claim) in *People v. Fields*, 50 *How. Pr.* 495. Decision in 40 *Barb.* explained (Actions by and against terms) in *Griggs v. Griggs*, 66 *Id.* 287, 298.
- Town of Fishkill v. Fishkill & Beekman Plank Road Co.**, 22 *Barb.* 634. Followed (Title of local bill) in *People ex rel. Schenectady Observatory v. Allen*, 42 *N. Y.* 404, 418. Cited with approval (Effect of statute invalid in part) in *People v. Briggs*, 50 *Id.* 553, 566.
- Town of Guilford v. Cooley**, 58 *N. Y.* 116. Prior proceeding as *Cooley v. Town of Guilford*, in 47 *Id.* 673. Decision in 58 *Id.* disting'd (Right of action in favor of town) in *Gleason v. Youmans*, 9 *Abb. N. C.* 107, 111. Applied in *Town of Chautauqua v. Gifford*, 8 *Hun.* 154; *Hagadorn v. Raux*, 72 *N. Y.* 584, 586.
- **v. Cornell**, 4 *Abb. Pr.* 220. See *Grant v. Courter*; *People v. Mayor, &c. of Brooklyn*; *Town of Guilford v. Supervisors of Chenango*. Explained (Power to grant injunction after judgment) in *Fellows v. Heermans*, 13 *Abb. Pr. N. S.* 1, 12.
- **v. Supervisors of Chenango**, 13 *Barb.* 615. Aff'd in 13 *N. Y.* 143. See *Doughty v. Hope*; *People ex rel. Griffing v. Mayor, &c. of Brooklyn*. Decision in 13 *N. Y.* disting'd (Validity of law compelling payment of claim by municipal corporation) in *People ex rel. Baldwin v. Haws*, 15 *Abb. Pr.* 113; *Baldwin v. Mayor, &c. of N. Y.*, 42 *Barb.* 553. Applied in *Davidson v. Mayor, &c. of N. Y.*, 2 *Robt.* 246; *People ex rel. N. Y. & Harlem R. R. Co. v. Havemeyer*, 47 *How. Pr.* 511; *Townsend v. Mayor, &c. of N. Y.*, 16 *Hun.* 363; *Brewster v. City of Syracuse*, 19 *N. Y.* 118; *Litchfield v. Vernon*, 41 *Id.* 134. Explained with *Brewster v. City of Syracuse*, 19 *Id.* 116, by *PECKHAM, J.*, in *Baldwin v. Mayor, &c. of N. Y.*, 2 *Keyes*, 387, 399. Limited with *People v. Mayor, &c. of Brooklyn*, 4 *N. Y.* 419, in *People v. Batchelor*, 53 *Id.* 128, 143. Disting'd and limited in *Weismer v. Village of Douglas*, 64 *Id.* 98. Applied to law authorizing bonding in aid of railroad, in *Benson v. Mayor, &c. of Albany*, 24 *Barb.* 255; *Town of Duaneburgh v. Jenkins*, 57 *N. Y.* 189. Disting'd with *Brewster v. City of Syracuse*, 19 *Id.* 116; *People ex rel. Crowell v. Lawrence*, 41 *Id.* 141, in *State v. Tappan*, 29 *Wis.* 664; s. c., 9 *Am. R.* 622, 626. Approved with *Thomas v. Leland*, 24 *Wend.* 65; *Brewster v. City of Syracuse*, 19 *N. Y.* 116, in *Mount v. State*, 90 *Ind.* 29; s. c., 46 *Am. R.* 192. Quoted in *Cooley on Const. Limit.* 5 ed. 280, 284, n. 1; 608, n. 1. Commented on in *Id.* 469, n. 1.
- Town of Lewis v. Marshall**, 9 *Abb. N. C.* 103, n.; mem. s. c., 56 *N. Y.* 663. Disting'd (Right of actions in favor of town) in *Gleason v. Youmans*, 9 *Abb. N. C.* 107, 110; *Town of Guilford v. Cooley*, 58 *N. Y.* 116, 121. Applied in *Town of Chautauqua v. Gifford*, 8 *Hun.* 154; *Hagadorn v. Raux*, 72 *N. Y.* 584. Compare *Griggs v. Griggs*, 66 *Barb.* 287; 56 *N. Y.* 504; *J.* 1867, c. 747, § 3.
- Town of Middletown v. Rondout R. R. Co.**, 12 *Abb. Pr. N. S.* 276; s. c., 43 *How. Pr.* 144. Aff'd in *Id.* 481. Decision in *Id.* 481, explained and limited, and that in *Id.* 144, disapproved (Power of county judge to make injunction order) in *Hathaway v. Warren*, 44 *Id.* 161. Decision in 43 *Id.* 144, disting'd with *Wilkie v. Rochester & State Line R. R. Co.*, 12 *Hun.* 242 (Injunction to restrain business of corporation) in *Howlett v. N. Y., West Shore, &c. Rv.*

Co., 14 *Abb. N. C.* 328. See (Limit of costs on motion) *Code Civ. Pro.* 1881, § 3261, *n.*

**Town of North Hempstead v. Town of Hempstead**, *Hopk.* 288. Aff'd in 2 *Wend.* 109. Dicta in latter and in *Jackson v. Leggett*, 6 *Id.* 377, disapproved (Resulting trust as defense in ejectment) and the contrary held, in *Moore v. Spellman*, 5 *Den.* 221, 225. Followed with *Jackson v. Pierce*, 2 *Johns.* 226 (When cestui que trust may maintain ejectment) in *Doggett v. Hart*, 5 *Fla.* 215; *s. c.*, 58 *Am. Dec.* 464, with note. Decision in *Hopk.* explained (Towns as corporations) in *Purdy v. People*, 4 *Hill*, 396. Applied (Power of towns, &c. as to lands not within their limits) in *Riley v. City of Rochester*, 9 *N. Y.* 71. Applied (Effect of division of town) to county, in *People v. Morrell*, 21 *Wend.* 580.

**Town of Pierrepont v. Lovelass**, 4 *Hun.* 696. Rev'd as Same *v. Loveless*, 72 *N. Y.* 211. Another proceeding in 4 *Hun.* 681. With latter decision see cases cited (Riparian rights) in 5 *Abb. N. C.* 173, *n.*

**Town of Springport v. Teutonia Sav'gs B'k**, 75 *N. Y.* 397. Subsequent decision in 84 *Id.* 403. Decision in 75 *Id.* disting'd (Validity of execution of municipal bonds) in *Cagwin v. Town of Hancock*, 84 *Id.* 532, 539, which rev'd 22 *Hun.* 201, 206, which see. Decision in 84 *N. Y.* reviewed with *People ex rel. Yawger v. Allen*, 52 *Id.* 538, 542; *People ex rel. Haines v. Smith*, 45 *Id.* 772, 777; *Cagwin v. Town of Hancock*, 84 *Id.* 532, 542, in *Calhoun v. Delhi & Middletown R. R. Co.*, 28 *Hun.* 379.

**Town of Venice v. Woodruff**, 62 *N. Y.* 462. Disting'd (Remedy against instrument as cloud on title) in *Town of Springport v. Teutonia Sav'gs B'k*, 75 *Id.* 397, 400. Applied in *Remington Paper Co. v. O'Dougherty*, 16 *Hun.* 596, which was modified in 81 *N. Y.* 474, 483, which see. Applied (Remedies respecting town bonds, how affected by difference between State and Federal decisions) in *Newton v. Keech*, 9 *Hun.* 360. Compared (Regularity of execution of town bonds) in *Town of Venice v. Murdock*, 92 *U. S.* 494, 501.

**Town of Wayne v. Sherwood**, 14 *Hun.* 423. Aff'd, it seems, in 76 *N. Y.* 599, but without opinion.

**Town of Wellsborough v. N. Y. & Canada R. R. Co.**, 76 *N. Y.* 185. See *People ex rel. Averill v. Adirondack Co.*; see *People ex rel. Rogers v. Spencer*. Applied (Validity of execution of town bonds) in *Cagwin v. Town of Hancock*, 84 *N. Y.* 532, 539; *Whiting v. Town of Pattey*, 18 *Blatchf. C. Ct.* 165, 177.

**Towner v. Church**, 2 *Abb. Pr.* 299. Criticised and regarded as overruled (What is non-residence for purposes of attachment) in *Wallace v. Castle*, 63 *N. Y.* 370. Collocated with other cases in *Thomps. on Prov. Rem.* 359.

— **v. Tooley**, 38 *Barb.* 598. See *Harris v.*

*Fléy*. Explained and applied (Remedy on administration bonds, &c.) in *Williams v. Kiernan*, 25 *Hun.* 355, 362; *Haines v. Meyer*, *Id.* 414, 417.

**Town v. Wilcox**, 12 *Wend.* 592. See *Miller v. Van Anken*. Overruled (Effect of submission of subject matter of suit to arbitration) in *Smith v. Barse*, 2 *Hill*, 387.

**Townsend, Matter of**, 4 *Hun.* 31; *s. c.*, as *Matter of Townsend*, 6 *Sup'm. Ct. (T. & C.)* 227. Appeal dismissed in 63 *N. Y.* 631.

—, 39 *N. Y.* 171. Disting'd (Appeal in condemnation proceedings) in *Matter of Commissioners of Central Park*, 50 *Id.* 493, 498. Cited as authority (Exercise of power of eminent domain in favor of foreign corporations) in 2 *Add. on Torts*, 265, *n.* Wood's ed.

**Townsend v. Bissell**, 3 *Hun.* 556. Reported at length in 5 *Sup'm. Ct. (T. & C.)* 565. Another decision in proceedings between same parties, in 4 *Hun.* 297; *s. c.*, 6 *Sup'm. Ct. (T. & C.)* 583.

— **v. Bogart**, 11 *Abb. Pr.* 355. Approved (Arrest of one partner for fraud of another) in *Coman v. Allen*, 21 *How. Pr.* 114, 116. Compare *Stewart v. Levy*, 36 *Cal.* 166; *Sherman v. Smith*, 42 *How. Pr.* 198. Explained in *Nat. B'k of Commonwealth v. Temple*, 2 *Sweeny*, 344, 354. Explained in 1 *Collyer on Partn.* § 445, *n.* 10, Wood's Am. ed.

— **v. Brundage**, 4 *Hun.* 264; *s. c.*, reported in 6 *Sup'm. Ct. (T. & C.)* 527.

— **v. Carman**, 6 *Cow.* 695. Aff'd in 6 *Wend.* 206.

— **v. Corning**. See *Townsend v. Hubbard*.

— **v. —**, 3 *N. Y. Leg. Obs.* 95. Aff'd in 1 *Barb.* 627.

— **v. Empire Stone Dressing Co.**, 6 *Duer*, 217. Cited with *Craig v. Tappin*, 2 *Sandf. Ch.* 78; *Bank of Utica v. Finch*, 3 *Barb. Ch.* 293; *Murray v. Barney*, 34 *Barb.* 336; *Hall v. Crouse*, 13 *Hun.* 557, and other cases in 20 *Am. Dec.* 659, *n.*, as indicating what is the weight of authority (Statement of amount to be secured in mortgage for future advances).

— **v. Gilsey**, 1 *Sweeny*, 155; *s. c.*, 7 *Abb. Pr. N. S.* 59. Rev'd in *Ct. of App.* Dec. 20, 1870, on ground that questions of fact should have been submitted to the jury. See 6 *Abb. L. J.* 177.

— **v. Glen's Falls Ins. Co.**, 10 *Abb. Pr. N. S.* 277. See (Effect of reference to more than one referee) *Code Civ. Pro.* 1881, § 1026, *n.*

— **v. Goelet**, 11 *Abb. Pr.* 187. Disting'd (Right of action to remove lien on land) in *Levy v. Merrill*, 52 *How. Pr.* 360, 365; 14 *Hun.* 146. Applied in *Phillips v. Mayor, &c. of N. Y.*, 2 *Hun.* 212, 215; which was rev'd in 60 *N. Y.* 21, which see.

— **v. Goewey**, 19 *Wend.* 424. Applied (Partner's action against co-partner) in *Halliday v. Carman*, 6 *Daly*, 423. Applied

- (Right of action in behalf of association) in *Davis v. Garr*, 6 *N. Y.* 134. Explained in *Shibley v. Angle*, 37 *Id.* 630. See cases cited in 4 *Abb. N. C.* 306, *n.*
- *v. Graves*, 3 *Paige*, 453. See *Ruan v. Perry*. Explained (Evidence of character) in 1 *Greenl. on Ev.* 14 ed. § 54, *n.* 3. Quoted in 2 *Bish. on Mar. & D.* § 644, 6 ed.
- *v. Hayt*, 51 *Barb.* 334. Aff'd in 51 *N. Y.* 656.
- *v. Hendricks*, 2 *Sweeney*, 503; *s. c.*, 39 *How. Pr.* 475. Rev'd in 40 *Id.* 143. Decision in *Id.* applied (Right to reference) in *Wood v. Hope*, 2 *Abb. N. C.* 188; *Evans v. Kalbfleisch*, 16 *Abb. Pr. N. S.* 16; *Ross v. Combes*, 36 *Super. Ct. (J. & S.)* 294. Disting'd in *Godfrey v. Williamsburgh City Fire Ins. Co.*, 12 *Abb. Pr. N. S.* 250; *Place v. Chesebrough*, 63 *N. Y.* 317; which aff'd 4 *Hun.* 578, which see. Collated with other cases in *Hoffm. on Referees*, 18. Applied (Jurisdiction of Court of Appeals on appeals from orders) by *GROVER, J.*, in *Fellow v. Heermans*, 13 *Abb. Pr. N. S.* 15. Applied (Complaint, as pleading from which to determine nature of action) in *Lanz v. Trout*, 46 *How. Pr.* 95.
- *v. Hubbard*, 4 *Hill*, 351; *s. c.*, 15 *N. Y. Com. L. Law. ed.* 845, with brief note. Aff'g, in effect, *Townsend v. Corning*, 23 *Wend.* 435. Decision in 4 *Hill* followed (Liability on deed executed by agent) in *Briggs v. Partridge*, 39 *Super. Ct. (J. & S.)* 339, 342, which was aff'd in 64 *N. Y.* 357, 362, which see; *Bryson v. Lucas*, 84 *N. C.* 680; *s. c.*, 37 *Am. R.* 634. Applied in *McClure v. Herring*, 70 *Mo.* 18; *s. c.*, 35 *Am. R.* 404. Both decisions disting'd in *Bradstreet v. Baker*, 14 *R. I.* 546; *s. c.*, 47 *Am. R.* 818, *n.* Collated with other cases in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 730, 741.
- *v. Keenan*, 2 *Hilt.* 544. Disapproved (Effect of placing cause on calendar, on appeal from justice's decision) in *Matthews v. Arnold*, 14 *Hun.* 376.
- *A. Lawrence*, 9 *Wend.* 458. Followed (Right to discovery and inspection) in *Babbitt v. Crampton*, 1 *Civ. Pro. R.* 169, 175.
- *v. McDonald*, 14 *Barb.* 460. Rev'd in 12 *N. Y.* 381.
- *v. Masterson Stone Dressing Co.*, 15 *N. Y.* 587. See (Appeal from judgment, &c.) *Code Civ. Pro.* 1881, § 1294, *n.*
- *v. Mayor, &c. of N. Y.*, 16 *Hun.* 362. Aff'd in 77 *N. Y.* 542. Decision in *Id.* explained with *Scott v. Onderdonk*, 14 *Id.* 9 (Action to remove assessment as cloud on title) in *Rogers v. Village of Sandy Hill*, 14 *Weekly Dig.* 45. Quoted in *Wait on Fraud. Conv.* § 418.
- *v. Merchants' Ins. Co.*, 36 *Super. Ct. (J. & S.)* 172; *s. c.*, less fully, 45 *How. Pr.* 501. Aff'd, it seems, in 56 *N. Y.* 655, but without opinion.
- *v. Narragansett Fire & Marine Ins. Co.*, 36 *Super. Ct. (J. & S.)* 170; *s. c.*, 46 *How. Pr.* 40. Aff'd, it seems, in 56 *N. Y.* 655, but without opinion.
- *v. Nebenzahl*, 8 *Abb. N. C.* 427; *s. c.*, 20 *Hun.* 81. Appeal dismissed in 81 *N. Y.* 644; *s. c.*, more fully, 8 *Abb. N. C.* 427, 432. Decision in *Id.* disting'd (Second arrest for same cause, when permissible) in *Ewart v. Schwartz*, 48 *Super. Ct. (J. & S.)* 390, 399.
- *v. N. Y. Central, &c. R. R. Co.*, 56 *N. Y.* 295; *s. c.*, 15 *Am. R.* 419. Further decision in 14 *Hun.* 217; *s. c.*, 6 *Sup'm. Ct. (T. & C.)* 495. See *Hamilton v. Third Ave. R. R. Co.* Decision in 56 *N. Y.* disting'd (Right to eject passenger for non-payment of fare) in *English v. Del. & Hud. Canal Co.*, 66 *Id.* 458. Disting'd in *Lynch v. Metrop. Elev. Ry. Co.*, 24 *Hun.* 507, a case of detention. Cited as authority in *Hufford v. Grand Rapids, &c. R. Co.*, 53 *Mich.* 118; *s. c.*, 46 *Am. R.* 483, *n.* Approved in *Yorton v. Milwaukee, Lake Shore & Western Ry. Co.*, 54 *Wis.* 234; *s. c.*, 41 *Am. R.* 23. Cited as authority with *Hibbard v. N. Y. & Erie R. R. Co.*, 15 *N. Y.* 470; *Bennett v. N. Y. Central, &c. R. R. Co.*, 5 *Hun.* 600, in *Frederick v. Marquette, Houghton, &c. R. R. Co.*, 37 *Mich.* 342; *s. c.*, 26 *Am. R.* 531.
- *v. Northwestern Ins. Co.*, 18 *N. Y.* 168. See *Boynton v. Clinton & Essex Mut. Ins. Co.* Disting'd (Effect of clause in policy against increase of risk) in *Williams v. People's Fire Ins. Co.*, 57 *N. Y.* 274, 278.
- *v. Ross*, 45 *Super. Ct. (J. & S.)* 447. Compare (Expense of watchman for property levied on) *Code Civ. Pro.* § 3307, subd. 7.
- *v. Stearns*, 32 *N. Y.* 209. See *Brigham v. Tillinghast*. Discussed (Terms of sale under assignment for benefit of creditors) in *Burrill on Assign.* § 224, 4 ed. Collated with other cases in *Bishop on Assign.* § 209. Collated with other cases (Preferences) in *Id.* § 182.
- *v. Susquehanna Turnpike Road*, 6 *Johns.* 90. See *Bartlett v. Crozier*. Followed and applied (Nature of liability of bridge company) in *Frankfort Bridge Co. v. Williams*, 9 *Dana (Ky.)* 403; *s. c.*, 35 *Am. Dec.* 155. Applied to railroad company, in *Cumberland V. R. R. Co. v. Hughes*, 11 *Pa. St.* 141; *s. c.*, 51 *Am. Dec.* 513, with note. Followed as conclusive (Trespass on the case against corporation for tort) in *Chestnut Hill T. Co. v. Rutter*, 4 *Serg. & L. (Pa.)* 6; *s. c.*, 8 *Am. Dec.* 675.
- *v. U. S. Trust Co.*, 3 *Redf.* 220. Applied (Right to increased value of securities as between remainderman and life tenant) in *Scovel v. Roosevelt*, 5 *Id.* 121, 125; *Farwell v. Tweddle*, 10 *Abb. N. C.* 94; *Re Clark*, 44 *Law Times R. N. S.* 736.
- *v. Whitney*, 15 *Hun.* 93. Aff'd in 75 *N. Y.* 425.
- Townsend Manuf. Co. v. Foster**, 51 *Barb.* 346. Said in 41 *N. Y.* 620, to have been

- aff'd in Ct. of App. Dec. 1869. Explained (Memoranda as evidence) in *Driggs v. Smith*, 45 *How. Pr.* 451.
- Townshend, Matter of.** See *Matter of Townsend*.
- Townshend v. Townshend**, 1 *Abb. N. C.* 81. See also (Deed between husband and wife) *Sims v. Rickets*, 35 *Ind.* 181; s. c., 9 *Am. R.* 679.
- Towsley v. Denison**, 45 *Barb.* 490. Re-consideration refused in 2 *Hun.* 524. See *Murray v. Toland*. Decision in 45 *Barb.* disapproved (Account stated between others than merchants) in *Anding v. Levy*, 57 *Miss.* 51; s. c., 34 *Am. R.* 439.
- **v. Harrison**. See *Lyle v. Smith*.
- **v. McDonald**, 32 *Barb.* 604. Disting'd (Sufficiency of affidavits for service by publication) in *Carter v. Youngs*, 42 *Super. Ct. (J. & S.)* 171.
- Tracey v. Altmyer**, 46 *N. Y.* 598. Disting'd (Presumption as to grounds of affirmation by General Term) in *Tilton v. Beecher*, 59 *Id.* 176, 191. See also *Fisher v. Gould*, 81 *Id.* 230. Explained (Appeal from order on motion for new trial on ground of newly discovered evidence) in *Scoville v. Landon*, 50 *Id.* 686. Applied in *Roberts v. Berdell*, 52 *Id.* 644. Explained and applied (Grounds of motion for new trial) in *Ludington v. Miller*, 36 *Super. Ct. (J. & S.)* 1, 5.
- **v. Corse**. See *Tracy v. Corse*.
- Tracy v. Albany Exch. Co.**, 7 *N. Y.* 472. Followed and explained (Covenant to renew lease, when void for uncertainty) in *Western Trans. Co. of Buffalo v. Lansing*, 49 *Id.* 499, 505.
- **v. Corse**, 45 *How. Pr.* 316. Aff'd in 49 *Id.* 323; s. c., as *Tracy v. Corse*, 58 *N. Y.* 143. Decision in *Id.* limited (Title of government to forfeited property, when complete) in *Ward v. Webster*, 9 *Daly*, 182.
- **v. First Nat. B'k of Selma**, 37 *N. Y.* 523. See *Rankine v. Elliott*. Further decision in same proceedings, in *Cable v. Tracy*, 11 *Blatchf. C. Ct.* 101, 117. Decision in 3 *N. Y.* disting'd (Right to move to set aside attachment) in *Jacobs v. Hogan*, 85 *Id.* 243, 245. Disting'd as decided prior to *Code Civ. Pro.* § 682, in *People's B'k of N. Y. v. Mechanic's Nat. B'k of Newark*, 62 *How. Pr.* 422, 425. Disting'd with *Allen v. Scandinavian Nat. B'k*, 46 *Id.* 71; *Matter of Griswold*, 13 *Barb.* 412; *Isham v. Ketchum*, 46 *Id.* 43; *Ketchum v. Ketchum*, 1 *Abb. Pr. N. S.* 157; *Thacher v. Bancroft*, 15 *Abb. Pr.* 243, in *Nat. Shoe & L. B'k v. Mechanic's Nat. B'k of Newark*, 89 *N. Y.* 440. Cited in *Harvey v. Allen*, 16 *Blatchf. C. Ct.* 29, 33.
- **v. Griffin**, 50 *Barb.* 70. Another report of same decision, but giving a different opinion, in *Tracy v. Veeder*, 35 *How. Pr.* 209. These decisions disapproved and *Elston v. Potter*, 9 *Bonn.* 639, preferred (Requisites of order of arrest in action of claim and delivery) in *Josuez v. Murphy*, 9 *Daly*, 324, 329.
- **v. Leland**, 2 *Sandf.* 729. See *Anonymous*, 1 *Duer*, 613. Disapproved (When female subject to arrest in civil action) in *Duncan v. Katen*, 6 *Hun.* 2.
- **v. McManus**, 58 *N. Y.* 257. See *Seymour v. Wilson*. Examined with other cases (Direct testimony to witness' intent) in 14 *Alb. L. J.* 385.
- **v. Rathbun**, 3 *Barb.* 543. Overruled (Effect of acknowledgment by one of joint debtors, to remove bar of statute of limitations) in *Van Keuren v. Parmelee*, 2 *N. Y.* 523.
- **v. Reynolds**, 7 *How. Pr.* 327. Approved under the Code (Effect of voluntary appearance) in *Wellington v. Claason*, 9 *Abb. Pr.* 175, 177. See *Code Civ. Pro.* 1881, § 821, n.
- **v. Talmage**, 18 *Barb.* 456; s. c., 9 *How. Pr.* 530; 12 *N. Y. Leg. Obs.* 303. Aff'd in 14 *N. Y.* 162. Another decision as *Tracy v. Talmadge*, in 1 *Abb. Pr.* 460. See *Bissell v. Michigan Southern, & C. R. Co.*; *Curtis v. Leavitt*. Decision in 14 *N. Y.* explained and approved (Effect of unlawful transfer of paper by banking association) in *Sacketts Harbor B'k v. Codd*, 18 *Id.* 244, as having been confirmed by *Curtis v. Leavitt*, 15 *Id.* 9. These three cases approved in *Oneida B'k v. Ontario B'k*, 21 *Id.* 496. Decision in 14 *Id.* disting'd (Rights of one transferring property that is to be used for allegal purpose) in *Haynes v. Rudd*, 17 *Hun.* 479; *Hull v. Ruggles*, 56 *N. Y.* 428. Applied, and *Rudderow v. Huntington*, 3 *Sandf.* 252, disting'd, in *Materne v. Horwitz*, 50 *Super. Ct. (J. & S.)* 41. Followed in *Brunswick v. Vallean*, 50 *Iowa*, 120; s. c., 32 *Am. R.* 119, with note collating cases. Followed, as according with the weight of authority and reason, in *Michael v. Bacon*, 49 *Mo.* 474; s. c., 8 *Am. R.* 138, with note collating authorities. Reviewed at length with other cases and approved in *Hill v. Spear*, 50 *N. H.* 253; s. c., 9 *Am. R.* 205, 219. Applied (Parties, when not in *pari delicto*) in *Comm'rs of Excise of Onondaga v. Backus*, 29 *How. Pr.* 40; *De Groff v. Am. Linen Thread Co.*, 21 *N. Y.* 128. Disting'd in *Richardson v. Crandall*, 30 *How. Pr.* 144; *Saratoga Co. B'k v. King*, 44 *N. Y.* 91; *Knowlton v. Congress & Empire Spring Co.*, 57 *Id.* 532. Explained in *Birkett v. Chatterton*, 13 *R. I.* 299, 302. Explained in *Benj. on Sales*, § 504, n. c. (Bennett's 4 *Am. ed.*); 2 *Add. on Contr.* 1147, n., *Abb. ed.* Approved in 1 *Pomeroy on Eq. Jur.* § 403, n. 2; *Pomeroy on Sp. Perf.* § 287, n. Applied (Rights of transferee of property as to relief against illegal transaction in connection therewith) in *McMahon v. Allen*, 35 *N. Y.* 407. Disting'd in *Sanderson v. Goodrich*, 46 *Barb.* 618. Decision in 18 *Id.* applied (Right of bank to discount under *L. 1838, c. 260, § 18*) in *Atlantic State B'k of Brooklyn v. Savery*, 82 *N. Y.*

- 291, 302. Decision in 1 *Abb. Pr.* applied (Jurisdiction of Special Term) in *Erisman v. Pidcock*, 62 *How. Pr.* 328.
- *v. Tracy*, 15 *Barb.* 503. See *Lupton v. Lupton*; *Shulters v. Johnson*. Approved (Charging legacy on real estate) as sound and weighty decision, in *Nichols v. Romaine*, 9 *How. Pr.* 512, 516. Disapproved in *Myers v. Eddy*, 47 *Barb.* 263, 270; citing *Reynolds v. Reynolds' Ex'rs*, 16 *N. Y.* 257. Followed in *Ragan v. Allen*, 7 *Hun.* 537, 539. Commented on in *Willard on Executors*, 393, *n.*
- *v. —*, 3 *Bradf.* 57. Disting'd (Parol evidence to establish trust) in *Robbins v. Robbins*, 47 *Super. Ct. (J. & S.)* 193, 204. Explained in *Randall v. Constans*, 33 *Minn.* 329, 335.
- *v. Troy & Boston R. R. Co.*, 55 *Barb.* 529. Aff'd in 38 *N. Y.* 433. Decision in *Id.* approved in distinction to *Parker v. Rensselaer & Saratoga R. R. Co.*, 16 *Barb.* 318 (Liability of lessee of railroad) in *Burchfield v. Northern Central Railw. Co.*, 57 *Id.* 589, 591.
- *v. Veeder*, 35 *How. Pr.* 209; *s. c.*, as *Tracy v. Griffin*, 50 *Barb.* 70. Disapproved (Recitals of facts in order of arrest) in *Josuez v. Murphy*, 6 *Daly*, 324. See (*Replevin*, where order of arrest has been granted) *Code Civ. Pro.* 1881, § 1714, *n.*
- *v. Whipple*, 8 *Johns.* 379. Approved (Effect of delivery of *ca. sa.* to sheriff, against person on limits) in *Gray v. Thornber*, 5 *Cow.* 278.
- Traders' B'k of Rochester v. Bradner**, 43 *Barb.* 379. Disting'd (What constitutes *bona fide* holder of negotiable paper) in *Fisher v. Sharpe*, 5 *Daly*, 214, 216; *Schepp v. Carpenter*, 51 *N. Y.* 602, 604. Applied to mortgagee, in *Cary v. White*, 7 *Lans.* 4; which was rev'd in 52 *N. Y.* 143, which see.
- Traders' Ins. Co. v. Robert**, 9 *Wend.* 404. Further decision in 17 *Id.* 631. Decision in 9 *Id.* overruled with *Tillou v. Kingston Mut. Ins. Co.*, 5 *N. Y.* 405 (Assignee, &c. of policy, as affected by acts of assignor) in *Grosvenor v. Atlantic Fire Ins. Co.*, 17 *Id.* 391, 396. Disapproved with *Tillou v. Kingston Mut. Ins. Co.*, and *Grosvenor v. Atlantic Fire Ins. Co.*; *Buffalo Locomotive Works v. Sun Mut. Ins. Co.*, 17 *N. Y.* 401, approved, in *Illinois Mut. Fire Ins. Co. v. Fix*, 53 *Ill.* 151; *s. c.*, 5 *Am. R.* 38. Declared overruled in *Humphry v. Hartford Fire Ins. Co.*, 15 *Blatchf. Ct.* 504, 523. Disapproved (Effect of assignment of policy as equivalent to new policy to assignee) in *State Mutual Insurance Co. v. Roberts*, 31 *Penn.* 438. Approved and applied (Insurable interest of mortgagee, &c.) in *Bell v. Western Marine & Fire Ins. Co.*, 5 *Rob. (La.)* 423; *s. c.*, 39 *Am. Dec.* 542, 547, with note.
- Tradesmen's Bk. v. Astor**, 11 *Wend.* 87; *s. c.*, 11 *N. Y. Com. L. Law. ed.* 1080, with brief note. Collated with other cases (Agency as implied from course of dealing) in 1 *Hare & W. Am. gead. Cus.* 5 ed. 690.
- *v. Merritt*, 1 *Paige*, 302. Limited (Following property) in *Justh v. Nat. B'k of Commonwealth*, 56 *N. Y.* 478, 484.
- Tradesmen's Nat. B'k v. McFeely**, 61 *Barb.* 522. Pronounced incorrect in light of other decisions (Joinder of causes of action) in *Pomeroy on Rem.* § 502, *n.* 3.
- Train v. Holland Purchase Ins. Co.**, 1 *Hun.* 527; *mem.*, *s. c.*, 3 *Sum'm. Ct. (T. & C.)* 777. Rev'd in 62 *N. Y.* 598. Further decision in 68 *Id.* 203. Decision in 62 *Id.* disting'd (Waiver of right to trial by jury) in *Ormes v. Dauchy*, 82 *Id.* 443, 449. Explained and applied (Effect of loss of property before issue of policy thereon) in *Van Loan v. Farmers' Mut. F. Ins. Assoc.*, 24 *Hun.* 133.
- Traphagen v. Traphagen**, 40 *Barb.* 537 Followed (Part performance that takes case out of statute of frauds) in *Green v. Green*, 2 *Redf.* 408, 410.
- Traver v. Halsted**, 23 *Wend.* 66. See *Gazley v. Price*. Applied (Effect of anticipatory refusal to perform) in *Clarke v. Crandall*, 27 *Barb.* 78.
- *v. Nichols*, 7 *Wend.* 434. Disting'd (Extent of liability on security for costs, given in justice's court) in *Fenno v. Dickinson*, 4 *Den.* 84. Applied to bond given on attachment, in *Ball v. Gardner*, 21 *Wend.* 271. To undertaking on appeal, to General Term, in *Gardner v. Barney*, 24 *How. Pr.* 471; *Robinson v. Plimpton*, 25 *N. Y.* 486. Disting'd in *Hinckley v. Kreitz*, 58 *Id.* 583, 588, which rev'd 36 *Super. Ct. (J. & S.)* 413, 423, which see, a case of appeal to Ct. of App. Explained (Appeal as continuance of action) in dissenting opinion in *Wolcott v. Holcomb*, 31 *N. Y.* 136.
- *v. Traver*, 3 *How. Pr.* 351. Aff'd in 3 *Id.* 368, *n.* Commented on and explained (Nature of proceedings for partition) in *Row v. Row*, 4 *Id.* 133.
- Travers v. Waters**, 1 *Johns. Ch.* 85. Aff'd in 12 *Johns.* 500. Prior decision in 1 *Johns. Ch.* 48.
- Travis v. Myers**, 67 *N. Y.* 542. Disting'd (Consolidation of actions) in *Schuehle v. Reiman*, 86 *Id.* 270, 273.
- *v. Thompson*, 37 *Barb.* 236. Reviewed at length and disting'd with *Mallory v. Burrett*, 1 *E. D. Smith*, 234 (First of series of carriers, when as to succeeding carriers, to be regarded as agent of shipper) in *Schneider v. Evans*, 25 *Wis.* 241; *s. c.*, 3 *Am. R.* 56, 68.
- *v. Tobias*, 7 *How. Pr.* 90. See (Dismissal of complaint) *Code Civ. Pro.* 1881, § 821, *n.*
- Treadwell v. Archer**, 76 *N. Y.* 196. Rev'g *Sherwood v. Archer*, 10 *Hun.* 73. In 76 *N. Y.* 196, in fourth line from top, for "defendant" read "plaintiff."
- *v. Fassett*. See *Stannard v. Mattice*.
- *v. Steele*, 3 *Cai.* 169. Explained (Mode of assigning breach of covenant) in *McGeehan v. McLaughlin*, 1 *Hall*, 33, 36.
- *v. Union Ins. Co.*, 6 *Cow.* 270. Criti-

- cised (What is voyage in relation to marine policy) in 3 *Kent Com.* 307, *n. c.*
- Tremain v. Cohoes Co.**, 2 *N. Y.* 163. See *Hay v. Same*. Explained and applied (What constitutes nuisance) in *Ileg v. Licht*, 8 *Abb. N. C.* 355, 360. Applied (Liability for injury done while acting under authority of law) in *Losee v. Buchanan*, 61 *Barb.* 106; *Pixley v. Clark*, 35 *N. Y.* 523; *McAndrews v. Colterd*, 13 *Vroom (N. J.)* 189; *s. c.*, 62 *Am. R.* 508, 510. Explained in *Wood on Nuis.* 3 ed. § 28. Included with notes in 1 *Thomps. on Negl.* 76.
- Tremper v. Conklin**, 44 *Barb.* 456. Aff'd in 44 *N. Y.* 58.
- Trench v. Chenango County Mut. Ins. Co.**, 7 *Hill*, 122. Commented on and doubted (Distinction between real and personal property, as to condition in policy respecting distance of other buildings) in *Wilson v. Herkimer Mutual Ins. Co.*, 6 *N. Y.* 53, 59. Reviewed with other cases and referred to as overruled (Severability of contract of insurance) in *Merrill v. Agricultural Ins. Co.*, 73 *N. Y.* 452, 461, which aff'd 10 *Hun*, 428, 430, which see. Disapproved in *McGowan v. People's Mutual Fire Ins. Co.*, 54 *Vt.* 211; *s. c.*, 41 *Am. R.* 843, as overruled by *Wilson v. Herkimer, &c. Ins. Co.*, 6 *N. Y.* 53.
- Trenor v. Fachin**, 12 *Abb. Pr.* 136; *s. c.*, 20 *How. Pr.* 405; 28 *Id.* 88, *n.* See *Calhoun v. Lee*.
- Trenton Banking Co. v. Sherman**, 86 *N. Y.* 221. Compared (Elements of estoppel) in 2 *Pomeroy on Eq. Jur.* 267, *n.*
- Trevor v. Wood**, 41 *Barb.* 255; *s. c.*, 26 *How. Pr.* 451. Rev'd in 36 *N. Y.* 307; *s. c.*, 3 *Abb. Pr. N. S.* 855. See *Dunning v. Roberts*. Decision in 36 *N. Y.* applied (Contracts by mail, &c.) in *Howard v. Daly*, 61 *Id.* 366. Followed in preference to *Lewis v. Browning*, 130 *Mass.* 175,—in *Haas v. Myers*, 111 *Id.* 421; 20 *Cent. L. J.* 428. Collated and classified with *Mactier v. Frith*, 6 *Wend.* 103; *Bruce v. Pearson*, 3 *Johns.* 534; *Tuttle v. Love*, 7 *Id.* 407; *White v. Corlies*, 46 *N. Y.* 468; *Cales v. Bowne*, 10 *Paige*, 526; *Chicago & Great E. R. Co. v. Dane*, 43 *N. Y.* 240; *Suydam v. Clark*, 2 *Sandf.* 183; *Barns v. Barron*, 61 *N. Y.* 39; *Hunt v. Smith*, 17 *Wend.* 179, and other cases in 32 *Am. R.* 40, *n.* Discussed in 2 *Pars. on Contr.* 257a, *n. z.* Discussed and cases cited in 4 *Am. L. Reg. N. S.* 206.
- Tribbles v. O'Connor**, 28 *Barb.* 538. Applied (Liability on bond in replevin) to bond on appeal, in *Hinckley v. Kreitz*, 36 *Super. Ct. (J. & S.)* 413, 424.
- Tribune Assoc. v. Smith**, 40 *Super. Ct. (J. & S.)* 251. Appeal dismissed, it seems, in 68 *N. Y.* 621, but without opinion. Other proceedings in 40 *Super. Ct. (J. & S.)* 81; *Id.* 99.
- Trigg v. Hitz**, 17 *Abb. Pr.* 436. Approved (Right of interpleader) but disting'd in *Johnston v. Lewis*, 4 *Abb. Pr. N. S.* 150.
- Disting'd in *Baltimore & O. R. R. Co. v. Arthur*, 13 *Weekly Dig.* 333.
- Trimble v. Thorne**, 16 *Johns.* 152; *s. c.*, 8 *Am. Dec.* 302, with note wherein it is explained in connection with *Tebbetts v. Dowd*, 23 *Wend.* 379. Dictum overruled (Effect of subsequent promise by indorser, as waiver of notice, &c.) in *Tebbetts v. Dowd*, 23 *Wend.* 379, 385. Referred to with *Jones v. Savage*, 6 *Id.* 658; *Sice v. Cunningham*, 1 *Cow.* 397, in *Raught v. Black*, 2 *Dian. (Ohio)* 477, as overruled by *Tebbetts v. Dowd*, 23 *Wend.* 379. Collated with other cases in *Holcombe Lead. Cas. on Com. L.* 368. Applied with *Beardsley v. Warner*, 6 *Wend.* 610 (Right of indorser to call on holder of note to proceed against maker) in *Gibson v. Parlin*, 13 *Neb.* 292, 294. Explained and applied in *Converse v. Cook*, 25 *Hun.* 44. Disting'd (Proof of acquiescence) in *Rogers v. Kneeland*, 13 *Wend.* 128.
- Trim v. Marsh**, 3 *Lans.* 509. Aff'd in 54 *N. Y.* 599; *s. c.*, 13 *Am. R.* 623. Further decision in 4 *Sup'm. Ct. (T. & C.)* 577; *mem. s. c.*, 2 *Hun.* 383. Decision in 54 *N. Y.* confirmed (Right of mortgagee in possession to purchase) in *Ten Eyck v. Craig*, 2 *Hun.* 452, 465. Quoted (Mortgagee's interest) in 2 *Washb. on Real Prop.* 4 ed. 109, 110. Collated with other cases in *McAdam on Land. & T.* 2 ed. § 56.
- Trinity Church v. Higgins**. See *Rector, &c. of Trinity Church v. Higgins*.
- Tripp v. Cook**, 26 *Wend.* 143; *s. c.*, 14 *N. Y. Com. L. Law. ed.* 1039, with brief note. Applied (Setting aside judicial sale) in *Merchants' Ins. Co. v. Hinman*, 3 *Abb. Pr.* 457; *Gould v. Gager*, 18 *Id.* 38; *Matt v. Walkley*, 3 *Edw.* 592; *Hoppock v. Conklin*, 4 *Sandf. Ch.* 586. Followed in *Kellogg v. Howell*, 62 *Barb.* 280, 288. Applied (Discretion as to setting aside such sale) in *King v. Platt*, 2 *Abb. Ct. App. Dec.* 532. Reviewed with other cases in dissenting opinion in *Dows v. Congdon*, 28 *N. Y.* 126. Examined and approved in *Howell v. Mills*, 53 *Id.* 322, 332. Approved in *Bailey v. Stewart*, 2 *Redf.* 212, 231, a case of application to set aside Surrogate's decree.
- **v. Pulver**, 2 *Hun.* 511; *s. c.*, reported 5 *Sup'm. Ct. (T. & C.)* 30.
- **v. Riley**, 15 *Barb.* 333. Limited and approved (Severance of property held in common) in *Channon v. Lusk*, 2 *Lans.* 211, 213. Approved in *Newton v. Howe*, 29 *Wis.* 531; *s. c.*, 9 *Am. R.* 616.
- **v. Vincent**. See *Baxter v. Lansing*.
- Trolan v. Fagan**, 48 *How. Pr.* 240. Disapproved with *Brown v. Marigold*, 50 *Id.* 251 (Effect of antedating admission of service of summons) in *Peck v. Richardson*, 9 *Hun.* 567. Followed in *Brown v. Marigold*, 50 *How. Pr.* 248. Not followed in *Peck v. Richardson*, 9 *Hun.* 568. Disting'd (Proof of service of summons) in *Maples v. Mackey*, *Id.* 15 533, 538.
- Trotter v. Curtis**, 19 *Johns.* 160; *s. c.*, 10

- Am. Dec.* 211. Followed (Usury in taking commissions) in *Seymour v. Marvin*, 11 *Barb.* 83; *More v. Howland*, 4 *Den.* 267; *Smith v. Marvin*, 27 *N. Y.* 140; *Elwell v. Chamberlain*, 31 *Id.* 617; *Matthews v. Coe*, 70 *Id.* 242. Commented on and explained in *Suydam v. Westfall*, 4 *Hill*, 211.
- *v. Hughes*, 12 *N. Y.* 74. See *Burr v. Beers*; *Hamill v. Gillespie*; *King v. Whately*. Applied (Liability of grantee of mortgaged premises) in *Wales v. Sherwood*, 52 *How. Pr.* 414; *Binsse v. Paige*, 1 *Keyes*, 89; *Stebbins v. Hall*, 29 *Barb.* 533, 537. Disting'd in *Douglass v. Cross*, 56 *How. Pr.* 331; *Douglass v. Wells*, 18 *Hun.* 91. Reviewed with other cases in *Real Estate Trust Co. v. Balch*, 45 *Super. Ct. (J. & S.)* 531; in dissenting opinion in *Dunning v. Leavitt*, 85 *N. Y.* 30, 40. Explained in *Thayer v. Marsh*, 11 *Hun.* 501, 503; which was aff'd in 75 *N. Y.* 340, 342, which see; *Thorp v. Keokuk Coal Co.*, 48 *Id.* 257. Criticised in *Vrooman v. Turner*, 8 *Hun.* 80, which was rev'd in 69 *N. Y.* 283, which see. Applied with *Belmont v. Coman*, 22 *Id.* 438, in *Fiske v. Tolman*, 124 *Mass.* 254; s. c., 26 *Am. R.* 659. Disapproved with *King v. Whately*, 10 *Paige*, 465; *Vrooman v. Turner*, 69 *N. Y.* 180, in *Dean v. Walker*, 107 *Ill.* 540; s. c., 47 *Am. R.* 467, with note. Cited as authority in *Woodbury v. Swan*, 58 *N. H.* 380, 383. Applied in *Pardee v. Treat*, 82 *N. Y.* 385, 388, a case of a judgment. Applied (Effect of acceptance of conveyance to bind one by covenants therein) in *Atlantic Dock Co. v. Leavitt*, 54 *N. Y.* 39.
- *v. Latson*, 7 *How. Pr.* 261. Disapproved (Compelling attendance of party by *subpoena duces tecum*) in *Central Nat. Bank of N. Y. v. Arthur*, 2 *Sweeny*, 194, 201. Overruled, in *Mitchell's Case*, 12 *Abb. Pr.* 249, 262.
- Troup v. Haight**, *Hopk.* 239. Dictum criticised as not founded on any adjudged case (Propriety of cross-bill in foreclosure) in *Jennings v. Webster*, 8 *Paige*, 505. Explained in *Chapman v. Robertson*, 6 *Id.* 629. Explained (Sufficiency of certificate of acknowledgment of deed) in *Jackson v. Osborn*, 2 *Wend.* 558. Applied in *Deinnis v. Tarpenhy*, 20 *Barb.* 375; *Meriam v. Har- sen*, 2 *Barb. Ch.* 270; *Dias v. Glover*, *Hoffm.* 74.
- *v. Smith*, 20 *Johns.* 33. See *Allen v. Mille*. Disting'd (Limitation of action as affected by fraudulent concealment) in *Engel v. Fischer*, 15 *Abb. N. C.* 72. Followed and approved as luminous and well considered, in *Fee v. Fee*, 10 *Ohio*, 469; s. c., 36 *Am. Dec.* 103, 106, with note. Criticised and questioned with *Leonard v. Pitney*, 5 *Wend.* 30; *Allen v. Mille*, 17 *Id.* 202, in *Conyers v. Kenan*, 4 *Ga.* 308; s. c., 48 *Am. Dec.* 226, 231. Dissented from with *Oothout v. Thompson*, 20 *Johns.* 277; *Leonard v. Pitney*, 5 *Wend.* 30, in *Persons v. Jones*, 12 *Geo.* 371; s. c., 58 *Am. Dec.* 476. Explained in *Wear v. Skinner*, 46 *Id.* 257; s. c., 24 *Am. R.* 517. Reviewed with *Leonard v. Pitney*, 5 *Wend.* 30; *Allen v. Mille*, 17 *Id.* 202; *Humbert v. Trinity Church*, 24 *Id.* 587, and the latter case criticised in *Phalen v. Clark*, 19 *Conn.* 421; s. c., 50 *Am. Dec.* 233, with note. Approved and followed with *Leonard v. Pitney*, 5 *Wend.* 30; *Allen v. Mille*, 17 *Id.* 202; *Humbert v. Trinity Church*, 24 *Id.* 587,—in *Freeholders of Somerset v. Veghte*, 44 *N. J. L.* 509, 523. Followed in *Thomas v. Ervin*, *Cheve's L. (So. Car.)* 22; s. c., 34 *Am. Dec.* 586, 588, a case of negligent omission. As to distinction between proceedings at law and in equity in this respect,—thought in *Bailey v. Glover*, 21 *Wall.* 342, to be against weight of authority, both in this country and England. See cases cited in 3 *Am. Dec.* 128, n. Referred to as the leading American case in 60 *Id.* 514, n. Discussed and commented on in *Ang. on Limit.* §§ 184, 185, 6 ed. Applied (Power of courts to make exceptions to statute of limitations) in *Cocke v. McGinnis*, 1 *Mart. & Y. (Tenn.)* 361; s. c., 17 *Am. Dec.* 809, 812, with note; *Bank of Alabama v. Dalton*, 9 *How. (U. S.)* 522. See cases cited in 13 *Am. Dec.* 363, n.
- *v. Wood*, 4 *Johns. Ch.* 228. See *Howell v. Baker*; *Jones v. Caswell*. Overruled (Civil rights, as affected by conviction of felony) in *Plattner v. Sherwood*, 6 *Johns. Ch.* 118, 128.
- Trowinger v. M'Burney**, 5 *Cow.* 253; s. c., 8 *N. Y. Com. L. Law. ed.* 644, with brief note.
- Trow v. Glen Cove Starch Co.**, 1 *Daly*, 280. Applied (Effect of fraudulent alteration of written evidence of claim) in *Meyer v. Hupeke*, 55 *N. Y.* 412, 418.
- *v. Shannon*, 8 *Daly*, 239. Aff'd in 78 *N. Y.* 446. Decision in *Id.* explained (Evidence to establish gift) in *Young v. Young*, 80 *Id.* 422, 435.
- Trowbridge v. Baker**, 1 *Cow.* 251. Cited (Effect of assuming to act in official character as evidence against person thus assuming) in 1 *Taylor on Ev.* 701.
- *v. Christmas*, *Clarke*, 271. Aff'd in 3 *Ch. Sent.* 7, but without opinion.
- Trow's Printing, & Co. v. Hart**, 60 *How. Pr.* 190. Aff'd in 85 *N. Y.* 500.
- Troxell v. Haynes**, 5 *Daly*, 389; s. c., 49 *How. Pr.* 517; more fully, 16 *Abb. Pr. N. S.* 1. Followed (Extra allowance as bar to recovery of damages for injunction) in *Howell v. Miller*, 5 *Civ. Pro. R. (Browne)* 164. Followed (Judgment against sureties on assessment of damages, on dissolution of injunction) in *Hovey v. Rubber Tip Pencil Co.*, 47 *How. Pr.* 289.
- Troy & Boston R. R. Co. v. Boston, Hoosac T. & Western R'y Co.**, 86 *N. Y.* 107. This is a different proceeding from those in 13 *Hun.* 60; 57 *How. Pr.* 181.
- *v. Lee*, 13 *Barb.* 169. Followed (Rule of damages in case of land taken for rail-



- road purposes) in *Henderson v. N. Y. Central R. R. Co.*, 78 *N. Y.* 428, 433. Referred to as overruled in,—*Bloomfield, &c. Gas-light Co. v. Calkins*, 1 *Sup'm. Ct. (T. & C.)* 551.
- *v. Tibbits*, 18 *Barb.* 297. Subsequent decision in 11 *Hov. Pr.* 168. See *Brown v. Leigh*; *Butternuts & Oxford Turnpike Co. v. North*. Decision in 18 *Barb.* explained (Liability on subscription to stock) in *Poughkeepsie, &c. Plank Road Co. v. Griffin*, 21 *Id.* 467, which was rev'd in 24 *N. Y.* 155, which see. Approved and applied in *Erie & N. Y. City R. R. Co. v. Owen*, 32 *Barb.* 617. Applied in *Dutchess v. Columbia R. R. Co. v. Mabbett*, 58 *N. Y.* 400; *Eastern Plank Road Co. v. Vaughan*, 20 *Barb.* 161. Disting'd in *Buffalo, &c. Co. v. Clark*, 22 *Hun.* 362. Followed as conclusive in *Dorris v. Sweeney*, 64 *Barb.* 640. Decision in 11 *Hov. Pr.* limited with *Union Bank v. Mott*, 11 *Abb. Pr.* 42 (Power to allow amendment to pleading) in *Woodruff v. Dickie*, 5 *Robt.* 619, 622.
- Troy and Lansingburgh R. R. Co. v. Kane**, 9 *Hun.* 506. Aff'd in 72 *N. Y.* 614. Compare (Replevin against tax collector) *Code Civ. Pro.* § 1695.
- Troy City B'k v. Grant**, *Hill & D.* 119. Disting'd (Payment by bank, when made by mistake) in *Whiting v. City B'k*, 77 *N. Y.* 363, 367.
- *v. Lauman*, 19 *N. Y.* 477. Followed (Immaterial alteration in negotiable paper) in *Shuler v. Gillette*, 12 *Hun.* 278. Followed (Acceptance payable at particular place) in *Myers v. Standart*, 11 *Ohio St.* 37.
- *v. McSpedon*, 33 *Barb.* 81. Aff'd as *McSpedon v. Troy City Bank*, 3 *Abb. Ct. App. Dec.* 133.
- Truax v. Thorn**. See *Harrison v. Stevens*.
- Truesdell v. Booth**, 4 *Hun.* 100; s. c., more fully, 6 *Sup'm. Ct. (T. & C.)* 379.
- *v. Granger*, 8 *N. Y.* 115. See *Brinckerhoff v. Phelps*; *Driggs v. Dwight*; *Peters v. McKeon*. Applied (Damages for breach of contracts to convey lease, &c.) in *Brinckerhoff v. Phelps*, 24 *Barb.* 100, 105; *Mack v. Patchin*, 42 *N. Y.* 172, 176. Explained and applied in *Becar v. Flues*, 64 *Id.* 520. With *Driggs v. Dwight*, 17 *Wend.* 71; *Brinckerhoff v. Phelps*, 24 *Barb.* 100, said not to have been overruled by *Conger v. Weaver*, 20 *N. Y.* 140,—in *Bush v. Cole*, 28 *Id.* 261, 270. Explained in *Carter v. Burr*, 39 *Barb.* 64; *Conger v. Weaver*, 20 *N. Y.* 146. Disting'd in *Portman v. Weeks*, 1 *City Ct.* 185. Collated with other cases in *McAdam on Landl. & T.* 2 ed. § 78. Applied (Distinction between rent and value of lease) in *Woodhull v. Rosenthal*, 61 *N. Y.* 394.
- Truscott v. Dole**, 7 *Hov. Pr.* 221. See (Allegations in verified pleading) *Code Civ. Pro.* 1881, § 524, n.
- *v. King*, 6 *Barb.* 346. Rev'd in 6 *N. Y.* 147. See *Kellogg v. Ames*; *Mead v. York*. Decision in 6 *N. Y.* explained (Effect of mortgage, &c. given to secure future advances) in *Monnot v. Ibert*, 33 *Barb.* 28. Disting'd in *Hubbell v. Blakeslee*, 8 *Hun.* 605; *Bank of Albion v. Barnes*, 2 *Lans.* 57. Disting'd in dissenting opinion in *Thompson v. Van Vechten*, 6 *Bosw.* 406. Applied in *Mead v. York*, 6 *N. Y.* 453; *Cook v. Whipple*, 55 *Id.* 167; *Ackerman v. Hunsicker*, 85 *Id.* 43, 50, 52, which rev'd 21 *Hun.* 53, 56, which see. Applied to case of insurance in *Hartshorn v. Union Mut. Ins. Co.*, 5 *Bosw.* 557. Disting'd (Time of objection to jurisdiction of equity) in *De Bussierre v. Holloday*, 4 *Abb. N. C.* 117. Followed, and *Gillett v. Staples*, 16 *Hun.* 588, disting'd, in *Steffin v. Steffin*, 4 *Civ. Pro. R. (Broune)* 179, 187. Applied (Extrinsic evidence as to consideration for mortgage) in *McKinster v. Babcock*, 26 *N. Y.* 381. Applied to evidence of agreement under which bond was delivered,—in *Chester v. B'k of Kingston*, 16 *N. Y.* 343. Cited as authority in *Thomas on Mort.* 58. Disting'd with *Ackerman v. Hunsicker*, 85 *N. Y.* 43 (Effect of recording, as notice to subsequent incumbancers, &c.) in *Dunlop v. Avery*, 89 *Id.* 592, 598.
- Truslow v. Putnam**, 4 *Abb. Ct. App. Dec.* 425; s. c., 1 *Keyes*, 568. See (Execution against bailor's interest) *Code Civ. Pro.* 1881, § 1412, n.
- Trust v. Person**, 3 *Abb. Pr.* 84. Aff'd as *Trust v. Pirsson*, in 1 *Hilt.* 292. Decision in *Id.* followed (Liens for storage, in whose favor not existing) in *Re Kelly*, *U. S. Dist. Ct. S. D. N. Y.* 1883, 18 *Fed. Rep.* 528. Cited (When agent having lien is estopped from asserting it) in *Whart. Com. on Ag.* § 820.
- *v. Pirsson*. See *Same v. Person*.
- Trustees for Support of Episcopate v. Colgrove**. See *Gallup v. Wright*.
- Trustees, &c. of Auburn Seminary v. Calhoun**, 25 *N. Y.* 422. Rev'd 38 *Barb.* 148; 62 *Id.* 381. See *Rutherford v. Rutherford*. Decision in 25 *N. Y.* explained (Proof of publication of will) in *Abbey v. Christy*, 49 *Barb.* 279. Applied in *Peck v. Cary*, 27 *N. Y.* 31; *Norton v. Norton*, 2 *Redf.* 15; *Walsh v. Walsh*, 4 *Id.* 168. Disting'd in *Bagley v. Blackman*, 2 *Lans.* 41, 43.
- *v. Cole*, 20 *Barb.* 321. Compare *Trustees of Auburn Theological Seminary v. Kellogg*, 16 *N. Y.* 83, another decision arising under same will.
- Trustees of Brookhaven v. Strong**, 1 *Sup'm. Ct. (T. & C.)* 415. Aff'd in 60 *N. Y.* 56. See *Hooker v. Cummings*. Decision in 60 *N. Y.* applied (Rights in certain land under water) in *Robins v. Ackerly*, 24 *Hun.* 560. Followed with *Robbins v. Ackerly*, 91 *N. Y.* 98, in *Hand v. Newton*, 92 *Id.* 88.
- Trustees of Brooklyn v. Patchen**, 8 *Wend.* 47. Approved (When lands or streets will be deemed dedicated to public use) in *Rector v. Hartt*, 8 *Mo.* 448; s. c., 41 *Am. Dec.* 650, with note.
- Trustees of Church, &c. of North Greig v.**

Johnson, 66 *Barb.* 119. Compare (Ejectment by co-tenants) *Code Civ. Pro.* § 1500. Explained in *Sedgw. & W. on Tr. of Tit. to Land*, § 284.

**Trustees of College Point v. Dennett**, 2 *Hun.* 669; s. c., reported 5 *Sup'm. Ct.* (T. & C.) 217.

**Trustees of Columbia Coll. v. Lynch**, 47 *How. Pr.* 273. Aff'd in 39 *N. Y. Super. Ct.* (J. & S.) 372, and the latter rev'd in 70 *N. Y.* 440; s. c., 26 *Am. R.* 615. Subsequent decision as Same v. Thacher, 10 *Abb. N. C.* 235; s. c., 87 *N. Y.* 311, which rev'd 46 *Super. Ct.* (J. & S.) 305. Decision in 87 *N. Y.* applied (Injunction to restrain use of property) in *Crooke v. Flatbush Water Works Co.*, 27 *Hun.* 72. Collated with *Phoenix Ins. Co. v. Continental Ins. Co.*, 87 *N. Y.* 400, and other cases (Covenants on restraint of use of land) in 32 *Moak Eng.* 853.

— v. Thacher. See Same v. Lynch.

**Trustees of Delhi v. Youmans**, 50 *Barb.* 316. Aff'd in 45 *N. Y.* 362. See *Pickard v. Collins*. Decision in 50 *Barb.* disapproved (Effect of doing lawful act with malicious intent) in *Phelps v. Nowlen*, 72 *N. Y.* 39, 46. Relied on with *Waffle v. N. Y. Central R. R. Co.*, 58 *Barb.* 413 (Easement respecting surface water in favor of owner of higher ground as against lower) in *Hoyt v. City of Hudson*, 27 *Wis.* 656; s. c., 9 *Am. R.* 473.

**Trustees of East Hampton v. Kirk**, 6 *Hun.* 257. Rev'd in 68 *N. Y.* 459. Subsequent decision in 84 *Id.* 215. Decision in 68 *Id.* applied (Waiver of right to trial by jury) in *Ormes v. Dauchy*, 82 *Id.* 443, 448. Decision in 84 *Id.* disting'd (Overflow of lands, as affecting title) in *Mulry v. Norton*, 29 *Hun.* 660. Approved in *Wilson v. Shivley*, 11 *Oreg.* 215, 218.

**Trustees of First Presb. Congregation in Hebron v. Quackenbush**, 10 *Johns.* 217. Followed (Liability of pew-owner) in *St. Paul's Church v. Ford*, 34 *Barb.* 16, 18.

**Trustees of First Baptist Church v. Brooklyn Fire Ins. Co.**, 19 *N. Y.* 305. See *Baptist Church v. Brooklyn Fire Ins. Co.*; *First Baptist Church v. Brooklyn Ins. Co.* Cited as authority with *Goit v. National Protection Ins. Co.*, 25 *Barb.* 180 (Power of insurance agent to waive condition of pre-payment of premium) in *Murphy v. Southern Life Ins. Co.*, 3 *Baet. (Tenn.)* 440; s. c., 27 *Am. R.* 761, 768. Disting'd in *Critchett v. American Ins. Co.*, 53 *Iowa*, 404; s. c., 36 *Am. R.* 230, 233, with note. Disting'd (Validity of parol contracts of insurance) in *Henning v. U. S. Ins. Co.*, 47 *Mo.* 425; s. c., 4 *Am. R.* 332, 336.

**Trustees of First Baptist Church of Schenectady v. Utica & Schenectady R. R. Co.**, 6 *Barb.* 313. Discussed (Noise as nuisance) in *Wood on Nuis.* 2 ed. § 643.

**Trustees of Forestville Baptist Soc'y v. Farnham**, 15 *Hun.* 381. Rev'd, it seems, in 82 *N. Y.* 618, but without opinion.

**Trustees of Hamilton College v. Stewart**, 1 *N. Y.* 581. Previous decision in 2 *Den.* 403. Both decisions explained (Liability on subscription) in *Barnes v. Perine*, 9 *Barb.* 206; 12 *N. Y.* 28. Decision in 1 *Id.* applied in *Stoddard v. Cleveland*, 4 *How. Pr.* 150; *Hammond v. Shepard*, 29 *Id.* 190; *Hurd v. Green*, 17 *Hun.* 333. Explained in *Erie & N. Y. City R. R. Co. v. Owen*, 32 *Barb.* 625; *Van Rensselaer v. Aikin*, 44 *Id.* 550. Disting'd in *Eastern Plank Road Co. v. Vaughan*, 20 *Id.* 158; *Richmondville Union Seminary, &c. v. Brownell*, 37 *Id.* 537. Criticised in *Wayne, &c. Coll. Inst. v. Smith*, 36 *Id.* 582. Criticised as contrary to reason and authority, and also disting'd in *Lathrop v. Knapp*, 27 *Wis.* 214, 220. Reviewed with *Barnes v. Perine*, 12 *N. Y.* 18; *McAuley v. Billenger*, 20 *Johns.* 89, and other cases, in *Philomath College v. Hartless*, 6 *Oreg.* 158; s. c., 25 *Am. R.* 510. Collated with other cases in 2 *Hare & W. Am. Leal. Cas.* 5 ed. 184. Explained and compared in 1 *Pars. on Contr.* 453, n. h. Discussed in *Id.* 454, n. k. Decision in 2 *Den.* examined, in *N. Y. Exchange Co. v. De Wolf*, 5 *Bosw.* 593, 607, 613, 617.

**Trustees of Huntington v. Nicoll**, 3 *Johns.* 566. Disting'd (When bill of peace will be entertained) in *Nevitt v. Gillespie*, 1 *How. (Miss.)* 108; s. c., 26 *Am. Dec.* 696.

**Trustees of Jordan v. Otis**, 37 *Barb.* 50. See *Underwood v. Stuyvesant*. Explained (Liability for encroachment on highway) in *Marvin v. Pardee*, 64 *Barb.* 353, 359. Collated with other cases in *Mills Thomps. on Highw.* 64.

**Trustees of Lansingburg v. Willard**, 9 *Johns.* 428. Opposed (Competency of witness as affected by fact that he believes himself interested) in *Moore v. Hitchcock*, 4 *Wend.* 292, 297. Overruled in *Commercial Bank of Albany v. Hughes*, 17 *Id.* 94, 102, where see cases cited. See *Smith v. Downs*, 6 *Conn.* 365; *Carman v. Foster*, 2 *Ashm. (Penn.)* 133.

**Trustees of Leake & Watts Orphan House v. Lawrence** 11 *Paige*, 80. Aff'd in 2 *Den.* 577. See *Jenkins v. De Groot*. Decision in 11 *Paige* followed (Liability of representatives of deceased partner) in *Slatter v. Carroll*, 2 *Sandf. Ch.* 580. Both decisions followed in *Troy Iron & Nail Factory v. Winslow*, 11 *Blatchf. C. Ct.* 513, 517. Decision in 11 *Paige* disapproved, with *Voorhis v. Childs*, 17 *N. Y.* 354, in *Doggett v. Dill*, 108 *Ill.* 560, 567, where *Geo.* and *Wis.* cases are alone considered as supporting *N. Y.* rule.

**Trustees of Methodist Episcopal Church v. Jaques**. See *M. E. Church v. Same*.

**Trustees of N. Y. Prot. Episc. Public School. Matter of**. See *Matter of N. Y. Prot. Episc. Public School*.

**Trustees of Presbyterian Cong. in Salem v. Williams**. See *Presbyterian Cong. in Salem v. Williams*, 9 *Wend.* 147.

**Trustees of Presb. Soc. in Waterloo v.**

- Anburn & Rochester R. R. Co.**, 3 *Hill*, 567. Disting'd (Liability for using highway for railroad purposes) in *Corey v. Buffalo*, &c. R. R. Co., 23 *Barb.* 489; *Plant v. Long Island R. R. Co.*, 10 *Id.* 30; *People v. Kerr*, 27 *N. Y.* 202; which aff'd 37 *Barb.* 405, which see. Followed and applied in *Williams v. N. Y. Central R. R. Co.*, 16 *N. Y.* 104. Applied in *Craig v. Rochester City*, &c. R. R. Co., 39 *Id.* 407. Discussed with *Fletcher v. Auburn & Syracuse R. R. Co.*, 25 *Wend.* 462, in *Davis v. Mayor*, &c. of N. Y., 14 *N. Y.* 521. Approved in *Imlay v. Union Br. R. R.*, 26 *Conn.* 249, 259. Applied to laying of gas pipes,—in *Calkins v. Bloomfield*, &c. Gas Light Co., 1 *Sup'm. Ct. (T. & C.)* 548. Followed with approval with *Williams v. N. Y. Central R. R. Co.*, 16 *N. Y.* 97; *Mahon v. N. Y. Central R. R. Co.*, 24 *Id.* 658, in *Indianapolis, Bloomington, &c. R. R. Co. v. Hartley*, 67 *Ill.* 439; s. c., 16 *Am. R.* 624, 628. Collated with other cases in *Cook Highw. L.* 4 ed. 17. Quoted and collated with other cases in *Mills Thomps. on Highw.* 3 ed. 398. Explained (Rights of public on highway) in *Milbau v. Sharp*, 15 *Barb.* 209; *Heath v. Barmore*, 50 *N. Y.* 306.
- Trustees of Presbytery of N. Y., Matter of**, 54 *How. Pr.* 226. Further proceeding in 57 *Id.* 500.
- Trustees of St. Jacobs' Luth. Ch. of Eden v. Bly**, 73 *N. Y.* 323. See cases cited (Effect of defective organization of corporation) in 4 *Abb. N. C.* 445, n.
- Trustees of Theological Seminary v. Kellogg**, 16 *N. Y.* 83. Commented on (Trusts for charitable uses) in 2 *Perry on Trusts*, 3 ed. § 748, n.
- Trustees of Union College v. Wheeler**, 5 *Lans.* 160; s. c., 59 *Barb.* 585. Aff'd in part and disapproved in part in 61 *N. Y.* 88. Decision in *Id.* disting'd and explained (Rights of assignee of mortgage) in *First Nat. B'k of Corry v. Stiles*, 22 *Hun.* 339, 346. Applied in *Reid v. Sprague*, 9 *Id.* 33; *Greene v. Warnick*, 64 *N. Y.* 225; *Bank for Savings v. Frank*, 45 *Super. Ct. (J. & S.)* 408. Reviewed with other cases in dissenting opinion in *Westbrook v. Gleason*, 79 *N. Y.* 40. Explained and other cases collected in 2 *Pomeroy on Eq. Jur.* 160, n. Opinion of DWIGHT, C., cited with approval in 1 *Pars. on Contr.* 228, n. 1, Keller's ed. Applied (Nature of mortgagor's interest) in *Bartlett v. Musliner*, 28 *Hun.* 235, 238.
- Trustees of Vernon Soc. v. Hills**, 6 *Cow.* 23; s. c., 16 *Am. Dec.* 429. See *Slee v. Bloom*. Followed (Right of corporation *de facto* to sue) in *Regents v. Williams*, 9 *Gill & J. (Md.)* 365; s. c., 31 *Am. Dec.* 72, 111, with note.
- Trustees of Watertown v. Cowen**, 4 *Paige*, 510; s. c., 27 *Am. Dec.* 80, with note containing citations. See *Adams v. Hopkins*; *Corning v. Lowerre*; *Hills v. Miller*; *Wy-*
- man v. Mayor*, &c. of N. Y. Applied (Covenant as to erections, &c. when running with the land) in *Blain v. Taylor*, 19 *Abb. Pr.* 230; *Weyman's Ex'rs v. Ringold*, 1 *Bradf.* 55; *Norman v. Wells*, 17 *Wend.* 151. Applied to covenant to pay rent,—in *Van Rensselaer v. Read*, 26 *N. Y.* 575. Disting'd (Right of adjoining owner to have restrained erection of nuisance in public place) in *Schermerhorn v. Mayor*, &c. of N. Y., 3 *Edw.* 123. Followed (Restraining violation of covenant against nuisances) in *Brouwer v. Jones*, 23 *Barb.* 161; Trustees of *Columbia College v. Lynch*, 70 *N. Y.* 452. Relied on in *Ravenswood v. Flemings*, 22 *W. Va.* 52; s. c., 46 *Am. R.* 485, 501. Explained and applied (Joinder of parties in proceedings to restrain nuisance) in *Murray v. Hay*, 1 *Barb. Ch.* 64. Applied in, as authority, *Bushnell v. Robeson*, 62 *Iowa*, 540, 545. Limited (Attorney's liability for fees of referee, &c.) in *Judson v. Gray*, 11 *N. Y.* 408, 414. Applied in *Campbell v. Cothran*, 1 *Sup'm. Ct. (T. & C.)* 80.
- Trustees of Wilson Collegiate Inst. v. Van Horne**. See *Wilson Collegiate Inst. v. Same*.
- Tucker v. Bishop**, 16 *N. Y.* 402. Applied (Bequest to several, when to be regarded as distributive) in *Everitt v. Everitt*, 29 *N. Y.* 73; *Titus v. Weeks*, 37 *Barb.* 150. Discussed in 1 *Jarm. on Wills*, Rand. & T. ed. 513, n.
- **v. Field**. See *Dupuy v. Wurtz*.
- **v. Ives**, 6 *Cow.* 193. Explained (Limitation of action, in case of account) in *Kimball v. Brown*, 7 *Wend.* 325.
- **v. Ladd**, 4 *Cow.* 47. See *Strong v. Smith*. Overruled, it seems (Setting aside pleas as false) in *Brewster v. Hall*, 6 *Cow.* 34.
- **v. Meeks**, 2 *Sweeny*, 736. Aff'd in 52 *N. Y.* 638. See (Construction of repugnant clauses in will) *Betts v. Betts*, 4 *Abb. N. C.* 317.
- **v. Rankin**, 15 *Barb.* 471. See *Fitch v. Comm'rs of Kirkland*; *Herrick v. Stover*. Overruled (Validity of order laying out highway) in *People v. Williams*, 36 *N. Y.* 441, 443. Disapproved in *Pratt v. People*, 13 *Hun.* 664, 667.
- **v. St. Clement's Church**, 3 *Sandf.* 242; s. c., 8 *N. Y. Leg. Obs.* 257. Aff'd in 8 *N. Y.* 558, n., but without opinion. Decision in 3 *Sandf.* explained (Charitable uses) in *Beekman v. People*, 27 *Barb.* 260, 275; *McCaughal v. Ryan*, 27 *Id.* 376, 398. See *Voornhies v. Presbyterian Church of Amsterdam*, 5 *How. Pr.* 58. Approved in *Hoffm. Ecc. L.* 178, as not affected by *Levy v. Levy*, 33 *N. Y.* 97; *Bascom v. Albertson*, 34 *Id.* 584.
- **v. Tucker**, 5 *Barb.* 99. Aff'd in 5 *N. Y.* 408. See *Hone v. Van Schaick*; *Lang v. Ropke*.
- **v. —**, 4 *Keyes*, 136; s. c., 4 *Abb. Ct. App. Dea.* 428. Applied (Surrogates's power to try claim) in *Stilwell v. Carpenter*, 2 *Abb. N. C.* 268; *Cooper v. Felter*, 6 *Lans.*

- 487; *McNulty v. Hurd*, 72 *N. Y.* 520; *Leviness v. Cassebeer*, 3 *Redf.* 497; *Keteltas v. Green*, 9 *Hun.* 602; *Estate of Shaw*, *Tuck.* 365. Disting'd in *Shakespeare v. Markham*, 72 *N. Y.* 400, 407, which aff'd 10 *Hun.* 311, 317, which see. Reviewed with *Magee v. Vedder*, 6 *Barb.* 352, in *Du Bois v. Brown*, 1 *Dem.* 317. Reviewed with *Glacius v. Fogel*, 88 *N. Y.* 434; *Strong v. Strong*, 3 *Redf.* 480; *Harris v. Ely*, 25 *N. Y.* 142; *Bevan v. Cooper*, 72 *Id.* 317; *People ex rel. Wright v. Coffin*, 7 *Hun.* 60; *Wright v. Fleming*, 12 *Id.* 469; 76 *N. Y.* 517; *Riggs v. Cragg*, *N. Y. Daily Reg.*, Oct. 21, 1882; *Bonfanti v. Deguerre*, 3 *Bradf.* 429; *Hitchcock v. Marshall*, 2 *Redf.* 174; *Haskin v. Feller*, 3 *Id.* 321; *Leviness v. Cassebeer*, *Id.* 491; *Kyle v. Kyle*, 67 *N. Y.* 400; *Shakespeare v. Markham*, 72 *Id.* 400; *Boughton v. Flint*, 74 *Id.* 476; *Matter of Brown*, 3 *Civ. Pro. R. (Browne)* 39. Criticized in *People ex rel. Adams v. Westbrook*, 61 *How. Pr.* 138, 141. Compare *Boughton v. Flint*, 5 *Abb. N. C.* 215. Explained (Power of executors, &c. to enter into arbitration) in *Wood v. Tunncliffe*, 74 *N. Y.* 38, 45. Disting'd (What are disputed claims against estates) in *Underhill v. Newburger*, 4 *Redf.* 499, 503.
- *v. White*, 27 *How. Pr.* 97. See note to this case, in 28 *Id.* 78.
- *v. Woolsey*, 64 *Barb.* 142; s. c., 6 *Lans.* 482. Cited (Liability of principal for rent of place of business occupied by agent) in *Whart. Com. on Ag.* § 126.
- Tuckerman v. Brown**, 11 *Abb. Pr.* 389. To same effect another decision between same parties, in 23 *How. Pr.* 109, which was aff'd in 33 *N. Y.* 297.
- Tufts v. Tufts**, 18 *Wend.* 621. See *Little v. Harvey*. See (Judgment as lien for ten years) *Code Civ. Pro.* § 1251.
- Tugman v. Nat. Steamship Co.**, 13 *Hun.* 332. Aff'd in 76 *N. Y.* 207, which was rev'd as *Nat. S. S. Co. v. Tugman*, 106 *U. S.* 118.
- Tugwell v. Bussing**, 48 *How. Pr.* 89. Disting'd (Duty of sheriff to sell in parcels) in *Bennett v. Bagley*, 22 *Hun.* 408, 411.
- Tullis v. Miller**, 13 *Hun.* 363. See also (Jurisdiction of State court over action by assignee in bankruptcy) *Wheelock v. Lee*, 5 *Abb. N. C.* 72, n.
- Tunno v. Lagne**, 2 *Johns. Cas.* 1; s. c., 1 *Am. Dec.* 141; 1 *N. Y. Com. L. Law. ed.* 417; with brief note. Relied on (What will excuse notice of non-payment of note) in *Duggan v. King*, *Rice's L. (So. Car.)* 239. s. c., 33 *Am. Dec.* 107, 111, with note. Followed as settling the law (To whom only notary, &c. need give notice of protest) in *State Bk. of Elizabeth v. Ayers*, 2 *Halst. (N. J.)* 130; s. c., 11 *Am. Dec.* 535. See cases collected in *Chitty on Bills*, 236, a.
- Tuomey v. Dunn**, 42 *Super. Ct. (J. & S.)* 291. Another proceeding as *Tuomey v. Dunn* in 77 *N. Y.* 515.
- Turk v. Ridge** 41 *N. Y.* 201. Applied (Rights of one not party to contract, to benefit thereof) in *Simson v. Brown*, 63 *Id.* 360; *Vrooman v. Turner*, 69 *Id.* 284. Followed in *Pardee v. Treat*, 82 *Id.* 385, 393. Disting'd in *Coster v. Mayor of Albany*, 43 *Id.* 410. Explained and limited (What creates liability as on covenant) in *Booth v. Cleveland Mill Co.*, 74 *Id.* 15, 22.
- Turley v. North Am. Fire Ins. Co.** See *Inman v. Western Fire Ins. Co.*; *Jennings v. Chenango Mut. Ins. Co.*
- Turnbull v. Bowyer**, 40 *N. Y.* 456. Disting'd (Effect of payment on forged draft) in *Susquehanna Val. Nat. B'k v. Loomis*, 85 *Id.* 207, 212.
- *v. Martin*. 2 *Daly*, 428. Followed (Effect of misconduct, &c. of arbitrators) in *Fudickar v. Guardian Mut. Life Ins. Co.*, 37 *Super. Ct. (J. & S.)* 358, 378.
- *v. Trout*. See *Nelson v. Dubois*.
- Turner, Matter of**. See *Matter of Burke*.
- Turner v. B'k of Fox Lake**, 3 *Keyes*, 425; s. c., 4 *Abb. Ct. App. Dec.* 434; 2 *Transc. App.* 344. Aff'g *Tanner v. B'k of Fox Lake*, 23 *How. Pr.* 399. Decision in 3 *Keyes* explained and typographical errors corrected (Effect of taking check for draft) in *Smith v. Miller*, 6 *Abb. Pr. N. S.* 239, which was rev'd in 43 *N. Y.* 175, which see; and see *Same v. Same*, 52 *Id.* 548. Re-aff'd in *Burkhalter v. Second Nat. B'k of Erie*, 42 *Id.* 538. Disting'd in *First Nat. B'k v. Fourth Nat. B'k*, 77 *Id.* 320, 326, which rev'd 16 *Hun.* 332, 335, which see.
- *v. Burrows*, 5 *Wend.* 541. Aff'd in 8 *Id.* 145. Subsequent decision as *Burrows v. Turner*, in 24 *Id.* 276. These three decisions explained and applied (Extrinsic evidence as to interests covered by contract of insurance) in *Lee v. Adsit*, 37 *N. Y.* 97. Decision in 5 *Wend.* explained and applied in *Pitney v. Glen's Falls Ins. Co.*, 65 *N. Y.* 14. Decisions in 5 *Wend.*; 8 *Id.* applied (Insurance by part owner) in *Harvey v. Cherry*, 76 *N. Y.* 444.
- *v. Jaycox*, 40 *Barb.* 164. Aff'd in 40 *N. Y.* 470. Decision in 40 *Barb.* disting'd (Effect of reference in instrument to another) in *Bonnell v. Griswold*, 68 *N. Y.* 299. Decision in 40 *Id.* disting'd (Effect of reference to schedule in assignment for creditors) in *Holmes v. Hubbard*, 60 *Id.* 185, a case of bond of indemnity. Both decisions discussed in *Burrill on Assign.* § 138, 4 ed. Decision in 40 *N. Y.* explained (Preferences) in *Id.* § 211, n. 4. Disting'd (Effect of note, &c. signed by all of members of firm) in *Berkshire Woolen Co. v. Juillard*, 75 *N. Y.* 535, 540, which aff'd 13 *Hun.* 506, 512, which see.
- *v. Taylor*, 2 *Daly*, 278. Explained (Appeal from order of reference) in *Magown v. Sinclair*, 5 *Id.* 63, 71.
- *v. Treadway*, 53 *N. Y.* 650; s. c., more fully, 56 *How. Pr.* 28. Followed (Taking note for antecedent debt, as constituting holder for value) in *Ayres v. Leybold*, 6 *Daly*, 91, 94. Explained and ap-

- plied in *Phenix Ins. Co. v. Church*, 81 *N. Y.* 494.
- *v. Van Riper*, 43 *How. Pr.* 33. Approved as a well considered case, and followed in preference to *Utter v. Gifford*, 25 *Id.* 289 (Costs in action for trespass on lands) in *Keiny v. Ingraham*, 66 *Barb.* 250, 256.
- Turrill v. Dolloway**, 17 *Wend.* 426. Rev'd in 26 *Id.* 483.
- Tuthill v. Bogart**, 14 *Hun.* 487. Aff'd in 79 *N. Y.* 215.
- *v. Broakman*, 3 *Weekly Dig.* 546. Superseded (Action against personal representative in individual capacity) by *Code Civ. Pro.* § 1814.
- *v. Davis*, 20 *Johns.* 285. See *Stafford v. Rice*. Applied (Validity of new security, in case of usurious contract) in *Bullock v. Boyd*, *Hoffm.* 307.
- *v. Tracy*, 31 *N. Y.* 157. Dictum disapproved (Necessity of affidavits on sale on foreclosure by advertisement) in *Frink v. Thompson*, 4 *Lans.* 487, 491. Applied in *Mowry v. Sanborn*, 68 *N. Y.* 164; which rev'd 7 *Hun.* 385, which see. Followed in *Oshorn v. Merwin*, 12 *Id.* 332. See *Code Civ. Pro.* 1881, § 2400, n.
- Tuton v. Thayer**, 47 *How. Pr.* 180. Disting'd and explained (Guaranty of payment and collection) in *Hernandez v. Stilwell*, 7 *Daly*, 360, 365.
- Tuttle v. Hannegan**, 4 *Daly*, 92. Aff'd in 54 *N. Y.* 686.
- *v. Hunt*. See *Penfield v. Carpenter*.
- *v. Jackson*, 6 *Wend.* 213; s. c., 21 *Am. Dec.* 306, with note containing citations. See *Sterry v. Arden*; *Williamson v. Brown*. Followed (Statute forbidding purchase of pretended titles, not applicable to judicial sales) in *Truax v. Thorn*, 2 *Barb.* 159; *Hoyt v. Thompson*, 5 *N. Y.* 345. Criticised and disting'd in *Mann v. Fairchild*, 14 *Barb.* 556, a case of purchase by attorney. Applied (Effect of notice of instrument entitled to be recorded) in *Williams v. Birbeck*, *Hoffm.* 372. Explained in *Williamson v. Brown*, 15 *N. Y.* 358. Collated with conflicting cases (Possession as evidence of notice) in 17 *Am. L. Rev.* 849, 881.
- *v. Kip*, 19 *Johns.* 194. Applied (Right of bail to surrender principal) in *Toles v. Adeo*, 84 *N. Y.* 222, 240.
- *v. Love*. See *Trevor v. Wood*.
- *v. Mayo*, 7 *Johns.* 132. Applied (Necessity of proof of actual receipt, to sustain action for money had and received) in *Gilchrist v. Cunningham*, 8 *Wend.* 644.
- Tuxbury v. Miller**. See *Callagan v. Hallett*.
- *v. Smith*, 14 *How. Pr.* 395; s. c., 6 *Abb. Pr.* 329. Approved (Form of summons) in *Norton v. Cary*, 14 *Id.* 365.
- Tweed, Matter of**, 47 *How. Pr.* 162; s. c., fully reported as *Tweed v. Davis*, in 1 *Hun.* 252; 4 *Sup'm Ct. (T. & C.)* 1.
- Twenty-ninth St., Matter of**. See *Mercer St., Matter of*.
- Twinam v. Swart**, 4 *Lans.* 263. Limited (Value of use, as element of damage for detention of personal property) in *Allen v. Fox*, 51 *N. Y.* 562, 566. Followed (Liability of sheriff levying on exempt property) and *Frost v. Mott*, 34 *N. Y.* 253; *Cantrell v. Conner*, 6 *Daly*, 224, explained, in *Sullivan v. Farley*, 63 *How. Pr.* 371.
- Twombly v. Cassidy**, 21 *Hun.* 277. Aff'd in 82 *N. Y.* 155.
- Twomley v. Central Park, &c. R. R. Co.**, 69 *N. Y.* 158; s. c., 25 *Am. R.* 162, with note (Contributory negligence).
- Tyack v. Bromley**, 4 *Edw.* 258. Modified on appeal in 1 *Barb. Ch.* 519. Decision in 4 *Edw.* followed (Injunction to restrain one from interfering with officer) in *Palmer v. Foley*, 36 *Super. Ct. (J. & S.)* 14, 24.
- Tyler v. Etna Fire Ins. Co.**, 12 *Wend.* 507. Aff'd in 16 *Id.* 385. Both decisions followed (Insurable interest of one having contract for purchase) in *Acer v. Merchants' Ins. Co.*, 57 *Barb.* 68, 82. Decision in 12 *Wend.* applied (Duty of insurer to state extent of his interest) in *White v. Hudson River Ins. Co.*, 7 *How. Pr.* 343. Followed and approved in *Morrison's Adm'r v. Tennessee Mar. & Fire Ins. Co.*, 18 *Mo.* 262; s. c., 59 *Am. Dec.* 299, with extended note. Disting'd (Insurer's right to subrogation, in case of such contract) in *Clinton v. Hope Ins. Co.*, 45 *N. Y.* 466. Both decisions collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 837.
- *v. Ames*, 6 *Lans.* 280. See *Hart v. Hart*. Followed (Termination of contract to render services to satisfaction of another) in *Spring v. Ansonia Clock Co.*, 24 *Hun.* 176. Cited with *Potter v. Merchants' Bank*, 28 *N. Y.* 641 (Power of principal to revoke agent's authority) in *Whart. Com. on Ag.* § 95.
- *v. Gardiner*, 35 *N. Y.* 559. See *Delafield v. Parish*. Applied (Proof of undue influence on testator) in *Matter of Rollwagen*, 48 *How. Pr.* 322, which was aff'd in 3 *Hun.* 121, 139, which see. Followed in *Baker's Will*, 2 *Redf.* 179, 193; *Van Kleeck v. Phipps*, 4 *Id.* 132. Applied but disting'd in *Kinne v. Johnson*, 60 *Barb.* 69, 72, 78. Explained and applied in *Voorhees v. Voorhees*, 39 *N. Y.* 463, 467. Reviewed with other cases in 3 *Redf.* 63. Applied to transfer of property, in *Platt v. Platt*, 2 *Sup'm Ct. (T. & C.)* 48. Included with notes in *Redf. Lead. Cas. on Wills*, 451. Disting'd (Practice on review of decision of supreme court on appeal from surrogate's decree on application for probate) in *Sutton v. Ray*, 72 *N. Y.* 482, 485.
- *v. Heidorn*, 46 *Barb.* 439. Disting'd (Presumption as to payment of rent) in *Lyon v. Chase*, 51 *Id.* 15, but see *Same v. Adde*, 63 *Id.* 100. Disting'd in *Bodell v. Shaw*, 59 *N. Y.* 46, 50. See authorities collected (Reserving rent on conveyance in fee) in 16 *Am. L. Rev.* 39.
- *v. Strang*, 21 *Barb.* 198. See (When

- title to personal property passes) in *O'Brien v. Jones*, 47 *Super. Ct. (J. & S.)* 67, 74. Approved in *Jones on Chat. M.* § 188.
- **v. Taylor**, 8 *Barb.* 585. See cases collected (Sale by one tenant in common) in 12 *Am. L. Reg. N. S.* 425.
- **v. Willis**, 33 *Barb.* 327; s. c., as *Tyler v. Whitney*, 12 *Abb. Pr.* 465. Applied with *Underwood v. Sutcliffe*, 10 *Hun.* 453; *Morgan v. Potter*, 17 *Id.* 403 (Regularity of receiver's appointment) in *Wright v. Nstrand*, 94 *N. Y.* 31, 45. Compared with other authorities in *High. on Receiv.* § 404, n. 1.
- Tymason v. Bates.** See *Bates v. Tymason*.
- Tyng v. Commercial Warehouse Co.**, 58 *N. Y.* 308. See *Thayer v. Manley*. See to same effect (Usury in charging commissions) in *Caldwell v. Commercial Warehouse Co.*, 4 *Sup'm. Ct. (T. & C.)* 179. Applied (Amendment of pleadings on appeal) in *Hudson v. Swan*, 7 *Abb. N. C.* 333.
- **v. Fields**, 5 *Sup'm. Ct. (T. & C.)* 672; s. c., fully reported in 3 *Hun.* 75.
- **v. Marsh**, 51 *How. Pr.* 465. Further proceeding in 42 *Super. Ct. (J. & S.)* 235.
- **v. Theological Seminary Prot. Episc. Ch.**, 46 *Super. Ct. (J. & S.)* 250. Aff'd, it seems, in 86 *N. Y.* 636, but without opinion.
- **v. U. S. Submarine and Torpedo Boat Co.**, 1 *Hun.* 161. Re-argument denied in *Id.* 309. Aff'd in 49 *How. Pr.* 360; mem. s. c., 60 *N. Y.* 644, without reviewing the merits.
- Tyson v. Blake**, 22 *N. Y.* 558: Disting'd (Limitation over, when repugnant to prior bequest) in *Floyd v. Fitcher*, 38 *Barb.* 409, 413. Applied with *Norris v. Beyea*, 13 *N. Y.* 273; *Smith v. Van Ostrand*, 64 *Id.* 278; but *Terry v. Wiggins*, 47 *Id.* 512, disting'd in *Campbell v. Beaumont*, 91 *Id.* 464. Applied (Requiring security from legatee for life) in *Livingston v. Murray*, 68 *Id.* 493; *Montfort v. Montfort*, 24 *Hun.* 120, 122. Disting'd in *Smith v. Van Ostrand*, 64 *Id.* 278, 286.
- U.
- Udall v. Kenney**, 3 *Cow.* 590. Approved (Wife's equities in her own personal effects) in *Tyler on Inf. & Cov.* 2 ed. § 258.
- Uhl v. Neuberger**, 11 *Weekly Dig.* 296. Explained (Running of statute of limitations, as affected by pendency of bankruptcy proceedings) in *Rosenthal v. Plumb*, 25 *Hun.* 336, 339.
- Ulster County Bank v. McFarlan**, 5 *Hill*, 432. Aff'd in 3 *Den.* 553. Decision in 5 *Hill* commented on (Promise to accept negotiable paper) in *Reelf. & B. Lead. Cas. on B. of Exch.* 57.
- Ulster County Sav'gs Inst. v. Decker**, 11 *Hun.* 515. Rev'd as *Same v. Leake*, 73 *N. Y.* 161; s. c., 29 *Am. R.* 115. Brief mem.

- of decision granting motion to correct remittitur as to costs, in 74 *Id.* 604.
- **v. Leake.** See *Same v. Decker*.
- Umfreville v. Keeler**, 1 *Sup'm. Ct. (T. & C.)* 486. Modified in 3 *Id.* 795.
- Underhill v. North Am. Kerosene Gas Light Co.**, 36 *Barb.* 354. Further decision in 31 *How. Pr.* 34.
- **v. Pomeroy**, 2 *Hill*, 603. Aff'd in 7 *Id.* 388.
- **v. Reinor.** See *Shaw v. Davis*; *Sheldon v. Van Buskirk*.
- **v. Saratoga & Washington R. R.**, 20 *Barb.* 455. Explained (Effect of grantor of estate on condition conveying away estate, before breach) in 2 *Washb. on Real Prop.* 4 ed. 17.
- **v. Taylor**, 2 *Barb.* 348. Disting'd (Mitigation of damages for libel) in *Palmer v. Laug*, 7 *Daly*, 33, 37.
- **v. Van Cortlandt**, 2 *Johns. Ch.* 339. Rev'd in 17 *Johns.* 405. See *Peters v. Newkirk*. Decision in 2 *Johns. Ch.* cited for elaborate review of the authorities (Effect of mistake of fact in award) in 2 *Parson. on Contr.* 703, n. h. Quoted (Excluding depositions in equity) in 3 *Greenl. on Ev.* 14 ed. § 351, n. 3.
- Underwood v. Farmers' Joint Stock Ins. Co.**, 57 *N. Y.* 400; s. c., 48 *How. Pr.* 367. Subsequent decision in 3 *Weekly Dig.* 243 aff'd in 71 *N. Y.* 605, but without opinion. See cases in Ct. of App. Law Inst. Libr. N. Y. City. Decision in 57 *N. Y.* disting'd (Waiver as to proof of loss) in *Goodwin v. Massachusetts Mut. Life Ins. Co.*, 73 *Id.* 480, 494. Followed in *Bell v. Lycoming F. Ins. Co.*, 19 *Hun.* 238, 240. Explained in *Rokes v. Amazon Ins. Co.*, 51 *Id.* 512; s. c., 34 *Am. R.* 323, citing also *Owen v. Farmers' Joint Stock Ins. Co.*, 57 *Barb.* 518.
- **v. Green**, 3 *Robt.* 86. Rev'd in 42 *N. Y.* 140. See *Clark v. Mayor, &c. of Syracuse*. Decision in 42 *N. Y.* applied (Discretion of officer of limited jurisdiction) in *Hoelt v. Seaman*, 38 *Super. Ct. (J. & S.)* 62, 72. Followed (Dead hog not *per se* a nuisance) in *River Rendering Co. v. Behr*, 77 *Mo.* 91; s. c., 46 *Am. R.* 6.
- **v. —**, 36 *Super. Ct. (J. & S.)* 481. Aff'd in effect, but appeal dismissed, in 56 *N. Y.* 247. See (What not included in time allowed for issuing execution) *Code Civ. Pro.* 1881, § 1382, n.
- **v. Jackson.** See *Harrison v. Stevens*.
- **v. Stuyvesant**, 19 *Johns.* 181; s. c., 10 *Am. Dec.* 215, with note. See *Matter of Lewis St.*; *Wyman v. Mayor, &c. of N. Y.* Approved (Acceptance of street by public) in *People v. Jones*, 6 *Mich.* 184. Relied on with *City of Oswego v. Oswego Canal Co.*, 6 *N. Y.* 257; *Badeau v. Mead*, 14 *Barb.* 328; *Clements v. Village of West Troy*, 16 *Id.* 251; *Trustees of Jordan v. Otis*, 37 *Id.* 50; in *Buchanan v. Curtis*, 25 *Wis.* 90; s. c., 3 *Am. R.* 2. Collated with other cases in *Mil's Thomps. on Highw.* 3 ed. 63. Applied (Effect of conveyance, &c. of land, as

- bounded on street) in *Howe v. Alger*, 4 *Allen (Mass.)* 210, 216.
- *v. Sutcliffe*, 10 *Hun*, 453. Rev'd in 77 *N. Y.* 58. Decision in 10 *Hun* criticised (Nature of supplementary proceedings) in *Wright v. Nostrand*, 94 *N. Y.* 31, 45. Decision in 77 *Id.* disting'd (Property passing to receiver in supplementary proceedings) in *Powell v. Waldron*, 89 *Id.* 328.
- Unger v. Forty-second St., &c. R. R. Co.**, 6 *Robt.* 237. Aff'd in 51 *N. Y.* 497. Decision in *Id.*, included with notes (Degree of care to be used towards people using horse-railroad track) in 1 *Thomps. on Negl.* 392.
- *v. People's Fire Ins. Co.*, 4 *Daly*, 96. Collated with *Stewart v. Phoenix Ins. Co.*, 5 *Hun*, 261; *Wolf v. Goodhue Ins. Co.*, 43 *Barb.* 400; *Moadinger v. Mechanics' Ins. Co.*, 2 *Hall*, 490; and other cases (Over valuation that vitiates policy) in 35 *Am. R.* 74, *n.*
- Union Bk. v. Bush**, 36 *N. Y.* 631. Applied (Amendment in proceedings for confession of judgment) in *Cook v. Whipple*, 55 *Id.* 150, 166.
- *v. Clossey*, 10 *Johns.* 271. Discussed (Liability of sureties on bond of bank officer) in *Ang. & A. on Corp.* § 319, 11 ed.
- *v. Coster*, 3 *N. Y.* 203; *s. c.*, 53 *Am. Dec.* 280, with note, aff'g 1 *Sandf.* 563. See *Allen v. Rightmire*; *Birkhead v. Brown*; *Douglass v. Howland*; *Leonard v. Vredenberg*. Decision in 3 *N. Y.* applied (What is general guaranty) in *Monroe v. Pilkington*, 14 *How. Pr.* 254. Reviewed and explained with *Monroe v. Pilkington*; *Birkhead v. Brown*, 2 *Den.* 375, in *Evansville B'k v. Kaufmann*, 93 *N. Y.* 273, 285. Explained in *Bissell v. Lewis*, 4 *Mich.* 457. Compare *Lowry v. Adams*, 22 *Vt.* 160; *Bank of Ireland v. Archer*, 11 *Mees. & W.* 383; *Russell v. Wiggins*, 2 *Story*, 214. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 341. Explained (Sufficiency of consideration for guaranty) in *Draper v. Snow*, 6 *Duer*, 665, which was aff'd in 20 *N. Y.* 335, which see. Applied in *Gates v. McKee*, 13 *Id.* 232, 238; *Church v. Brown*, 21 *Id.* 318; *Grant v. Hotchkiss*, 26 *Barb.* 66. Approved (Notice of acceptance of contract of guaranty) in *Wilcox v. Draper*, 12 *Neb.* 135, 150. Quoted in 2 *Pars. on Contr.* 14, *n. e.* Approved (Difference between contracts of guaranty and ordinary simple contracts) in *Baylis on Sureties*, &c. 120.
- *v. Mayor, &c. of N. Y.*, 51 *Barb.* 159. Rev'd in 51 *N. Y.* 638. See *Forrest v. Mayor, &c. of N. Y.*
- *v. Mott*, 6 *Abb. Pr.* 315. Further decision in 8 *Id.* 150; *s. c.*, 16 *How. Pr.* 525, which was aff'd in 9 *Abb. Pr.* 106. Also further decisions in 18 *How. Pr.* 506, and in 19 *Id.* 114; *s. c.*, 10 *Abb. Pr.* 372, which latter was rev'd in 19 *How. Pr.* 267; *s. c.*, 11 *Abb. Pr.* 42. See *Troy & Boston R. R. Co. v. Tibbits*. Decision in 6 *Abb. Pr.* explained (Grounds for vacating order of arrest) in *Barret v. Gracie*, 34 *Barb.* 20, 25. Decisions in 18 *How. Pr.*; 19 *Id.* approved and followed (Amendment on trial before referee) in *Ford v. Ford*, 53 *Barb.* 525, 528.
- Union B'k of Rochester v. Gregory**, 46 *Barb.* 98. See (Notary's certificate) *Code Civ. Pro.* 1881, § 923, *n.*
- Union B'k of Sandusky v. Torrey**, 5 *Duer*, 626. Followed (Right to read entire deposition in evidence) in *Marshall v. Watertown Steam Engine Co.*, 10 *Hun*, 464.
- Union Consolidated Mining Co. v. Raht**, 9 *Hun*, 208. Appeal dismissed, it seems, in 63 *N. Y.* 629, but without opinion.
- Union Cotton Manufactory v. Lobdell**, 13 *Johns.* 462. Applied (Joinder of counts) in *Norris v. School District*, 12 *Me.* 293; *s. c.*, 28 *Am. R.* 182, with note.
- Union Dime Savgs. Inst. v. Andariese**, 19 *Hun*, 310. Aff'd as *Same v. Anderson*, in 83 *N. Y.* 174.
- *v. Anderson*. See *Same v. Andariese*.
- *v. Duryea*, 3 *Hun*, 210; *s. c.*, more fully, 5 *Sup'm. Ct. (T. & C.)* 292. Aff'd in 67 *N. Y.* 84.
- *v. Osley*, 4 *Hun*, 657. Compared with other cases (Determination of contested claims on reference as to surplus in foreclosure) in *Thomas on Mort.* 381. Compare *Bergen v. Snedecor*, 8 *Abb. N. C.* 51. Collated with other cases in *Colby on Forec.* 40.
- Union Hotel Co. v. Hersee**, 15 *Hun*, 371. Rev'd in 79 *N. Y.* 454; *s. c.*, 35 *Am. R.* 536.
- Union India Rubber Co. v. Tomlinson**, 1 *E. D. Smith*, 364. For contrary rule at common law (Grounds of action on contract for services) see *Rosc. N. P.* 555. See also *Abb. Tr. Ev.* 357.
- Union Manuf. Co. v. Lounsbury**, 42 *Barb.* 125. Aff'd in 41 *N. Y.* 363.
- Union Nat. B'k v. Warner**, 12 *Hun*, 306. See *Fullerton v. Viall*. Disting'd with *Davis v. Leopold*, 87 *N. Y.* 620 (Right of debtor to make preference among creditors without fraud) in *Jewett v. Noteware*, 30 *Hun*, 192. Re-aff'd with *Briggs v. Merrill*, 58 *How. Pr.* 389; *Fullerton v. Viall*, 42 *Id.* 294; *Goodhue v. Berrien*, 2 *Sandf. Ch.* 630, 636 (Fraudulent grantee not to be protected even for amount actually paid) in *Ferguson v. Hillman*, 55 *Wis.* 181, 191.
- Union Nat. B'k of Pittsburg v. Wheeler**, 36 *Super. Ct. (J. & S.)* 536. Aff'd in 60 *N. Y.* 612, which was aff'd as *Wheeler v. Nat. B'k*, 96 *U. S.* 268.
- Union Nat. B'k of Troy v. Bassett**, 3 *Abb. Pr. N. S.* 359. Followed (Amendment of answer) in *Barnett v. Meyer*, 10 *Hun*, 110.
- *v. Sixth Nat. B'k of N. Y.*, 1 *Lans.* 13. Aff'd in 43 *N. Y.* 452. Decision in *Id.* applied (Negligence, as affecting right to recover back, money paid by mistake) in *Nat. B'k of Commerce v. Nat. Mechanics' B'k's Assoc.*, 46 *How. Pr.* 380. Extended and applied in *U. S. v. Nat. Park B'k*; *U. S. Dist. Ct. S. D. N. Y.* 6 *Fed. Rep.* 854.

**Union Trust Co. v. Whiton**, 17 *Hun*, 593. Appeals dismissed in 78 *N. Y.* 491. Previous decision in 9 *Hun*, 657. See *Howell v. Van Siclen*. Decision in 78 *N. Y.* distinguishing (Costs on appeal) in *First Nat. B'k of Meadville v. Fourth Nat. B'k of N. Y.*, 84 *Id.* 470. Reviewed with *First Nat. B'k of Meadville v. Fourth Nat. B'k of N. Y.*; *Howell v. Van Siclen*, 8 *Hun*, 524; *Isaacs v. N. Y. Plaster Mills*, 43 *Super. Ct. (J. & S.)* 397; *Donovan v. Board of Education*, 1 *Civ. Pro. R.* 311; *Provost v. Farrell*, 18 *Hun*, 303, in *Havemeyer v. Havemeyer*, 47 *Super. Ct. (J. & S.)* 104. Decision in 18 *Hun* explained with *Donovan v. Vandermark*, 22 *Id.* 307; *Mott v. Consumer's Ice Co.*, 8 *Daly*, 244; *Howell v. Van Siclen*, 4 *Abb. N. C.* 1; 8 *Hun*, 524, in 11 *Abb. N. C.* 217, *n.* Decision in 9 *Hun* explained (Evidence in action for money lent) in 2 *Greenl. on Ev.* 14 ed. § 112, *n. b.*

**Union Turnpike Co. v. Jenkins**. See *Jenkins v. Union Turnpike Co.*

**United Ins. Co. v. Lenox**, 1 *Johns. Cas.* 377. Aff'd in 2 *Id.* 443.

— **v. Robinson**, 2 *Cai.* 280. Aff'd in 1 *Johns.* 592.

**U. S. v. Crookshank**, 1 *Edw.* 233. See correction of line 2 of p. 241, in *Id.* 693.

— **v. Dodge**, 14 *Johns.* 95. It is now conceded (Jurisdiction in actions on bonds given for duties) that such an act of Congress imposes no obligation upon the State Court to entertain jurisdiction, and that they do so voluntarily, if at all.

— **v. Graff**, 4 *Hun*, 634; *s. c.*, more fully, 67 *Barb.* 304. Compare (Attachment of contents of safe containing securities deposited with trust company) in *Gregg v. Hilson*, 8 *Phil. (Pa.)* 91.

— **v. Lathrop**, 17 *Johns.* 4. Denied (Jurisdiction of State court over proceeding to enforce penalty under Federal law) in *Bletz v. Columbia Nat. B'k*, 87 *Penn. St.* 87; *s. c.*, 30 *Am. R.* 343, 347. Relied on in *Brigham v. Clafflin*, 31 *Wis.* 607; *s. c.*, 11 *Am. R.* 623, 628. Modified in *Stearns v. U. S.*, 2 *Paine*, 310. Discussed in 1 *Kent Com.* 402.

— **v. White**, 2 *Hill*, 59. Discussed (State statutes of limitation whether binding on government of U. S.) in *Ang. on Limit.* § 40, 6 ed.

**U. S. Bank v. Chapin**. See *Macomber v. Dunham*; *Miller v. Burroughs*.

— **v. Haskins**, 1 *Johns. Cas.* 132. Followed with *Bank of Utica v. Smalley*, 2 *Cow.* 778 (Necessity that corporation suing set forth manner of its organization) in *Selma & Tennessee R. R. Co. v. Tipton*, 5 *Ala.* 787; *s. c.*, 39 *Am. Dec.* 344, with note.

— **v. Stearns**, 15 *Wend.* 314; *s. c.*, 12 *N. Y. Com. L. Law. ed.* 877, with brief note. See *Bank of Utica v. Smalley*; *Noble v. Paddock*. Explained (Judicial notice of laws of Congress by State courts) in *Platt v. Crawford*, 8 *Abb. Pr. N. S.* 297, 304.

Followed (Agents as witnesses in behalf of employers) in *Union Bank v. Meeker*, 4 *La. Ann.* 189; *s. c.*, 50 *Am. Dec.* 559, with note.

**U. S. Reflector Co. v. Rushton**, 7 *Daly*, 410. Quoted (Necessity of acceptance in case of sale of goods over fifty dollars) in *Benj. on Sales*, § 155, *n. o* (Bennett's 4 *Am. ed.*). Explained in 1 *Id.* § 158, *n. 10* (Corbin's 4 *Am. ed.*).

**U. S. Tel. Co. v. Western Union Tel. Co.**, 56 *Barb.* 46. Explained (Action against telegraph company for refusal to send a message) in 2 *Para. on Contr.* 257, *n. t.*

**U. S. Trust Co. v. Brady**, 20 *Barb.* 119. Said in *People v. Bowen*, 30 *Id.* 39, to have been aff'd by Ct. of App.

— **v. U. S. Fire Ins. Co.** See *Rosevelt v. Brown*.

**U. S. Rolling Stock Co., Matter of**, 55 *How. Pr.* 286. Further proceeding in 55 *Id.* 286. See *Taylor v. Atlantic & Great Western R. R. Co.*

**Updike v. Campbell**, 4 *E. D. Smith*, 570. Collated with other cases (Lease for unlawful purposes) in *McAdam on Landl. & T.* 2 ed. § 77.

**Upton v. Vail**, 6 *Johns.* 181; *s. c.*, 5 *Am. Dec.* 210, with note; 4 *N. Y. Com. L. Law. ed.* 92, with brief note. Disting'd (Liability for false representations) in *Gallagher v. Brunel*, 6 *Cow.* 353. Reviewed with *Young v. Covell*, 8 *Johns.* 23; *Veeder v. Fonda*, 3 *Paige*, 94; *Dale v. Roosevelt*, 5 *Johns. Ch.* 174, in *Bean v. Herrick*, 12 *Me.* 262; *s. c.*, 28 *Am. Dec.* 176, with note. Said in 5 *Am. Dec.* 212, *n.*, to have an importance in the adjudications of *N. Y.*, like that of *Pasley v. Freeman*, 3 *T. R.* 51.

**Utica & Black River R. R. Co. v. Stewart**, 33 *How. Pr.* 312. Compare (Notaries' power out of county) *L.* 1875, c. 458.

**Utica, Chenango, &c. R. R. Co., Matter of**, 56 *Barb.* 456. Approved and explained (Valuation of land taken for railroad purposes) in *Matter of Prospect Park & C. I. R. R. Co.*, 24 *Hun*, 200. Followed with *Matter of N. Y. Central, &c. R. R. Co.*, 15 *Hun*, 63, but *Troy & Boston R. R. Co. v. President, &c. Northern Turnpike Co.*, 16 *Barb.* 100; *Albany Northern R. R. Co. v. Lansing*, *Id.* 68; *Canandaigua & Niagara Falls R. R. Co. v. Payne*, *Id.* 273; *Union Village & Johnsonville R. R. Co. v. Akin*, 53 *Id.* 457, disapproved in *Matter of N. Y., Lackawanna, &c. R. R. Co.*, 29 *Hun*, 1.

**Utica B'k v. Gauson**. See *Bank of Rutland v. Buck*.

— **v. Van Gieson**. See *Mayor, &c. of N. Y. v. Erben*.

**Utica City B'k v. Buel**, 17 *How. Pr.* 498; *s. c.*, 9 *Abb. Pr.* 335. See (Service of injunction order) *Code Civ. Pro.* 1881, § 2452, *n.*

**Utica Cotton Man'fg Co. v. Supervisors of Oneida**, 1 *Barb. Ch.* 432. Disapproved (Taxation of toll bridges) in *Hudson River*



Bridge Co. v. Patterson, 11 *Hun*, 525, 527.

**Utica Ins. Co. v. Bloodgood**, 4 *Wend*. 652. See Same v. Scott. Disting'd (Estoppel to assert right given by statute) in Harper v. Leal, 10 *How. Pr.* 281. Disting'd (Agreement that suspends operation of statute of limitations) in Rowe v. Thompson, 15 *Abb. Pr.* 383; Shapley v. Abbott, 42 *N. Y.* 453; Allen v. Webster, 15 *Wend*. 289. Explained in Gaylord v. Van Loan, 15 *Wend*. 313. Followed, and Allen v. Webster, 15 *Wend*. 289, disting'd in Burton v. Stephens, 24 *Vt.* 131; s. c., 58 *Am. Dec.* 153. Questioned with Utica Ins. Co. v. Caldwell, 3 *Wend*. 296; Same v. Kip, 8 *Cow*. 20 (Effect of note discounted, &c. by corporation contrary to law) in Pratt v. Eaton, 18 *Hun*, 295. Doubted with Utica Ins. Co. v. Cadwell, 3 *Wend*. 296; Same v. Kip, 8 *Cow*. 20; in New Hope, &c. Co. v. Poughkeepsie Silk Co., 25 *Wend*. 650. Reviewed with other cases in Marvin v. Hymers, 12 *N. Y.* 280. Doubted and disting'd with Utica Ins. Co. v. Cadwell; Same v. Kip; Same v. Scott, 19 *Johns.* 1; *Re Jaycox*, 12 *Blatch. C. Ct.* 209, 214, and see 18 *Id.* 70, 77.

— **v. Cadwell**, 3 *Wend*. 296. See Same v. Bloodgood; Same v. Scott. Approved (Loan by insurance company, when not usurious) in N. Y. Fire Ins. Co. v. Donaldson, 3 *Edw.* 199. Applied to loan by banker, in Beals v. Benjamin, 33 *N. Y.* 65. Applied (Loan in consideration of collateral contract, when not usurious) in Clarke v. Sheehan, 47 *Id.* 196.

— **v. Kip**, 8 *Cow*. 20. Subsequent decision in 3 *Wend*. 367. See Same v. Bloodgood. Decision in 8 *Cow*. explained (Effect of note discounted by corporation, contrary to law) in Beach v. Fulton B'k, 3 *Wend*. 583; Tracy v. Talmage, 14 *N. Y.* 189. Disting'd (Recovery of money paid on illegal contract) in Peck v. Burr, 10 *N. Y.* 298; Perkins v. Savage, 15 *Wend*. 415. Applied in Spring Co. v. Knowlton, 108 *U. S.* 49, 60; which overruled, in effect, 57 *N. Y.* 518, 545, which see.

— **v. Scott**, 19 *Johns.* 1. Rev'd in 8 *Cow*. 709. See Utica Ins. Co. v. Bloodgood. Decision in 19 *Johns.* questioned with Same v. Kip, 8 *Cow*. 20; Same v. Cadwell, 3 *Wend*. 296; Same v. Kip, *Id.* 369; Same v. Bloodgood, 4 *Id.* 652 (Recovery of money paid on void contract) in Curtis v. Leavitt, 15 *N. Y.* 9, 97. Cited as authority with Utica Ins. Co. v. Cadwell, 3 *Wend*. 296; Utica Ins. Co. v. Bloodgood, 4 *Id.* 652; Marville v. American Tract Society, 123 *Mass.* 129; s. c., 25 *Am. R.* 40 44. Decision in 19 *Johns.* followed (Effect of note discounted by corporation, contrary to law) in Utica Ins. Co. v. Hunt, 1 *Wend*. 56. Applied in Pratt v. Short, 79 *N. Y.* 447. Discussed in *Ang. & A. on Corp.* § 111, 11 ed. Explained in *Id.* §§ 265, 269. Decision in 8 *Cow*. disting'd, in N. Y. State Loan and Trust Co. v. Helmer, 77 *N. Y.* 64.

— **v. Toledo Ins. Co.**, 17 *Barb.* 132. Approved (Re-insurance, when invalid as effected by one acting as agent for both parties) in N. Y. Central Ins. Co. v. National Protection Ins. Co., 14 *N. Y.* 85, 92.

**Utley v. Healey**, 1 *Cow*. 345. Disting'd (Surrender of lease) in Roe v. Conway, 74 *N. Y.* 201, 206.

**Utter v. Gifford**, 25 *How. Pr.* 289. See Turner v. Van Riper. Overruled (Costs in action for trespass) in Turner v. Van Riper, 43 *How. Pr.* 33, 37. Opposed in Keiny v. Ingraham, 66 *Barb.* 250, 256.

— **v. Stuart**, 30 *Barb.* 20. Disting'd (Vendee's right to recover back payments on rescission of contract of sale) in Tice v. Zinsser, 76 *N. Y.* 549, 552. Compared and doubted in 7 *Am. L. Reg. N. S.* 79.

## V.

**Vail v. Foster**, 4 *N. Y.* 312. Applied (Right of creditor to benefit of collateral securities) in Kelly v. Cushing, 48 *Barb.* 271. Disting'd (Effect of note of third person received for debt) in Soffe v. Gallagher, 3 *E. D. Smith*, 517. Quoted in 2 *Benj. on Sales*, § 1031, n. 17, 941 (Corbin's 4 *Am. ed.*).

— **v. Hamilton**, 20 *Hun*, 355. Aff'd in 85 *N. Y.* 453. Decision in 20 *Hun* disting'd (Corporate mortgage, when invalidated by failure of proof of assent of stockholders) in Rochester Savings Bank v. Averell, 26 *Id.* 643.

— **v. Knapp**, 49 *Barb.* 299. Applied (Injunction against proceedings in other State) in Clafin & Co. v. Hamlin, 62 *How. Pr.* 285. Relied on in Snook v. Snetzer, 25 *Ohio St.* 516. Commented on in 1 *High on Inj.* 2 ed. § 105, n. 1.

— **v. Lane**, 4 *Hun*, 653; s. c., more fully, 67 *Barb.* 281.

— **v. Lewis**, 4 *Johns.* 450; s. c., 4 *Am. Dec.* 300. Applied (Effect of salicet, &c. in pleading) in Gleason v. McVickar, 7 *Cow*. 45.

— **v. Owen**, 19 *Barb.* 22. Approved and followed with Brown v. Smith, 24 *Id.* 419 (Liability of assessor) in Bell v. Pierce, 48 *Barb.* 51. Approved, and Prosser v. Secor, 5 *Id.* 607, disapproved in Barhyte v. Shepherd, 35 *N. Y.* 238, 242. Explained and limited in Wade v. Matheson, 4 *Lans.* 158.

— **v. Rensen**, 7 *Paige*, 206. Explained (Waiver of right of appeal) in Benkard v. Babcock, 17 *Abb. Pr.* 423.

— **v. Rice**, 5 *N. Y.* 155. Disting'd (Evidence of commercial usage) in Fox v. Parker, 44 *Barb.* 546.

— **v. Smith**, 4 *Cow*. 71. See (Date of judgment) Moore v. Tracy, 7 *Wend*. 229; Matter of Worthington, 16 *Alb. L. J.* 63; and see *Abb. Tr. Ev.* 538.

— **v. Vail**, 4 *Paige*, 317. Further action relative to same will, in 7 *Barb.* 226; which was aff'd in 10 *Id.* 69. See Kilpatrick v.

- Johnson. Decision in 7 *Barb.* followed (Estoppel of persons not parties to former action) in *Knauth v. Bassett*, 34 *Id.* 31, 40. Decision in 4 *Paige* explained with *Hull v. Hull*, 24 *N. Y.* 647 (Right to accumulations of personal property) in *Cook v. Lowry*, 95 *Id.* 103. Disting'd in *Grant v. Grant*, 3 *Redf.* 296.
- Valarino v. Thompson**, 7 *N. Y.* 576. Cited (Ambassador's privilege) in 1 *Kent Com.* 39, *Holmes' ed.* n. 1. Compared in 1 *Id.* 45, n. 1.
- Vale v. Bliss**, 50 *Barb.* 358. See *Maloy v. N. Y. Central R. R. Co.* Explained (Nuisance as caused by excavations in highways) in *Wood on Nuis.* 2 ed. § 277.
- Valentine, Matter of**, 10 *Hun.* 83. Rev'd in 72 *N. Y.* 184; s. c., 3 *Abb. N. C.* 285. See (Reference on application for sale of real estate of lunatic) *Code Civ. Pro.* 1881, § 2354, n.
- Valentine v. Belden**, 20 *Hun.* 537. For a different rule (Right of administrator to purchase on foreclosure) in case of guardians, see *Low v. Purdy*, 2 *Lans.* 422.
- **v. Conner**, 40 *N. Y.* 248. Followed (Right of General Term to look beyond findings of fact) in *Porter v. McGrath*, 41 *Super. Ct. (J. & S.)* 84, 98.
- **v. Northrup**, 12 *Wend.* 494. Followed (What is ouster of co-tenant) in *Trustees of Church, &c. of North Greig v. Johnson*, 66 *Barb.* 119, 123.
- **v. Valentine**, 2 *Barb. Ch.* 430. See *Westerfield v. Westerfield*. Followed (Executor's, &c. commissions) in *Betts v. Betts*, 4 *Abb. N. C.* 317, 437, 442; *Lansing v. Lansing*, 1 *Abb. Pr. N. S.* 284. Disting'd with *Drake v. Price*, 5 *N. Y.* 430; *Betts v. Betts*, 4 *Abb. N. C.* 317, and *Morgan v. Hannas*, 13 *Abb. Pr. N. S.* 361, criticised in *Hancox v. Meeker*, 95 *N. Y.* 528. Followed (Double commissions to executors) in *Drake v. Price*, 7 *Barb.* 390; which was aff'd in 5 *N. Y.* 431, which see; see also *Hall v. Hall*, 78 *Id.* 539. Explained in *Matter of Carman*, 3 *Redf.* 48. Disting'd in *Ward v. Ford*, 4 *Id.* 34, 40, 43. Examined with *Drake v. Price*, 5 *N. Y.* 430; *Hall v. Hall*, 78 *Id.* 539; *Lansing v. Lansing*, 45 *Barb.* 182; *Mann v. Lawrence*, 3 *Bradf.* 424, and *Ward v. Ford*, 4 *Redf.* 45; *Matter of Carman*, 3 *Id.* 47, explained in *Johnson v. Lawrence*, 95 *N. Y.* 154. Followed with *Hall v. Hall*, 18 *Hun.* 358, but *Matter of Pirnie*, 1 *Tuck.* 119; *Cram v. Cram*, 2 *Redf.* 244; *Matter of Carman*, 3 *Id.* 46; *Ward v. Ford*, 4 *Id.* 34, disapproved in *Meeker v. Crawford*, 5 *Id.* 450. Applied (Right to compel accounting by executors) in *Matter of Ritch*, 2 *Redf.* 332.
- Valk v. Crandall**, 1 *Sandf. Ch.* 179. Explained (Corporations, how created) in *Ang. & A. on Corp.* § 88, 11 ed. Discussed (Liability on subscription to stock) in *Id.* § 521, 11 ed.
- Vallance v. Bausch**, 28 *Barb.* 633; s. c., 17 *How. Pr.* 243; 8 *Abb. Pr.* 368. Approved (Husband's right of administration on wife's property) in *Ransom v. Nichols*, 22 *N. Y.* 110, 113. See *Matter of Winne*, 1 *Lans.* 508, 521. Rev'd in 2 *Id.* 21.
- Vallett v. Parker**, 6 *Wend.* 615. Applied (Burden of proof on holder of negotiable paper, as to consideration) in *Catlin v. Hansen*, 1 *Duer*, 323. Applied (Defense to such paper in hands of bona fide holder) in *Redlich v. Doll*, 54 *N. Y.* 238. Disting'd (Validity of note based on sale of land made contrary to statute against champerty) in *Witter v. Blodgett*, 4 *N. Y. Leg. Obs.* 264. Applied (Effect of note declared void by statute) in *Boughner v. Meyer*, 5 *Col.* 71; 40 *Am. R.* 139; *Traders' B'k of Chicago v. Alsop*, 64 *Iowa*, 97, 100. Collated with other cases in *Redf. & B. Lead. Cas. on B. of Exch.* 235. Disting'd with *Woodhull v. Holmes*, 20 *Johns.* 230 (Extrinsic proof as to condition on which note was given) in *Walker v. Crawford*, 54 *Ill.* 444; s. c., 8 *Am. R.* 701, 704.
- Valton v. Nat. Loan Fund Ass. Co.**, 22 *Barb.* 9. Rev'd, though approved in part, in 20 *N. Y.* 32. Further decision in 17 *Abb. Pr.* 268. Rev'd in 4 *Abb. Ct. App. Dec.* 437; s. c., 1 *Keyes*, 21. See *Ruse v. Mut. Benefit Life Ins. Co.*; *St. John v. Am. Mut. Life Ins. Co.* Decision in 20 *N. Y.* applied (Effect of fraudulent representations on contract of insurance) to contract of sale, in *Smith v. Countryman*, 30 *Id.* 672; *Carr v. Schermerhorn*, 3 *Lans.* 194; *Masterton v. Beers*, 6 *Robt.* 368, 389. Examined in *Hutchins v. Cleveland Mut. Ins. Co.*, 11 *Ohio St.* 479. See cases cited in 4 *Sup'm. Ct. (T. & C.)* 586, n. Followed (Defense that policy is void by statute is affirmative and must be pleaded) in *Goodwin v. Massachusetts Mut. Life Ins. Co.*, 73 *N. Y.* 480, 496. Applied (Assignability of life policy) in *Olmsted v. Keyes*, 85 *Id.* 593, 600. Disapproved in *Warnock v. Davis*, 104 *U. S.* 775, 782. Decision in 22 *Barb.* relied on (Insurable interest in life of another) in *Equitable Life Assur. Soc. v. Paterson*, 41 *Ga.* 338; s. c., 5 *Am. R.* 535, 539. Decision in 20 *N. Y.* disapproved in *Missouri Valley Life Ins. Co. v. Sturges*, 18 *Kans.* 93; s. c., 26 *Am. R.* 764. Collated with *Swift v. Mass. Mut. Life Ins. Co.*, 63 *Id.* 186; *Dilleber v. Home Life Ins. Co.*, 69 *Id.* 256, and other cases in 27 *Am. R.* 327, n. Collated with *Rawls v. Am. Mut. Life Ins. Co.*, 27 *N. Y.* 283, and other cases, in 22 *Am. L. Reg. N. S.* 389, n. Disting'd (Sufficiency of exception to evidence, without grounds being stated) in *Martin v. Wagener*, 1 *Sup'm. Ct. (T. & C.)* 506, 509. Decision in 19 *How. Pr.* applied (Stay of proceedings on appeal) in *McMahon v. Allen*, 13 *Abb. Pr.* 128. See cases cited *pro* and *con* in *Hoyt v. Terwilliger*, 12 *Abb. Pr. N. S.* 130. Disting'd (Sufficiency of notice of judgment to limit time to appeal) in *Devlin v. Mayor, &c. of N. Y.*, 62 *How. Pr.* 166. Decision in 17 *Abb. Pr.* collated with other cases (Chal-

- enge for principal cause) in 6 *Abb. N. C.* 18, *n.*
- Van Alen v. Am. Nat. B'k.** See *Van Allen v. Same.*
- **v. Feltz**, 32 *Barb.* 189; *s. c.*, 9 *Abb. Pr.* 277. Rev'd in 4 *Abb. Ct. App. Dec.* 489; *s. c.*, 1 *Keyes*, 332. See *Winchell v. Hicks*. Decision in 1 *Keyes* approved and followed (Sufficiency of new promise under statute of limitations) in *Lansing v. Blair*, 43 *N. Y.* 48, 51.
- **v. Illinois Central R. R. Co.** See *Van Allen v. Same.*
- **v. Rogers**, 1 *Johns. Cas.* 281; *s. c.*, *Am. Dec.* 118, with note (Right to mesne profits).
- **v. Schermerhorn**, 14 *How. Pr.* 287. See (Limitation of action, as affected by discontinuance) *Code Civ. Pro.* 1881, § 412, *n.*
- **v. Vanderpool**, 6 *Johns.* 69; *s. c.*, 5 *Am. Dec.* 192; 4 *N. Y. Com. L. Law. ed.* 55, with brief note. Applied with *Robertson v. Livingston*, 5 *Cow.* 473; *Leland v. Douglass*, 1 *Wend.* 490 (Right of factor to sell on credit) in *Daylight Burner Co. v. Odlin*, 51 *N. H.* 56; *s. c.*, 12 *Am. R.* 45.
- Van Allen v. Am. Nat. B'k.** 3 *Lans.* 517. Aff'd as *Van Alen v. Same.* in 52 *N. Y.* 1. Decision in *Id.* disting'd (Following property obtained by fraud) in *Justh v. Nat. B'k of Commonwealth*, 56 *Id.* 478, 482. Approved in *Dows v. Kidder*, 84 *Id.* 121, 131. Followed (Effect of deposit of trust funds commingled with others) in *Graham v. Van Duzer*, 2 *Redf.* 322; *Rabel v. Griffin*, *N. Y. Daily Reg. Dec.* 19, 1883. Approved and applied in *Nat. B'k v. Ins. Co.*, 104 *U. S.* 54, 70.
- **v. —**, 10 *Abb. Pr. N. S.* 331. See to the contrary (Double costs on appeals) *Matthews v. Wood*, 33 *Super. Ct. (J. & S.)* 335; *Ahern v. Standard Life Ins. Co.*, 40 *How. Pr.* 190. See *Code Civ. Pro.* 1881, § 3239, *n.*
- **v. Nolan**. Reported under *City of Utica v. Churchill*, 33 *N. Y.* 161. Rev'd in *Van Allen v. Assessors*, 3 *Wall.* 573. Cited with other authorities (State tax on Federal operations) in 1 *Kent Com.* 429, *n.* 1, *Holmes' ed.*
- **v. Farmers' Joint-Stock Ins. Co.**, 4 *Hun.* 413; *s. c.*, more fully, 6 *Sup'm. Ct. (T. & C.)* 591. Rev'd in 64 *N. Y.* 469. Further decision in 10 *Hun.* 397. Aff'd, it seems, in 72 *N. Y.* 604, but without opinion. See *Walsh v. Hartford Fire Ins. Co.* Decision in 64 *N. Y.* disting'd, and that in 72 *Id.* followed (Waiver of proof of loss) in *Goodwin v. Mass. Mut. Life Ins. Co.*, 73 *Id.* 480, 491, 495. Decision in 64 *Id.* applied in *Bell v. Lycoming Fire Ins. Co.*, 19 *Hun.* 240. Decision in 4 *Hun.* relied on with *Rowley v. Empire Ins. Co.*, 36 *N. Y.* 550 (Insurance company, when estopped by conduct of agent) in *Pedmont & Arlington Life Ins. Co. v. Young*, 58 *Ala.* 476; *s. c.*, 29 *Am. R.* 770, 774, with note.
- **v. Illinois Central R. R. Co.**, 7 *Bosw.* 515. Aff'd as *Van Alen v. Same.* in 4 *Abb. Ct. App. Dec.* 443; *s. c.*, 2 *Keyes*, 673.
- Van Alst v. Hunter**, 5 *Johns. Ch.* 148. See *Stewart v. Lisenard*. Quoted (Personal disabilities of testators) in 1 *Jarm. on Wills*, *Rand. & T. ed.* 95, *n.* Explained in *Willard on Executors*, 86.
- Van Alstine v. Wemple.** See *Dykens v. Townsend.*
- Van Alstyne v. Cook**, 25 *N. Y.* 489. Previous decision to same effect, as *Artisan's Bank v. Treadwell*, 34 *Barb.* 553. Decision in 25 *N. Y.* followed (Appointment of receiver of limited partnership) in *Whitcomb v. Fowle*, 7 *Abb. N. C.* 295, 298. Discussed in 1 *Collyer on Partn.* § 384, *Wood's Am. ed.*
- **v. Erwine**, 11 *N. Y.* 331. See *Doughty v. Hope*. Applied (Sufficiency of affidavit for attachment) in *Easton v. Malavazi*, 7 *Daly*, 148.
- **v. Nat. Commercial B'k of Albany**, 4 *Abb. Ct. App. Dec.* 449; *s. c.*, 7 *Transc. App.* 241. Followed (Necessity of production of negotiable paper sued on, at trial) in *Crandall v. Schroeppel*, 4 *Sup'm. Ct. (T. & C.)* 78, 80. Disting'd in *Johnson v. First Nat. Bank of Hoboken*, 6 *Hun.* 124, 127. Approved and applied to action on bond in *Shillito v. Robbins, Hamilton Co. O. Dist. Ct. 7 Cin. L. Bul.* 74.
- **v. Spraker**, 13 *Wend.* 578. Rev'd in 18 *Id.* 200. See *Harrison v. Stevens.*
- Van Amburgh v. Baker.** Reported under *Wade v. Baker*, 14 *Hun.* 615. Aff'd in 81 *N. Y.* 46.
- Van Amringe v. Barnett**, 8 *Bosw.* 357. Disting'd (Effect of plea in bar as waiver of plea in statement) in *Fairweather v. Satterly*, 7 *Robt.* 546.
- Van Anken v. Stewart.** See *Bleecker v. Smith.*
- Van Ankin v. Westfall**, 14 *Johns.* 233. Followed (Action for slander imputing crime committed in another State) in *Shipp v. McCraw*, 3 *Murph. (N. C.)* 463; *s. c.*, 9 *Am. Dec.* 611.
- Van Autwerp, Matter of**, 1 *Sup'm. Ct. (T. & C.)* 423. Aff'd in 56 *N. Y.* 261. See *Matter of Volkening*. Decision in 56 *N. Y.* followed (Assessment as tax) in *Roosevelt Hospital v. Mayor, &c. of N. Y.*, 84 *Id.* 108, 113.
- Van Arsdale v. Drake**, 2 *Barb.* 599. Applied (Right of assignee for creditors to maintain partition) in *Rutherford v. Hewey*, 59 *How. Pr.* 231, 237.
- Van Beil v. Prescott**, 46 *Super. Ct. (J. & S.)* 542. Aff'd in 82 *N. Y.* 630.
- Van Benschooten v. Lawson**, 6 *Johns. Ch.* 313; *s. c.*, 10 *Am. Dec.* 333. Disapproved (Effect of agreement for interest on arrears of interest) in *Stewart v. Petree*, 55 *N. Y.* 621, 623. Explained in *Mowry v. Bishop*, 5 *Paige*, 102. Disting'd in *N. Y. Life Ins. &c. Co. v. Manning*, 3 *Sandf. Ch.* 59.
- Van Benschoten v. Yapple**, 13 *How. Pr.* 97. Compare (Partial defense) *Code Civ. Pro.* § 508.
- Van Benthuyzen v. Stevens**, 14 *How. Pr.*

70. See (What complaint must contain) *Code Civ. Pro.* 1881, § 481, n.
- Van Bergen v. Bradley**, 36 *N. Y.* 316. Overruled with *Potter v. Van Vranken*, *Id.* 619 (Appeal to the Court of Appeals, from judgment entered after order of General Term denying new trial) in *Caughy v. Smith*, 47 *Id.* 244. Disting'd in *Juleand v. Rathbone*, 39 *Id.* 371. Followed in *Coleman v. Pleystead*, 40 *Id.* 341.
- **v. Van Bergen**, 3 *Johns. Ch.* 282; s. c., 8 *Am. Dec.* 511. Applied and approved (Relief in equity against nuisance) in *Rosser v. Randolph*, 7 *Port. (Ala.)* 238; s. c., 31 *Am. Dec.* 712, with note. Approved in *Robeson v. Pittenger*, 1 *Green Ch. (N. J.)* 57; s. c., 32 *Am. Dec.* 412, 415, with note as laying down the true rule.
- Van Beuren v. Van Gaasbeck**. See *Miller v. Burroughs*.
- Van Blareom v. Broadway B'k**, 9 *Bosw.* 532. Rev'd in 37 *N. Y.* 540. Opinion of MASON, J., is in 5 *Transc. App.* 132.
- Van Bokkelen v. Taylor**, 2 *Hun.* 138; s. c., 4 *Sup'm. Ct. (T. & C.)* 422. Rev'd in 62 *N. Y.* 105.
- Van Bokkelin v. Ingersoll**, 5 *Wend.* 315. Rev'g *Ingersoll v. Van Bokkelin*, 7 *Cov.* 670. Decision in 5 *Wend.* disapproved (Lien of master of vessel) in *The Larch*, 2 *Curt. C. Ch.* 427. Compare *Drinkwater v. The Spartan, Ware*, 145. Decision in 7 *Cov.* followed (Damages in trover by one having special property, against stranger) in *Little v. Fossett*; 34 *Me.* 545; s. c., 56 *Am. Dec.* 671.
- Van Boskerck v. Herrick**, 63 *Barb.* 250. Compare (Removal of testamentary trustee) *Code Civ. Pro.* §§ 2817, 2818.
- Van Bracklin v. Fonda**, 12 *Johns.* 468; s. c., 7 *Am. Dec.* 339. See *Moses v. Mead*. Explained (Sale of provisions for domestic use) in *Hoe v. Sanborn*, 21 *N. Y.* 552, 561. Cited with approval in *Fleet v. Hollenkemp*, 13 *B. Monr. (Ky.)* 219; s. c., 56 *Am. Dec.* 563, 570. Collated with *Moses v. Mead*, 1 *Den.* 378; *Dwine v. McCormick*, 50 *Barb.* 116; *Burch v. Spencer*, 15 *Hun.* 504, and other cases, in 17 *Am. L. Rev.* 429. Reviewed and collated with other cases and disapproved in 22 *Am. L. Reg. N. S.* 232. Discussed in *Benj. on Sales*, § 670 n. r (Bennett's 4 *Am. ed.*). Quoted in 2 *Id.* § 1012, n. 44 (Corbin's 4 *Am. ed.*).
- Van Bramer v. Cooper**, 2 *Johns.* 279. Followed with *Hartness v. Thompson*, 5 *Id.* 160; *Jackson v. Todd*, 6 *Id.* 257 (Contracts of infant not to be avoided by third persons) in *Robert v. Wiggin*, 1 *N. H.* 73; s. c., 8 *Am. Dec.* 38, as conclusive. Criticised with *Jackson v. Todd*; *Slocum v. Hooker*, 13 *Barb.* 536, and other cases, in *Tyler on Inf. & Cov.* 2 ed. § 19.
- Van Brunt v. Ahearn**. See *Dygart v. Schenck*.
- **v. Applegate**, 44 *N. Y.* 544. See *Buckley v. Buckley*. Applied (Effect of conveyance, &c. of partnership realty) in *Tarbel v. Bradley*, 7 *Abb. N. C.* 283. Disting'd in *Staats v. Bristow*, 73 *N. Y.* 264, 268, a case of attachment.
- **v. Day**, 17 *Hun.* 166. Rev'd in 81 *N. Y.* 251; s. c., 8 *Abb. N. C.* 336. See (Oral stipulation as ground for counterclaim in action on written agreement) *Everson v. Fry*, 72 *Penn. St.* 326.
- **v. Schenck**, 11 *Johns.* 377. Trial at nisi prius, reported in *Anth. N. P.* 217. See *Wickham v. Freeman*. Decision in 11 *Johns.* applied (When, by concurring in act of trespass, one becomes trespasser *ab initio*) in *Lamb v. Day*, 8 *Verm.* 407; s. c., 30 *Am. Dec.* 479. Explained and collated with other cases (Possession, &c. as necessary to maintain action for trespass) in *Bigel. Cas. on Torts*, 362.
- Van Buren, Matter of**, 55 *How. Pr.* 513; s. c., with affirmance, 17 *Hun.* 527; which was aff'd in 79 *N. Y.* 384. Decision in *Id.* followed (Validity of assessment for drains) in *Matter of Kendall*, 83 *Id.* 613.
- Van Buren v. Cockburn**, 2 *Code R.* 63. Subsequent decision in 14 *Barb.* 118. Decision in 2 *Code R.* disapproved (Joinder of husband, in action affecting wife's property) in *Brownson v. Gifford*, 8 *How. Pr.* 389, 395; *Ackley v. Tarbox*, 29 *Barb.* 512. Decision in 14 *Id.* applied (Presumption from alterations apparent in will) in *Wetmore v. Carryl*, 4 *Redf.* 544, 552. Collated with *Ridgeley v. Johnson*, 11 *Barb.* 540; *Waring v. Smyth*, 2 *Barb. Ch.* 11 (Presumptions from alterations of instruments) in 30 *Alb. L. J.* 246.
- **v. Stokes**, 1 *Hun.* 434. Fully reported in 3 *Sup'm. Ct. (T. & C.)* 511.
- **v. Wells**, 19 *Wend.* 203. Cited as authority (Admission or rejection of testimony that is *prima facie*, irrelevant) in *Lawson v. State*, 20 *Ala.* 65; s. c., 56 *Am. Dec.* 182.
- Van Buskirk v. Purinton**, 2 *Hall*, 561. Followed (Carrier obtaining possession of goods without authority from the owner cannot, as against such owner, set up lien for freight) in *Fitch v. Newberry*, 1 *Doug. (Mich.)* 1; s. c., 40 *Am. Dec.* 33, 39, with note; *Salтус v. Everett*, 20 *Wend.* 275; *Hoffman v. Carow*, 22 *Id.* 318, and other cases being cited in illustration of the general principle that the owner of property cannot be deprived of it without his consent. See also 40 *Am. Dec.* 44, n., where *Van Buskirk v. Purinton*, and *Collman v. Collins*, 2 *Hall*, 569, are referred to as holding the doctrine of *Fitch v. Newberry*, and *Robinson v. Baker*, 5 *Cush. (Mass.)* 137, which relies on *Salтус v. Everett*, is cited at length. These cases are said, however, to be opposed to the case of the Exeter carrier, cited in *Yorke v. Greenough*, 2 *Ld. Raymond*, 866, and to a dictum in *King v. Richards*, 6 *Whart. (Pa.)* 418; s. c., 37 *Am. Dec.* 422. Followed in *Robinson v. Baker*,

- 5 *Cush. (Mass.)* 137; s. c., 51 *Am. Dec.* 54, 57; also relying on *Saltus v. Everett*. Explained in *Ang. on Carr.* § 366, 5 ed.
- *v. Roberts*, 14 *How. Pr.* 61. See decision on the merits, in 31 *N. Y.* 661. See *Bridge v. Payson*.
- *v. Warren*, 34 *Barb.* 457; s. c., 13 *Abb. Pr.* 145. Aff'd in 4 *Abb. Ct. App. Dec.* 457; s. c., 2 *Keyes*, 119; which was rev'd in *Green v. Van Buskirk*, 7 *Wall.* 139; s. c., 38 *How. Pr.* 52. Prior decisions in 3 *Wall.* 448; 5 *Id.* 307. Decision in 34 *Barb.*; 4 *Abb. Ct. App. Dec.* explained (Assignment of personal property when invalid in another jurisdiction though valid where made) and decision in 7 *Wall.* followed, in *Warner v. Jaffray*, 96 *N. Y.* 248. These various decisions collated with other cases in *Bishop on Assign.* § 261. Decision in 34 *Barb.* relied on (Right given by assignment of property is superior to that of subsequently attaching creditor) in *Noble v. Thompson Oil Co.*, 79 *Penn. St.* 354; s. c. 21 *Am. R.* 66, 72.
- Van Campen v. Knight**, 63 *Barb.* 205. Aff'd in 65 *N. Y.* 580.
- Vance v. Bloomer**, 20 *Wend.* 196. Applied with *Loddell v. Hopkins*, 5 *Cow.* 516 (Necessity of demand and refusal, in case of contract to make payment in specific articles) in *Fosdick v. Greene*, 27 *Ohio St.* 484; s. c., 22 *Am. R.* 328, 335.
- *v. Phillips*, 6 *Hill.* 43. See *Smith v. Acker*. Explained (Intent to defraud creditors on sale of chattels) in *Burrill on Assign.* § 274, n. 3, 396, 4 ed.; *Wait on Fraud. Conv.* § 204.
- Van Cleef v. Fleet**, 15 *Johns.* 147. Disting'd (Sheriff's liability as affected by tender of indemnity bond) in *Lummis v. Kasson*, 43 *Barb.* 376, by which it is referred to as overruled, in *Dolson v. Saxton*, 11 *Hun.* 565, 570.
- Van Cleve v. Abbott**, 3 *Abb. Pr. N. S.* 144. Disapproved (Discharge of mechanic's lien) in *Dowdney v. McCollom*, 5 *Daly*, 240, 242.
- Van Cortlandt v. Kip**, 1 *Hill.* 590. Rev'd in 7 *Id.* 346. See *Moers v. White*. Decision in 1 *Hill* explained and applied (Effect of codicil, as re-publication of will) in *Brown v. Clark*, 77 *N. Y.* 375, 377. Quoted in 1 *Jarm. on Wills*, Rand. & T. ed. 366, n. 3.
- *v. Tozer*, 17 *Wend.* 338. Aff'd in 29 *Id.* 423.
- *v. Underhill*, 17 *Johns.* 405. Applied (Setting aside award of arbitrators) in *Viele v. Troy & Boston R. R. Co.*, 21 *Barb.* 395; *Cole v. Blunt*, 2 *Bosw.* 123; *Story v. Elliot*, 8 *Cow.* 27, 34; *Halstead v. Seaman*, 82 *N. Y.* 27, 31; which rev'd in effect 52 *How. Pr.* 415, 421, which see. Disting'd in *Bushwick, &c. Turnpike Co. v. Ebbets*, 3 *Edw.* 353, 355. Applied to award by State auditors, in *State of Michigan v. Phoenix B'k*, 33 *N. Y.* 27.
- Van Cott v. Van Brunt**, 2 *Abb. N. C.* 283. Rev'd in 82 *N. Y.* 535. In *Id.* 540, fifth line from bottom, "not" should be transposed to seventh line from bottom, after word "should." Decision in 82 *N. Y.* criticised as obscure, and also disting'd (Liability of stockholder) in *Jackson v. Traer*, 64 *Iowa*, 469, 483. Discussed in *Morawetz on Corp.* § 589, n. 2. Decision in 2 *Abb. N. C.* disting'd (Enforcing lien of creditors of corporation on assets in hands of others) in *McLean v. Eastman*, 21 *Hun.* 312, 314.
- Vandemark v. Vandemark**, 26 *Barb.* 416. Superseded (Appeal from surrogate's decision) by *Code Civ. Pro.* § 2568.
- Vandenburgh v. Truax**, 4 *Den.* 464. See *Dunckle v. Kocker*; *Ryan v. N. Y. Central R. R. Co.* Approved and applied (Liability for consequences of illegal act) in *Munger v. Baker*, 1 *Sup'm. Ct. (T. & C.)* 123. Approved in *Ryan v. N. Y. Central R. R.*, 35 *N. Y.* 210, 214. Compare *Webb v. Rome, &c. R. R. Co.*, 49 *Id.* 428. Disting'd in *Van Rensselaer v. Kidd*, 6 *Id.* 335; *Putnam v. B'way & Seventh Ave. R. R. Co.*, 55 *Id.* 119. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 550; *Bigel. Cas. on Torts*, 609.
- *v. Van Bergen*, 13 *Johns.* 212. Followed (Assignability of license to perform acts on land) in *Mendenhall v. Klinck*, 51 *N. Y.* 251.
- *v. Van Rensselaer*, 6 *Paige*, 147. Discussed (Computation of time of running of statute of limitations) in *Ang. on Limit.* § 50, 6 ed.
- *v. Village of Greenbush*, 4 *Hun.* 795. Aff'd in 66 *N. Y.* 1.
- Vandenhoevel v. United Ins. Co.**, 2 *Johns. Cas.* 127. Rev'd in 2 *Id.* 451; s. c., 1 *Am. Dec.* 180; 1 *N. Y. Com. L. Law. ed.* 575, with brief note. See *Maggrath v. Church*. Decision in 2 *Johns. Cas.* 127, followed notwithstanding reversal (Conclusiveness of foreign admiralty sentence) in *Baxter v. Ins. Co.*, 6 *Mass.* 277; s. c., 4 *Am. Dec.* 125, 140. Decision in 2 *Johns. Cas.* 451, remarked, in 1 *Am. Dec.* 187, n., to have been decided not so much on the ground of authority as of policy. Thought in 16 *Id.* 212, n., to be opposed to weight of authority. See *N. Y. Firemen Ins. Co. v. De Wolf*, 2 *Cow.* 66; *Radcliff v. United Ins. Co.*, 9 *Johns.* 277, 282.
- Vanderbilt v. Adams**, 7 *Cow.* 349; s. c., 9 *N. Y. Com. L. Law. ed.* 149, with brief note. See *People v. Platt*. Disting'd (Power of public authorities to abate nuisance) in *Clark v. Mayor, &c. of Syracuse*, 13 *Barb.* 39. Recognized as settled law, with *Stuyvesant v. Mayor, &c. of N. Y.*, 7 *Conc.* 588; *Baker v. Boston*, 12 *Pick. (Mass.)* 184; s. c., 22 *Am. Dec.* 421. Followed with *Stuyvesant v. Mayor, &c. of N. Y.*, in *Wadleigh v. Gilman*, 12 *Me.* 403; s. c., 28 *Am. Dec.* 188, with note. Explained in *Cooley on Const. Limit.* 5 ed. 723; *Id.* n. 2. Applied (Validity of harbor regulations) in *Roosevelt v. Godard*, 52 *Barb.* 551. Ex-

- plained and applied in *Hoelt v. Seaman*, 38 *Super. Ct. (J. & S.)* 62, 71.
- *v. Armstrong*, 3 *Hun.* 623. Appeal dismissed, it seems, in 64 *N. Y.* 660, but without opinion.
- *v. Eagle Iron Works*. See *Koon v. Greenman*.
- *v. Mathis*, 5 *Duer*, 304. Included (Requisites in action for malicious prosecution) in *Bigel. Cas. on Torts*, 178.
- *v. Richmond Turnpike Co.*, 2 *N. Y.* 479; s. c., 51 *Am. Dec.* 815, with note, containing citations. Previous decision as *Richmond Turnpike Co. v. Vanderbilt*, 1 *Hill*, 480. See *Wright v. Wilcox*. Decision in 2 *N. Y.* disting'd (Liability of principal for tortious acts of agent) by *Bosworth, J.*, in *Mechanics' B'k v. N. Y. & N. H. R. R. Co.*, 4 *Duer*, 551; *Weed v. Panama R. R. Co.*, 5 *Id.* 196; which was aff'd in 17 *N. Y.* 366, which see. Applied in *Isaacs v. Third Ave. R. R. Co.*, 47 *Id.* 127. Compared in *Mott v. Consumers' Ice Co.*, 73 *Id.* 548; *Rounds v. Del., Lack., & C. R. R. Co.*, 64 *Id.* 135. Explained in *Ang. & A. on Corp.* § 388, 11 ed.
- Vanderburgh v. Hull*, 20 *Wend.* 70; s. c., 13 *N. Y. Com. L. Law. ed.* 780, with brief note. Followed with *Chase v. Barrett*, 4 *Paige*, 160 (Essential elements of partnership *inter se*) in *Price v. Alexander*, 2 *G. Greene (Iowa)* 427; s. c., 52 *Am. Dec.* 526, with note. Explained in 1 *Pars. on Contr.* 160, n. m. Cited in *Story on Partn.* 7 ed. § 47.
- Vanderheyden v. Crandall*, 2 *Den.* 9. Aff'd in *Wendell v. Crandall*, 1 *N. Y.* 491. Decision in 2 *Den.* re-aff'd (Effect of statute abolishing entails) in *Van Rensselaer v. Poucher*, 5 *Den.* 35. Applied (Effect of covenant of warranty, &c. as estoppel) in *Tefft v. Munson*, 63 *Barb.* 31, 38. Examined in *May v. Tillman*, 1 *Mich.* 264, citing *Sherwood v. Vanderburgh*, 2 *Hill*, 303. Commented on (Trusts to preserve contingent remainders) in 2 *Perry on Trusts*, 3 ed. § 523, n. 1.
- *v. Reid*, *Hopk.* 408. Rev'd in 5 *Cow.* 719. Decision in *Hopk.* commented on (Jurisdiction of surrogates' courts) in *Willard on Executors*, 46.
- *v. Vanderheyden*, 2 *Paige*, 287; s. c., 21 *Am. Dec.* 86, with note containing citations (Compensation of trustees).
- *v. Young*, 11 *Johns.* 150. See *Cunningham v. Bucklin*. Applied (When person clothed with discretionary powers is to be considered as *quoad hoc* a judge) in *Hartmanft's Appeal*, 85 *Penn. St.* 433; s. c., 27 *Am. R.* 667.
- Vanderkar v. Rensselaer & Saratoga R. R. Co.*, 13 *Barb.* 390. See *Parker v. Same*. Approved (Railroad cattle guards in a village, a nuisance) in *Brace v. N. Y. Central R. R. Co.*, 27 *N. Y.* 269. Applied (Distinction between effect of repealing statutes on vested rights and on penalties) in *Van Dyck v. McQuade*, 86 *Id.* 38, 49.
- Vanderkarr v. Vanderkarr*, 11 *Johns.* 122. s. c., 5 *N. Y. Com. L. Law. ed.* 85, with brief note. See *Frost v. Raymond*; *Greenby v. Willocks*. Followed (Express covenants in deed as affecting implied ones) in *Weems v. McCaughan*, 7 *Smedes & M. (Miss.)* 422; s. c., 45 *Am. Dec.* 314.
- Vanderkemp v. Shelton*, 11 *Paige*, 28. Rev'd *Clarke*, 321. Decision in 11 *Paige* followed (Effect of foreclosure of mortgage, without making junior incumbrancer a party) in *Walsh v. Rutgers' Fire Ins. Co.*, 13 *Abb. Pr.* 37; *Peabody v. Roberts*, 47 *Barb.* 99. Explained at length in dissenting opinion in *Gage v. Brewster*, 31 *N. Y.* 223. Re-aff'd, as not shaken by *Hoyt v. Hoyt*, 8 *Bosw.* 511 (Effect of record of assignment of mortgage) in *Belden v. Meeker*, 2 *Lans.* 475. Cited as authority in *Purdy v. Huntington*, 42 *N. Y.* 349; *Decker v. Boice*, 83 *Id.* 220. See *Gillig v. Maass*, 28 *Id.* 212. Explained (Rights of purchaser of mortgaged premises) in *Packer v. Rochester, &c. R. R. Co.*, 17 *N. Y.* 288.
- Van Der Minden v. Elsas*, 36 *Super. Ct. (J. & S.)* 66. Compare (Alleging title in action for chattel) *Code Civ. Pro.* § 1720.
- Vanderpool v. Van Allen*, 10 *Barb.* 157. See *Cresson v. Stout*. Disting'd (Intent as governing question of fixtures) in *McRea v. Central Nat. B'k of Troy*, 66 *N. Y.* 498. Cited as authority in *Thomas on Mort.* 48.
- *v. Van Valkenburgh*, 6 *N. Y.* 190. Followed (Judgment debtor as party to action in nature of creditor's bill) in *Miller v. Hall*, 40 *Super. Ct. (J. & S.)* 262, 268. Confirmed (Who may appear at probate of will, although not cited) by *Code Civ. Pro.* § 2617.
- Vanderpool v. Smith*, 1 *Daly*, 311. Aff'd in 4 *Abb. Ct. App. Dec.* 461.
- Vanderslice v. Newton*, 4 *N. Y.* 130. Quoted and explained (Damages as necessary and proximate) in 3 *Pars. on Contr.* 176, n. p.
- Vander Volgen v. Yates*, 3 *Barb. Ch.* 242. Aff'd in 9 *N. Y.* 219. Decision in *Id.* quoted (Resulting use,—how created) in 2 *Washb. on Real Prop.* 4 ed. 428.
- Vandervoort v. Columbian Ins. Co.* See *Brown v. Cattaraugus County Mut. Ins. Co.*; *Jennings v. Chenango Mut. Ins. Co.*
- *v. Smith*, 2 *Cui.* 155. See *Lazier v. Westcott*. Disting'd with *Mumford v. McPherson*, 1 *Johns.* 414 (Parol evidence of warranty in case of written contract) in *Adams v. Gray*, 8 *Conn.* 11; s. c., 20 *Am. Dec.* 82, with note. See to the contrary *Ionides v. Pacific Ins. Co.*, *L. R.* 7 *Q. B.* 517; 6 *Id.* 674; s. c., 6 *Am. L. Rev.* 297. See *Abb Tr. Ev.* 478.
- Vanderwerken v. N. Y. & New Haven R. R. Co.*, 6 *Abb. Pr.* 239; s. c., as *Vandevoenter v. Same*, 27 *Barb.* 244. Followed with *Green v. Hudson River R. R. Co.*, 28 *Id.* 9; *Crowley v. Panama R. R. Co.*, 30 *Id.* 99 (Right of action for injuries causing death) in *Whitford v. Panama R. R. Co.*, 23 *N. Y.* 465, 479.

- Compare Brown v. Buffalo, &c. R. R.**, 22 *Id.* 191. Followed with *Beach v. Bay State Steamboat Co.*, 30 *Barb.* 433; *Whitford v. Panama R. R. Co.*, 23 *N. Y.* 465 (Territorial scope of statute conferring right of action for damages for death) in *McCarthy v. Chicago, Rock Island & Pacific R'y Co.*, 18 *Kans.* 46; s. c., 26 *Am. R.* 742. Followed with *Whitford v. Panama R. R. Co.*, 23 *N. Y.* 465, in *Carnahan v. Western Union Tel. Co.*, 89 *Ind.* 526; s. c., 46 *Am. R.* 175.
- Vanderwerker v. People.** See *Story v. Elliot*.
- Vanderwiele v. Taylor**, 65 *N. Y.* 341. Explained (Nuisance on land) in *Moak's Underhill's Torts*, 1 *Am. ed.* 459.
- Vanderzee v. McGregor**, 12 *Wend.* 545; s. c., 27 *Am. Dec.* 156, with note containing citations. See *Streety v. Wood*. Collated with other cases (Privileged communication as determined by duty to the public) in *Bigel. Cas. on Torts*, 172.
- **v. Vanderzee**, 30 *Barb.* 331. Aff'd in 36 *N. Y.* 231. Decision in *Id.* followed (When devise in perpetuity may be held to convey life estate only) in *Harris v. American Bible Society*, 4 *Abb. Pr. N. S.* 421, 430. Decision in 30 *Barb.* disting'd (Effect of possession begun under lease, as adverse) in *Bedell v. Shaw*, 59 *N. Y.* 46, 50.
- Van Deusen v. Charter Oak Fire & Marine Ins. Co.**, 1 *Robt.* 55. Followed with *Conover v. Mutual Ins. Co.*, 1 *N. Y.* 290 (Effect of mortgage, as alienation of insured property) and *Riley v. Delafield*, 7 *Johns.* 522, disting'd in *Hennessey v. Manhattan Fire Ins. Co.*, 28 *Hun.* 98, 102. Followed in *Judge v. Conn. Fire Ins. Co.*, 132 *Mass.* 521. Collated with other cases in 59 *Am. Dec.* 309, n.
- **v. Sweet**, 51 *N. Y.* 378. See *Lewis v. Jones*. Disting'd (Remedy in case of deed executed by person of unsound mind) in *Mitchell v. Barnes*, 32 *Hun.* 194, 198. Compare cases in 3 *Abb. N. Y. Dig.* 710; 1 *Par. on Contr.* 385; *Canfield v. Fairbanks*, 63 *Barb.* 461, and cases cited. Followed (Effect of such deed) in *Farley v. Parker*, 6 *Oreg.* 105; s. c., 25 *Am. R.* 504, 506. Followed (Effect of inquisition, as evidence of mental capacity) in *Banker v. Banker*, 63 *N. Y.* 413. Compare *Code Civ. Pro.* § 2334. Commented on ("Void" and "voidable" distinguished) in *Wait on Fraud. Conv.* § 423, 557.
- **v. Young**, 29 *Barb.* 9. Rev'd in 29 *N. Y.* 9, because incompetent evidence had been received, and plaintiffs were not entitled to treble damages. See *Jackson v. Brownson*.
- Van De Veer v. Stanton.** See *Smith v. Sutts*.
- Vandeventer v. N. Y. & New Haven R. R. Co.** See *Vanderwerken v. Same*.
- Vandevoort v. Gould**, 36 *N. Y.* 639. Explained (Measure of damages in action for mesne profits) in *Sedgw. & W. on Tr. of Tit. to Land*, § 666.
- **v. Palmer**, 5 *Duer*, 677. See *Norton v. Hayes*. Followed (Signature to petition to remove cause) in *Bell v. Lycoming Fire Ins. Co.*, 6 *Sup'm. Ct. (T. & C.)* 54, 56.
- Vandewalker v. Osmer**, 1 *Sup'm. Ct. (T. & C.)* 50; s. c., 65 *Barb.* 556. Appeal dismissed, it seems, in 56 *N. Y.* 658, but without opinion. Decision in 65 *Barb.* explained (Warranty as covering obvious defects) in *Benj. on Sales*, § 616, n. e (Bennett's 4 *Am. ed.*).
- Van Dewater v. Kelsey**, 1 *N. Y.* 553. Followed (Discretion as to continuing or dissolving injunction) in *Paul v. Munger*, 47 *Id.* 472; *Pfohl v. Sampson*, 59 *Id.* 174, 176.
- Van Dolsen v. Abendroth**, 43 *Super. Ct. (J. & S.)* 470. Another decision in 1 *City Ct.* 460. Decision in 43 *Super. Ct. (J. & S.)* followed (Decision in bankruptcy proceedings as *res adjudicata*) in *Durant v. Abendroth*, 44 *Id.* 463, 468.
- Van Doren v. Balty**, 11 *Hun.* 239. See *Osborn v. Schenck*. Followed (Conversion by tenant in common) in *Potter v. Neal*, 62 *How. Pr.* 158, 161. Disting'd in *Osborn v. Schenck*, 83 *N. Y.* 201, 206.
- **v. Horton**, 19 *Hun.* 7. See *Duden v. Waitzfelder*. Explained and applied (Motion for new trial after non-suit) in *Dusenbury v. Dusenbury*, 61 *How. Pr.* 433. Followed in *Seely v. N. Y. Central, &c. R. R. Co.*, 25 *Hun.* 230, 232. See to the contrary *Duden v. Waitzfelder*, 2 *Abb. N. C.* 295.
- **v. Mayor, &c. of N. Y.**, 9 *Paige*, 388. See *Hartwell v. Armstrong*; *Van Rensselaer v. Kidd*. Applied (Relief against cloud on title) in *Cox v. Clift*, 3 *Barb.* 487; *Mulligan v. Baring*, 8 *Daly*, 80. Disting'd in *Johnson v. Wetmore*, 12 *Barb.* 436; *Johnson v. Stevens*, 13 *How. Pr.* 133, 136. Approved and followed in *Hall v. Theisen*, *Sup'm. Ct. Cal.* 14 *Reporter*, 11. Followed in *Haessler v. Thomas*, 4 *Mo. App.* 463, 469. Reviewed with other cases (Equitable relief against illegal taxation) in *Wilson v. Mayor of N. Y.*, 1 *Abb. Pr.* 30. Applied in *Mut. Benefit Life Ins. Co. v. Supervisors of N. Y.*, 33 *Barb.* 322; *N. Y. Life Ins. Co. v. Same*, 4 *Duer*, 198; *Heywood v. City of Buffalo*, 14 *N. Y.* 538.
- Van Dyne v. Coope**, 1 *Hill*, 557. Followed (Effect of failure of sureties on replevin bond to justify) in *Decker v. Anderson*, 39 *Barb.* 347, 353.
- **v. Thayre**, 14 *Wend.* 233. Subsequent decision as *Van Dyne v. Same*, in 19 *Id.* 162. Decision in 14 *Id.* followed (Declarations of husband, as evidence, in ejectment for dower) in *Keator v. Dimmick*, 46 *Barb.* 163. Decision in 19 *Wend.* examined with other cases (Rights of mortgagee in possession) in *Hubbell v. Moulson*, 53 *N. Y.* 228. Both decisions reviewed with other cases in dissenting opinion in *Trimm v. Marsh*, 54 *Id.* 617. Decision in 14 *Wend.* criticised as laying down too broad a rule,

- in *Howell v. Leavitt*, 95 *N. Y.* 617, 621. Decision in 19 *Wend.* followed (Right of dower, as affected by release of equity of redemption to mortgagee) in *Decker v. Hall*, 1 *Edm.* 283. Applied (Estoppel of grantee of husband, to set up mortgage against right of dower) in *Bartlett v. Musliner*, 23 *Hun.* 237. Explained (Memoranda as evidence) in *Butler v. Benson*, 1 *Barb.* 536.
- Van Duzen v. Worrell**, 18 *Barb.* 409. Referred to in *Cowing v. Greene*, 45 *Id.* 585, 591, as overruled (Witness as incompetent because of action being prosecuted for his immediate benefit) in *Freeman v. Spalding*, 12 *N. Y.* 373; *Butler v. Potterson*, 13 *Id.* 292.
- Van Duzer v. Howe**, 21 *N. Y.* 531. Applied (Effect of negotiable paper signed in blank) in *Ketchen v. Place*, 41 *Barb.* 465, 467; *Redlich v. Doll*, 54 *N. Y.* 238. Disting'd in *Chauncey v. Arnold*, 24 *Id.* 332, 335, as inapplicable to instruments under seal. Disting'd in *Ledwich v. McKim*, 53 *Id.* 315; *McGrath v. Clark*, 56 *Id.* 34, 37. Approved in *Garrard v. Haddan*, 67 *Pa. St.* 82; s. c., 5 *Am. R.* 412. See cases reviewed in 4 *Alb. L. J.* 70. Applied (Usury as determined by making charge for indorsement) in *Kitchel v. Schenck*, 29 *N. Y.* 520; *Chatham B'k v. Betts*, 37 *Id.* 358. Applied (Liability of surety, &c. to third person, as affected by misrepresentation made by principal debtor) in *McWilliams v. Mason*, 2 *Abb. Pr. N. S.* 218; which was aff'd in 31 *N. Y.* 299, 303, which see.
- **v. Van Duzer**. See *Schemerhorn v. Miller*.
- Vanduzor v. Linderman**. See *Pangburn v. Bull*.
- Van Dyck v. McQuade**, 57 *How. Pr.* 62; s. c., with affirmance, 45 *Super. Ct. (J. & S.)* 620, and that aff'd in 86 *N. Y.* 38. Other proceedings between same parties in 20 *Hun.* 262; which was aff'd in 85 *N. Y.* 616.
- **v. Van Beuren**, 1 *Johns.* 345; s. c., 3 *N. Y. Com. L. Law. ed.* 168, with brief note. Approved with *Mackie v. Cairns*, 5 *Cow.* 564; *Crawford v. Morell*, 8 *Johns.* 253 (Effect of contract void and illegal by statute as to part) in *Goodman v. Newell*, 13 *Conn.* 75; s. c., 33 *Am. Dec.* 378.
- **v. —**, 1 *Cal.* 84. Commented on (Ejectment against co-tenants) in *Sedgw. & W. on Tr. of Tit. to Land*, § 289.
- Van Dyke v. Jackson**, 1 *E. D. Smith*, 419. Disting'd (Limit of right of individual partner to benefits growing out of partnership relation) in *Mitchell v. Reed*, 61 *N. Y.* 123, 140.
- Van Ellen v. Carrier**, 29 *Barb.* 644. Aff'd as *Van Etten v. Currier*, in 4 *Abb. Ct. App. Dec.* 475; s. c., 3 *Keyes*, 329.
- Van Epps v. Harrison**, 5 *Hill*, 63; s. c., 40 *Am. Dec.* 314, with extended note. Subsequent decision in 1 *Den.* 246. Explained (Liability for false representations on sale, &c. of land) in *Clarke v. Baird*, 7 *Barb.* 67. Approved and applied in *Whitney v. Allaire*, 1 *N. Y.* 312. Applied in *Hammond v. Pennoek*, 61 *Id.* 151. Applied to sale of chattels, in *Smith v. Countryman*, 30 *Id.* 669; *Ellis v. Andrews*, 56 *Id.* 86. Disapproved in *Holbrook v. Connors*, 60 *Me.* 578; s. c., 11 *Am. R.* 216. Shown in 2 *Am. Dec.* 80, *n.*, to be in conflict with cases cited from *Me.*, *Mass.* and *Ill.* Applied (Rescission of contract for fraud to breach of warranty) in *Gillespie v. Torrance*, 25 *N. Y.* 310. Applied (Want of consideration as defense to sealed consideration) in *Anthony v. Harrison*, 19 *Hun.* 208. Disting'd (Recoupment for fraud, in proceeding for recovery of mortgage debt) in *Reed v. Latson*, 15 *Barb.* 16.
- **v. Van Deusen**, 4 *Paige*, 64; s. c., 25 *Am. Dec.* 516. Applied (Dismissal of bill for want of parties) in *Hutchinson v. Reed*, *Hoffm.* 320. Followed and approved (Compelling one who takes and uses property of infant to account as guardian) in *Davis v. Harkness*, 1 *Gilm. (Ill.)* 173; s. c., 41 *Am. Dec.* 184, 189, with note.
- **v. Van Epps**, 9 *Paige*, 237. See *Davoue v. Fanning*. Applied (One standing in situation of trust, when precluded from purchasing trust property) in *Conger v. Ring*, 11 *Barb.* 366; *Fulton v. Whitney*, 66 *N. Y.* 556; *Bennett v. Austin*, 81 *Id.* 308, 322. Applied (Extent to which one so purchasing is protected) in *Currie v. Cowles*, 6 *Bosw.* 462.
- Van Eps v. Dillaye**. See *Arnold v. Camp*.
- **v. Mayor, &c. of Schenectady**, 12 *Johns.* 436; s. c., 7 *Am. Dec.* 330. See *Nixon v. Hyserott*. Followed (What will satisfy covenant to give deed) in *Ketchum v. Evertson*, 13 *Johns.* 363; *Gazley v. Price*, 16 *Id.* 269. Disting'd in *Parker v. Parmele*, 20 *Id.* 135; *Fletcher v. Button*, 4 *N. Y.* 401; *Delavan v. Duncan*, 49 *Id.* 486. See *Burwell v. Jackson*, 9 *Id.* 544. Examined at length with *Ketchum v. Evertson*, 13 *Johns.* 363; *Bates v. Delavan*, 5 *Paige*, 307; *Matter of Hunter*, 1 *Edw.* 6, in *Bowen v. Vickers*, 1 *Green Ch. (N. J.)* 520; s. c., 35 *Am. Dec.* 516, 519, with note. Explained and *Mills v. Hunt*, 17 *Wend.* 333; 20 *Id.* 431, relied on in *Jenness v. Wendell*, 51 *N. H.* 63; s. c., 11 *Am. R.* 48, 49, 51.
- Van Etten v. Currier**. See *Van Ellen v. Carrier*.
- **v. Hurst**, 6 *Hill*, 311; s. c., 41 *Am. Dec.* 748, with note wherein are collected citations. Disting'd (Attachment against non-resident) in *Taylor v. Heath*, 4 *Den.* 596.
- **v. Troudden**, 1 *Hun.* 432. Fully reported in 3 *Sup'm. Ct. (T. & C.)* 603; 67 *Barb.* 342.
- Van Geisen v. Fuller**, 4 *Hill*, 171. Aff'd in *How. App. Cas.* 240, but without opinion.
- Van Gelder v. Van Gelder**, 13 *Hun.* 118. Further proceeding in 77 *N. Y.* 446. Subsequent proceedings between same parties in 26 *Hun.* 356; which was aff'd as *Van Gelder*



- v. Hallenbeck, 89 *N. Y.* 633. With decision in 13 *Hun* compare (Costs on appeal) *Code Civ. Pro.* §§ 3239, 3251, subd. 4.
- Van Giesen v. Bridgford**, 18 *Hun.* 73. Aff'd as *Van Giessen v. Same*, in 83 *N. Y.* 348.
- Van Gieson v. Van Gieson**, 12 *Bosw.* 520. Aff'd in 10 *N. Y.* 316.
- Van Gordon v. Jackson**. See *Jackson v. Lucett*.
- Van Guysling v. Van Kuren**, 35 *N. Y.* 70. See *Delafield v. Parish*. Followed (Testamentary capacity) in *Kinne v. Johnson*, 60 *Barb.* 69, 72; *McLaughlin's Will*, 2 *Redf.* 504, 512.
- Van Hagen v. Van Rensselaer**. See *Freeman v. Adams*.
- Van Heusen v. Radcliff**, 17 *N. Y.* 580. Followed (Rights as against unrecorded mortgage, &c.) in *Hoyt v. Hoyt*, 8 *Bosw.* 527. Disting'd in *Fraser v. Gilbert*, 11 *Hun.* 637. Applied in *Field v. Baker*, 12 *Blatchf. C. Ct.* 438, 443. Discussed in *Burrill on Assign.* § 391, 4 ed. Followed (Filing of chattel mortgage) in *Platt v. Stewart*, 13 *Blatchf. C. Ct.* 481, 496.
- Van Hoesen v. Coventry**, 10 *Barb.* 518. Followed (Right of riparian proprietor to reasonable use of water) in *Elliot v. Fitchburg R. R. Co.*, 10 *Cush.* 191; s. c., 57 *Am. Dec.* 86, with note.
- **v. Van Alstyne**, 3 *Wend.* 75. See *Vreeland v. Hyde*. Approved, notwithstanding reversal (Reasonable time within which to demand payment of note payable on demand) in *Salmon v. Grosvenor*, 66 *Barb.* 161, 164, 167.
- Van Hook v. Whitlock**, 3 *Paige*, 409. Subsequent decision in 2 *Edw.* 304; which was aff'd in 7 *Paige*, 373, and that aff'd on other grounds, in 26 *Wend.* 43; s. c., 37 *Am. Dec.* 246, with note. See *Corning v. McCullough*; *Humbert v. Trinity Church*. Decision in 7 *Paige* explained (Demurrer on ground of action being barred by lapse of time) in *Fellers v. Lee*, 2 *Barb.* 490. Commented on in *Ang. on Limit.* § 294, 6 ed. Explained and criticised (Nature of stockholder's liability) in *Lowry v. Inman*, 2 *Sweeny*, 117, 138. Decision in 26 *Wend.* explained (Limitation of action against stockholders) in *Freeland v. McCullough*, 1 *Den.* 424. The various decisions herein examined, in *Corning v. McCullough*, 1 *N. Y.* 47, 72. Decision in 3 *Paige* followed in *Scovill v. Thayer*, 105 *U. S.* 143, 155. Commented on in *Ang. on Limit.* § 115, 6 ed. Cited and collated with other cases (Limitation of action based on statute) in *Cowenhoven v. Freeholders of Middlesex*, 15 *Vroom (N. J.)* 232; s. c., 15 *Reporter*, 116. Decision in 26 *Wend.* explained and *Van Raugh v. Van Arsdaln*, 3 *Cal.* 155, relied on (Right of foreign creditor in regard to discharge under insolvent law) in *Jones v. Horsey*, 4 *Md.* 306; s. c., 59 *Am. Dec.* 81. Approved in *Davidson v. Smith*, 1 *Biss.* 353. Applied (Estoppel to assert unconstitutionality of provision) in *Vose v. Cockcroft*, 44 *N. Y.* 423.
- Van Hoozer v. Cory**, 34 *Barb.* 9. See *Milliman v. Neher*; *Strong v. Taylor*. Disting'd (Acquisition of property having a potential existence) in *Stephens v. Santee*, 49 *N. Y.* 35, 40; *Low v. Pew*, 108 *Mass.* 347; s. c., 11 *Am. R.* 357. Followed and approved with *Conderman v. Smith*, 41 *Barb.* 404, in *Arques v. Wasson*, 51 *Cal.* 620; s. c., 21 *Am. R.* 718.
- Van Horn v. Kermit**, 4 *E. D. Smith*, 453. See *Weeks v. N. Y.*, New Haven, &c. R. R. Co. Explained (Carrier's liability for baggage) in *Ang. on Carr.* § 113, n. a, 5 ed.
- Van Horne v. Crain**. See *Norman v. Wells*.
- **v. Fonda**, 5 *Johns. Ch.* 388. See *Burhans v. Van Zandt*. Applied (Purchase by co-tenant, when for common benefit) in *Levy v. Brush*, 8 *Abb. Pr. N. S.* 430; *Swinburne v. Swinburne*, 28 *N. Y.* 572. Disting'd in *Burhans v. Van Zandt*, 7 *Barb.* 102; which was rev'd in 7 *N. Y.* 627, which see; *Harvey v. Cherry*, 12 *Hun.* 557; *Wells v. Chapman*, 4 *Sandf. Ch.* 341. Disting'd with *Holridge v. Gillespie*, 2 *Johns. Ch.* 33, in *Sneed's Heirs v. Atherton*, 6 *Dana (Ky.)* 276; s. c., 32 *Am. Dec.* 70. Explained in *Rothwell v. Dewey*, 2 *Black.* 613, 618. Fully approved by *Storv, J.*, in *Flagg v. Mann*, 2 *Sumn.* 522, and see cases cited in 28 *Am. Dec.* 84, n. Commented on in *Sedgw. & W. on Tr. of Tit. to Land*, § 292. Applied (Fiduciary relation, as creating disability to purchase) in *Baker v. Humphrey*, 101 *U. S.* 494, 501.
- Van Ingen v. Whitman**, 62 *N. Y.* 513. Followed (Requisites of capital furnished by special partner) in *Maginn v. Lawrence*, 45 *Super. Ct. (J. & S.)* 235, 238.
- Van Keuren v. Corkins**, 4 *Hun.* 129; s. c., more fully, 6 *Sup'm. Ct. (T. & C.)* 355. Aff'd in 66 *N. Y.* 77. Decision in *Id.* disting'd (Application of recording act to assignment of mortgage) in *Heilbrunn v. Hammond*, 13 *Hun.* 474, 480. Disting'd in *Burhans v. Hutcheson*, 25 *Kans.* 625; s. c., 37 *Am. R.* 274. Collated with cases in 27 *Moak Eng.* 757, n.
- **v. Parmelee**, 2 *N. Y.* 523; s. c., 51 *Am. Dec.* 322, with note collecting citations thereof as a leading case in *N. Y.* See *Baker v. Stackpoole*; *Hackley v. Patrick*; *Johnson v. Beardslee*; *Shoemaker v. Benedict*; *Wakeman v. Sherman*. Disting'd (Effect of promise, &c. by one of joint debtors to prevent running of statute of limitations) in *N. Y. Life Ins. Co. v. Covert*, 3 *Abb. Ct. App. Dec.* 357; *Reid v. McNaughton*, 15 *Barb.* 170; *Winchell v. Bowman*, 21 *Id.* 450; *Barger v. Durvin*, 22 *Id.* 70; *Haight v. Avery*, 16 *Hun.* 254. Applied in *Bogert v. Vermilya*, 10 *Barb.* 32, 35; *Payne v. State*, 39 *Id.* 637; which was aff'd in 29 *N. Y.* 146, 178, which see. Explained at length and followed in *Dunham v. Dodge*, 10 *Barb.* 566; which was adopted as the opinion in *Shoemaker v. Benedict*, 11

- N. Y.* 181. Result of this and other decisions stated in *Winchell v. Hicks*, 18 *N. Y.* 559. Doctrine of this case and *Shoemaker v. Benedict*, 11 *N. Y.* 176, in 6 *Am. Dec.* 576, *n.*, as having been adopted in numerous cases there cited. Disapproved with *Shoemaker v. Benedict*, 11 *N. Y.* 176, in *Merritt v. Day*, 9 *Vroom (N. J.)* 32; *s. c.*, 20 *Am. R.* 362, 365, as tending to unsettle established law, the contrary decisions of *Smith v. Ludlow*, 6 *Johns.* 267; *Johnson v. Beardslee*, 15 *Id.* 3; *Patterson v. Choate*, 7 *Wend.* 441, being referred to as holding what was, until recently, the settled law of *N. Y.* Followed with *Dunham v. Dodge*, 10 *Barb.* 570, in *Mayberry v. Willoughby*, 5 *Neb.* 368; *s. c.*, 25 *Am. R.* 491. Followed with *Shoemaker v. Benedict*, 11 *N. Y.* 176; *Dean v. Hewit*, 5 *Wend.* 257; *Tompkins v. Brown*, 1 *Den.* 247, in *Miller v. Miller, McArth. & Mack*, 109; *s. c.*, 48 *Am. R.* 738. Examined with *Shoemaker v. Benedict*, 11 *N. Y.* 176, and approved, but apparently on the principle of *stare decisis* not followed in *McClurg v. Howard*, 45 *Mo.* 365. Quoted in *Ang. on Limit.* § 260, *n.* 5, 6 ed. See cases cited in 10 *Am. Dec.* 697, *n.* Applied with *Shoemaker v. Benedict*, 11 *N. Y.* 184 (New promise, by whom to be made) in *Pickett v. King*, 34 *Barb.* 197; which was aff'd in 34 *N. Y.* 176, which see; *Harper v. Fairley*, 53 *Id.* 444; *Smith v. Ryan*, 66 *Id.* 356. Disting'd (New promise, to whom to be made) in *Philips v. Peters*, 21 *Barb.* 358. See (Distinction between statute that discharges debt, and one that acts on remedy only) *Waltermire v. Westover*, 14 *N. Y.* 21. Explained (Power of partner to bind firm) in *Cookingham v. Lasher*, 38 *Barb.* 658. Applied with *Robbins v. Fuller*, 24 *N. Y.* 570; *Murray v. Mumford*, 6 *Cow.* 441 (Continuance of partnership relation after dissolution of partnership) in *Marietta & Cincinnati R. R. Co. v. Mowry*, 28 *Hun.* 79, 89. Applied in *Hart v. Woodruff*, 24 *Id.* 510, 512. Quoted in 1 *Collyer on Partn.* § 107, *n.* 1, p. 173, *Wood's Am. ed.* Discussed in 3 *Pars. on Contr.* 80, *n.* *v.*
- Van Kirk v. Wilds**, 11 *Barb.* 520. Referred to as overruled (Sufficiency of affidavit for attachment) in *Morgan v. House*, 36 *Hov. Pr.* 326; citing *Bennett v. Brown*, 4 *N. Y.* 254.
- Van Kleeck v. Reformed Dutch Church**, 6 *Paige*, 600. Aff'd in 20 *Wend.* 457. See *James v. James*. Decision in 20 *Wend.* applied (Effect of provision void as devise, as controlling disposition of property) in *Van Cortlandt v. Kip*, 1 *Hill*, 595; *Tucker v. Tucker*, 5 *N. Y.* 418; *Downing v. Marshall*, 23 *Id.* 375; *Van Nostrand v. Moore*, 52 *Id.* 12, 22. Commented on and explained in *Kip v. Van Cortlandt*, 7 *Hill*, 351. Disting'd in *Youngs v. Youngs*, 45 *N. Y.* 258. See *Hillis v. Illitis*, 16 *Hun.* 78. Applied with *Quinn v. Hardenbrook*, 54 *N. Y.* 86; *Scott v. Guernsey*, 48 *Id.* 106; *Kelso v. Lorillard*, 85 *Id.* 182 (Preference of blood of testator over strangers) in *Wood v. Mitcham*, 92 *Id.*
375. Applied in *Lynes v. Townsend*, 33 *Id.* 562. Cited with approval in 1 *Perry on Trusts*, 3 ed. § 160, *n.* 2.
- **v. Phipps**, 4 *Redf.* 99. Aff'd as *Phipps v. Van Kleeck*, 22 *Hun.* 541. Decision in 4 *Redf.* applied (Presumption of undue influence on testator) in *Marx v. McGlynn*, *Id.* 455, 477.
- Van Kleeck v. Le Roy**, 37 *Barb.* 544. Aff'd in 3 *Abb. Pr. N. S.* 431.
- Van Kuren v. Saxton**, 3 *Hun.* 547; *s. c.*, reported fully, 5 *Sup'm. Ct. (T. & C.)* 566.
- Van Leuven v. First Nat. B'k of Kingston**, 6 *Lans.* 373. Aff'd in 54 *N. Y.* 671. See *Talmage v. Pell*. Decision in 54 *N. Y.* disting'd (National bank, how far bound by acts of officer) in *First Nat. B'k v. Ocean Nat. B'k*, 60 *Id.* 293. Followed in *Person v. Atlantic Nat. B'k*, 77 *Id.* 310. Applied (Power of national banks as to exchange of securities) in *Williamson v. Mason*, 12 *Hun.* 103; *Yerkes v. Nat. B'k of Port Jervis*, 69 *Id.* 388.
- **v. Lyke**, 1 *N. Y.* 515; *s. c.*, 49 *Am. Dec.* 346, with note wherein are collected citations. Approved and applied (Liability for injuries done by animals) in *Earl v. Van Alstine*, 8 *Barb.* 633. Explained in 1 *Add. on Torts*, 43, *n.* 1, *Wood's ed.* Included in 1 *Thomps. on Negl.* 188.
- Van Lew v. King**, 3 *Cow.* 375. Examined (Jurisdiction exercised by justices of the peace in *N. Y.* county) in *People v. Morgan*, 5 *Daly*, 161, 176.
- Van Loon v. Lyons**, 4 *Daly*, 149. Rev'd in 61 *N. Y.* 22.
- Van Marter v. Babcock**, 23 *Barb.* 633. Colated with *Mackinnon Pen Co. v. Fountain Ink Co.*, 48 *Super. Ct. (J. & S.)* 442; *Jarvis v. Peck*, 10 *Paige*, 118; *Alcock v. Giberton*, 5 *Duer*, 76; *Heard v. Seeley*, 47 *Barb.* 428, and other cases (Contracts in restraint of trade) in 19 *Centr. L. J.* 80.
- Van Namee v. People**, 9 *Hov. Pr.* 198. See *Getty v. Hudson River R. Co.* See (What complaint must contain) *Code Civ. Pro.* § 481, *n.*
- Vanneman v. Powers**, 7 *Lans.* 181. Rev'd in 56 *N. Y.* 39. Decision in *Id.* applied (Married woman's liability for acts of husband) in *Holmes v. Bronson*, 43 *Mich.* 562.
- Van Ness v. Bush**, 22 *Hov. Pr.* 481. Explained and disapproved (Referee's power, on trial, to allow amendment setting up new defense) in *Ford v. Ford*, 53 *Barb.* 525, 530. Compare *Brown v. Leigh*, 12 *Abb. Pr. N. S.* 193.
- **v. Fisher**. See *Griswold v. Waddington*.
- Van Ness v. Hamilton**, 10 *Johns.* 349. See *Brooker v. Coffin*. See error book in *State Libr.* at Albany. See also proceedings of *N. Y. Assembly Committee*, on official conduct of *W. W. Van Ness*, with evidence published in *N. Y.*, 1820.
- Van Nest's Estate**, 1 *Tuck.* 130. Disapproved as being too broad (Executor's right to commissions, as affected by his not

- having rendered any services) in *Eager v. Roberts*, 2 *Redf.* 247, 250.
- Van Nest v. Yeomans.** See *Ball v. Ryers*.
- *v. Yoe*, 1 *Sandf. Ch.* 4. Limited (Sol-  
vency of debtor, as affecting validity of as-  
signment) in *Ogden v. Peters*, 21 *N. Y.* 23,  
26. Cited with approval (Assignment, when  
void, as tending to delay creditors) in 2  
*Kent Com.* 536, n. a. Explained (Power  
of assignee to compound and compromise  
debts) in *Burrill on Assign.* § 228, 4 ed.  
Explained (Power to sue and defend suits)  
in *Id.* § 230. Explained (Who may assail  
assignment) in *Id.* § 503.
- Vannorsdall v. Van Deventer**, 51 *Barb.* 137.  
Disting'd (Meaning of term "heirs") in  
*Cushman v. Horton*, 59 *N. Y.* 149, 153.
- Van Orden v. Van Orden.** See *Beecker v.*  
*Beecker*; *Livingston v. Livingston*.
- Van Order v. Van Order**, 8 *Hun.* 315. Dis-  
ting'd (Condonation of adultery, as consid-  
eration) in *Adams v. Adams*, 24 *Hun.* 401,  
404.
- Van Orman v. Phelps**, 9 *Barb.* 500. Ex-  
plained (Liability in trespass to co-tenant)  
in *King v. Phillips*, 1 *Lans.* 421, 434.
- Van Orsdall v. Hazard.** See *People v. Car-  
rique*.
- Van Ostrand v. Reed**, 1 *Wend.* 424; s. c., 19  
*Am. Dec.* 529. See *Mumford v. McPherson*.  
Approved (Warranty on sale of patent  
right) in *Joliffe v. Collins*, 21 *Mo.* 341.  
Collated with *Creery v. Holly*, 14 *Wend.*  
26; *Kellogg v. Richards*, *Id.* 116; *Niles v.*  
*Culver*, 8 *Barb.* 207; *Goodyear v. Ogden*, 4  
*Hill*, 104, and other cases (Limit of excep-  
tions to rule forbidding parol evidence to  
vary written instruments) in *Stapleton v.*  
*King*, 33 *Iowa*, 28; s. c., 11 *Am. R.* 109, 111.
- Van Pelt v. McCraw**, 4 *N. Y.* 110. Ex-  
amined (Right of mortgagee of chattels to  
recover for injury to his interest) by *Cox-  
stock, J.*, in *Manning v. Monaghan*, 23 *Id.*  
539, 547.
- *v. Metallic Spring Shoe Heel Co.*, 35  
*Super. Ct. (J. & S.)* 111; s. c., as *Van Pelt*  
*v. U. S. Metallic Spring Co.*, 13 *Abb. Pr. N.*  
*S.* 325.
- *v. U. S. Metallic Spring Co.* See *Van*  
*Pelt v. Metallic Spring Shoe Heel Co.*
- Van Raugh v. Van Arsdal**, 3 *Cal.* 154; s.  
c., 2 *Am. Dec.* 259. See *Roosevelt v.*  
*Cebra*; *Smith v. Smith*; *Van Hook v. Whit-*  
*lock*. Reviewed with *Smith v. Spinola*, 2  
*Johns.* 188; *Smith v. Smith*, *Id.* 235; *White*  
*v. Canfield*, 7 *Id.* 117, and other cases  
(Effect of insolvent laws of other States) in  
*Blanchard v. Russell*, 13 *Mass.* 1; s. c., 7  
*Am. Dec.* 106, 111.
- Van Rensselaer v. Aiken**, 44 *Barb.* 547.  
Rev'd in 44 *N. Y.* 126.
- *v. Albany & W. S. R. R. Co.*, 1 *Hun.*  
507; s. c., 3 *Sup'm. Ct. (T. & C.)* 620.  
Aff'd in 62 *N. Y.* 65.
- *v. Ball*, 19 *N. Y.* 100. Aff'g 27 *Barb.*  
104. Decision in 19 *N. Y.* followed. (Action  
for rent by assignee, &c. of reversion) in  
*Main v. Green*, 32 *Barb.* 453; 33 *Id.* 136;
- Van Rensselaer v. Barringer*, 39 *N. Y.* 14.  
Explained with *Van Rensselaer v. Snyder*,  
13 *Id.* 299, in *Van Rensselaer v. Read*, 26  
*Id.* 558, 576. See *Code Civ. Pro.* 1881, §  
1504, n. 1.
- *v. Bonesteel*, 24 *Barb.* 365. Aff'd in  
26 *N. Y.* 558; *Van Rensselaer v. Slinger-*  
*land*, *Id.* 580. See also (Assignee, &c. as  
affected by covenants to pay rent) *Van*  
*Rensselaer v. Hays*, 19 *N. Y.* 78.
- *v. Bradley*, 3 *Den.* 135; s. c., 45 *Am.*  
*Dec.* 451, with note wherein are collected  
citations. Followed (Apportionment of  
rent) in *Van Rensselaer v. Gallup*, 5 *Id.*  
454, 465. Overruled (What is rent service)  
in *Van Rensselaer v. Chadwick*, 24 *Barb.* 333.
- *v. Chadwick*, 24 *Barb.* 333. Aff'd in  
22 *N. Y.* 32. Followed with *Litchfield v.*  
*Burwell*, 5 *How. Pr.* 341, and *Wallis v.*  
*Lott*, 15 *Id.* 567 (Officer's return of service  
as conclusive on defendant) in *Stout v.*  
*Sioux City, &c. R. R. Co., U. S. Cir. Ct.*  
*D. Neb.* 12 *Reporter*, 516; s. c., 8 *Fed. Rep.*  
794.
- *v. Clark*, 17 *Wend.* 25; s. c., 31 *Am.*  
*Dec.* 280, with note where syllabus is ex-  
plained. Followed (Effect of notice of un-  
recorded deed) in *Goelet v. McManus*, 1  
*Hun.* 306. Referred to as a leading author-  
ity in 2 *Pomeroy on Eq. Jur.* 222, n.
- *v. Cottrell*, 7 *Barb.* 127. Aff'd in *Seld.*  
*Notes*, No. 1, 23.
- *v. Dennison*, 35 *N. Y.* 393. See *Hos-*  
*ford v. Ballard*. Followed (Assignees, &c.  
as affected by covenant to pay rent) in *Van*  
*Rensselaer v. Barringer*, 39 *N. Y.* 15.  
Explained (Distinction between deed of  
assignment and lease) in *Lyon v. Adde*, 63  
*Barb.* 96. Collated with other cases in  
*Gerard Titles to Real Est.* 2 ed. 138.
- *v. Dole*, 1 *Johns. Ch.* 279. See *Dexter*  
*v. Taber*. Disting'd (Slander in charging  
crime) in *Hayes v. Ball*, 72 *N. Y.* 418, 422.
- *v. Dunbar*, 4 *How. Pr.* 151. Disting'd  
(Proof to justify order for service by publi-  
cation) in *Carter v. Youngs*, 42 *Super. Ct.*  
*(J. & S.)* 171.
- *v. Hayes*, 5 *Den.* 477. Explained  
(Right of action for rent reserved in grant  
in fee) in *Sedgw. & W. on Tr. of Tit. to*  
*Land*, § 209.
- *v. Hays*, 19 *N. Y.* 68. Aff'g 27 *Barb.*  
104. Decision in 19 *N. Y.* followed  
(Assignees, &c. as affected by covenant to  
pay rent) in *Main v. Green*, 32 *Barb.* 454;  
33 *Id.* 137; *Van Rensselaer v. Barringer*, 32  
*N. Y.* 14; *Cruger v. McLaury*, 41 *Id.* 221.  
Explained in *Van Rensselaer v. Read*, 26 *Id.*  
568. Followed with *Van Rensselaer v. Read*,  
26 *N. Y.* 558, in *Van Rensselaer v. Bouton*,  
3 *Keyes*, 260. See authority collected  
(Reserving rent upon conveyance in fee) in  
16 *Am. L. Rev.* 39. Commented on and  
quoted in 2 *Washb. on Real Prop.* 4 ed.  
233. Collated with other cases in *Gerard*  
*Titles to Real Est.* 2 ed. 133.
- *v. Jewett*, 5 *Den.* 135. Aff'd in 2 *N.*  
*Y.* 135; s. c., 51 *Am. Dec.* 274, with note

- wherein it is said to have been extensively cited as an authority. Decision in 2 *N. Y.* applied (Right to interest in action on contract) in *Dana v. Fiedler*, 12 *Id.* 51; which aff'd 1 *E. D. Smith*, 483, 489, which see; *De Lavallette v. Wendt*, 75 *N. Y.* 582. Approved and followed in *Adams v. Fort Plain B'k*, 36 *N. Y.* 261. Followed as conclusive in *Livingston v. Miller*, 11 *Id.* 87. Criticised as extreme in *McMahon v. N. Y. & Erie R. R. Co.*, 20 *Id.* 463, 469. Reviewed with other cases in *White v. Miller*, 78 *Id.* 393, 395. See cases classified in *Currie v. White*, 6 *Abb. Pr. N. S.* 381. Disting'd in *Holmes v. Rankin*, 17 *Barb.* 456; *Gallup v. Perue*, 10 *Hun.* 526. Explained in connection with *McMahon v. Erie R. R. Co.*, 20 *N. Y.* 463, in *Marsh v. Fraser*, 37 *Wis.* 149, 152. Collated with *Dana v. Fiedler*, 12 *N. Y.* 40, and other cases in 28 *Am. R.* 314, *n.* Followed (Assignees, &c. as affected by covenants to pay rent) in *Van Rensselaer v. Hays*, 19 *N. Y.* 93.
- *v. —*, 6 *Hill*, 373; *s. c.*, 41 *Am. Dec.* 750, with note wherein are collated citations. Applied (Reference as affected by question of account being involved) in *Camp v. Ingersoll*, 86 *N. Y.* 433, 435.
- *v. —*, 5 *Den.* 121. Aff'd in 2 *N. Y.* 141. Decision in *Id.* disapproved (Remedy by ejectment to enforce payment of rent) and *Clark v. Jones*, 1 *Den.* 510, 519, followed in *Horton v. N. Y. Central, &c. R. R. Co.*, 12 *Abb. N. C.* 30.
- *v. Jones*, 5 *Den.* 449. See *Harrison v. Stevens*. Explained in action involving similar lease (Necessity of demand of performance of services) in *Livingston v. Miller*, 11 *N. Y.* 80, 84.
- *v. Kidd*, 4 *Barb.* 17. See cases reviewed (Equitable relief against collection of taxes) in *Wilson v. Mayor, &c. of N. Y.*, 1 *Abb. Pr.* 4, 31. Approved in *Dodd v. City of Hartford*, 25 *Conn.* 232. Relied on with *Van Doren v. Mayor of N. Y.*, 9 *Paige*, 388; *Wiggin v. Mayor of N. Y.*, *Id.* 16, in *De Witt v. Hays*, 2 *Cal.* 463; *s. c.*, 56 *Am. Dec.* 353.
- *v. —*, 6 *N. Y.* 331. Applied (Liability for execution of warrant after return day) to renewal of tax warrant,—in *Thomas v. Clapp*, 20 *Barb.* 166.
- *v. Owen*, 48 *Barb.* 61; *s. c.*, 33 *How.* *Pr.* 12. See (Expiration of plaintiff's title before trial in ejectment) *Code Civ. Pro.* 1881, § 1520, *n.*
- *v. Penniman*, 6 *Wend.* 569. Approved (Surrender of lease by operation of law as implied from acceptance of new lease) in *Coe v. Hobby*, 72 *N. Y.* 141, 146. Quoted in *Browne on Stat. of Frauds*, § 51, 4 ed.
- *v. Platner*, 2 *Johns. Cas.* 17; *s. c.*, 1 *N. Y. Com. L. Law.* ed. 423, with brief note citing other cases. Another decision involving substantially same facts, in 2 *Johns. Cas.* 24. Decision in *Id.* explained (Assignees, &c. as affected by covenants to pay rent) in *Van Rensselaer v. Read*, 26 *N. Y.* 558, 570.
- *v. —*, 1 *Johns.* 276. Overruled (Interest on arrears of rent) in *Van Rensselaer v. Jewett*, 2 *N. Y.* 135, 140.
- *v. Poucher*, 5 *Den.* 35. Former decision in 24 *Wend.* 216. Decision in 5 *Den.* approved (Effect of statute abolishing entails) in *Wendell v. Crandall*, 1 *N. Y.* 492.
- *v. Read*, 26 *Id.* 558. See *Same v. Hays*. Applied (Effect of conveyance in fee reserving rent) in *Tyler v. Heidorn*, 46 *Barb.* 450; *Van Rensselaer v. Bouton*, 3 *Keyes*, 261; *Same v. Barringer*, 39 *N. Y.* 15. Collated with other cases in *Gerard Titles to Real Est.* 2 ed. 139; 16 *Am. L. Rev.* 39.
- *v. Sheriff of Albany*, 1 *Cow.* 501. Denied (Right of junior creditor to redeem from judgment) in *Jackson v. Budd*, 7 *Id.* 661. Disting'd in *Brewster v. Cropsey*, 4 *How. Pr.* 221. Applied (Mandamus as remedy for breach of official duty) in *People v. Brennan*, 39 *Barb.* 537. Disting'd in *People ex rel. Frost v. Fay*, 3 *Lans.* 403.
- *v. Sheriff of Onondaga*. See *Jackson v. Ramsey*.
- *v. Slingerland*, 26 *N. Y.* 580. See *Same v. Bonesteel*. Applied (Assignees, &c. as affected by covenant to pay rent) in *Van Rensselaer v. Barringer*, 39 *N. Y.* 15. Collated with other cases in *Gerard Titles to Real Est.* 2 ed. 139. See (Ejectment for non-payment of rent) *Code Civ. Pro.* 1881, § 1504, *n.*
- *v. Smith*, 27 *Barb.* 104. Collated with other cases (Effect of conveyance in fee reserving rent) in *Gerard Titles to Real Est.* 2 ed. 133.
- *v. Snyder*, 9 *Barb.* 302. Aff'd in 13 *N. Y.* 299. See *Same v. Ball*. Decision in 13 *N. Y.* applied (Effect of conveyance in fee, reserving rent) in *Van Rensselaer v. Smith*, 27 *Barb.* 159; *Tyler v. Heidorn*, 46 *Id.* 447; *Van Rensselaer v. Hays*, 19 *N. Y.* 86. Applied (Effect of insufficiency of property liable to be distrained for rent) to liability to levy for taxes, in *Fake v. Whipple*, 39 *Barb.* 344. Followed (Ejectment for non-payment of rent) in *Van Rensselaer v. Ball*, 19 *N. Y.* 100, 108; *Hosford v. Ballard*, 39 *Id.* 151; which aff'd 39 *How. Pr.* 167, which see. See *Code Civ. Pro.* 1881, § 1504, *n.*
- *v. Stafford*, *Hopk.* 569. Aff'd in 9 *Cow.* 316.
- *v. Van Rensselaer*. See *Campbell v. Arnold*.
- *v. Vickery*, 3 *Lans.* 57. Followed (Evidence as to boundary line) in *Jones v. Smith*, 3 *Hun.* 351; which was rev'd in 64 *N. Y.* 180. Cited (Inferring date of delivery of deed from circumstances) in 2 *Whart. Com. on Ev.* § 979.
- *v. Witbeck*, 7 *Barb.* 133. Rev'd in 7 *N. Y.* 517. See *Merritt v. Village of Portchester*; *Parish v. Golden*. Applied (Effect of defect in assessment proceedings) in *Wheeler v. Mills*, 40 *Barb.* 646; *Hinckley v. Cooper*, 22 *Hun.* 257; *Jewell v. Van Steen-*

- burgh, 58 *N. Y.* 90. Disting'd in Buffalo & State Line R. R. Co. v. Sup'rs Erie, 48 *Id.* 105; Bradley v. Ward, 58 *Id.* 406. Cited as authority in Nat. B'k of Chemung v. City of Elmira, 6 *Lans.* 121. Limited in Parish v. Golden, 35 *N. Y.* 462, 465, by which, however, it is said not to have been shaken,—in Westfall v. Preston, 49 *Id.* 355. Explained in Fifield v. Marinette County, 62 *Wis.* 532, 539. Disting'd (Assessors, when without jurisdiction) in Wade v. Matheson, 4 *Lans.* 163; Palmer v. Lawrence, 6 *Id.* 291. Followed with Westfall v. Preston, 49 *N. Y.* 349, and Parish v. Golden, 35 *Id.* 462; Newman v. Supervisors of Livingston, 45 *Id.* 676, disting'd in Marsh v. Bowen, 12 *Abb. N. C.* 1, 9. Collated with Parish v. Golden, 35 *N. Y.* 462; Johnson v. Elwood, 53 *Id.* 431, and other authorities in note in 19 *Cent. L. J.* 150; State *ex rel.* Harvey v. Cook, which is also reported in 82 *Mo.* 185, and in which Johnson v. Elwood is relied on.
- Van Riper, Ex parte**, 20 *Wend.* 614. See Corning v. McCullough; Harger v. McCullough. Approved. (Nature of liability of officer of corporation for its debts) in Bird v. Hayden, 2 *Abb. Pr. N. S.* 67. Reviewed with other cases, in Lowry v. Inman, 2 *Sweeney*, 117, 141. See (Enforcing such liability, when created by foreign statute) Winter v. Baker, 50 *Barb.* 434. Followed in Pugh v. Hurtt, 52 *How. Pr.* 25. Explained in *Ang. & A. on Corp.* § 622, 11 ed.
- Van Riper v. Baldwin**, 19 *Hun.* 344. Aff'd in 85 *N. Y.* 618, but without opinion.
- **v. Poppenhausen**, 43 *N. Y.* 68. Applied (Joint action against one joint debtor and representatives of another deceased) in Divine v. Duncan, 2 *Abb. N. C.* 331.
- Van Rossum v. Walker**, 11 *Barb.* 237. Quoted and collated with other cases (Provision in assignment for benefit of creditor respecting sales on credit) in *Bishop on Assign.* § 211. Discussed in *Burrill on Assign.* § 222, 4 ed. Explained in *Id.* § 183, n. 3.
- Van Santen v. Standard Oil Co.**, 17 *Hun.* 140. Aff'd in 81 *N. Y.* 171. Decision in 17 *Hun* explained (Stoppage in transitu) in 2 *Benj. on Sales*, § 1286, n. 27 (Corbin & 4 Am. ed.).
- Van Santvoord v. St. John**, 6 *Hill.* 157. See Gibson v. Culver; McDonald v. Western R. R. Co.; St. John v. Van Santvoord. Disting'd with Ackley v. Kellogg, 8 *Cow.* 223; Ostrander v. Brown, 15 *Johns.* 39 (Carrier's liability as to delivery) in Gould v. Chapin, 20 *N. Y.* 259, 263. Applied in McDonald v. Western R. R. Co., 34 *Id.* 504. Applied (Effect of custom respecting delivery by carrier) in Sage v. Gittner, 11 *Barb.* 123; Wright v. Boughton, 22 *Id.* 567; Hempstead v. N. Y. Central R. R. Co., 28 *Id.* 499. Disting'd in Rawson v. Hollaad, 59 *N. Y.* 611, 618. Followed and approved in Farmers' & Mechanics' B'k v. Champlain Transp. Co., 18 *Vt.* 131, 140, and see Same v. Same, 16 *Id.* 52. Applied (Carrier's liability for injury happening to goods while not in his custody) in Dillon v. N. Y. & Erie R. R. Co., 1 *Hilt.* 228, 231. Re-aff'd (Liability of carrier receiving goods for point beyond its line) in Root v. Great Western R. R. Co., 45 *N. Y.* 532. Disting'd in Wilcox v. Parmelee, 3 *Sandf.* 613. Approved in Quimby v. Vanderbilt, 17 *N. Y.* 313. Relied on with Root v. Great Western R. R. Co., 45 *Id.* 524; Burtis v. Buffalo & State Line R. R. Co., 24 *Id.* 269; Aetna Ins. Co. v. Wheeler, 49 *Id.* 616; Babcock v. Lake Shore, &c. R'y Co., *Id.* 491; Maghee v. Camden & Amboy R. R. Co., 45 *Id.* 514, in Crawford v. Southern R. R. Ass'n, 51 *Miss.* 222; s. c., 24 *Am. R.* 626. Reviewed with Bostwick v. Champion, 11 *Wend.* 575; Fairchild v. Slocum, 19 *Id.* 329; Hart v. Rensselaer & Saratoga R. R. Co., 8 *Id.* 87; Smith v. N. Y. Central R. R. Co., 43 *Barb.* 225, in Barter v. Wheeler, 49 *N. H.* 9; s. c., 6 *Am. R.* 434, 450. Collated with Weed v. Schenectady, &c. R. R. Co., 19 *Wend.* 534; Wilcox v. Parmelee, 3 *Sandf.* 610, and other cases in 1 *Am. R.* 79, n. Commented on in 2 *Redf. Am. Railw. Cas.* 57. Collated with other cases in *Id.* 60. Quoted in 2 *Story on Contr.* 5 ed. § 945, n. 5. Applied (Writ of error, when well brought) in Hartung v. People, 26 *N. Y.* 157.
- Van Schaick v. Edwards** 2 *Johns.* Cas. 355; s. c., 1 *N. Y. Com. L. Law. ed.* 542, with brief note. See Scoville v. Canfield.
- **v. Sigel**, 58 *How. Pr.* 211. Aff'd in 60 *Id.* 122; s. c., 9 *Daly*, 386.
- **v. Third Ave. R. R. Co.**, 30 *Barb.* 189; s. c., 8 *Abb. Pr.* 380. Rev'd in 25 *How. Pr.* 446. Subsequent decision in 49 *Barb.* 409, aff'd in 38 *N. Y.* 346.
- Van Schoick v. Niagara Fire Ins. Co.**, 68 *N. Y.* 434. See Brown v. Cattaraugus Co. Mut. Ins. Co.; Jennings v. Chenango Co. Ins. Co. Followed as controlling (Insurance company as affected by knowledge possessed by agent) in Broadhead v. Lycoming Ins. Co., 14 *Hun.* 452, 455. Followed in Chase v. People's Fire Ins. Co., *Id.* 459; McCabe v. Farm Buildings Fire Ins. Co., *Id.* 604; Holmes v. Drew, 16 *Id.* 493; Sontell v. Oswego Co. Farmers' Ins. Co., *Id.* 518; Davis v. Lamar Ins. Co., 18 *Id.* 230; Bennett v. North British, &c. Ins. Co., 81 *N. Y.* 276. Disting'd in Broadhead v. Lycoming F. Ins. Co., 23 *Hun.* 397, 400. Explained in Bell v. Lycoming Fire Ins. Co., 19 *Id.* 245. Explained (Necessity that policy state interest covered) in Dakin v. Liverpool, &c. Ins. Co., 77 *N. Y.* 604. Applied (Principal as affected by knowledge of agent) in Bennett v. Buchan, 76 *Id.* 391.
- Van Schoning v. Buchanan**, 23 *How. Pr.* 164. Aff'g Van Schoning v. Mitchell, *Id.* 44. Opinion of BARBOUR, J., to same effect in 14 *Abb. Pr.* 185.

- Van Schoonhoven v. Curley**, 21 *Hun*, 205. Aff'd in 86 *N. Y.* 187.
- Van Schuyver v. Mulford**, 59 *N. Y.* 426. See *Savage v. Burnham*. Applied (Adverse claims not to be determined in partition action) in *Therasson v. White*, 52 *How. Pr.* 66. Disting'd in *Wager v. Wager*, 23 *Hun*, 439, 442. Commented on in *Sedgw. & W. on Tr. of Tit. to Land*, § 166. Disting'd with *Manice v. Manice*, 43 *N. Y.* 303 (Trust in will when valid, though connected with illegal provisions) in *Richards v. Moore*, 5 *Redf.* 278, 282.
- Van Sickler v. Palmer**, 2 *Sup'm. Ct. (T. & C.)* 612. Applied (Effect of certificate as estopping to set up usury in mortgage) in *Eitel v. Bracken*, 38 *Super. Ct. (J. & S.)* 7, 15.
- Van Sickler v. Graham**. See *Boyd v. Bigelow*.
- **v. Jacobs**. See *Morse v. Keyes*.
- Van Size v. Long Island R. R. Co.**, 3 *Hun*, 613; s. c., more fully, as Matter of Long Island R. R. Co., 6 *Sup'm. Ct. (T. & C.)* 298.
- Van Slyke v. Hyatt**, 9 *Abb. Pr. N. S.* 58. Approved, and appeal dismissed, in 46 *N. Y.* 259. Decision in *Id.* applied (Remedy for insufficiency of findings by referee) in *Morgan v. Mulligan*, 50 *Id.* 665; *Meacham v. Burke*, 54 *Id.* 219. Applied (Review by Court of Appeals of order respecting referee's findings) in *Quincey v. Young*, 53 *Id.* 506. Applied (Sufficiency of findings, in referee's report) in *Dolan v. Merritt*, 18 *Hun*, 28.
- **v. Lettice**. See *Larkin v. Robbins*; *Miller v. Van Auken*.
- **v. Shelden**, 9 *Barb.* 278. Disting'd (What mortgage may be foreclosed by advertisement) in *Mowry v. Sanborn*, 62 *Id.* 223, 230.
- Van Steenberg v. Bigelow**, 3 *Wend.* 42. Examined and applied (Validity of special statutory proceedings) in *Porter v. Purdy*, 29 *N. Y.* 103.
- **v. Kortz**, 10 *Johns.* 167. Approved (Requisites of crime of perjury) in *Pratt v. Price*, 11 *Wend.* 128; *Chamberlain v. People*, 23 *N. Y.* 85, 88. Applied in *State v. Whittemore*, 50 *N. H.* 245; s. c., 9 *Am. R.* 196, 199.
- **v. Tobias**, 17 *Wend.* 562. See (Action for injury done by animals belonging to different persons) *Code Civ. Pro.* 1881, § 3109, *n.*
- Van Tassel v. Capron**, 1 *Den.* 250; s. c., 43 *Am. Dec.* 667, with note wherein are collected citations. Explained (Slander against one in his professional capacity) in *Moak's Underhill's Torts*, 1 *Am. ed.* 121.
- **v. Wood**, 12 *Hun*, 388. Rev'd in 76 *N. Y.* 614.
- Van Tine v. Crane**, 1 *Wend.* 524. Explained (Liability on note joint and several in terms, made in partnership name) in *Snow v. Howard*, 35 *Barb.* 55, 57.
- Van Tuyl v. Van Tuyl**, 57 *Barb.* 235; s. c., 9 *Abb. Pr. N. S.* 5. Disting'd with Matter of Taylor, 9 *Paige*, 614 (Admissibility of declarations of person as to fact of his marriage) in *Badger v. Badger*, 88 *N. Y.* 546. See to the contrary (Exclusion of assignor as witness) *Lyon v. Snyder*, 61 *Barb.* 172. See also *Abb. Tr. Ev.* 64.
- **v. Westchester Fire Ins. Co.**, 67 *Barb.* 72. Aff'd in 55 *N. Y.* 657.
- Van Valen v. Lapham**, 13 *How. Pr.* 240. Disting'd (Effect of counterclaim arising after commencement of action) in *Howard v. Johnston*, 82 *N. Y.* 271, 275.
- Van Valkenburgh v. Am. Popular Life Ins. Co.**, 9 *Hun*, 583. Aff'd in 70 *N. Y.* 605. See *Murray v. N. Y. Life Ins. Co.*
- **v. Astor Mut. Ins. Co.**, 1 *Bosw.* 61. Explained and disting'd (Implied warranty of seaworthiness) in *Hathaway v. Sun Mut. Ins. Co.*, 8 *Id.* 33, 63.
- **v. Bates**, 14 *Abb. Pr. N. S.* 314. Followed (Action in aid of attachment) in *Lupton v. Smith*, 3 *Hun*, 1.
- **v. Mayor, &c. of N. Y.**, 28 *How. Pr.* 239; s. c., more fully, 43 *Barb.* 109. See cases cited (Municipal corporation as public agent) in 8 *Abb. N. C.* 280, *n.*
- **v. Watson**, 13 *Johns.* 480; s. c., 7 *Am. Dec.* 395. Disting'd and *Raymond v. Loyl*, 10 *Barb.* 483, followed (Liability of parent for necessities furnished his minor child) in *Kelly v. Davis*, 49 *N. H.* 176; s. c., 6 *Am. R.* 499, 503, 506. Questioned with *Edward v. Davies*, 16 *Johns.* 285; Matter of Rider, 11 *Paige*, 188, in *Tyler on Inf. & Cov.* 2 ed. § 65.
- Van Vechten v. Griffiths**, 4 *Abb. Ct. App. Dec.* 487. Cited (Effect of recitals in admiralty decree to bind strangers) in 2 *Whart. Com. on Ev.* § 814.
- **v. Hopkins**, 5 *Johns.* 211; s. c., 4 *Am. Dec.* 339, with extended note, wherein it is said to be a leading American case, and because of its clear exposition of terms to have been highly regarded as authority, its definitions being generally accepted by the courts; see especially *McLaughlin v. Russell*, 17 *Ohio*, 475, where it is disting'd and approved, and *Gibson v. Williams*, 4 *Wend.* 320, disapproved (Testimony of witnesses as to construction of libel). See *Fry v. Bennett*. Cited with approval (Necessity of sufficient colloquium to support innuendo) in *Peterson v. Sentman*, 37 *Md.* 140; s. c., 11 *Am. R.* 534. Applied with *Fry v. Bennett*, 5 *Sandf.* 65 (Office of innuendo) in *Bundy v. Hart*, 46 *Mo.* 460; s. c., 2 *Am. R.* 525. Included with notes in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 138.
- **v. Paddock**, 12 *Johns.* 178; s. c., 7 *Am. Dec.* 308. Reviewed with *Houghtaling v. Osborn*, 15 *Johns.* 119; *Strong v. Elliot*, 8 *Cov.* 30, and other cases (Validity of official acts done on Sunday), in *Reid v. State*, 53 *Ala.* 402; s. c., 25 *Am. R.* 627, 633. Reviewed with other cases in *Re Worthington*, 16 *Bankr. Reg.* 52.

- **v. Pruyn**, 9 *How. Pr.* 222. Aff'd in 13 *N. Y.* 549. Decision in *Id.* included (Notice of protest, where to be served) in 2 *Ames Cas. on B. & N.* 438.
- **v. Van Veghten**, 8 *Paige*, 104. Discussed (Suspension of power of alienation) in 4 *Kent Com.* 271, *n. g.* Quoted (Wills, when taking effect) in 1 *Jarm. on Wills*, Rand. & T. ed. 601, *n.*
- Van Vleck v. Burroughs**, 6 *Barb.* 341. Followed (Interposition of statute of limitations in proceedings before surrogate) in *Clock v. Chadeagne*, 10 *Hun.* 97, 101, 104.
- Van Vleet v. Slauson**, 45 *Barb.* 317. Approved and disting'd (Provisions in assignment act, when directory) in *Hardman v. Bowen*, 39 *N. Y.* 200. Disting'd in *Rennie v. Bean*, 24 *Hun.* 123, 127.
- Van Voorhis v. Brintnall**, 23 *Hun.* 264. Rev'd in 86 *N. Y.* 18; *s. c.*, 21 *Am. L. Reg. N. S.* 9, with note. See *Ormes v. Dauchy*; *People v. Baker*. Decision in 86 *N. Y.* followed (Re-marriage in another State, after divorce for adultery) in *Thorp v. Thorp*, 90 *N. Y.* 602, 605; *Moore v. Hegeman*, 92 *Id.* 521, 524; *People v. Chase*, 28 *Hun.* 310, 313. Criticised in 17 *Am. L. Rev. N. S.* 166. Explained in 2 *Pars. on Contr.* 598, *n. 1*, Keller's ed. See *Abb. Ann. Dig.* 1882-3, 146, *n.*
- **v. Budd**, 39 *Barb.* 479. See *Franklin v. Talmadge*. Disting'd (Middle letter of name) in *Kortz v. Canvassers of Greene County*, 12 *Abb. N. C.* 84.
- Van Wagenen v. Clark**, 22 *Hun.* 497. Motion for re-argument denied, it seems, in 23 *Id.* 354, but without opinion.
- Van Wagner v. Terrett**, 27 *Barb.* 181. Followed (Acceptance of draft, when not to be regarded as guaranty) in *Gallagher v. Nichols*, 60 *N. Y.* 438, 445.
- Van Wart v. Smith**, 1 *Wend.* 219; *s. c.*, 9 *N. Y. Com. L. Law. ed.* 894, with brief note.
- Van Wert v. Benedict**, 1 *Bradf.* 114. Disregarded as *obiter dictum* (Married woman's power to make will) in *Wadhams v. American Home Missionary Society*, 12 *N. Y.* 415, 424.
- Van Wezel v. Van Wezel**, 1 *Edw.* 113. Aff'd in 3 *Paige*, 38. See *Watson v. Nelson*. Decision in 3 *Paige* followed (Discharge of one committed for non-payment of money) in *People ex rel. Crouse v. Cowles*, 3 *Abb. Ct. App. Dec.* 513.
- **v. Wyckoff**, 3 *Sandf. Oh.* 528. Disting'd (Limitation of action to reach assets of decedent's estate) on *Malloy v. Vanderbilt*, 4 *Abb. N. C.* 127, 130.
- Van Winkle v. Udall**, 1 *Hill*, 559. Compare (Effect of levy of one of several executions by sheriff) *Fenton v. Folger*, 21 *Wend.* 676; *Ball v. Liney*, 48 *N. Y.* 6; *Davy v. Field*, 1 *Abb. Ct. App. Dec.* 490. Disapproved in *Banks v. Evans*, 10 *Smedes & M. (Miss.)* 35; *s. c.*, 48 *Am. Dec.* 734, 741, with note.
- **v. U. S. Mail S. S. Co.**, 37 *Barb.* 122. See *Bliven v. Hudson River R. R. Co.* Disting'd (Carrier's liability as to goods taken by process of law) in *Mierson v. Hope*, 2 *Sweeny*, 561, 574.
- Van Woert v. Albany & Susq. R. R. Co.**, 67 *N. Y.* 538. Aff'g 1 *Sup'm. Ct. (T. & C.)* 256. Decision in 67 *N. Y.* explained (Acceptance in case of sale of goods over fifty dollars in value) in 1 *Benj. on Sales*, § 139, *n. 1*, subd. 2 (Corbin's 4 *Am. ed.*).
- Van Wormer v. Mayor, &c. of Albany**, 15 *Wend.* 262. Aff'd in 18 *Id.* 163. Decision in 15 *Id.* disting'd (Power of public authorities to cause destruction of private property, as nuisance) in *Clark v. Mayor, &c. of Syracuse*, 13 *Barb.* 40; *Rogers v. Barker*, 31 *Id.* 455. Applied in *Cooper v. Schultz*, 32 *How. Pr.* 122; *Weil v. Schultz*, 33 *Id.* 8. Both decisions explained in *Reynolds v. Schultz*, 34 *Id.* 147, 156. Decision in 15 *Wend.* followed (Corporator, as party within rule excluding party as witness) in *Pack v. Mayor, &c. of N. Y.*, 3 *N. Y.* 492.
- Van Wyck v. Ailen**, 6 *Daly*, 376. Aff'd in 69 *N. Y.* 61; *s. c.*, 25 *Am. R.* 136. See *Passenger v. Thorburn*.
- **v. Alliger**, 6 *Barb.* 507. Referred to as repudiated by *Van Deusen v. Young*, 29 *Id.* 9 (Rights of one in possession of land under contract of sale, as to cutting of timber) in *Cook v. Doolittle*, 5 *Hun.* 342.
- **v. Aspinwall**, 17 *N. Y.* 190. Aff'g *Same v. Guthrie*, 4 *Duer*, 268. See *Streety v. Wood*. Decision in 17 *N. Y.* examined (Privileged statement by physician) in *Perkins v. Mitchell*, 31 *Barb.* 461, 466, 468. Collated with other cases and explained in *Bigel. Cas. on Torts*, 171.
- **v. Baker**, 10 *Hun.* 39. Further decisions in 11 *Id.* 309; 16 *Id.* 168. See *Boyd v. Dunlap*. Decision in 11 *Hun* followed (Costs to abide event) in *Mott v. Consumers' Ice Co.*, 8 *Daly*, 244, 246. Disting'd in *Sheridan v. Genet*, 1 *Civ. Pro. R.* 310, *n.* Disting'd and questioned (Costs, on ground of claim of title to real property being involved) in *Black v. O'Brien*, 23 *Hun.* 82, 84. Disting'd (Discontinuance, when allowed without costs) in *Cole v. Rose*, 65 *How. Pr.* 520.
- **v. Bauer**, 9 *Abb. Pr. N. S.* 142. See (Attachment of property) *Code Civ. Pro.* 1881, ch. VII, tit. III, art. 1, *n.*
- **v. Brady**, 3 *Code R.* 157. Said not to have been generally accepted as authority. (Examination of debtor in supplementary proceedings on questions of fraud) in *Clapp v. Lathrop*, 23 *How. Pr.* 423, 443.
- **v. Guthrie**. See *Van Wyck v. Aspinwall*.
- **v. Hardy**, 11 *Abb. Pr.* 473; *s. c.*, 20 *How. Pr.* 222. Aff'd in 4 *Abb. Ct. App. Dec.* 496; *s. c.*, 39 *How. Pr.* 392. Decision in 11 *Abb. Pr.* explained and limited (Sufficiency of affidavit to obtain order for service by publication) in *Peck v. Cook*, 41 *Barb.* 549, 554. Said not to have been overruled,—in *Steinle v. Bell*, 12 *Abb. Pr. N. S.* 171, 173.

— **v. McIntosh**, 14 *N. Y.* 439. Followed (Comparison of handwriting) in *Hardy v. Norton*, 66 *Barb.* 527, 537, 538; *B'k of Commonwealth v. Mudgett*, 44 *N. Y.* 524. Applied in *Hoyt v. Stuart*, 3 *Bosw.* 447, 450. Reviewed with other cases in *Miles v. Loomis*, 10 *Hun.* 372, 376; which was aff'd in 75 *N. Y.* 288, 294, which see. Disting'd in *Pontius v. People*, 82 *Id.* 339, 349. See cases cited in 6 *Am. Dec.* 172, *n.*

— **v. Seward** 6 *Paige*, 62. Aff'd in 18 *Wend.* 375. Both decisions examined (Voluntary conveyance, when fraudulent as to creditors) in *Babcock v. Eckler*, 24 *N. Y.* 628. Decision in 6 *Paige* applied in *Dunlap v. Hawkins*, 59 *N. Y.* 342, 347.

— **v. Walters**, 16 *Hun.* 209. Aff'd in 81 *N. Y.* 352, as *Van Wyck v. Watters*. Both decisions followed with *Guardian Mut. Life Ins. Co. v. Kashaw*, 66 *N. Y.* 544 (Agent's bonus not principal's usury) in accordance with the prevailing doctrine,—in *Jordan v. Humphrey*, 31 *Minn.* 495, 499.

— **v. Watters**. See *Same v. Walters*.

**Van Zandt v. Mayor, &c. of N. Y.**, 8 *Bosw.* 375. See *Whitney v. Same*. Explained (Right to wharfage) in *Langdon v. Mayor, &c. of N. Y.*, 6 *Abb. N. C.* 314, 326.

— **v. Mut. Benefit Life Ins. Co.**, 55 *N. Y.* 169; *s. c.*, 14 *Am. R.* 215. Mem. of decision below in 6 *Alb. L. J.* 96. See *Breasted v. Farmers' Loan & Trust Co.* Decision in 55 *N. Y.* approved (Effect of condition in policy as to self-destruction of assured) in *De Gogorza v. Knickerbocker Life Ins. Co.*, 65 *Id.* 236. Explained in 2 *Pars. on Contr.* 476, *n.* 1, *Keller's ed.* Applied (Evidence of non-professional witness, as to sanity) in *Higbee v. Guardian Mut. Life Ins. Co.*, 66 *Barb.* 466. Disting'd in *Koenig v. Globe Mut. Life Ins. Co.*, 10 *Hun.* 559.

**Varet v. N. Y. Ins. Co.**, 7 *Paige*, 560. Aff'd in *N. Y. Ins. Co. v. Roulet*, 24 *Wend.* 505.

**Varian v. Stevens**, 2 *Duer*, 635. Compare (Power to appoint guardian) *Towsey v. Harrison*, 25 *How. Pr.* 266.

**Varick v. Briggs**, 6 *Paige*, 323. Aff'd in 22 *Wend.* 543. Decision in 6 *Paige* disting'd (Purchaser as affected by notice of prior equities) in *Trustees of Union College v. Wheeler*, 61 *N. Y.* 117. Compared in *Westbrook v. Gleason*, 79 *Id.* 31.

— **v. Edwards**, *Hoffm.* 382. Aff'd in 11 *Paige*, 290; which was rev'd in 5 *Den.* 664. See *Kane v. Bloodgood*. Decision in 5 *Den.* overruled (Release of devisee's contingent interest) in *Miller v. Emans*, 19 *N. Y.* 384. Decision in *Hoffm.* approved (Judgment of court of common law, when not bar to relief in equity) as supported both by authority and principle,—in *Hunt v. Danforth*, 2 *Curt. C. Ct.* 592. Decision in 11 *Paige* followed as decisive (Running of statute of limitations in case of eviction of one to whom land belongs in equity) in *Bartlett v. Judd*, 21 *N. Y.* 200, 205.

— **v. Jackson**, 2 *Wend.* 166; *s. c.*, 19 *Am.*

*Dec.* 571. See other decisions involving same facts as *Pelletreau v. Jackson*, 11 *Wend.* 110; *Varick v. Edwards*, *Hoffm.* 382. Decision in 2 *Wend.* disting'd (Estoppel to allege incompetency of witness) in *Montgomery v. Miller*, 3 *Redf.* 159.

— **v. Mayor, &c. of N. Y.** See *Dygart v. Schenck*.

— **v. Smith**, 5 *Paige*, 187; *s. c.*, 28 *Am. Dec.* 417, with note wherein it is shown to have been frequently cited and approved. Subsequent decision in 9 *Paige*, 547. Decision in 5 *Id.* applied (Limit of right of eminent domain) in *People v. Comm'rs of Highways of Palatine*, 53 *Barb.* 75. Decision in 9 *Paige* approved in *State v. Brown*, 3 *Dutcher (N. J.)* 13. Decision in 5 *Paige* disting'd (Evidence that use for which property is taken is public) in *Matter of Deansville Cemetery Assoc.*, 66 *N. Y.* 572. Thought in 22 *Am. Dec.* 691, *n.*, to have been somewhat misapprehended by authorities there cited. Disting'd (Joinder of causes of action) in *Latting v. Latting*, 4 *Sandf. Ch.* 36. Followed with *Brinkerhoff v. Brown*, 6 *Johns. Ch.* 150, in *De Louis v. Meek*, 2 *G. Greene (Iowa)* 55; *s. c.*, 50 *Am. Dec.* 491, 500, with note. Reviewed with other cases (Navigable streams) in *People v. Canal Appraisers*, 33 *N. Y.* 479. Decision in 9 *Paige* collated with other cases in *Mills Thoms. on Highw.* 3 ed. 48.

— **v. Tallman**, 2 *Barb.* 113. See *Jackson v. Roberts*. With this case and *Leggett v. Rogers*, 9 *Barb.* 406, see to same effect (Comptroller's deed as evidence of regularity of his proceedings) *Jackson v. Morse*, 18 *Johns.* 441; *Tallman v. White*, 2 *N. Y.* 66; *Bank of Utica v. Mersereau*, 3 *Barb. Ch.* 528, 578. See also *Hoyt v. Dillon*, 19 *Barb.* 644, a case of a deed from common council of Brooklyn.

**Vartie v. Underwood**, 18 *Barb.* 561. See *Denton v. Nanny*; *Swaine v. Perine*. Applied (Right of surety to have fund belonging to principal exhausted before resort to surety) in *Wright v. Austin*, 56 *Barb.* 19. Disapproved (Dower in surplus on mortgage foreclosure) in *Newhall v. Lynn Savings Bank*, 101 *Muss.* 432; *s. c.*, 3 *Am. R.* 389. Collated with other cases in *Colby on Forecl.* 54.

**Vary v. Godfrey**, 6 *Cow.* 587. Explained and applied (Affidavit, &c. in action, when not to be taken before attorney therein) in *Bliss v. Molter*, 8 *Abb. N. C.* 242.

**Vassar v. Camp**, 14 *Barb.* 341. Aff'd in 11 *N. Y.* 441, 453. Decision in *Id.* applied (Contract, as created by acceptance by letter) to acceptance by telegraph, in *Trevor v. Wood*, 36 *Id.* 309.

**Vasseur v. Livingston**. See *Vasseur v. Same*.

**Vasseur v. Livingston**, 4 *Duer*, 285. Aff'd in *Vasseur v. Livingston*, 13 *N. Y.* 248. See *Leavenworth v. Packer*. Decision in 4 *Duer* applied (Counterclaim in action by assignee) in *Wiltzie v. Northam*, 3 *Bosw.*



168. Decision in 13 *N. Y.* applied (Necessity of reply to counterclaim) in *Nichols v. Boerum*, 6 *Abb. Pr.* 291. Disting'd in *Van Valen v. Lapham*, 13 *How. Pr.* 247.
- Vatel v. Herner**, 1 *Hilt.* 149. Collated with other cases (Eviction of lessee) in *McAdam on Landl. & T.* 2 ed. § 212.
- Vaughan v. Burford**, 3 *Bradf.* 78. Overruled, in effect (Necessity of attestation before signing of will) in *Jackson v. Jackson*, 39 *N. Y.* 153. Followed (Proof of publication of will) in *Burk's Will*, 2 *Redf.* 239, 242.
- Vaughn v. Ely**, 4 *Barb.* 159. See (Divesting of title to real property on execution sale) *Code Civ. Pro.* 1881, § 1440, *n.*
- Vaupell v. Woodward**, 2 *Sandf. Ch.* 143. Collated with other cases (Waiver of tender) in *McAdam on Landl. & T.* 2 ed. § 154.
- Vedder v. Fellows**, 20 *N. Y.* 126. See to the contrary (Right of judge to express opinion on evidence) *Massoth v. Delaware, & C. Canal Co.*, 64 *Id.* 524, and cases there cited. Explained (Reasonableness of corporate by-laws) in *Ang. & A. on Corp.* § 349, *n.* 1.
- **v. Van Buren**, 14 *Hun.* 250. See (Notice of appeal from justices' decision) *Code Civ. Pro.* 1881, § 3070, *n.*
- **v. Vedder**, 1 *Den.* 257. Compare (Effect of receipt in full) *Ryan v. Ward*, 48 *N. Y.* 204. Explained and limited in *Grumley v. Webb*, 44 *Mo.* 444, 456. Explained (Discharge of claim for personal injury) in *Moak's Underhill's Torts*, 1 *Am.* ed. 84. Explained (Effect of agreement to cancel and release mutual claims) in 2 *Pars. on Contr.* 685, *n.* *p.*
- Veeder v. Baker**, 10 *Weekly Dig.* 498; *mem. s. c.*, 22 *Hun.* 318. Rev'd in 83 *N. Y.* 156.
- **v. Cooley**, 2 *Hun.* 74; *s. c.*, 4 *Sup'm. Ct. (T. & C.)* 245. Applied (Allegations of fraud as determining character of action) in *Sparman v. Keim*, 83 *N. Y.* 245, 250.
- **v. Fonda**, 3 *Paige*, 94. See *Upton v. Vail*. Disting'd and limited (Relief against mistake as to quantity, on sale of real estate) in *Paine v. Upton*, 21 *Hun.* 306, 311.
- Veltman v. Thompson**, 3 *N. Y.* 438. Disting'd (Lien on vessel) in *Mott v. Lansing*, 57 *Id.* 112, 116.
- Vence v. Vence**, 15 *How. Pr.* 497. Aff'd in *Id.* 576.
- Verastegui v. Luzunariz**, 25 *Hun.* 119, opinion not reported; abridg't *s. c.*, 12 *Weekly Dig.* 489.
- Verdin v. Slocum**, 9 *Hun.* 150. Rev'd in 71 *N. Y.* 345. Decision in *Id.* disting'd (Trust attempted to be created by will, when invalid, as passive) in *Donovan v. Van De Mark*, 78 *Id.* 244, 248.
- Vermilyea v. Odell**, 1 *Edm.* 617. Aff'd in 4 *Paige*, 121.
- Vermilyea v. Austin**, 2 *E. D. Smith*, 203. Aff'd in *Christopher v. Austin*, 11 *N. Y.* 216.
- **v. Beatty**, 6 *Barb.* 429. Explained (Place of trial of actions affecting realty) in *Sedgw. & W. on Tr. of Tit. to Land*, § 469.
- Vermilyea, Ex parte**, 6 *Cow.* 555. See (Opinion that disqualifies juror) *People v. Bodine*, 1 *Edm.* 36, 91. Followed with *People v. Vermilyea*, 7 *Cow.* 108; *People v. Mather*, 4 *Wend.* 229, in *Nelms v. State*, 13 *Smedes & M. (Miss.)* 500; *s. c.*, 53 *Am. Dec.* 94. Compare *Jones v. People*, 2 *Colo.* 351; *Hirsch on Juries*, § 349.
- Vermilyea v. Fulton B'k**, 1 *Paige*, 37. Noted (Officers of corporation, as parties to proceedings against corporation) in *Ang. & A. on Corp.* § 675, 11 ed.
- **v. Palmer**, 52 *N. Y.* 471. Followed (Effect of findings by jury in equitable action) in *Carroll v. Deimel*, 13 *Weekly Dig.* 401. Applied (Adoption of special verdict) in *Madison University v. White*, 25 *Hun.* 490, 494.
- **v. Vermilyea**, 14 *How. Pr.* 470. See (Injunction pending action) *Code Civ. Pro.* 1881, § 604, *n.*
- Vermont Central R. R. Co. v. Northern R. R. Co.**, 6 *How. Pr.* 106. See (Change of venue) *Code Civ. Pro.* 1881, § 986, *n.*
- Vernam v. Harris**, 1 *Hun.* 451; *s. c.*, 3 *Sup'm. Ct. (T. & C.)* 483. See to the contrary (Effect of note of one of joint debtors, as payment) *Palmer v. Priest*, 1 *Sprague*, 512. See also *Abb. Tr. Ev.* 806.
- Vernol v. Vernol**, 2 *Hun.* 676; *s. c.*, 5 *Sup'm. Ct. (T. & C.)* 687. Rev'd in 63 *N. Y.* 45.
- Vernon v. Manhattan Co.**, 17 *Wend.* 524. Aff'd in 22 *Id.* 183. Both decisions applied (Right to notice of dissolution of partnership) in *Wardwell v. Haight*, 2 *Barb.* 553. Decision in 22 *Wend.* applied in *Mechanics' B'k v. Livingston*, 33 *Barb.* 462; *Clapp v. Rogers*, 12 *N. Y.* 286; *City B'k of Brooklyn v. McChesney*, 20 *Id.* 242; *Austin v. Holland*, 69 *Id.* 573. Applied with *National B'k v. Norton*, 1 *Hill*, 572; *Wardwell v. Haight*, 2 *Barb.* 549; *Clapp v. Rogers*, 2 *Kern.* 283, in *Rose v. Coffield*, 53 *Id.* 18; *s. c.*, 36 *Am. R.* 389, the contrary statements in *City B'k of Brooklyn v. McChesney*, 20 *N. Y.* 240, being disapproved as a dictum. Decision in 17 *Wend.* followed in *Watkinson v. Bank of Pennsylvania*, 4 *Whart. (Pa.)* 482; *s. c.*, 34 *Am. Dec.* 522.
- **v. Vernon**, 7 *Lans.* 492. Modified in 53 *N. Y.* 351. Decision in *Id.* applied (Sufficiency of form of words to create trust) in *Chipman v. Montgomery*, 4 *Hun.* 748; *Donovan v. Vandemark*, 18 *Id.* 201. Disting'd (Effect of power to give fee) in *Robert v. Corning*, 23 *Id.* 299, 306. Applied (Power to receive rents and profits, when implied) in *Marx v. McGlynn*, 4 *Redf.* 487. See (Interest, when vested in beneficiary under will) *Embury v. Sheldon*, 2 *Abb. N. C.* 404.
- Verona Central Cheese Factory v. Murtough**, 50 *N. Y.* 314. See (Liability of

- persons supplying milk to cheese factories) *L.* 1876, c. 161. See (Evidence of motive or intent) *Cowley v. People*, 8 *Abb. N. C.* 1; *Id.* 3, n.
- Verplanck v. Caines**, 1 *Johns. Ch.* 57. Explained (Appointment of receiver of partnership) in 1 *Collyer on Partn.* § 385, n. 1, Wood's Am. ed.
- **v. Mercantile Ins. Co.**, 1 *Edw.* 46. Subsequent decisions in *Id.* 84; 2 *Paige*, 438. See *Attorney-General v. Utica Ins. Co.*; *Bank Comm'rs v. Bank of Buffalo*; *Carpenter v. Danforth*; *Scott v. Depeyster*. Decision in 1 *Edw.* 46, approved (Limit of right of amendment of bill) in *Shields v. Barrow*, 17 *Hov. (U. S.)* 130. Compare, for rule under Code, *Brown v. Leigh*, 12 *Abb. Pr. N. S.* 193. Applied (Enjoining operations of corporation) in *Fisher v. World Mut. Ins. Co.*, 15 *Abb. Pr. N. S.* 363, 366. Decision in 1 *Edw.* 84, applied (Duty of trustees of corporation toward it and its shareholders) in *Parsons v. Hayes*, 14 *Abb. N. C.* 419. Followed (Stockholders of corporation are not its creditors) in *Coulter v. Robertson*, 24 *Miss* 278; s. c., 57 *Am. Dec.* 168. Decision in 2 *Paige*, applied (Proceeding by stockholder to enforce dissolution of corporation) in *Masters v. Eclectic Life Ins. Co.*, 6 *Daly*, 455, 457. Quoted (Stage of action at which receiver is to be appointed) in *High on Receiv.* § 113, n. 4.
- **v. Van Buren**, 11 *Hun*, 328. Rev'd in effect in 76 *N. Y.* 247. Contrary to latter decision see (Impeachment of judgment for fraud) *Krekeler v. Ritter*, 62 *Id.* 372. See also *Abb. Tr. Ex.* 831.
- Verplank v. Sterry**. See *Sterry v. Arden*.
- Viadero v. Viadero**, 7 *Hun*, 313. See (Ne exeat) *Code Civ. Pro.* 1881, § 548, n.
- Viall v. Genesee Mut. Ins. Co.**, 19 *Barb.* 440. Relied on with *Buckbee v. U. S. Ins. & Trust Co.*, 18 *Barb.* 541 (Waiver of forfeiture of insurance policy) in *Walsh v. Aetna Life Ins. Co.*, 30 *Jona*, 133; s. c., 6 *Am. R.* 664, 669. Cited as authority in *Osterloh v. New Denmark, & Co. Ins. Co.*, 60 *Wis.* 126, 128. See *Bennecke v. Conn. Mutual Ins. Co.*, 105 *U. S.* 355, 360.
- Viany v. Ferran**, 54 *Barb.* 529; s. c., with points of counsel, 5 *Abb. Pr. N. S.* 110.
- Vibbard v. Johnson**, 19 *Johns.* 77. See *Frisbie v. Hoffnagle*. Doubted (Want of title in vendor as defence to action for price) in *Walker v. Squires, Hill & D.* 23, 26. Disting'd with *Case v. Hall*, 24 *Wend.* 102, in *Estelle v. Peacock*, 48 *Mich.* 469, 471. Disting'd in *Matheny v. Mason*, 73 *Mo.* 677; s. c., 39 *Am. R.* 541. Quoted in 2 *Story on Contr.* 5 ed. § 1062, n. 3.
- Viburt v. Frost**, 3 *Abb. Pr.* 119; s. c., as *Hobart v. Frost*, 5 *Duer*, 672. Approved (Effect of voluntary appearance) in *Bingham v. Disbrow*, 14 *Abb. Pr.* 251, 257. Dissented from with *Wilson v. Mayor, &c.* of *N. Y.*, 1 *Abb. Pr.* 4; 6 *Id.* 6 (Mode of taking objection to jurisdiction) in *Hotch-kiss v. Elting*, 36 *Barb.* 38, 51.
- Vickery v. Dickson**, 35 *Barb.* 96. Further decision in 62 *Id.* 272.
- Victory v. Baker**, 67 *N. Y.* 366. Explained (Liability for injury resulting from dangerous condition of premises) in *Moak's Underhill's Torts*, 1 Am. ed. 261.
- Victory Webb, & Co. v. Beecher**, 55 *Hov. Pr.* 193. Applied (Necessity of complete statement of causes of action) in *Anderson v. Speers*, 8 *Abb. N. C.* 382, 384; *Reiners v. Brandenhorst*, 59 *Hov. Pr.* 91.
- Vidvard v. Cushman**, 23 *Hun*, 434. Compare (Implied easement of light and air) in *Kiats v. Hugo*, 115 *Mass.* 204, 216.
- Viele v. Goss**, 49 *Barb.* 96. Aff'd, it seems, in 51 *N. Y.* 624, but without opinion. Decision in 49 *Barb.* explained (Liability for false representations as to credit of another) in *Moak's Underhill's Torts*, 1 Am. ed. 531.
- **v. Troy & Boston R. R. Co.**, 21 *Barb.* 381. Aff'd in 20 *N. Y.* 184. Decision in *Id.* commented on (Surrender of possession by vendee where title is defective) in *Sedgwick & W. on Tr. of Tit. to Land*, § 323.
- Vielie v. Osgood**, 8 *Barb.* 130. See (Subscription required by statute of frauds) *James v. Patten*, *Id.* 344.
- Vilas v. Jones** 10 *Paige*, 76. Aff'd in 1 *N. Y.* 274. See *Billington v. Wagoner*; *Cole v. Savage*; *Wood v. Jefferson Co. B'k.* Decision in 1 *N. Y.* explained (Effect of usurious agreement, to discharge surety) in *La Farge v. Herter*, 11 *Barb.* 169; *Draper v. Trescott*, 29 *Id.* 406. Limited in *Billington v. Wagoner*, 33 *N. Y.* 31, 36. Applied in *Fernan v. Doubleday*, 3 *Lans.* 219. Followed and approved in *Meiswinkle v. Jung*, 30 *Wis.* 361; s. c., 11 *Am. R.* 572; *Howell v. Sevier*, 1 *Lea (Tenn.)* 360; s. c., 27 *Am. R.* 771, 772. Opposed in *Vary v. Norton*, *U. S. Cir. Ct. W. D. Mich.* 6 *Fed. Rep.* 812. Explained (Equitable relief against judgment at law) in *Crippen v. Culver*, 13 *Barb.* 430. Explained ("Borrower" within meaning of *L.* 1837, c. 430, § 4) in *Schermerhorn v. Am. Life Ins., & Co.*, 14 *Barb.* 166; *Allerton v. Belden*, 3 *Lans.* 494; which was rev'd in 49 *N. Y.* 377, which see. Approved as applicable to question of who is purchaser within meaning of exemption law,—in *Smith v. Slade*, 57 *Barb.* 639.
- **v. N. Y. Central Ins. Co.**, 9 *Hun*, 121. Aff'd in 72 *N. Y.* 590; s. c., 23 *Am. R.* 186.
- Village of Buffalo v. Webster**, 10 *Wend.* 99; s. c., 11 *N. Y. Com. L. Law. ed.* 792, with brief note citing cases. See *Bush v. Seabury*. Applied (Ordinance when not in restraint of trade) in *Cronin v. People*, 82 *N. Y.* 318, 323.
- Village of Cohoes v. Moran**, 25 *Hov. Pr.* 385. Followed (Effect of general excise

- law on local provisions) in *Village of Gloversville v. Howell*, 7 *Hun.* 345, 347.
- Village of Delhi v. Youmans**, 50 *Barb.* 316. Aff'd in 45 *N. Y.* 362. Both decisions included (Diverting subterranean stream) in *Blanchard & W. Cas. on Mines & M.* 802, 813.
- Village of Deposit v. Vail**, 5 *Hun.* 310. Followed (Effect of general excise law on local provisions) in *Village of Gloversville v. Howell*, 7 *Id.* 345, 347.
- Village of Gloversville v. Howell**, 7 *Hun.* 345. Aff'd in 70 *N. Y.* 287. See *Matter of Volkening*. Decision in 7 *Hun.* applied (Effect of general excise law on local provisions) in *Village of Deposit v. Devereux*, 8 *Id.* 317, 319.
- Vilmar v. Schall**, 35 *Super. Ct. (J. & S.)* 67. Aff'd in 61 *N. Y.* 564. Decision in *Id.* applied (Basis of extra allowance, in case of counterclaim) in *Woonsocket Rubber Co. v. Rubber Clothing Co.*, 62 *How. Pr.* 180, 182.
- Vincent v. Buhler**, 1 *Daly*. 165. Followed (Married woman's liability on lease) in *Eustaphie v. Ketchum*, 6 *Hun.* 621, 623.
- **v. Germond**, 11 *Johns.* 283. See *Seymour v. Davis*. Compared (Delivery under statute of frauds) in *Brown v. Hall*, 5 *Lans.* 177, 181. Explained in *Benj. on Sales*, § 144, n. 5, 182, n. 25 (Corbin's 4 *Am. ed.*). Reviewed with *Webster v. Zielly*, 52 *Barb.* 482; *Howard v. Sexton*, 4 *N. Y.* 157; *Gale v. Nixon*, 6 *Cov.* 445; *Ryan v. Dox*, 34 *N. Y.* 307, and other cases (Memorandum required by statute of frauds is not contract but only evidence of it) in *Bird v. Munroe*, 66 *Me.* 337; s. c., 22 *Am. R.* 571, 578.
- **v. King**, 13 *How. Pr.* 234. Disapproved as contrary to authority (Injunction, where contract provides remedy in damages) in *Phenix Ins. Co. v. Continental Ins. Co.*, 14 *Abb. Pr. N. S.* 266, 273.
- **v. Parker**, 7 *Paige*, 65. Explained (Wife's land and property as affected by suit by her for divorce) in 2 *Bish. on Mar. & D.* § 524, 6 ed.
- **v. Sands**, 33 *Super. Ct. (J. & S.)* 511; s. c., 11 *Abb. Pr. N. S.* 866; 42 *How. Pr.* 231. Aff'd, it seems, in 58 *N. Y.* 673, but without opinion. Decision in 33 *Super. Ct. (J. & S.)* applied (Merger of debt against corporation, through recovery of judgment against one of several who are liable) in *Jones v. Barlow*, 38 *Id.* 142, 145, which was rev'd in 62 *N. Y.* 202.
- **v. Vanderbilt**, 10 *How. Pr.* 324; s. c., more fully, as *Ninety-nine Plaintiffs v. Vanderbilt*, 1 *Abb. Pr.* 193.
- Viner v. Alexandria, &c. Steamship Co.**, 50 *N. Y.* 23. Followed (Liability of carrier for goods delivered to wrong person) in *Bush v. Romer*, 2 *Sup'm. Ct. (T. & C.)* 597.
- Vischer v. Vischer**, 12 *Barb.* 640. See *Borden v. Fitch*; *Bradshaw v. Heath*; *Kinnier v. Kinnier*. Disting'd (Effect of foreign divorce) in *Hill v. Hill*, 28 *Barb.* 26; *Hunt v. Hunt*, 9 *Hun.* 624; which was aff'd in 72 *N. Y.* 240, which see. Followed in *McGiffert v. McGiffert*, 31 *Barb.* 70; *Hoffman v. Hoffman*, 55 *Id.* 271; *Holmes v. Holmes*, 4 *Lans.* 391; *People v. Baker*, 76 *N. Y.* 82. Cited as authority (Jurisdiction to grant divorce) in *Ashbaugh v. Ashbaugh*, 17 *Ill.* 477. Commented on in 2 *Bish. on Mar. & D.* § 163a, n. 3, 6 ed. Doctrine discussed and cases cited in 3 *Am. L. Reg. N. S.* 213. Reviewed with other cases (Effect of law of domicile on validity of contract of marriage) in *Tyler on Inf. & Cov.* 2 ed. § 685.
- **v. Yates**, 11 *Johns.* 23. See *Yates v. Foote*. Overruled (Recovery of money deposited on illegal wager) in *Yates v. Foot*, 12 *Id.* 1; but without overthrowing principle of invalidity of election bet. Reviewed with *Yates v. Foot*, in *Ruckman v. Pitcher*, 1 *N. Y.* 392, 401. Followed and approved with *Bunn v. Riker*, 4 *Johns.* 428; *Lansing v. Lansing*, 8 *Id.* 454 (Invalidity of election bets) in *Stoddard v. Martin*, 1 *R. I.* 1; s. c., 19 *Am. Dec.* 643, with note. Approved and followed in *Gregory v. King*, 58 *Ill.* 169; s. c., 11 *Am. R.* 56, with note collating cases.
- Vogel v. Badcock**, 1 *Abb. Pr.* 176. See (Action for chattel, by assignee) *Code Civ. Pro.* 1881, § 1692, n.
- Vogt, Matter of**, 44 *How. Pr.* 171. Aff'd as *People ex rel. Barlow v. Curtis*, 50 *N. Y.* 321; s. c., 10 *Am. R.* 483.
- Volans v. Owens**, 9 *Hun.* 558. Rev'd in 74 *N. Y.* 526; s. c., 30 *Am. R.* 337. See *Aldrich v. Sager*. Decision in 74 *N. Y.* followed (Liability under Civil Damage Act) in *Hill v. Berry*, 75 *Id.* 229.
- Volkening, Matter of**, 52 *N. Y.* 650. Applied (Title of private or local bill) in *Wenzler v. People*, 58 *Id.* 527; *Devlin v. Mayor, &c. of N. Y.*, 63 *Id.* 22; *People ex rel. Comm'rs of Washington Park v. Banks*, 67 *Id.* 573; *Tift v. City of Buffalo*, 82 *Id.* 204, 211. Disting'd with *Village of Gloversville v. Howell*, 70 *Id.* 290; *Matter of Mayer*, 50 *Id.* 505; *People ex rel. City of Rochester v. Briggs*, *Id.* 553; *Matter of Leake & Watts' Orphans' Home*, 92 *Id.* 120; *Harris v. People*, 59 *Id.* 600; *Matter of Sackett street*, 74 *Id.* 103; *Matter of Van Antwerp*, 56 *Id.* 261, in *Matter of Paul*, 94 *Id.* 497.
- Volkening v. De Graaf**, 44 *Super. Ct. (J. & S.)* 424. Aff'd in 81 *N. Y.* 268.
- Voltz v. Blackmar**, 4 *Hun.* 139. Rev'd in 64 *N. Y.* 646. Decision in another action between same parties in 4 *Hun.* 140; which was rev'd in 64 *N. Y.* 440. Decision in *Id.* applied (Proof of circumstances immediately connected with that directly involved) in *Dalton v. Gill*, 25 *Hun.* 121. Followed (Exemplary damages in actions for assault and battery) in *Smith v. Bagwell*, 19 *Fla.* 117; s. c., 45 *Am. R.* 12.
- Von Beck v. Village of Rondout**, 15 *Abb. Pr.* 48. Said in 41 *N. Y.* 619, to have been aff'd in the Ct. of App. June, 1869.
- Von Bruck v. Peyser**, 2 *Robt.* 468; s. c., 28

- How. Pr.* 292. Further decision in 4 *Robt.* 514.
- Von Gerhard v. Lighte**, 13 *Abb. Pr.* 101. Followed (Liability of bail) in *Watt v. Reilly*, 62 *How. Pr.* 351.
- Von Keller v. Schulting**, 50 *N. Y.* 108. Further proceeding in 45 *How. Pr.* 139.
- Von Latham v. Libby**, 38 *Barb.* 389; s. c., more fully, as *Von Latham v. Rowan*, 17 *Abb. Pr.* 237. Disting'd (Liability as to warrant void for want of jurisdiction) in *Miller v. Adams*, 52 *N. Y.* 409, 413; which aff'd 7 *Lans.* 131, 135, which see.
- Von Rhade v. Von Rhade**, 2 *Sup'm Ct. (T. & C.)* 491. Disting'd (Affidavit for service by publication) in *Bixby v. Smith*, 3 *Hun.* 60, 64.
- Von Sachs v. Kretz**, 10 *Hun.* 95. Aff'd in 72 *N. Y.* 548.
- Von Schoning v. Mitchell**. See *Von Schoning v. Buchanan*.
- Voorhees v. Burchard**, 6 *Lans.* 176. Aff'd in 55 *N. Y.* 98. See *Marshall v. Guion*; *Parsons v. Johanson*. Decision in 55 *N. Y.* disting'd (What pass as appurtenances by conveyance) in *Parsons v. Johnson*, 63 *Id.* 69. Explained in *Simmons v. Cloonan*, 81 *Id.* 564.
- **v. De Myer**, 3 *Sandf. Ch.* 614. Aff'd in 2 *Barb.* 37.
- **v. Dorr**, 51 *Barb.* 580. Subsequent proceedings as *Voorhees v. McCartney*, 51 *N. Y.* 387. See *Sedgwick v. Stanton*. Both cases reviewed with numerous others (Effect of agreements for contingent compensation to attorney) in 24 *Alb. L. J.* 18. Decision in 51 *N. Y.* examined in 10 *Alb. L. J.* 193. Compare (Attorney's liability for costs) *Cone v. Donaldson*, 47 *Penn. St.* 363, and other cases cited in 20 *Am. L. Reg. N. S.* 265. See *Code Civ. Pro.* 1881, § 3247, n.
- **v. Earl**, 2 *Hill*, 288; s. c., 15 *N. Y. Com. L. Law. ed.* 362, with brief note; 38 *Am. Dec.* 588, with note wherein are collected citations. See *Cary v. Gruman*. Applied (Duty of one seeking to rescind contract of sale) in *Moyer v. Shoemaker*, 5 *Barb.* 322; *Stevens v. Hyde*, 32 *Id.* 182. Applied (Damages for breach of warranty) in *Cary v. Gruman*, 4 *Hill*, 629. Approved as settled law with *Cary v. Gruman*, in *Passinger v. Thorburn*, 34 *N. Y.* 641; *Muller v. Eno*, 14 *Id.* 606. See (Right to rescind contract of sale) *Id.* 601; *Day v. Pool*, 52 *Id.* 419. Cited with *Day v. Pool*, 52 *N. Y.* 416, in 19 *Cent. L. J.* 7, as supporting in *N. Y.* the English rule. Explained in 1 *Benj. on Sales*, § 626 (Corbin's 4 *Am. ed.*).
- **v. Gros**. See *Shepard v. Rowe*.
- **v. McCartney**. See *Voorhees v. Dorr*.
- **v. McGinnis**. See *Voorhies v. McGinnis*.
- **v. Olmstead**, 3 *Hun.* 744; s. c., 6 *Sup'm Ct. (T. & C.)* 172. Aff'd in *Voorhis v. Olmstead*, 66 *N. Y.* 113. Decision in *Id.* disting'd (Estoppel by receipt) in *How v.*

- Union Mut. Life Ins. Co.*, 80 *Id.* 52, '40. Collated and discussed with *Hamburger v. Rodman*, 9 *Daly*, 93, and other cases in an article (Liens of vendors of chattels for purchase money) in 19 *Cent. L. J.* 26. Explained (Estoppel of vendor as against sub-vendee) in 2 *Benj. on Sales*, § 1148, n. 7 (Corbin's 4 *Am. ed.*).
- **v. Presb. Church of Amsterdam**, 8 *Barb.* 135. Aff'd in 17 *Id.* 103. Both decisions commented on (Charitable uses) in *Beekman v. People*, 27 *Id.* 260, 277; *McCoughal v. Ryan*, 27 *Id.* 376, 398. Compare *Williams v. Williams*, 8 *N. Y.* 525. Decision in 17 *Barb.* collated with other cases in *Gerard Titles to Real Est.* 2 *ed.* 298. Both decisions explained (Implied trusts) in *Browne on Stat. of Frauds*, § 82, 4 *ed.*
- Voorhies v. Baxter**, 1 *Abb. Pr.* 43; s. c., less fully, 18 *Barb.* 592. Aff'd, it seems, in *Voorhies v. Child*, 17 *N. Y.* 354.
- **v. McGinnis**, 46 *Barb.* 242. Rev'd as *Voorhees v. Same*, in 48 *N. Y.* 278. Decision in *Id.* applied (Annexation, as test of fixture) in *Grosz v. Jackson*, 6 *Daly*, 464; *McRea v. Central Nat. B'k*, 66 *N. Y.* 497; which aff'd 50 *How. Pr.* 53, which see. Disting'd and doubted in *Sisson v. Hibbard*, 10 *Hun.* 420, 423; which was aff'd in 75 *N. Y.* 542, 547, which see. Disting'd in *Wells v. Maples*, 15 *Hun.* 90, 92; *Tift v. Horton*, 53 *N. Y.* 383; *McEntee v. Scott*, 2 *Sup'm Ct. (T. & C.)* 285. Doubtful in *Kinsey v. Bailey*, 9 *Hun.* 452, 456. Cited in 1 *Add. on Torts*, 357, n, Wood's *ed.* Collated with *Farmers' L. & T. Co. v. Hendrickson*, 25 *Barb.* 488; *Bishop v. Bishop*, 11 *N. Y.* 123; *Snedeker v. Waring*, 12 *N. Y.* 179; *McKeage v. Hanover Fire Ins. Co.*, 81 *N. Y.* 38; *Hoyle v. Plattsburgh, &c. R. R. Co.*, 54 *Id.* 314, and many other authorities in 1 *Am. L. J.* 191, where *Ala.*, *Ohio*, *N. Y.*, *N. J.*, *N. H.*, *Mo.*, *Wis.*, *Iowa* and probably *Mass.* are said to regard rolling stock personally,—while *Ky.*, *Ill.* and probably *Penn.*, *Md.* and *Maine* regard it as part of realty.
- **v. Voorhies**, 24 *Barb.* 150. See *Jackson v. Carpenter*. Followed (Evidence of affirmation by infant of his sale of land) in *Gillespie v. Bailey*, 12 *W. Va.* 70; s. c., 29 *Am. R.* 445.
- Voorhis, Petition of**, 5 *Sup'm Ct. (T. & C.)* 345; mem. s. c., 3 *Hun.* 212. Aff'd as *Petition of De Voorhies*, 62 *N. Y.* 637.
- Voorhis v. Child's Ex'r**, 17 *N. Y.* 354. See *Jenkins v. De Groot*; *Lawrence v. Leake & Watts' Orphan House*. Explained (Liability of representatives of deceased joint obligor) in *Divine v. Duncan*, 2 *Abb. N. C.* 331; *Stahl v. Stahl*, 2 *Lans.* 63. Compared in *Bentz v. Thurber*, 1 *Sup'm Ct. (T. & C.)* 646. Applied in *Pope v. Cole*, 64 *Barb.* 408. Re-aff'd and applied in *Hoyt v. Bonnett*, 50 *N. Y.* 538, 545. Approved (Distinctions between actions at law and suits in equity) in *Pomeroy on Rem.* § 65,

- n. 2.* Criticised in 1 *Pomeroy on Eq. Jur.* § 354, *n. 1.*
- *v. Mayor, &c. of N. Y.*, 46 *How. Pr.* 116. Re-aff'd in effect in 4 *Hun.* 76, which was aff'd in 62 *N. Y.* 498. Decision in *Id.* collated with other cases (Changes of plan in municipal contracts) in 5 *Abb. N. C.* 47, *n.*
- *v. Olmstead.* See *Voorhees v. Olmstead.*
- *v. Voorhis*, 50 *Barb.* 119. Aff'd on the merits, as *Voorhees v. Voorhees*, in 39 *N. Y.* 463. See *Dominick v. Michael.* Decision in 50 *Barb.* followed (Undue influence on testator) in *Kiune v. Johnson*, 60 *Barb.* 69, 75.
- Vorebeck v. Roe**, 50 *Barb.* 302. See *Beebe v. Hutton*; *Green v. Armstrong.* Criticised (Effect of unstamped instruments) in *State v. Garton*, 32 *Ind.* 1; *s. c.*, 2 *Am. R.* 315, as overlooking effect of certain statutory provisions. Quoted (Trees considered as real property) in 3 *Washb. on Real Prop.* 4 ed. 345.
- Vos v. United Ins. Co.**, 2 *Johns. Cas.* 187. Rev'd in *Id.* 469. See *Goix v. Low.* Decision in 2 *Johns. Cas.* 180. Cited in 1 *Kent Com.* 146, *n. a.*, as containing the English doctrine of actual blockade. Cited also in *Id.* 150, *n. a.*
- Vosburgh v. Teator**, 32 *N. Y.* 561. Followed (Estoppel created by settlement of boundary line) in *Miner v. Mayor, &c. of N. Y.*, 37 *Super. Ct. (J. & S.)* 171, 189. Cited with *Selltek v. Addams*, 15 *Johns.* 197; *Jackson v. Gager*, 5 *Cow.* 383; *Robertson v. McNiel*, and other authorities, in *Lennox v. Hendricks*, 11 *Oreg.* 33, 38.
- *v. Thayer*, 12 *Johns.* 461. See *Case v. Potter.* Disting'd (Books of account as evidence) in *Burke v. Wolfe*, 38 *Super. Ct. (J. & S.)* 263, 268, 271; *Ives v. Waters*, 30 *Hun.* 297. Applied in *Knight v. Cunningham*, 6 *Id.* 100, 103.
- *v. Welch*, 11 *Johns.* 175. Disting'd (Proof to justify granting of judicial order) in *Conway v. Hitchins*, 9 *Barb.* 384. Applied in *Stanton v. Ellis*, 16 *Barb.* 322; *Pratt v. Bogardus*, 49 *Id.* 94; *Adkins v. Brewer*, 3 *Cow.* 209. Applied (Recital in warrant, as evidence of jurisdictional fact) in *Bradstreet v. Fergusson*, 23 *Wend.* 640. Followed with *Gold v. Bissell*, 1 *Id.* 210, in *Barkeloo v. Randall*, 4 *Blackf. (Ind.)* 476; *s. c.*, 32 *Am. Dec.* 46, with note.
- Vose v. Cockeroff**, 45 *Barb.* 58. Aff'd in 44 *N. Y.* 415. See *Brookman v. Hamill.* Applied (Validity of State law giving lien on vessel) in *Poole v. Kermit*, 37 *Super. Ct. (J. & S.)* 123. Disting'd (Estoppel to assert unconstitutionality of law on appeal) in *Brookman v. Hamill*, 46 *N. Y.* 636. Followed in *Delaney v. Brett*, 51 *Id.* 81.
- *v. Florida R. R. Co.*, 50 *N. Y.* 369. Further proceeding in 46 *How. Pr.* 424. Also proceeding as *Vose v. Yulee*, 4 *Hun.* 628, which was aff'd in 64 *N. Y.* 449, which was rev'd in *Yulee v. Vose*, 99 *U. S.* 539. See *Newcomb v. Rayner.*
- *v. Hamilton Mut. Ins. Co.* See *Hand v. Williamsburgh City Fire Ins. Co.*
- *v. Yulee.* See *Vose v. Florida R. R. Co.*
- Vredenburgh v. Morris**, 1 *Johns. Cas.* 223. Approved (Judgment as lien on term of years) in *Merry v. Hallet*, 2 *Cow.* 497.
- Vreedenburgh v. Calif.**, 9 *Paige*, 128. Collated with other cases (Setting aside surrogate's proceedings for irregularity) in *Willard on Executors*, 50.
- Vreeland v. Blunt**, 6 *Barb.* 182. Disting'd (Draft, when on particular fund) in *Attorney Genl. v. Continental Life Ins. Co.*, 71 *N. Y.* 325, 328.
- *v. Hyde*, 2 *Hall*, 429. See *Sice v. Cunningham.* Criticised as not carefully considered (Time of presentation of note payable on demand) in *Merritt v. Todd*, 23 *N. Y.* 28, 34 (And see dissenting opinion *Id.* 38). Disting'd with *Van Hoesen v. Van Alstyne*, 3 *Wend.* 75, in *Mudd v. Harper*, 1 *Id.* 110; *s. c.*, 54 *Am. Dec.* 644, with note.
- *v. McClelland*, 1 *Bradf.* 393. Followed (Effect of deed as revocation of will) in *Waide v. Holbrook*, 2 *Redf.* 378, 389. Disting'd (Proof of undue influence on testator) in *Booth v. Kitchen*, 3 *Id.* 52, 61.
- Vroman v. American Mer. Union Express Co.**, 2 *Hun.* 512; *s. c.*, reported 5 *Sup'm. Ct. (T. & C.)* 22.
- Vroom v. Dittmas**, 4 *Paige*, 526. See *Benedict v. Gilman.* Applied (Sufficiency of allegation of usury) in *Gould v. Horner*, 12 *Barb.* 603; *Cole v. Savage*, *Clarke*, 362; *Gould v. Homer*, 1 *Code R. N. S.* 357. Applied with *New Orleans Gas Co. v. Dudley*, 8 *Paige*, 452; *Curtis v. Masten*, 11 *Id.* 15, in *Manning v. Tyler*, 21 *N. Y.* 568. Disting'd (Rights of purchaser on foreclosure sale) in *Packer v. Rochester, &c. R. R. Co.*, 17 *N. Y.* 288. Reviewed with other cases in dissenting opinion in *Gage v. Brewster*, 31 *N. Y.* 224. Applied to expenses of re-sale (Liability for costs of foreclosure) in *Raynor v. Selmes*, 52 *N. Y.* 582.
- *v. Van Horne*, 10 *Paige*, 549; *s. c.*, 42 *Am. Dec.* 94, with note wherein are collected citations on the points decided respecting executors and administrators.
- Vrooman v. King**, 36 *N. Y.* 477. See to the contrary (Declarations of owner of real estate, as affecting those claiming under him) *Adams v. Davidson*, 10 *Id.* 309. And see *Abb. Tr. Ev.* 711.
- *v. Jackson*, 6 *Hun.* 326. Explained (Equitable relief in ejectment) in *Sedgwick & W. on Tr. of Tit to Land*, § 182.
- *v. Lawyer*, 13 *Johns.* 339. Reviewed with other cases (Liability for damage done by domestic animal) in *Decker v. Gammon*, 44 *Me.* 322, 329.
- *v. Phelps.* See *Mann v. Eckford.*
- *v. Turner*, 8 *Hun.* 78. Rev'd in part in

- 69 *N. Y.* 280; s. c., 25 *Am. R.* 195. See *Garnsey v. Rogers*; *Hamill v. Gillespie*; *Lawrence v. Fox*; *Trotter v. Hughes*. Decision in 69 *N. Y.* followed (Liability of grantee of mortgaged premises) in *Cashman v. Henry*, 5 *Abb. N. C.* 230, 232. Applied in *Smith v. Cross*, 16 *Hun.* 490; *Deyermund v. Chamberlin*, 22 *Id.* 110, 114; *Dunning v. Leavitt*, 85 *N. Y.* 30, 35 (And see dissenting opinion *Id.* 39). Disting'd in *Dougllass v. Wells*, 18 *Hun.* 91. Applied in *Pardee v. Treat*, 82 *N. Y.* 385, 388, a case of a judgment lien. Followed in *Stuart v. Worden*, 42 *Mich.* 154, 161. Discussed with numerous other cases from *N. Y.* and other States, in *Brewer v. Maurer*, 38 *Ohio St.* 543, 550. Applied (Enforcing promise made for benefit of third person) in *McCafferty v. Decker*, 12 *Hun.* 459. Applied in *Davis v. Clinton Water Works Co.*, 54 *Iowa*, 59, 62. See cases cited in 33 *Am. R.* 6, n. Examined (Liability of married woman for deficiency under foreclosure) in 17 *Abb. L. J.* 240.
- *v. Weed*. See *Harrison v. Stevens*.
- W.**
- Waddell v. Cook**, 2 *Hill*, 47; s. c., 37 *Am. Dec.* 372. See *White v. Osborn*; *Wilson v. Reed*. Disting'd (Seizure of property of joint owners, on process against one) in *Hall v. Carnley*, 1 *Abb. Pr.* 162, a case of mortgaged property. Explained in *Fiero v. Betts*, 2 *Barb.* 636. Applied in *Dinchart v. Wilson*, 15 *Id.* 598. Said with *Walsh v. Adams*, 3 *Den.* 125, not to have been overruled or impaired by *Hull v. Carnley*, 11 *N. Y.* 501, or *Goellet v. Asseller*, 22 *Id.* 225,—in *Berry v. Kelly*, 4 *Robt.* 106, 123. Followed in *Smyth v. Tankersley*, 20 *Ala.* 212; s. c., 56 *Am. Dec.* 193. See *Code Civ. Pro.* 1881, § 693, n.
- *v. Darling*, 51 *N. Y.* 327. See (Requisites of counterclaim) *Code Civ. Pro.* 1881, § 501, n.
- *v. Elmendorf*, 12 *Barb.* 585. Aff'd in 10 *N. Y.* 170. See *Shepard v. Rowe*. See (Presumption of payment of judgment) *Malloy v. Vanderbilt*, 4 *Abb. N. C.* 127, 132.
- *v. Mayor, &c. of N. Y.* See *Bellinger v. N. Y. Central R. R. Co.*
- Wade v. Baker**, 14 *Hun.* 615. Aff'd as *Van Amburgh v. Baker*, 81 *N. Y.* 46. See *Id.* 622.
- *v. De Leyer*, 40 *Super. Ct. (J. & S.)* 541. Motion to vacate order dismissing appeal denied in 63 *N. Y.* 318.
- *v. Kalbfleisch*, 15 *Abb. Pr. N. S.* 16. Aff'd in 16 *Abb. Pr. N. S.* 104; s. c., 58 *N. Y.* 282; 17 *Am. R.* 250. Decision in *Id.* followed (Survival of cause of action for breach of contract to marry) in *Price v. Price*, 75 *N. Y.* 244, 248; which aff'd 11 *Hun.* 299, 301, which see. Followed and approved in *Grubb's Adm'r v. Sult*, 32 *Gratt. (Va.)* 203; s. c., 4 *Am. R.* 765, 771. Disting'd (Survival of cause of action for personal injury) in *Cregin v. Brooklyn Crossover R. R. Co.*, 75 *N. Y.* 196; which aff'd 56 *How. Pr.* 34, which see; *Scott v. Brown*, 24 *Id.* 620, 622. Followed in *Best v. Vedder*, 58 *How. Pr.* 188; *Holliday v. Parker*, 23 *Hun.* 71. Collated and reviewed with *Best v. Vedder*, 58 *How. Pr.* 187, and *Fried v. N. Y. Cent. R. R. Co.*, 25 *Id.* 287, and other cases in 22 *Am. L. Reg. N. S.* 361.
- *v. Matheson*, 4 *Lans.* 158. Aff'd in 47 *N. Y.* 658, but without opinion.
- *v. Wheeler*, 3 *Lans.* 201. Aff'd in 47 *N. Y.* 658, but without opinion.
- Wademan v. Albany & Susq. R. R. Co.**, 51 *N. Y.* 568. Applied (Duty of maintaining farm crossings) in *Jones v. Seligman*, 81 *Id.* 190, 196. See (Demurrer for improper demand of judgment) *Code Civ. Pro.* 1881, § 488, n.
- Wadley v. Davis**, 43 *How. Pr.* 82. Said not to be overruled by *Bigsby v. Warden*, 62 *N. Y.* 27 (Notice of appeal from justice's court) in *Jones v. Cook*, 11 *Hun.* 231.
- Wadsworth v. Alcott**, 6 *N. Y.* 64. Disting'd (Right to rent, as affected by death of lessor) in *Fay v. Hollaran*, 35 *Barb.* 295, 297. Applied (Proof of usage, to vary contract) in *Lawrence v. Gallagher*, 42 *Super. Ct. (J. & S.)* 321.
- *v. Heermans*. See *Hill v. Same*.
- *v. Murray*, 16 *Barb.* 601. Aff'd as *Wadsworth v. Wadsworth*, 12 *N. Y.* 376.
- *v. Pacific Ins. Co.*, 4 *Weird.* 33. Applied (Liability for loss of memorandum articles specified in policy) in *Depuyster v. Sun Mut. Ins. Co.*, 17 *Barb.* 307; 19 *N. Y.* 277. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 732.
- *v. Sharpsteen*. See *Wadsworth v. Sherman*.
- *v. Sherman*, 14 *Barb.* 169. Aff'd as *Wadsworth v. Sharpsteen*, 8 *N. Y.* 388. Decision in *Id.* explained and applied (Effect of acts of drunkard while subject to commission) in *Lewis v. Jones*, 50 *Barb.* 648.
- *v. Thomas*, 7 *Barb.* 445. Approved (Effect of new acknowledgment, &c. provided for by Code Pro., on debts already barred at its enactment) in *Esseltyn v. Weeks*, 12 *N. Y.* 635, 639.
- *v. Wendell*, 5 *Johns. Ch.* 224. Rev'd in 20 *Johns.* 659. Decision in 5 *Johns. Ch.* followed (When instrument without seal may be treated as sealed instrument) in *McCarley v. Board of Supervisors*, 58 *Miss.* 483; s. c., 38 *Am. R.* 338. Applied (When instrument which cannot operate as conveyance may have effect as agreement) in *Welsh v. Usher*, 7 *Hill. Ch. (So. Car.)* 167; s. c., 29 *Am. Dec.* 63, with note. Included with note in *Lawson's Lead. Eq. Cas. Simplified*, 8.
- Waffle v. Dillenbeck**, 39 *Barb.* 123. Aff'd in 38 *N. Y.* 53; s. c., more fully, 4 *Abb. Pr. N.*

- S.* 457. See *Lincoln v. Saratoga & Schenectady R. R. Co.*
- *v. Goble*, 53 *Barb.* 517. Followed (Attachment as affected by failure to serve summons) in *Taddiken v. Cantrell*, 1 *Hun.* 711; *Blossom v. Estes*, 84 *N. Y.* 614, 618. Disting'd in *Simpson v. Burch*, 4 *Id.* 315, 317.
- *v. N. Y. Central R. R. Co.*, 58 *Barb.* 413. Aff'd in 53 *N. Y.* 11; s. c., 13 *Am. R.* 467. See *Bellinger v. N. Y. Central R. R. Co.*; *Trustees of Delhi v. Youmans*. Decision in 58 *Barb.* disting'd (Liability for drainage of surface water) in *Gould v. Booth*, 66 *N. Y.* 65. Cited with approval in *McCormick v. Kansas City, &c. R. R. Co.*, 70 *Mo.* 359; s. c., 35 *Am. R.* 431, with note. Cited with other cases in 11 *Am. L. Reg. N. S.* 23. Discussed in *Wood on Nuis.* 2 ed. § 382. Decision in 53 *N. Y.* limited in *Noonan v. City of Albany*, 79 *Id.* 476.
- *v. Porter*, 61 *Barb.* 130. Discussed (Nuisance as caused by surface water) in *Wood on Nuis.* 2 ed. § 383. See cases cited in 5 *Abb. N. C.* 173, n.
- Wagener v. Finch.** See *Waggoner v. Finch*.
- Wager v. Schuyler**, 1 *Wend.* 553. Applied (Evidence as to probable duration of a life) in *Schell v. Plumb*, 55 *N. Y.* 592, 598. Collated with *Schell v. Plumb*, *Harris v. Panama R. R. Co.*, 2 *Bosw.* 7, and cases from other States (Books of science as evidence) in 22 *Am. L. Reg. N. S.* 106, n.
- *v. Troy Union R. R. Co.*, 25 *N. Y.* 526. Followed (Effect of appropriation of highway for railroad purposes, as additional burden) in *Craig v. Rochester City, &c. R. R. Co.*, 39 *Barb.* 499, which was aff'd in 39 *N. Y.* 408, which see. Disting'd in *People v. Kerr*, 27 *Id.* 206; *People v. Long Island R. R. Co.*, 9 *Abb. N. C.* 181, 201. Collated with other cases in *Cook Highw. L.* 4 ed. 17; *Mills Thomps. on Highw.* 3 ed. 399. Explained in 15 *Am. L. Rev.* 394. Followed (Ejectment, as remedy to recover land covered by highway) in *Lozier v. N. Y. Central R. R. Co.*, 42 *Barb.* 469. Disting'd in *Troy & Bost. R. R. Co. v. Boston, Hoosac Tunnel & W. R'y Co.*, 86 *N. Y.* 127. Disting'd (Form of judgment in such action) in *White's B'k of Buffalo v. Nichols*, 64 *Id.* 75.
- Waggoner v. Finch**, 1 *Sup'm. Ct. (T. & C.)* 145; s. c., as *Wagener v. Finch*, 65 *Barb.* 498. Collated with other cases (Rejection of competent evidence by referee) in *Hoffm. on Referees*, 72.
- *v. Jermaine*, 3 *Den.* 306; s. c., 45 *Am. Dec.* 474, with note wherein are collected citations. See *Blunt v. Aiken*. Applied (Liability as to nuisance established by former owner) in *Conhocton Stone Road v. Buffalo, N. Y. & Erie R. R. Co.*, 51 *N. Y.* 573, 582.
- *v. Millington*, 8 *Hun.* 142. Applied (Married woman as surety) in *Woolsey v. Brown*, 11 *Id.* 52, 54.
- Wagner v. Jones**, 7 *Daly*, 375. Aff'd in 77 *N. Y.* 590.
- *v. Long Island R. R. Co.*, 2 *Hun.* 633; s. c., 5 *Sup'm. Ct. (T. & C.)* 163. Appeal dismissed in 70 *N. Y.* 614. Decision in 5 *Sup'm. Ct. (T. & C.)* 163. Followed (What is a water-course) in *Barkley v. Wilcox*, 19 *Hun.* 320. See cases cited in 5 *Abb. N. C.* 173, n.
- *v. People*, 54 *Barb.* 367. Aff'd in 2 *Keyes*, 684; s. c., more fully, 4 *Abb. Ct. App. Dec.* 509.
- Wagstaff v. Lowerre**, 23 *Barb.* 209. Followed (Commissions of trustees, &c.) in *Ward v. Ford*, 4 *Redf.* 34, 42, 47; *Matter of Leggett*, *Id.* 148, 151.
- Waid v. Gaylord**, 1 *Hun.* 607. Fully reported in 4 *Sup'm Ct. (T. & C.)* 41.
- Wait v. Albany & Susquehanna R. R. Co.**, 5 *Lans.* 475. Cited, and *SUTHERLAND, J's*, dissenting opinion in *Burtis v. Buffalo & State Line R. R. Co.*, 24 *N. Y.* 269-274, approved (Authority of carrier's agent to contract for transportation of goods beyond its own line) in *Grover & Baker Sewing Machine Co. v. Missouri Pacific R. R. Co.*, 70 *Mo.* 672; s. c., 35 *Am. R.* 444.
- *v. Day*, 4 *Den.* 439. Overruled (Trust in case of grant made to one person, consideration being paid by another) in *Garfield v. Hatmaker*, 15 *N. Y.* 475, 477. Cited (Effect of conveyance to mistress as against creditors) in *Potter v. Gracie*, 58 *Ala.* 303; s. c., 29 *Am. R.* 748. Quoted in *Wait on Fraud. Conv.* § 213.
- *v. Green*, 35 *Barb.* 585. Another opinion in 62 *Id.* 241. Aff'd in 36 *N. Y.* 556; s. c., 46 *How. Pr.* 449. See *Ballard v. Burgett*; *Steelyards v. Singer*. Decision in 36 *N. Y.* followed (Owner of personal property, when not allowed to assert title as against bona fide purchaser) in *Rawls v. Deshler*, 4 *Abb. Ct. App. Dec.* 20. Reviewed and disting'd with *Fleeman v. McKean*, 25 *Barb.* 474, in *Ballard v. Burgett*, 40 *N. Y.* 316, 321, 327. Disting'd in *McNeil v. Tenth Nat. B'k*, 55 *Barb.* 59, 68; *City B'k v. Rome, W. & O. R. R. Co.*, 44 *N. Y.* 138. Questioned in *Austin v. Dye*, 46 *Id.* 500, 502, as in conflict with *Ballard v. Burgett*. Explained in *Comer v. Cunningham*, 77 *Id.* 397. See 46 *How. Pr.* 530, n. Commented on in 1 *Benj. on Sales*, §§ 457, 460 (*Corbin's 4 Am. ed.*). See authorities collected in *Lewis v. McCabe*, 49 *Conn.* 141, 148; s. c., 21 *Am. L. Reg. N. S.* 217, with note also collecting authorities.
- *v. Morris*, 6 *Wend.* 394. Applied (Discharge in bankruptcy, as affected by new promise) in *Graham v. O'Hern*, 24 *Hun.* 222.
- *v. Ray*, 5 *Hun.* 649. Aff'd in 67 *N. Y.* 36.
- *v. Van Allen*, 22 *N. Y.* 319. Disting'd (Power of court to extend time) in *People ex rel. Atty.-Gen. v. Security, &c. Ins. Co.*, 79 *Id.* 272.
- *v. Wait*, 4 *Barb.* 192. Rev'd in 4 *N. Y.* 95.

- Decision in *Id.* disting'd (Right of dower as affected by divorce from bond of matrimony) in *Barrett v. Failing*, 111 *U. S.* 523, 525. Discussed in 2 *Bish. on Mar. & Div.* § 707, 6 ed.
- Waite v. Barry**, 12 *Wend.* 377. Quoted (Essentials of arbitration and award) in 2 *Greenl. on Ev.* 14 ed. § 78, n. a.
- **v. Harper**. See Callagan v. Hallett.
- Wakeman v. Bailey**, 2 *Hill*, 279. Rev'd in 2 *Den.* 220.
- **v. Dalley**, 44 *Barb.* 498. Aff'd in 51 *N. Y.* 27; s. c., 10 *Am. R.* 551; *Thomps. Liab. of Off. & A.* 299, with notes. Decision in *Id.* re-aff'd (Evidence to establish deceit) in *Indianapolis, P., & C. R. R. Co. v. Tyng*, 2 *Hun*, 311, 320; which was aff'd in 63 *N. Y.* 653, 655, which see. Disting'd in *Salisbury v. Howe*, 87 *Id.* 128, 135. Explained in 1 *Benj. on Sales*, § 646, n. 12 (Corbin's 4 *Am.* ed.)
- **v. Grover**, 4 *Paige*, 23. Aff'd as *Grover v. Wakeman*, in 11 *Wend.* 187; s. c., 25 *Am. Dec.* 624, with note containing citations. See *Barnum v. Hempstead*; *Hyslop v. Clarke*; *Spaulding v. Strang*. Opinion of SUTHERLAND, J., in 11 *Wend.* included in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 68, where his views are said to have been extensively followed. Decision in 11 *Wend.* approved (Preferential assignments) in *Haydock v. Coope*, 53 *N. Y.* 68, 73. Followed with *Riggs v. Murray*, 2 *Johns. Ch.* 564, in *Smith v. Craft*, *U. S. Cir. Ct. D. Ind.* 17 *Fed. Rep.* 705. Quoted and commented upon in *Burrill on Assign.* §§ 164, 166, 169, 194, 196, 197, n. 3, 4 ed. Decision in 4 *Paige*, quoted in *Id.* § 160, n. 4. Decision in 11 *Wend.* examined and approved, but disting'd with *Hyslop v. Clarke*, 14 *Johns.* 458 (Effect of provision for exaction of release by creditor, in *Spaulding v. Strang*, 37 *N. Y.* 135; 38 *N. Y.* 9. Denied in *Clayton v. Johnson*, 36 *Ark.* 406; s. c., 38 *Am. R.* 40. Decision in 4 *Paige* discussed in *Burrill on Assign.* §§ 192, 352, 4 ed. Both decisions applied (Assignment, when invalid as tending to delay creditors) in *McConnell v. Sherwood*, 84 *N. Y.* 522, 528. Decision in 11 *Wend.* approved in *Marsh v. Bennett*, 5 *McLean*, 117, 130. Followed with *Hyslop v. Clarke*, 14 *Johns.* 458; *Austin v. Bell*, 20 *Id.* 442; *Seaving v. Brinkerhoff*, 5 *Johns. Ch.* 329 (Assignment to be absolute and unconditional) in *Duggan v. Bliss*, 4 *Col.* 223; s. c., 34 *Am. R.* 86, with note collating cases. Collated with diverse authorities in other States in 22 *Am. L. Reg. N. S.* 264. Cited in 2 *Kent Com.* 536, n. a, as "the most stern decision that exists, either in England or this country, on this subject." Collated with other cases in *Bishop on Assign.* § 167. Both decisions commented upon (Power to compound and compromise debts) in *Burrill on Assign.* § 228, 4 ed. Followed with *Mackie v. Cairns*, 5 *Cow.* 580; *Seaving v. Brinkerhoff*, 5 *Johns. Ch.* 329; *Austin v. Bell*, 20 *Johns.* 442; *Good-*
- rich v. Downs*, 6 *Hill*, 438; *Barney v. Griffin*, 2 *N. Y.* 865 (Assignment void for reservation) in *Pierson v. Manning*, 2 *Mich.* 449, citing *Webb v. Daggett*, 2 *Barb.* 9.
- **v. Price**, 3 *N. Y.* 384; s. c., 8 *Code R.* 196. See *Hazleton v. Wakeman*. Disting'd (Appeal from order on motion to set aside judicial sale) in *King v. Platt*, 2 *Abb. Ct. App. Dec.* 531; *Depew v. Dewey*, 46 *How. Pr.* 443; *Howell v. Mills*, 53 *N. Y.* 330. Followed in *Buffalo Sav'gs B'k v. Newton*, 23 *Id.* 160, 162. Explained in dissenting opinion in *Dows v. Congdon*, 28 *Id.* 124. Disting'd (Power of General Term to review action of commissioners) in *Matter of Kings Co. Elev. R'y Co.*, 82 *Id.* 95, 102.
- **v. Russel**, 1 *Edw.* 509. Referred to as overruled (Proceedings that may be taken by representatives of judgment creditor) in *Walker v. Donovan*, 6 *Daly*, 552, 556.
- **v. Sherman**, 9 *N. Y.* 85. See *Bloodgood v. Bruen*. Reviewed with *Shapley v. Abbott*, 42 *N. Y.* 447; *Van Keuren v. Parmelee*, 1 *Id.* 531 (Sufficiency of acknowledgment to remove bar of statute of limitations) in *De Freest v. Warner*, 30 *Hun*, 94.
- Wakker, Matter of**, 1 *Edm. Sel. Cas.* 575. Further opinion in 3 *Barb.* 162. Decision in *Id.* explained (Who are included in term "justices") in *People v. Morgan*, 5 *Daly*, 161, 180.
- Walbridge v. James**, 4 *Hun*, 793. Aff'd, it seems, in 66 *N. Y.* 639, but without opinion. Further proceeding in 16 *Hun*, 8; s. c., 56 *How. Pr.* 185.
- **v. Mayor, &c. of N. Y.** See *Miner v. Same*. With latter decision see (Referee's fees on sale) *Code Civ. Pro.* 1881, § 3297, n.
- Walden v. Davidson**, 11 *Wend.* 65; s. c., 25 *Am. Dec.* 602. Subsequent decision in 15 *Wend.* 575. Decision in *Id.* followed and approved (Liability of sheriff for acts of his deputy) in *James v. Gurley*, 48 *N. Y.* 163, 167. Disting'd and also disapproved (Protection of sheriff in a sale of land under execution directed to another sheriff) in *Bybee v. Ashly*, 2 *Gilm. (Ill.)* 151; s. c., 43 *Am. Dec.* 47, 50, with note.
- **v. LeRoy**, 2 *Cal.* 263; s. c., 2 *Am. Dec.* 236; 2 *N. Y. Com. L. Law. ed.* 419, with brief note. Commented on (What is the subject of general average loss) in 3 *Kent Com.* 236, n. a.
- **v. N. Y. Firemen's Ins. Co.**, 12 *Johns.* 128. Rev'd in *Id.* 513.
- **v. Sherburne**, 15 *Johns.* 409. See *Baker v. Stackpoole*; *Hackley v. Patrick*; *Smith v. Ludlow*. Applied (Partnership, as determined by participation in profits) in *Leggett v. Hyde*, 58 *N. Y.* 279. Disting'd in *Burnett v. Snyder*, 76 *Id.* 344, 351. Applied (Power of partner to bind co-partners after dissolution) in *Baker v. Stackpoole*, 9 *Cow.* 434; *Van Keuren v. Parmelee*, 2 *N. Y.* 531; *Hart v. Woodruff*, 24 *Hun*, 510, 512. Disapproved in *Cady v. Shep-*



- herd, 11 *Pick. (Mass.)* 400; s. c., 22 *Am. Dec.* 379, 385. Commented on in 1 *Collyer on Partn.* § 107, n. 1, Wood's *Am. ed.*; 1 *Greenl. on Ev.* 14 ed. § 112, n. c; *Ang. on Limit.* § 260, 6 ed. Applied (Effect of putting part of instrument in evidence) in *Forrest v. Forrest*, 6 *Duer*, 130. Applied (Account, when to be considered liquidated) in *Beers v. Reynolds*, 12 *Barb.* 293.
- Waldorph v. Bortle**, 4 *How. Pr.* 358. Opposed (Abatement of ejectment) in *Mosely v. Mosely*, 11 *Abb. Pr.* 105, 107. Said not to have been followed (Parties defendant in ejectment).—*Pulen v. Reynolds*, 22 *How. Pr.* 353, 355. See *Code Civ. Pro.* 1881, § 1503, n.
- Waldron, Matter of**, 13 *Johns.* 418. See *Mercein v. People*. Followed (Right to custody of minor child) in *State v. Smith*, 6 *Greenl. (Me.)* 462; s. c., 20 *Am. Dec.* 324, 329, with note. Reviewed with *Matter of McDowles*, 8 *Johns.* 330, and other cases in *Matter of Kottman*, 2 *Hill (So. Cur.)* 363; s. c., 27 *Am. Dec.* 390. Relied on in *Sturtevant v. State*, 15 *Neb.* 459; s. c., 48 *Am. R.* 349.
- Waldron v. McCarty**, 3 *Johns.* 471. See *Greenvault v. Davis*. Disting'd (Breach of covenant for quiet enjoyment) in *Trustees of Newburgh v. Galatian*, 4 *Cov.* 343, a case of bond of indemnity. Disting'd in *St. John v. Palmer*, 5 *Hill*, 602; *Rea v. Minkler*, 5 *Lans.* 199; *Shattuck v. Lamb*, 65 *N. Y.* 504. Followed in *Kortz v. Carpenter*, 5 *Johns.* 121; *Olmstead v. Stewart*, 13 *Id.* 238; *Chesterman v. Gardner*, 5 *Johns. Ch.* 32; *Kinney v. McCullough*, 1 *Sandf. Ch.* 378; *Webb v. Alexander*, 7 *Wend.* 284. Explained and criticised as contrary to more recent decisions in *N. Y.*,—in *McGary v. Hastings*, 39 *Cal.* 360; s. c., 2 *Am. R.* 456.
- **v. McComb**, 1 *Hill*, 111. Rev'd in 7 *Id.* 335.
- **v. Rensselaer & Saratoga R. R. Co.**, 8 *Barb.* 390. Collated with other cases (Liability for injuries to cattle while straying on railroad track) in *Thomps. on Negl.* 530.
- **v. Ritchings**, 3 *Daly*, 288; s. c., 9 *Abb. Pr. N. S.* 359. Followed (Presumption as to laws of other States) in *Graves v. Cameron*, 9 *Daly*, 152, which is collated with other cases in 32 *Monk Eng.* 468, n. Explained (Where contracts between persons living in different States are to be regarded as made) in 1 *Add. on Contr.* 18, n. *Abb. ed.*
- **v. Waldron**, 4 *Bradf.* 114. Disting'd (Liability of decedent's estate for deficiency on foreclosure) in *Williams v. Eaton*, 3 *Reelf.* 505.
- **v. Willard**, 17 *N. Y.* 466. Applied (Right of action possessed by transferee of property) in *McMahon v. Allen*, 3 *Abb. Pr. N. S.* 80; *Whittaker v. Merrill*, 30 *Barb.* 390; *Sherman v. Elder*, 24 *N. Y.* 384. Disting'd in *Hicks v. Cleveland*, 39 *Barb.* 576; *Genet v. Howland*, 45 *Id.* 567. Applied (Assignability of right of action for loss of property) in *Fulton Fire Ins. Co. v. Baldwin*, 37 *N. Y.* 650.
- Wales v. Sherwood**, 1 *Abb. N. C.* 101, n.; s. c., more fully, 52 *How. Pr.* 413.
- Walker v. American Nat. B'k**, 49 *N. Y.* 659. Compare (Right to act as attorney) *Dyer v. Sutherland*, 75 *Ill.* 583, and other cases cited in 20 *Am. L. Reg. N. S.* 264.
- **v. Ames**, 2 *Cov.* 428. Followed (Conclusiveness of judgment on defendant who has failed to make his defense in the action) in *Greenbaum v. Elliott*, 60 *Mo.* 25, 30, 31.
- **v. B'k of State of N. Y.**, 13 *Barb.* 636. Aff'd in 9 *N. Y.* 582. See *Dusenberry v. Ellis*; *Palmer v. Stephens*; *Rossiter v. Rossiter*. Both decisions limited (Personal liability of agent on contract) in *Hegeman v. Johnson*, 35 *Barb.* 206. Decision in 9 *N. Y.* applied in *Aspinwall v. Torrance*, 1 *Lans.* 387. Cited approvingly (Liability of agent receiving drafts for collection) in *Exchange Nat. B'k v. Third Nat. B'k*, 112 *U. S.* 276, 291.
- **v. Crain**, 17 *Barb.* 119. Followed (Authority of trustees, &c. of corporation to assess stockholders for deficiency) in *Hurd v. Tallman*, 60 *Id.* 272, 286. Disting'd with *Story v. Furman*, 25 *N. Y.* 215, and *Hurd v. Tallman*, 60 *Barb.* 272, limited in *Coykendall v. Corning*, 88 *N. Y.* 129, 140. Cited as authority with *Story v. Furman*, 25 *N. Y.* 214; *Hurd v. Tallman*, 60 *Barb.* 272; *Cuykendall v. Douglass*, 19 *Hun.* 577; *Matter of Dodge & Stevenson Manuf. Co.* 77 *N. Y.* 101, in *Cuykendall v. Miles*, *U. S. Cir. Ct. D. Mass.* 14 *Reporter*, 69; s. c., 10 *Fed. Rep.* 342.
- **v. Devereaux**, 4 *Paige*, 229. Followed with *Clarke v. Brooklyn B'k*, 1 *Edw.* 371 (When exercise of discretionary power cannot be reviewed) in *Conn. & Passumpsic Rivers R. R. Co. v. Bailly*, 24 *Vt.* 465; s. c., 58 *Am. Dec.* 181. Explained (Equitable regulation of corporate elections) in 3 *South. L. Rev. N. S.* 213. Quoted in 2 *High. on Inj.* 2 ed. § 1230, n. 1.
- **v. Erie R'y Co.**, 63 *Barb.* 260. Questioned (Proof of income from business, to show damage resulting from personal injury) in *Masterton v. Village of Mt. Vernon*, 58 *N. Y.* 391, 396. Compare *Clifford v. Dam*, 44 *Super. Ct. (J. & S.)* 391, 393.
- **v. Granite B'k**, 44 *Barb.* 111; s. c., more fully, 19 *Abb. Pr.* 111.
- **v. Millard**, 29 *N. Y.* 375. Commented on and disting'd with *Coon v. Knap*, 8 *Id.* 402 (Effect of payment of sum less than that due, as accord and satisfaction) in *Hammond v. Christie*, 5 *Robt.* 160, 167.
- **v. Russell**, 16 *How. Pr.* 91; s. c., 7 *Abb. Pr.* 452, n. See (Right of party to action, to witness fees) *Code Civ. Pro.* 1881, § 3288, n.
- **v. Schuyler**, 10 *Wend.* 480. See *Shaw v. White*. Followed as the settled rule (Valuation of land for dower) in *Van Gelder v. Post*, 2 *Edw.* 577, 579; *Parks v.*

- Hardy, 4 *Bradf.* 15, 18. Collated with other cases in *Sharsw. & B. Cas. on Real Prop.* 399.
- *v. Sherman*, 20 *Wend.* 636. See *Cresson v. Stout*; *Goodrich v. Jones*; *Murdock v. Gifford*. Followed (*Machinery, &c.* as fixtures) in *Vanderpool v. Van Allen*, 10 *Barb.* 164. Approved and followed as settled law, in *Stevens v. Buffalo & N. Y. City R. R. Co.*, 31 *Id.* 605, 634; *Voorhies v. McGinnis*, 46 *Id.* 248, but applied in *Lafin v. Griffiths*, 35 *Id.* 62; *Shaw v. Lenke*, 1 *Daly*, 488; *Noyes v. Terry*, 1 *Lans.* 220. Disting'd in *Farmers' Loan & Trust Co. v. Hendrickson*, 25 *Barb.* 492; *Bishop v. Bishop*, 11 *N. Y.* 125; *McRea v. Central Nat. B'k of Troy*, 66 *Id.* 498. Explained and applied in *Potter v. Cromwell*, 40 *Id.* 295. Examined in *Buckley v. Buckley*, 11 *Barb.* 58. Approved, but criticised, in *Voorhis v. Freeman*, 2 *Watts & S. (Pa.)* 116; s. c., 37 *Am. Dec.* 490, with note. Reviewed with other cases in *Providence Gas Co. v. Thurber*, 2 *R. I.* 15; s. c., 55 *Am. Dec.* 621. Commented on in 2 *Kent Com.* 348.
- *v. Suediker*, *Hoffm.* 145. Compared with later and what are thought to be prevailing authorities (Limit of mortgage for future advances),—in *Jones on Chat. M.* § 96.
- *v. Spencer*, 47 *Super. Ct. (J. & S.)* 523. Appeal dismissed, it seems, in 86 *N. Y.* 162. Former decision in 45 *Super. Ct. (J. & S.)* 71.
- *v. Swayzee*. See *Brittin v. Wilder*.
- *v. Wainwright*, 16 *Barb.* 486. Applied (Review of decision of ecclesiastical tribunal) in *Chase v. Cheney*, 58 *Ill.* 509; s. c., 11 *Am. R.* 95, 98. Quoted in 1 *High on Inj.* 2 ed. § 309, n. 2.
- *v. Walker*, 20 *Hun.* 400. Aff'd in 82 *N. Y.* 260; s. c., 8 *Abb. N. C.* 436; 59 *How. Pr.* 476. Decision in *Id.* followed (Power to strike out answer of defendant in contempt in action for divorce) in *Brisbane v. Brisbane*, 5 *Civ. Pro. R. (Browne)* 352. Compare *McClung v. McClung*, 40 *Mich.* 493, involving taking of proofs. Compare *Allen v. Allen*, 8 *Abb. N. C.* 175, involving right to jail liberties.
- *v.* —, 3 *Abb. N. C.* 12. Should be *Walter v. Walter*, as appears from facts stated and opinion.
- Wall v. Buffalo Water Works Co.** See *Shearman v. N. Y. Central Mills*.
- *v. East River Mut. Ins. Co.*, 7 *N. Y.* 370. Disting'd (Warranty as to use of insured premises) in *Benedict v. Ocean Ins. Co.*, 31 *Id.* 395; *Smith v. Mech. & Trad. Ins. Co.* 32 *Id.* 401. Followed (Warranty as to occupation) in *Alexander v. Germania Fire Ins. Co.*, 66 *Id.* 466. Followed (Effect of descriptive words as warranty) in *Bryce v. Lorillard Fire Ins. Co.*, 35 *Super. Ct. (J. & S.)* 401.
- *v. Home Ins. Co.*, 8 *Dow.* 597. Aff'd in 36 *N. Y.* 157. See *Baker v. Union Life Ins. Co.* Decision in 36 *N. Y.* followed (Effect of provision that it shall be void in case of non-payment of premium notes) in *Williams v. Albany City Ins. Co.*, 19 *Mich.* 451; s. c., 2 *Am. R.* 95, 100.
- *v. Howard Ins. Co.*, 14 *Barb.* 383. Overruled (Warranty as to use of insured premises) in *Wall v. East River Mut. Ins. Co.*, 7 *N. Y.* 370.
- *v. Kellogg*, 16 *N. Y.* 385. Relied' on (Recovery from executor, &c. for property received by him in his representative capacity) in *Conger v. Atwood*, 28 *Ohio St.* 134; s. c., 22 *Am. R.* 362, 369.
- *v. Lee*, 34 *N. Y.* 141. Cited with other cases (Disturbance of religious meeting) in 12 *Am. L. Reg. N. S.* 538.
- Wallace v. Am. Linen Thread Co.**, 16 *Hun.* 404. Followed (Effect of findings of jury in equitable action) in *Carroll v. Deimel*, 13 *Weekly Dig.* 401.
- *v. Castle*, 68 *N. Y.* 370. Further proceeding in 14 *Hun.* 106. Decision in 68 *N. Y.* followed (Appealability of order vacating attachment) in *Claffin v. Baere*, 80 *Id.* 642; *Allen v. Meyer*, 73 *Id.* 1, 4. Applied to order for exoneracion of bail, in *Douglass v. Haberstro*, 82 *Id.* 572, 574.
- *v. Drew*, 59 *Barb.* 413. Rev'd in 54 *N. Y.* 678, on technical grounds, not appearing to affect the questions discussed in the opinion. Compare *Pollett v. Long*, 56 *Id.* 200. Decision in 59 *Barb.* discussed (Nuisance as produced by riparian owner erecting bulwarks) in *Wood on Nuis.* 2 ed. § 349.
- *v. Eaton*, 5 *How. Pr.* 99. Applied (Parties in judgment creditor's action) in *Miller v. Hall*, 40 *Super. Ct. (J. & S.)* 262, 267.
- *v. Karlenowefski*, 19 *Barb.* 118. Explained and applied (Sufficiency of provision for compensation for land taken by right of eminent domain) in *Chapman v. Gates*, 54 *N. Y.* 132, 145.
- *v. Lent*, 1 *Daly.* 481. Followed (Fraudulent representations or concealment by landlord, when a defense to an action for rent) in *Jackson v. Odell*, 14 *Abb. N. C.* 42. Collated with other cases in *McAdam on Landl. & T.* 2 ed. § 73.
- *v. Markham*, 1 *Den.* 671. Disting'd (Foundation for costs in actions against executors, &c.) in *Genet v. Binsse*, 3 *Daly*, 239, 242.
- *v. Mayor, &c. of N. Y.*, 2 *Hill.* 440. Applied (Vindictive damages for negligence) in *Woodman v. Nottingham*, 49 *N. H.* 387; s. c., 6 *Am. R.* 526, 532.
- *v. Morss*, 5 *Hill.* 391. Commented on (Matter arising on contract, when basis of action for tort) in *Campbell v. Perkins*, 8 *N. Y.* 430, 440. Disting'd (Infant's liability for torts) in *Hewitt v. Warren*, 10 *Hun.* 560, 563. Collated with other cases in *Ellwell Lead. Cas. on Inf. &c.* 207.
- *v. Patterson*, 29 *How. Pr.* 170. Followed (Requisites of notice of appeal from justice's decision) in *Putnam v. Heath*, 41 *Id.* 262, 264. Approved, but report criticised as incorrect,—in *Youngehouse v. Fin-*

- gar, 63 *Barb.* 299, 307. See *Code Civ. Pro.* 1881, § 3070, n.
- *v. Swinton*, 64 *N. Y.* 188. See (Leave to issue execution) *Code Civ. Pro.* 1881, § 1881, n.
- Wallack v. Mayor, &c. of N. Y.**, 3 *Hun.* 84; s. c., 5 *Sup'm. Ct. (T. & C.)* 310. Further decision as Wallack v. Society for Reformation of Juvenile Delinquents, 67 *N. Y.* 23. See *Milbau v. Sharp*.
- *v. Society for Reformation of Juvenile Delinquents*. See *Same v. Mayor, &c. of N. Y.*
- Waller v. Harris**, 7 *Paige*, 167. Aff'd in 20 *Wend.* 555. See *People ex rel. Rice v. Ransom*. Not followed (Compliance with requirements of statute respecting redemption from execution sale) in *Ex parte Newell*, 4 *Hill*, 611. See, however, *Wood v. Moorhouse*, 1 *Lans.* 416. See *Code Civ. Pro.* 1881, § 1464, n. Applied (Construction of statutes) in *Bell v. Yates*, 33 *Barb.* 638; *Post v. B'k of Utica*, 7 *Hill*, 408. Followed in *People v. Plumsted*, 2 *Mich.* 468. Applied in *U. S. v. Temple*, 105 *U. S.* 97. Cited approvingly in 1 *Kent Com.* 462.
- Wallerstein v. Columbian Ins. Co.**, 3 *Robt.* 528. Rev'd in 44 *N. Y.* 204. Decision in *Id.* disting'd ("Total loss" in marine insurance) in *Burt v. Brewers' & Maltsters' Ins. Co.*, 9 *Hun.* 383; *Chadsey v. Guion*, 46 *Super. Ct. (J. & S.)* 118, 120; *Same v. Same*, 48 *Id.* 267, 272. Cited in 3 *Kent Com.* 331, n. 1, *Holmes' ed.* as stating the American rule.
- Walling v. Schwartzkopf**, 44 *Super. Ct. (J. & S.)* 576. Explained (Buyer's remedy for defects in goods sold) in 2 *Benj. on Sales*, § 1356, n. 11 (*Corbin's* 4 *Am. ed.*).
- Wallis v. Lott**. See *Van Rensselaer v. Chadwick*.
- *v. Randall*, 16 *Hun.* 33. Aff'd in 81 *N. Y.* 164.
- Walls v. Bailey**, 49 *N. Y.* 464; s. c., 10 *Am. E.* 407. Approved and collated with other cases (Evidence of usage on construction of contract) in *Adams v. M. & B. Fire Ins. Co.*, *U. S. Cir. Ct. D. R. 1.*, 17 *Fed. Rep.* 630, 633. Referred to in 2 *Am. Dec.* 374, n., as a well considered case. Collated with *Commercial B'k of Ky. v. Varnum*, 3 *Lans.* 90, n., and numerous other cases in 18 *Am. E.* 204, n.; *Lawson on Usages and Customs*, 392. Approved in 2 *Whart. Com. on Ev.* § 961a; 12 *Ins. L. J.* 787. See other cases collected in 1 *Abb. N. C.* 472, n.
- Wallsworth v. McCullough**, 10 *Johns.* 93; s. c., 4 *N. Y. Com. L. Law. ed.* 949, with brief note. Followed with *Jones v. Percival*, 2 *Johns. Cas.* 49 (Personal liability of justice of the peace for false imprisonment) in *Flack v. Harrington*, *Breese (Ill.)* 213; s. c., 12 *Am. Dec.* 170. See cases cited in 6 *Am. Dec.* 303, n.
- Walrath v. Barton**, 11 *Barb.* 382. Further decision as *Walrath v. Redfield*, 18 *N. Y.* 457. See *Parrott v. Knickerbocker Ice Co.* Decision in 18 *N. Y.* applied (Interest in actions for tort) in *Black v. Camden & Amboy R. R. &c. Co.*, 45 *Barb.* 43. See *Lake-man v. Grinnell*, 5 *Bosw.* 638. Followed with *Richmond v. Bronson*, 5 *Den.* 55, and particularly *Wehle v. Haviland*, 42 *How. Pr.* 399, in *Floyd v. Paul*, *Hamilton Co. (O.) Dist. Ct.* 10 *Cin. L. Bul.* 14.
- *v. Redfield*. See *Walrath v. Barton*.
- *v. Thompson*, 6 *Hill*, 540. Aff'd in 2 *N. Y.* 185. Previous decision in 4 *Hill*, 200. Decision in 6 *Id.* applied (Discharge of guarantor from liability) in *Henderson v. Marvin*, 11 *Abb. Pr.* 146; *Bigelow v. Benton*, 14 *Barb.* 130. Disting'd in *Kingsbury v. Williams*, 53 *Id.* 151. Decision in 4 *Hill* limited (Construction of guaranty) in *Crist v. Burlingame*, 62 *Barb.* 357. Questioned in *Weed v. Clark*, 4 *Sandf.* 35. Applied in *Durham v. Manrow*, 2 *N. Y.* 537. Explained in *Broune on Stat. of Frauds*, § 402, 4 ed. Collated with *French v. Carhart*, 1 *N. Y.* 96; *Norton v. Woodruff*, 2 *Id.* 153; *Almgren v. Dutilh*, 5 *Id.* 28; *Goodrich v. Stevens*, 5 *Lans.* 230, and other cases (Parol evidence to explain mercantile contracts) in 28 *Am. E.* 210, n.
- Walsh's Estate, Tuck**, 132. Disapproved (Effect of subscription to will by mark) in *Simpson's Will*, 2 *Redf.* 29.
- Walsh v. Adams**. See *Waddell v. Cook*.
- *v. Bailie*, 10 *Johns.* 180; s. c., 4 *N. Y. Com. L. Law. ed.* 988, with brief note. Disting'd (Construction of contract of surety) in *Prior v. Williams*, 3 *Abb. Ct. App. Dec.* 627. Applied in *Barns v. Barrow*, 61 *N. Y.* 43. Disting'd with *Rogers v. Warner*, 8 *Johns.* 119 (What constitutes continuing guaranty) in *Rapelye v. Bailey*, 5 *Conn.* 149; s. c., 13 *Am. Dec.* 49.
- *v. Cornett*, 17 *Hun.* 27. See (Amendment of pleadings in justices' court) *Code Civ. Pro.* 1881, § 2944, n.
- *v. Durkin*, 12 *Johns.* 99; s. c., 5 *N. Y. Com. L. Law. ed.* 317, with brief note. See *Bowne v. Joy*.
- *v. Hartford Fire Ins. Co.*, 9 *Hun.* 421. Rev'd in 73 *N. Y.* 5. Decision in *Id.* disting'd (Waiver of condition in policy by agent of insurer) in *Woodruff v. Imperial F. Ins. Co.*, 83 *Id.* 133, 140. Disting'd with *Van Allen v. Farmers' Joint Stock Ins. Co.*, 64 *Id.* 469; *Marvin v. Universal Life Ins. Co.*, 85 *Id.* 278, in *Steen v. Niagara Fire Ins. Co.*, 89 *Id.* 315, 327.
- *v. Kelly*, 42 *Barb.* 98. Aff'd in 40 *N. Y.* 556. Decision in 42 *Barb.* followed (Propriety of question on cross-examination as calling for fact and not conclusion of law) in *Caspar v. O'Brien*, 15 *Abb. Pr. N. S.* 402, 404, citing also *Knapp v. Smith*, 27 *N. Y.* 277; *Sweet v. Tuttle*, 14 *Id.* 467; *Davis v. Peck*, 54 *Barb.* 425. Decision in 40 *N. Y.* 556 disting'd (Exceptions to charge, when too general) in *Betz v. Conner*, 7 *Daly*, 550, 553.
- *v. Mead*, 8 *Hun.* 387. See *Brown v.*

- Cayuga and Susquehanna R. R. ; *Swords v. Edgar*. Disting'd (Liability for injury caused by condition of lot fronting on street) and *Todd v. City of Troy*, 61 *N. Y.* 506, applied in *Moore v. Gladsden*, 87 *Id.* 84, 87.
- *v. N. Y. Floating Dry Dock Co.*, 8 *Daly*, 387. Aff'd in 77 *N. Y.* 448.
- *v. Powers*, 43 *N. Y.* 23. Rev'g Flinn *v. Powers*, 36 *How. Pr.* 289; which aff'd 35 *Id.* 279.
- *v. Sayre*, 52 *How. Pr.* 334. See account with comments of medical press published in 1 vol. at N. Y. 1870-71, and to be found at State Libr. in Albany. Approved (Power to compel physical examination) in *Shaw v. Van Rensselaer*, 60 *How. Pr.* 144. Criticised with *Osborn v. Manhattan R. R. Co.*, 5 *Monthly L. Bul.* 8, and *Harold v. N. Y. Elevated R'y Co.*, 21 *Hun.* 268; *Devanbagh v. Devenbagh*, 5 *Paige*, 554, disting'd in *Roberts v. Ogdensburgh, &c. R. R. Co.*, 29 *Hun.* 154. Disapproved, *Harrold v. N. Y. Elevated R'y Co.*, 21 *Hun.* 268, being explained, and *Roberts v. Ogdensburgh R. R. Co.*, 29 *Hun.* 155, followed, in *Newman v. Third Ave. R. R. Co.*, 50 *Super. Ct. (J. & S.)* 412.
- *v. Washington Marine Ins. Co.*, 3 *Robt.* 202. Aff'd in 32 *N. Y.* 427. Decision in *Id.* applied (Opinions of witness in nautical matters) in *Spickerman v. Clark*, 9 *Hun.* 133. See to the contrary (Presumption as to seaworthiness) *Pickup v. Thames, &c. Ins. Co.*, *L. R.* 3 *Q. B. Div.* 594. See *Abb. Tr. Ec.* 497. Applied (Right of action on marine policy) in *Sturm v. Atlantic Mut. Ins. Co.*, 38 *Super. Ct. (J. & S.)* 281, 302, 308. Applied (Amendment as to parties) in *N. Y., &c. Milk Pan Co. v. Remington's Agric. Works*, 25 *Hun.* 475 (and see dissenting opinion *Id.* 481).
- Walter, Matter of**, 14 *Hun.* 148. Rev'd in 75 *N. Y.* 354.
- , 21 *Hun.* 533. Re-argument denied, it seems, in *Id.* 619, but without opinion. Aff'd in 83 *N. Y.* 538.
- Walter v. Bennett**, 16 *N. Y.* 250. Followed (Recovery on contract not sustainable on allegation of tort) in *Mayor, &c. of N. Y. v. Parker Vein Steamship Co.*, 12 *Abb. Pr.* 300, 302; *Whitcomb v. Hungerford*, 42 *Barb.* 177, 186. Applied to an analogous case in *Field v. Syms*, 2 *Robt.* 35, 38. Limited in *Conaughty v. Nichols*, 42 *N. Y.* 83, 87. Explained and applied in *Ross v. Mather*, 51 *Id.* 108, 111. Applied conversely, in *Beard v. Yates*, 2 *Hun.* 467. Disting'd (Amendment of complaint on trial) in *Vibbard v. Roderick*, 51 *Barb.* 629; *Bigelow v. Dunn*, 53 *Id.* 571. Applied in *Stoddard v. Rotton*, 5 *Bosw.* 387. Followed as decisive (Remedy, when on contract and not in trover) in *Harris v. Schultz*, 40 *Barb.* 319. Applied in *Robbins v. Falconer*, 43 *Super. Ct. (J. & S.)* 363, 371. Disting'd in *Grand Trunk R'y Co. v. Edwards*, 56 *Barb.* 413; *Matter of Pie*, 10 *Abb. Pr.* 410.
- *v. Lockwood*, 4 *Abb. Pr.* 307; s. c., more fully, 23 *Barb.* 228.
- *v. People*, 50 *Barb.* 144. Approved (Requisites of crime of rape) in *Don Moran v. People*, 25 *Mich.* 356; s. c., 12 *Am. R.* 283, with note.
- *v. —*. See *Walters v. Same*.
- *v. Walter*. See *Walker v. Walker*.
- Waltermire v. Westover**, 14 *N. Y.* 16. Followed (Discharge of debt by operation of statute of limitations) in *Jones v. Merchants' Bank of Albany*, 6 *Robt.* 162, 164.
- Walters v. People**, 6 *Park.* 15; s. c., as *People v. Walters*, 18 *Abb. Pr.* 147. Aff'd as *Walters v. People*, in 32 *N. Y.* 147. See *People v. McCann*. Decision in 32 *N. Y.* followed (Power of legislature to change mode of challenging jurors) in *Weston v. People*, 6 *Hun.* 140. Discussed with *Ferris v. People*, 35 *N. Y.* 125; *People v. McCann*, 16 *Id.* 58; *Brotherton v. People*, 75 *Id.* 154; *O'Connell v. People*, 87 *Id.* 377; *Walker v. People*, 88 *Id.* 81; *People v. Schryver*, 42 *Id.* 1 (Burden of proof of sanity or insanity in criminal cases) in 18 *Cent. L. J.* 402. Compare (Disqualification of juror) *Points of Law. in Guiteau's Case*, 70 (Boston, Little, Browne & Co., 1881).
- Walther v. Westmore**. See *Baker v. Wheeler*; *Jennings v. Merrill*.
- Walton v. Cronly**, 14 *Wend.* 63. Overruled (Parol evidence, in court of law, to show that deed absolute in terms, was intended as mortgage) in *Webb v. Rice*, 6 *Hill.* 219. Followed in *Hall v. Savill*, 3 *G. Greene (Iowa)* 37; s. c., 54 *Am. Dec.* 485, with note. Compared (Liability of mortgage as assignee on covenants) in 4 *Kent Com.* 167, n. d.
- *v. Walton*, 7 *Johns. Ch.* 258; s. c., 11 *Am. Dec.* 456, with note. Disting'd with *Giddings v. Seward*, 16 *N. Y.* 365; *Doughty v. Stillwell*, 1 *Brailf.* 300 (Ademption of bequests of instruments for payment of money) in *Abernethy v. Catlin*, 2 *Dem.* 341. Cited as authority (Question of ademption, when not one of intention) in *Ross v. Carpenter*, 9 *B. Monr. (Ky.)* 367; s. c., 50 *Am. Dec.* 513, with note. Followed (Effect of contract to convey land, as revocation of devise) in *Denohoo v. Lea*, 1 *Swan. (Tenn.)* 119; s. c., 55 *Am. Dec.* 725. Compare 2 *R. S. G.* § 41, and comments in 11 *Am. Dec.* 470, n. Followed (Will once revoked cannot be revived) in *Bohanon v. Walcott*, 1 *How. (Miss.)* 336; s. c. 29 *Am. Dec.* 631, 635.
- *v. —*, 4 *Abb. Ct. App. Dec.* 512; s. c., 1 *Keyes*, 15. Disting'd (Liability of executor, &c.) in *McCabe v. Fowler*, 84 *N. Y.* 314, 320. With *Clapp v. Meserole*, 1 *Abb. Ct. App. Dec.* 362, see to the contrary *U. S. v. Walker*, 109 *U. S.* 258.

- Walworth v. Farmers' Loan and Trust Co.**, 4 *Sandf. Ch.* 51. Approved, but rev'd, in 1 *N. Y.* 433.
- Wambaugh v. Gates**, 11 *Paige*, 505. Aff'd in *How. App. Cas.* 247. Further proceedings in 8 *N. Y.* 138. Decision in 11 *Paige* explained and applied (Proof in proceeding to enforce liability of heirs for decedent's debts) in *Blossom v. Hatfield*, 24 *Hun*, 276. With decision in 8 *N. Y.* see (Recovery by purchaser on execution sale, in case of his eviction) *Code Civ. Pro.* 1881, § 1479, n.
- Wanzer v. Cary**, 12 *Hun*, 403. Aff'd in 76 *N. Y.* 526.
- **v. De Baum**, 1 *E. D. Smith*, 261; s. c., 1 *Code R. N. S.* 280. Applied (Debt, when fraudulently contracted) in *Freeman v. Leland*, 2 *Abb. Pr.* 480. Applied (Right of arrest for fraud, as affected by form of action) in *Union B'k v. Mott*, 6 *Id.* 325. Examined and re-aff'd. (Right of arrest as affected by existence of foreign judgment) in *Greenbaum v. Stein*, 2 *Daly*, 223. See *Code Civ. Pro.* 1881, § 552, n.
- Ward v. Arredondo**, *Hopk.* 213; s. c., 14 *Am. Dec.* 543. Approved (Jurisdiction as to lands without State) in *Gardner v. Ogden*, 22 *N. Y.* 327, 338.
- **v. Atlantic & Pac. Tel. Co.**, 71 *N. Y.* 81. Followed (Liability for injury resulting from fall of telegraph pole) in *Allen v. Atlantic & Pac. Tel. Co.*, 21 *Hun*, 22. Disting'd with *Allen v. Atlantic & C. Tel. Co.*; *Cleveland v. N. J. Steamboat Co.*, 68 *N. Y.* 306; *Loftus v. Union, & C. Ferry Co.*, 84 *Id.* 455 (Liability for injury arising from unusual cause) in *Gubasco v. Mayor, & C. of N. Y.*, *N. Y. Daily Reg.* July 11, 1883.
- **v. Beebe**, 15 *Abb. Pr.* 372. Further decision in 17 *Id.* 1.
- **v. Begg**, 18 *Barb.* 139. Disting'd (Action in which attachment may be granted) in *Gordon v. Gaffey*, 11 *Abb. Pr.* 1, 3. See *Code Civ. Pro.* 1881, ch. VII, tit. III, art. 1, n.
- **v. Center**, 3 *Johns.* 271. Applied (Effect of jury's verdict on conflicting evidence as to fraud) in *Blanchard's Gun-Stock Fuming Factory v. Jacobs*, 2 *Blatchf. C. Ct.* 69, 71.
- **v. Clark**, 2 *Johns.* 10; s. c., 3 *Am. Dec.* 383. Disting'd (Words imputing crime of perjury when actionable) in *Commons v. Walters*, 1 *Port. (Ala.)* 377; s. c., 27 *Am. Dec.* 635. Included in *Bigel. Cas. on Torts*, 81.
- **v. Dewey**, 16 *N. Y.* 519. Rev'g decision, report of which is to be found in *Van Santvoord's Precedents of Pleadings*, 121, n. Another decision in 7 *How. Pr.* 17. *Dewey v. Ward*, 12 *Id.* 419, appears to be a cross-suit. Decision in 16 *N. Y.* disting'd (Ground of proceeding for removal of cloud on title) in *Williams v. Fitzhugh*, 37 *Id.* 449; *Fonda v. Sage*, 48 *Id.* 179. Applied in *Crooke v. Andrews*, 40 *Id.* 549. Followed in *Bunce v. Gallagher*, 5 *Blatchf. C. Ct.* 481, 488.
- **v. Green**, 6 *Cow.* 173; s. c., 16 *Am. Dec.* 437. Disting'd (When master of vessel is empowered to sell it) in *Joy v. Allen*, 2 *Wood & M.* 316, 318.
- **v. Howard**, 25 *Hun*, 119. Abridg't s. c., 12 *Weekly Dig.* 491. Earlier proceeding as *Lintz v. Howard*, 18 *Hun*, 424.
- **v. Kilpatrick**, 9 *Weekly Dig.* 342. Aff'd in 85 *N. Y.* 413; s. c., 39 *Am. R.* 674.
- **v. Newell**, 42 *Barb.* 482. Disting'd (Liability of special partner) in *Van Ingen v. Whitman*, 62 *N. Y.* 513, 520.
- **v. N. Y. Central R. R. Co.**, 47 *N. Y.* 29. Applied (Measure of damages against carrier for delay) in *Dunham v. Bost. & Me. R. R. Co.*, 70 *Me.* 164; s. c., 35 *Am. R.* 314, 318. Included with notes in *Sedgw. Cas. on Dam.* 177.
- **v. People**, 3 *Hill*, 395. Aff'd in 6 *Id.* 144. See *Keyser v. Harbeck*. Decision in 3 *Hill* commented on (Petit larceny, whether a felony) in *Carpenter v. Nixon*, 5 *Id.* 260. See also *Keyser v. Harbeck*, & *Duer*, 373, 388; *People v. Adler*, 3 *Park.* 249, 255. Disregarded in *Shay v. People*, 22 *N. Y.* 317. Decision in 6 *Hill* collated with *Marshall v. Peters*, 12 *How. Pr.* 218; *Brown v. Brown*, 30 *N. Y.* 519; *Myer v. Whitaker*, 5 *Abb. N. C.* 172, and other cases (Property in ice and actions in respect thereto) in 32 *Am. R.* 164, n. See also 21 *Am. L. Reg. N. S.* 320, n.; 3 *Alb. L. J.* 386.
- **v. Perrin**, 54 *Barb.* 89. Explained and followed (Sufficiency of notice of protest) in *Requa v. Collins*, 51 *N. Y.* 144, 149.
- **v. Roy**, 69 *N. Y.* 96. See (Costs in action brought in name of another) *Code Civ. Pro.* 1881, § 3247, n.
- **v. Ruckman**, 34 *Barb.* 419. Aff'd in 36 *N. Y.* 26.
- **v. Sea Ins. Co.**, 7 *Paige*, 294. Applied (Proceedings by stockholder for dissolution of corporation) in *Masters v. Eclectic Life Ins. Co.*, 6 *Daly*, 455, 457; *Kittredge v. Kellogg Bridge Co.*, 8 *Abb. N. C.* 168, 169. Discussed in *Ang. & A. on Corp.* § 774, 11 ed.
- **v. Shaw**, 7 *Wend.* 404. Disting'd (When title passes on sale) in *Brewer v. Salisbury*, 9 *Barb.* 514.
- **v. Spencer**, 1 *Hun*, 622; fuller mem. s. c., 4 *Sup'm. Ct. (T. & C.)* 697. Appeal said in 2 *Hun*, vi. to have been dismissed.
- **v. Syme**, 8 *N. Y. Leg. Obs.* 95. Aff'd in 4 *N. Y.* 171. Subsequent decision in 9 *N. Y. Leg. Obs.* 313; s. c., 1 *Code R. N. S.* 208; rev'd in 9 *How. Pr.* 16; s. c., as *Ward v. Wordsworth*, 1 *E. D. Smith*, 598. Decision in 9 *How. Pr.* approved and applied (Attorney's lien under the Code) in *Haight v. Holcomb*, 7 *Abb. Pr.* 212; *Roberts v. Carter*, 9 *Id.* 368; *Rooney v. Second Ave. R. R. Co.*, 18 *N. Y.* 370. See to the contrary *Davenport v. Ludlow*, 4 *How. Pr.* 337.
- **v. Tingley**, 4 *Sandf. Ch.* 476. Collated

- with other cases (Provision for conditional preferences in assignments for creditors) in *Bishop on Assign.* § 200. Explained in *Burrill on Assign.* § 179, 4 ed.
- **v. Ward**, 23 *Hun.* 431. Followed (Power of Supreme Court to determine validity of alleged devise) in *Wager v. Wager*, *Id.* 440.
- **v. Warren**, 15 *Hun.* 600. Aff'd in 82 *N. Y.* 265. Decision in *Id.* disting'd as a case of claim of right (Title, when obtained by prescription) in *Wiseman v. Lucksinger*, 84 *Id.* 31, 46. Discussed (Ejectment against tenants in common) in *Sedgw. & W. on Tr. of Tit. to Land*, § 276.
- **v. Whitney**, 3 *Sandf.* 399. Aff'd in 8 *N. Y.* 442.
- **v. Wiman**, 17 *Wend.* 193. Approved (Liability for fraudulent representations as to title to real estate) in *Whitney v. Allaire*, 1 *N. Y.* 305, 308.
- **v. Wordsworth**. See *Same v. Syme*.
- Wardell v. Eden**. See *Andrews v. Beecker*.
- **v. Fosdick**, 13 *Johns.* 325; s. c., 7 *Am. Dec.* 383. Approved (Liability for fraudulent representations as to title to real estate) in *Whitney v. Allaire*, 1 *N. Y.* 305, 308.
- **v. Howell**, 9 *Wend.* 170; s. c., 11 *N. Y. Com. L. Law. ed.* 572, with brief note. See *Bay v. Coddington*; *Root v. French*; *Rosa v. Brotherson*; *Schepp v. Carpenter*. Applied (Parting with value that makes one bona fide holder of negotiable paper) in *Farrington v. Frankfort B'k*, 24 *Barb.* 503; *Francia v. Joseph*, 3 *Edw.* 184; *Stalker v. McDonald*, 6 *Hill.* 97. Disting'd with *Francia v. Joseph*, in *Traders' Bank of Rochester v. Bradner*, 43 *Barb.* 379, 393. Quoted in *Redf. & B. Lead. Cas. on B. of Exch.* 268.
- Wardrop v. Dunlop**, 1 *Hun.* 325; s. c., 3 *Sup'm. Ct. (T. & C.)* 531. Aff'd, it seems, in 59 *N. Y.* 634, but without opinion.
- Wardwell v. Haight**. See *Vernon v. Manhattan Co.*
- Warhus v. Bowery Savings B'k**, 5 *Duer*, 67. Aff'd in 21 *N. Y.* 543. Decision in *Id.* disting'd (Effect of signing instrument without full knowledge of its contents) in *Kirkland v. Dinsmore*, 2 *Hun.* 46, 49; which was rev'd in 62 *N. Y.* 171, 179, which see.
- Waring v. Indemnity Fire Ins. Co.** 45 *N. Y.* 606; s. c., 6 *Am. R.* 146. See *De Forest v. Fulton Fire Ins. Co.* Relied on (Basis of recovery, in case of loss under policy covering an interest in property) in *Trade Ins. Co. v. Barraciff*, 16 *Vroom (N. J.)* 543; s. c., 46 *Am. R.* 792, 798.
- **v. Loder**, 53 *N. Y.* 581. Disting'd (Rights of mortgagee, in case of insured property) in *Ulster County Sav'gs Inst. v. Leake*, 73 *Id.* 166. Disting'd (Insurer's right to subrogation) in *Dick v. Franklin Fire Ins. Co.*, 10 *Mo. App.* 376, 391.
- **v. Mason**, 18 *Wend.* 425; s. c., 13 *N. Y. Com. L. Law. ed.* 422, with brief note. Explained and quoted (Sale by sample) in 1 *Par. on Contr.* 548, n. v. Reviewed and collated with other cases to same effect, in 22 *Am. L. Reg. N. S.* 242.
- **v. Robinson**, *Hoffm.* 524. Disting'd (Effect of appointment of receiver of insolvent partnership) in *Holmes v. McDowell*, 15 *Hun.* 585, 590.
- **v. Smyth**, 2 *Barb. Ch.* 119; s. c., 47 *Am. Dec.* 299, with note, wherein are collected citations. See *Phyfe v. Riley*; *Tillou v. Clinton Ins. Co.*; *Van Buren v. Cockburn*. Applied (Nature of mortgagee's interest) in *Calkins v. Calkins*, 3 *Barb.* 312. Reviewed with other cases in dissenting opinion in *Trimm v. Marsh*, 54 *N. Y.* 623. Disting'd (Merger of original contract in written agreement) in *Matteson v. Ellsworth*, 33 *Wis.* 488; s. c., 14 *Am. R.* 766, 770.
- **v. Somborn**, 12 *Hun.* 81. Appeal dismissed, it seems, in 71 *N. Y.* 605, but without opinion.
- **v. Warren**, 1 *Johns.* 340. Explained with *Austin v. Sawyer*, 9 *Cow.* 39 (Admissibility of declarations of former owner) in *Paige v. Cagwin*, 7 *Hill.* 361, 369. Followed with *Jackson v. Bard*, 4 *Johns.* 230; *Jackson v. McCall*, 10 *Id.* 377, in *Norton v. Pettibone*, 7 *Conn.* 319; s. c., 18 *Am. Dec.* 116, with note.
- **v. Waring**, 3 *Abb. Pr.* 246. Previous decision in 17 *Barb.* 552. Decision in 3 *Abb. Pr.* followed (Purchaser, &c. of decedent's real estate, when protected from liability for his debts) in *Fonda v. Chapman*, 23 *Hun.* 119, 123. Decision in 17 *Barb.* disting'd (Effect of devise to wife for life, with power) in *Dunning v. Vandusen*, 47 *Ind.* 423; s. c., 17 *Am. R.* 709, 712. Quoted (Lapse of real estate specifically devised) in 1 *Jarm. on Wills*, *Rand. & T.* ed. 637, n.
- Warne v. Constant**, 4 *Johns.* 32. Applied (Liability for false imprisonment) in *Dusenbury v. Keiley*, 85 *N. Y.* 383, 389.
- Warner v. Beardsley**, 8 *Wend.* 194. See *Pain v. Packard*. Explained (Equitable remedy of surety to compel debtor to pay) in *Slauson v. Watkins*, 86 *N. Y.* 597, 601. Limited (Discharge of surety by failure of creditor to proceed against principal debtor) in *Converse v. Cook*, 25 *Hun.* 44, 46.
- **v. Beers**, 23 *Wend.* 103. See *Thomas v. Dakin*. Explained (Banking associations, as corporations) in *Leavitt v. Blatchford*, 5 *Barb.* 11; *People v. Assessors of Watertown*, 1 *Hill.* 617. Disapproved in *De Bow v. People*, 1 *Den.* 12, but see *Gifford v. Livingston*, 2 *Id.* 380. Approved with *Gifford v. Livingstone*, in *Palmer v. Smith*, 10 *N. Y.* 303, 305. Applied in *Talmage v. Pell*, 9 *Paige*, 415. Explained in *Supervisors of Niagara v. People*, 7 *Hill.* 509; *East River B'k v. Judah*, 10 *How. Pr.* 136; *Leavitt v. Blatchford*, 17 *N. Y.* 527. Denied (Effect of constitutional provision as to mode of passage of laws affecting corporations) in *Purdy v. People*, 4 *Hill.* 398, 401. Ex-

plained in *Hunt v. Van Alstyne*, 25 *Wend.* 608. Criticised (Power of courts to go behind record, to impeach statute) in *People v. Devlin*, 33 *N. Y.* 280, 285. Discussed and cases cited in 3 *Am. L. Reg. N. S.* 345.

— *v. Blakeman*, 36 *Barb.* 501. Aff'd in 4 *Keyes*, 487; s. c., 4 *Abb. Ct. App. Dec.* 530. See *Wood v. Colvin*. Decision in 4 *Abb. Ct. App. Dec.* explained and applied (Rights of purchaser at sale under irregular foreclosure) in *Mickles v. Dillaye*, 15 *Hun.* 301. Applied in *Jordan v. Humphrey*, 31 *Minn.* 495, 498. Otherwise (Money judgment against fraudulent grantee) where fraudulent grantee is debtor's wife, as in *Phipps v. Sedgwick*, 95 *U. S.* 3. Quoted in *Wait on Fraud. Conv.* § 60, n. 2.

— *v. Durant*, 15 *Hun.* 45. Aff'd in 76 *N. Y.* 133. See *Loder v. Hatfield*; *Manice v. Manice*.

— *v. Erie R'y Co.*, 49 *Barb.* 558. Rev'd in 49 *N. Y.* 468. See *De Graff v. N. Y. Central, &c. R. R. Co.* Decision in 39 *N. Y.* explained (Duty of railroad company to furnish safe road-bed) in *Tinney v. Boston & Albany R. R. Co.*, 62 *Barb.* 219. Applied with *Tinney v. Boston & Albany R. R. Co.*, in *Smith v. St. Louis, Kansas City & Northern R'y Co.*, 69 *Mo.* 32; s. c., 33 *Am. L.* 487, 490. Applied (Master's liability to employe for injury resulting from imperfect machinery, &c.) in *King v. N. Y. Central, &c. R. R. Co.*, 4 *Hun.* 770. Followed with *De Graff v. N. Y. Central, &c. R. R. Co.*, 76 *N. Y.* 125, in *Ballou v. Milwaukee & St. Paul R'y Co.*, 54 *Wis.* 259; s. c., 41 *Am. R.* 31, 35. Cited with other cases in 12 *Am. L. Reg. N. S.* 107. Applied (Master's liability to employe for negligence of co-employe) in *Moran v. N. Y. Central, &c. R. R. Co.*, 67 *Barb.* 99. Explained in *Brickner v. N. Y. Central, &c. R. R. Co.*, 2 *Lans.* 515, 517; *Laning v. Same*, 49 *N. Y.* 528, 531; *Flike v. Boston & Albany R. R. Co.*, 53 *Id.* 553. Criticised and limited in *Chapman v. Erie R'y Co.*, 1 *Sup'm. Ct. (T. & C.)* 528.

— *v. Gouverneur*, 1 *Barb.* 36. Approved with *Bank of Ogdensburg v. Arnold*, 5 *Paige*, 40 (Receiver of mortgaged property) in 16 *Cent. L. J.* 86, where the *N. Y.* rule is said to be followed in most of the sister States, California constituting the notable exception. Quoted in *High. on Receiv.* § 667, n. 1.

— *v. Hitchins*, 5 *Barb.* 666. Explained and compared (Lessee's obligation to rebuild in case of destruction of demised premises) in 1 *Parv. on Contr.* 505, n. m.

— *v. Hudson River R. R. Co.*, 5 *How. Pr.* 454. Approved (Statutory liability of railroad corporations in favor of laborers) in *Kent v. N. Y. Central R. R. Co.*, 12 *N. Y.* 628, 633.

— *v. Lee*, 6 *N. Y.* 144. See *Scott v. Ocean B'k.* Followed with *Scott v. Ocean B'k.*, 5 *Bosw.* 192; 23 *N. Y.* 289 (Property in notes or bills sent to banker for collec-

tion) in *Hoffman v. Miller*, 9 *Bosw.* 334, 341. See *Commercial Bank of Clyde v. Marine Bank*, 1 *Abb. Ct. App. Dec.* 405.

— *v. N. Y. Central R. R. Co.*, 45 *Barb.* 290. Rev'd in 44 *N. Y.* 465. Further decision in 52 *Id.* 437. Decision in 44 *Id.* disapproved (Negligence in one crossing railroad track) in *Costello v. Syracuse, &c. R. R. Co.*, 65 *Barb.* 102. Applied (Proof that injury was solely caused by defendant on action for negligence) in *McLain v. Van Zandt*, 39 *Super. Ct. (J. & S.)* 352. Dictum opposed in *Robinson v. N. Y. Central, &c. R. R. Co.*, 65 *Barb.* 146, 149. Disting'd (Evidence of intemperate habits of railroad employe, as bearing on question of negligence) in *Oleghorn v. N. Y. Central, &c. R. R. Co.*, 56 *N. Y.* 46. Limited (Negligence in running train at high rate of speed) in *Tozer v. N. Y. Central, &c. R. R. Co.*, 17 *Weekly Dig.* 370. Decision in 52 *N. Y.* followed (Continuance of power of jury over verdict) in *Manning v. Port Henry Iron Co.*, 27 *Hun.* 219, 221. Dictum overruled in effect (Modification of verdict by court) in *Dalrymple v. Williams*, 63 *N. Y.* 361.

— *v. Penn. R. R. Co.*, 6 *Hun.* 197. Explained and followed (Time of application for removal to Federal Court) in *Bright v. Milwaukee, &c. R. R. Co.*, 1 *Abb. N. C.* 15.

— *v. People*, 2 *Den.* 272; s. c., 43 *Am. Dec.* 740, with note, wherein it is said to be a leading case in *N. Y.* Followed (Power of legislature to reduce compensation of officer) in *Phillips v. Mayor, &c. of N. Y.*, 1 *Hill.* 490; *Conner v. Same*, 5 *N. Y.* 300. Followed (Duties of office made elective by constitution cannot be transferred by statute to appointee) in *King v. Hunter*, 65 *N. C.* 603; s. c., 6 *Am. R.* 754; *State ex rel. Kennedy v. Brunst*, 26 *Wis.* 412; s. c., 7 *Am. R.* 84.

— *v. Price*, 3 *Wend.* 397. Relied on (When persons signing as sureties must be regarded as co-sureties) in *Bagott v. Mullen*, 32 *Ind.* 332; s. c., 2 *Am. R.* 351.

— *v. Shed*, 10 *Johns.* 138; s. c., 4 *N. Y. Com. L. Law. ed.* 970, with brief note. Followed (Process as protection to officer) in *Miller v. Brown*, 3 *Mo.* 127; s. c., 23 *Am. Dec.* 693, with note; *Ranahan v. O'Neale*, 6 *Gill. & J. (Md.)* 298; s. c., 26 *Am. Dec.* 576, with note. Followed with *Parker v. Walrod*, 16 *Wend.* 514; *Noble v. Holmes*, 5 *Hill.* 194; *Cornell v. Barnes*, 7 *Id.* 35; *Webber v. Gay*, 24 *Wend.* 485; *People v. Cooper*, 13 *Id.* 379; *People v. Warren*, 5 *Hill.* 440, in *State v. Weed*, 21 *N. H.* 262; s. c., 53 *Am. Dec.* 188, 192. And compare citations on this point, in 21 *Am. Dec.* 192, n.

— *v. Warren*, 46 *N. Y.* 228. Followed (Wife's liability for acts of husband as agent) in *Wicks v. Hatch*, 38 *Super. Ct. (J. & S.)* 95, 110. Discussed in *Wait on Fraud. Conv.* § 198.

- **v. Western Transp. Co.**, 5 *Robt.* 490. Reviewed with other cases (Fraud on carrier) in *Magnin v. Dinmore*, 38 *Super. Ct. (J. & S.)* 248, 254, which was rev'd in 62 *N. Y.* 35, 43, which see.
- **v. Buckley**, 2 *Abb. N. C.* 323. Disting'd (Basis of extra allowance) in *Potter v. Farrington*, 24 *Hun.* 552.
- **v. Wigers**, 2 *Sandf.* 635. See (Order of disposition of issues) *Code Civ. Pro.* 1881, § 967, *n.*
- Warren v. Haight**, 65 *N. Y.* 171. Prior proceedings between same parties, as it seems, in 62 *Barb.* 490. With decision in 65 *N. Y.* compare (Following proceeds of stolen property) *Newton v. Porter*, 5 *Lans.* 416; 69 *N. Y.* 133; *Porter v. Knapp*, 6 *Lans.* 125.
- **v. Leland**, 2 *Barb.* 613. Applied (Sales of growing trees) in *Boisaubin v. Reed*, 1 *Abb. Ct. App. Dec.* 162, 165; *Kellam v. McKenstry*, 6 *Hun.* 383; which was aff'd in 69 *N. Y.* 270, which see. Disting'd in *Vorebeck v. Roe*, 50 *Barb.* 306. Doubted in *Goodyear v. Vosburgh*, 57 *Id.* 243, 246.
- **v. Lynch**, 5 *Johns.* 239; *s. c.*, 3 *N. Y. Com. L. Law. ed.* 1005, with brief note. Applied with *Andrews v. Harriot*, 4 *Cow.* 508 (Law of place, as applicable to sealed instrument) in *Williams v. Haynes*, 27 *Iowa*, 251; *s. c.*, 1 *Am. R.* 268.
- **v. Mains**, 7 *Johns.* 476. Disting'd (What is sufficient tender) in *Spann v. Baltzell*, 1 *Fla.* 301; *s. c.*, 46 *Am. Dec.* 346, 357, with note.
- **v. Sprague**. See *Joslin v. Cowee*.
- **v. United Ins. Co.**, 2 *Johns. Cas.* 231; *s. c.*, 1 *Am. Dec.* 164, with note, wherein it is shown to have been frequently confirmed (Implied warranty of seaworthiness). Also *s. c.*, 1 *N. Y. Com. L. Law. ed.* 498, with brief note citing *N. Y.* cases.
- Warth v. Radde**, 18 *Abb. Pr.* 396. Disting'd (Misjoinder of causes of action) in *Day v. Stone*, 5 *Daly*, 354.
- Washburn, Matter of**, 4 *Johns. Ch.* 106; *s. c.*, 3 *Wheel.* 473; *s. c.*, 8 *Am. Dec.* 548. Relied on with *People v. Schenck*, 2 *Johns.* 479; *Matter of Goodhue*, 1 *Wheel.* 427; 1 *City Hall Rec.* 153; *People v. Goodhue*, 2 *Johns. Ch.* 198, and *People v. Wright*, 2 *Cai.* 213, disapproved (Surrender of offender against laws of another jurisdiction) in *Matter of Fetter*, 3 *Zabr. (N. J.)* 311; *s. c.*, 57 *Am. Dec.* 382, with extended note. Cited in connection with leading English and American authorities in 1 *Kent Com.* 36, *n. d.* Approved in 17 *Am. L. Rev.* 340. See letter of Mr. Lawrence in *Trans. of Nut. Asso. for Prom. of Social Science*, 1866, p. 153.
- Washburn v. Burnham**, 63 *N. Y.* 132. Disting'd (Basis of proceeding for removal of cloud on title) in *Remington Paper Co. v. O'Dougherty*, 16 *Hun.* 596.
- **v. Cooke**. See *Lewis v. Chapman*.
- **v. Franklin**, 11 *Abb. Pr.* 93. Rev'd in 14 *Id.* 140; *s. c.*, 35 *Barb.* 599; 24 *How. Pr.* 515. See *Central B'k v. Empire Stone Dressing Co.*
- **v. Jones**, 14 *Barb.* 193. Disting'd (Liability of bailee of horse) in *Mowers v. Fethers*, 61 *N. Y.* 34, 39.
- **v. McInroy**, 7 *Johns.* 135. Disting'd (Recovery of several penalties for sale of liquor without license) in *Deyo v. Rood*, 3 *Hill*, 528; *Suydam v. Smith*, 52 *N. Y.* 383, 389 (latter, a case of neglect of duty of keeper of toll-gate). Followed in *Tiffany v. Davis*, 13 *Johns.* 253. Applied to exaction of excessive fare,—in *Fisher v. N. Y. Central, & c. R. R. Co.*, 46 *N. Y.* 659. See *Johnson v. Hudson River R. R. Co.*, 2 *Sweeny*, 312.
- Washington B'k v. Palmer**, 2 *Sandf.* 686; *s. c.*, 8 *N. Y. Leg. Obs.* 92. Cited as authority (Stockholder of bank as witness in action affecting bank) in *Montgomery B'k v. Marsh*, 7 *N. Y.* 485.
- Washington Cemetery v. Prospect Park & C. I. R. R. Co.**, 7 *Hun.* 655. Aff'd in 68 *N. Y.* 591; *s. c.*, 4 *Abb. N. C.* 15. See *Milhau v. Sharp*. Decision in 68 *N. Y.* followed (Fee, when not acquired in land taken for public purposes) in *Murdock v. Prospect Park & C. I. R. R. Co.*, 73 *Id.* 579, 582. Disting'd in *Story v. N. Y. Elevated R. R. Co.*, 3 *Abb. N. C.* 478, 497.
- Washington Ins. Co. v. Price**, *Hopk.* 1. Followed (Disqualification of judge by interest) in *Place v. Butternuts, & c. Manuf. Co.*, 28 *Barb.* 506; *Jewett v. Albany City B'k, Clarke*, 182; *Oakley v. Aspinwall*, 3 *N. Y.* 550. Explained in *Matter of Ryers*, 72 *Id.* 12. Questioned in *Matter of Dodge and Stevenson Manuf. Co.*, 77 *Id.* 101, 103.
- **v. Slee**, 2 *Paige*, 365. Explained and applied (Effect of death of party to proceeding) in *Cort v. Campbell*, 82 *N. Y.* 509, 514. Disting'd with *Requa v. Holmes*, 16 *Id.* 193, in *Nicoll v. Boyd*, 90 *Id.* 516.
- Washington Life Ins. Co. v. Lawrence**, 53 *Barb.* 307. Said in 41 *N. Y.* 620, to have been aff'd in *Ct. of App. Dec.* 1869.
- Washington Park, Matter of**, 15 *Abb. Pr.* *N. S.* 148. Rev'd in *Washington Park v. Barnes*, 2 *Sup'm. Ct. (T. & C.)* 637, appeal from which was dismissed in *Matter of Washington Park*, 56 *N. Y.* 144. Decision in *Id.* followed (Discontinuance of proceedings to acquire land for public purposes) in *Matter of Military Parade Ground*, 60 *Id.* 325. Disting'd in *Matter of Rhinebeck, & c. R. R. Co.*, 67 *Id.* 245. Disting'd (Title when divested in such proceedings) in *Rider v. Stryker*, 63 *Id.* 139.
- Washington Park v. Barnes**. See *Matter of Washington Park*.
- Washoe Tool M'fg Co. v. Hibernia Fire Ins. Co.**, 7 *Hun.* 74. Aff'd in 66 *N. Y.* 613.
- Wasmer v. Delaware, Lack. & c. R. R. Co.** See *Brown v. Cayuga & Susquehanna R. R. Co.*; *Fletcher v. Auburn & Syracuse R. R. Co.*; *Ryan v. N. Y. Central, & c. R. R. Co.*
- Waterbury, Matter of**, 8 *Paige*, 380. Followed (Injunction against proceedings by creditors on application for voluntary dissolution of corporations) in



- Matter of French Manufg Co., 12 *Hun*, 488.
- Waterbury v. Dry Dock, &c. R. R. Co.**, 54 *Barb.* 388; s. c. as Dry Dock, &c. R. R. Co. v. N. Y. & Harlem R. R. Co., 32 *How. Pr.* 193. Rev'd 30 *How. Pr.* 39.
- **v. Mather**, 16 *Wend.* 611. Dictum approved and followed (Effect of misnomer of defendant in pleading, &c.) in *Miller v. Stettiner*, 7 *Bosw.* 692, 695. See 2 *Phil. Ev.* 182; *Barry v. Foyles*, 1 *Pet.* 311.
- **v. Merchants' Union Exp. Co.**, 50 *Barb.* 157; s. c., 3 *Abb. Pr. N. S.* 163. Discussed with *Bacon v. Dinsmore*, 42 *How. Pr.* 377; *Fargo v. McVicker*, 55 *Barb.* 437 (Personality or corporate character of joint stock companies) in *Baltimore & O. R. Co. v. Adams Express Co.*, *U. S. Cir. Ct. D. Md.* 12 *Fed. Rep.* 404, 407. See cases cited in 4 *Abb. N. C.* 311, n. Quoted with cases to the contrary (Receiver of corporation) in *High on Receiv.* § 288, n. 1.
- **v. Sinclair**, 26 *Barb.* 455; s. c., more fully, 6 *Abb. Pr.* 20. Rev'd in 7 *Id.* 399; s. c., 16 *How. Pr.* 329. See *Hall v. Newcomb*; *Herrick v. Carman*. Decision in 16 *How. Pr.* explained (Liability of irregular indorser) in *Moore v. Cross*, 19 *N. Y.* 230.
- **v. Sturtevant**, 18 *Wend.* 353. Explained (Declarations to prove conspiracy to defraud creditors) in *Cuyler v. McCartney*, 40 *N. Y.* 221, 228; which rev'd 33 *Barb.* 165, 172, which see.
- **v. Westervelt**, 9 *N. Y.* 598. Followed (Joint liability of sheriff and deputy for tort committed by latter) in *Witowski v. Brennan*, 41 *Super. Ct. (J. & S.)* 284, 288. Thought in 11 *Am. Dec.* 145, n., to have overruled *Moulton v. Norton*, 4 *Barb.* 296.
- Water Commissioners, Matter of.** See *Bellinger v. N. Y. Central R. R. Co.*
- Water Commissioners of Detroit v. Burr**, 35 *Super. Ct. (J. & S.)* 522. Aff'd in 56 *N. Y.* 665.
- Waterford & Whitehall Turnpike Co. v. People**, 9 *Barb.* 161. Followed (Statutory remedy, when exclusive) in *Syracuse & Tully Plank Road Co. v. People*, 66 *Barb.* 25, 29; *People v. Hickey*, 5 *Daly*, 365, 377.
- Waterman v. Haskin**, 11 *Johns.* 228. Cited as authority (Power of court to control money raised on its own process) in *Stebbins v. Walker*, 2 *Green L. (N. J.)* 80; s. c., 25 *Am. Dec.* 449, 503, with note.
- **v. Whitney**, 11 *N. Y.* 157. See *Jackson v. Holloway*; *Jackson v. Kniffen*. Commented on with *Johnson v. Hicks*, 1 *Lans.* 150 (Admissibility of declarations of testator as bearing on question of validity of will) in *Taylor Will Case*, 10 *Abb. Pr. N. S.* 300, 307. Disting'd in *La Bau v. Vanderbilt*, 3 *Redf.* 412. Followed in *Bates v. Bates*, 27 *Iowa*, 110; s. c., 1 *Am. R.* 261. Followed with *Jackson v. Kniffen*, 2 *Johns.* 31, in *Gay v. Gay*, 60 *Iowa*, 415; s. c., 46 *Am. R.* 78. Compared with *Jackson v. Kniffen*, 2 *Johns.* 31, in *Reynolds v. Adams*, 90 *Ill.* 134; s. c., 82 *Am. R.* 15. Applied to grantor in *Sanford v. Ellithorp*, 95 *N. Y.* 48, 54. Cases cited to the contrary in *Abb. Tr. Ev.* 124, n. 9. Collated with other cases in 3 *Am. Dec.* 395, n.
- Waters v. Crawford**, 2 *Sup'm. Ct. (T. & C.)* 602. Compared with a previous decision in *Crawford v. Waters*, 46 *How. Pr.* 210, and explained (Right of lessee to accounting by lessor) in *Pursell v. N. Y. Life Ins. &c. Co.*, 42 *Super. Ct. (J. & S.)* 388, 390, 398.
- **v. Callen**, 2 *Bradf.* 354. Reviewed other cases (Insane delusion of testator) in *Merrill v. Rolston*, 5 *Redf.* 220, 255. Explained in *Willard on Executors*, 82.
- **v. Langdon**, 40 *Barb.* 408. Explained and disting'd (Validity of statute providing for election of justice) in *Dawson v. Horan*, 51 *Barb.* 459, 465. Explained in *Geraty v. Reid*, 78 *N. Y.* 64, 67.
- **v. Shepherd**, 14 *Hun*, 223. Disregarded under *Code Civ. Pro.* § 1019 (Delivery of report by referee) in *Phipps v. Carman*, 23 *Hun*, 151. Disapproved with *Quackenbush v. Johnson*, 55 *How. Pr.* 94; but *Geib v. Topping*, 83 *N. Y.* 46, disting'd, and *Phipps v. Carman*, 23 *Hun*, 150; 84 *N. Y.* 650, followed in *Little v. Lynch*, 5 *Civ. Pro. R. (Broune)* 216.
- **v. Travis**, 9 *Johns.* 450; s. c., 4 *N. Y. Com. L. Law. ed.* 837, with brief note. See *Kane v. Bloodgood*. Cited with approval (Distinction between vendor and purchaser of land seeking specific performance) in *Couse v. Boyles*, 3 *Green. Uh. (N. J.)* 212; s. c., 38 *Am. Dec.* 514, with note.
- Watertown Bank & Loan Co. v. Mix**, 51 *N. Y.* 558. See *Thayer v. Van Vleet*. Applied (Communications between judge and jury after retirement) in *Gillotte v. Jackson*, 41 *Super. Ct. (J. & S.)* 308, 310. Followed in *Plunkett v. Appleton*, 51 *How. Pr.* 474. Disting'd in *Mahoney v. Decker*, 18 *Hun*, 367.
- Watervleit Bank v. White.** See *Babcock v. Beman*.
- Watkins v. Abrahams**, 24 *N. Y.* 72. Aff'g *Wotkyns v. Abrahams*, 14 *How. Pr.* 191. See *Roraback v. Stebbins*. Decision in 24 *N. Y.* explained (Confession of judgment by married woman) in *Roraback v. Stebbins*, 4 *Abb. Ct. App. Dec.* 100, 104.
- **v. Halstead**, 2 *Sanif.* 311. See *Nash v. Russell*; *Wilson v. Burr*. Disapproved (Effect of promise made by married woman after coverture to meet obligation incurred during coverture) in *Goulding v. Davidson*, 26 *N. Y.* 608, 616, 619, which rev'd 28 *Barb.* 438, 440, which see. Said, however, in *Smith v. Allen*, 1 *Lans.* 101, 108, not to have been overruled or questioned in *Goulding v. Davidson*. See to the contrary *Wilson v. Burr*, 25 *Wend.* 386. Approved in 1 *Pars. on Contr.* 465. Included in *Ewell Lead. Cas. on Inf. &c.* 317. Collated with other cases in 36 *Am. R.* 765, n.
- **v. Pickney**, 3 *Edw.* 533. Quoted and

- explained (Compelling delivery of property to receiver) in *High on Receiv.* § 51, n. 1.
- *v. Stevens.* See *Soulden v. Van Rensselaer.*
- *v. Weaver*, 10 *Johns.* 107. Explained (Constable who serves jury process, when disqualified to act as attorney) in *Miles v. Pulver*, 3 *Den.* 84.
- *v. Wilcox*, 4 *Hun.* 220; s. c., 6 *Sup'm. Ct. (T. & C.)* 539. Aff'd in 66 *N. Y.* 654, on last point.
- Watkinson v. Laughton**, 8 *Johns.* 213. Discussed (Carrier's liability for theft of third persons) in *Ang. on Carr.* § 189, 5 ed. Quoted and explained (Measure of damages in actions against carrier) in *Id.* § 484, 5 ed.
- Watrous v. Kearney**, 11 *Hun.* 584. Appeal dismissed in 79 *N. Y.* 496.
- Watson, Matter of**, 2 *E. D. Smith*, 429. Explained and applied (Discharge of debtor from imprisonment) in *Matter of Roberts*, 8 *Daly*, 95, 97, 101. But see *Matter of Fowler*, *Id.* 548, 557.
- , 3 *Lans.* 408. Aff'd in 5 *Id.* 466, and that aff'd as *Watson v. Nelson*, 69 *N. Y.* 536. See *Lansing v. Lansing*. With decision in 5 *Lans.* compare (Proceedings to punish for contempt) *People ex rel. Phelps v. Fancher*, 2 *Hun.* 226, 232. Decision in 3 *Lans.* explained and qualified (Surrogate's power to issue attachment to punish executors, &c. for breach of duty) in *Thompson's Estate*, 15 *Abb. Pr. N. S.* 230, 236, 239, 242. Decision in 69 *N. Y.* explained in *People v. Marshall*, 7 *Abb. N. C.* 380, 383. See *Stockbridge's Assignment*, *Id.* 395, 398, a case of assignee for creditors. See *Code Civ. Pro.* 1881, §§ 2481, n., 2555, n. With decision in 3 *Lans.* see (Writ of habeas corpus, when to be denied) *Code Civ. Pro.* 1881, § 2016, n. Decision in 69 *N. Y.* disting'd with *Stowbridge v. Stowbridge*, 21 *Hun.* 288; *Van Wezel v. Van Wezel*, 3 *Paige*, 38; *People ex rel. Hawley v. Bennet*, 4 *Id.* 282; *People ex rel. Backus v. Spalding*, 10 *Id.* 287 (Punishment for disobedience of order) in *Meyers v. Becker*, 29 *Hun.* 567, 572.
- Watson v. Bennett**, 12 *Barb.* 196. Criticised as extreme (Liability of corporations for acts of their agents) in *Fink v. Canyon Road Co.*, 5 *Oreg.* 305. See *Luce v. Isthmus Transit R'way Co.*, 6 *Id.* 125; s. c., 25 *Am. R.* 506; 23 *Am. Dec.* 744, n.
- *v. Brennan*, 39 *Super. Ct. (J. & S.)* 81. Rev'd in 66 *N. Y.* 621.
- *v. Campbell*, 38 *N. Y.* 153; s. c., more fully, 6 *Transc. App.* 335.
- *v. Davis*, 19 *Wend.* 371. Explained and approved with *Hess v. Beekman*, 11 *Johns.* 457 (Effect of proceedings before justice, as bar) in *Young v. Rummell*, 5 *Hill*, 60. See *Hall v. Tuttle*, 6 *Id.* 38.
- *v. Delafield*, 2 *Cui.* 224. Subsequent decision in 1 *Johns.* 150, which was aff'd in 2 *Id.* 526.
- *v. Duykinck*, 3 *Johns.* 335. Followed and approved (Freight paid in advance, when to be refunded) in *Griggs v. Austin*, 3 *Pick. (Mass.)* 20; s. c., 15 *Am. Dec.* 175. Discussed in 3 *Kent Com.* 226. Collated with other cases in 2 *Redf. Am. Railw. Cas.* 203.
- *v. Gardiner*, 50 *N. Y.* 671. See (Amendment of judgment on re-adjustment of costs) *McLean v. Hoyt*, 56 *How. Pr.* 351. See (Costs where there are several issues of fact) *Code Civ. Pro.* 1881, § 3234, n.
- *v. Hunter*, 5 *Johns. Ch.* 169; s. c., 9 *Am. Dec.* 295. Followed (Injunction against cutting and removing timber) in *Johnson v. White*, 11 *Barb.* 194, 198. See *Weatherby v. Wood*, 29 *How. Pr.* 406. Quoted in 1 *High on Inf.* 2 ed. § 674, n. 5. Disting'd with *Wilson v. Maltby*, 59 *N. Y.* 126; *Bank of Auburn v. Roberts*, 45 *Barb.* 421; *Johnson v. White*, 11 *Id.* 194 (Remedy for severance of property from real estate) in *Sullivan v. Toole*, 26 *Hun.* 203. Applied (Power to give damages, when incidental to jurisdiction of equity) in *Henderson v. N. Y. Central R. R. Co.*, 78 *N. Y.* 437.
- *v. Husson*, 1 *Duer*, 242. Aff'd in *Drummond v. Husson*, 14 *N. Y.* 60. Decision in 1 *Duer* explained (Remedy for irrelevancy in pleading) in *Lec Bank v. Kitching*, 11 *Abb. Pr.* 435, 439.
- *v. McLaren*, 19 *Wend.* 557. Aff'd as *McLaren v. Watson*, 26 *Wend.* 425; s. c., 14 *N. Y. Com. L. Law. ed.* 1129, with brief note; 37 *Am. Dec.* 260, with note. See *Birkhead v. Brown*; *Lamoureux v. Hewitt*. Reporter's abstract to decision in 19 *Id.* corrected (Liability of guarantor of note as indorser) in *Miller v. Gaston*, 2 *Hill*, 192. Followed (Estoppel as created by representations as to validity, &c. of obligation) in *Hills v. Varct*, 3 *N. Y. Leg. Obs.* 107; *L'Amoureux v. Vischer*, 2 *N. Y.* 281. Followed with *Douglass v. Howland*, 24 *Wend.* 35; *Cooper v. Dederick*, 22 *Barb.* 516; *Brewster v. Silence*, 8 *N. Y.* 207 (Words "value received" as sufficient expression of consideration for guaranty) in *Miller v. Cook*, 23 *Id.* 496. See also *Day v. Elmore*, 4 *Wisc.* 196. Decision in 26 *Wend.* cited as authority (Negotiability of guaranty) in *Tinker v. McCauley*, 3 *Mich.* 194. Followed with *Cooper v. Dederick*, 22 *Barb.* 516, in *Killian v. Ashley*, 24 *Ark.* 516 (cited in 44 *Am. Dec.* 308, n.). Quoted in 2 *Story on Contr.* 5 ed. § 1119, n. 3.
- *v. Morton*, 26 *How. Pr.* 383. Rev'd in 18 *Abb. Pr.* 138; s. c., 27 *How. Pr.* 294.
- *v. Nelson.* See *Matter of Watson*.
- *v. N. Y. Central R. R. Co.*, 1 *Duff. Super. Ct. (Sheldon)* 159; s. c., 6 *Abb. Pr. N. S.* 91. Aff'd, in effect, in 47 *N. Y.* 157. Decision in *Id.* criticised and doubted as extreme (Statute, when invalid, as impairing obligation of contracts) in *Sydror v. Palmer*, 32 *Wis.* 406.
- *v. People*, 64 *Barb.* 130. Aff'd, it

seems, in 52 *N. Y.* 641, but without opinion.

— *v. Randall*, 20 *Wend.* 201. See *Leonard v. Vredenberg*. Collated with *Mallory v. Gillett*, 21 *N. Y.* 412, and many other cases (Verbal promise to answer for debt of another when within statute of frauds) in *Stewart v. Campbell*, 58 *Me.* 439; s. c., 4 *Am. R.* 296.

— *v. Spence*, 20 *Wend.* 260. Disapproved (Remedy of grantee of mortgagor, when not made party to foreclosure suit) in *Frische v. Kramer's Lessee*, 16 *Ohio*, 125; s. c., 47 *Am. Dec.* 368, with note.

*Watt v. Crawford*, 11 *Paige*, 470. Aff'd as *Ferris v. Crawford*, 2 *Den.* 595.

*Watts v. Kinney*, 23 *Wend.* 484. Aff'd in 6 *Hill*, 82. Decision in *Id.* followed (Operation of lease, &c. when restricted by provision therein) in *Rexford v. Marquis*, 7 *Lans.* 258. Applied (Distinction between local and transitory action) in *Atlantic & Pac. Tel. Co. v. Balt. & Ohio R. R. Co.*, 46 *Super. Ct. (J. & S.)* 377, 385.

— *v. Van Ness*, 1 *Hill*, 76. Explained (Contracts as affected by Sunday law) in 2 *Pars. on Contr.* 759, n. q.

*Waugh v. Fielding*. See *Seymour v. Wilson*.

*Waverly Paper Mills v. Bristol*, 2 *Sup'm. Ct. (T. & C.)* 662. Aff'd, it seems, in 60 *N. Y.* 626, but without opinion.

*Waverly Waterworks Co., Matter of*, 16 *Hun*, 57. Rev'd in 85 *N. Y.* 478. Decision in *Id.* followed (Effect of obtaining discretionary order) in *Brownell v. Ruckman*, *Id.* 648.

*Way v. Cooper*, 12 *Weekly Dig.* 119; s. c. as *May v. Cooper*, 24 *Hun*, 7.

*Waydell v. Luer*, 5 *Hill*, 448. Rev'd in 3 *Den.* 410. Decision in 4 *Hill* disting'd (Effect of note, &c. as payment) in *Livingston v. Radcliff*, 6 *Barb.* 206; *McMaster v. Vernon*, 3 *Duer*, 254. Decision in 3 *Den.* applied in *Ireland v. Johnson*, 18 *Barb.* 394. Followed as directly in point, in *Ludington v. Bell*, 77 *N. Y.* 140. Explained and applied to bond and mortgage, in *La Farge v. Herter*, 11 *Barb.* 171. Reversal explained in *Parrott v. Colby*, 6 *Hun*, 55, 58.

*Wayland v. Lysen*, 9 *Abb. Pr. N. S.* 79. Rev'd as *Wayland v. Tysen*, in 45 *N. Y.* 281. Decision in *Id.* disting'd (Striking out pleading) in *Walker v. Walker*, 82 *Id.* 260, 264. Followed (Striking out answer as sham) in *Clafin v. Jaroslowski*, 64 *Barb.* 403; *Roby v. Hallock*, 5 *Abb. N. C.* 86, 88; *Thompson v. Erie R. R. Co.*, 45 *N. Y.* 472; *Webb v. Foster*, 41 *Super. Ct. (J. & S.)* 312; *Grocers' B'k of N. Y. v. O'Rourke*, 6 *Hun*, 18, 21. Followed with *Thompson v. Erie R. R. Co.*, in *Farmers' Nat. B'k v. Leland*, 50 *N. Y.* 673. Disting'd in *Kay v. Churchill*, 10 *Abb. N. C.* 83, 85. See to the contrary *Nelson Lumber Co. v. Richardson*, 31 *Minn.* 267.

— *v. Tysen*. Same *v. Tysen*.

*Wayne & Ontario Collegiate Inst. v. Devinney*, 43 *Barb.* 220. Said in 41 *N. Y.* 620, to have been rev'd in Ct. of App. Dec. 1869.

*Wayne Co. Savgs. Bk. v. Low*, 6 *Abb. N. C.* 76. Aff'd in 81 *N. Y.* 566; s. c., 37 *Am. R.* 533; mem., s. c., 8 *Abb. N. C.* 390. See *Chapman v. Robertson*. Decision in 81 *N. Y.* followed (Usury as determined by law of place) in *Sheldon v. Haxton*, 24 *Hun*, 197; *Western Transp. & Co. v. Kildershouse*, 87 *N. Y.* 430. Compare *Dickinson v. Edwards*, 77 *Id.* 573, 584. Applied in *Scott v. Perlee*, 39 *Ohio St.* 63, 69.

*Weaver v. Barden*, 3 *Lans.* 338. Rev'd with modifications in 49 *N. Y.* 286. See *Stalker v. McDonald*. Followed (Who is *bona fide* holder for value) in *Ayres v. Leyboldt*, 6 *Daly*, 91, 94; *Turner v. Treadway*, 56 *How. Pr.* 28; *Cary v. White*, 52 *N. Y.* 138, 141; *Barnard v. Campbell*, 58 *Id.* 77. Disting'd in *Union Dime Savgs. Inst. v. Duryea*, 67 *Id.* 84, 87. Explained in *Dows v. Kidder*, 84 *Id.* 121, 135; *Barto v. Tompkins Co. Nat. Bk.*, 15 *Hun*, 11, 13. Quoted in 1 *Benj. on Sales*, § 450 (Corbins's 4 *Am. ed.*). Examined with other cases (Rights of *bona fide* purchaser of stock) in 20 *Am. L. Reg. N. S.* 170, n.

— *v. Bentley*, 1 *Cai.* 47. Applied (Recovery based on consideration money paid) in *Stow v. Stevens*, 7 *Verm.* 27; s. c., 29 *Am. Dec.* 139, 144; *Pipkin v. James*, 1 *Humph. (Tenn.)* 325; s. c., 34 *Am. Dec.* 652, with note.

— *v. Devendorf*, 3 *Den.* 117. See *Stephenson v. Hall*; *Yates v. Lansing*. Examined with other cases (Personal liability of assessors) in *Wilson v. Mayor of N. Y.*, 1 *Abb. Pr.* 17, 24. Explained and applied in *Barhyte v. Shepherd*, 35 *N. Y.* 241, 245, 252. Followed in *Brown v. Smith*, 24 *Barb.* 422; *Williams v. Weaver*, 75 *N. Y.* 34. Disting'd in *Wade v. Matheson*, 4 *Lans.* 163; *Palmer v. Lawrence*, 6 *Id.* 201. Applied to justice of the peace, in *Voorhees v. Martin*, 12 *Barb.* 511. To school directors, in *Dritt v. Snodgrass*, 66 *Mo.* 286; s. c., 27 *Am. R.* 343, 349. To grand juror, in *Turpen v. Booth*, 56 *Cal.* 65; s. c., 38 *Am. R.* 49. To public officer in *Steele v. Dunham*, 26 *Wis.* 393. Followed and *People ex rel. Francis v. Common Council of Troy*, 78 *N. Y.* 33; *Adsit v. Brady*, 4 *Hill*, 630; *Robinson v. Chamberlain*, 34 *N. Y.* 389, disting'd, in *East River Gas Light Co. v. Donnelly*, 93 *N. Y.* 557, a case of a common council. Disting'd (Jurisdiction of assessors) in *Nat. B'k of Chemung v. City of Elmira*, 53 *N. Y.* 54. Applied (Inquiry into motive of public officer) in *People v. Supervisors of Schenectady*, 35 *Barb.* 412. Disapproved with *Barhyte v. Shepherd*, 35 *N. Y.* 238; *Easton v. Calendar*, 11 *Wend.* 92, in *Auditor of State v. Atchison, Topeka, &c. R. R. Co.*, 6 *Kan.* 509; s. c., 7 *Am. R.* 575, 579, as extending too widely, definition of judicial acts.

- **v. Rome, &c. R. R. Co.**, 3 *Sup'm. Ct. (T. & C.)* 270. Disting'd (Liability for ejection of passenger from train) in *Townsend v. N. Y. Central, &c. R. R. Co.*, 6 *Id.* 495, 498.
- Webb's Estate**, 7 *uck.* 372. Followed (Marriage, when valid though prohibited by statute) in *Van Voorhis v. Brintnall*, 86 *N. Y.* 18, 27.
- Webb v. Alexander**, 7 *Wend.* 281. Compared (What is breach of covenant of quiet enjoyment, &c.) in *Fowler v. Poling*, 6 *Barb.* 171. Reviewed with other cases in dissenting opinion of DWIGHT, C., in *Shattuck v. Lamb*, 65 *N. Y.* 512.
- **v. Bailey**, 54 *N. Y.* 164. Compare (Authority of county judge to issue attachment) *Code Civ. Pro.* § 638.
- **v. Buckelew**, 82 *N. Y.* 555. Explained (Conclusiveness of judgments in personal actions) in *Sedgw. & W. on Tr. of Tit. to Land*, § 508.
- **v. Daggett**, 2 *Barb.* 9. See *Grover v. Wakeman*. Explained and applied (Discretion as to costs in creditor's actions) in *Black v. O'Brien*, 23 *Hun.* 82, 85. Collated with other cases (Preferences in assignment for creditors) in *Bishop on Assign.* § 182. Quoted in *Burrill on Assign.* §§ 165, 166, 4 ed.
- **v. Duckingfield**, 13 *Johns.* 390; s. c., 7 *Am. Dec.* 388. with note containing citations. See *McMillan v. Vanderlip*. Compared with other cases (Construction of shipping articles) in *The Sarah Jane*, 1 *Blatchf. C. Ct.* 410. Applied in *The Triton*, *Id.* 285. Cited in 2 *Pars. on Shipp. & Admiralty*, 40, 104; *Abb. on Shipping*, 229, 757, 767, 776. Explained in 1 *Pars. on Contr.* 391, n. s.
- **v. Mott**, 6 *How. Pr.* 439. Opposed (Effect of variance between complaint and summons) in *Fond du Lac v. Bonesteel*, 22 *Wisc.* 251.
- **v. National Fire Ins. Co.** See *Boynton v. Clinton & Essex Mut. Ins. Co.*
- **v. Odell**, 49 *N. Y.* 583. Disting'd (Implied warranty on transfer of promissory notes) in *Littauer v. Goldman*, 72 *Id.* 506, 510.
- **v. Overmann**, 6 *Abb. Pr.* 92. Explained (Receiver in supplementary proceedings under the Code) in *High in Receiv.* § 432.
- **v. Pell**. See *Goodhue v. Churchman*.
- **v. Rice**, 1 *Hill*, 606. Rev'd in 6 *Id.* 219. Decision in *Id.* explained as not authority under the Code (Parol evidence that deed absolute in terms was intended as mortgage) in *Despard v. Walbridge*, 15 *N. Y.* 374, 378.
- **v. Rome, Watertown & Ogdensburg R. R. Co.**, 3 *Lans.* 453. Aff'd in 49 *N. Y.* 420; s. c., 10 *Am R.* 389. See *Ryan v. N. Y. Central R. R. Co.* Decision in 3 *Lans.* followed (Liability for fire set from locomotive) in *McCoun v. N. Y. Central & Hudson River R. R. Co.*, 66 *Barb.* 338, 340. Decision in 49 *N. Y.* applied in *Philadelphia & Reading R. R. Co. v. Hendrickson*, 80 *Penn. St.* 182; s. c., 21 *Am. R.* 97. Relied on in *Pennsylvania R. R. Co. v. Hope*, 80 *Penn. St.* 373; 21 *Am. R.* 100. Applied in *Delaware, Lackawanna, &c. R. R. Co. v. Salmon*, 10 *Vroom (N. J.)* 299; s. c., 23 *Am. R.* 214, 219. Approved (What is evidence of negligence in setting fire) in *Hay's Adm'r v. Miller*, 6 *Hun.* 320, 324.
- **v. Van Zandt**, 16 *Abb. Pr.* 314, n. Cited with cases to the contrary (Receiver in proceeding to foreclose mechanic's lien) in *High on Receiv.* § 586, n. 1.
- Webber, Ex parte**, 18 *Wend.* 510. Subsequent decision as *Webber's Executors v. Underhill*, 19 *Id.* 447.
- Webber v. Gay**. See *Duffield v. Horton*; *Parker v. Walrod*; *Warner v. Shed*.
- **v. Shearman**, 3 *Hill*, 547. Subsequent decision in 6 *Id.* 20. Rev'd in 2 *Den.* 362. Decision in 6 *Hill* limited (Distrain for rent of preceding tenancy, under 2 *R. S.* 500, § 1) in *Bell v. Potter*, 6 *Id.* 497, 500. Decision in 3 *Id.* approved and followed (Effect of holding over, as continuation of tenancy) in *People v. Paulding*, 22 *Hun.* 91, 94.
- Webber's Executors v. Blunt**, 19 *Wend.* 188. Applied (Security, when void, as taken *colore officii*) in *Richardson v. Crandall*, 48 *N. Y.* 360. Applied (Security, &c. taken by sheriff, when void as contravening statute) in *Morton v. Campbell*, 14 *Abb. Pr.* 414. See *Tolcs v. Adece*, 84 *N. Y.* 222, 235.
- **v. Underhill**, 19 *Wend.* 447. Applied (Abatement of action of replevin) in *Hopkins v. Adams*, 5 *Abb. Pr.* 353. Disting'd in *Roberts v. Massen*, 23 *Hun.* 486, 488. Applied to ejectment under the Code, in *Mosely v. Mosely*, 11 *Abb. Pr.* 107. Disting'd as inapplicable to case of death of plaintiff, in *Lahey v. Brady*, 1 *Daly*, 445; and see *Potter v. Van Vrancken*, 36 *N. Y.* 624, 626.
- Weber v. Kingsland**, 8 *Bosw.* 415. Applied (Reading deposition in evidence) in *Marshall v. Watertown Steam Engine Co.*, 10 *Hun.* 463, 465.
- **v. N. Y. Central, &c. R. R. Co.**, 58 *N. Y.* 451. Further decision in 67 *Id.* 587. See *Beisiegel v. Same*. Decision in 53 *N. Y.* followed (Contributory negligence in one crossing railroad track) in *Massoth v. Delaware & H. Canal Co.*, 6 *Hun.* 314, 317; which was aff'd in 64 *N. Y.* 524, 529, which see; *Powell v. N. Y. Central, &c. R. R. Co.*, 22 *Hun.* 58; *Leonard v. Same*, 42 *Super. Ct. (J. & S.)* 231. Explained (Evidence of absence of flagman at crossing, as bearing on question of negligence) in *McGrath v. N. Y. Central, &c. R. R. Co.*, 63 *N. Y.* 522, 526. Compare *Callaghan v. Rome, W. & O. R. R. Co.*, 13 *Weekly Dig.* 395. Followed in *Welsch v. Hannibal & St. J. R. R. Co.*, 72 *Mo.* 455. Followed (Giving statutory signals at crossing, when insufficient to absolve company from charge of negligence) in

- Dyer v. Erie R'y Co.**, 71 *N. Y.* 230. Applied (Question of ordinary care, when one of fact) in *Hays' Administrator v. Miller*, 6 *Hun.* 320, 324.
- Webster v. Bainbridge**, 13 *Hun.* 180. See (Frivolous pleading) *Code Civ. Pro.* 1881, § 537, *n.*
- **v. Bond**, 9 *Hun.* 437. See *Sawyer v. Chambers*. See to the contrary (Power of court in ejectment to bring in parties when only equity would relieve) *Holman v. Holman*, 66 *Barb.* 215; *Geeniah v. Keah*, *Id.* 245.
- **v. Hopkins**, 11 *How. Pr.* 140. Approved and followed (Power of justices' courts, &c. as to amendment of pleadings) in *Gilmore v. Jacobs*, 48 *Barb.* 330, 338. But see to the contrary *Lowe v. Rummell*, 5 *Daly*, 18.
- **v. Hudson River R. R. Co.** See *Chapman v. New Haven R. R. Co.* Applied (Imputation to plaintiff of negligence of another) in *Robinson v. N. Y. Central, &c. R. R. Co.*, 65 *Barb.* 155; *Arctic Fire Ins. Co. v. Austin*, 3 *Hun.* 198, which was rev'd in 69 *N. Y.* 483, which see. Disting'd in *Bronk v. N. Y. & New Haven R. R. Co.*, 5 *Daly*, 454, 457. Disting'd (Joint liability for tortious act causing injury) in *Jackson v. Brookins*, 5 *Hun.* 535; *Chipman v. Palmer*, 77 *N. Y.* 51, 54.
- **v. Stevens**, 5 *Duer*, 553. Relied on (Agreement by lessee for years respecting easement when not binding on reversioner) in *Glenn v. Davis*, 35 *Md.* 208; *s. c.*, 6 *Am. R.* 389, 393.
- **v. Van Steenberg**, 46 *Barb.* 211. Applied (Necessity of new consideration, to constitute one a *bona fide* holder) in *Lawrence v. Clark*, 36 *N. Y.* 130.
- **v. Zielly**, 52 *Barb.* 482. See *Courtwright v. Stewart*; *Vincent v. Germond*. Limited (Effect of subsequent payment on sale of personality to satisfy requirements of statute of frauds) in *Hunter v. Wetsell*, 57 *N. Y.* 375, 380. See cases cited (What is part of realty) in 5 *Abb. N. C.* 174, *n.*
- Weed v. Barney**, 45 *N. Y.* 344. Followed (Warehouseman's liability) in *Grassman v. Fargo*, 6 *Hun.* 310.
- **v. Burt**, 78 *N. Y.* 192. For "defendant left plaintiff's" in eighth line from top read "plaintiff left defendant's."
- **v. Ellis**, 3 *Cal.* 253. Applied (Who may submit to arbitration, when acting for another) in *Hutchins v. Johnson*, 12 *Conn.* 376; *s. c.*, 30 *Am. Dec.* 622.
- **v. Foster**, 11 *Barb.* 203. Followed (Newspaper publication when libelous) in *Robertson v. Bennett*, 44 *Super. Ct. (J. & S.)* 66, 70.
- **v. Mut. Benefit Life Ins. Co.**, 41 *Super. Ct. (J. & S.)* 476. Aff'd in 70 *N. Y.* 561. Former decision in 35 *Super. Ct. (J. & S.)* 386. See *Breasted v. Farmer's Loan and Trust Co.*
- **v. Panama R. R. Co.**, 5 *Duer*, 193. Aff'd in 17 *N. Y.* 362. See *Brand v. Schenectady & Troy R. R. Co.* Decision in 17 *N. Y.* applied (Liability of railroad company for wilful injury done by employe) in *Meyer v. Second Ave. R. R. Co.*, 8 *Bosw.* 311; *Blackstock v. N. Y. & Erie R. R. Co.*, 20 *N. Y.* 50. Followed in *Redding v. So. Carolina R. R. Co.*, 3 *So. Carr.* 1; *s. c.*, 16 *Am. R.* 681, 688. Approved in *Railroad Co. v. Finney*, 10 *Wis.* 388, which is followed in *Croaker v. Chicago & North Western R'y Co.*, 36 *Id.* 657; *s. c.*, 17 *Am. R.* 504, 507. Disting'd in *Gordon v. Manchester & Lawrence R. R.*, 52 *N. H.* 596; *s. c.*, 13 *Am. R.* 97, 106. Reviewed with other cases in *Palmer v. Railroad*, 3 *So. Carr.* 580; *s. c.*, 16 *Am. R.* 750, 760. Decision in 5 *Duer* disting'd with *Tilley v. Hudson River R. R. Co.*, 29 *N. Y.* 283; *Brown v. N. Y. Central R. R. Co.*, 32 *Id.* 597, in *New Orleans, Jackson & Great Northern R. R. Co. v. Harrison*, 48 *Miss.* 112; *s. c.*, 12 *Am. R.* 356, 360.
- **v. People**, 31 *N. Y.* 465. Explained and limited (Sufficiency of record of court below, on return to writ of error) in *Manke v. People*, 74 *N. Y.* 415, 423. See *Graham v. People*, 63 *Barb.* 474; 6 *Lans.* 152.
- **v. —**, 3 *Sup'm. Ct. (T. & C.)* 50. Aff'd in 56 *N. Y.* 628, without apparently passing on any thing but the terms of the charge.
- **v. Saratoga & Schenectady R. R. Co.** 19 *Wend.* 534; *s. c.*, 13 *N. Y. Com. L. Law. ed.* 698, with brief note. See *Bostwick v. Champion*; *Fairchild v. Slocum*; *Hawkins v. Hoffman*; *Orange County B'k v. Brown*; *Pardee v. Drew*; *St. John v. Van Santvoord*; *Van Santvoord v. St. John*. Applied (Carriers liability on contract to transport to point beyond its line) in *Cary v. Cleveland & Toledo R. R. Co.*, 29 *Barb.* 56; *Buffit v. Troy & Boston R. R. Co.*, 36 *Id.* 425. Disting'd in *Van Santvoord v. St. John*, 6 *Hill*, 161; *Wait v. Albany & Susquehanna R. R. Co.*, 5 *Lans.* 478; *Reed v. U. S. Express Co.*, 48 *N. Y.* 467; *Milnor v. N. Y. & New Haven R. R. Co.*, 53 *Id.* 363, 370. Critically examined with *Wilcox v. Parmelee*, 3 *Sandf.* 610; *Burtis v. Buffalo & State Line R. R. Co.*, 24 *N. Y.* 269, 278; *Schroeder v. Hudson River R. R. Co.*, 5 *Duer*, 55; *Quimby v. Vanderbilt*, 17 *N. Y.* 312, 315; *Foy v. Troy & Boston R. R.*, 24 *Barb.* 382; *St. John v. Van Santvoord*, 25 *Wend.* 660; 6 *Hill*, 157; *Champion v. Bostwick*, 11 *Wend.* 571; 18 *Id.* 174; *Hart v. Rensselaer & Saratoga R. R. Co.*, 8 *N. Y.* 37; *McDonald v. Western R. R. Co.*, 34 *N. Y.* 501, 502; *Wibert v. Erie R. R. Co.*, 12 *N. Y.* 256; *Smith v. N. Y. Central R. R. Co.*, 43 *Barb.* 225; *Cary v. Cleveland & Toledo R. R. Co.*, 29 *Barb.* 36, in *Nashua Lock Co. v. Worcester & Nashua R. R. Co.*, 48 *N. H.* 339; *s. c.*, 2 *Am. R.* 242. Questioned in *Baltimore & Ohio R. R. Co. v. Green*, 25 *Md.* 90. Examined in *Hood v. N. Y. & New Haven R. R. Co.*, 22 *Conn.* 15. Collated with other cases in *Field on Ultra*

- Vires*, 116. Discussed in *Ang. on Carr.* § 531, 5 ed.; 2 *Pars. on Contr.* 213, n. u. Explained in *Ang. on Carr.* § 95, 5 ed. Explained and applied (Carriers liability for money carried as baggage) in *Taylor v. Monnot*, 1 *Abb. Pr. N. S.* 328; *Merrill v. Grinnell*, 30 *N. Y.* 611. Followed (Common law power of courts to amend) in *Matter of Christern*, 43 *Super. Ct. (J. & S.)* 523, 528. Disting'd (In whom right of action against carrier is vested) in *Needles v. Howard*, 1 *E. D. Smith*, 58, a case of an innkeeper. Disting'd and questioned in *Elkins v. Boston & Maine R. R.*, 19 *N. H.* 337; s. c., 51 *Am. Dec.* 184, with note. Discussed (Allegations in action against carrier) in *Ang. on Carr.* § 441, 5 ed.
- *v. Tucker*, 19 *N. Y.* 422. Applied (Power granted by statute, when to be construed as continuing) in *People v. Allen*, 42 *Barb.* 214. Disting'd in *People v. Woodruff*, 32 *N. Y.* 355, 369.
- *v. Village of Ballston Spa*. See *Lloyd v. Mayor, &c. of N. Y.*; *Mark v. Hudson River Bridge Co.*
- Weedsport B'k v. Park B'k**, 2 *Robt.* 418. Aff'd in 4 *Abb. Ct. App. Dec.* 545; s. c., 2 *Keyes*, 561.
- Weeks v. Ellis**, 2 *Barb.* 320. Applied (Validity of acts of officer *de facto*) in *Foot v. Stiles*, 57 *N. Y.* 399, 402. See *Auditors of Wayne Co. v. Benoit*, 20 *Mich.* 176; s. c., 4 *Am. R.* 382.
- *v. Love*, 33 *Super. Ct. (J. & S.)* 397. Aff'd in 50 *N. Y.* 568. See *Harger v. McCullough*. Followed with *Pfohl v. Simpson*, 74 *N. Y.* 142 (Right of creditor of corporation to bring action against stockholder) in *McMaster v. Davidson*, 29 *Hun.* 542.
- *v. N. Y., New Haven & Hartford R. R. Co.*, 9 *Hun.* 669. Aff'd in 72 *N. Y.* 50; s. c., 28 *Am. R.* 104, with note. Decision in 9 *Hun.* collated with *Gore v. Norwich & N. Y. Transp. Co.*, 2 *Daly*, 254; *Mudgett v. Bay State Steamship Co.*, 1 *Id.* 151; *Van Horn v. Kirit*, 4 *E. D. Smith*, 453; *Mackin v. N. J. Steamboat Co.*, 7 *Abb. Pr. N. S.* 241, and *Tower v. Utica, &c. R. R. Co.*, 7 *Hill*, 47 (Liability of carrier for loss of baggage from state-room, &c. when notice is posted) in 20 *Fed. Rep.* 433, n.
- *v. Southwick*, 12 *How. Pr.* 170. Disting'd (Termination of injunction proceedings) in *Waterbury v. Bouker*, 10 *Hun.* 262. Said in *Coates v. Goddard*, 34 *Super. Ct. (J. & S.)* 126, to have been superseded (Basis of extra allowance) by amendment of 1865 to *Code Pro.* § 509.
- *v. Tones*, 16 *Hun.* 349. Aff'd, it seems, in 76 *N. Y.* 601, but without opinion. Compare (Time of filing lis pendens) *Code Civ. Pro.* § 1670.
- Weet v. Trustees of Brockport**, 16 *N. Y.* 161, n. See *Bailey v. Mayor, &c. of N. Y.*; *Bartlett v. Crozier*; *Hutson v. Mayor, &c. of N. Y.*; *Rochester White Lead Co. v. City of Rochester*; *Wilson v. Mayor, &c. of N. Y.* Disting'd (Liability of one contract-
- ing for performance of public work) in *Minard v. Mead*, 38 *Barb.* 176. Followed and approved (Trustees of villages as representatives of the corporation) in *Lee v. Village of Sandy Hill*, 40 *N. Y.* 451. Disting'd with *Maximilian v. Mayor, &c. of N. Y.*, 62 *Id.* 160; *Ham v. Same*, 70 *Id.* 459, and *Wilson v. Same*, 1 *Den.* 595; *Mills v. City of Brooklyn*, 32 *N. Y.* 489, applied in *Cain v. City of Syracuse*, 29 *Hun.* 105. Explained and applied (Liability of public for omission of duty due to particular individual) in *Clark v. Miller*, 47 *Barb.* 42. Followed as decisive in *Garlinghouse v. Jacobs*, 29 *N. Y.* 310. Examined and reconciled with *Adsit v. Brady*, 4 *Hill*, 630 in *Robinson v. Chamberlain*, 34 *N. Y.* 389, 391. Criticised as obiter in *Hover v. Barkhoof*, 44 *Id.* 121, citing also *Bartlett v. Crozier*, 17 *Johns.* 440. Disting'd in *Day v. Crossman*, 4 *Sup'm. Ct. (T. & C.)* 125. Applied to action against officer,—in *Connors v. Adams*, 13 *Hun.* 429. Applied (Municipal liability for injury resulting from defect in highway) in *Hyatt v. Trustees of Rondout*, 44 *Barb.* 392; *Davenport v. Ruckman*, 37 *N. Y.* 572; which aff'd 16 *Id.* 341, which see; *Ellis v. Village of Lowville*, 7 *Lans.* 438; *Noble v. City of Richmond*, 31 *Gratt. (Va.)* 271; s. c., 31 *Am. R.* 726, 729; *Hines v. City of Lockport*, 60 *Barb.* 384. Followed but disapproved in *Clark v. City of Lockport*, 49 *Id.* 582. Disting'd in *Mills v. City of Brooklyn*, a case of sewerage, and see *Sleight v. City of Kingston*, 11 *Hun.* 594, 597. Explained in *Peck v. Village of Batavia*, 32 *Barb.* 634, 639, in connection with *Adsit v. Brady*, 4 *Hill*, 630. Disapproved in *City of Nevada v. Pearce*, 46 *Tex.* 525; s. c., 26 *Am. R.* 283. Concluded in 2 *Thomps. on Negl.* 678. Collated with other cases in *Cook Highw. L.* 4 ed. 49; *Mills Thomps. on Highw.* 3 ed. 209.
- Weetjen v. Vibbard**, 5 *Hun.* 265. See *Bates v. Underhill*. See doctrine discussed (Liability for acts of co-trustees) in 15 *Am. L. Rev.* 178.
- Wegman v. Childs**, 44 *Barb.* 403. Rev'd in 41 *N. Y.* 159. Decision in *Id.* disting'd (Action, when to be regarded as pending) in *Porter v. Kingsbury*, 77 *Id.* 164, 168. Applied in *Chapin v. James*, 11 *R. I.* 86; s. c., 23 *Am. R.* 412.
- Wehle v. Bowery Savgs. B'k**, 40 *Super. Ct. (J. & S.)* 97. See (Interpleader by bank) *German Exch. B'k v. Comm'rs of Excise*, 6 *Abb. N. C.* 394, and cases cited in note.
- *v. Butler*, 34 *Super. Ct. (J. & S.)* 215; s. c., more fully, 35 *Id.* 1; and less fully, 12 *Abb. Pr. N. S.* 139; 43 *How. Pr.* 5. Aff'd in 61 *N. Y.* 245. Decision in *Id.* limited (Evidence of retail value, to show market value) in *Wehle v. Haviland*, 69 *Id.* 448, 450. Disting'd (Liability for taking goods under attachment) in *Day v. Bach*, 46 *Super. Ct. (J. & S.)* 460, 466.
- *v. Conner*, 40 *Super. Ct. (J. & S.)* 24.

- Aff'd in 63 *N. Y.* 258. Further proceeding in 69 *N. Y.* 546, rev'g 40 *Super. Ct. (J. & S.)* 24. Also another in 45 *Id.* 598, which was aff'd in 83 *N. Y.* 231. Decision in 69 *Id.* applied (Sheriff's liability for failure to return execution) in *Parker v. Bradley*, 46 *Super. Ct. (J. & S.)* 244, 249. Decision in 83 *N. Y.* collated with *Dunlop v. Patterson F. Ins. Co.*, 74 *Id.* 145; *Cresson v. Stout*, 17 *Johns.* 116, and contrary cases (*Levy on moneys in custody of law*) in 22 *Am. L. Reg. N. S.* 665, 671.
- *v. Haviland*, 4 *Daly*, 550; s. c., fully reported, 42 *How. Pr.* 399. See *Miller v. Fenton*; *Walrath v. Redfield*.
- *v. Spelman*, 1 *Hun.* 634. Subsequent decision, as it seems, in 25 *Id.* 99. Decision in 1 *Id.* disting'd (Evidence of declarations of third person to whom witness has been referred for information) in *Lambert v. People*, 6 *Abb. N. C.* 181, 193.
- Wehrkamp v. Willet**, 1 *Daly*, 4. Further decision in 4 *Abb. Ct. App. Dec.* 548; s. c., 1 *Keyes*, 250. Decision in 1 *Daly* disting'd (New trial for newly discovered evidence) in *Messenger v. Fourth Nat. B'k*, 6 *Id.* 190, 195. Followed in *May v. Strauss*, 8 *Abb. N. C.* 274, 279.
- Wehrum v. Kuhn**, 34 *Super. Ct. (J. & S.)* 336. Aff'd in 61 *N. Y.* 623.
- Weigand v. Siechel**, 34 *Barb.* 84. See *Wigand v. Same*.
- Weil v. Lange**, 6 *Daly*, 549. Explained (Negotiable paper, by what law governed) in 2 *Greenl. on Ev.* 14 ed. § 153a, n. a.
- *v. Martin*, 1 *Civ. Pro. R.* 133; mem. s. c., 24 *Hun.* 645; 12 *Weekly Dig.* 366.
- Weir v. Fitzgerald**, 2 *Bradf.* 42. Included (Execution of will by deaf, dumb and blind) in *Redf. Lead. Cas. on Wills*, 33. Commented on (Effect of old age of testator) in *Willard on Executors*, 86.
- *v. Groat*, 4 *Hun.* 193. Disting'd (Liability of married woman's separate estate) in *Covert v. Hughes*, 8 *Id.* 305, 307; *Woolsey v. Brown*, 11 *Id.* 55. Applied in *Salmon v. McEnany*, 23 *Id.* 87, 89.
- Weismer v. Village of Douglas**, 4 *Hun.* 201; s. c., 6 *Sup'm. Ct. (T. & C.)* 514. Aff'd in 64 *N. Y.* 91; s. c., 21 *Am. R.* 586. Decision in *Id.* applied (Legislative power to declare what is municipal purpose) in *People ex rel. Murphy v. Kelly*, 5 *Abb. N. C.* 383, 449. Approved but disting'd (Statute, when invalid as taking private property for private purpose) in *Berthoff v. O'Reilly*, 74 *N. Y.* 515. Followed (Estoppel to assert invalidity of municipal contract) in *Austin v. Coggeshall*, 12 *R. I.* 329; s. c., 34 *Am. R.* 648. See *Hodges v. City of Buffalo*, 2 *Den.* 110. Collated with other cases in 5 *Abb. N. C.* 49, n.
- Weisser v. Denison**, 10 *N. Y.* 68. See *Manhattan Co. v. Lydig*. Followed (Effect of account between bank and depositor, as binding latter as to payment of forged checks) in *Welsh v. German-Am. B'k*, 73 *N. Y.* 428; *Frank v. Chemical Nat. B'k of N. Y.*, 37 *Super. Ct. (J. & S.)* 36, 35; 45 *Id.* 457 (latter decision aff'd in 84 *N. Y.* 213, which see). Approved and applied in *First Nat. B'k v. Tappan*, 6 *Kan.* 456; s. c., 7 *Am. R.* 568, 571; *Manufacturers' Nat. B'k v. Barnes*, 65 *Ill.* 69; s. c., 16 *Am. R.* 576. Applied (Notice to agent, as notice to principal) in *Spadone v. Manvel*, 2 *Daly*, 266.
- Welch, Matter of**, 14 *Barb.* 396. Approved (Election canvassers as ministerial officers) in *Attorney-general v. Barstow*, 4 *Wisc.* 782.
- Welch v. Allen**, 21 *Wend.* 147. Subsequent decision as *Welch v. Silliman*, 2 *Hill*, 491. See decision in 21 *Wend.* and other cases collected (Successors of trustees) in 12 *Am. L. Reg. N. S.* 348, n.
- *v. Hazelton*, 14 *How. Pr.* 97. Explained (Remedy for irrelevancy in pleading) in *Lee B'k v. Kitching*, 11 *Abb. Pr.* 435, 439.
- *v. Hicks*, 6 *Cow.* 504; s. c., 16 *Am. Dec.* 443, with note citing cases, and wherein it is said to have been followed in *N. Y.* and elsewhere (Right of carrier to *pro rata* freight). See *Scott v. Libby*.
- *v. Lynch*, 7 *Barb.* 380. Rev'd in *Seld. Notes*, No. 1, 13.
- *v. Pullman Palace Car Co.*, 16 *Abb. Pr. N. S.* 352; s. c., more fully, 1 *Buff. Super. Ct. (Sheldon)* 457. Criticised and *Palmer v. Wagner*, 11 *Alb. L. J.* 149, cited (Liability of sleeping-car company) in *Pullman Palace Car Co. v. Gaylord, Ky. Super. Ct.* 6 *Ky. L. Rep.* 283. Confirmed in 19 *Am. L. Rev.* 204, 221.
- *v. Sage*, 47 *N. Y.* 143. Disting'd (Circumstances that put purchaser on inquiry) in *Claffin v. Lenheim*, 5 *Hun.* 273. Applied in *Seybel v. Nat. Currency B'k*, 54 *N. Y.* 288, 302 (and see dissenting opinion *Id.* 312). Disting'd (Requisites of negotiable instrument) in *Ledwich v. McKim*, 53 *N. Y.* 313. Applied in *Hotchkiss v. Nat. B'ks*, 21 *Wall.* 354, 358.
- *v. Smith*, 13 *Hun.* 408. Aff'd, it seems, in 80 *N. Y.* 650, but without opinion.
- *v. Winterburn*, 14 *Hun.* 518. Explained (Arrest in action for injury to real property) in *Sedgw. & W. on Tr. of Tit. to Land*, § 630.
- Weld v. O'Brien**, 53 *N. Y.* 642. Rev'd in *O'Brien v. Weld*, 92 *U. S.* 81.
- Weldon v. Buck**, 4 *Johns.* 144. For report of trial see *Anth. N. P.* 15. Decision in 4 *Johns.* applied with *Mason v. Franklin*, 3 *Id.* 205 (Effect of protest for non-acceptance, as giving right of action on bill) in *Morgan v. Towles*, 8 *Mart. (La.)* 730; s. c., 13 *Am. Dec.* 300.
- Welland Canal Co. v. Hathaway**, 8 *Wend.* 480; s. c., 24 *Am. Dec.* 51, with note containing citations and wherein it is said to be regarded as a leading case in *N. Y.* See *Dezell v. Odell*; *Lansing v. Montgomery*. Applied (Proof of corporate existence of corporation suing) in *Waterville Manf. Co. v. Bryan*, 14 *Barb.* 184. Explained in

- Black River, &c. R. R. Co. v. Clarké, 25 *N. Y.* 209. Followed with *Williams v. B'k of Michigan*, 7 *Wend.* 541 (Estoppel to deny corporate existence) in *Phenix B'k of N. Y. v. Curtis*, 14 *Conn.* 437; s. c., 36 *Am. Dec.* 492, with note. See to the contrary cases cited in *Abb. Tr. Eo.* 28, n. 5. Applied (Estoppel *in pais*) in *Miller v. Platt*, 5 *Duer*, 279; *Sparrow v. Kingman*, 1 *N. Y.* 242, 253; *Carpenter v. Stilwell*, 11 *Id.* 74; *Plumb v. Cattaraugus Co. Mut. Ins. Co.*, 18 *Id.* 392, 395; *Payne v. Burnham*, 62 *Id.* 73. Explained in *Andrews v. Aetna Life Ins. Co.*, 85 *Id.* 334, 344. Approved in *Brewer v. Boston, &c. R. R. Co.*, 5 *Metc. (Mass.)* 478; s. c., 39 *Am. Dec.* 694, with note. Cited as containing the first distinctive enunciation in this country, and also on the point applied, in *City of Chicago v. Gage*, 95 *Ill.* 593; s. c., 35 *Am. R.* 182. Cited in 2 *Pars. on Contr.* 801, n. b; 3 *Washb. on Real Prop.* 4 ed. 73. Applied (Admissions as evidence to supply deficiency in record evidence) in *Sherman v. People*, 13 *Hun.* 577.
- Weller v. Tuthill**, 4 *Hun.* 811. Rev'd in 66 *N. Y.* 347.
- **v. Weller**, 28 *Barb.* 588. Overruled (Right of curtesy or dower, when defeated by determination of estate to which right attaches) in *Hatfield v. Sneden*, 54 *N. Y.* 280, 285. Reviewed with *Hatfield v. Sneden*, 42 *Barb.* 615; 54 *N. Y.* 280, and other cases in *Tyler on Inf. & Cov.* 2 ed. § 279. Criticised in *Sharsw. & B. Cas. on Real Prop.* 350. Explained in 1 *Washb. on Real Prop.* 4 ed. 171.
- Welles v. March**, 30 *N. Y.* 344. See *Deming v. Colt*; *Fisher v. Murray*; *Havens v. Hussey*; *Robinson v. McIntosh*. Cited with approval (Authority of partner to assign firm property) in *Wilcox v. Jackson*, 7 *Colo.* 521, 535. Quoted and explained in *Burrill on Assign.* § 85, 4 ed. Explained in *Rumery v. McCulloch*, 54 *Wis.* 555; s. c., 48 *Am. R.* 359, n., as not authority for position to which it is cited in *Burrill on Assign.*; *Fisher v. Murray*, 1 *E. D. Smith*, 341, being also cited in this connection.
- **v. N. Y. Central R. R. Co.**, 26 *Barb.* 641. Aff'd as *Wells v. N. Y. Central R. R. Co.*, in 24 *N. Y.* 181. See *Cole v. Goodwin*; *Gould v. Hill*; *Nolton v. Western R. R. Co.* Both decisions disting'd (Exemption of carrier by contract from liability for negligence) in *Bissell v. N. Y. Central R. R. Co.*, 29 *Barb.* 610, 615. Dissented from with *Perkins v. N. Y. Central R. R. Co.*, 24 *N. Y.* 196; *Smith v. N. Y. Central R. R. Co.*, 29 *Barb.* 132; 24 *N. Y.* 222; *Bissell v. N. Y. Central R. R. Co.*, 29 *Barb.* 602; 25 *N. Y.* 442; *Poucher v. N. Y. Central R. R. Co.*, 49 *Barb.* 263; 10 *Am. R.* 364, in *Ohio & Mississippi R'y Co. v. Selby*, 47 *Ind.* 471; s. c., 17 *Am. R.* 719, 725; following *Cole v. Goodwin*, 19 *Wend.* 251; *Gould v. Hill*, 2 *Hill*, 623; *Dorr v. N. J. Steam Nav. Co.*, 4 *Sandf.* 136; *Stoddard v. Long Island R. R. Co.*, 5 *Id.* 180; *Parsons v. Monteath*, 13 *Barb.* 353; *Moore v. Evans*, 14 *Id.* 524, as maintaining a contrary view. Questioned in *Illinois Central R. R. Co.*, 37 *Ill.* 507; *Mobile & Ohio R. R. Co. v. Hopkins*, 41 *Ala.* 502; *Pennsylvania R. R. Co. v. Henderson*, 51 *Penn. St.* 328; *Jacobus v. St. Paul & Chicago R'y Co.*, 20 *Minn.* 129. Explained in *Railroad Co. v. Lockwood*, 17 *Wall.* 357, 364. Decision in 24 *N. Y.* denied in dissenting opinion of *SANDERSON, J.*, in *Hooper v. Wells*, 27 *Cal.* 11, 43; *Rose v. Des Moines Valley R. Co.*, 39 *Iowa*, 246. Criticised in *Lawson's Contr. of Carr.* §§ 28, 128, 220. See doctrine discussed in 5 *Am. L. Reg. N. S.* 460. See *N. Y. Cases* collected and compared in 4 *Abb. L. J.* 69.
- **v. Yates**, 44 *N. Y.* 525. Disting'd (Reformation of written contract for mistake, &c.) in *Bryce v. Lorillard F. Ins. Co.*, 55 *Id.* 240, 243. Applied with *Botsford v. McLean*, 45 *Barb.* 478; *Kilmer v. Smith*, 77 *N. Y.* 226; *Andrews v. Gillespie*, 47 *Id.* 487, and *Long v. Warren*, 68 *Id.* 426, disting'd in *Albany City Sav'gs Inst. v. Burdick*, 87 *Id.* 40.
- Wellington v. Morey**, 25 *Hun.* 118. Abridg't s. c., 12 *Weekly Dig.* 476.
- Wells v. Baldwin**. See *Fitzhugh v. Runyon*.
- **v. Chapman**, 4 *Sandf. Ch.* 312. Aff'd in 13 *Barb.* 561.
- **v. City of Buffalo**, 14 *Hun.* 435. Aff'd in 80 *N. Y.* 253.
- **v. Evans**, 20 *Wend.* 251; s. c., 13 *N. Y. Com. L. Law. ed.* 844, with brief note. Rev'd in *Evans v. Wells*, 22 *Wend.* 324.
- **v. Gates**, 18 *Barb.* 554. See *Ebbinghausen v. Worth Club*. Explained (Joint liability of members of association for contracts of agents) in *Hawley v. Keeler*, 62 *Barb.* 231.
- **v. Holbrook**, 3 *Hun.* 598; s. c., 6 *Sup'm. Ct. (T. & C.)* 400. Appeal dismissed, it seems, in *Gallup v. Babsen*, 68 *N. Y.* 615, but without opinion.
- **v. Howell**, 19 *Johns.* 385. Applied (Right to protection in use of uninclosed land) in *Worrall v. Rhoads*, 2 *Whart. (Pa.)* 427; s. c., 30 *Am. Dec.* 274, with note.
- **v. Jones**, 2 *Abb. Pr.* 20. Applied (Jurisdiction of Special Term) in *Erisman v. Pidcock*, 62 *How. Pr.* 328. Explained (*Supersedeas* after discharge on bail) in *Bostwick v. Wildey*, 42 *How. Pr.* 251. See (Motion, where heard) *Code Civ. Pro.* 1881, § 769, n.
- **v. Kelsey**, 15 *Abb. Pr.* 53; s. c., 38 *Barb.* 242. Rev'd in 37 *N. Y.* 143; s. c., 4 *Abb. Pr. N. S.* 234. Decision in *Id.* disting'd (Evidence of value of converted property as shown by sale) in *Flannagan v. Maddin*, 81 *N. Y.* 623.
- **v. Lain**, 15 *Wend.* 99. See *Camp v. Root*. Explained (Validity of submission to arbitration) in *Bulson v. Lohnes*, 29 *N. Y.* 291, 295. Compare (Effect of parol submission to arbitration) *Inhabitants of*



- Deerfield v. Arms, 20 *Pick. (Mass.)* 480; Logsdon v. Robert, 3 *Monr. (Ky.)* 256; Evans v. McKinney, *Litt. Sel. Cas. (Ky.)* 264; Richardson v. Cassily, 3 *Watts. (Pa.)* 320; Dickerson v. Terier, 4 *Blackf. (Ind.)* 253; Titus v. Scantling, 8 *Id.* 89; Lamor v. Nicholson, 7 *Port. (Ala.)* 158.
- **v. Mann**, 52 *Barb.* 263. Rev'd in 45 *N. Y.* 327.
- **v. Marshall**. See *Marsh v. Lawrence*.
- **v. N. Y. Central R. R. Co.** See *Welles v. Same*.
- **v. Padgett**, 8 *Barb.* 323. See for a converse application of the rule (Evidence of seduction in action for breach of promise to marry) in *Whitney v. Elmer*, 60 *Id.* 250. Followed and approved with *Kniffen v. McConnell*, 30 *N. Y.* 285, in *Sauer v. Schulenberg*, 33 *Md.* 288; s. c., 3 *Am. R.* 174. Referred to in 5 *Am. Dec.* 618, n., as an instructive case.
- **v. Smith**, 2 *Edw.* 78. Aff'd in 7 *Paige*, 22; s. c., 31 *Am. Dec.* 274, with note containing citations and comments. See *Ketchum v. Everton*.
- **v. Steam Nav. Co.**, 2 *N. Y.* 204. Subsequent decision in 8 *Id.* 375. See *Abbey v. Steamboat R. L. Stevens*; *Alexander v. Greene*; *Caton v. Rumney*. Decision in 8 *N. Y.* disapproved (Exemption of carrier from liability for fraud, &c. of employees) in *Smith v. N. Y. Central R. R. Co.*, 29 *Barb.* 182, 187. Cited as authority with *Steinway v. Erie Ry. Co.*, 43 *N. Y.* 123, and *Mynard v. Syracuse R. Co.*, 71 *Id.* 180, (Exemption of carrier from liability for negligence) in *The Hadji*, *U. S. Cir. Ct. S. D. N. Y.* 20 *Fed. Rep.* 875, 878, abstr. s. c., 18 *Rep.* 198. Decision in 2 *N. Y.* quoted (Liability of owners of tow boats as common carriers) in *Aug. on Carr.* § 86, n. 4, 5 ed; *Id.* § 239, n. 1.
- **v. Stewart**, 3 *Barb.* 40. Approved (Set-off in action by assignee) in *Martin v. Kunzmuller*, 37 *N. Y.* 396, 400. Applied in dissenting opinion in *Seymour v. Dunham*, 24 *Hun.* 93, 98.
- **v. Whitehead**, 15 *Wend.* 527. Compare (What must accompany notice of dishonor of foreign bill) *Chitty on Bills*, 498. Included with notes in *Redf. & B. Lead. Cas. on B. of Exch.* 498.
- Welsh v. Carter**, 1 *Wend.* 185; s. c., 9 *N. Y. Com. L. Law. ed.* 881, with brief note; also 19 *Am. Dec.* 473, with note, wherein it is said to be often referred to as an authority (Liability of vendor of chattel for defect of quality). See *Culver v. Avery*.
- **v. Cochran**, 2 *Hun.* 675; s. c., 5 *Sup'm. Ct. (T. & C.)* 699. Rev'd in 63 *N. Y.* 181; s. c., 20 *Am. R.* 519, without passing on point as to wife's property (and see *Tyler on Inf. & Cov.* 2 ed. § 468). See *Averill v. Williams*. Decision in 63 *N. Y.* disting'd (Liability for trespass in execution of process) in *Croft v. King*, 1 *City Ct.* 157. Cited in 2 *Whart. Com. on Ev.* § 1318.
- **v. Darragh**, 52 *N. Y.* 590. Explained and applied (Character of action, as determined by complaint for purposes of reference) in *Kingsley v. City of Brooklyn*, 1 *Abb. N. C.* 120. Followed in *Williams v. Allen*, 48 *How. Pr.* 357; *Patterson v. Stettauer*, 39 *Super. Ct. (J. & S.)* 413, 416. Disting'd in *Streat v. Rothschild*, 12 *Abb. N. C.* 383, 387. Collated with other cases in *Hoffm. on Referees*, 14.
- **v. German Am. B'k.** 42 *Super. Ct. (J. & S.)* 462. Aff'd in 73 *N. Y.* 424; s. c., 29 *Am. R.* 175. Decision in *Id.* collated with *Ingalls v. Morgan*, 10 *N. Y.* 184; *President, &c. of Westfield Bank v. Cornen*, 37 *Id.* 320; *Nat. B'k v. Norton*, 1 *Hill*, 572; *Fulton Bank v. N. Y. & C. Canal Co.*, 4 *Paige*, 127, and other cases (Notice to agent when not notice to principal) and the rule in *The Distilled Spirits*, 11 *Wall.* 366, approved in preference,—in 13 *Weekly L. Bull.* 182.
- Wells v. Conn. Mut. Life Ins. Co.**, 46 *Barb.* 412. Aff'd in 48 *N. Y.* 34. Decision in *Id.* disting'd (Construction of condition in policy) in *Shader v. Railway Pass. Assur. Co.*, 66 *Id.* 445.
- Wemple v. Stewart**, 22 *Barb.* 154. Disting'd (Discharge from obligation to fulfill contract) in *Jones v. Kent*, 80 *N. Y.* 585, 590.
- Wendell Matter of**, 19 *Johns.* 153. See *Roosevelt v. Cebra*. Followed with *Wyman v. Mitchell*, 1 *Cov.* 316 (Debt contracted before passage of insolvent law, how affected by proceedings under that law) in *Conway v. Seamons*, 55 *Vt.* 8; s. c., 45 *Am. R.* 579.
- Wendell v. Jackson**, 8 *Wend.* 183; s. c., 22 *Am. Dec.* 635, with note containing citations. Aff'g *Jackson d. People v. Wendell*, 5 *Wend.* 142. Decision in 8 *Id.* applied (Yielding of courses and distances to monuments in construction of grants) in *White v. Williams*, 48 *N. Y.* 347. Disting'd in *Tymason v. Bates*, 14 *Wend.* 680. Approved with *Jackson v. Bowen*, 1 *Cai.* 358, in *Buckner v. Lawrence*, 1 *Doug. (Mich.)* 28. Followed (Mode of commencing survey) in *Elliott v. Lewis*, 10 *Hun.* 486, 488. Disting'd (Presumption of title in favor of State) in *People v. Trinity Church*, 30 *Barb.* 548. Applied (Presumption that grant was made with reference to actual view of premises) in *Schoonmaker v. Davis*, 44 *Id.* 466.
- **v. Mayor, &c. of Troy**, 39 *Barb.* 329. Aff'd in 4 *Keyes*, 261; s. c., 4 *Abb. Ct. App. Dec.* 563. Decision in *Id.* applied (Municipal liability for injury resulting from defect in highway) in *McDermett v. City of Kingston*, 6 *Abb. N. C.* 246, 252; which was rev'd in 19 *Hun.* 198, 200, which see; *Hume v. Mayor, &c. of N. Y.*, 74 *N. Y.* 275. Disting'd (Municipal liability for injury resulting in making connection from sewer) in *Masterton v.*

- Village of Mt. Vernon, 58 *Id.* 391, 394. Disapproved (Right of individual to acquire personal interest in public street) in Johnston v. Charleston, 3 *So. Car.* 232; s. c., 16 *Am. R.* 721, 726.
- **v. Van Rensselaer**, 1 *Johns. Ch.* 344. See Brown v. Bowen; Parkhurst v. Van Cortlandt; Storrs v. Barker. Disting'd (Attorney, when disqualified to purchase) in Hawley v. Cramer, 4 *Cow.* 742. Applied (Estoppel to assert title to real estate) in Pell v. Tredwell, 5 *Wend.* 698. Disting'd in Trenton Banking Co. v. Duncan, 86 *N. Y.* 221, 228. Applied (Estoppel as against one making improvements on land) in Town v. Needham, 3 *Paige*, 555. Approved and followed in Kirk v. Hamilton, 102 *U. S.* 68, 76. Explained in 2 *Pars. on Contr.* 795, n. r. Approved (Parties in equity) in Doe v. Doe, 37 *N. H.* 268.
- **v. Wadsworth**, 20 *Johns.* 659. See case for appeal, by J. V. Henry, Followed with Frost v. Beekman, 1 *Johns. Ch.* 288; James v. Morey, 2 *Cow.* 246 (Constructive notice of deed, &c.) in Carter v. Champion, 8 *Conn.* 549; s. c., 21 *Am. Dec.* 695, 700, with note. Reviewed with James v. Morey, and other cases in Lodge v. Simonton, 2 *Pen. & W. (Pa.)* 439; s. c., 23 *Am. Dec.* 36, with note.
- Wendover v. Hogeboom**, 7 *Johns.* 308. See Sharp v. United Ins. Co. Followed with Leonard v. Huntington, 15 *Johns.* 298; Thorn v. Hicks, 7 *Cow.* 697 (Who liable as owner of vessel) in Jones v. Pitcher, 3 *Stew. & P. (Ala.)* 135; s. c., 24 *Am. Dec.* 716, 734.
- Wendt v. Peyser**, 14 *Hun.* 114. See (Verification of pleading) *Code Civ. Pro.* 1881, § 523, n.
- Wenman v. Mohawk Ins. Co.**, 13 *Wend.* 267; s. c., 28 *Am. Dec.* 464, with note containing citations. Applied (What prevents running of statute of limitations) in Carshore v. Huyck, 6 *Barb.* 588. Applied (Effect of granting of letters of administration, on running of statute) in Bucklin v. Ford, 5 *Id.* 396. Discussed in *Ang. on Limit.* § 170, n. 2, 6 ed. Applied (Necessity of demand, to set statute running) in Sweet v. Irish, 36 *Barb.* 470. See Payne v. Slate, 39 *Id.* 639. Disapproved with Bruce v. Tilson, 25 *N. Y.* 194; Howland v. Edmonds, 24 *Id.* 307, in Palmer v. Palmer, 36 *Mich.* 487; s. c., 24 *Am. R.* 605.
- Wente v. Young**, 12 *Hun.* 220. See Olcott v. Maclean. Said in Tullis v. Miller, 13 *Hun.* 363 (Power of assignee in bankruptcy to sue in State court) to conflict with Olcott v. Maclean, 11 *Id.* 394. See Wheelock v. Lee, 5 *Abb. N. C.* 72, and cases cited in note.
- Wentz v. Erie R'y Co.** See Elmore v. Sands.
- Wenzler v. People**, 58 *N. Y.* 516. See Geraty v. Reid. Followed (Who are justices of the peace) in People *ex rel.* White v. Rochester, 11 *Hun.* 239, 244; People v. Morgan, 58 *N. Y.* 679. Applied (Title of local bill) in Neuendorff v. Duryea, 6 *Daly*, 283.
- Werely v. Persons**, 28 *N. Y.* 344. See Matteson v. N. Y. Central R. R. Co. Followed (Declarations of pain in case of declarations made even after suit brought) in Murphy v. N. Y. Central R. R. Co., 66 *Barb.* 130.
- Westcott v. Tilton**, 1 *Duer*, 53; s. c., 10 *N. Y. Leg. Obs.* 278. Subsequent decisions as Westcott v. Thompson, 16 *N. Y.* 613; 18 *Id.* 363. Decision in 18 *Id.* explained (Sale or return of goods) in 1 *Benj. on Sales*, § 2, n. 6 (Corbin's 4 *Am. ed.*).
- Weseman v. Wingrove**, 9 *Weekly Dig.* 434. Compare (Provision of payment of taxes, on foreclosure sale) *Code Civ. Pro.* § 1676.
- West v. Cartledge**, 5 *Hill*, 488. Rev'd in 2 *Den.* 377.
- **v. Emmons**, 5 *Johns.* 179. Explained (Covenants in contract for sale of real estate, when dependent) in Parker v. Parmelee, 20 *Id.* 136. Applied with Green v. Reynolds, 2 *Johns.* 207, to sale of personality in McGhee v. Hill, 4 *Port. (Ala.)* 170; s. c., 29 *Am. Dec.* 277, with note. Explained in 1 *Pars. on Contr.* 537, n. n.
- **v. Mayor, &c. of N. Y.**, 10 *Paige*, 539. Disting'd (Injunction against multiplicity of suits for breach of municipal ordinances) in Third Ave. R. R. Co. v. Mayor, &c., 54 *N. Y.* 159, 162. Applied to proceeding to avoid assessment,—in Bouton v. City of Brooklyn, 15 *Barb.* 394. Quoted in 2 *High on Inj.* 2 ed. § 1244, n. 1. Applied (Injunction against proceeding to recover penalty given by statute) in Wallack v. Society for Reformation of Delinquents, 67 *N. Y.* 28.
- **v. Stanley**. See Camp v. Root.
- **v. Wentworth**, 3 *Cow.* 82. See Suydam v. Jenkins. Disapproved (Measure of damages for conversion) in Suydam v. Jenkins, 3 *Sandf.* 614, 629, 636. Explained in Devlin v. Pike, 5 *Daly*, 90; Clark v. Pinney, 7 *Cow.* 681, 687. Applied in Wilson v. Mathews, 24 *Barb.* 296. Disting'd in Baker v. Drake, 53 *N. Y.* 223. Explained in 3 *Pars. on Contr.* 197, n. j.
- **v. West**, 8 *Paige*, 433. Followed (Citizenship of minor children of naturalized parents) in Matter of Morrison, 22 *How. Pr.* 100.
- Westbrook v. Gleason**, 14 *Hun.* 245. Rev'd in 79 *N. Y.* 23. Subsequent decision in 12 *Weekly Dig.* 261; mem. s. c., 24 *Hun.* 602, which was aff'd in 89 *N. Y.* 641. Decision in 79 *Id.* disting'd (Preference between mortgages) in Decker v. Boice, 83 *Id.* 215, 220. Approved in 2 *Pomeroy on Eq. Jur.* 190, n.
- Westcott v. Cady**, 5 *Johns. Ch.* 334; s. c., 9 *Am. Dec.* 306. See Bloom v. Burdick; Covenhoven v. Shuler. Disting'd (Construction of codicils) in Pierpont v. Patrick, 53 *N. Y.* 595.
- **v. Fargo**, 6 *Lans.* 319; s. c., 63 *Barb.* 349. Aff'd in 61 *N. Y.* 542; s. c., 19 *Am. R.* 300. See Belger v. Dinsmore; Lamb v. Camden & Amboy R. R. Co. Decision in 6 *Lans.* applied

(Effect of carrier's receipt as contract) in *Falkenan v. Fargo*, 44 *How. Pr.* 329. Approved (Limitation of carrier's liability for negligence) in *Magnin v. Dinsmore*, 56 *N. Y.* 168, 174. Decision in 31 *N. Y.* approved and followed (Actions by and against joint-stock companies) in *Fargo v. Louisville, &c. R. R. Co. U. S. Cir. Ct. D. Ind.* 6 *Fed. Rep.* 787, 793. See to the contrary *Gott v. Dinsmore*, 111 *Mass.* 51; *Taft v. Ward*, 106 *Id.* 518. See also *Abb. Tr. Ev.* 16. See cases cited in 4 *Abb. N. C.* 311, n. See *Code Civ. Pro.* 1881, § 1919, n.

— *v. Keeler*, 4 *Bosw.* 564. See to the contrary (Right of assignee to prove tort) *Code Civ. Pro.* 434; *Simar v. Canaday*, 53 *N. Y.* 298. See also *Abb. Tr. Ev.* 3, 4.

— *v. Thompson*. See *Westcott v. Tilton*.  
**Westerfield v. Westerfield**, 1 *Bradf.* 198. Disting'd (Commissions as executor and as trustee to same person on same fund) in *Ward v. Ford*, 4 *Redf.* 34, 40, 43. Disting'd with *Valentine v. Valentine*, 2 *Barb. Ch.* 430; *Drake v. Price*, 7 *Barb.* 388; 5 *N. Y.* 430; *Mann v. Lawrence*, 3 *Id.* 424; *Lansing v. Lansing*, 45 *Barb.* 182; *Betts v. Betts*, 4 *Abb. N. C.* 437; *Hall v. Hall*, 18 *Hun.* 358; 78 *N. Y.* 535, in *Hall v. Campbell*, 1 *Dem.* 415.

**Westerlo v. De Witt**, 35 *Barb.* 215. Rev'd in 36 *N. Y.* 340. See *Coutant v. Schuyler*. Decision in *Id.* applied (Evidence of gifts *causa mortis*) in *Walsh v. Sexton*, 55 *Barb.* 251, 256. Disting'd in *Johnson v. Spies*, 5 *Hun.* 470, as inapplicable to case of gifts *inter vivos*, but applied in such case, in *Gray v. Barton*, 55 *N. Y.* 72; and see *Montgomery v. Miller*, 3 *Redf.* 164. Decision in 35 *Barb.* relied on in *Tillinghast v. Wheaton*, 8 *R. I.* 536; s. c., 5 *Am. R.* 621. Decision in 36 *N. Y.* disting'd (Conclusiveness of settlement of dispute) in *Taplin v. Wilson*, 4 *Hun.* 244, 249, 251.

— *v. Evertson*. See *Casey v. Brush*.

**Western v. Genesee Mut. Ins. Co.** See *Hyde v. Goodnow*.

— *v. Romaine*, 1 *Bradf.* 37. See (Costs on proceedings before surrogate) *Code Civ. Pro.* 1881, §§ 2558, n., 2561, n.

**Western B'k v. City of Columbus**, 7 *How. Pr.* 238. Explained (Law of place regulating actions affecting drafts) in *Hibernia B'k v. Mechanics, &c. B'k*, 21 *Hun.* 166, 174.

— *v. Sherwood*, 29 *Barb.* 383. Dictum disapproved (Necessity that judgment on bond be for penalty) in *Howard v. Farley*, 18 *Abb. Pr.* 260, 262.

**Western N. Y. Life. Ins. Co. v. Clinton**, 5 *Hun.* 118. Rev'd in 66 *N. Y.* 326. See *Pechner v. Phoenix Ins. Co.*

**Western R. R. Co. v. Bayne**, 11 *Hun.* 166. Aff'd in 75 *N. Y.* 1.

**Western R. R. Corp. v. Kortright**, 10 *How. Pr.* 457. Followed (Appealability of order striking out answer) in *Lindon v. Beach*, 6 *Hun.* 200.

— *v. Nolan*, 48 *N. Y.* 513. See *Mohawk & Hudson R. R. Co. v. Artcher*. Disting'd

(Right of action to restrain assessment) in *Lutes v. Briggs*, 5 *Hun.* 71.

**Western Transp. Co. v. Barber**, 56 *N. Y.* 544. See *Same v. Hoyt*, 69 *Id.* 230, a decision involving same subject matter. Decision in 56 *Id.* followed (Estoppel of bailor as against bailor) in *The Idaho*, 93 *U. S.* 575, 580. See *Germ. Exch. B'k v. Comm'rs of Excise*, 6 *Abb. N. C.* 394, 398.

— *v. Marshall*, 37 *Barb.* 509. Aff'd in 6 *Abb. Pr. N. S.* 280; s. c., 4 *Abb. Ct. App. Dec.* 575. Compare (Effect of obtaining bill of lading fraudulently) *The Idaho*, 5 *Den.* 280.

— *v. Schen*, 19 *N. Y.* 408. Explained (Place for taxing corporations) in *Oswego Starch Factory v. Doloway*, 21 *Id.* 449, 455; *People v. Cassity*, 46 *Id.* 51. Applied in *Chadwick v. Crapsey*, 35 *Id.* 201. Followed in *Union Stbt. Co. v. City of Buffalo*, 82 *Id.* 351, 355.

**Westervelt v. Ackley**, 2 *Hun.* 258; s. c., 4 *Sup'm Ct. (T. & C.)* 444. Aff'd in 62 *N. Y.* 505.

— *v. Gregg*, 1 *Barb. Ch.* 469. Explained with reference to subsequent statute (Appointment of auditor, &c. to examine executor's account) in *Buchan v. Rintoul*, 10 *Hun.* 183, 186, which was aff'd in 70 *N. Y.* 1, 4, which see; *Matter of Rich*, 3 *Redf.* 177. Criticised in *Matter of Douglass, Id.* 538.

— *v. —*, 12 *N. Y.* 202. See *Campbell v. Bruen*. Applied (Husband's rights in wife's property) in *Vallance v. Bausch*, 8 *Abb. Pr.* 371; *Billings v. Baker*, 28 *Barb.* 351; *Rider v. Hulse*, 33 *Id.* 266, 270, which was aff'd in 24 *N. Y.* 374, which see; *Briggs v. Mitchell*, 60 *Barb.* 312; *Norris v. Beyea*, 13 *N. Y.* 288. Disting'd in *Rieben v. White*, 43 *Barb.* 97. Applied (Immediate right of action, as property entitled to constitutional protection) in *Berley v. Ram-pacher*, 5 *Duer.* 189. Approved in *McCahill v. Hamilton*, 20 *Hun.* 393. Applied (What is due process of law) in *Rockwell v. Nearing*, 35 *N. Y.* 306. Approved in *State v. Beswick*, 13 *R. I.* 211; s. c., 36 *Am. R.* 102, n.; *Towle v. Mann*, *Sup'm Ct. Iowa*, 1879; 3 *Northw. Rep.* 341. Cited with other cases in *Hurtade v. People of California*, 110 *U. S.* 516, 527. Approved in *Cooley on Const. Limit.* 355.

— *v. Smith*, 2 *Duer.* 449; s. c., 12 *N. Y. Leg. Obs.* 78. See *Bartlett v. Campbell*. Examined and disting'd (Indemnitors as affected by result of suit against party agreed to be indemnified) in *Bridgeport Fire & Marine Ins. Co. v. Wilson*, 7 *Bosw.* 427, 435, which was rev'd in 34 *N. Y.* 275, 281, which see. Explained in *Thomas v. Hubbell*, 15 *Id.* 403, 408. Applied (Judgment against sheriff, as concluding indemnitor) in *Fay v. Ames*, 44 *Barb.* 334.

**Westfall v. Gere**, 3 *Lans.* 151. Rev'd in 49 *N. Y.* 349.

— *v. Hudson River Fire Ins. Co.*, 2 *Duer.* 490. Rev'd in 12 *N. Y.* 289. See *Harper v. Albany Mut. Ins. Co.*

- **v. Parsons**, 16 *Barb.* 645. Applied with *Barker v. Bucklin*, 2 *Den.* 45 (Parol agreement to pay another's debt when not within statute of frauds) in *Brown v. Brown*, 47 *Mo.* 130; s. c., 4 *Am. R.* 320.
- **v. Preston**, 49 *N. Y.* 349. Statement at end of opinion that judgment was aff'd is an error. It was rev'd. See 50 *Id.* xxii. See *Merritt v. Village of Portchester*; *People ex rel. Mygatt v. Supervisors of Chenango*; *Van Rennselaer v. Witbeck*. Compared (Effect of defect in assessment proceedings) in *Brevoort v. City of Brooklyn*, 18 *Hun.* 385. Applied in *Jewell v. Van Steenburgh*, 58 *N. Y.* 90. Explained in *Bradley v. Ward*, *Id.* 406. Followed in *Albany City B'k v. Maher*, *U. S. Cir. Ct. N. D. N. Y.* 6 *Fed. Rep.* 423. Disting'd in *First Nat. B'k of Utica v. Waters*, *U. S. Cir. Ct. N. D. N. Y.* 7 *Id.* 158.
- Westlake v. Bostwick**, 35 *Super. Ct. (J. & S.)* 256. Explained (Effect of assertion by one party to contract that he will not perform) in 2 *Benj. on Sales*, § 860, n. 8 (Corbin's 4 *Am. ed.*).
- **v. Degraw**, 25 *Wend.* 669. Disting'd (Liability for rent, as affected by condition of leased premises) in *Wallace v. Lent*, 1 *Daly*, 482. Collated with other cases in *McAdam on Landl. & T.* 2 ed. § 73.
- Weston v. Barker**, 12 *Johns.* 276; s. c., 7 *Am. Dec.* 319. See *Fink v. Cox*. Explained (Action at law for share of trust fund) in *Rathbone v. Stocking*, 2 *Barb.* 145. Explained and applied (Enforcement of trust created for one's benefit) in *Smith v. Woodruff*, 1 *Hilt.* 464. Disting'd in *Dias v. Brunell*, 24 *Wend.* 11; *Seaman v. Whitney*, *Id.* 262. Applied in *Wyman v. Smith*, 2 *Sandf.* 334. Disting'd in *Tiernan v. Jackson*, 5 *Pet.* 597. Followed in *McLaughlin v. Swann*, 18 *How. (U. S.)* 220. Explained (What operates as assignment of fund) in *Harris v. Clark*, 3 *N. Y.* 117. Applied with *McMenomy v. Ferrers*, 3 *Johns.* 71 (Effect of general acceptance) in *Corbett v. Clark*, 45 *Wis.* 403; s. c., 30 *Am. R.* 763, 769. Disting'd (What is novation of debt sufficient to discharge original debtor from liability) in *Butterfield v. Hartshorn*, 7 *N. H.* 345; s. c., 26 *Am. Dec.* 741, 744, with note.
- **v. City of Syracuse**, 17 *N. Y.* 110. Disting'd (Authority of common council to contract) in *Smith v. City of Newburgh*, 77 *Id.* 130, 134.
- **v. Ketcham**, 39 *Super. Ct. (J. & S.)* 54. Re-argument refused in *Id.* 552. Subsequent decision in 51 *How. Pr.* 455.
- **v. N. Y. Elevated R. R. Co.**, 42 *Super. Ct. (J. & S.)* 156. Aff'd in 73 *N. Y.* 595.
- West Point Foundry Assoc. v. Brown**, 3 *Edw.* 284. Explained (Who are liable as partners for firm debts) in 1 *Collyer on Partn.* § 416, n. 1, Wood's *Am. ed.*
- West Point Iron Co. v. Reymert**, 45 *N. Y.* 703. Disting'd (Waiver of jury trial) in *Town of Duaneburgh v. Jenkins*, 57 *N. Y.* 176. Followed (Injunction respecting mining property) in *Nichols v. Jones*, *U. S. Cir. Ct. N. D. Ala.*, 19 *Fed. Rep.* 855.
- West River B'k v. Taylor**, 34 *N. Y.* 128. Followed (Sufficiency of notice of protest to immediate prior indorser) in *Griffith v. Assmann*, 48 *Mo.* 66, 69.
- West Side B'k v. Pugsley**, 47 *N. Y.* 368. See (Application of property of judgment debtor to payment of judgment in supplementary proceedings) *Code Civ. Pro.* 1881, § 2450, n.
- West Side Sav'gs B'k v. Newton**, 8 *Daly*, 332. Rev'd in 57 *How. Pr.* 152; s. c., 8 *Daly*, 346, n.; mem. of s. c., 76 *N. Y.* 616. Decision in *Id.* explained (Torts caused by negligence) in *Moak's Underhill's Torts*, 1 *Am. ed.* 278.
- Wethey v. Andrews**, 3 *Hill*, 582. See *Merritt v. Todd*. Explained and followed (Interest as indication of term of credit) in *Salmon v. Grosvenor*, 66 *Barb.* 161, 163, 167.
- Wetmore v. Atlantic White Lead Co.**, 37 *Barb.* 70, 96. Followed (Erection of wharf as nuisance) in *Thornton v. Grant*, 10 *R. I.* 477; s. c., 14 *Am. R.* 701.
- **v. Baker**, 9 *Johns.* 307; s. c., 4 *N. Y. Com. L. Law. ed.* 775, with brief note. Discussed (Liability of carriers of passengers, as copartners) in *Ang. on Carr.* § 584, 5 ed.
- **v. Campbell**, 2 *Sandf.* 341. Disting'd (Authority to open and regulate streets) in *Swift v. City of Williamsburgh*, 24 *Barb.* 430. Approved, in *Manice v. Mayor, &c. of N. Y.*, 8 *N. Y.* 120, 130. Applied (Burden of proof as to validity of assessment) in *Weinberger v. Fauerbach*, 14 *Abb. Pr. N. S.* 93. Applied (Necessity of estimate and assessment of expenses of street alteration) in *Waddell v. Mayor, &c. of N. Y.*, 8 *Barb.* 98; *Laimbeer v. City of N. Y.*, 4 *Sandf.* 111. Followed (Authority to appoint collector to levy assessments) in *Gilbert v. Havemeyer*, 2 *Id.* 510.
- **v. Kissam**, 3 *Bow.* 321. Explained (Avoidance of settlement by wife during coverture) in *McIlvaine v. Kadel*, 3 *Robt.* 429, 431.
- **v. Law**, 34 *Barb.* 515; s. c., 22 *How. Pr.* 130. Collated with *Fearing v. Irwin*, 4 *Daly*, 385; *Anderson v. James*, 4 *Robt.* 35, and other cases (Highways as boundaries) in 23 *Am. R.* 233, n.
- **v. Parker**, 7 *Lans.* 121. Aff'd in 52 *N. Y.* 450. Decision in *Id.* followed (Validity of bequest to corporation) in *Robert v. Corning*, 23 *Hun.* 299, 305. Collated with many decisions from various States (Who are bound, by probate of will) in 60 *Am. Dec.* 358, n.
- **v. Scovell**, 3 *Edw.* 515. Disapproved with *Hoyt v. McKenzie*, 3 *Barb. Ch.* 320 (Injunction to restrain publication of private letters, when only to be granted) in *Woolsey v. Judd*, 4 *Duer*, 379, 389. Collated

- with other cases (Injunctions against criminal acts) in 18 *Am. L. Rev.* 599, 616.
- **v. Story**, 22 *Barb.* 414; s. c., 3 *Abb. Pr.* 262. Followed (Power to complete at subsequent session passage of municipal ordinance partially passed at previous session) in *Beckman's Case*, 11 *Id.* 164.
- **v. Tracy**, 14 *Wend.* 250; s. c., 28 *Am. Dec.* 525. See *People v. Quigg*; *Renwick v. Morris*. Disting'd (Effect of encroachment on highway as nuisance) in *Peckham v. Henderson*, 27 *Barb.* 211; *Harrower v. Ritson*, 37 *Id.* 308. Quoted in *Wood on Nuis.* 2 ed. § 254. Applied (Construction of remedial statute) in *People v. Hickey*, 5 *Daly*, 365, 377.
- **v. White**, 2 *Cal. Cas.* 87; s. c., 2 *Am. Dec.* 323. Applied (Effect of part performance, to take case out of statute of frauds) in *Ryan v. Dox*, 34 *N. Y.* 312. Disting'd in *Wiseman v. Lucksinger*, 34 *Id.* 31, 40. Examined with other cases (Effect of parol contract for damming of water) in *Babcock v. Utter*, 1 *Abb. Ct. App. Dec.* 48. Followed (Effect of part payment, as part performance) in *Houston v. Townsend*, 1 *Del. Ch.* 416; s. c., 12 *Am. Dec.* 109, with note. Cited with approval in *Townsend v. Houston*, 1 *Harr. (Del.)* 532; s. c., 27 *Am. Dec.* 732, 736, with extended note. Shown in *Iam v. Goodrich*, 33 *N. H.* 38; s. c., 2 *Am. Dec.* 329, not to be an authority for this position. Reviewed with other cases (When water rights pass as appurtenances) in *Strickler v. Todd*, 10 *Serg. & R.* 63; s. c., 13 *Am. Dec.* 649, with note.
- Wetter v. Schlieper**, 6 *Abb. Pr.* 123; s. c., more fully, 4 *E. D. Smith*, 707. See *Deming v. Colt*.
- Wetzel v. Schultz**. See *Boyce v. Bates*.
- Wetzell v. Dismore**, 4 *Daly*, 193. Rev'd in 54 *N. Y.* 496.
- Weyburu v. White**, 22 *Barb.* 82. Overruled, it seems (Assignment of right of action for money lost on bet) in *Meech v. Stoner*, 19 *N. Y.* 26. See *Code Civ. Pro.* 1881, § 1910, n.
- Weyer v. Beach**, 14 *Hun*, 231. Aff'd in 79 *N. Y.* 409.
- Weyman v. People**, 4 *Hun*, 511; s. c., 6 *Sup'm. Ct. (T. & C.)* 696. Aff'd, it seems, in 62 *N. Y.* 623, on opinion of DANIELS, J., below. See *Smith v. People*. Decision in 4 *Hun* disting'd (Evidence of other offenses, to show intent) in *People v. Special Sessions*, 10 *Hun*, 159. Reviewed with other cases, in *People v. Shulman*, 80 *N. Y.* 373, n. Disting'd (What constitutes larceny) in *Zink v. People*, 77 *Id.* 114, 129; *Thorn v. Turck*, 13 *Weekly Dig.* 550.
- Whalen v. Supervisors, &c. of Albany**, 6 *How. Pr.* 278. Applied (Waiver of referee's oath) in *Nason v. Ludington*, 8 *Daly*, 149.
- Wheaton v. Olds**, 20 *Wend.* 174. Disting'd (Recovery of money paid under mistake as to quantity of goods sold) in *Hargous v. Albion*, 3 *Den.* 408. Applied in *Calkins v. Griswold*, 11 *Hun*, 210; *Scott v. Warner*, 2 *Lans.* 51. Applied to mistake as to bound-
- ary line, in *Coon v. Smith*, 29 *N. Y.* 395. To money paid on assessment in *Allen v. Mayor, &c. of N. Y.*, 4 *E. D. Smith*, 408.
- Wheaton v. Address**, 23 *Wend.* 452. Col-  
lated with other cases (Enlarging devise into fee) in *Sharsw. & B. Cas. on Real Prop.* 64.
- **v. Baker**, 14 *Barb.* 594. See *Masson v. Bovet*; *Nellis v. Bradley*. Applied (Duty of one seeking to rescind contract for fraud, to restore what he has received) in *Gould v. Cayuga, &c. Nat. B'k*, 21 *Hun*, 293. Disting'd in *Kinney v. Kiernan*, 49 *N. Y.* 164, 171.
- **v. Gates**, 18 *N. Y.* 395. See cases collected from several States (Rights of pew-holders) in 19 *Moak Eng.* 565.
- **v. Hibbard**, 20 *Johns.* 290; s. c., 11 *Am. Dec.* 284. Applied (Construction of remedial statute) in *People v. Hickey*, 5 *Daly*, 365, 377. Dicta criticised (Effect of statutory provisions on right of action for recovery of usurious excess of interest) in *Porter v. Mount*, 41 *Barb.* 561, 564. Both these decisions explained in *Palen v. Johnston*, 46 *Id.* 21, 23, as not to be upheld under *Meech v. Stoner*, 19 *N. Y.* 26.
- Wheeler, Matter of**, 2 *Abb. Pr. N. S.* 361. Substantially followed (Validity of corporate election) in *People v. Twaddell*, 18 *Hun*, 427, 432.
- Wheeler v. Allen**, 49 *Barb.* 460. Aff'd in 51 *N. Y.* 37. Decision in *Id.* disting'd (Proof to sustain action to recover possession of personal property) in *Western R. R. Co. v. Bayne*, 75 *Id.* 1, 4.
- **v. Anthony**, 10 *Wend.* 346. Disting'd (Effect of irregularity in assessment and taxation proceeding) in *Cruger v. Dougherty*, 1 *Lans.* 464, 467. Reviewed with *Jackson v. Morse*, 18 *Johns.* 441, and other cases in *Lyon v. Hunt*, 11 *Ala.* 295; s. c., 46 *Am. Dec.* 216, 225.
- **v. Clark**, 1 *Sup'm. Ct. (T. & C.)* Add. 8. Aff'd in 58 *N. Y.* 267.
- **v. Conn. Mut. Life Ins. Co.**, 16 *Hun*, 317. Rev'd in 82 *N. Y.* 543; s. c., 37 *Am. R.* 594, with note; also s. c., 10 *Ins. L. J.*, with note. Decision in *Id.* disting'd (Forfeiture when not created by failure to perform in time) in *N. Y. Life Ins. Co. v. Rector, &c. of St. George's Church*, 12 *Abb. N. C.* 50, 54. Followed (Forfeiture of life policy for non-payment of premium) in *Klein v. N. Y. Life Ins. Co.*, 104 *U. S.* 88, 91; *Mut. Fire Ins. Co. of Cecil Co. v. Miller Lodge*, 58 *Id.* 463, 476. Examined (Allegations of complaint as fixing nature of cause of action) in 9 *Abb. N. C.* 6, n., citing numerous other cases.
- **v. Cropsey**, 5 *How. Pr.* 288. Approved and followed (Exemption of team from execution) in *Wilcox v. Hawley*, 31 *N. Y.* 648, 656, and *Smith v. Slade*, 57 *Barb.* 637, 641. Applied in *Van Buren v. Loper*, 29 *Id.* 390, also a case of a physician.
- **v. Curtis**, 11 *Wend.* 654. Qualified (Effect of rule forbidding plea and demur-

- rer to same count) in *Miller v. Maxwell*, 16 *Id.* 9, 23. Overruled in *Auburn & Owasco Canal Co. v. Leitch*, 4 *Den.* 65.
- *v. Dakin*, 12 *How. Pr.* 537. See (Execution after creditor's death) *Code Civ. Pro.* 1881, § 1876, *n.*
- *v. Falconer*, 7 *Robt.* 45. Followed (Refusal in action involving account) in *Ross v. Combes*, 37 *Super. Ct. (J. & S.)* 289, 296.
- *v. Garcia*, 5 *Robt.* 280. Aff'd in 40 *N. Y.* 584. See (Refusal to perform, as dispensing with proof of tender) cases cited in *Abb. Tr. Ex.* 316, *n.* 11.
- *v. Lozee*, 12 *How. Pr.* 446. Approved (Foreign witness-fees) in *Hicks v. Brennan*, 10 *Abb. Pr.* 305.
- *v. McFarland*, 10 *Wend.* 318. Rev'd in 26 *Wend.* 467; *s. c.*, 14 *N. Y. Com. L. Law. ed.* 1142, with brief note. Decision in 10 *Wend.* disting'd and thought to be correct notwithstanding reversal in 26 *Id.* (Execution against property pledged, &c.) in *Hull v. Carnley*, 11 *N. Y.* 507. Applied also to seizure of partnership property under execution against one person in *Atkins v. Saxton*, 77 *Id.* 200. Decision in 10 *Wend.* followed (Effect of declarations of deputy sheriff) in *Stewart v. Wells*, 6 *Barb.* 81. Criticised (Lien of bailee) and *Morgan v. Congdon*, 4 *N. Y.* 553; applied in *De Vinne v. Rianhard*, 9 *Daly*, 406. Applied (Possession that will uphold lien) in *Walther v. Wetmore*, 1 *E. D. Smith*, 24. Opinion of VERPLANCK, Senator, approved in *Western Transp. Co. v. Barber*, 56 *N. Y.* 549.
- *v. Newbould*, 5 *Duer*, 29. Aff'd in 16 *N. Y.* 392. Decision in *Id.* approved but disting'd (Evidence of usage) in *Fox v. Parker*, 44 *Barb.* 546. Disting'd in *Walls v. Bailey*, 49 *N. Y.* 475. Followed as conclusive in *Commercial B'k of Ky. v. Varnum*, 3 *Lans.* 96, *n.* Applied in *Higgins v. Moore*, 34 *N. Y.* 422; *Lawrence v. Gallagher*, 42 *Super. Ct. (J. & S.)* 321. Disting'd (Right of pledgee to sell) in *Chapman v. Brooks*, 31 *N. Y.* 84, as inapplicable to assignment of pledge as collateral security. Approved in *Alexandria, &c. R. R. Co. v. Burke*, 22 *Gratt. (Va.)* 254, 262. Applied (Right of pledgee to sell without notice) in *Brass v. Worth*, 40 *Barb.* 553. Disting'd in *Milliken v. Dehon*, 27 *N. Y.* 375. Disting'd (Rights of pledgee of commercial paper) in *Bank of N. Y. v. Vanderhorst*, 32 *Id.* 559. Applied in *Moody v. Andrews*, 39 *Super. Ct. (J. & S.)* 306. Followed in *Joliet Iron Co. v. Scioto Fire Brick Co.*, 82 *Ill.* 584; *s. c.*, 25 *Am. R.* 341.
- *v. N. Y. & Harlem R. R. Co.*, 24 *Barb.* 414. See (Service of summons on railroad corporation in proceedings in justice's court) *Code Civ. Pro.* 1881, §§ 2879, *n.*; 2880, *n.*
- *v. Raymond*, 5 *Cow.* 231. Aff'd in 9 *Id.* 295.
- *v. —*, 8 *Cow.* 311. See *Foot v. Stevens*; *Millis v. Martin*. Followed with *Foot v. Stevens*, 17 *Wend.* 483; *Bloom v. Burdick*, 1 *Hill*, 139; *Mills v. Martin*, 19 *Johns.* 33 (Presumption as to court of general jurisdiction) in *Kenney v. Greer*, 13 *Ill.* 432; *s. c.*, 54 *Am. Dec.* 439, 447, with note.
- *v. Reynolds*, 66 *N. Y.* 227. See *Dung v. Parker*. Applied (Enforcing trust in real estate notwithstanding statute of frauds) in *Moyer v. Moyer*, 21 *Hun.* 67, 71. Followed in *Randall v. Constans*, 33 *Minn.* 329, 336. Approved in *Pomeroy on Sp. Perf.* § 144, *n.*
- *v. Rochester & Syracuse R. R. Co.*, 12 *Barb.* 227. Disapproved (Right to determine location of farm crossings) in *Wademan v. Albany, &c. R. R. Co.*, 51 *N. Y.* 563, 576.
- *v. Ruckman*, 1 *Robt.* 408. Subsequent decision in 7 *Id.* 447; *s. c.*, 35 *How. Pr.* 350; which was aff'd in 51 *N. Y.* 391. Also another decision as it seems in 5 *Robt.* 702. Decision in 51 *N. Y.* cited (Dismissal of complaint as bar to subsequent action) in 2 *Whart. Com. on Ev.* § 782. Compare *Code Civ. Pro.* § 1209.
- *v. Ruthven*, 2 *Redf.* 491. Aff'd in part in 13 *Hun.* 530; and that aff'd in 74 *N. Y.* 428; *s. c.*, 30 *Am. R.* 315. See *King v. Talbot*.
- *v. Scofield*, 6 *Hun.* 555. Aff'd in 67 *N. Y.* 311. Compare (Lien of material man in case of completion of work by owner after contractor's default) *Rodbourn v. Seneca Lake, &c. Co.*, *Id.* 215.
- *v. Spinola*, 54 *N. Y.* 377. See *People v. Tibbetts*. Cited as laying down the established rule (Low water-mark as boundary of private ownership on fresh water lakes and ponds) in 13 *Cent. L. J.* 3. See cases cited in 5 *Abb. N. C.* 174, *n.* Commented on (Title by adverse possession) in *Sedgw. & W. on Tr. of Tit. to Land*, § 723.
- *v. Van Houten*, 12 *Johns.* 311. Opposed (Conclusiveness of award) in *Whittemore v. Whittemore*, 2 *N. H.* 26; *Webster v. Lee*, 5 *Mass.* 334. Followed in *McJimsey v. Traverse*, 1 *Stew. (Ala.)* 244; *s. c.*, 18 *Am. Dec.* 43, as a high authority and decisive.
- *v. Warner*, 47 *N. Y.* 519. Applied (Limitation of action on note payable on demand) to note without day of payment, — in *Bartholomew v. Scaman*, 25 *Hun.* 620. Disting'd in *Smiley v. Fry*, 49 *Super. Ct. (J. & S.)* 134, 137, a case of certificate of deposit.
- *v. Webster*, 1 *E. D. Smith*, 1. Explained (Absence from State as affecting running of statute of limitations) in 3 *Pars. on Contr.* 99, *n. k.*
- Wheellock v. Lee**, 15 *Abb. Pr. N. S.* 24. Rev'd in 64 *N. Y.* 242. Further decision in 74 *Id.* 495; *s. c.*, 5 *Abb. N. C.* 80; rev'g *Id.* 72; *s. c.*, less fully, 54 *How. Pr.* 402. See *Cole v. Savage*. Decision in 64

- N. Y.* explained (Who entitled to relief, as borrower under statute respecting usury) in *Matthews v. Warner*, *U. S. Cir. Ct. D. Mass.* 6 *Fed. Rep.* 465. With decision in 74 *N. Y.* see (Jurisdiction of State court in action by assignee in bankruptcy) *Southard v. Pinckney*, 5 *Abb. N. C.* 184. See (Distinction between legal and equitable actions as to mode of trial of issues) *Code Civ. Pro.* 1881, ch. X, tit. I, art. 1, n. Explained in 3 *Greenl. on Ev.* 14 ed. § 266, n. a.
- *v. Tanner*, 39 *N. Y.* 481. Explained (Duty of seller as to delivery) in 2 *Benj. on Sales*, § 1018, n. 6 (Corbin's 4 *Am. ed.*).
- *v. Young*, 4 *Wend.* 647. Limited (Liability for injury resulting from construction of canal) in *St. Peter v. Denison*, 58 *N. Y.* 416, 422.
- Wheelwright v. Beers**, 2 *Hall*, 391. Examined and limited (Valuation of goods lost by carrier) in *Lakeman v. Grinnell*, 5 *Bosw.* 625, 629, 633, 639, 644. Explained in 3 *Pars. on Contr.* 193, n. v.
- *v. Depeyster*, 1 *Johns.* 471; s. c., 3 *Am. Dec.* 345; 3 *N. Y. Com. L. Law. ed.* 214, with brief note, questioning doctrine of the case (Effect of sales by prize court on neutral country).
- *v. Loomer*, 4 *Edw.* 232. Further decision in 3 *Sandf. Ch.* 135.
- *v. Wheelwright*, 2 *Redf.* 501. Disting'd (Liability of executors for interest when commissions voluntarily appropriated) in *Whitney v. Phoenix*, 4 *Id.* 180, 195.
- Whelan v. Lynch**, 65 *Barb.* 326. Aff'd in 60 *N. Y.* 469; s. c., 19 *Am. R.* 202. See *Thayer v. Manley*. Decision in 60 *N. Y.* collated with other cases (Damages in case of failure of factor to obey orders to sell) in 58 *Am. Dec.* 160, n. Decision in 65 *Barb.* quoted in *Benj. on Sales*, § 870, n. a. (Bennett's 4 *Am. ed.*). Decision in 60 *N. Y.* followed (Price current as evidence of value of stock) in *Vogt v. Cope*, 66 *Cal.* 31. Cited at length in 1 *Whart. Com. on Ev.* § 674, n.
- *v. Whelan*, 3 *Cow.* 537. Applied (Effect of contract attained by undue influence) in *Brice v. Brice*, 5 *Barb.* 540; *Brand v. Brand*, 39 *How. Pr.* 265, 275. Applied to will, in *Tyler v. Gardiner*, 35 *N. Y.* 595; *Clark v. Fisher*, 1 *Paige*, 177. Cited as authority (Marriage as valuable consideration) in 1 *Add. on Contr.* 4, n. 1, *Abb. ed.*
- Whipple v. Christian**, 15 *Hun*, 321. Aff'd in 80 *N. Y.* 523.
- *v. Foot*, 2 *Johns.* 418; s. c., 3 *Am. Dec.* 442. See *Bank of Lansingburgh v. Cray*; *Foot v. Colvin*; *Green v. Armstrong*; *Stewart v. Doughty*. Applied (When execution becomes dormant) in *Russell v. Gibbs*, 5 *Cow.* 392; *Storm v. Woods*, 11 *Johns.* 112. Explained in *Rew v. Barber*, 3 *Cow.* 279. Disting'd in *Doty v. Turner*, 8 *Johns.* 22. Followed with *Storm v. Woods*, 11 *Id.* 110, in *Michie v. Planters' Bank*, 4 *How. (Miss.)* 130; s. c., 34 *Am. Dec.* 112, with note.
- Applied (Growing crops as chattels) in *Austin v. Sawyer*, 9 *Cow.* 42; *Harris v. Frink*, 49 *N. Y.* 28. Disting'd and questioned in *Norris v. Watson*, 22 *N. H.* 364; s. c., 55 *Am. Dec.* 160, with note.
- *v. Williams*, 4 *How. Pr.* 28. Cited as well decided, but not on the right ground (Computing length of time of notice) in *Taylor v. Corbiere*, 8 *Id.* 385.
- Whispell v. Whispell**, 4 *Barb.* 217. Quoted (Considering rank and condition of parties in action for divorce for cruelty) in 1 *Bishop on Mar. & D.* § 742, 6 ed. Doctrine discussed and cases cited (Condonation) in 5 *Am. L. Reg. N. S.* 647.
- Whitaker, Matter of**, 4 *Johns. Ch.* 378. Collated with *Matter of Brick's Estate*, 15 *Abb. Pr.* 12, and other cases (Effect of marriage of testamentary ward before full age, as determining guardianship) in *Tyler on Inf. & Cov.* 2 ed. § 170.
- Whitaker v. Brown**, 8 *Wend.* 505. Subsequent decisions in 11 *Id.* 75; 16 *Id.* 505; s. c., 12 *N. Y. Com. L. Law. ed.* 1178, with brief note. Decision in *Id.* explained (Giving of note in the name of firm as evidence of existence of partnership debt) in 1 *Pars. on Contr.* 182, n. d. Cited with other cases (Ratification by partnership) in 11 *Am. L. Reg. N. S.* 543. With decision in 8 *Wend.* compare (Evidence of declarations, as against transferee of note) *Earl v. Clute*, 2 *Abb. Ct. App. Dec.* 1, and cases there cited; 1 *Fairf. (Me.)* 249.
- *v. Chapman*, 3 *Lans.* 155. Limited (Debts that are not affected by discharge in bankruptcy) in *Shuman v. Strauss*, 52 *N. Y.* 408. Followed (What is debt in fiduciary character, within meaning of bankrupt act) in *Hardenbrook v. Collson*, 24 *Hun*, 476. Followed in *Banning v. Bleakley*, 27 *La. Ann.* 257; s. c., 21 *Am. R.* 554, 556, citing *Duguid v. Edwards*, 50 *Barb.* 290.
- *v. Cone*, 2 *Johns. Cas.* 58; s. c., 1 *N. Y. Com. L. Law. ed.* 437, with brief note (Effect of grant of land held adversely).
- *v. Desfosse*, 7 *Bosw.* 678. Approved (Reference involving long account) in *Batchelor v. Albany City Ins. Co.*, 6 *Abb. Pr. N. S.* 240, 249. Collated with other cases in *Hoffm. on Referees*, 12.
- *v. Eighth Ave. R. R. Co.*, 51 *N. Y.* 295. Rev'g *Whittaker v. Same*, 5 *Robt.* 650. See *Luby v. Hudson River R. R. Co.*
- *v. Farmers' Union Ins. Co.*, 29 *Barb.* 312. Followed (Liability of insurance company, before payment of premium) in *Baldwin v. Chouteau Ins. Co.*, 56 *Mo.* 151; s. c., 17 *Am. R.* 671, 673, citing *Lightbody v. North Missouri Ins. Co.*, 23 *Wend.* 18.
- *v. Merrill*, 28 *Barb.* 526. Further decision in 30 *Id.* 389. Decision in 28 *Id.* dissented from (Verdict subject to opinion of court) in *Wilcox v. Hoch*, 62 *Id.* 509, 514.
- *v. Whitaker*, 6 *Johns.* 112. Followed (Declaring on promise by or to executors) in *Jones v. Moore, Binn. (Pa.)* 573; s. c., 6

- Am. Dec.* 428. Included with notes (Administration by husband on estate of married woman) in *Ewell Lead. Cus. on Inf., &c.* 513.
- *v. —*, 52 *N. Y.* 368; s. c., 11 *Am. R.* 711. Cases of same name in 54 *N. Y.* 638 and 4 *Hun.* 810, are different from this and from each other. See *Filer v. N. Y. Central R. R. Co.*
- Whitbeck v. Building Material Co.**, 2 *Hun.* 161; s. c., 4 *Sup'm. Ct. (T. & C.)* 679. Aff'd, it seems, in 62 *N. Y.* 613, but without opinion.
- *v. Cook*, 15 *Johns.* 483; s. c., 8 *Am. Dec.* 272. See *Edwards v. Davis*; *Greene v. Collins*; *Jackson v. Hathaway*. Disting'd (Existence of public way as breach of covenant against warranty) in *Rea v. Mingler*, 5 *Lans.* 196, as not applicable to private way. Cited in *Beach v. Miller*, 51 *Ill.* 206; 2 *Am. R.* 290, 294. Compared in *Kellogg v. Malin*, 50 *Mo.* 496; s. c., 11 *Am. R.* 426. Cited as authority in *Rawle on Cov. for Tit.* 4 ed. 80, and *Id.* 102, 104, *n.*
- *v. N. Y. Central R. R. Co.*, 36 *Barb.* 644. Disting'd (Measure of damages for injury to timber) in *Argotsinger v. Vines*, 82 *N. Y.* 308, 313. Approved (Opinion as to damages caused by trespass on land) in *Richardson v. Northrup*, 66 *Barb.* 85, 88.
- *v. Rowe*, 25 *How. Pr.* 403. Followed (Setting aside mortgage sales) in *Kellogg v. Howell*, 62 *Barb.* 280, 289.
- *v. Van Ness*, 11 *Johns.* 409; s. c., 6 *Am. Dec.* 383; 5 *N. Y. Com. L. Law. ed.* 202, with brief note. See *Ontario Bank v. Lightbody*. Disting'd (Effect of note, &c. of third person, as payment) in *Gibson v. Toby*, 53 *Barb.* 195; *Porter v. Talcott*, 1 *Cow.* 385; *Darnell v. Morehouse*, 36 *How. Pr.* 523; *Lightbody v. Ontario B'k*, 11 *Wend.* 17. Applied in *Breed v. Cook*, 15 *Johns.* 242; *Hardin v. Kretsinger*, 17 *Id.* 295; *White v. Howard*, 1 *Sandf.* 86. Reviewed and criticised with *Porter v. Talcott*, 1 *Cow.* 359; *Rew v. Barber*, 3 *Id.* 272, in *Lowrey v. Murrell*, 2 *Port. (Ala.)* 280; s. c., 27 *Am. Dec.* 651.
- *v. Whitbeck*, 9 *Cow.* 266; s. c., 18 *Am. Dec.* 503, with note, wherein it is said to have been frequently followed (Acknowledgment of consideration in deed is not conclusive). See *Shepherd v. Little*. Applied (Husband, as bound by covenants in deed executed by himself and wife) in *Griner v. Butler*, 61 *Ind.* 362; s. c., 28 *Am. R.* 675.
- Whitcomb v. Fowle**, 7 *Abb. N. C.* 295; s. c., 56 *How. Pr.* 365.
- *v. Hungerford*, 42 *Barb.* 177. Disting'd (Amendment of complaint on trial) in *Vibbard v. Roderick*, 51 *Barb.* 629; *Bigelow v. Dunn*, 53 *Id.* 571.
- White v. Anthony**, 23 *N. Y.* 164. Followed (Costs in Court of Appeals on appeal from order) in *Tauton v. Groh*, 9 *Abb. Pr. N. S.* 453, 458.
- *v. Ashton*, 51 *N. Y.* 280. Previous decision to same effect as *White v. Van Kirk*, 25 *Barb.* 16.
- *v. Baxter*, 41 *Super. Ct. (J. & S.)* 358. Aff'd in 71 *N. Y.* 254. Decision in *Id.* followed (Consideration for promise) in *Roberts v. Cobb*, 31 *Hun.* 150.
- *v. Brownell*, 3 *Abb. Pr. N. S.* 318. Aff'd in 4 *Id.* 162; s. c., 2 *Daly*, 329. Decision in *Id.* disting'd (Action against president of voluntary association) in *Fritz v. Muck*, 62 *How. Pr.* 69, 73. Disting'd with *Olery v. Brown*, 51 *Id.* 92 (Remedy of expelled member of voluntary association) in *Hutchinson v. Lawrence*, 67 *Id.* 38. Explained in *Olery v. Brown*, 51 *Id.* 94, 96. Compare (Membership in exchange) *Ritterband v. Baggett*, 4 *Abb. N. C.* 67. See cases cited in *Id.* 305, *n.*, 311, *n.* Explained (Effect of arbitration by authorities of commercial exchange) in *Heath v. President of Gold Exchange*, 7 *Abb. Pr. N. S.* 257.
- *v. Bullock*, 20 *Barb.* 91. Rev'd in 15 *How. Pr.* 102; s. c., 4 *Abb. Ct. App. Dec.* 578. Decision in *Id.* disting'd (Commissions to executors, &c.) in *Ward v. Ford*, 4 *Redf.* 34, 40. With decision in 20 *Barb.* see cases collected (Liability for acts of co-trustee) in 15 *Am. L. Rev.* 175.
- *v. Buloid*, 2 *Paige*, 475. See (Transfer of interest, on death of party) *Code Civ. Pro.* 1881, § 760, *n.*
- *v. Calder*, 33 *How. Pr.* 392. For correction of foot note, see 34 *Id.* 96. See *Green v. Telfair*.
- *v. Canfield*, 7 *Johns.* 117; s. c., 5 *Am. Dec.* 249. See *Van Raugh v. Van Arsdaln*.
- *v. Carpenter*. See *Rogers v. Murray*.
- *v. Carroll*, 42 *N. Y.* 161. Applied (Privilege of alleged libel in judicial proceedings) in *Aylesworth v. St. John*, 25 *Hun.* 157. Explained and applied in *Marsh v. Ellsworth*, 50 *N. Y.* 309, 313. Explained in *Moak's Underhill's Torts*, 1 *Am. ed.* 154.
- *v. Case*. See *Moakley v. Riggs*.
- *v. Chouteau*, 10 *Barb.* 202. Subsequent decision in 1 *E. D. Smith*, 493. Both decisions discussed and cases cited (Evidence of declarations of deceased persons) in 3 *Am. L. Reg. N. S.* 648. Decision in 10 *Barb.* explained (Action in name of broker for price of goods sold for owner) in 1 *Benj. on Sales*, § 241, *n.* 39 (Corbin's 4 *Am. ed.*).
- *v. Coatsworth*, 6 *N. Y.* 137. See *Hess v. Beckman*. Applied (Effect of judicial determination, as conclusive) in *Demarest v. Daig*, 11 *Abb. Pr.* 15; which was aff'd in 32 *N. Y.* 290, which see: *Glackin v. Zeller*, 52 *Barb.* 150; *Matter of Leland*, 14 *Blatchf. C. Ct.* 240. Disting'd in *People v. Eddy*, 57 *Barb.* 602; 3 *Lans.* 82; *Gillilan v. Spratt*, 3 *Daly*, 445. Applied (Conclusiveness of verdict of jury in summary proceedings) in *Yonkers & N. Y. Fire Ins. Co. v. Bishop*, 1 *Daly*, 451.
- *v. Cole*, 24 *Wend.* 116. Rev'd in 26 *Id.* 511. Decision in 24 *Id.* referred to as overruled (Effect of retention of possession on



- sale, &c. of chattels).—in *Stewart v. Slater*, 6 *Duer*, 96. Criticised in *Hanford v. Artcher*, 4 *Hill*, 303. Disting'd (Interest as disqualifying witness) in *Moak v. Guion*, 7 *Hill*, 59.
- *v. Continental Nat. B'k*, 64 *N. Y.* 316. See *Marine Nat. B'k v. Nat. City B'k*. Disting'd (Warranty of genuineness of commercial paper) in *Susquehanna Val. Nat. B'k v. Loomis*, 85 *N. Y.* 207, 211.
- *v. Corlies*, 46 *N. Y.* 467. See *Trevor v. Wood*. Included (Formal requisites of contract) in *Lawson's Lead. Com. L. Cas. Simplified*, 1.
- *v. Coulter*, 1 *Hun*, 357; s. c., 3 *Sup'm. Ct. (T. & O.)* 608. Rev'd in part in 59 *N. Y.* 629. Compare (Sufficiency of service on husband alone, in foreclosure against husband and wife) *Nagle v. Taggart*, 4 *Abb. N. C.* 144, n.
- *v. Delavan*, 17 *Wend.* 49. Rev'd in *Ryckman v. Delavan*, 25 *Id.* 186.
- *v. Evans*, 47 *Barb.* 179. Disting'd (Who bound by judgment as privies) in *Bennett v. Couchman*, 48 *Id.* 83.
- *v. Featherstonhaugh*, 7 *How. Pr.* 357. Referred to as overruled by *Abbott v. Smith*, 8 *Id.* 463 (Appearance by defendant, when in time) in *Carpenter v. N. Y. & New Haven R. R. Co.*, 11 *Id.* 481, 483.
- *v. Fuller*, 4 *Hun*, 631; s. c., more fully, 67 *Barb.* 267.
- *v. Geraerdt*, 1 *Edw.* 336. Overruled (Necessity that execution issue before creditor's action) in *Geery v. Geery*, 63 *N. Y.* 257. Followed with *Devoe v. Ithaca & Owego R. R. Co.*, 5 *Paige*, 521 (Chose in action as subject to process of sequestration) in *Grew v. Breed*, 12 *Metc. (Mass.)* 363; s. c., 46 *Am. Dec.* 687, 689. Collated with other cases in 14 *Am. Dec.* 531, n.
- *v. Hackett*, 24 *Barb.* 290. Rev'd in 20 *N. Y.* 178.
- *v. Haight*, 16 *N. Y.* 310. Followed (Liability on note given on organization of insurance company) in *Howland v. Edmonds*, 24 *Id.* 307, 311, 313; *Tuckerman v. Brown*, 11 *Abb. Pr.* 389, 394; 33 *N. Y.* 304; *Hart v. Achilles*, 28 *Barb.* 581; *Bell v. Yates*, 33 *Id.* 632; *Elwell v. Crocker*, 4 *Bosw.* 32; *Bell v. McElwain*, 18 *How. Pr.* 150; *White v. Foster*, *Id.* 151. Disting'd in *Savage v. Medbury*, 19 *N. Y.* 33. Explained in *Dana v. Munson*, 23 *Id.* 566.
- *v. Hieks*, 43 *Barb.* 64. Aff'd in 33 *N. Y.* 383. Decision in *Id.* relied on (Execution of power created by will) in *South v. South*, 91 *Ind.* 221; s. c., 46 *Am. R.* 591; *Warner v. Conn. Mut. Life Ins. Co.*, 109 *U. S.* 357, 367. Decision in 43 *Barb.* explained (Extrinsic evidence to show that power has been executed by will) in *Bingham's Appeal*, 64 *Pa. St.* 345. Decision in 33 *N. Y.* approved in *Funk v. Eggleston*, 92 *Ill.* 515; s. c., 34 *Am. R.* 136, collating many cases. Explained and case cited to the contrary, in 2 *Jurm. on Wills*, Rand. & T., ed. 273, n.
- *v. Howard*, 52 *Barb.* 294. Aff'd, though questioned on some points in 46 *N. Y.* 144. Decision in *Id.* followed (Right of foreign corporation to take real estate by devise) in *Draper v. President, &c. of Harvard College*, 57 *How. Pr.* 273. Disting'd in *Prichard v. Thompson*, 29 *Hun*, 295, 298. Applied to devise to U. S., in *U. S. v. Fox*, 94 *U. S.* 315, 321; aff'g *Matter of Fox*, 52 *N. Y.* 530, 534; 63 *Barb.* 157, 160. Followed (Validity of bequest to unincorporated society) in *Betts v. Betts*, 57 *How. Pr.* 355. Compare *Sherwood v. Am. Bible Soc.*, 4 *Abb. Ct. App. Dec.* 227; *Harris v. Slaght*, 46 *Barb.* 470. See cases cited in 4 *Abb. N. C.* 311, n. Collated with other cases in *Gerard Tiles to Real Est.* 2 ed. 305. Followed (Requisites of equitable conversion) in *Gourley v. Campbell*, 66 *N. Y.* 173; *McCarty v. Deming*, 4 *Lans.* 442. Applied (Vesting of interests under will) in *Chapman v. Nichols*, 61 *How. Pr.* 275, 280. Explained and disting'd (Intestacy as to remainder) in *Newell v. Nichols*, 12 *Hun*, 604, 623.
- *v. Hoyt*, 7 *Daly*, 232. Aff'd in 73 *N. Y.* 505.
- *v. Jones*, 1 *Abb. Pr. N. S.* 328; s. c., 1 *Robt.* 321. See (Violation of contract transferring good will) *Grimm v. Warner*, 45 *Iowa*, 106. Explained in 1 *Collyer on Partn.* § 117, n. 2, *Wood's Am. ed.*
- *v. Joy*, 11 *How. Pr.* 36. Rev'd in 13 *N. Y.* 83. See *Gillet v. Fairchild*. These decisions disting'd (Pleading authority to sue, in action by receiver) as inapplicable to case of assignee for benefit of creditors, —in *Butterfield v. Macomber*, 22 *How. Pr.* 150, 154.
- *v. Kibbling*. See *Stafford v. Rice*.
- *v. Knapp*, 47 *Barb.* 549. Followed (Delivery required by statute of frauds) in *Wooster v. Sage*, 6 *Hun*, 285, 288.
- *v. Lester*, 1 *Keyes*, 516. Explained (Effect of mortgage sale by U. S. Loan Commissioners) in *Thompson v. Comm'rs for Loaning, &c.*, 79 *N. Y.* 62.
- *v. Lovejoy*. See *Jackson v. Hammond*.
- *v. McLean*, 57 *N. Y.* 670; s. c., fully reported, 47 *How. Pr.* 193.
- *v. McNett*, 33 *N. Y.* 371. Reviewed with other cases (Charging separate estate of married woman) in *Coakley v. Chamberlain*, 9 *Abb. Pr. N. S.* 177. Applied in *Prendergast v. Borst*, 7 *Lans.* 491. Criticised but applied in *Manhattan B. & M. Co. v. Thompson*, 58 *N. Y.* 83. Disting'd in *Treadwell v. Hoffman*, 5 *Daly*, 207, 210.
- *v. Madison*, 26 *N. Y.* 117; s. c., 26 *How. Pr.* 481. See *Dusenberry v. Ellis*; *Palmer v. Stephens*; *Passinger v. Thorburn*; *Rossiter v. Rossiter*. Applied (Parol evidence of grounds of judgment, &c.) in *Mayor, &c. of N. Y. v. Ryan*, 7 *Daly*, 438. Disting'd (Liability on contract entered into by assumed agent without authority) in *Aspinwall v. Torrance*, 1 *Lans.* 356.

- Explained and applied in *Dung v. Parker*, 52 *N. Y.* 494, 500, which rev'd 3 *Lans.* 89, 98, which see. Dicta explained in *Noe v. Gregory*, 7 *Daly*, 283, 285. Cited (Execution of power given to factor to insure) in *Whart. Com. on Ag.* § 782.
- *v. Meallo*, 37 *Super. Ct. (J. & S.)* 72. Rev'd in 63 *N. Y.* 609. Further decision in 42 *Super. Ct. (J. & S.)* 163.
- *v. Merritt*, 7 *N. Y.* 352; s. c., 57 *Am. Dec.* 527, with notes. Followed (Remedy against judgment as having been obtained by fraud) in *Farrington v. Bullard*, 40 *How. Pr.* 517. Applied (Conclusiveness of judgment by default) in *Gates v. Preston*, 41 *N. Y.* 115. Explained (Liability for false representations) in *Wakeman v. Dalley*, 44 *Barb.* 502, which was aff'd in 51 *N. Y.* 33, which see.
- *v. Miller*, 7 *Hun*, 427. Rev'd in 71 *N. Y.* 118; s. c., 27 *Am. R.* 13. Further decision in 78 *N. Y.* 393. See *Hawkins v. Pemberton*; *Hoe v. Sanborn*; *Luby v. Hudson River R. R. Co.*; *Passinger v. Thornburn*; *Seixas v. Woods*. Decision in 71 *Id.* explained (Sale of specific chattel by description) in 2 *Benj. on Sales*, § 966, n. 24 (*Corbin's* 4 *Am. ed.*); *Id.* § 988, n. 35. Decision in 78 *N. Y.* followed (Allowance of interest) in *Robbins v. Carll*, 93 *Id.* 656.
- *v. Moore*, 1 *Paige*, 551. Disting'd (Effect of mistake in recording mortgage) in *Mut. Life Ins. Co. v. Dake*, 1 *Abb. N. C.* 381, 391. Applied (Effect of deed absolute in terms, as mortgage) in *Odell v. Montross*, 68 *N. Y.* 503.
- *v. Munroe*, 12 *Abb. Pr.* 357; s. c., 33 *Barb.* 650. Applied (Discretion as to hearing renewal of motion) in *Belmont v. Erie R'y Co.*, 52 *Barb.* 648; *Smith v. Spalding*, 30 *How. Pr.* 341. Cited as authority in *Riggs v. Pursell*, 74 *N. Y.* 379. Referred to as overruled in effect (Appeal from discretionary order) by *Matter of Duff*, 41 *How. Pr.* 350,—in *Central Nat. B'k v. Clark*, 34 *Super. Ct. (J. & S.)* 487.
- *v. Nellis*, 31 *Barb.* 279. Aff'd in 31 *N. Y.* 405. See *Bartley v. Richtmyer*; *Hewit v. Prime*; *Knight v. Wilcox*. See cases cited (Proof to sustain action for seduction) in 34 *Am. R.* 367, n.
- *v. Osborn*, 21 *Wend* 72. See *Wilson v. Reed*. Approved as established law (Conversion as between co-tenants) in *Osborn v. Schenck*, 83 *N. Y.* 201, 204. Though thought to conflict with *Mersereau v. Norton*, 15 *Johns.* 179, yet recognized as authority in *Rains v. McNairy*, 4 *Humph. (Tenn.)* 356; s. c., 40 *Am. Dec.* 651, with note, citing also as authority *Waddell v. Cook*, 2 *Hill*, 47 (Effect of judicial sale of share of one co-tenant). Commented on in 2 *Greenl. on Ev.* 14 ed. § 646, n. 1.
- *v. Parker*, 8 *Barb.* 48. See *Egleston v. Knickerbacker*. Followed (Power of guardian to bind ward) in *Carman v. Cowles*, 2 *Redf.* 414, 417.
- *v. Platt*, 5 *Den.* 269. Followed (Claims against attorney for money collected, how affected by discharge in bankruptcy) in *Flanagan v. Pearson*, 42 *Tex.* 1; s. c., 19 *Am. R.* 40. Cited as authority (Rights of pledgee of commercial paper) in *Clarke v. Iselin*, 21 *Wall.* 360, 368.
- *v. Ross*, 15 *Abb. Pr.* 66; s. c., 4 *Abb. Ct. App. Dec.* 589. Approved (Liability of premium notes received in one department to assessment in another) in *Sands v. Boutwell*, 26 *N. Y.* 233 236, and see reporter's note on p. 236.
- *v. Schnyler*, 1 *Abb. Pr. N. S.* 300. Approved (Equitable remedy to compel transfer of stock) in *Cushman v. Thayer M'fg Jewelry Co.*, 76 *N. Y.* 365, 369.
- *v. Scott*, 4 *Barb.* 56. Dictum disapproved (Validity of town ordinance allowing animals to run on highway) in *Griffin v. Martin*, 7 *Id.* 297, 302.
- *v. Seaver*. See *Tallman v. Green*. Disting'd (Liability for false representations on sale) in *Sherman v. Johnson*, 56 *Barb.* 53, 63. Disting'd in *Wheaton v. Newcombe*, 48 *Super. Ct. (J. & S.)* 215, 219, a case of statement on settlement of account.
- *v. Skinner*, 13 *Johns.* 307; s. c., 7 *Am. Dec.* 381. See *Dusenberry v. Ellis*. Disting'd (Liability on contract made as agent) in *Hegeman v. Johnson*, 35 *Barb.* 200, 205; *St. Andrew's Bay Land Co. v. Mitchell*, 4 *Fla.* 192; s. c., 54 *Am. Dec.* 340, with note.
- *v. Smith*, 4 *Hill*, 166. Rev'd in 7 *Id.* 520.
- *v. —*, 1 *Lans.* 469. Rev'd in 46 *N. Y.* 418. Decision in 1 *Lans.* disting'd (Reference on reversal of judgment) in *Devlin v. Mayor, &c. of N. Y.*, 6 *Daly*, 386, 389.
- *v. —*, 6 *Lans.* 5. Aff'd in 54 *N. Y.* 522. Decision in 6 *Lans.* cited (Liability of stock-broker for revoking general agreement to buy, hold and sell stocks for commission) in *Whart. Com. on Ag.* § 726.
- *v. Spencer*, 14 *N. Y.* 247. Applied (Enjoyment of easement by license, not evidence of title) in *Flora v. Carbeau*, 38 *N. Y.* 116. Approved (Waiver of defects in form, by neglect to correct them by motion) in *Pomeroy on Rem.* § 600.
- *v. Springfield Bank*, 1 *Barb.* 225. Further decision in 3 *Sandf.* 222. See *Stalker v. McDonald*. Decision in 3 *Sandf.* followed (Effect of payment of precedent debt, to make one holder for value) in *Purchase v. Mattison*, 3 *Bosw.* 310, 312; *Farrington v. Frankfort Bank*, 31 *Barb.* 183, 188, 193; *Prentiss v. Graves*, 33 *Id.* 621, 626; *N. Y. Marbled Iron Works v. Smith*, 4 *Duer*, 362, 377. Questioned with *N. Y. Marbled Iron Works v. Smith*; *Purchase v. Mattison*, in *Hoyt v. Hoyt*, 8 *Bosw.* 511, 527.
- *v. Story*, 2 *Hill*, 543. Reconciled with *Howard v. Cavendish, Palmer*, 246 (Assigning widow portion of building for dower) in *Tyler on Inf. & Cov.* 2 ed. 628.
- *v. Vankirk*, 25 *Barb.* 16. Further de-

- cision to same effect, as *White v. Ashton*, 51 *N. Y.* 280.
- *v. Wager*, 32 *Barb.* 250. Aff'd in 25 *N. Y.* 328. See *Minier v. Minier*; *Shepard v. Shepard*. Decision in *Id.* explained as a case arising at law (Validity of deed from wife to husband) in *Townshend v. Townshend*, 1 *Abb. N. C.* 83; *Hunt v. Johnson*, 44 *N. Y.* 34. Followed in *Winans v. Peebles*, 32 *Id.* 425. Applied to sale of personalty by husband to wife, in *Savage v. O'Neil*, 42 *Barb.* 379. To wife's right of action against husband, in *Freethy v. Freethy*, *Id.* 644, and to husband's against wife, in *Perkins v. Perkins*, 62 *Id.* 533. Disting'd with *Winans v. Peebles*, 32 *N. Y.* 423, in *Sims v. Rickets*, 35 *Ind.* 181; s. c., 9 *Am. R.* 679, 686, a case of conveyance by husband to wife, citing *Simmons v. McElwain*, 26 *Barb.* 419. Referred to in *Tyler on Inf. & Cov.* 2 ed. § 454, as stating a principle which has never been directly repudiated, the doctrine being, however, said to be technical, and to have been easily and frequently evaded. Compared with other authorities in 7 *South. L. J. N. S.* 84. Applied (Right of married woman to convey real estate) in *McKesson v. Stanton*, 50 *Wisc.* 297, 305.
- *v. Williams*, 1 *Paige*, 502. See *Hil-dreth v. Sands*. Followed and approved (Assignability of vendor's lien) in *Briggs v. Hill*, 3 *How. (Miss.)* 362; s. c., 38 *Am. Dec.* 441, 444, with note. Reviewed with other cases in *Hall's Exec. v. Click*, 5 *Ala.* 363; s. c., 39 *Am. Dec.* 327, 329, with note. Followed in *Wellborn v. Williams*, 9 *Ga.* 86; s. c., 52 *Am. Dec.* 427, 434, as according with the weight of authority. Reviewed at length in *Schnebley v. Ragan*, 7 *Gill & J. (Ind.)* 120; s. c., 28 *Am. Dec.* 195, with note. Relied on with *Hallock v. Smith*, 3 *Barb.* 267, in *Perkins v. Gibson*, 51 *Miss.* 699; s. c., 24 *Am. R.* 644, 653. Collated with other cases in 12 *Am. Dec.* 263, n.
- *v. —*, 48 *Barb.* 222. Rev'd (Discrepancy between distance named in conveyance, and fixed monument) in 48 *N. Y.* 344.
- White's Bank of Buffalo v. Nichols**, 64 *N. Y.* 65. Followed (Effect of conveyance of land bounded by highway) in *Putzel v. Van Brunt*, 40 *Super. Ct. (J. & S.)* 501, 511; *Matter of Opening 67th St.*, 60 *How. Pr.* 264, 269.
- Whited v. Germania Fire Ins. Co.**, 13 *Hun.* 191. Aff'd in 76 *N. Y.* 415; s. c., 32 *Am. R.* 330. Decision in *Id.* followed (Waiver of conditions by agent of insurance company) in *Putnam v. Commonwealth Ins. Co.*, 18 *Blatchf. C. Ct.* 368, 373. Applied in *Home Ins. Co. v. Duke*, 84 *Ind.* 253, 255. Collated with other cases in 27 *Am. R.* 597, n.
- Whitehall Transp. Co. v. N. J. Steamboat Co.**, 51 *N. Y.* 369. Applied (Interest in action for injury caused by negligence) in *Lackin v. Del. & Hud. Canal Co.*, 22 *Hun.* 339.
- Whitehead v. Buffalo & Lake Huron R'y Co.**, 18 *How. Pr.* 218. See *Hulbert v. Hope Mut. Ins. Co.* Disting'd (Jurisdiction over foreign corporations) in *Prouty v. Mich. Southern, &c. R. R. Co.*, 1 *Hun.* 658.
- *v. Kennedy*, 7 *Hun.* 230. Rev'd in 69 *N. Y.* 462. Decision in *Id.* disting'd (Attorney's lien) in *Matter of Knapp*, 85 *Id.* 284, 299. See *Code Civ. Pro.* § 1881, § 66.
- *v. Smith*, 14 *Hun.* 531. Aff'd in 81 *N. Y.* 151. Decision in 14 *Hun.* disting'd and explained (Who may be witness against executor) in *Hall v. Richardson*, 22 *Id.* 444, 447.
- Whiteman v. Leslie**, 54 *How. Pr.* 494. Aff'd in effect, it seems, in 77 *N. Y.* 609, but without opinion.
- Whiteside v. People**, 26 *Wend.* 634. Cited with other cases (Proceedings of public bodies) in 12 *Am. L. Reg. N. S.* 549.
- Whitford v. Laidler**, 25 *Hun.* 136. Compare (Contracts by trustees of association) *Stearns v. Allen*, *Id.* 559.
- *v. Panama R. Co.*, 3 *Bow.* 67. Aff'd with approval of the reasoning, in 23 *N. Y.* 465. See *Vanderwerken v. N. Y. & New Haven R. R. Co.* Decision in 23 *N. Y.* applied (Law of place, as governing carrier's performance) in *Faulkner v. Hart*, 44 *Super. Ct. (J. & S.)* 486. Disting'd (Liability for tort committed in another jurisdiction) in *Van Buskirk v. Warren*, 2 *Keyes*, 129. Compare (Territorial effect of statutory liability) *Lowry v. Iman*, 6 *Abb. Pr. N. S.* 397. Followed (Right of action for injury causing death) in *Green v. Hudson River R. R. Co.*, 2 *Abb. Ct. App. Dec.* 282, 286. Explained and applied in *Mahler v. Norwich & N. Y. Transp. Co.*, 45 *Barb.* 226; *Stallknecht v. Penn. R. R. Co.*, 13 *Hun.* 453; 53 *How. Pr.* 308. Explained in *McDonald v. Mallory*, 77 *N. Y.* 550; *Leonard v. Columbia Steam Nav. Co.*, 84 *Id.* 48, 53. Applied in *Schlichting v. Wintgen*, 25 *Hun.* 626, 629. Disting'd in *Littlewood v. Mayor, &c. of N. Y.*, 89 *N. Y.* 24, 29. Relied on in *Hyde v. Wabash, St. Louis, &c. R'y Co.*, 61 *Iowa.* 441; s. c., 47 *Am. R.* 820. Followed in *Willis v. Missouri, Pacific R'y Co.*, 61 *Tex.* 432; s. c., 48 *Am. L.* 301; *McDonald v. Mallory*, 77 *N. Y.* 546, being disting'd and also said to be repudiated in part by some of the courts and text-writers. Disting'd, and *Leonard v. Columbia Steam Nav. Co.*, 84 *N. Y.* 48, followed (Extra-territorial force of statute giving right of action for personal injury) in *Herrick v. Minneapolis & St. Louis R'y Co.*, 31 *Minn.* 11; s. c., 47 *Am. R.* 771. Disting'd with *Leonard v. Columbia Steam Nav. Co.*, 84 *N. Y.* 48, and the latter approved in *Boyce v. Wabash R'y Co.*, 63 *Iowa.* 70, 72. Applied (Presumption as to statute law of another jurisdiction) in *Ellis v. Maxson*, 19 *Mich.* 186; s. c., 2 *Am. R.* 81.
- Whiting, Matter of**, 2 *Barb.* 513. Applied (Validity of statute requiring railroad com-

- pany, &c. to make change or improvement on its property) in *Commonwealth v. Penn. Canal Co.*, 66 *Penn.* 41; s. c., 5 *Am. R.* 329, 339.
- Whiting v. Barney**, 38 *Barb.* 393. Further decision in 30 *N. Y.* 330. Reviewed at length with *Hebbard v. Haughian*, 70 *Id.* 54; *Edington v. Aetna Life Ins. Co.*, 77 *Id.* 564; *Sloan v. N. Y. Central R. R. Co.*, 45 *Id.* 125; *Dilliber v. Home Life Ins. Co.*, 69 *Id.* 256; *Edington v. Mut. Life Ins. Co.*, 67 *Id.* 185; *Grattan v. Metrop. L. Ins. Co.*, 80 *Id.* 281; *Bacon v. Frisbie*, *Id.* 394; *Pierson v. People*, 18 *Hun.* 139; *Staunton v. Parker*, 19 *Id.* 55 (Extent of "privilege as to professional communications) in *Pearshall v. Elmer*, 5 *Redf.* 181. See *Prouty v. Eaton*, 41 *Barb.* 409; *Brand v. Brand*, 39 *How. Pr.* 289; *Britton v. Lorentz*, 45 *N. Y.* 51. Collated with other cases in 36 *Am. R.* 631, n. Discussed in 1 *Best on Ev.* § 184, n. a, 330, Wood's ed. See *Code Civ. Pro.* 1881, § 835, n.
- **v. Mayor, &c. of N. Y.**, 37 *N. Y.* 600. See opinion of GROVER, J., on the merits, in 6 *Transc. App.* 193.
- **v. Otis**, 1 *Bosw.* 420. See other cases collected (Testimony of parties) in 1 *Abb. N. C.* 362, n.
- Whitley v. Leeds**, 27 *How. Pr.* 378. Disapproved (Allowing stamp to be affixed in court) in *Lewis v. Randall*, 1 *Abb. Pr. N. S.* 135.
- Whitlock's Case**, *Tuck.* 491. Aff'd as *Hoyt v. Bonnett*, 58 *Barb.* 529, but the latter rev'd in 50 *N. Y.* 538. Compare (Limitation of time for enforcing claim against decedent's estate) *Doendorff v. Utz*, 48 *Md.* 298.
- Whitlock v. Duffield**, *Hoffm.* 110. Rev'd in 26 *Wend.* 54. Decision in *Hoffm.* explained, as not authority, and the contrary held (Specific performance of covenant of renewal of lease) in *Kelso v. Kelly*, 1 *Daly.* 419, 422; *Robinson v. Kettletas*, 4 *Edw.* 67. Followed and explained in *Western Trans. Co. of Buffalo v. Lansing*, 49 *N. Y.* 499, 505.
- Whitman v. Conner**, 40 *Super. Ct. (J. & S.)* 339. Followed with *Guillander v. Howell*, 35 *N. Y.* 657 (Mortgage of chattels, by what law governed) in *Ames' Iron Works v. Warren*, 76 *Ind.* 512; s. c., 40 *Am. R.* 258.
- **v. Hogan**, 15 *Hun.* 197. Rev'd in 85 *N. Y.* 243.
- **v. Nicol**, 38 *Super. Ct. (J. & S.)* 528. Further proceeding in 16 *Abb. Pr. N. S.* 329; s. c., 49 *How. Pr.* 88.
- Whitmarsh v. Hall**, 3 *Den.* 375. See *Medbury v. Watrous*. Disting'd (Right of set-off) in *Taylor v. Mayor, &c. of N. Y.*, 82 *N. Y.* 10, 19. Explained (Recovery by infant who has disaffirmed contract) in 2 *Pars. on Contr.* 37, n. g. Referred to in *Tyler on Inf. & Cov.* 2 ed. § 39, as laying down what is undoubtedly the true rule. Included in *Ewell Lead. Cus. on Inf. &c.* 107. Explained in 1 *Chitty on Contr.* 200, n. o, 11
- Am. ed.* Explained (Contracts for work, labor and services) in 2 *Id.* 856, n. z.
- Whitmore v. Foose**, 1 *Den.* 159. Followed and approved (Limitation of time within which to enforce claims against decedent's estate) in *Tucker v. Tucker*, 4 *Abb. Ct. App. Dec.* 428, 433. Compare *Dolbeer v. Casey*, 19 *Barb.* 149.
- **v. Mayor, &c. of N. Y.**, 5 *Hun.* 195. Aff'd on the construction of the statute, solely, in 67 *N. Y.* 21. Decision in *Id.* applied (Who are local officers of N. Y. city, &c. government) in *People ex rel. Phelps v. General Sessions*, 13 *Hun.* 398; *Taylor v. Mayor, &c. of N. Y.*, 67 *N. Y.* 93. Decision in 5 *Hun.* applied in *Goettman v. Mayor, &c. of N. Y.*, 6 *Id.* 132. Disting'd in *Brinck v. Mayor*, 16 *Id.* 340, 343.
- Whitney v. Allaire**, 4 *Den.* 554. Aff'd in 1 *N. Y.* 305. Prior decision as *Allaire v. Whitney*, 1 *Hill*, 484. Decisions in 1 *N. Y.*; 4 *Den.* applied (Remedies of party that has been defrauded in making of contract) in *Harris v. Equitable Life Assur. Soc.*, 3 *Hun.* 732. Applied (Liability for false representations as to value of real estate) in *White v. Seaver*, 25 *Barb.* 239. Approved in *Clark v. Baird*, 9 *N. Y.* 197. Cited as settled law in *Haight v. Hayt*, 19 *Id.* 471, 474. Disting'd in *People v. Stephens*, 71 *Id.* 540, 553. Followed (Parol proof of representations made at time of executing lease) in *Sharp v. Mayor, &c. of N. Y.*, 40 *Id.* 270. Decision in 1 *Id.* limited (Damages for injury resulting from fraudulent representation) in *Sharon v. Mosher*, 17 *Barb.* 521.
- **v. American Ins. Co.**, 3 *Cow.* 210. Aff'd in 5 *Id.* 712.
- **v. Black River Ins. Co.**, 9 *Hun.* 37. Aff'd in 72 *N. Y.* 117; s. c., 28 *Am. R.* 116. See *Paine v. Agricultural Ins. Co.* Decision in 72 *N. Y.* followed (Building, when vacant or unoccupied, within meaning of law of insurance) in *Stnipski v. Trans. F. Ins. Co.*, 43 *Mich.* 373, 375.
- **v. Elmer**. See *Gillet v. Mead*.
- **v. Ferris**, 10 *Johns.* 66. Applied with *Sweeting v. Turner*, 10 *Id.* 216; *Whitney v. Sterling*, 14 *Id.* 215; *Harris v. Wilson*, 7 *Wend.* 57 (Declarations of partner, as evidence that another person is member of the firm) in *Grafton B'k v. Moore*, 13 *N. H.* 99; s. c., 38 *Am. Dec.* 478, with note, as sustaining a well established principle.
- **v. Groot**, 24 *Wend.* 82. Disting'd with *Rogers v. Warner*, 8 *Johns.* 119 (Liability for statements inducing sales) in dissenting opinion of RUSSELL, J., in *Macullar v. McKinley*, 49 *Super. Ct. (J. & S.)* 5. Criticised (Continuing guaranties) in *Menard v. Scudder*, 7 *La. Ann.* 385; s. c., 56 *Am. Dec.* 610. See to the contrary *Rose v. N. P.* 457, and see *Abb. Tr. Ev.* 473. Collated with other cases in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 109.
- **v. Hitchcock**, 4 *Den.* 461. Applied (Exemplary damages in case where defend-

- ant is liable criminally) in *Fay v. Parker*, 53 *N. H.* 342; s. c., 16 *Am. R.* 270, 325; *People v. Goodwin*, 18 *Johns.* 187, being also cited (Effect of constitutional provision against one being twice put in jeopardy of life or limb).
- *v. Krows*, 11 *Barb.* 198. Sustained (Validity of assignment with discretionary power) in *Benedict v. Huntington*, 32 *N. Y.* 219, 222. Explained in *Burrill on Assign.* § 224, 4 ed. Collated with other cases in *Bishop on Assign.* § 211.
- *v. Lewis*. See *Frisbie v. Hoffnagel*; *Tallmadge v. Wallis*.
- *v. Martine*, 6 *Abb. N. C.* 72. Rev'd in 47 *Super. Ct. (J. & S.)* 396, and that rev'd in 88 *N. Y.* 535.
- *v. Mayor, &c. of N. Y.*, 6 *Abb. N. C.* 329, n. See *Presbyterian Church v. City of N. Y.* Applied (Rights of one to whom land under water is granted by municipal corporation) in *Langdon v. Mayor, &c. of N. Y.*, 6 *Abb. N. C.* 328, which was rev'd in 93 *N. Y.* 129, where also *Furman v. Mayor, &c. of N. Y.*, 5 *Sanif.* 16; *Marshall v. Guion*, 11 *N. Y.* 461; *Van Zandt v. Mayor*, 8 *Bosw.* 375, were disting'd.
- *v. Meyers*, 1 *Duer*, 266. Explained (Eviction as bar to rent) in *Healy v. McManus*, 23 *How. Pr.* 238, 240.
- *v. Nat. B'k of Potsdam*, 45 *N. Y.* 303. Disting'd (Warranty on transfer of note) in *Littauer v. Goldman*, 72 *Id.* 506, 511.
- *v. N. Y. Firemen Ins. Co.*, 18 *Johns.* 208. Disting'd (What constitutes total loss of freight) in *Hubbell v. Great Western Ins. Co.*, 74 *N. Y.* 246, 254.
- *v. Shufelt*, 1 *Den.* 592. Applied (Proof that authorizes granting of judicial order) in *Scott v. Durfee*, 59 *Barb.* 393, n.; *Sperry v. Major*, 1 *E. D. Smith*, 363.
- *v. Snyder*, 2 *Lans.* 477. See *Chapman v. Rose*. Disting'd (Rights of bona fide holders on note obtained by fraud or misrepresentation) in *Chapman v. Rose*, 56 *N. Y.* 137, 142. Disting'd in *Mosher v. Carpenter*, 13 *Hun.* 604. Questioned, but followed as authoritative until rev'd,—in *Head v. Smith*, 44 *How. Pr.* 476. Applied in *Hotchkiss v. English*, 4 *Hun.* 371. Followed and approved in *Gibbs v. Linabury*, 22 *Mich.* 479; s. c., 7 *Am. R.* 675, with note collating cases; *Briggs v. Ewart*, 51 *Mo.* 245; s. c., 11 *Am. R.* 445, 449, with note collating cases. Followed in *Walker v. Egbert*, 29 *Wis.* 194; s. c., 9 *Am. R.* 548, with note; *Cline v. Guthrie*, 42 *Ind.* 227; s. c., 13 *Am. R.* 357. See *Douglas v. Matting*, 29 *Iowa*, 498; s. c., 4 *Am. R.* 238, with note.
- *v. Sterling*, 14 *Johns.* 215. See *Halliday v. McDougall*; *Whitney v. Ferris*. Opposed with *McPherson v. Rathbone*, 11 *Wend.* 97 (General reputation as evidence of partnership) in *Bowen v. Rutherford*, 60 *Ill.* 41; s. c., 14 *Am. R.* 25. Said with *Gowan v. Jackson*, 20 *Johns.* 176; *McPherson v. Rathbone*, 11 *Wend.* 96, in *Grafton Bank v. Moore*, 13 *N. H.* 99; s. c., 38 *Am. Dec.* 478, 480, with note to have been overruled in *Halliday v. McDougall*, 20 *Wend.* 81. Compare *Bernard v. Torrance*, 5 *Gill & J. (Md.)* 383; *Roscoe on Ev.* 212.
- *v. Sutton*. See *Noyes v. Hewitt*.
- *v. Taylor*, 54 *Barb.* 536. Explained (Warranty on sale of horse) in 2 *Benj. on Sales*, § 941, n. 12 (Corbin's 4 *Am. ed.*).
- *v. Thomas*, 23 *N. Y.* 281. Applied (Deed, &c. as evidence of regularity of tax sale) in *Sanders v. Leavey*, 38 *Barb.* 73. Disting'd (Jurisdiction to make assessment) in *Stewart v. Fonda*, 19 *Hun.* 197; *Buffalo, &c. R. R. Co. v. Sup'rs of Erie*, 48 *N. Y.* 97. Reviewed with other cases and applied in *Nat. B'k of Chemung v. City of Elmira*, 53 *Id.* 53.
- *v. Townsend*, 7 *Hun.* 233. Aff'd in effect in 67 *N. Y.* 40.
- *v. Waterman*, 4 *How. Pr.* 313. Disting'd (Appealable order) in *Salters v. Genin*, 10 *Abb. Pr.* 478, 480.
- *v. Wells*. See *Simmons v. Sherman*.
- *v. Whitney*, 49 *Barb.* 319. Compared (Right of wife to contract with husband) in *Van Order v. Van Order*, 8 *Hun.* 315.
- *v. Wright*, 15 *Wend.* 171; s. c., 12 *N. Y. Com. L. Law. ed.* 825, with brief note. Commented on, and reporter's abstract corrected (Evidence of former recovery in ejectment) in *Wheeler v. Ryerss*, 4 *Hill*, 466.
- Whitney Arms Co. v. Barlow**, 38 *Super. Ct. (J. & S.)* 554. Rev'd in 63 *N. Y.* 62; s. c., 20 *Am. R.* 504, on question of sufficiency of report. Further decision in 41 *Super. Ct. (J. & S.)* 220; and that aff'd in 68 *N. Y.* 34. See *Bissell v. Michigan Southern, &c. R. R. Co.* Decision in 63 *Id.* disting'd (Estoppel of corporation to show invalidity of its contract) in *Joslyn v. Dow*, 19 *Hun.* 497. Applied in *Seeley v. Morgan*, 49 *Super. Ct. (J. & S.)* 346. Followed in *Hatch v. Western Union Tel. Co.*, 9 *Abb. N. C.* 430, 435; *Ward v. Johnson*, 95 *Ill.* 215, 240. Explained with *Parish v. Wheeler*, 22 *N. Y.* 494; *Bissell v. Michigan Southern, &c. R. R. Co.*, *Id.* 258, in *Memphis & Little Rock R. R. Co. v. Dow*, *U. S. Cir. Ct. S. D. N. Y.* 17 *Reporter*, 424; s. c., 19 *Fed. Rep.* 388. Explained in *Morawetz on Corp.* § 103. Applied (Judgment against corporation, as evidence against trustees) in *Esmond v. Bullard*, 16 *Hun.* 67. Followed in *Chase v. Curtis*, 113 *U. S.* 452, 459; s. c., 19 *Reporter*, 420. Disting'd (Sufficiency of statement as to amount of capital, in trustee's report) in *Glen's Falls Paper Co. v. White*, 18 *Id.* 216. Explained (Penal character of liability of trustees, of corporation) in *Glen's Falls Paper Co. v. White*, 58 *How. Pr.* 174. Decision in 68 *N. Y.* followed as decisive (Liability of trustees for making untrue report) in *Bonnell v. Griswold*, 80 *Id.* 136. See other cases collected (Nature of liability of officer, &c. of corporation) in 6 *Abb. N. C.* 259, n.
- Whitton v. Spring**, 74 *N. Y.* 169. Quoted

- (Authority to receive payment) in 2 *Benj. on Sales*, § 1095, n. 25 (Corbin's 4 Am. ed.); *Id.* § 1099, n. 26. See to the contrary *Rose. N. P.* 657. And see *Abb. Tr. Eo.* 801.
- Whittaker v. Eight Ave. R. R. Co.** See *Whitaker v. Same*.
- Whittemore v. Elliott**, 7 *Hun.* 518. Cited (Separate liability of particular partner when a liability of the firm) in *Story on Partn.* 7 ed. § 867, n.
- *v. Farrington*, 12 *Hun.* 349. Aff'd in 76 *N. Y.* 452. Previous decision in 7 *Hun.* 392. See *Penny v. Martin*.
- Whittlesey v. Frantz**, 74 *N. Y.* 456. Followed (Jurisdictional averment, when taken as true) in *Matter of Farnham*, 75 *N. Y.* 190.
- Wibert v. N. Y. & Erie R. R. Co.**, 19 *Barb.* 36. Aff'd, on the ground that the defendants were not liable for the delay, in 12 *N. Y.* 245. See *Bostwick v. Champion*; *Conger v. Hudson River R. R. Co.*; *Weed v. Saratoga & Schenectady R. R. Co.* Decision in 19 *Barb.* dissented from (Measure of damages for failure of carrier to transport according to contract) in *Kent v. Hudson River R. R. Co.*, 22 *Id.* 278, 286. Followed in *Jones v. N. Y. & Erie R. R. Co.*, 29 *Id.* 633, 635; *Kirkland v. Leary*, 2 *Sweeny*, 677, 683; *Conger v. Hudson River R. R. Co.*, 6 *Duer*, 379, 382. Limited with *Jones v. N. Y. & Erie R. R. Co.*, in *Ward v. N. Y. Central R. R. Co.*, 47 *N. Y.* 29, 33. Explained in 3 *Par. on Contr.* 183, n. 4. Decision in 12 *N. Y.* explained (What is reasonable time for performance of contract) in *New Haven & Northampton Co. v. Quintard*, 6 *Abb. Pr. N. S.* 131. Disting'd (Liability of carrier for delay) in *Blackstock v. N. Y. & Erie R. R. Co.*, 1 *Bow.* 81; which was aff'd in 20 *N. Y.* 50, which see. Disting'd in *Tierney v. N. Y. Central, &c. R. R. Co.*, 76 *Id.* 305, 311. Approved (Effect of general railroad act on liability of companies as carriers) in *Bissell v. N. Y. Central R. R. Co.*, 25 *Id.* 452.
- Wice v. Commercial Ins. Co.**, 7 *Daly*, 258; s. c., 2 *Abb. N. C.* 325. Another proceeding in 8 *Daly*, 70. See (Liability for costs of guardian *ad litem*) *Sparmann v. Keim*, 6 *Abb. N. C.* 353, and *Id.* 354, n.
- Wickelhausen v. Willett**, 10 *Abb. Pr.* 164. Aff'd in 12 *Abb. Pr.* 319; s. c., 21 *How.* *Pr.* 40; and that aff'd as *Wilckens v. Willett*, 4 *Abb. Ct. App. Dec.* 596; s. c., 1 *Keyes*, 521. Decision in 10 *Abb. Pr.* 168, not followed (Power of legislative bodies to punish for contempt) in *People ex rel. McDonald v. Keeler*, 32 *Hun.* 592.
- Wicker v. Dresser**, 4 *Abb. Tr.* 93; s. c., 13 *How. Pr.* 331. Approved (Punishment for contempt in supplementary proceedings) in *Kearney's Case*, 13 *Abb. Pr.* 459, 466, in preference to *Shepherd v. Dean*, 13 *How. Pr.* 173. Explained in *Holstein v. Rice*, 15 *Abb. Pr.* 313. Followed in *Hilton v. Patterson*, 18 *Id.* 248; *Tremain v. Richardson*, 68 *N. Y.* 617, 619. Explained in *People v. Brennan*, 45 *Barb.* 347, a case of proceeding for cancellation of lien.
- Wickes v. Adirondack Co.**, 2 *Hun.* 112; s. c., with opinion, 4 *Sup'm. Ct. (T. & C.)* 250.
- *v. Clark*, 3 *Edw.* 53. Modified in 8 *Paige*, 161. Approved and disting'd (Contract by wife with husband) in *Campbell v. Campbell*, 79 *Ky.* 395, 398.
- Wickham v. Freeman**, 12 *Johns.* 183. Applied (Disseisee's right of action for trespass) in *Budd v. Bingham*, 18 *Barb.* 497. Relied on with *Case v. De Goes*, 3 *Cal.* 261; *Van Brunt v. Schenck*, 11 *Johns.* 377; in *Bacon v. Sheppard*, 6 *Halst. (N. J.)* 197; s. c., 20 *Am. Dec.* 583, with note. See exposition in 13 *Co.* 21.
- Wicks v. Bowman**, 5 *Daly*, 225. Explained (Effect of destruction of property contracted to be sold, before delivery of deed) in *Aspinwall v. Balch*, 4 *Abb. N. C.* 193, 197. Cited and compared in 25 *Moak Eng.* 71. Collated with other cases in *McAdam on Land. & T.* 2 ed. § 64.
- *v. Hatch*, 38 *Super. Ct. (J. & S.)* 95. Aff'd in 62 *N. Y.* 535. See *Kingsbury v. Kirwan*.
- Wickware v. Bryan**, 11 *Wend.* 545. Overruled (Passing on issue of law after plea of general issue) in *Jones v. Thompson*, 6 *Hill*, 621.
- Wickwire v. Chapman**, 15 *Barb.* 302. Approved and followed (Preference of guardian of infant, as to letters of administration) in *Cluett v. Mattice*, 43 *Id.* 417, 419. But compare *Cottle v. Vanderheyden*, 11 *Abb. Pr. N. S.* 17.
- Widening Carlton St., Matter of**, 16 *Hun.* 497. Aff'd as *Matter of City of Buffalo*, 73 *N. Y.* 362.
- Widows' and Orphans' Ben. Life Ins. Co., Matter of**, 13 *Hun.* 115. Aff'd, it seems, in 74 *N. Y.* 617, but without opinion.
- Widrig v. Oyer**, 13 *Johns.* 124. Collated with other cases (Charge of crime involving moral turpitude) in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 99.
- Wiest v. Critsinger**, 4 *Johns.* 117. See (Costs in justice's court) *Code Civ. Pro.* 1881, § 3075, n.
- Wigand v. Dejonge**, 18 *Hun.* 405. Another proceeding in 8 *Abb. N. C.* 260. See *Wood v. Wood*.
- *v. Sichel*, 3 *Keyes*, 120; s. c., 33 *How. Pr.* 174; and as *Weigand v. Same*, 4 *Abb. Ct. App. Dec.* 592. Aff'g *Kayser v. Sichel*, 34 *Barb.* 84. See *Roth v. Palmer*. Decision in 4 *Abb. Ct. App. Dec.* doubted (Remedy by assumpsit on rescission of contract) in *Kellogg v. Turpie*, 93 *Ill.* 265; s. c., 34 *Am. R.* 163. Decision in *Id.* approved (Remedy of seller on discovery that credit was obtained by fraud) notwithstanding conflicting authorities, in *Dietz v. Sutcliffe*, 80 *Ky.* 650, 654.
- Wiggin v. Bush**, 12 *Johns.* 306; s. c., 7 *Am. Dec.* 324. See *Callagan v. Hallett*. Disting'd (Illegality in consideration of bill

- or note, when to be set up against third person) in *Haight v. Joice*, 2 *Cal.* 64; s. c., 56 *Am. Dec.* 311. Followed (Validity of obligation executed on condition that obligee withdraw his objections to discharge of obligor as bankrupt, &c.) in *Rice v. Maxwell*, 13 *Smedes & M. (Miss.)* 239; s. c., 53 *Am. Dec.* 85, with note; *Payne v. Eden*, 3 *Cal.* 217, being also cited as bearing on the point.
- *v. Gans*, 4 *Sandf.* 646. Explained (Examination of party to suit) in *Phoenix v. Dupuy*, 7 *Daly*, 233, 241. Commented on in *Hoffm. on Referees*, 45.
- *v. Mayor, &c. of N. Y.*, 9 *Paige*, 16. See *Hartwell v. Armstrong*; *Livingston v. Mayor, &c. of N. Y.*; *Van Rensselaer v. Kidd*. Followed (Assessment as creating cloud of title) in *Murphey v. Mayor, Del. Ct. of App. &c.* June, 1880; 22 *Alb. L. J.* 387, 389.
- *v. Woodruff*, 16 *Barb.* 474. Compare (Affidavit in summary proceedings) *Matter of Wiggins*, 11 *N. Y. Leg. Obs.* 89.
- Wiggins v. Armstrong**, 2 *Johns. Ch.* 144. See *McDowell v. Second Ave. R. R. Co.* Followed as settled law (Right of creditor at large to control disposition of debtor's property) in *Greenwood v. Broadhead*, 8 *Barb.* 595. Followed in *Rhodes v. Cousins*, 6 *Rand. (Va.)* 188; s. c., 18 *Am. Dec.* 715, with note. Disting'd in *Ward v. McKenzie*, 33 *Tex.* 297; s. c., 7 *Am. R.* 260. Quoted in 2 *High on Inj.* 2 ed. § 1403, n. 2. Commented on and quoted in *Wait on Fraud. Conv.* § 52.
- *v. Howard*, 22 *Hun*, 126. Aff'd in 83 *N. Y.* 613.
- *v. Tallmadge*, 11 *Barb.* 457. Subsequent decision dismissing appeal in 7 *How. Pr.* 404. See *Brown v. Brown*. Decision in 11 *Barb.* criticised with *Holdane v. Trustees of Cold Spring*, 23 *Id.* 103; 21 *N. Y.* 474 (*Cul-de-sac* as public highway) in *Hickok v. Trustees of Plattsburgh*, 41 *Barb.* 130, 136. Approved in *People v. Kingman*, 24 *N. Y.* 559. Collated with *Holdane v. Trustees of Cold Spring*, 23 *Barb.* 103; *People v. Kingman*, 24 *N. Y.* 559, and other cases in 29 *Am. R.* 51.
- Wightman v. Wightman**, 4 *Johns. Ch.* 343. Compare (Effect of marriage within degrees of consanguinity) *Campbell v. Crampton*, 8 *Abb. N. C.* 363, 373. Discussed in 2 *Kent Com.* 83. Relied on (Ratification of marriage contracted between parties not capable of contracting at the time) in *Jones v. Jones*, 36 *Md.* 447; s. c., 11 *Am. R.* 505. Said with *Ferlat v. Gojon*, *Hoek.* 487 (Authority of court of chancery in *N. Y.*, to declare marriage null and void) in *Mattison v. Mattison*, 1 *Strob. Eq. (So. Car.)* 387; s. c., 47 *Am. Dec.* 541, 543, to declare a doctrine not applicable to the court of equity in that State. Disapproved (Attacking void marriage collaterally) in *Mountholly v. Andover*, 11 *Verm.* 226; s. c., 34 *Am. Dec.* 685. Followed (Marriage of lunatic is void) in *Crump v. Morgan*, 3 *Tred. L. (N. C.)* 91; s. c., 40 *Am. Dec.* 447, 452. Included with notes in *Ewell Lead. Cas. on Inf. &c.* 602. Relied on (Propriety of judicial decision pronouncing nullity of marriage void for insanity) in *Powell v. Powell*, 18 *Kans.* 371; s. c., 26 *Am. R.* 774. Confirmed with *Williamson v. Williamson*, 1 *Johns. Ch.* 489 (Annulling marriages) in 21 *Am. L. Reg. N. S.* 564. Discussed in 1 *Bish. on Mar. & D.* § 120, n. 3, 6 ed.
- Wilber v. Sisson**, 53 *Barb.* 258. Aff'd in 54 *N. Y.* 121.
- Wilbur v. Danolds**, 59 *N. Y.* 657. Compare (Discretion as to granting writ of assistance) *Thomas on Mort.* 372. Compare *Code Civ. Pro.* § 1675.
- Wilbrand v. Eighth Ave. R. R. Co.**, 3 *Bosw.* 314. Criticised as obiter (Extent of rights of city railroad companies in streets) in *Adolph v. Central Park, &c. R. R. Co.*, 33 *Super. Ct. (J. & S.)* 186, 188. Relied on in *State v. Foley*, 31 *Iowa*, 527; s. c., 7 *Am. R.* 166, 170.
- Wilbur v. Brown**, 3 *Den.* 356. Explained (Requisites of complaint in action for diverting water) in *Beckwith v. Griswold*, 29 *Barb.* 291, 294.
- *v. How.* See *Doolin v. Ward*; *Jones v. Caswell*.
- *v. Hubbard*, 35 *Barb.* 303. Discussed (Trespasses on realty by cattle and domestic animals) in 1 *Add. on Torts*, 389, n. 1, Wood's ed. Explained (Presumptions) in 2 *Best on Ev.* § 446, n. a, Wood's ed.
- *v. Selden*, 6 *Cow.* 162; s. c., 8 *N. Y. Com. L. Law. ed.* 867, with brief note. See to the contrary (Requisites of proof of what deceased witness said on former trial) *Martin v. Cope*, 3 *Abb. Ct. App. Dec.* 182; *Crary v. Sprague*, 12 *Wend.* 45; *Cornell v. Green*, 10 *Serg. & R. (Pa.)* 16; *Chess v. Chess*, 17 *Id.* 409; *Ballenger v. Barnes*, 3 *Dev. (N. C.)* 460; *Bowie v. O'Neale*, 5 *II. & J. (Md.)* 226; *Pegram v. Isabel*, 2 *H. & M. (Va.)* 193; *Mayor of D. v. Day*, 3 *Taunt.* 261. Followed in *Commonwealth v. Richards*, 18 *Pick. (Mass.)* 434; s. c., 29 *Am. Dec.* 608, with note. Criticised as laying down too strict a rule, in 1 *Taylor on Ev.* 501, citing also *Jackson v. Bailey*, 2 *Johns.* 17. Reviewed with other cases (Evidence of testimony of witness that is beyond jurisdiction) in *Gerhausen v. No. British, &c. Co.*, 7 *Nev.* 174. Followed in *Crite v. Commonwealth, Sup'm. Ct. App. Va. July*, 1881, 12 *Reporter*, 575. Cited in 1 *Taylor on Ev.* 457.
- Wilckens v. Willet.** See *Wickelhausen v. Willett*.
- Wilcox v. Fitch.** See *People v. Gilbert*.
- *v. Green*, 23 *Barb.* 639. Said in *Id.* 643, n., to have been aff'd in *Ct. of App.* 1856.
- *v. Hawley*, 31 *N. Y.* 648. See *Hoyt v. Van Alstyne*. Applied (Exemption of team of householder from execution) in *Smith v. Slade*, 57 *Barb.* 637, 639. Dis-

- ting'd in *Brooks v. Hathaway*, 8 *Hun*, 289, 291. See *Brown v. Davis*, 9 *Hun*, 43, 45. Explained (Proof necessary to constitute exemption) in *Reinecke v. Flecke*, 35 *Super. Ct. (J. & S.)* 491, 496. Collated with other cases (Meaning of word "family," as used in exemption laws) in *N. J. L. J. Dec.* 1882; s. c., 11 *Wash. L. R.* 1.
- *v. Howell*, 44 *Barb.* 396. Aff'd in 44 *N. Y.* 398. Decision in *Id.* followed (Estoppel by certificate as to validity of mortgage) in *Eitel v. Bracken*, 38 *Super. Ct. (J. & S.)* 7, 15. Disting'd in *Weyh v. Boylan*, 85 *N. Y.* 394, 401.
- *v. Parmelee*, 3 *Sandf.* 610. See *Bostwick v. Champion*; *Van Santvoord v. St. John*; *Weed v. Saratoga & Schenectady R. R. Co.* Approved (Liability on contract to forward goods) in *Read v. Spaulding*, 5 *Bosw.* 395, 404, 410. Explained (Carrier's responsibility beyond his own route) in 2 *Pars. on Contr.* 213, n. u.
- *v. Rome, Watertown, &c. R. R. Co.*, 39 *N. Y.* 358. See *Brown v. N. Y. Central R. R. Co.*; *Dascomb v. Buffalo & State Line R. R. Co.*; *Ernst v. Hudson River R. R. Co.*; *Nichols v. Sixth Ave. R. R. Co.* Disting'd (Negligence in crossing track) in *Gonzales v. N. Y. & Harlem R. R. Co.*, 39 *How. Pr.* 414; *Gillespie v. City of Newburgh*, 54 *N. Y.* 468, 471; *Massoth v. Delaware & Hud. Canal Co.*, 64 *Id.* 529. Followed in *Mitchell v. N. Y. Central, &c. R. R. Co.*, 2 *Hun*, 535, 538; *Baxter v. Troy & Boston R. R. Co.*, 41 *N. Y.* 503. Approved and followed in *Beisiegel v. N. Y. Central R. R. Co.*, 40 *Id.* 22; *Havens v. Erie R'y Co.*, 41 *Id.* 299. Cited in 2 *Whart. Com. on Ev.* § 1253, as contrary to *Penn. R. R. Co. v. Weber*, 76 *Pa. St.* 157.
- *v. Smith*, 5 *Wend.* 231; s. c., 21 *Am. Dec.* 213, with note, wherein it is said to have been recognized as authority in numerous cases there cited. See *Hamlin v. Dingman*; *Parker v. Baker*. Applied (Effect of acts of officer *de facto*) in *Morris v. People*, 3 *Den.* 397. Explained in *Lambert v. People*, 76 *N. Y.* 220, 233. Disting'd in *People v. Brennan*, 30 *How. Pr.* 420. Applied (What constitutes officer *de facto*) in *Dolan v. Mayor, &c. of N. Y.*, 68 *N. Y.* 278.
- *v. Ten Eyck*, 5 *Johns.* 78. Explained in *Evans v. Harris*, 19 *Barb.* 416, 423, as not authority (What are independent covenants) the cases, on the authority of which it was placed, having been overruled, in *Cunningham v. Morrell*, 10 *Johns.* 203.
- *v. Wilcox*, 48 *Barb.* 327. See *Woolever v. Knapp*. Disting'd (Accounting to co-tenant for rent) in *McCabe v. McCabe*, 18 *Hun*, 155. See *Code Civ. Pro.* 1881, § 1666, n.
- *v. —*, 14 *N. Y.* 575. Aff'g *People ex rel. Wilcox v. Wilcox*, 22 *Barb.* 178. Decision in 14 *N. Y.* followed (Authority to determine right to custody of children) in *Matter of Watson*, 10 *Abb. N. C.* 215, 217. Explained in *People ex rel. Wehle v. Weissenbach*, 60 *N. Y.* 393. Followed (In-trusting mother with custody of child) in *People v. Gates*, 39 *How. Pr.* 80. Followed (Equity jurisdiction of Supreme Court judge at chambers) in *People ex rel. Heilbronner v. Hooster*, 14 *Abb. Pr. N. S.* 420. Quoted and collated with other cases (Practice in cases not provided for by Code) in *Colby on Forec.* 29.
- *v. Wood*, 9 *Wend.* 346. Commented on (Lease, when commencing and ending) in *McAdam on Landl. & T.* 2 ed. § 103. Doctrine discussed and cases cited in 4 *Am. L. Reg. N. S.* 223.
- Wilcox Silver Plate Co. v. Green**, 9 *Hun*, 347. Aff'd in 72 *N. Y.* 17. Decision in *Id.* quoted (Sufficiency of delivery to carrier under provisions of statute of frauds) in *Benj. on Sales*, § 181, n. 24 (Corbih's 4 *Am. ed.*).
- Wilde v. Cantillon**, 1 *Johns. Cas.* 123. Cited as a leading case with *Hyatt v. Wood*, 4 *Johns. Rep.* 150 (Liability for forcible entry) in 22 *Am. L. Reg. N. S.* 723, n., where latter case is said to have always been followed in *N. Y.*, and frequently in other cases cited. Followed with *Hyatt v. Wood*, 4 *Johns.* 313; *Ives v. Ives*, 13 *Id.* 235, in *Elliott v. Powell*, 10 *Watts (Pa)* 453; s. c., 36 *Am. Dec.* 200, with note.
- *v. Jenkins*, 4 *Paige*, 481. See *City of Utica v. Churchill*; *Murray v. Toland*. Followed (Conclusiveness of stated account) in *Brown v. Vandyke*, 4 *Halst. Ch. (N. J.)* 795; s. c., 55 *Am. Dec.* 250. Approved with *City of Utica v. Churchill*, 33 *N. Y.* 161; *Mickles v. Rochester City B'k*, 11 *Paige*, 118; *Bennett v. Am. Art Union*, 5 *Sandf.* 614 (Rights of stockholders, as owners of the corporate property) in *Button v. Hoffman*, 61 *Wis.* 20, 22. Explained in *Ang. & A. on Corp.* § 191, 11 ed.
- *v. Joel*, 15 *How. Pr.* 320; s. c., 6 *Duer*, 671. See *Carpenter v. Wright*. Disting'd (Damages on injunction) as not wholly applicable as against surety,—in *Allen v. Brown*, 5 *Lans.* 511, 515. See *Code Civ. Pro.* 1881, § 625, n.
- Wilder v. Butterfield**, 50 *How. Pr.* 385. Followed (Liability on collector's bond) in *Richardson v. Rogers*, *Id.* 403, 405.
- *v. Keeler*, 3 *Paige*, 167; s. c., 23 *Am. Dec.* 781, with note. See *Meech v. Allen*; *Morgan v. Skidmore*. Applied (Equity of joint debtors in estate of deceased partner) in *Stewart's Case*, 4 *Abb. Pr.* 410; *Meech v. Allen*, 17 *N. Y.* 302. Followed in *Troy Iron & Nail Factory v. Winslow*, 11 *Blatchf. C. Ct.* 513, 518; *Davis v. Howell*, 33 *N. J. Eq.* 72, 74; s. c., 35 *Am. R.* 306, n.; 20 *Am. L. Reg. N. S.* 461, 462, citing other cases. See cases in several States collected in 5 *Am. L. Reg. N. S.* 80.
- *v. Winne*, 6 *Cov.* 284. Aff'd in *Wilder v. Fonday*, 4 *Wend.* 100. Decision in 6 *Cov.* discussed (Provisions in assignment that tend to hindrance and delay of creditors) in *Burrill on Assign.* § 328, 4 ed.



**Wilds v. Hudson River R. R. Co.**, 33 *Barb.* 503. Rev'd in 24 *N. Y.* 430; s. c., 23 *How. Pr.* 492; also s. c., 2 *Am. L. Reg. N. S.* 76. Further decision in 29 *N. Y.* 315. Decisions in *Id.* and 24 *Id.* disting'd (Negligence in crossing track) in *Beisiegel v. N. Y. Central R. R. Co.*, 34 *Id.* 629. Decision in 24 *Id.* applied in *Grippen v. N. Y. Central R. R. Co.*, 40 *Id.* 34, 52. Decision in 29 *Id.* commented on in *Wilcox v. Rome, &c. R. R. Co.*, 39 *Id.* 362. See *Cosgrove v. N. Y. Central, &c. R. R. Co.*, 13 *Hun.* 330. Decision in 24 *N. Y.* disting'd (Negligence, as question for jury) in *Welling v. Judge*, 40 *Barb.* 207. Decision in 29 *N. Y.* examined with others, in *Ernst v. Hudson River R. R. Co.*, 3 *Abb. Pr. N. S.* 110. Decision in 24 *N. Y.* applied in *Clark v. Mayor, &c. of N. Y.*, 24 *How. Pr.* 336. Decisions in 24 *N. Y.* and 29 *Id.* applied in *Deyo v. N. Y. Central R. R. Co.*, 34 *Id.* 12.

**Wildy v. Washburn.** See *Lawton v. Commissioners of Cambridge.*

**Wiles v. Brown**, 3 *Barb.* 37. Explained (Sheriff's liability for release of debtor imprisoned on execution) in *Bullymore v. Cooper*, 2 *Lans.* 71, 79.

— *v. N. Y. Central, &c. R. R. Co.*, 2 *Hun.* 109; s. c., with opinion, 4 *Sup'm. Ct. (T. & C.)* 264.

— *v. Pick*, 26 *N. Y.* 42. Followed (Acknowledgments by married women) in *Allen v. Reynolds*, 36 *Super. Ct. (J. & S.)* 297, 299.

— *v. Suydam*, 6 *Sup'm. Ct. (T. & C.)* 292; mem. s. c., 3 *Hun.* 604. Rev'd in 64 *N. Y.* 173. Further decision in 10 *Hun.* 578. Decision in 64 *N. Y.* applied (Demurrer for improper joinder of causes of action) in *Harris v. Eldridge*, 5 *Abb. N. C.* 281; *Cook v. Horwitz*, 10 *Hun.* 588. Disting'd in *Victory Webb, &c. M'g Co. v. Beecher*, 55 *How. Pr.* 203; *Smith v. Rathbun*, 22 *Hun.* 157. Disting'd (Mode of enforcing statutory remedy against stockholders) in *Jessup v. Carnegie*, 80 *N. Y.* 457. Decision in 10 *Hun.* disting'd (Trustee's liability) in *Anderson v. Speers*, 21 *Id.* 568. Decision in 64 *N. Y.* cited as authority with *Miller v. White*, 50 *Id.* 137; *Merchants' Bank v. Bliss*, 35 *Id.* 412; *Garrison v. Howe*, 17 *Id.* 466, in *Gregory v. German B'k of Denver*, 3 *Colo.* 332; s. c., 25 *Am. R.* 760.

**Wiley v. Brigham**, 16 *Hun.* 106. Appeal dismissed in 81 *N. Y.* 13. See *Pennie v. Continental Life Ins. Co.*

— *v. Slater.* See *Cady v. Fairchild.*

**Wilgus v. Bloodgood**, 33 *How. Pr.* 269. See *Flanagan v. Tine.* Disapproved (Execution against estate of deceased judgment debtor) in *Wallace v. Swinton*, 64 *N. Y.* 188, 195; *Marine B'k of Chicago v. Van Brunt*, 61 *Barb.* 361.

**Wilke v. People**, 53 *N. Y.* 525. Explained (Granting new trial under *L. 1855, c. 337*) in *Levy v. People*, 80 *Id.* 327, 337.

**Wilkes v. Ferris**, 5 *Johns.* 335; s. c., 4 *Am.*

*Dec.* 364, with note; 3 *N. Y. Com. L. Law. ed.* 1037, with brief note on symbolical delivery. See *Jackson v. Willard.* Explained (Sale on execution, of assignor's interest in assignment for creditors) in *Austin v. Bell*, 20 *Johns.* 451. Applied in *McDermutt v. Strong*, 4 *Johns. Ch.* 690. Applied (Effect of reference to schedule, in assignment for creditors) in *Moir v. Brown*, 14 *Barb.* 46. Disting'd in *Platt v. Lott*, 17 *N. Y.* 478, 481. Applied to indemnity bond, in *Holmes v. Hubbard*, 60 *Id.* 185. Followed with approval in preference to *Platt v. Lott*, — in *Mims v. Armstrong*, 31 *Id.* 87; s. c., 1 *Am. R.* 22, 26; 4 *Am. Dec.* 366, *n.*, citing also *Moir v. Brown*, 14 *Barb.* 39, as authority. Applied (Effect of reservation in assignment for creditors) in *Beck v. Burdett*, 1 *Paige*, 310. Said in *Green v. Trieber*, 3 *Id.* 11, 31, to have been followed by scarcely any case in *N. Y.* since.

— *v. Harper*, 2 *Barb. Ch.* 338. Aff'd in 1 *N. Y.* 586. Decision in 2 *Barb. Ch.* collated with other cases (Right of surety to subrogation) in 2 *Hare & W. Am. Lead. Cas.* 5 ed. 452.

— *v. Lion*, 2 *Cow.* 333. Further decision on same will, in *Jackson v. Chew*, 12 *Wheat.* 153; *Waring v. Jackson*, 1 *Pet.* 570.

— *v. Mayor, &c. of N. Y.*, 8 *Daly*, 407. Aff'd in 79 *N. Y.* 621. See *Peyser v. Mayor, &c. of N. Y.* Decision in 79 *N. Y.* disting'd (Recovery of money paid on void assessment) in *Horn v. Town of New Lots*, 83 *Id.* 100, 104.

— *v. Rogers*, 6 *Johns.* 566. Disapproved with *Matter of Burke*, 4 *Sandf. Ch.* 617 (Allowance to father from estates of children, for their support) in *McKnight v. Walsh*, 23 *N. J. Eq.* 136, 143.

**Wilkie v. Bolster**, 3 *E. D. Smith*, 327. Followed (Proof of accident, as *prima facie* evidence of negligence on part of carrier of passengers) in *Ryan v. Gilmer*, 2 *Mont.* 517; s. c., 25 *Am. R.* 744, 750. Explained (Damages for injury caused by negligence of such carrier) in 1 *Add. on Torts*, 573, *n.* 1, *Wood's ed.*

— *v. Roosevelt*, 3 *Johns. Cas.* 206; s. c., 2 *Am. Dec.* 149, with note; also s. c., 1 *N. Y. Com. L. Law. ed.* 670, with brief note of cases on weight, &c. of evidence as ground for new trial. See *Aeby v. Rapelye*; *Jones v. Hake.* Dissented from and said not to have been generally followed (Validity of note given for usurious consideration) in 2 *Am. Dec.* 155, *n.*, adopting opposite view expressed in *Dickerman v. Day*, 31 *Iowa*, 444; s. c., 7 *Am. R.* 156.

**Wilkin v. Wilkin**, 1 *Johns. Ch.* 111. Cited as authority with *Phelps v. Green*, 3 *Id.* 302 (Partition in equity, as matter of right) in *Wiseley v. Findlay*, 3 *Rand. (Va.)* 361; s. c., 15 *Am. Dec.* 712, 718, with note.

**Wilkins v. Balterman**, 3 *Barb.* 47. Disting'd (Attorney's lien and remedy) in *Murray v. Jibson*, 22 *Hun.* 386, 388.

- **v. Earle**, 19 *Abb. Pr.* 190; s. c., 3 *Robt.* 352. Rev'd in 44 *N. Y.* 172. See *Cromwell v. Stephens*; *Jackson v. Potter*; *Ruloff v. People*. Decision in *Id.* applied (Effect of testimony of witness, when untrue in part) in *Deering v. Metcalf*, 74 *Id.* 501, 505. See other cases collected (Testimony of parties) in 1 *Abb. N. C.* 364, n.
- **v. —**, 46 *N. Y.* 358. Applied (Appeal to Court of Appeals) in *Delaney v. Brett*, 51 *N. Y.* 83. Explained (Meaning of term "presumption") in 2 *Whart. Com. on Ev.* § 1284. Disting'd (Judgment on remittitur from Court of Appeals, how far judgment of court below) in *Richardson v. Kropf*, 5 *Daly*, 386.
- **v. Pearce**, 5 *Den.* 541. Aff'd in 2 *N. Y.* 469. Decision in 5 *Den.* cited with *Sage v. Sherman*, 2 *N. Y.* 417 (Continuance of authority of partner to bind others) in *Story on Partn.* 7 ed. § 103, n.
- Wilkinson v. First Nat. Fire Ins. Co.**, 9 *Hun.* 522. Aff'd in 72 *N. Y.* 499; s. c., 28 *Am. R.* 166. See *Mayor of N. Y. v. Hamilton Fire Ins. Co.* See (Deduction for stay from time limited for commencement of action) *Code Civ. Pro.* 1881, § 406, n.
- **v. Gill**, 10 *Hun.* 156. Aff'd in 74 *N. Y.* 63; s. c., 30 *Am. R.* 264.
- **v. Johnson**, 4 *Hill*, 46. Collated with *Jackson v. Stiles*, 5 *Cow.* 282, and other cases (Consolidation of actions) in 58 *Am. Dec.* 511, n.
- **v. Tiffany**, 4 *Abb. Pr.* 98. Applied (Appeal from order for allowance taken by default) in *Voorhis v. French*, 47 *Super. Ct. (J. & S.)* 365.
- Wilflow v. Bell**. See *Bank of Attica v. Wolf*.
- **v. Lane**, 37 *Barb.* 244. Disapproved (Deed as covering interest subsequently acquired by grantor) in *Sherman v. Kane*, 86 *N. Y.* 57, 69, which aff'd 46 *Super. Ct. (J. & S.)* 310, 325, which see. Limited (Effect of possession begun under lease, as adverse) in *Bedell v. Shaw*, 59 *N. Y.* 46, 51.
- Willard v. Reinhardt**, 2 *E. D. Smith*, 148. See *Wintermute v. Clark*. Commented on (Distinction between inn and boarding-house) in 1 *Add. on Torts*, 752, n. 1, *Wood's ed.*
- **v. Sperry**, 16 *Johns.* 121. Applied (Effect of former adjudication) in *Burritt v. Belfy*, 47 *Conn.* 323, 326.
- **v. Stone**, 7 *Cow.* 52; s. c., 17 *Am. Dec.* 496, with note. See *Hunt v. Penke*. Applied (Evidence of plaintiff's misconduct, in action for breach of promise to marry) in *Button v. McCauley*, 1 *Abb. Ct. App. Dec.* 284; *Palmer v. Andrews*, 7 *Wend.* 144. Applied to action for enticing away wife in *Bennett v. Smith*, 21 *Barb.* 447. Included in *Lawson's Levd. Com. Lav. Cus. Simplified*, 122. Applied (Evidence of refusal to marry) in *Hubbard v. Bonesteel*, 16 *Barb.* 361.
- **v. Tillman**, 2 *Hill*, 274. Prior decision in 19 *Wend.* 358. See *Graves v. Berdan*. Decision in 2 *Hill* disting'd (Covenants running with the land) in *Tallman v. Coffin*, 4 *N. Y.* 137. Explained (Right of action in assignee for rent) in *Van Rensselaer v. Read*, 26 *Id.* 578.
- **v. Warren**, 17 *Wend.* 257. See *Hyatt v. Wood*. Applied (Liability for forcible entry) in *People ex rel. Niles v. Smith*, 24 *Barb.* 18. Collated with *Wood v. Phillips*, 43 *N. Y.* 152; *McDougall v. Sitcher*, 1 *Johns.* 42, and other cases (Forcible entry) in 18 *Am. Dec.* 139, n. See 4 *Bac. Abr. tit. Forcible Entry*; B.
- Willcocks, Matter of**, 7 *Cow.* 402; s. c., 17 *Am. Dec.* 525. Applied (Requisites of corporate meeting) in *Lockwood v. Mechanics' Nat. B'k*, 9 *R. I.* 308; s. c., 11 *Am. R.* 253, 269. Discussed in *Ang. & A. on Corp.* §§ 501, 509, 11 ed. Quoted (Right to vote on hypothecated stock) in *Id.* § 132. Quoted (Corporate elections) in *Id.* § 141.
- Willcox v. Smith**, 26 *Barb.* 316. Explained with *Heath v. Grenell*, 61 *Id.* 190 (Limitation of action, as affected by presentation of claim) and *Peck v. Randall*, 1 *Johns.* 164; disting'd in *Cotter v. Quinlan*, 2 *Den.* 29. Followed (Personal liability of administrator for counsel fees on accounting) in *Mygatt v. Willcox*, 1 *Lans.* 59. Applied (Costs to counsel, on proceedings before surrogate) in *Matter of Gates*, 2 *Redf.* 147. See *Code Civ. Pro.* 1881, §§ 2558, n., 2561, n. See (Vouchers on accounting by executor, &c.) *Id.* § 2734, n.
- Willetts v. Phoenix B'k**, 2 *Duer*, 121. Disting'd (Effect of certification of check) in *Mutual Nat. B'k v. Rotge*, 28 *La. Ann.* 933; s. c., 26 *Am. R.* 126, 128; *Andrews v. German Nat. B'k*, 9 *Heisk. (Tenn.)* 211; s. c., 24 *Am. R.* 300, 302. See *First Nat. B'k v. Leach*, 52 *N. Y.* 350. Disting'd with *Farmers' & Mechanics' B'k v. Butchers' & Drovers' B'k*, 14 *Id.* 624; *Smith v. Miller*, 43 *Id.* 176; *Meads v. Merchants' B'k*, 25 *Id.* 147, in *Tripp v. Curtenius*, 36 *Mich.* 494; s. c., 24 *Am. R.* 610, 613, a case of certificate of deposit, where *Nat. B'k of Fort Edward v. Washington Co. Nat. B'k*, 5 *Hun.* 605, was disapproved. Included in 2 *Ames Cas. on B. & N.* 736.
- Willetts v. Stringer**, 17 *Abb. Pr.* 152. See other cases collected (Application to intervene) 6 *Abb. N. C.* 306, n.
- Willetts v. Buffalo & Rochester R. R. Co.**, 14 *Barb.* 585. See *Harty v. Central R. R. Co.* Applied (Effect of contributory negligence of one in charge of passenger or property) in *Harvey v. Rose*, 26 *Ark.* 3; s. c., 7 *Am. R.* 595. Commented on in *Thomps. on Carr. of Pass.* 293.
- **v. Waite**, 13 *How. Pr.* 34. Aff'd in 25 *N. Y.* 577. Decision in *Id.* explained and compared (Title to personal property as affected by assignment under foreign bankrupt law) in *Hibernia B'k v. Mechanics', &c. B'k*, 21 *Hun.* 166, 176; which was aff'd in 84 *N. Y.* 367, 386, which see.
- Willey v. Shaver**, 1 *Sup'm. Ct. (T. & C.)*

324. Compare (Costs against school officer) *Code Civ. Pro.* § 3244.
- William, Earl of Craven, v. Price**, 37 *How. Pr.* 15. Compare (Costs in action for trespass) *Keiny v. Ingraham*, 66 *Barb.* 250, 256.
- William & Anthony Streets, Matter of**. See *Mayor, &c. of N. Y., Matter of*.
- Williams' Case**, 1 *City H. Rec.* 29. Followed with *Bowerhan's Case*, 4 *Id.* 138; *Mill's Case*, 5 *Id.* 178; *Millegan & Welchman's Case*, 6 *Id.* 78 (Confessions as evidence) in *State v. Guild*, 5 *Halst. (N. J.)* 163; s. c., 18 *Am. Dec.* 404, 408.
- Williams, Matter of**, 12 *N. Y. Leg. Obs.* 179. Disting'd (Abatement of legacies to widow and children) in *Scofield v. Adams*, 12 *Hun*, 371.
- Williams v. Allen**, 2 *Hun*, 377; s. c., 4 *Sup'm. Ct. (T. & C.)* 673; and s. c., reported 48 *How. Pr.* 357.
- **v. Ayrault**, 31 *Barb.* 364. Further decision as *Williams v. Fitzhugh*, 44 *Id.* 321; and that modified and aff'd in 37 *N. Y.* 444. Also further decision as *Ayrault v. Chamberlain*, 33 *Barb.* 229. Decision in 31 *Id.* collated with other cases (Pendency of suit in another jurisdiction as a defence) in *Davis v. Morriss*, 76 *Va.* 21, 28, citing also *McNamara v. Dwyer*, 7 *Paige*, 239. Decision in 37 *N. Y.* applied (Legal rights growing out of illegal transaction) in *Madison Ave. Church v. Oliver St. Church*, 41 *Super. Ct. (J. & S.)* 369, 386. Applied (Action for same subject-matter before different tribunals) in *Berry v. Mut. Life Ins. Co.*, 2 *Sup'm. Ct. (T. & C.)* 17. Approved (Conditions of relief against usury) in *Gerwig v. Shetterly*, 64 *Barb.* 627. See *Browne v. Vredenburgh*, 43 *N. Y.* 199. Followed (Loan secured by mortgage, by what law governed) in *Cope v. Wheeler*, 41 *Id.* 314.
- **v. Babcock**. See *Shaughnessey v. Rensselaer Ins. Co.*
- **v. Bacon**, 10 *Wend.* 636. Denied (Liability of person extradited on one charge to arrest on another) in *Bacharach v. Lagrave*, 4 *Sup'm. Ct. (T. & C.)* 215, 217, 221. Followed with *Browning v. Abrams*, 51 *How. Pr.* 172, and *Adriance v. Lagrave*, 59 *N. Y.* 110, in *State v. Stewart*, 60 *Wis.* 587, 590.
- **v. Bank of Michigan**, 7 *Wend.* 539. See *Welland Canal Co. v. Hathaway*. Cited in 1 *Kent Com.* 384, n. e, *Holme's ed.*, and compared with Federal decisions (Sovereignty of U. S. Government over its territories).
- **v. Barnaman**, 28 *How. Pr.* 59; s. c., as *Barnaman v. Williams*, 18 *Abb. Pr.* 158. Further decision in 19 *Id.* 69.
- **v. Birch**, 6 *Bosw.* 299. Aff'd in 2 *Transc. App.* 133.
- **v. Brown**. See *Edmeston v. Lyde*.
- **v. Cassidy**, 22 *Hun*, 180. Followed (Costs, in case of severance) in *Royce v. Jones*, 23 *Id.* 453.
- **v. Conrad**, 30 *Barb.* 524. Disting'd (Authority of executor before issuing of letters to him) in *Humbert v. Wurster*, 22 *Hun*, 405, 407. Compare (Effect of devise in trust for children, &c.) in *Sturge v. Sturge*, 45 *L. T. R. N. S.* 787.
- **v. Crary**, 5 *Cow.* 368. Further decisions in 8 *Id.* 246; 4 *Wend.* 443. Decision in 4 *Wend.* applied (Parol proof of intention of testator) in *Magee v. Magee*, 67 *Barb.* 494. Followed with decision in 8 *Cow.* in *Stevens v. Stevens*, 2 *Redf.* 265, 285. See *Boughton v. Flint*, 5 *Abb. N. C.* 215, and *Id.* 216, n. Decisions in 5 *Cow.*; 8 *Id.*; 4 *Wend.* quoted (Effect of legacy from debtor to creditor) in *Willard on Executors*, 365.
- **v. Dakin**. See *Dakin v. Williams*.
- **v. Dias**, 18 *Weekly Dig.* 353; s. c., more fully and correctly reported, as *Same v. Kiernan*, 25 *Hun*, 355. Followed (Liability of sureties on bond of administrators, &c.) in *Haines v. Meyer*, *Id.* 414, 417.
- **v. Eldridge**, 1 *Hill*, 249. Approved and disting'd (Objections to interrogatories, &c. annexed to commission) in *Morse v. Cloyes*, 11 *Barb.* 107. Disapproved in *Cope v. Sibley*, 12 *Id.* 521, 524. Applied in *Hall v. Barton*, 25 *Id.* 276, 278.
- **v. Fireman's Fund Ins. Co.**, 54 *N. Y.* 569; s. c., 13 *Am. R.* 620. See *Harper v. Albany Mut. Ins. Co.* See (Construction of provision in fire policy, prohibiting keeping of hazardous articles) *Collins v. Farmville Ins. & Banking Co.*, 79 *N. C.* 279; s. c., 28 *Am. R.* 322.
- **v. Fitch**, 18 *N. Y.* 546. Applied (Effect of admission of illegal evidence) in *Foote v. Beecher*, 78 *Id.* 157. Disting'd (Privilege of communications between attorney and client) in *Marsh v. Howe*, 36 *Barb.* 649, 655; *Sanford v. Sanford*, 61 *Id.* 305. Applied (Effect of promise to hold property for benefit of another) in *Hutchings v. Miner*, 46 *N. Y.* 460. Collated with *Norton v. Mallory*, 63 *N. Y.* 434; *Meyer v. Meyer*, 21 *Hun*, 67; *Spicer v. Spicer*, 16 *Abb. Pr. N. S.* 112 (Contracts to make will) in 27 *Moak Eng.* 516. Included in *Redf. Lead. Cas. on Wills*, 607.
- **v. Fitzhugh**. See *Williams v. Ayrault*.
- **v. Gillies**, 53 *How. Pr.* 429. Aff'd in 13 *Hun*, 422, but that rev'd in 75 *N. Y.* 197. Decision in *Id.* followed with *Briggs v. Partridge*, 64 *Id.* 357 (Inadmissibility of parol evidence to establish liability under sealed instrument, of one not party thereto) in *Williams v. Gillies*, 28 *Hun*, 175. Cited (Contract for partnership in buying and selling of lands as affected by statute of frauds) in *Story on Partn.* (7 ed.) §§ 83, n., 94, n.
- **v. Glenn**, 16 *N. Y.* 389. Followed (Effect of bill rendered as conclusive as to amount due) in *Harrison v. Ayers*, 18 *Hun*, 337.
- **v. Hill**, 19 *Wend.* 305; s. c., 13 *N. Y. Com. L. Law. ed.* 617, with brief note.
- **v. Hogeboom**, 8 *Paige*, 469. Explained

- and cases cited to the contrary (Receiver in judgment creditor's action) in *Hugh on Receiv.* § 404, n. 1.
- **v. Holdredge**, 22 *Barb.* 396. Followed with *Hewitt v. Mason*, 24 *How. Pr.* 366 (Liability for words charging one with being afflicted with venereal disease) in *Kaucher v. Blinn*, 29 *Ohio St.* 62; s. c., 23 *Am. R.* 727, 728. Compare (Action by or against married woman) *Code Civ. Pro.* § 450.
- **v. Houghtaling**, 3 *Cow.* 86. Followed (Calculating interest, in cases of partial payments) in *Huner v. Doolittle*, 3 *G. Greene (Iowa)*, 76; s. c., 54 *Am. Dec.* 489, with note.
- **v. Hutchinson**, 5 *Barb.* 122. Aff'd in 3 *N. Y.* 312; s. c., 53 *Am. Dec.* 301, with note collecting citations of the case. See *Simpson v. Buck*. Decision in 3 *N. Y.* applied (Promise to pay for services, when not implied) in *Maltby v. Harwood*, 12 *Barb.* 478; *Bowen v. Bowen*, 2 *Bradf.* 337; *Keller v. Stuck*, 4 *Redf.* 297; *Kelly's Estate*, *Tuck.* 29. Disting'd in *Lewis v. Trickey*, 20 *Barb.* 391; *Conger v. Van Aernum*, 43 *Id.* 605; *Ross v. Hardin*, 79 *N. Y.* 90; *Gallagher v. Vought*, 8 *Hun.* 87, 89. Followed as conclusive in *Shirley v. Vail*, 38 *How. Pr.* 408. Applied in *Hall v. Finch*, 29 *Wis.* 278; s. c., 9 *Am. R.* 559, 564. Collated with *Bowen v. Bowen*, 2 *Bradf.* 336; *Gallagher v. Vought*, 8 *Hun.* 87, in 29 *Abb. L. J.* 145. Disting'd (Liability of parent, &c. to maintain child) in *Raymond v. Loyl*, 10 *Barb.* 486; *Hill v. Hanford*, 11 *Hun.* 536, 538. See *Smith v. Rogers*, 24 *Kans.* 140; s. c., 36 *Am. R.* 254, and note. Criticised (Right of mother to recover for services of children) in dissenting opinion of *Hoseboom, J.*, in *Gray v. Durland*, 50 *Barb.* 221. Cited as authority in *Whitaker v. Warren*, 60 *N. H.* 20, 26.
- **v. Irving**, 47 *How. Pr.* 440. Modified in 5 *Sup'm. Ct. (T. & C.)* 671.
- **v. Jackson**, 5 *Johns.* 489. See *Jackson v. Lunt*. Followed (Propriety of plaintiff in ejectment declaring on demises both from grantor and grantee) in *Pitts v. Bullard*, 3 *Ga.* 5; s. c., 46 *Am. Dec.* 405.
- **v. Johnson**, 2 *Bosw.* 1. See *Amoskeag Manuf. Co. v. Spear*. Applied as to right to use of same trade-mark here involved, in *Williams v. Spence*, 25 *How. Pr.* 366. Applied (What may constitute trade-mark) in *Godillot v. Hazard*, 49 *Id.* 10. Applied to copyright in *Potter v. McPherson*, 21 *Hun.* 559, 566. Explained in 2 *Pars. on Contr.* 257, *be n. f.* Collated with other cases in *Thomp. on Prov. Rem.* 259.
- **v. Keech**, 4 *Hill.* 168. Applied (Authority of school trustees) in *Horton v. Garrison*, 23 *Barb.* 178; *Gullis v. Space*, 63 *Id.* 181.
- **v. Kenney**, 14 *Barb.* 629. Collated with other cases (Liability of owner of fee of highway for removing and selling the soil) in *Mills Thomp. on Highw.* 3 ed. 17.
- **v. Kiernan**. See *Same v. Dias*.
- **v. Larkin**, 3 *Den.* 114. Followed (Validity of contract for school purposes, made before tax therefor has been voted) in *Albright v. Riker*, 22 *Hun.* 367, 369.
- **v. Lawrence**, 53 *Barb.* 320. Aff'd in 47 *N. Y.* 62. See *Mumford v. Nicoll*.
- **v. Littlefield**, 12 *Wend.* 362. Disting'd (Effect of departure by factor from his instructions) in *Farmers', &c. Nat. Bk. v. Logan*, 74 *N. Y.* 563, 584. Cited in *Whart. Com. on Ag.* § 247. Collated with other cases in *Holcombe Lead. Cas. on Com. L.* 55.
- **v. Lowndes**, 1 *Hall.* 579. Disting'd (Sheriff's liability for wrongful seizure under execution) in *Masten v. Webb*, 24 *Hun.* 90, 92, which *rev'd* 60 *How. Pr.* 302, 305, which see.
- **v. McCauley**, 3 *E. D. Smith*, 120. See (New trial in justice's court) *Code Civ. Pro.* 1881, § 3064, n.
- **v. Mechanic's & Trad. Fire Ins. Co.**, 54 *N. Y.* 577. Applied (Effect of admission of evidence under issue not made by the pleadings) in *Williams v. Peoples' Fire Ins. Co.*, 57 *Id.* 278.
- **v. Merle**, 11 *Wend.* 80; s. c., 25 *Am. Dec.* 604, with extended note. Reviewed at length with *Ripley v. Gelston*, 9 *Johns.* 201; *Saltus v. Everett*, 20 *Wend.* 366, and other cases (Rights of purchaser from one without title) in *McMahon v. Sloane*, 12 *Pa. St.* 229; s. c., 51 *Am. Dec.* 601, 603, with note. Disting'd with *Hoffman v. Carow*, 20 *Wend.* 21; 22 *Id.* 285, in *Hills v. Snell*, 104 *Mass.* 173; s. c., 6 *Am. R.* 216.
- **v. Miller**, 4 *How. Pr.* 94; s. c., 2 *Code R.* 55. Approved (Action for breach of special contract is action for recovery of money only) in *Trapp v. N. Y. & Erie R. R. Co.*, 1 *Code R. N. S.* 385.
- **v. Montgomery**, 60 *N. Y.* 648. Applied under *Code Civ. Pro.* (Appealability of order denying new trial for misconduct of juror) in *Gale v. N. Y. Central, &c. R. R. Co.*, 76 *Id.* 595.
- **v. Murray**, 32 *How. Pr.* 187; s. c., 2 *Abb. Pr. N. S.* 292. Referred to as superseded by Code amendment (Costs on appeal from county court), in *Crosby v. Brown*, 44 *How. Pr.* 149, 151.
- **v. N. Y. Central R. R. Co.**, 18 *Barb.* 222. *Rev'd* in 16 *N. Y.* 97. See *People v. Kerr*; *Presbyterian Society v. Auburn & Rochester R. R. Co.*; *Story v. N. Y. Elevated R. R. Co.* Decision in 16 *N. Y.* disting'd (Effect of appropriation of street for railroad purposes as new use) as inapplicable to case of sewer in *Kelsey v. King*, 11 *Abb. Pr.* 183; which was aff'd in 33 *How. Pr.* 44, which see. Re-aff'd in *Wager v. Troy Union R. R. Co.*, 25 *N. Y.* 532. Disting'd in *Patten v. N. Y. Elevated R. R. Co.*, 3 *Abb. N. C.* 345. Disting'd in *People v. Kerr*, 27 *N. Y.* 192, 194, 202, 205; which aff'd 37 *Barb.* 357, 405, which see. Disting'd as inapplicable to horse railroads

- in Brooklyn Central, &c. R. R. Co. v. Brooklyn City R. R. Co., 33 *Id.* 422. Applied to horse railroads in *Craig v. Rochester City, &c. R. R. Co.*, 39 *Id.* 494; which was aff'd in 39 *N. Y.* 407, which see. Applied to bridge across street, in *Knox v. Mayor, &c. of N. Y.*, 55 *Barb.* 411. To gas-pipes, in *Calkins v. Bloomfield, &c. Gas light Co.*, 1 *Sup'm. Ct. (T. & C.)* 548. Disting'd in *Kellinger v. Forty-second St., &c. R. R. Co.*, 50 *N. Y.* 210, as inapplicable where ownership of fee of highway is not in adjoining owner. Disting'd in *Heath v. Barman*, 49 *Barb.* 498, a case of a plank-road. Disting'd as inapplicable and *Benedict v. Goit*, 3 *Id.* 449; *Dexter v. Broat*, 16 *Id.* 337, cited in *Jones v. Keith*, 37 *Tex.* 399; s. c., 14 *Am. R.* 382, 383, 387. Collated with other cases in *Mills Thomps. on Highw.* 3 ed. 397. Commented on and collated with other cases in *Cook Highw. L.* 4 ed. 9. Collated with many cases from various jurisdictions, in *Grand Rapids & Indiana R. R. Co. v. Heisel*, 38 *Mich.* 62; s. c., 31 *Am. R.* 306. Explained in 15 *Am. L. Rev.* 392. See citation of cases when rule herein has been adopted, — in 1 *Am. L. Reg. N. S.* 196. Decision in 18 *Barb.* 222, dissented from, in *Imlay v. Union B. R. R.*, 26 *Conn.* 249. Decision in 16 *N. Y.* disting'd (Form of judgment in action for relief as to unlawful appropriation of highway) in *White's B'k of Buffalo v. Nichols*, 64 *Id.* 65, 75. Applied (Injunction against use of street for railroad purposes) in *Milhau v. Sharp*, 27 *Id.* 625; *Henderson v. N. Y. Central R. R. Co.*, 78 *Id.* 430. Disting'd in *Troy & Boston R. R. Co. v. Boston, Hoosac T. &c. R'y Co.*, 86 *Id.* 107, 127. Disting'd with *Henderson v. N. Y. Central R. R. Co.*, 78 *Id.* 433 (Rule of damages for land taken for railroad purposes) in *Matter of N. Y., Lackawanna, &c. R'y Co.*, 27 *Hun*, 151, 154.
- *v. Nichols*. See *Kemp v. Coughtry*.
- *v. People*, 24 *N. Y.* 405. See *Conner v. Mayor, &c. of N. Y.* Explained (What is local bill) in *People v. Davis*, 61 *Barb.* 463. Applied in *Kerrigan v. Force*, 9 *Hun*, 189; *Healey v. Dudley*, 5 *Lans.* 120; *Matter of Bayard*, 25 *Hun*, 546, 550. Disting'd in *People v. O'Brien*, 38 *N. Y.* 195. Applied (Evidence to sustain conviction for larceny) in *Higgins v. People*, 7 *Lans.* 111, 113; *Rhodihan v. People*, 5 *Park.* 400.
- *v. —*, 45 *Barb.* 201. Aff'd on ground that defendant could not testify in his own behalf, — in 33 *N. Y.* 683.
- *v. People's Fire Ins. Co.*, 57 *N. Y.* 274. See *Harper v. Albany Mut. Ins. Co.* Applied (When question may be litigated though not included in pleadings) in *Hudson v. Swan*, 7 *Abb. N. O.* 332.
- *v. Parry*, 6 *Paige*, 166. Explained and followed (Proof of claim of executor, &c. against estate) in *Wood v. Rusco*, 4 *Redf.* 380, 384, 386. See *Code Civ. Pro.* 1881, § 2843, *n.* Confirmed (Affidavit to ac-
- count of executor, &c.) in *Code Civ. Pro.* § 2733.
- *v. Rogers*, 5 *Johns.* 163. See *Ball v. Ryers*. Applying cited with *Handy v. Dobbin*, 12 *Id.* 220; *Holmes v. Muncaster*, *Id.* 395 (Taking money on execution) in *Prentiss v. Bliss*, 4 *Vt.* 513; s. c., 24 *Am. Dec.* 631, with note.
- *v. Safford*. See *Holmes v. Seely*.
- *v. Sherman*, 15 *Johns.* 195. See (Costs in justice's court) *Code Civ. Pro.* 1831, § 3074, *n.*
- *v. Smith*, 2 *Cai.* 1; s. c., 2 *Am. Dec.* 209. Cited with other authorities (Necessity of notice of blockade) in 1 *Kent Com.* 147, *n. b.*
- *v. —*, 2 *Cai.* 13. Rev'd in 2 *Cai. Cas.* 110. See *Scott v. Libby*.
- *v. —*, 2 *Hill*, 301. See *Bristol v. Sprague*. Followed (Amount of recovery by bona fide holder of note) in *Allaire v. Hartshorne*, 1 *Zab. (N. J.)* 655; s. c., 47 *Am. Dec.* 175, 181 with note. Disting'd with *Youngs v. Lee*, 18 *Barb.* 189; 12 *N. Y.* 534; *Cardwell v. Hicks*, 37 *Barb.* 458; *Huff v. Wagner*, 63 *Id.* 215, in *Riggs v. Hatch*, *U. S. Cir. Ct. S. D. N. Y.* 15 *Reporter*, 681; s. c., 16 *Fep. Rep.* 836. Applied in *Maitland v. Citizen's Nat'l B'k of Baltimore*, 40 *Md.* 540; s. c., 17 *Am. R.* 620, 633. Included in 1 *Ames Cas. on B. & N.* 641.
- *v. Storrs*, 6 *Johns. Ch.* 353; s. c., 10 *Am. Dec.* 340, with note. Examined with *Doolittle v. Lewis*, 7 *Johns. Ch.* 45 (Rights of foreign administrators, &c.) in *Parsons v. Lyman*, 20 *N. Y.* 103, 114.
- *v. Supervisors of Wayne*, 14 *Hun*, 343. Rev'd in 78 *N. Y.* 561. Decision in *Id.* disting'd (Liability of non resident to personal tax) in *Boardman v. Supervisors of Tompkins*, 85 *Id.* 359, 364; which rev'd 22 *Hun*, 231, 233, which see. Disting'd with *People ex rel. B'k of Montreal v. Comm'rs of Taxes*, 59 *N. Y.* 40; *People ex rel. Hoyt v. Same*, 23 *Id.* 224; *Parker Mills v. Same*, 23 *Id.* 242, in *Matter of McMahon*, 66 *How. Pr.* 190.
- *v. Thorn*, 70 *N. Y.* 270. Explained (Right of creditor to reach surplus income of trust fund) in *McEwen v. Brewster*, 17 *Hun*, 227. Commented on in *Wait on Fraud. Conv.* §§ 45, 360. See *Code Civ. Pro.* 1881, § 1879, *n.* Disting'd (Alienation of interest in trust fund) in *Cocks v. Barlow*, 5 *Redf.* 406, 415.
- *v. Thorp*, 8 *Cow.* 201. See to the contrary (Effect of admissions made in connection with proceedings for compromise) *Murray v. Coster*, 4 *Cow.* 635; *Hartford Bridge Co. v. Granger*, 4 *Conn.* 142; *Fuller v. Hampton* 5 *Id.* 416; *Gerrish v. Sweetser*, 4 *Pick. (Mass.)* 374. Overruled in *Marvin v. Richmond*, 3 *Den.* 58.
- *v. Tilt*, 36 *N. Y.* 319. Applied (Right to set up usury as defense) in *Knickerbocker Life Ins. Co. v. Hill*, 16 *Abb. Pr. N. S.* 327; *Harger v. Wilson*, 63 *Barb.* 247; *Taylor v. Jackson*, 5 *Daly*, 498. Followed

- as decisive in *Ohio & Miss. R. R. Co. v. Kasson*, 37 *N. Y.* 218, 224. Denied in *Nance v. Gregory*, 6 *Lea. (Tenn.)* 343; s. c., 40 *Am. R.* 41. Applied (Who is *bona fide* purchaser) in *Miller v. Crayton*, 3 *Sup'm. Ct. (T. & C.)* 361.
- *v. Town of Duaneburgh*, 66 *N. Y.* 129. Explained (Validity of law for town bonding) in *Rogers v. Rochester, &c. R. R. Co.*, 21 *Hun.* 44, 46. Compared in *Thompson v. Perrine*, 103 *U. S.* 806, 815.
- *v. Townsend*, 31 *N. Y.* 411. Approved (Right of mortgagee to purchase) in *Ten Eyck v. Craig*, 2 *Hun.* 452, 464, which was aff'd in 62 *N. Y.* 406, 421, which see. Approvingly mentioned in *Waterson v. Devoe*, 18 *Kans.* 223, 234; *Sturdevant v. Mather*, 20 *Wis.* 576, 585.
- *v. Tradesmen's Fire Ins. Co.*, 1 *Daly*, 322. Followed (Amendment to perfect appeal) in *Linsser v. Seiler*, 7 *Daly*, 464, 466.
- *v. —*, 1 *Daly*, 437. Explained, and effect of *L. 1867, c. 784, § 5*, stated (Effect of order for new trial made in *N. Y. Marine Court*) in *Frank v. Benner*, 3 *Id.* 422.
- *v. Vanderbilt*, 29 *Barb.* 491. Aff'd in 28 *N. Y.* 217. See *Giina v. Second Ave. R. R. Co.* Decision in 28 *N. Y.* re-asserted (Liability of part owner of one of several connecting lines of carriers) in *Ward v. Vanderbilt*, 4 *Abb. Ct. App. Dec.* 521. Followed with *Ward v. Vanderbilt*, (Recovery for consequential injuries caused by negligence) in *Ehrgott v. Mayor, &c. of N. Y.*, 96 *N. Y.* 264. Relied on with *Eten v. Luyster*, 60 *Id.* 252, in *Cincinnati, Hamilton, &c. R. R. Co. v. Eaton*, 94 *Ind.* 474; s. c., 48 *Am. R.* 179. Included in *Sedgw. Cas. on Dama*, 152. See cases cited in 34 *Am. R.* 93, *n.* Relied on (Non-performance of contract when not excused by act of God) in *Engster v. West*, 35 *La. Ann.* 119; s. c., 48 *Am. R.* 232. Decision in 29 *Barb.* explained in *Ang. on Carr. § 620a, n. a*, 5 ed.
- *v. Walbridge*, 3 *Wend.* 415. See *Stafford v. Rice*. Disting'd (Firm liability on note of one partner) in *Osgood v. Glover*, 7 *Daly*, 367, 371.
- *v. Walker*, 3 *Leg. Obs.* 204; s. c., 2 *Sandf. Ch.* 325. See *Beardsley v. Root*. Approved (Authority of agent to receive payments) in *Hatfield v. Reynold*, 34 *Barb.* 613. Applied in *Doubleday v. Kress*, 50 *N. Y.* 413; *Merritt v. Cole*, 9 *Hun.* 102; *Megary v. Funtis*, 5 *Sandf.* 376, 380. Followed as abundantly sustained by authority, and said to have been frequently cited with approval,—in *Smith v. Kidd*, 68 *N. Y.* 131, 137. Disting'd in *Wardrop v. Dunlop*, 1 *Hun.* 325, 330. Disting'd in dissenting opinion in *Fellows v. Northrup*, 39 *N. Y.* 126. Cited approvingly in 2 *Kent Com.* 621, *n. b.*
- *v. Weaver*, 75 *N. Y.* 30. Aff'd in 100 *U. S.* 547, but overruled in part (Deduction of debts of owner from assessment of bank shares) in *People v. Weaver*, *Id.* 539. See cases collected (Personal liability of officer making assessment) in 20 *Am. L. Reg. N. S.* 5.
- *v. Williams*, 8 *N. Y.* 525. See *Downing v. Marshall*; *Owens v. Miss. Soc. of M. E. Church*; *Shotwell v. Mott*. Disting'd (Charitable uses) as inapplicable to lands, in *Beekman v. People*, 27 *Barb.* 260, 275. Applied in *Trustees of Theol. Sem. of Auburn v. Kellogg*, 16 *N. Y.* 89. Explained in *Robertson v. Bullions*, 11 *Id.* 243, 255; *Owens v. Miss. Soc. of M. E. Church*, 14 *Id.* 380, 388. Examined and applied in *Beekman v. Bonsor*, 23 *Id.* 307. Examined at length and limited in *McCaughal v. Ryan*, 27 *Barb.* 376, 382. Examined in dissenting opinion in *Downing v. Marshall*, 23 *Id.* *Pr.* 4, 20. Commented on and compared with subsequent adverse decisions, in *Levy v. Levy*, 33 *N. Y.* 97, 107, 119. Overruled in *Bascom v. Albertson*, 34 *Id.* 584; and see *Rose v. Rose*, 4 *Abb. Ct. App. Dec.* 108. Disapproved in *Holmes v. Mead*, 52 *Id.* 332, 337. Disapproved and repudiated in *Matter of Abbott*, 3 *Redf.* 303, 305. Extent to which it has been overruled stated in *Power v. Cassidy*, 16 *Hun.* 294, 298; which was aff'd in 79 *N. Y.* 602, 613, which see. See *Prichard v. Thompson*, 95 *Id.* 76, limiting *Powers v. Cassidy*. Collated with *Matter of N. Y. Public Schools*, 31 *Id.* 374; *Christie v. Gage*, 2 *Sup'm. Ct. (T. & C.)* 344, and many other cases, in *Sowers v. Cyrenius*, 39 *Ohio St.* 29; s. c., 48 *Am. R.* 418. Shown in 9 *Am. Dec.* 582, *n.*, to have been overruled in *Levy v. Levy*, 33 *N. Y.* 97; *Bascom v. Albertson*, 34 *Id.* 584, these and many other cases being reviewed at length. Explained with *Beekman v. Bonsor*, 23 *Id.* 308; *Bascom v. Albertson*, 34 *Id.* 610, in *Starkweather v. Am. Bible Society*, 72 *Ill.* 50; s. c., 22 *Am. R.* 133, 140. Explained in 3 *Washb. on Real. Prop.* 4 ed, 518, *n.* Commented on in 2 *Perry on Trusts*, 3 ed. § 748, *n.* 391. Collated with other cases in *Gerard Titles to Real Est.* 2 ed 296, 303. Quoted in 1 *Jarm. on Wills*, *Rand. & T.* ed. 386, *n.*; *Id.* 478. Explained (Effect of provision for accumulation) in *McGrath v. Van Stavoren*, 8 *Daly*, 454, 457. Approved and followed (Validity of bequest to corporation) in *Wetmore v. Parker*, 52 *N. Y.* 450, 457; which aff'd 7 *Lans.* 121, 124, which see. Cited with other cases (Power of corporation to execute trust) in 12 *Am. L. Reg. N. S.* 542.
- *v. —*, 2 *Hun.* 111; s. c., with opinion, 4 *Sup'm. Ct. (T. & C.)* 251.
- *v. Willis*, 15 *Abb. Fr. N. S.* 11. See (Mode of taking objection that action was not commenced in time) *Code Civ. Pro.* 1881, § 413, *n.*
- *v. Wilson*, 4 *Sandf. Ch.* 379. See *Bining v. Clark*. Disting'd (Good-will of partnership business as property) in *Musselman's Appeal*, 62 *Pa.* 81; s. c., 1 *Am. R.* 385, 386. Collated with *Martin v. Van*

- Schaick, 4 *Paige*, 479; *Case v. Abell*, 1 *Id.* 401; *Dougherty v. Van Nostrand*, *Hoffm.* 68, and *Binger v. Clark*, 10 *Abb. Pr. N. S.* 264, in 15 *Fed. Rep.* 317, *n.* See (Effect of sale of good-will of business) *Howe v. Searing*, 19 *How. Pr.* 14, 17. Cited with other cases in 14 *Am. L. Reg. N. S.* 829.
- *v. Woodard*, 2 *Wend.* 487. Dictum overruled (Effect of power to sell and convey as including power to mortgage) in *Bloomer v. Waldron*, 3 *Hill*, 361. Denied in *Stokes v. Payne*, 58 *Miss.* 614; *s. c.*, 38 *Am. R.* 340. Citing *Cumming v. Williamson*, 1 *Sandf. Ch.* 17.
- Williamson, Matter of.** See *Williamson v. Mayor, &c. of N. Y.*
- Williamson v. Brown**, 15 *N. Y.* 354. Applied (Purchaser, &c. when chargeable with notice) in *Parker Mills v. Jacot*, 8 *Bosw.* 175; *Herrlich v. Brennan*, 11 *Hun.* 194; *Thomson v. Wilcox*, 7 *Lans.* 380; *Robinson v. Williams*, 22 *N. Y.* 387; *Fassett v. Smith*, 22 *Id.* 258; *Baker v. Bliss*, 39 *Id.* 74; *Reed v. Gannon*, 50 *Id.* 345, 350; *Bennett v. Buchan*, 76 *Id.* 390; *Stearns v. Gage*, 79 *Id.* 106; *Burnham v. Brennan*, 42 *Super. Ct. (J. & S.)* 79. Approved and applied with *Howard Ins. Co. v. Halsey*, 4 *Sandf.* 578; *Kellogg v. Smith*, 26 *N. Y.* 18; *Tuttle v. Jackson*, 6 *Wend.* 213; *Reed v. Gannon*, 50 *N. Y.* 345, in *Ellis v. Horrman*, 90 *Id.* 466. Followed as announcing a rational doctrine,—in *Pell v. McElroy*, 36 *Cal.* 268, 276. See cases cited in 16 *Am. Dec.* 512, *n.* Referred to in 2 *Pomeroy on Eq. Jur.* 40, *n.*, as uniformly treated as an important and leading case. Analysed and explained in 17 *Am. L. Rev.* 849, 856. Approved in *Thomas on Mort.* 152. Quoted in *Wait. on Fraud. Conv.* § 374.
- *v. Champlin, Clarke*, 9. Aff'd in 8 *Paige*, 70. Decision in *Id.* disting'd (Suit against guarantor pending foreclosure) in *Schaaf v. O'Brien*, 8 *Daly*, 181, 183.
- *v. Dale*, 3 *Johns. Ch.* 290. Followed (Setting aside judicial sale) in *Kellogg v. Howell*, 62 *Barb.* 280, 290. Followed with *Duncan v. Dodd*, 2 *Paige*, 99; *Requa v. Rea*, *Id.* 339 (Power of court to control sales by public officers on its own process) in *Seaman v. Riggins*, 1 *Green Ch. (N. J.)* 214; *s. c.*, 34 *Am. Dec.* 200.
- *v. Dodge*. See *Conlin v. Cantrell*.
- *v. Field*, 2 *Sandf.* 533. See *Lawrence v. Leake & Watts Orphan House*; *Nodine v. Greenfield*. Followed (New statute of limitations as affecting vested right) in *Rawls v. Doe, ex dem. Kennedy*, 23 *Ala.* 240; *s. c.*, 58 *Am. Dec.* 289.
- *v. —*, 2 *Barb. Ch.* 281. See *Dickenson v. Codwise*.
- *v. Mayor, &c. of N. Y.*, 3 *Hun.* 65; *s. c.*, as *Petition of Williamson*, 5 *Sup'm. Ct. (T. & C.)* 349. Aff'd, it seems, as *Matter of Williamson*, 62 *N. Y.* 618, but without opinion.
- *v. Wadsworth*, 49 *Barb.* 294. Overruled (Who is a "servant") in *Coffin v. Reynolds*, 37 *N. Y.* 640.
- *v. Williamson*, 6 *Paige*, 298. Applied (Interest on legacy) in *Campbell v. Cowdrey*, 31 *How. Pr.* 180; *Cooke v. Meeker*, 36 *N. Y.* 20. Followed in *Rogers v. Rogers*, 2 *Redf.* 24, 27. Collated with other cases in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 630. Followed (Right of tenant for life to income of residue from time of testator's death) in *Bullard v. Benson*, 1 *Dem.* 486. Followed (Division of funds between life-tenant and remainder-man) in *Roosevelt v. Roosevelt*, 5 *Redf.* 264, 267. Disting'd (When legacy, given in lieu of dower, abates) in *Orton v. Orton*, 3 *Abb. Ct. App. Dec.* 415. Limited with *Babcock v. Stoddard*, 3 *Sup'm. Ct. (T. & C.)* 207; *Sanford v. Sanford*, 4 *Hun.* 753. Limited in *Tickel v. Quinn*, 1 *Dem.* 425. Quoted (Reducing to writing and preserving evidence in surrogate's court) in *Willard on Executors*, 52.
- *v. —*, 1 *Johns. Ch.* 488. See *Wightman v. Wightman*. Followed (Effect of conduct of injured party to bar prosecution for divorce for adultery) in *Christianberry v. Christianberry*, 3 *Blackf. (Ind.)* 202; *s. c.*, 25 *Am. Dec.* 96, with note. Discussed (English common law, how far applicable in divorce proceedings) in 1 *Bish. on Mar. & D.* § 75, 6 ed.
- Willink v. Vanderveer.** See *Mayor of Albany v. Cunliff*.
- *v. Bailey*, 19 *Johns.* 263. Reviewed (Compelling production of books) in *Wallis v. Murray*, 4 *Cow.* 401; *Townsend v. Lawrence*, 9 *Wend.* 459.
- *v. Corlies*, 2 *Edw.* 281. Quoted (Receiver of real estate) in *High on Receiv.* § 563, *n.* 1.
- *v. Forrest.* See *Fry v. Bennett*; *Lee v. Woolsey*.
- *v. Green*, 5 *Hill*, 232; *s. c.*, 40 *Am. Dec.* 351; 16 *N. Y. Com. L. Law. ed.* 113, with brief note of other cases. Applied with *Cayuga Co. B'k v. Warden*, 1 *N. Y.* 418 (Effect of notice of protest served on one of two joint indorsers) to admissions of one of two joint obligors,—in *Lewis v. Woodworth*, 2 *N. Y.* 512, 514. Included with note in 2 *Ames Cas. on B. & N.* 424.
- *v. Havemeyer.* See *Clark v. Holdridge*.
- *v. Long Island R. R. Co.*, 32 *Barb.* 398. Aff'd in 34 *N. Y.* 670. Decision in *Id.* criticised (Negligence as question of law) in *Thrings v. Central Park R. Co.*, 7 *Robt.* 616. Approved in *Bills v. N. Y. Central R. R. Co.*, 84 *N. Y.* 5, 10. Disting'd (Contributory negligence in standing on platform of railroad car) in *Quinn v. Illinois Central R. R. Co.*, 51 *Ill.* 499.
- *v. Mott*, 36 *N. Y.* 486. Explained (Acknowledgment of testator's signature) in *Mitchell v. Mitchell*, 16 *Hun.* 97, 100. Disting'd in *Sisters of Charity v. Kelly*, 67 *N. Y.* 414. Followed in *Norton v. Norton*, 2 *Redf.* 6, 16; *Matter of Harder, Truck*, 426, 430. Applied (Evidence to sustain admis-

- sion of will to probate) in *Kinne v. Kinne*, 2 *Sup'm. Ct. (T. & C.)* 392.
- *v. People*, 5 *Park*. 621. Aff'd in 32 *N. Y.* 715. Decision in *Id.* examined at length (Test of insanity) in *People v. Montgomery*, 13 *Abb. Pr. N. S.* 215. Followed in *Flanagan v. People*, 52 *N. Y.* 467, 469. Followed (Power of review by Court of Appeals in criminal cases) in *Gaffney v. People*, 50 *N. Y.* 416, 425. Decision in 5 *Park.* overruled (Evidence of declarations of those from whom one has received stolen property) in *People v. Dowling*, 84 *N. Y.* 478, 485.
- *v. Tibbals*, 33 *Super. Ct. (J. & S.)* 220. See other cases collected (Usage to vary contract) in 1 *Abb. N. C.* 472, *n.*
- *v. Underhill*. See *Bissell v. Bissell*.
- *v. Weaver*, 3 *Sup'm. Ct. (T. & C.)* 757; *s. c.*, 1 *Hun.* 121. Rev'd in 58 *N. Y.* 681.
- Williston v. Jones*. See *Edgell v. Hart*.
- Willitts v. Waite*, 25 *N. Y.* 577. Decision at Special Term reported in 13 *How. Pr.* 34. See *Hoyt v. Thompson*; *Runk v. St. John*. Decision in 25 *N. Y.* limited and criticised (Right of foreign assignee to maintain suit in courts of this State) in *Hunt v. Jackson*, 5 *Blatchf. C. Ct.* 349, 351. See (Service of summons on dissolved corporation) in *Hetzel v. Tannehill Silver Mining Co.*, 4 *Abb. N. C.* 40.
- Willmarth v. Crawford*. See *N. Y. Firemen's Ins. Co. v. Ely*.
- Willoughby v. Comstock*, 3 *Hill*, 389. See (Negotiability of instrument as affected by statement as to deposit of collateral security) in *Arnold v. Rock River Valley, &c. R. R. Co.*, 5 *Duer*, 214. Reviewed with other cases (Necessity of notice of sale by pledgee) in *Wheeler v. Newbould*, 16 *N. Y.* 399.
- Willover v. Hill*, 72 *N. Y.* 36. Explained and applied (Evidence to mitigate damages in action for slander) in *Hatfield v. Lasher*, 81 *N. Y.* 246, 250, which aff'd 17 *Hun.* 23, 26, which see. Applied to action for seduction, in *Wandell v. Edwards*, 25 *Id.* 498, 500. See *Code Civ. Pro.* 1881, § 536, *n.*
- Wills v. Simmonds*, 51 *How. Pr.* 48. Aff'd in part and rev'd in part in 8 *Hun.* 189.
- Willson v. Betts*. See *Hewlett v. Cock*; *Ridgeley v. Johnson*.
- *v. Ellis*. See *Morse v. Keyes*.
- *v. Foree*, 6 *Johns.* 110; *s. c.*, 5 *Am. Dec.* 195. Questioned but followed (Assumpsit on sale obtained by fraud) in *Nelson v. Hyde*, 66 *Barb.* 59, 61. Followed with *Pierce v. Drake*, 15 *Johns.* 475, in *Mann v. Stowell*, 3 *Chand. (Wisc.)* 247. Examined with *Pierce v. Drake*; *Arnold v. Crane*, 8 *Johns.* 82; *Corlies v. Gardner*, 2 *Hull*, 345, in *Galloway v. Holmes*, 1 *Doug. (Mich.)* 340.
- Willy v. Mulledy*, 6 *Abb. N. C.* 97. Aff'd in 78 *N. Y.* 310. Decision in *Id.* disting'd (Several liability as to negligent use of premises) and *Moore v. Goedel*, 34 *Id.* 527. Criticised in *Harris v. Perry*, 89 *Id.* 308.
- Wilmerdings v. Fowler*, 45 *How. Pr.* 142; *s. c.*, as *Fowler v. Lowenstien*, 7 *Lans.* 167. Aff'd in 14 *Abb. Pr. N. S.* 249. Further decision in 55 *N. Y.* 641; *s. c.*, fully reported 15 *Abb. Pr. N. S.* 86. With latter decision see (When Court of Appeals loses jurisdiction of case) *People ex rel. Smith v. Village of Nelliston*, 79 *N. Y.* 638.
- Wilmersdoerffer v. Mahopae Improvement Co.*, 18 *Hun.* 387. Approved and explained (Dissolution of corporation at suit of attorney general) in *Kittredge v. Kellogg Bridge Co.*, 8 *Abb. N. C.* 168, 170.
- Wilmont v. Meserole*, 41 *Super. Ct. (J. & S.)* 274. Compare (Meaning of term "real property") *Code Civ. Pro.* § 3343, subd. 6.
- Wilmot v. Hurd*, 11 *Wend.* 584. See (Necessity that warranty be made at time of sale) *Shall v. Ostrander*, 63 *Barb.* 136. Applied (What demands are proper subjects of set-off) in *Hart v. Willard*, 1 *Sandf.* 256.
- *v. Richardson*, 6 *Duer*, 328. Further decision in 7 *Bow.* 570. Aff'd in 2 *Keyes*, 519; *s. c.*, 4 *Abb. Ct. App. Dec.* 614.
- Wilsey v. Dennis*, 44 *Barb.* 354. Discussed (Contract for sale of real property) in 1 *Chitty on Contr.* 429, *n.* 4, 11 *Am. ed.*
- Wilson v. Abrahams*, 1 *Hill*, 207. See *Brant v. Fowler*; *People v. Douglass*. Followed (Verdict as invalidated by use of intoxicating liquors by jury) in *Jones v. People*, 6 *Colo.* 452; *s. c.*, 45 *Am. R.* 526, citing *People v. Douglas*, 4 *Cor.* 36, as overruled. Followed with *Bullard v. Spoor*, 2 *Id.* 430; *Rose v. Smith*, 4 *Id.* 17, in *State v. Bruce*, 43 *Iowa*, 530; *s. c.*, 30 *Am. R.* 403.
- *v. Allen*, 6 *Barb.* 542. Qualified (Receiver as representative of creditors of judgment debtor) in *McHarg v. Donnelly*, 27 *Id.* 100, 103.
- *v. Baptist Education Society*, 10 *Barb.* 303. Applied (Surrogates jurisdiction as to disputed claims) in *Andrews v. Wallege*, 8 *Abb. Pr.* 426; *Tucker v. Tucker*, 4 *Abb. Ct. App. Dec.* 430; *Ruthven v. Patten*, 2 *Abb. Pr. N. S.* 128. Disting'd in *Matter of Flood*, 16 *Id.* 409. Criticised in *McNulty v. Hurd*, 11 *Hun.* 339, 341; which was modified in 72 *N. Y.* 518, 520, which see. Reviewed with other cases and applied, in *Matter of Shaw, Tuck.* 363.
- *v. Barney*, 5 *Hun.* 257. Explained (Who may be appointed receiver) in *Chamberlain v. Greenleaf*, 4 *Abb. N. C.* 92, 95.
- *v. Boerem*, 15 *Johns.* 286. Discussed (Derivative evidence) in 2 *Best. on Ev.* § 505, *n. a.* Wood's ed.
- *v. Britton*, 6 *Abb. Pr.* 33. Rev'd in *Id.* 97; *s. c.*, 26 *Barb.* 562, as to evidence of fraudulent intent. Decision in 6 *Abb. Pr.* 37, followed (Affidavits on motion to vacate attachment) in *Dickinson v. Benham*, 10 *Id.* 391; but see *Gasherie v. Apple*, 14 *Id.* 64, 67. Decision in 6 *Id.* 97. Followed with *Dickinson v. Benham*, 10 *Id.* 390; 12



- Id.* 158; *Scott v. Dexter*, 1 *Weekly Dig.* 25; *Talcott v. Rosenthal*, 22 *Hun.* 573; *Tim v. Smith*, 13 *Abb. N. C.* 31 (Arrest for intent to defraud creditors) in *Farwell v. Furniss*, 67 *How. Pr.* 188.
- *v. Burr*, 25 *Wend.* 386. See *Watkins v. Halstead*. Criticised and the contrary held (Effect of moral obligation to uphold promise of *feme covert* made after removal of her disability) in *Music v. Dodson*, 76 *Mo.* 624; s. c., 43 *Am. R.* 780; 15 *Reporter*, 601, citing also as contrary cases *Watkins v. Halstead*, 2 *Sandf.* 311; *Smith v. Allen*, 1 *Lans.* 101; *Ehle v. Judson*, 24 *Wend.* 67; and in *Smith v. Ware*, 13 *Johns.* 237.
- *v. City of Watertown*, 5 *Sup'm. Ct. (T. & C.)* 579; s. c., more fully, in 3 *Hun.* 508.
- *v. Davol*. See *Thomas v. Crofut*.
- *v. Deen*, 74 *N. Y.* 531. Disting'd (Parol evidence to vary written contract) in *Chapin v. Dobson*, 73 *N. Y.* 74, 80; *Funch v. Abenheim*, 20 *Hun.* 7.
- *v. Duncan*, 11 *Abb. Pr.* 3. Not followed (Sufficiency of notice, accompanying attachment, to be served on third person) in *Greenleaf v. Mumford*, 19 *Abb. Pr.* 477. Approved with *Kuhlman v. Orser*, 5 *Duer*, 242, in *Clarke v. Goodridge*, 41 *N. Y.* 210, 214. Followed in *O'Brien v. Mechanics, &c. Fire Ins. Co.*, 36 *Super. Ct. (J. & S.)* 110, 124; which was rev'd in 56 *N. Y.* 52, 55, which see.
- *v. Edwards*, 6 *Lans.* 134. Rev'd in 61 *N. Y.* 659. Further decision in 67 *Id.* 591. Decision in 6 *Lans.* disting'd (Liability of sureties) in *Western N. Y. Life Ins. Co. v. Clinton*, 66 *N. Y.* 332.
- *v. Forsyth*, 24 *Barb.* 105. Applied (Effect of retention of possession by assignor) in *Waverly Nat. B'k v. Halsey*, 57 *Barb.* 263. Explained in *Burrill on Assign.* § 281, 4 ed. Applied (Assignment for creditors, as affected by fraudulent concealment of assets by assignor) in *Miller v. Halsey*, 4 *Abb. Pr. N. S.* 33; *Am. Exch. B'k v. Webb*, 15 *How. Pr.* 194. Collated with other cases in *Bishop on Assign.* § 226. Explained (Preferences in partial assignments) in *Burrill on Assign.* § 169, 4 ed. Collated with other cases in *Bishop on Assign.* § 167.
- *v. Genesee Mut. Ins. Co.*, 16 *Barb.* 511. Rev'd on ground of insufficiency of notice to agent in 14 *N. Y.* 418. See *Hoffman v. Aetna Ins. Co.*; *Tilton v. Kingston Mut. Ins. Co.* Both decisions examined and explained (Validity of policy, as affected by transfer of interest between partners) in *Hoffman v. Aetna Ins. Co.*, 32 *N. Y.* 405, 409. Decision in 16 *Barb.* applied in *Pierce v. Nashua Ins. Co.*, 50 *N. H.* 297; s. c., 9 *Am. R.* 235. Followed with *Hoffman v. Aetna Ins. Co.*, 32 *N. Y.* 406, in *Dermani v. Home Mut. Ins. Co. of New Orleans*, 26 *La. Ann.* 69; s. c., 21 *Am. R.* 545.
- *v. Goit*. See *Terwilliger v. Wands*.
- *v. Green*, 20 *Wend.* 189. Overruled (Extent of power of review, on certiorari) in *Mercwood v. Hollister*, 6 *N. Y.* 309. See *Niblo v. Post*, 25 *Wend.* 280; *Buck v. Binninger*, 3 *Barb.* 391.
- *v. Hamilton*, 9 *Johns.* 442. Disapproved (Power of appellate court, to revive suit on death of party) in *Anderson v. Anderson*, 20 *Wend.* 585, 587.
- *v. Herkimer Co. Mut. Ins. Co.*, 6 *N. Y.* 53. See *Trench v. Chenango M. Fire Ins. Co.* Explained (Severability of contract of insurance) in *Merrill v. Agricultural Ins. Co.*, 73 *N. Y.* 452, 461.
- *v. Knapp*, 42 *Super. Ct. (J. & S.)* 25. Aff'd in 70 *N. Y.* 596.
- *v. Lawrence*, 13 *Hun.* 238. Aff'd in 76 *N. Y.* 585. Prior decision in 8 *Hun.* 593. See *Barry v. Brune*; *Barry v. Equitable Life Assur. Soc'y.* Decision 76 *N. Y.* applied (Assignability of policy in favor of wife) in *Brunner v. Cohn*, 86 *Id.* 11, 15. Disting'd in *Living v. Domert*, 26 *Hun.* 151. Decision in 8 *Hun.* disting'd in *Robinson v. Mut. Benefit Life Ins. Co.*, 16 *Blatchf. C. Ct.* 194, 209, 213.
- *v. —*, 18 *Hun.* 56. Aff'd in 82 *N. Y.* 409. Decision in *Id.* cited as authority (What is maritime contract) in *McDonald v. Schooner Nimbus*, 137 *Mass.* 360, 363.
- *v. Little*, 1 *Sandf.* 351. Aff'd in 2 *N. Y. (Comst.)* 443; s. c., 51 *Am. Dec.* 307, with note, collecting citations. Decision in 3 *Id.* explained (Damages for conversion of stock) in *Romaine v. Van Allen*, 26 *Id.* 310. Explained in *Ang. & A. on Corp.* § 580, 11 ed. Applied (Sale by pledgee, when authorized) in *Durant v. Einstein*, 35 *How. Pr.* 231; *Taylor v. Ketchum*, 12, 299. Disting'd in *Milliken v. Dehon*, 27 *N. Y.* 375; *Markham v. Jaudon*, 41 *Id.* 244. Explained in 2 *Pars. on Contr.* 114, n. c. Applied (Distinction between pledge and mortgage) in *Lewis v. Graham*, 4 *Abb. Pr.* 110; *Campbell v. Parker*, 9 *Bosw.* 332. See *Hasbrouck v. Vandervoort*, 4 *Sandf.* 78. Compare *Brownell v. Hawkins*, 4 *Barb.* 491; *Langdon v. Bush*, 9 *Wend.* 80; *Bunacleugh v. Poolman*, 3 *Daly*, 236. Explained in *Thomas on Mort.* 431. Disting'd with *Seymour v. Wyckoff*, 10 *N. Y.* 213, and *Nourse v. Prime*, 4 *Johns. Ch.* 496; *Horton v. Morgan*, 4 *Duer*, 58; *Allen v. Dykers*, 4 *Hill*, 593 being relied on (Duty of bailee of stocks to restore identical shares received) in *Atkins v. Gamble*, 42 *Cal.* 86; s. c., 10 *Am. R.* 282, 292, 295. Followed (Effect of delivery of certificate of stock in passing equitable title) in *Reed v. Copeland*, 50 *Conn.* 472; s. c., 47 *Am. R.* 663.
- *v. Lynt*, 30 *Barb.* 124. Collated with other cases (Trusts for charitable purposes) in *Gerard Titles to Real Est.* 2 ed. 301.
- *v. Mackenzie*, 7 *Hill*, 95; s. c., 42 *Am. Dec.* 51, with extended note, wherein are collected citations (Civil liability of military and naval officers, and kindred topics).
- *v. Martin*, 1 *Den.* 602. See *Clark v.*

Marsiglia; *Young v. Dake*. Disting'd and limited (Validity of parol executory contract extending over period of more than one year) in *Greene v. Waggoner*, 2 *Ill.* 298. Followed (Contract for board and lodging is not for interest in real estate) in *White v. Maynard*, 111 *Mass.* 250; s. c., 15 *Am. R.* 28, 32.

— *v. Mathews*, 24 *Barb.* 295. See *Suydam v. Jenkins*. Relied on (Damages in conversion) by *DENIO*, Ch. J., in *Scott v. Rogers*, 4 *Abb. Ct. App. Dec.* 157, 160, *n.*

— *v. Mayor, &c. of N. Y.*, 1 *Abb. Pr.* 4; s. c., 4 *E. D. Smith*, 675. See *Viburt v. Frost*. Disting'd (Injunction against illegal tax) in *Fuller v. Allen*, 7 *Abb. Pr.* 16. Followed in *N. Y. Life Ins. Co. v. Supervisors of N. Y.*, 4 *Duer*, 200; *Pumpelly v. Village of Owego*, 45 *How. Pr.* 259. Applied (Mandamus as remedy against illegal taxation) in *People v. Assessors of Barton*, 44 *Barb.* 155. Explained (Taxation of non-residents) in *Internat. Life Assur. Soc. v. Comm'rs of Taxes*, 28 *Id.* 320. Examined in *Hoyt v. Comm'rs of Taxes*, 23 *N. Y.* 224, 236.

— *v. —*, 1 *Den.* 595. See *Bartlett v. Crozier*; *Bellinger v. N. Y. Central R. R. Co.*; *Lacour v. Mayor, &c. of N. Y.*; *Weet v. Trustees of Brockport*; *Yates v. Lansing*. Applied (Discretion as to construction or repair of public works) in *Griffith v. Follett*, 20 *Barb.* 632; *Peck v. Village of Batavia*, 32 *Id.* 644; *Kavanagh v. City of Brooklyn*, 38 *Id.* 237. Approved and applied in *Cole v. Trustees of Medina*, 27 *Id.* 218, 221. Followed as decisive in *Ely v. City of Rochester*, 26 *Id.* 137. Re-aff'd and applied in *Mills v. City of Brooklyn*, 32 *N. Y.* 496. Disting'd in *Donohue v. Mayor, &c. of N. Y.*, 3 *Daly*, 69; *Lacour v. Mayor, &c. of N. Y.*, 3 *Duer*, 414; *Bastable v. City of Syracuse*, 8 *Hun*, 590; *Clemence v. City of Auburn*, 66 *N. Y.* 339. See *Hutson v. Mayor, &c. of N. Y.*, 9 *Id.* 169. Followed and approved in *Imler v. City of Springfield*, 55 *Mo.* 119; s. c., 17 *Am. R.* 645, 652. Applied with *Mills v. City of Brooklyn*, 32 *N. Y.* 489; *Masterton v. Village of Mount Vernon*, 58 *N. Y.* 391; *Smith v. Mayor, &c.*, 66 *N. Y.* 295, as laying down a doctrine very generally applied elsewhere under circumstances almost innumerable, in variety,—in *Burford v. Grand Rapids*, 53 *Mich.* 98, 100. Applied to suspension of ordinance in *Hill v. B'd of Aldermen of Charlotte*, 72 *N. C.* 55; s. c., 21 *Am. R.* 451. Disapproved in *Nevins v. City of Peoria*, 41 *Ill.* 512. Disapproved with *Mills v. City of Brooklyn*, 32 *N. Y.* 489, in *Garrison v. City of Charleston*, 16 *W. Va.* 282; s. c., 37 *Am. R.* 762. See, however, 43 *Am. Dec.* 723, *n.* Collated with *Weet v. Trustees of Brockport*, 16 *N. Y.* 161, 170; *Lacour v. Mayor, &c. of N. Y.*, 3 *Duer*, 406; *Conrad v. Trustees of Ithaca*, 16 *N. Y.* 158; *Rochester White Lead Co. v. City of Rochester*, 3 *Id.* 463; *Mills v. City of Brooklyn*, 32 *Id.* 489;

*Wims v. Mayor, &c. of Troy*, 59 *Id.* 500; *Barton v. City of Syracuse*, 37 *Barb.* 292; 36 *N. Y.* 51; *St. Peter v. Dennison*, 58 *Id.* 416, and other cases in *Ashley v. City of Port Huron*, 35 *Mich.* 296; s. c., 24 *Am. R.* 552, 554, with note collating cases. Explained (Municipal liability for neglect to repair highway) in *Weet v. Trustees of Brockport*, 16 *Id.* 170, *n.* Cited with *Weet v. Trustees of Brockport*, 16 *N. Y.* 161; *Lloyd v. Mayor, &c. of N. Y.*, 5 *Id.* 369; *Ilyatt v. Trustees of Rondout*, 44 *Barb.* 385, in *Collins v. City of Council Bluffs*, 3 *Iowa*, 324; s. c., 7 *Am. R.* 200, as according with the weight of authority. Criticised and limited (Liability for injury resulting from exercise of authority conferred by law) in *City of Pekin v. Brereton*, 67 *Ill.* 477; s. c., 16 *Am. R.* 629. Questioned in *Inman v. Tripp*, 11 *R. I.* 520; s. c., 23 *Am. R.* 520, 522. Disapproved with *Bailey v. Mayor, &c. of N. Y.*, 3 *Hill*, 531, in *Meares v. Comm'rs of Wilmington*, 9 *Ired. (N. C.)* 73; s. c., 49 *Am. Dec.* 412, 417, with note. Disapproved in *Thurston v. City of St. Joseph*, 51 *Mo.* 510; s. c., 11 *Am. R.* 463, 466. Disting'd (Municipal liability for negligence of contractor) in *Delmonico v. Mayor, &c. of N. Y.*, 1 *Sandf.* 227. Applied (Statute, when mandatory) in *People ex rel. Raymond v. Connolly*, 4 *Abb. Pr. N. S.* 377. Approved and applied (Distinction between ministerial and judicial duties) in *Nash v. People*, 36 *N. Y.* 616. Discussed in 1 *Add. on Torts*, 31, *n.* 1, Wood's ed.

— *v. Morgan*. See *Carpenter v. Atherton*.

— *v. Onderdonk*, 3 *How. Pr.* 319; s. c., with points of counsel, 1 *Code R.* 63.

— *v. Palmer*, 11 *Hun*, 325. Appeal dismissed in 75 *N. Y.* 250. Decision in *Id.* applied (Effect of notice of entry of judgment) in *Yates v. Burch*, 87 *Id.* 409.

— *v. People*, 4 *Park.* 619. See *People v. Cogdell*. Applied (Effect of irregularities of jurors in obtaining information) in *People v. Gaffney*, 14 *Abb. Pr. N. S.* 41. Questioned (Opinion of medical witness as evidence) in *Gardiner v. People*, 6 *Park.* 155, 202.

— *v. Randall*, 7 *Hun*, 15. Aff'd in 67 *N. Y.* 338. Decision in 7 *Hun* followed (Recovery for money paid by mistake as to quantity) in *Paine v. Upton*, 21 *Id.* 306, 312.

— *v. Reed*, 3 *Johns.* 175. Followed (Action against co-tenant as wrong-doer) in *Kellum v. Knechdt*, 17 *Hun*, 584. Disting'd (Liability for conversions, as between co-tenants) in *Osborn v. Schenck*, 18 *Id.* 205. Applied in *White v. Osborn*, 21 *Wend.* 75. Followed with *Farr v. Smith*, 9 *Wend.* 338; *Mersereau v. Norton*, 15 *Johns.* 179; *Hyde v. Stone*, 7 *Wend.* 357, in *Warren v. Aller*, 1 *Pinn. (Wisc.)* 479; s. c., 44 *Am. Dec.* 406, with note. Cited with *Hyde v. Stone*, 7 *Wend.* 354; *White v. Osborn*, 21 *Id.* 72; *Waddell v. Cook*, 2 *Hill*, 47; *Farr v. Smith*, 9 *Wend.* 338, as accord-

- ing with the weight of authority,—in Hall v. Page, 4 Ga. 428; s. c., 48 Am. Dec. 235, 237, with note. Cited in Winner v. Penniman, 35 Md. 163; s. c., 6 Am. R. 385, as according with the weight of authority. Disapproved in Sanborn v. Morrill, 15 Verm. 700; s. c., 40 Am. Dec. 701, 703; Welch v. Clark, 12 Verm. 681; s. c., 36 Am. Dec. 368, with note. Cited with Kelum v. Knecht, 17 Hun, 583; Moody v. Buck, 1 Sandf. 304; Dyckman v. Valiente, 42 N. Y. 549, in Story on Partn. 7 ed. § 449, n. Quoted in Bigel. Cas on Torts, 448. Commented on in 2 Greenl. on Ev. 14 ed. § 646, n. 1.
- v. Roberts, 5 Bosw. 100. Disting'd (What is contract of guaranty) in Gallagher v. Nichols, 60 N. Y. 438, 446.
- v. Robertson, 21 N. Y. 587; s. c., 19 How. Pr. 350. Followed (Effect of appropriation of firm property to pay individual debt) in Hurlbert v. Dean, 2 Abb. Ct. App. Dec. 431; Ransom v. Van Deventer, 41 Barb. 316. Applied in Scott v. Guthrie, 10 Bosw. 420; O'Neil v. Salmon, 25 How. Pr. 249, 251; Menagh v. Whitwell, 52 N. Y. 153, 162; Martin v. Wagener, 1 Sup'm. Ct. (T. & C.) 518. Followed but disting'd in Knauth v. Bassett, 34 Barb. 31, 34, 36, 39. Disting'd in Dimon v. Hazard, 32 N. Y. 65, 80. Disting'd with Menagh v. Whitwell, 52 Id. 146, in Sherill Roper Air Engine Co. v. Harwood, 30 Hun, 9. Applied in Keith v. Fink, 47 Ill. 272, 276. Collated with other cases in Bishop on Assign. § 188. Collated with other cases (Trust for assignor) in Id. § 201. Explained in Burrill on Assign. § 350, n. 4, 4 ed. Quoted (Preferences) in Id. § 211, n. 5, 4 ed. Followed as settled law (Effect of provision in assignment for creditors giving assignee discretion) in Townsend v. Stearns, 32 N. Y. 217. Discussed in Burrill on Assign. § 224, 4 ed.
- v. Robinson, 6 How. Pr. 110. Limited (Liability for false imprisonment) in Von Latham v. Libby, 38 Barb. 346.
- v. Susquehanna Turnpike Co. See Renwick v. N. Y. Central R. Co.
- v. Taylor, 8 Daly, 253. Commented on (Weekly or monthly hiring from what acts implied) in McAdam on Landl. & T. 2 ed. §§ 20, 22.
- v. Troup, 7 Johns. Ch. 25. Aff'd in 2 Cow. 195; s. c., 14 Am. Dec. 458, 474, with note, wherein it is said to have been frequently cited and followed (Mortgage is mere security, giving mortgagee no legal estate). See Bergen v. Bennett; Nixon v. Hyserott. Decision in 2 Cow. disting'd (Rights of grantee of mortgagee) in Davis v. Duffie, 18 Abb. Pr. 365; Mickles v. Townsend, 18 N. Y. 578. Examined with other cases in Purdy v. Huntington, 42 Id. 346. Applied (Powers, how regarded in equity) in Cumming v. Williamson, 1 Sandf. Ch. 21. Limited (Who may question purchase made by trustee) in Iddings v. Bruen, 4 Sandf. Ch. 277. Applied (Parol evidence to explain written contract) in Brown v. Slater, 16 Conn. 192; s. c., 41 Am. Dec. 137. Quoted (Effect of assigning debt to transfer mortgage) in 2 Washb. on Real Prop. 4 ed. 99.
- v. Van Pelt, 2 Sup'm. Ct. (T. & C.) 414. Aff'd, it seems, in 71 N. Y. 611, but without opinion.
- v. Wheeler, 6 How. Pr. 49. Restored as authority (Dismissal of complaint for failure to bring cause to trial) by Winchell v. Martin, 14 Abb. Pr. N. S. 47.
- v. Williams, 14 Wend. 146; s. c., 28 Am. Dec. 518. Disting'd (Liability of firm on firm note) in Osgood v. Glover, 7 Daly, 367, 372.
- v. Wilson, 1 Barb. Ch. 592. Doubted (Necessity of conveyance to transfer title of real estate to receiver) as authority under the Code,—in Porter v. Clark, 9 N. Y. 142, 147.
- Wilson Collegiate Institute v. Van Horn,** 3 Den. 171. Followed (Fees for searches that are not required in foreclosure suits) in Curtiss v. McNair, 6 Hun, 550.
- Wiltse v. Beardsley, Hill & D.** 386. Disting'd (Misjoinder of causes of action against administrator, &c.) in Day v. Stone, 5 Daly, 353.
- v. Northam, 3 Bosw. 162. Further decision in 5 Id. 421.
- Winans v. Peebles,** 31 Barb. 371. Rev'd in 32 N. Y. 423. See Shepard v. Shepard; White v. Wager. Decision in 32 N. Y. explained (Validity of deed from wife to husband) in Hunt v. Johnson, 44 Id. 34. Compared with other authorities in 7 South. L. J. N. S. 84.
- Winants v. Sherman,** 3 Hill, 74. See (Admissibility of whole of account introduced in evidence) as to contradiction of items, Walden v. Sherburne, 15 Johns. 409. But see Abb. Tr. Ev. 326.
- Winchell v. Bowman,** 21 Barb. 448. Aff'd as Winchell v. Hicks, 18 N. Y. 558. See Johnson v. Beardslee. Disting'd (Waiver of right to go to jury) in Slade v. McMullen, 45 How. Pr. 55; Low v. Hall, 47 N. Y. 105; Stone v. Flower, Id. 568; Wombough v. Cooper, 2 Hun, 428, 432; Clemence v. City of Auburn, 66 N. Y. 338; Trustees of East Hampton v. Kirk, 68 Id. 465; First Nat. B'k of Springfield v. Dana, 79 Id. 116. Followed with approval in Taylor v. Atlantic Mut. Ins. Co., 37 Id. 283. Applied (Effect of payment, to remove bar of statute of limitations) in Miller v. Talcott, 46 Barb. 171; Pickett v. Leonard, 34 N. Y. 176; Harper v. Fairley, 53 Id. 445. Disting'd, and Payne v. Gardiner, 29 N. Y. 146; Van Alen v. Feltz, 1 Keyes, 332; Smith v. Ryan, 66 N. Y. 352; Harper v. Fairley, 53 Id. 442; Munro v. Potter, 34 Barb. 358; Miller v. Talcott, 46 Id. 171; 54 N. Y. 114, being reviewed in Littlefield v. Littlefield, 19 Id. 203. Applied (Effect of payment by one of several joint obligors) in Haight v. Avery,

- 16 *Hun.* 254; *Pitts v. Hunt*, 6 *Lans.* 148. Explained in dissenting opinion in *Payne v. Gardner*, 29 *N. Y.* 182. Disting'd in *Cronkhite v. Herrin*, *U. S. Cir. Ct. W. D. Wis.* 15 *Fed. Rep.* 888, 890. Approved in *Nat. B'k of Delavan v. Cotton*, 53 *Wis.* 31, 34. Followed (Effect of written promise to take pre-existing demand out of statute of limitations, under provisions of Code) in *Van Alen v. Feltz*, 4 *Abb. Ct. App. Dec.* 441. See *Coe v. Mason*, 41 *Barb.* 614, with decision in 21 *Barb.* see cases cited (Pleading statute of limitations) in 8 *Abb. N. C.* 198, *n.*
- *v. Hicks*. See Same *v. Bowman*.
- Winchester v. Osborne**, 62 *Barb.* 337. Rev'd in 61 *N. Y.* 555.
- Windle, Matter of**, 2 *Edw.* 585. Reviewed with other cases (Infant, when considered as holding property as trustee) in *Tyler on Inf. & Cov.* 2 ed. § 107.
- Windt v. German Reformed Church**, 4 *Sandf. Ch.* 471. See *Matter of Brick Church*; *Buffalo City Cemetery v. City of Buffalo*. Applied with *Richards v. North-West Protestant Dutch Church*, 32 *Barb.* 42 (Right to remove bodies from cemetery) in *Kincaid's Appeal*, 66 *Penn. St.* 411; *s. c.*, 5 *Am. R.* 377.
- Wines v. Mayor, &c. of N. Y.**, 9 *Hun.* 659. Aff'd in 70 *N. Y.* 613. See *Brennan v. Mayor, &c. of N. Y.* Both decisions disting'd (Fixing salaries of attendants of court) in *Moser v. Mayor, &c. of N. Y.*, 21 *Hun.* 164. Decision in 70 *N. Y.* disting'd in *Rowland v. Mayor, &c. of N. Y.*, 83 *Id.* 372, 377.
- Winfield v. Bacon**, 24 *Barb.* 154. Examined and disting'd with *Bellinger v. Craigue*, 31 *Barb.* 539; *Davis v. Talcott*, 12 *N. Y.* 184. (Effect of former adjudication) in *McDonald v. Christie*, 42 *Barb.* 36, 40.
- Wing, Matter of**, 2 *Hun.* 671; *s. c.*, reported 5 *Sup'm. Ct. (T. & C.)* 205.
- Wing v. Disse**, 15 *Hun.* 190. See (Power to accept resignation of receiver) *Code Civ. Pro.* 1881, § 2471, *n.*
- *v. Schramm*, 13 *Hun.* 377. Aff'd in 79 *N. Y.* 619. Decision in *Id.* said in *Tyler on Inf. & Cov.* 2 ed. § 501, to hold a doctrine different from that of Massachusetts cases there cited (Effect of statute requiring assent of husband to wife's deed).
- *v. N. Y. & Erie R. R. Co.*, 1 *Hill.* 235. Cited with approval (Degree of care to be exercised by carrier) in *Merchants' Despatch &c. Co. v. Cornforth*, 3 *Colo.* 280; *s. c.*, 25 *Am. R.* 757, 759.
- *v. Smith*, 13 *Hun.* 408. Aff'd, it seems, in 80 *N. Y.* 650, but without opinion.
- *v. Terry*, 5 *Hill.* 160. Overruled (Liability of drawer of bill who signs as surety) in *Suydam v. Westfall*, 2 *Den.* 205.
- Winne, Matter of**, 1 *Lans.* 508. Rev'd in 2 *Id.* 21. See *Billings v. Baker*; *Burke v. Valentine*; *Jaycox v. Collins*. Decision in 1 *Lans.* collated with other cases (Estate by courtesy as affected by statute) in *Sharnov. & B. Cas. on Real Prop.* 289. Decision in 2 *Lans.* approved in 7 *South. L. J.* 71.
- Winne v. McDonald**, 39 *N. Y.* 233. Disting'd (Rights of one deriving title from fraudulent vendee) in *Barnard v. Campbell*, 58 *Id.* 73, 78.
- *v. Reynolds*, 6 *Paige*, 407. Disting'd (Contract for sale of real estate, as affected by existence of incumbrances) in *Morange v. Morris*, 3 *Abb. Ct. App. Dec.* 320. Applied in *Pangburn v. Miles*, 10 *Abb. N. C.* 42, 46.
- *v. Sickles*, 9 *How. Pr.* 217. Followed (Answer when not to be stricken out as sham) in *Fellows v. Muller*, 38 *Super. Ct. (J. & S.)* 137, 139.
- Winship v. Pitts**, 3 *Paige*, 259. Disting'd (Application of common law doctrines of waste) in *Agate v. Lowenbein*, 57 *N. Y.* 604, 615. Followed in *Pynchon v. Stearns*, 11 *Metc. (Mass.)* 304; *s. c.*, 45 *Am. Dec.* 207, with note. Discussed in 1 *Washb. on Real Prop.* 4 ed. 147. Applied (Rehearing matter decided by another judge) in *Livingston's Petition*, 34 *N. Y.* 576.
- Winslow v. Clark**, 2 *Lans.* 377. Rev'd in 47 *N. Y.* 261. See *Phyfe v. Riley*.
- *v. McCall*, 32 *Barb.* 241. Explained (Rights of subsequent incumbrancer in surplus on foreclosure) in *Mut. Life Ins. Co. of N. Y. v. Truchtnicht*, 3 *Abb. N. C.* 135, 138. Applied (Possession by third person, as creating breach of covenant of quiet enjoyment) in *Shattuck v. Lamb*, 65 *N. Y.* 506.
- Winsted B'k v. Webb**, 46 *Barb.* 177. Aff'd in 39 *N. Y.* 325. See *Alcott v. Rathbone*. Decision in 39 *N. Y.* disting'd (Recovery in case of agreement substituted for original one) in *Kent v. Reynolds*, 8 *Hun.* 559, 561; *Hanse v. Phinney*, 15 *Id.* 154.
- Winston v. English**, 44 *How. Pr.* 398. Aff'd in 14 *Abb. Pr. N. S.* 119; *s. c.*, with points of counsel 35 *Super. Ct. (J. & S.)* 512. Both decisions followed under *Code Civ. Pro.* (Right to examination of adverse party) in *Levy v. Loeb*, 5 *Abb. N. C.* 156, 160. Decision in 35 *Super. Ct.* followed in *Glenny v. World Mut. Life Ins. Co.*, 40 *Id.* 92, 94.
- *v. Kilpatrick*, 5 *Daly*, 524. Aff'd in 1 *Weekly Dig.* 569.
- Winter v. Colt**, 7 *N. Y.* 288. See *Bank of Rochester v. Jones*. Applied (Factor's lien, when acquired) in *Beebe v. Mead*, 83 *N. Y.* 592. Cited in *Whart. Com. on Ag.* § 769, *n.*
- *v. Drury*, 3 *Sandf.* 263, *n.* Aff'd in 5 *N. Y.* 525. See *Cowperthwaite v. Sheffield*; *Hutter v. Ellwanger*. Decision in 5 *N. Y.* disting'd (Lien of holder of check or bill) in *Watts v. Shipman*, 21 *Hun.* 598, 605. Applied with *Harris v. Clark*, 3 *N. Y.* 93; *Cowperthwaite v. Sheffield*, *Id.* 243; *Hutter v. Ellwanger*, 4 *Lans.* 11; *Brill v. Tuttle*, 15 *Hun.* 289 (Requisites of equitable assignment of debt) in *Hart's Assignee v. Dixon*, *Ky. Super Ct.* Oct, 1884, 5 *Ky. L. Rep. & J.* 669, 672.

- **v. Kinney**, 1 *N. Y.* 365. Trial at circuit reported as *Kinney v. Winter*, 1 *Edm.* 109. Decision in 1 *N. Y.* disting'd (Security, when void as taken *colore officii*) in *Richardson v. Crandall*, 48 *Id.* 361. Applied in *Cook v. Freudenthal*, 80 *Id.* 202, 209. Explained and applied in *Toles v. Adce*, 84 *Id.* 222, 237.
- **v. Livingston**. See *Sill v. Rood*.
- Wintermute v. Clark**, 5 *Sandf.* 242. Followed (What is innu) in *Taylor v. Monnot*, 1 *Abb. Pr.* 325, 327. Followed with *People v. Jones*, 54 *Barb.* 316, in *Lewis v. Hitchcock*, *U. S. Dist. Ct. S. D. N. Y.* 10 *Fed. Rep.* 4. Collated with other cases in 7 *Am. Dec.* 450, *n.* Explained in 2 *Pars. on Contr.* 145, *n. k.* Explained (Innkeeper's liability for property left after departure of guest) in *Id.* 154, *n. o.* Collated with *Willard v. Reinhard*, 2 *E. D. Smith*, 148; *Fitch v. Casler*, 17 *Hun.* 126, and other cases (What constitutes boarder or guest) in 46 *Am. R.* 119, *n.*
- **v. Cooke**, 7 *Hun.* 476. Rev'd in 73 *N. Y.* 107.
- **v. Light**, 46 *Barb.* 278. See to the contrary (Parol evidence, in case of lease to show reservation of ripening crops) 2 *Whart. Com. on Ev.* § 969.
- Winterson v. Eighth Av. R. R. Co.**, 2 *Hilt.* 389. Disting'd (Joinder of causes of action for wrongful acts) in *Morenus v. Crawford*, 15 *Hun.* 45, 47.
- Winthrop v. McKim**, 51 *How. Pr.* 323. Rev'd in 6 *Hun.* 59, and that rev'd, it seems, and former aff'd in 66 *N. Y.* 625, but without opinion.
- **v. Meyer**, 4 *E. D. Smith*, 177; *s. c.*, more fully, 1 *Abb. Pr.* 383.
- Winton v. Saidler**, 3 *Johns. Cas.* 185. Overruled (Competency of one who has signed instrument, to testify to its invalidity) in *Bank of Utica v. Hillard*, 5 *Cov.* 153, 159; *Williams v. Walbridge*, 3 *Wend.* 416; *Stafford v. Rice*, 5 *Cov.* 22, 25. See *Jordaine v. Lashbrooke*, 7 *T. R.* 597.
- Wintringham v. Lafoy**, 7 *Cov.* 735. Disting'd (Liability for sheriff as trespasser for levy) in *Wood v. Orser*, 25 *N. Y.* 348, 353.
- Wise v. Chase**, 3 *Robt.* 35. Rev'd (Payment by delivering vouchers) in 44 *N. Y.* 337.
- Wiseman v. Panama R. R. Co.**, 1 *Hilt.* 300. See (Action for compensation, by employee) for distinction between action for wages and wrongful discharge, cases cited in *Abb. Tr. Ev.* 358, *n. 1.*
- Wiser v. Blachly**, 1 *Johns. Ch.* 607. Subsequent decision in 2 *Id.* 488. Decision in 1 *Id.* disting'd (Requisites of liability on guardian's bond) in *Girvin v. Hickman*, 21 *Hun.* 317; *Brown v. Snell*, 57 *N. Y.* 297; *Gosman v. Cruger*, 69 *Id.* 90. Followed in *Bumpas v. Dotson*, 7 *Humph. (Tenn.)* 310; *s. c.*, 46 *Am. Dec.* 81, 85, with note. Followed (Reformation of instrument as against surety) in *Prior v. Williams*, 3 *Abb. Ct. App. Dec.* 627. Followed and approved with *Gillespie v. Moon*, 2 *Johns. Ch.* 585; *Lyman v. United Ins. Co.*, 17 *Johns.* 374, (When equity will relieve against mistake in written instrument) in *Smith v. Allen*, 1 *Sabt. (N. J.)* 43; *s. c.*, 21 *Am. Dec.* 33, 40, with note. Decision in 2 *Johns. Ch.* approved (Bill of review before performance of decree) in *Davis v. Speiden*, 104 *U. S.* 84.
- Wisner v. Ocmupough**, 71 *N. Y.* 113. See (Equitable defense) *Code Civ. Pro.* 1881, § 507, *n.*
- Wisner v. O'Brien**, 35 *Super. Ct. (J. & S.)* 149; *s. c.*, 44 *How. Pr.* 209. Superseded (Refilling chattel mortgage) by *L.* 1873, c. 501; *L.* 1879, c. 418.
- Wiswall v. Hall**, 3 *Paige*, 313. Applied (Relief against written instrument on ground of fraud, &c.) in *Botsford v. McLean*, 45 *Barb.* 488; *De Peyster v. Hasbrouck*, 11 *N. Y.* 590. Examined at length with *De Peyster v. Hasbrouck*; *Gillespie v. Moon*, 2 *Johns. Ch.* 585; *Cowles v. Bowne*, 10 *Paige*, 535; *Gouverneur v. Titus*, 1 *Edw.* 480, in *Glass v. Hulbert*, 102 *Mass.* 24; *s. c.*, 3 *Am. R.* 418, 431.
- **v. McGowan**, *Hoffm.* 125. Rev'd in 2 *Barb.* 270; and that aff'd as *Price v. McGown*, 10 *N. Y.* 465. See *Sterry v. Arden*. Decision in 2 *Barb.* explained and applied (Relief in damages in action for specific performance) in *Stevenson v. Buxton*, 8 *Abb. Pr.* 415. Disting'd in *Hammond v. Pennock*, 61 *N. Y.* 145, 156. Disting'd (Parol enlargement of time of performance of written contract) in *Stone v. Sprague*, 20 *Barb.* 515.
- Witbeck v. Holland**, 55 *Barb.* 443; *s. c.*, 38 *How. Pr.* 273. Aff'd in 45 *N. Y.* 13. See *Redmond v. Liverpool, &c. Steamship Co.*; *Ziun v. N. J. Steamboat Co.*
- **v. Van Rensselaer**, 2 *Hun.* 55; *s. c.*, 4 *Sup'm. Ct. (T. & C.)* 282. Aff'd in 64 *N. Y.* 27. Decision in 2 *Hun.* discussed (Writ of possession in ejectment) in *Sedgw. & W. on Tr. of Tit. to Land*, §§ 551, 553, 556.
- **v. Waine**, 16 *N. Y.* 532. Applied (Merger of agreement in subsequent written contract) in *Silliman v. Tuttle*, 45 *Barb.* 177. Applied, and *Howes v. Barker*, 3 *Johns.* 506; *Houghtaling v. Lewis*, 10 *Id.* 297, explained, in *Morris v. Witchee*, 20 *N. Y.* 41, 46. Disting'd in *Davis v. Lotlich*, 46 *Id.* 393, 397.
- **v. —**, 8 *How. Pr.* 443. Applied (Resettlement of bill of exceptions after appeal) to amendment of case, in *O'Gorman v. Kamak*, 5 *Daly*, 517, 520.
- Witherby v. Mann**, 11 *Johns.* 518. Followed (Effect of giving negotiable note to enable action for money paid to be maintained) in *Neale v. Newland*, 4 *Ark.* 506; *s. c.*, 38 *Am. Dec.* 42, with note. Criticised with *Cumming v. Hackley*, 8 *Id.* 202, in 38 *Am. Dec.* 44, *n.*, on the ground of inconsistency. Cited with *Boyd v. Hitchcock*, 20 *Johns.* 76; *Le Page v. McCrea*, 1 *Wend.* 164; *Brown v. Fceter*, 7 *Id.* 301;

- Evans v. Wells, 22 *Id.* 224, 341; La Farge v. Herter, 11 *Barb.* 159, and other cases as according with all the American authorities (Accord and satisfaction as defense to proceeding on judgment) in *Savage v. Everman*, 70 *Penn. St.* 315; s. c., 10 *Am. R.* 676. Followed (Payment in securities or other property when to be regarded as payment in cash) in *Ralston v. Wood*, 15 *Ill.* 159; s. c., 58 *Am. Dec.* 604, with note.
- Witherhead v. Allen**, 28 *Barb.* 661. Rev'd, on the question of pleading, in 3 *Keyes*, 562; s. c., 4 *Abb. Ct. App. Dec.* 628. Decision in *Id.* disting'd (Judgment against joint stock company, as evidence against individual member) in *Miller v. White*, 8 *Abb. Pr. N. S.* 54. See *Id.* 164, n. Decision in 28 *Barb.* commented on in *Throop Justice's Man.* 2 ed. 306.
- Withers v. N. J. Steamboat Co.**, 48 *Barb.* 455. Aff'd, it seems, in 51 *N. Y.* 626, but without opinion.
- **v. Powers**, 2 *Sandf.* 350. Disting'd (Effect of occupation under hostile title, as eviction) in *Shattuck v. Lamb*, 65 *N. Y.* 506.
- Withy v. Mumford**, 5 *Cow.* 137. Approved in part and disapproved in part (Who has right of action on covenant running with the land) in *Markland v. Crump*, 1 *Dev. & B. (N. C.)* 94; s. c., 27 *Am. Dec.* 230, with note, *Kane v. Sanger*, 14 *Johns.* 89, being also disapproved.
- Witt v. Mayor, &c. of N. Y.**, 5 *Robt.* 248. See opinion of court in 6 *Id.* 441.
- Withans v. Schack**, 57 *How. Pr.* 310. Further decision in 24 *Hun.* 328, after complaint had been amended.
- Witty v. Matthews**, 52 *N. Y.* 512. See *Doupe v. Genin*. Applied (Landlord's liability for condition of leased premises) in *White v. Mealio*, 37 *Super. Ct. (J. & S.)* 72, 76, which was rev'd in 63 *N. Y.* 609. Applied with *Howard v. Doolittle*, 3 *Duer*, 474, in *Krueger v. Farrant*, 20 *Minn.* 335; s. c., 43 *Am. R.* 223, citing also *Doupe v. Genin*, 45 *N. Y.* 119.
- Witzel v. Chapin**, 3 *Bradf.* 386. See *Minchin v. Merrill*. Approved and followed (When deposit in trust constitutes a gift) in *Martin v. Funk*, 75 *N. Y.* 138. Disapproved with *Day v. Roth*, 18 *Id.* 453 (Necessity for consideration to support acknowledgment of trust) in 1 *Am. L. Mag.* 96.
- Wixson v. People**, 5 *Park.* 119 (Competency of defendant in indictment as witness against co-defendant) in *Taylor v. People*, 12 *Hun.* 212, 214.
- Wolcott v. Holcomb**, 31 *N. Y.* 125. Followed (Liability of assignee for costs) in *Dowling v. Buckham*, 52 *N. Y.* 658; *Peck v. Yorks*, 75 *Id.* 424. Compare *Code Civ. Pro.* § 247.
- **v. Sullivan**, 1 *Edw.* 399. Aff'd in 6 *Paige*, 117.
- **v. Van Santvoord**, 17 *Johns.* 248; s. c., 8 *Am. Dec.* 396, with note. See *Foden v. Sharp*. Applied (Right of recovery on note, &c. payable at particular place) in *Read v. City of Buffalo*, 67 *Barb.* 529; *Caldwell v. Cassidy*, 8 *Cow.* 271; *Gay v. Paine*, 5 *How. Pr.* 108; *Hills v. Place*, 48 *N. Y.* 523; *Locklin v. Moore*, 57 *Id.* 362. Approved as settled law in *Fairchild v. Ogdensburgh, &c. R. R. Co.*, 15 *Id.* 337, 339. Followed as decisive with *Foden v. Sharp*, 4 *Johns.* 183; *Caldwell v. Cassidy*, 8 *Cow.* 271; *Haxton v. Bishop*, 3 *Wend.* 13, in *Butterfield v. Kinzie*, 1 *Scam. (Ill.)* 445; s. c., 30 *Am. Dec.* 657. Applied with *Haxton v. Bishop*, 3 *Wend.* 13; *Caldwell v. Cassidy*, 8 *Cow.* 271, in *Gammon v. Everett*, 25 *Me.* 66; s. c., 43 *Am. Dec.* 255, with note. Followed and approved in *Wallace v. McConnell*, 13 *Pet.* 186. Followed in *Clarke v. Gordon*, 3 *Rich. (So. Car.)* 311; s. c., 45 *Am. Dec.* 768, 770. Disapproved in *Mellon v. Croghan*, 3 *Mart. N. S. (La.)* 423; s. c., 15 *Am. Dec.* 163, with note. Explained (Time and place of payment, as essential part of note) in *Woodworth v. B'k of America*, 19 *Johns.* 391, 420, which rev'd 18 *Id.* 315, 322, which see.
- **v. Winston**, 8 *Abb. Pr.* 422. Compare (Defendant when not excused from verifying) *Code Civ. Pro.* § 526.
- Wolf v. Goodhue Fire Ins. Co.**, 43 *Barb.* 400. Said in 41 *N. Y.* 620, to have been aff'd in Ct. of App. Dec. 1869. See *Unger v. People's Fire Ins. Co.* Decision in 43 *Barb.* followed (Effect of honest overvaluation as defense) in *Dogge v. Northw. Nat. Ins. Co.*, 49 *Wis.* 501, 504.
- Wolfe v. Burke**, 7 *Lans.* 151. Rev'd in 56 *N. Y.* 115. See *Clark v. Clark*. Decision in 56 *N. Y.* followed as decisive (Injunction against application for injunction) in *Wallack v. Society for Reformation of Delinquents*, 67 *Id.* 29. Decision in 7 *Lans.* approved (Name as trademark) in *Mencely v. Meneely*, 1 *Hun.* 367, 375.
- **v. Frost**, 4 *Sandf. Ch.* 72. Disting'd (Effect of parol agreement respecting land) in *Tallmadge v. East River B'k*, 2 *Duer*, 614, 618, as inapplicable to executed agreements. Followed in *Rice v. Roberts*, 24 *Wis.* 461; s. c., 1 *Am. R.* 195, 196. Applied (Distinction between easement and license) in *Banks v. Am. Tract Society*, 4 *Sandf. Ch.* 468. Explained in *Wiseman v. Lucksinger*, 84 *N. Y.* 31, 41.
- **v. Goulard**, 18 *How. Pr.* 64. See *Messerole v. Tynberg*. Disting'd and approved with *Bininger v. Wattles*, 28 *How. Pr.* 206; *Corwin v. Daley*, 7 *Boas.* 222. Explained and approved (Appropriation of popular signification of word as trademark) in *Newman v. Alvord*, 49 *Barb.* 588, 592. Applied in *Congress & Empire Spring Co. v. High Rock Congress Spring Co.*, 57 *Barb.* 526, 533, which was rev'd, in 10 *Abb. Pr. N. S.* 348. Followed as having been approved in subsequent cases, in *Lea v. Wolf*, 13 *Id.* 389. Collated with other cases in *Thomp.*

on *Prov. Rem.* 262. Explained in 2 *Pars.* on *Cont.* 257, *bb*, *n. e.*

— *v. Howard Ins. Co.*, 1 *Sandf.* 124. Aff'd in 7 *N. Y.* 583.

— *v. Howes*, 24 *Barb.* 174, with opinion of Bacon, J., on p. 666. Aff'd in 20 *N. Y.* 197. See *Harmony v. Bingham*; *McMillan v. Vanderlip*. Decision in 20 *N. Y.* applied (Recovery, in case of part performance of contract) in *Clark v. Gilbert*, 32 *Barb.* 582, 585; 26 *N. Y.* 282; *Price v. Hartshorn*, 44 *Id.* 102. Explained in *Tipton v. Feitner*, 20 *Id.* 429; *Niblo v. Binsse*, 44 *Barb.* 58, *n.* Applied (What will excuse performance of contract) in *People v. Tubbs*, 37 *Id.* 588; *Cohen v. N. Y. Mut. Life Ins. Co.*, 50 *Id.* 610, 622. Disting'd in *Requa v. Bulkley*, 1 *City Ct.* 153.

— *v. Myers*, 3 *Sandf.* 7. Criticised (Who to sign bill of lading for goods shipped on vessel) in 38 *Am. Dec.* 408, *n.*, as clearly erroneous.

— *v. Security Fire Ins. Co.*, 39 *N. Y.* 49. Explained and applied (Effect of transfer of insured property) in *Shearman v. Niagara Fire Ins. Co.*, 40 *How. Pr.* 396, which was aff'd in 46 *N. Y.* 531, which see. Followed (Waiver by insurer) in *Steen v. Niagara F. Ins. Co.*, 61 *How. Pr.* 144, 148.

— *v. Supervisors of Richmond*, 11 *Abb. Pr.* 270; *s. c.*, 19 *How. Pr.* 370. Approved (Municipal liability for injury done by mobs) in *Davidson v. Mayor, &c. of N. Y.*, 2 *Robt.* 230, 249.

— *v. Van Nostrand*, 2 *N. Y.* 570; *s. c.*, 4 *How. Pr.* 208. See decision, on the merits, in 2 *N. Y.* 436. Decision in *Id.* 570, disting'd (Additional allowance by appellate court) in *Dupuy v. Wurtz*, 3 *Sup'm. Ct. (T. & C.)* 113.

**Wolf v. Koppel**, 5 *Hill*, 458. Aff'd in 2 *Den.* 368. See *Leverick v. Meigs*. Both decisions followed with *Sherwood v. Stone*, 14 *N. Y.* 267 (Liability of agent acting under *del credere* commission, as original debtor) in *Lewis v. Brehme*, 33 *Id.* 412; *s. c.*, 3 *Am. R.* 190, 198, citing also *Leverick v. Meigs*, 1 *Cow.* 645. Decision in 5 *Hill* commented on in *Browne on Stat. of Frauds*, § 213, 4 *ed.*

**Wolfstein v. People**. See *People v. Call*.

**Wolstenholme v. Wolstenholme Tile Mfg Co.**, 4 *Hun.* 427. Aff'd in 64 *N. Y.* 272. Previous decision in 3 *Lans.* 457.

**Wood, Matter of**, *Hopk.* 6; *s. c.*, 2 *Cow.* 29, *n.* Applied (What included in term office) in *People v. Tweed*, 13 *Abb. Pr. N. S.* 423; *People ex rel. Kelly v. Common Council of Brooklyn*, 77 *N. Y.* 508. Applied (Member of the bar, as officer) in *Matter of Mosness*, 39 *Wis.* 509; *s. c.*, 20 *Am. R.* 55; *Matter of Oaths of Attorneys, &c.*, 20 *Johns.* 492, being said not to deny this position.

**Wood v. Anthony**. See *Blanchard v. Strait*.

— *v. Auburn & Rochester R. R. Co.*, 8 *N. Y.* 160, 168. Followed (Proof of misconduct in arbitrators) in *Fudickar v. Guard-*

*ian Mut. Life Ins. Co.*, 37 *Super. Ct. (J. & S.)* 358, 378.

— *v. Bach*, 54 *Barb.* 134. Rev'g *Jones v. Bach*, 48 *Id.* 568.

— *v. Belden*, 59 *Barb.* 549. Rev'd in 54 *N. Y.* 658, on ground that defendant could not complain of disobedience of jury, as it did not preclude another action.

— *v. Brown*, 34 *N. Y.* 337. See *Bates v. Underhill*; *Craig v. Craig*. Explained and limited (Liability of executor for maladministration) in *Burt v. Burt*, 41 *N. Y.* 46, 52. Applied (Right to relief, as limited by statement of case in complaint) in *Jones v. Jones*, 18 *Hun.* 441. Followed (Authority of surrogate over trustees, &c.) in *Savage v. Olmstead*, 2 *Redf.* 478, 481. Disting'd in *Blake v. Sands*, 3 *Id.* 173. See *Code Civ. Pro.* 1881, § 2635, *n.* Followed (Proceeding by executor against co-executor) in *Matter of Ritch*, 2 *Redf.* 330, 332; *Price v. Brown*, 10 *Abb. N. Y.* 67, 70.

— *v. Burnham*, 6 *Paige*, 513. Aff'd as *Tallman v. Wood*, 26 *Wend.* 9. Decision in 6 *Paige* explained (Rule in *Shelley's Case*) in 1 *Perry on Trusts*, 3 *ed.* § 370.

— *v. Byington*, 2 *Barb. Ch.* 387. Disting'd (Liability of decedent's real estate for judgment against his representatives) in *East River Nat. B'k v. McCaffrey*, 3 *Redf.* 97. See *Code Civ. Pro.* 1881, § 2757, *n.* Disting'd (Interlocutory decrees) in *Webb v. Buckalew*, 82 *N. Y.* 555, 560.

— *v. Chapin*, 13 *N. Y.* 509. See *Doughty v. Hope*; *Jackson v. McChesney*. Compared (Proof of jurisdictional facts) in *Munro v. Merchant*, 26 *Barb.* 395. Applied (Purchaser at judicial sale, how far purchaser for valuable consideration) in *Barto v. Tompkins County Nat. B'k*, 15 *Hun.* 13. Approved in *Wood v. Morehouse*, 45 *N. Y.* 368, 376. Doubted (Effect of recorded deed as against prior unrecorded deed) in *Ring v. Steele*, 4 *Abb. Ct. App. Dec.* 69. Cited as authority in *Hoyt v. Jones*, 31 *Wis.* 389, 404. Limited (Effect of consideration clause in deed) to cases under the recording act, — in *Bolton v. Jacks*, 6 *Robt.* 166, 234. Applied in *Lacustrine, &c. Co. v. Lake Guano, &c. Co.*, 82 *N. Y.* 476, 483.

— *v. City of Brooklyn*, 14 *Barb.* 425. Disting'd (Injunction to prevent enforcement of void city ordinance) in *Davis v. Am. Soc. for Prev. of Cruelty to Animals*, 75 *N. Y.* 362, 369. Applied (Effect of constitutional provision for trial by jury) in *People v. Toynbee*, 20 *Barb.* 212. Disting'd (Injunction against arrest) in *Burch v. Cavanaugh*, 12 *Abb. Pr. N. S.* 415; *Holt v. Comm'r's of Excise*, 31 *How. Pr.* 337, 340, *n.*

— *v. Colvin*, 2 *Hill*, 566; *s. c.*, 38 *Am. Dec.* 598, with note. Subsequent decision in 5 *Hill*, 228. See *Frost v. Yonkers Savings B'k*; *Jackson v. Anderson*; *Little v. Harvey*. Decision in 2 *Hill* followed (Rights of one claiming title under unauthorized sheriff's sale) in *Stafford v. Williams*, 12

- Barb.* 243. Followed (Effect of sale under satisfied judgment) in *Cameron v. Irwin*, 5 *Hill*, 275. Examined and qualified with *Cameron v. Irwin* in *Warner v. Blakeman*, 36 *Barb.* 501, 516; and see *Gillespie v. Splahn*, 1 (*Wilson*) *Ind.* 228, 235. Collated with other cases in *Banks v. Evans*, 10, *Smedes & M. (Miss.)* 35; s. c., 48 *Am. Dec.* 734, 738, with note, *Jackson v. Cadwell*, 1 *Cow.* 640, being cited as authority. Decision in 5 *Hill* approved with *Catlin v. Jackson*, 8 *Johns.* 543 (Levy unnecessary where judgment is lien on lands) in *Bagley v. Ward*, 37 *Cal.* 121. See *Code Civ. Pro.* 1881, § 1481, n. See (Effect of redemption from sale under execution) *Id.* § 1448, n.
- *v. Donaldson*, 17 *Wend.* 550. Aff'd as *Donaldson v. Wood*, 22 *Id.* 395. Dictum in *Id.* overruled (Extent of mechanics' lien) in *McDermott v. Palmer*, 8 *N. Y.* 383, 385.
- *v. Draper*, 4 *Abb. Pr.* 322; s. c., 24 *Barb.* 187. See *Christopher v. Mayor, &c.* of *N. Y.* Explained and cases cited to the contrary (Injunction against taxes) in 1 *High on Inj.* 2 ed. § 485, n. 2, 312.
- *v. Dwight*, 7 *Johns. Ch.* 295. Followed (Effect of process becoming *functus officio*) in *People ex rel. Roberts v. Bowe*, 8 *Abb. N. C.* 234, 235. Applied (Effect of appeal from order, as stay of proceedings) in *Johnson v. Scriver*, 3 *Abb. Pr.* 209. Relied on as an authority in *Estate of Crozier*, 65 *Cal.* 332, 334. Quoted in 2 *High on Inj.* 2 ed. § 1709, n. 1.
- *v. Edwards*, 19 *Johns.* 205. See *Clark v. Smith*. Explained (Mutuality on contracts) in 1 *Chitty on Contr.* 21, n. 3, 11 *Am. ed.*
- *v. Erie R'y Co.*, 9 *Hun.* 648. Aff'd in 72 *N. Y.* 196; s. c., 28 *Am. R.* 125. See *Merritt v. Earle*. Decision in 72 *N. Y.* followed (Construction of act to prevent transaction of business under fictitious names) in *Ryan v. Hardy*, 26 *Hun.* 176. Disting'd in *Lunt v. Lunt*, 8 *Abb. N. C.* 76, 81. Compare *Zimmermann v. Erhardt*, 60 *How. Pr.* 163. Applied (Violation of statute as bar to action) in *Platz v. City of Cohoes*, 24 *Hun.* 102.
- *v. Fisk*, 4 *Hun.* 525. Rev'd in 63 *N. Y.* 245; s. c., 20 *Am. R.* 528. Decision in *Id.* followed (Effect of death of one of joint sureties) in *Davis v. Van Buren*, 72 *N. Y.* 587, 589; *Randall v. Sackett*, 77 *Id.* 482. See to the contrary *Code Civ. Pro.* § 758.
- *v. Fleet*, 36 *N. Y.* 499. Discussed (Effect of partition without deed) in *Browne on Stat. of Frauds*, § 68, 4 ed.
- *v. Hazen*, 10 *Hun.* 362. Followed (Remedy on claim, as affected by proving same in bankruptcy) in *Rosenthal v. Plumb*, 25 *Id.* 336, 339.
- *v. Henry*, 40 *N. Y.* 124. See *Roberts v. Prosser*. Followed (Right of execution against person) in *Church of Redeemer v. Crawford*, 36 *Super. Ct. (J. & S.)* 307, 318. Disting'd in *Roberts v. Prosser*, 53 *N. Y.* 260, 263.
- *v. Hickok*, 2 *Wend.* 501. See *Gibson v. Culver*. Cited in 2 *Wharfl. Com. on Ex.* § 964, as contrary to what is now settled (Sufficiency of single witness to prove usage).
- *v. Hitchcock*, 20 *Wend.* 47. Quoted and explained (Essentials of tender) in 2 *Para. on Contr.* 644, n. m. Colated with other cases in *McAdam on Land. & T.* 2 ed. § 153.
- *v. Hollister*, 3 *Abb. Pr.* 14. Explained (Place of trial of creditor's action) in *Black v. O'Brien*, 23 *Hun.* 83. See *Code Civ. Pro.* 1881, § 982, n. See (Change of venue) *Id.* § 986, n.
- *v. Hubbell*, 5 *Barb.* 601. Aff'd in 10 *N. Y.* 479. Both decisions applied (Effect of destruction of leased premises before lessee takes possession) to case of premises sold under foreclosure,—in *Aspinwall v. Balch*, 4 *Abb. N. C.* 193, 197. To contract for sale of land, in *Smith v. McCluskey*, 45 *Barb.* 618. Decision in 5 *Barb.* explained and compared in 1 *Para. on Contr.* 505, n. m. Decision in 10 *N. Y.* disting'd (Reformation of lease) in *Wilson v. Deen*, 74 *Id.* 531, 536.
- *v. Jackson*, 8 *Wend.* 9; s. c., 22 *Am. Dec.* 603, with note containing citations, and wherein it is said to be a leading authority in *N. Y.* Rev'g *Jackson v. Wood*, 3 *Id.* 27. Subsequent decision in 18 *Id.* 107. See *Green v. Clark*; *Manny v. Harris*. Decision in 8 *Wend.* applied (Evidence as to former recovery) in *Calkins v. Allerton*, 3 *Barb.* 173; *Buckhead v. Brown*, 5 *Sandf.* 151; *Lawrence v. Hunt*, 10 *Wend.* 84. Approved both on reason and on authority, in *Bigel. on Estoppel*, 90, n. 4 ed. as preferable to *King v. Chase*, 15 *N. H.* 9; s. c., 41 *Am. Dec.* 675, with note, which see. Decision in 3 *Wend.* applied with *Lawrence v. Hunt*, 10 *Id.* 80, in *Offutt v. John*, 8 *Mo.* 120; s. c., 40 *Am. Dec.* 125, with note. Disting'd with *Lawrence v. Hunt*, in *Long v. Bangas*, 2 *Ired. (N. C.)* 290; s. c., 38 *Am. Dec.* 694, with note. Both decisions reviewed and criticised in *King v. Chase*, 15 *N. H.* 9; s. c., 41 *Am. Dec.* 675, 681, with extended note. See *Abb. Tr. Ex.* 828, and authorities cited. Compare *Howard v. Mitchell*, 14 *Mass.* 24. Decision in 8 *Wend.* denied (Special plea in ejectment) in *Crandall v. Gallup*, 12 *Conn.* 365. Followed (Extent to which former judgment may be used as estoppel, on question of title to land) in *Frantz v. Ireland*, 4 *Lans.* 278, 281; *Kerr v. Hays*, 35 *N. Y.* 339. Applied (Effect of receipt of surplus moneys arising from execution sale) to foreclosure sale,—in *Candee v. Burke*, 1 *Hun.* 549. Cited as authority (Marriage as valuable consideration for promise) in 1 *Add. on Contr.* 4, n. 1, *Abb. ed.*
- *v. Jefferson County B'k*, 9 *Cow.* 194. Approved with *Vilas v. Jones*, 10 *Paige*, 76 (Effect of extension of time of payment to release surety) in *Stillwell v. Aaron*, 69 *Mo.* 539; s. c., 33 *Am. R.* 517.



- **v. Lafayette**, 46 *N. Y.* 484. Subsequent decision in 68 *Id.* 181. Decision in 46 *Id.* approved, but disting'd (Effect of agreement for arbitration) in *Del & Hud. Canal Co. v. Pa. Coal Co.*, 50 *Id.* 250, 265.
- **v. Lester**, 29 *Barb.* 145. Disting'd (Effect of agreement for lien to take effect at a future time) in *Hale v. Omaha Nat. B'k*, 33 *Super. Ct. (J. & S.)* 46.
- **v. Lowry**, 17 *Wend.* 492. See *Griswold v. Sheldon*; *Russell v. Winne*. Applied as still authority (Effect of agreement for sale of mortgaged chattels by mortgagor) though overruled by *Smith v. Hoe*, 23 *Wend.* 653, upon another point, in *Russell v. Winne*, 4 *Abb. Pr. N. S.* 384, 389, citing also *Gardner v. McEwen*, 19 *N. Y.* 123. Applied in *Edgell v. Hart*, 13 *Barb.* 388, which was aff'd in 9 *N. Y.* 218, which see. Disting'd in *Hull v. Carnley*, 2 *Duer*, 109. Reviewed with other cases and applied in *Griswold v. Sheldon*, 4 *N. Y.* 589. Applied (Effect of *L. 1833*, c. 279, respecting filing of chattel mortgages) in *Otis v. Sill*, 8 *Barb.* 109. Explained in *Lee v. Huntoon*, *Hoffm.* 458.
- **v. McClughan**, 2 *Hun.* 150; s. c., reported in 4 *Sup'm. Ct. (T. & C.)* 420.
- **v. Mayor, &c. of N. Y.**, 3 *Abb. Pr.* 467. Subsequent decision in 4 *Abb. Pr. N. S.* 152.
- **v. —**, 7 *Hun.* 164. Collated with other cases (Who are agents of municipality) in 8 *Abb. N. C.* 282, n.
- **v. Merritt**, 2 *Bosw.* 368. Cited with *Boardman v. Gaillard*, 60 *N. Y.* 614, and other cases (Right of part owners of vessel, to account of earnings, &c.) in *Story on Partn.* 7 ed. § 449, n.
- **v. Moorhouse**, 1 *Lans.* 405. Aff'd as *Same v. Moorhouse*, 45 *N. Y.* 368. Decision in *Id.* followed (Sheriff's deed as evidence) in *Clute v. Emmerich*, 21 *Hun.* 122, 128. Followed (Execution against estate of deceased judgment debtor) in *Marine B'k of Chicago v. Van Brunt*, 49 *N. Y.* 160, 164. Explained and applied in *Beard v. Sinnott*, 38 *Super. Ct. (J. & S.)* 549. Disting'd with *Olcott v. Robinson*, 20 *Barb.* 148 (Notice by publication, when complete) in *Market Nat. B'k of N. Y. v. Pacific Nat. Bk. of Boston*, 89 *N. Y.* 397. Criticised and authority to the contrary collated in *Collins v. Smith*, 15 *Northw. Rep.* 194. See *Code Civ. Pro.* 1881, § 1434, n. See (Waiver of production of papers on redemption from execution) *Id.* §§ 1468, n., 1474, n.
- **v. Northwestern Ins. Co.**, 46 *N. Y.* 421. See *Harper v. Albany Mut. Ins. Co.* See (Rights under contract for sale of real estate, before delivery of deed) *Mut. Life Ins. Co. v. Balch*, 4 *Abb. N. C.* 200, 203, a case of sale in foreclosure.
- **v. Oakley**, 4 *Edw.* 562. Aff'd in 11 *Paige*, 400.
- **v. Peake**, 8 *Johns.* 69. See *Lawton v. Comm'rs of Cambridge*. Approved (Justices act judicially in appointing supervisor) in *Wildy v. Washburn*, 16 *Id.* 49; *People v. Seaman*, 5 *Den.* 409, 412.
- **v. People**, 53 *N. Y.* 511. Disting'd (Requisites of indictment as to alleging discharge) in *Gibson v. People*, 5 *Hun.* 543. Disting'd (Sufficiency of indictment for statutory defense) in *Phelps v. People*, 72 *N. Y.* 355.
- **v. —**, 1 *Hun.* 381; s. c., 3 *Sup'm. Ct. (T. & C.)* 506. Rev'd in 59 *N. Y.* 117. Decision in *Id.* disting'd (Effect of error in admitting evidence under indictment charging several offenses) in *Phelps v. People*, 72 *Id.* 365, 373.
- **v. Phillips**, 43 *N. Y.* 152. Rev'd in effect previous decision in *King v. Phillips*, 1 *Lans.* 421. Another decision in 11 *Abb. Pr. N. S.* 1. See *Willard v. Warren*. With decision in 11 *Abb. Pr. N. S.* see (Abatement of action) *Code Civ. Pro.* 1881, § 764, n. Decision in 43 *N. Y.* explained (Actions between tenants in common of land) in *Sedgw. & W. on Tr. of Tit. to Land*, § 276. See (Forcible entry and detainer) *Code Civ. Pro.* § 2233, &c.
- **v. Poughkeepsie Mut. Ins. Co.**, 32 *N. Y.* 619. See *Boehen v. Williamsburgh Ins. Co.* Disting'd (Evidence of waiver by agent of insurer) in *Boehen v. Williamsburgh Ins. Co.*, 35 *N. Y.* 131, 133.
- **v. Randall**. See *Malone v. Clark*.
- **v. Robinson**, 22 *N. Y.* 564. See *Garfield v. Hatmaker*; *McCartney v. Bostwick*; *Seymour v. Wilson*. Applied (Who is purchaser, &c. for valuable consideration, as against prior equity) in *Tiffany v. Warren*, 37 *Barb.* 577. Disting'd in *Wood v. Morehouse*, 45 *N. Y.* 377; *Murphy v. Briggs*, 89 *Id.* 452. Applied in *Weaver v. Barden*, 49 *Id.* 286, 292; *Cary v. White*, 52 *Id.* 138, 145. Followed (Enforcing trust in favor of creditors in case of voluntary conveyances) in *McCartney v. Bostwick*, 32 *Id.* 53, 60. This decision and those of *Garfield v. Hatmaker*, 15 *Id.* 475; *Wood v. Robinson*, 22 *Id.* 564; *McCartney v. Bostwick*, 32 *Id.* 53; 31 *Barb.* 390, compared with later decisions such as *Ocean Nat. B'k v. Olcott*, 46 *N. Y.* 12; *Dunlap v. Hawkins*, 59 *Id.* 342; 2 *Sup'm. Ct. (T. & C.)* 292,— in *Pomeroy on Eq. Jur.* 615.
- **v. Seward**. See *Estate of Maxwell*.
- **v. Shultis**, 4 *Hun.* 309. See (Amendment of pleadings in justice's court) *Code Civ. Pro.* 1881, § 2944, n.
- **v. Squires**, 1 *Hun.* 481; s. c., 3 *Sup'm. Ct. (T. & C.)* 468. Rev'd in 60 *N. Y.* 191.
- **v. Stoddard**, 2 *Johns.* 194. Followed (Disqualification of juror for interest, in action affecting town, &c.) in *Diveny v. City of Elmira*, 51 *N. Y.* 510.
- **v. Torrey**. See *Green v. Burke*.
- **v. Tunncliffe**, 74 *N. Y.* 38. See (Adjournment of proceedings before arbitrators) *Code Civ. Pro.* 1881, § 2308, n.
- **v. Vandenburg**, 6 *Paige*, 277. Followed (Liability of decedent's estate for ex-

- pense of tombstone) in *Crapo v. Armstrong*, 61 *Iowa*, 697. Explained in *Willard on Executors*, 271.
- *v. Weiant*, 1 *N. Y.* 77. See brief opinion of Sup'm. Ct. on appeal from circuit, and opinion of JEWETT, Ch. J., in Ct. of App., in *How. App. Cas.* 159, 167.
- *v. Wellington*, 30 *N. Y.* 218. Followed (Validity of transfer of premium notes by mutual insurance company) in *Brookman v. Metcalf*, 32 *Id.* 591, 594. Disting'd (Repeal of statute by implication) in *People ex rel. Brown v. Van Hoesen*, 62 *How. Pr.* 76, 81.
- *v. Wilcox*, 1 *Den.* 37. Examined and qualified (Liability for use and occupation) in *Hoffman v. Delihanty*, 13 *Abb. Pr.* 383, 390, 392. Disting'd in *Hall v. Western Transp. Co.*, 34 *N. Y.* 284, 287. For the rule in action on contract, see *Gilhooly v. Washington*, 4 *N. Y.* 217. See also *Abb. Tr. Ev.* 353.
- *v. Wood*, 2 *Paige*, 108. See *Mix v. Mix*; *Tilton v. Beecher*. Disting'd (Bills of particulars) in *Tilton v. Beecher*, 59 *N. Y.* 176, 185. Applied, and *Young v. De Mott*, 1 *Barb.* 30; *People v. Tweed*, 5 *Barb.* 353; 63 *N. Y.* 201; *Wigand v. De Jonge*, 18 *Hun.* 405; *Tilton v. Beecher*, 59 *N. Y.* 183, disting'd in *Kee v. McSweeney*, 66 *How. Pr.* 447. Disting'd (Pleading in actions for divorce) in *Mitchell v. Mitchell*, 61 *N. Y.* 398, 404. Quoted in 2 *Bish. on Mar. & D.* § 606, 6 ed. Applied (Defendant, when not required to elect between denial and new matter constituting a defense) in *Hollenbeck v. Clow*, 9 *How. Pr.* 291. Applied (Alimony, when granted) in *Leslie v. Leslie*, 6 *Abb. Pr. N. S.* 205; *Osgood v. Osgood*, 2 *Paige*, 622. Disting'd (Necessity that in suit for divorce infant prosecute or defend by guardian or next friend) in *Jones v. Jones*, 18 *Mo.* 308; s. c., 36 *Am. Dec.* 723, as resting on local provisions and rules of practice. See (Condonation) in 5 *Am. L. Reg. N. S.* 644.
- *v. —*, 2 *Paige*, 454. Aff'd in 8 *Wend.* 357.
- *v. —*, 4 *Paige*, 299. Decision in subsequent action affecting same estate in 5 *Id.* 596; s. c., 28 *Am. Dec.* 451, with note, wherein are collected citations. Decision in 4 *Id.* explained and applied (Liability of sureties of non-resident executor) in *Hood v. Hood*, 85 *N. Y.* 561, 571. Explained with *Mandeville v. Mandeville*, 8 *Paige*, 475 (Circumstances affording adequate security for due administration of estate) in *Martin v. Duke*, 5 *Redf.* 597. See also *Shields v. Shields*, 60 *Barb.* 56, and *Mandeville v. Mandeville*, applied on this point in *Ballard v. Charlesworth*, 1 *Dem.* 501; and *Shields v. Shields*, followed in *Hovey v. McLean*, *Id.* 396, in preference to *Freeman v. Kellogg*, 4 *Redf.* 218. Commented on in *Willard on Executors*, 136. See *Code Civ. Pro.* 1881, § 2685, n. Decision in 5 *Paige* disting'd (Power of guardian to change domicile of ward) in *Seiter v. Straub*, 1 *Dem.* 264; *Mat-*
- ter of Bosch*, *N. Y. Daily Reg. July* 12, 1883. Doubtful with *Lewis v. Smith*, 9 *N. Y.* 502 (Widow when put to election between provision in will and dower) in *Colgate v. Colgate*, 23 *N. J. Eq.* 372, 381. Collated with other cases in *Sharsw. & B. Cas. on Real Prop.* 360.
- *v. —*, 26 *Barb.* 356. Disting'd (Limitation of action to reach assets of insolvent estate of decedent) in *Malloy v. Vanderbilt*, 4 *Abb. N. C.* 127, 130. Disting'd (Equitable relief in rem. where remedy against decedent's estate) in *Stilwell v. Swarthout*, 81 *N. Y.* 109, 116. See (Parties in action against devisees) *Code Civ. Pro.* 1881, § 1846, n.
- *v. —*, 18 *Hun.* 350. Aff'd in 83 *N. Y.* 575. Decision in 18 *Hun* disting'd with *Howland v. Howland*, 20 *Id.* 472 (Wife's right to her personal property, as against husband or his creditors) in *Kingman v. Frank*, 64 *How. Pr.* 520. Decision in 83 *N. Y.* quoted in *Schouler on Dom. Rel.* 3 ed. § 120, a., n. 1. Discussed (Notice to quit in ejectment) in *Sedg. & W. on Tr. of Tit. to Land*, § 376. Quoted (Improvements) in *Id.* § 698.
- Woodbeck v. Havens**, 42 *Barb.* 66. Referred to in *Tyler on Inf. & Cov.* 2 ed. § 353, as contrary to other authorities (Wife as sole trader and entitled to her own earnings).
- *v. Keller*, 6 *Cow.* 118. Disting'd (Quantum of evidence in civil cases) in *Johnson v. Agricultural Ins. Co.*, 25 *Hun.* 251, 253. Followed with *Clark v. Dibble*, 16 *Wend.* 601; *Hopkins v. Smith*, 3 *Barb.* 599, in *Kane v. Ilibernia Mut. Fire Ins. Co.*, 9 *Vrom (N. J.)* 441; s. c., 20 *Am. R.* 409, 414. Followed in *Newbit v. Statuck*, 35 *Me.* 315; s. c., 58 *Am. Dec.* 706.
- Woodbine Street, Matter of**, 17 *Abb. Pr.* 112. Applied (Certiorari, to whom to be directed) in *People v. Hill*, 65 *Barb.* 170, 174. See (Certiorari without notice) *Code Civ. Pro.* 1881, § 2128, n.
- Woodburn v. Mosher**, 9 *Barb.* 255. See *Brigham v. Tillinghast*; *Murphy v. Bell*; *Nicholson v. Leavitt*. Overruled with *Murphy v. Bell*, 8 *How. Pr.* 468 (Power in assignment for benefit of creditors) in *Benedict v. Huntington*, 32 *N. Y.* 219, 222. Explained in *Burrill on Assign.* § 219, n. 3. 4 ed.; *Id.* § 224, n. 4. Collated with other cases in *Bishop on Assign.* § 209.
- Woodbury v. Delap**, 1 *Sup'm. Ct. (T. & C.)* 20; s. c. as *Woodbury v. Deloss*, 65 *Barb.* 501.
- *v. Deloss*. See *Woodbury v. Delap*.
- *v. Sackrider*, 2 *Abb. Pr.* 402. Disapproved (Sufficiency of averment of protest) in *Graham v. Machado*, 6 *Duer.* 514, 548. Overruled in *Cook v. Warren*, 88 *N. Y.* 37, 40.
- Woodcock v. Bennet**, 1 *Cow.* 711; s. c., 13 *Am. Dec.* 508. See *Reynolds v. Corp.* Applied (Rights of purchaser under erroneous execution) in *Jackson v. Cadwell*, 1 *Cow.* 643; *Gerry v. Post*, 13 *How. Pr.* 122.

- Approved and followed in *Morgan v. Evans*, 72 *Ill.* 586; s. c., 22 *Am. R.* 157. Reviewed at length with *Jackson v. Cadwell*, 1 *Cov.* 623; *Jackson v. Anderson*, 4 *Wend.* 474; *Swan v. Saddlemire*, 8 *Id.* 676; *Jackson v. Bowen*, 7 *Cov.* 1; *Reed v. Pruyn*, 7 *Johns.* 426; *Sherman v. Boyce*, 15 *Id.* 444; *Jackson v. Morse*, 18 *Id.* 441, and other cases in *Boren v. McGehee*, 6 *Port (Ala.)* 432; s. c., 31 *Am. Dec.* 695, 698, with note. See *Code Civ. Pro.* 1881, § 1479, n. Limited (Irregularity of execution) in *Hunt v. Loucks*, 38 *Cal.* 372. Followed (Execution against estate of decedent) in *Beard v. Sinnott*, 38 *Super. Ct. (J. & S.)* 552. Disting'd and disapproved in *Martin v. Branch B'k at Decatur*, 15 *Ala.* 587; s. c., 50 *Am. Dec.* 147, 150, with note. Disting'd in *Coleman v. McAnulty*, 16 *Mo.* 173; s. c., 57 *Am. Dec.* 229. Reviewed at length with other cases (Allowing damages in action for specific performance) in *Beck v. Allison*, 4 *Daly*, 453. Applied in *Wiswall v. McGowan*, *Hoffm.* 131. Relied on in *Warner v. Daniels*, 1 *Woodb. & M.* 90, 114, as suit to set aside conveyance for fraud. Applied (Effect of matter in answer, as evidence) in *Cushman v. Shepard*, 4 *Barb.* 124; *Forrest v. Forrest*, 6 *Duer*, 128; *Dunham v. Gates*, *Hoffm.* 189. Disapproved in *Schwaz v. Wendell*, *Walk. Oh. (Mich.)* 295, citing *Clason v. Morris*, 10 *Johns.* 542. Followed in *Morgan v. Tipton*, 3 *McLean*, 350. Disting'd (Diligence in giving notice of dishonor of bill) in *Gibson v. Toby*, 53 *Barb.* 199.
- Woodford v. Patterson.** See *Brewer v. Salisbury*; *Shindler v. Houston*.
- **v. People**, 5 *Sup'm Ct. (T. & C.)* 539; s. c., less fully, 3 *Hun*, 310. Aff'd in 62 *N. Y.* 117; s. c., 20 *Am. R.* 464. See *People v. Allen*; *People v. Wright*.
- Woodgate v. Fleet**, 3 *Hun*, 619. Rev'd, it seems, in 64 *N. Y.* 566. Former decision in 44 *Id.* 1; s. c., 11 *Abb. Pr. N. S.* 41.
- Woodhead's Estate**, *Tuck.* 92. See (Surrogate's power to punish for contempt) *Code Civ. Pro.* 1881, § 2555, n.
- Woodhull v. Holmes.** See *Herrick v. Carman*; *Vallett v. Parker*.
- **v. Mower**, 1 *Hun*, 495. Fuller mem., s. c., 3 *Sup'm Ct. (T. & C.)* 765.
- **v. Rosenthal**, 61 *N. Y.* 382. Disting'd (Difference between sub-lease and assignment) in *Ganson v. Tift*, 71 *Id.* 48, 54, as not impugning *Collins v. Hasbuck*, 56 *Id.* 157. See authorities reviewed in 16 *Am. L. Rev.* 31. Discussed (Apportionment of mesne profits) in *Sedgw. & W. on Tr. of Tit. to Land*, §§ 685, 699. Compare *Code Civ. Pro.* § 1531. Explained (Ejectment for lands inaccessible to sheriff) in *Sedgw. & W. on Tr. of Tit. to Land*, § 127.
- Woodin v. Bagley**, 13 *Wend.* 453. See *McDowl v. Charles*. Disting'd (Right of next of kin to maintain action for distributive share of decedent's personal property) in *Jeroms v. Jeroms*, 18 *Barb.* 27. Followed in *Beecher v. Crouse*, 19 *Wend.* 308. Followed (Questions for examination, in case of reference of claim against estate of decedent) in *Raynor v. Laux*, 28 *Hun*, 35.
- Woodman v. Goodenough**, 18 *Abb. Pr.* 265. See (Title of receiver in supplementary proceedings to after-acquired property) *Code Civ. Pro.* 1881, § 2469, n.
- Woodmansee v. Rodgers**, 58 *How. Pr.* 98. Aff'd in *Id.* 439; s. c., 20 *Hun*, 285; which was aff'd in 59 *How. Pr.* 402; s. c., as *Woodmansee v. Rogers*, 82 *N. Y.* 88.
- Woodruff's Estate**, *Tuck.* 1. See *Woodruff v. Woodruff*.
- *Tuck*, 58. See *Clarkson v. Clarkson*. Followed (Tenant for life, when entitled to stock dividends) in *Cragg v. Riggs*, 5 *Redf.* 82, 91. Disting'd in *Matter of Pollock*, 3 *Id.* 109, a case of profits from contract.
- Woodruff v. Bunce**, 9 *Paige*, 443. Said to be supported by well-considered adjudications in courts of other States (Injunction in case of breach of covenants)—in *Wanzer v. Tintly*, 17 *How. (U. S.)* 584.
- **v. Cook**, 14 *How. Pr.* 481. See *Bostwick v. Brown*. Disapproved (Costs against executors, &c.) in *Holdridge v. Scott*, 1 *Lans.* 303, 307. — See *Smith v. Patten*, 9 *Abb. Pr. N. S.* 203; *Fish v. Crane*, *Id.* 252; *Howe v. Lloyd*, *Id.* 257.
- **v. Dickie**, 5 *Robt.* 619; s. c., 31 *How. Pr.* 164. Disapproved (Amendment of pleadings) in *Union Nat. B'k of Troy v. Basset*, 3 *Abb. Pr. N. S.* 359, 362; *Ford v. Ford*, 53 *Barb.* 525, 527; *Strong v. Dwight*, 11 *Abb. Pr. N. S.* 323; *Diamond v. Williamsburgh Ins. Co.*, 4 *Daly*, 495. Applied in *Livermore v. Bainbridge*, 14 *Abb. Pr. N. S.* 234, n. Doubted in *Union B'k v. Basset*, 3 *Abb. Pr. N. S.* 359; *Robbins v. Richardson*, 2 *Bosw.* 248; *Hochstetter v. Isaacs*, 14 *Abb. Pr. N. S.* 235; *Frazer v. Frazer*, *N. Y. Daily Reg.* Nov. 28, 1881. Said to be overruled (Powers of referee as to amendment) by *Bennett v. Lake*, 47 *N. Y.* 93, and *Ford v. Ford*, 53 *Barb.* 525, followed in preference,—in *Hochstetter v. Isaacs*, 14 *Abb. Pr. N. S.* 235.
- **v. Fisher**, 17 *Barb.* 224. Quoted (Nuisance resulting from not draining swamp lands) in *Wood on Nuis.* 2 ed. § 118. Discussed in 1 *Add. on Torts*, n., 1 *Wood's ed.* Quoted (Taxation for local improvements) in *Cooly on Const. Limit.* 5 ed. 633, n. 1.
- **v. Hurson**, 32 *Barb.* 557. Discussed (Attorney as witness) in 1 *Best on Ev.* § 184, n. a, *Wood's ed.*
- **v. Leonard**, 1 *Hun*, 632. Disting'd (Pleading irregular indorsement) in *Lynch v. Levy*, 11 *Id.* 146.
- **v. Merchants' B'k of N. Y.**, 25 *Wend.* 673. Aff'd in *Merchants' B'k of N. Y. v. Woodruff*, 6 *Hill*, 174. See *Frith v. Barker*. Both decisions followed (Allowance of days of grace) in *Bowen v. Newell*, 8 *N. Y.* 194; which aff'd 2 *Duer*, 584, 592, 604, which see. Decision in 25 *Wend.* included in 2 *Ames Cas. on B. & N.* 295. Both decisions

- explained (Evidence of local custom as affecting such allowance) in *Trask v. Martin*, 1 *E. D. Smith*, 509. Decision in 25 *Wend.* collated with other cases in *Redf. & B. Lead. Cas. on B. of Exch.* 308. Both decisions followed (Evidence of local commercial usage) in *Otsego Co. B'k v. Warren*, 18 *Barb.* 296; *St. Nicholas Ins. Co. v. Mercantile Mut. Ins. Co.*, 5 *Bosw.* 246. See cases collected in 1 *Abb. N. C.* 472, *n.*
- *v. Moore*, 8 *Barb.* 171. Included (Action by indorser against maker) in 2 *Ames Cas. on B. & N.* 88.
- *v. Peterson*, 51 *Barb.* 252. Opinion of FOSTER, J., in 56 *Id.* 404.
- *v. Valentine*, 57 *N. Y.* 663. Followed in case involving precisely same state of facts,—in *Teed v. Valentine*, 65 *Id.* 474.
- *v. Woodruff*, 17 *Abb. Pr.* 165. Another decision as Matter of Woodruff's Estate, in *Tuck*, 1.
- *v.* —, 52 *N. Y.* 53. Cited (Using facts of public notoriety in construing ambiguous terms in contract) in 2 *Whart. Com. on Ev.* § 939, *n.*
- Woodruff & Beach Iron Works v. Chittenden.** See *Harger v. McCullough*.
- Woods v. De Figanriere**, 16 *Abb. Pr.* 1. For *Supreme Court*, in caption, read *N. Y. Superior Court*; *s. c.*, 1 *Robt.* 610. Subsequent decision in 16 *Abb. Pr.* 159; *s. c.*, 1 *Robt.* 659; also in *Id.* 681; *s. c.*, 25 *How. Pr.* 522. Decision in 16 *Abb. Pr.* 159 followed (Compelling inspection of books, &c. on examination before trial) in *De Bary v. Stanley*, 5 *Daly*, 412. Decision in 1 *Robt.* 610, approved (Examination of party, in case of corporations) in *People v. Mut. Gas Light Co.*, 74 *N. Y.* 436.
- *v. Monell*, 1 *Johns. Ch.* 502. See *Howell v. Barker*. Followed with *Tiernon v. Wilson*, 6 *Johns. Ch.* 411; *Jackson v. Newton*, 18 *Id.* 355 (Validity of sale in mass by sheriff of distinct tracts of land) in *Nesbitt v. Dallam*, 7 *Gill. & J. (Md.)* 494; *s. c.*, 28 *Am. Dec.* 236, 243, with note.
- *v. Moore*, 4 *Sandf.* 579. See *Lynes v. Townsend*. Collated with other cases (When property will pass by will, notwithstanding misdescription) in 8 *Am. R.* 673, *n.*
- *v. Morrell*, 1 *Johns. Ch.* 103. Quoted (Answer in creditor's action) in *Wait on Fraud. Conv.* § 162.
- *v. Pangborn*, 14 *Hun.* 540. Rev'd as *Woods v. Pangburn*, 75 *N. Y.* 495. Decision in *Id.* disting'd (Payment of one judgment, when satisfaction of another) in *Luce v. Alexander*, 49 *Super. Ct. (J. & S.)* 202.
- *v. People*, 1 *Sup'm. Ct. (T. & C.)* 610. Rev'd in 55 *N. Y.* 515; *s. c.*, 14 *Am. R.* 309, with note. Decision in *Id.* followed (Evidence of dissipated character of prosecutrix) in *Brennan v. People*, 7 *Hun.* 171, 173. Compare *Ford v. Jones*, 62 *Barb.* 484.
- *v. Rowan*, 5 *Johns.* 42. Examined with *Andrus v. Waring*, 20 *Id.* 153; Mc-
- Clure v. Erwin*, 3 *Cow.* 313 (*Non damnificatus* as defense to action on indemnity bond) in *Wheelock v. Rice*, 1 *Doug. (Mich.)* 269.
- *v.* —, 5 *Johns.* 133. Cited with approval (Interest of sheriff in result of action, as cause of challenge to the array) in *Mumshower v. Patton*, 10 *Serg. & R. (Pa.)* 334; *s. c.*, 13 *Am. Dec.* 678.
- *v. Wilder*, 43 *N. Y.* 164. Commented on (Partnership between alien enemies) in 1 *Collyer on Partn.* § 13, *n.* 2, *Wood's Am. ed.*
- Woodward v. Aspinwall.** See *Same v. Harris*.
- *v. Briggsbee*, 2 *Hun.* 683; *s. c.*, fully reported, 5 *Sup'm. Ct. (T. & C.)* 204.
- *v. Harris*, 2 *Barb.* 439. Subsequent decision as *Woodward v. Aspinwall*, 3 *Sandf.* 272.
- *v. Murray*, 18 *Johns.* 400. See *Browne v. Witt*; *Kneettle v. Newcomb*. Followed (Exemption of household property) in *Arthur v. Morgan*, 112 *U. S.* 495, 499; *s. c.*, 19 *Reporter*, 163.
- *v. Stearns.* See *Hall v. Bishop*. Compare (Jurisdiction to grant attachment) *Code Civ. Pro.* § 638.
- *v. Washburn*, 3 *Den.* 369. Approved (Liability for causing loss of service) in *Johnston Harvester Co. v. Meinhardt*, 9 *Abb. N. C.* 393, 396. Followed (Right of master to maintain action for injury to apprentice, causing disability) in *Ames v. Union R'way Co.*, 117 *Mass.* 541; *s. c.*, 19 *Am. R.* 427.
- Woodworth v. B'k of America**, 19 *Johns.* 391; *s. c.*, 6 *N. Y. Com. L. Law. ed.* 843, with brief note citing approval in 2 *Ian. Neg. Inst.* 395; also *s. c.*, 10 *Am. Dec.* 239, with note wherein it is said to be a leading case in *N. Y.* and other States. Rev'g *Bank of America v. Woodworth*, 18 *Johns.* 315. See *Redlick v. Doll*. Decision in 19 *Johns.* applied (Effect of alteration in note, &c.) in *Chappell v. Spencer*, 23 *Barb.* 586; *Niagara District B'k v. Fairman, &c. Tool Manuf. Co.*, 31 *Id.* 405; *Reeves v. Pierson*, 23 *Hun.* 185, 187. Disting'd in *Mechanics', &c. B'k v. Schuyler*, 7 *Cow.* 338, *n.*; *Troy City B'k v. Lanman*, 19 *N. Y.* 480; *Shuler v. Gillette*, 12 *Hun.* 279. Explained at length in *Benedict v. Cowden*, 49 *N. Y.* 403. Followed with *Nazro v. Fuller*, 24 *Wend.* 374, in *Charlton v. Reed*, 61 *Iowa*, 166; *s. c.*, 47 *Am. R.* 808. Applied in *Glover v. Robbins*, 49 *Ala.* 219; *s. c.*, 20 *Am. R.* 272. Followed in *Townsend v. Star Wagon Co.*, 10 *Neb.* 615; *s. c.*, 35 *Am. R.* 493, citing also *Clason v. Morris*, 10 *Johns.* 538; *Ludlow v. Simond*, 2 *Cal. Cas.* 1. Cited in 3 *Kent Com.* 98, as recognizing the English law on the point (Effect of designating place of payment of note). Cited in 2 *Dan. on Neg. Inst.* § 1897.
- *v. Bennett*, 53 *Barb.* 361. Rev'd in 43 *N. Y.* 273. Decision in *Id.* disting'd (Effect of contract containing illegal provis-

- ions) in *Arnot v. Pittston & Elmira Coal Co.*, 2 *Hun.* 591, 594. Disting'd (Recovery of money paid under illegal contract) in *Haynes v. Rudd*, 17 *Id.* 480; *Contra*, *Knowlton v. Congress & E. Spring Co.*, *U. S. Cir. Ct. N. D. N. Y.* 5 *Reporter*, 166. But see *Abb. Tr. Ev.* 283. Applied (Effect of secret partnership in public contract) in *Kelly v. Devlin*, 58 *How. Pr.* 491; *People v. Lord*, 6 *Hun.* 394. Disting'd in *Bradley v. Kingsley*, 43 *N. Y.* 534, 537, a case of sale under a chattel mortgage. Disapproved with *Merritt v. Millard*, 4 *Keyes*, 208, in *Gregory v. Wilson*, 36 *N. J.* (7 *Vroom*) 315; s. c., 13 *Am. R.* 448, 451, citing *Bel-den v. Pitkin*, 2 *Cal.* 147, as sustaining a contrary view.
- *v. Payne*, 5 *Hun.* 551. Subsequent decision in 74 *N. Y.* 196; s. c., 30 *Am. R.* 298, on substantially the same grounds. Decision in *Id.* disting'd with *Piercy v. Keator*, 70 *N. Y.* 419 (Rights reserved by grantor of land) in *Bennett v. Culver*, 27 *Hun.* 554.
- *v. Seymour*, 22 *Hun.* 245. Re-argument denied, it seems, in 23 *Id.* 147.
- *v. Sweet*, 44 *Barb.* 268. Aff'd in 51 *N. Y.* 8. Decision in *Id.* applied (Effect of preference given by husband to wife, as against his creditors) in *Jaycox v. Caldwell*, *Id.* 398.
- Woolever v. Knapp**, 18 *Barb.* 265. Followed (Liability to co-tenant of land for exclusive occupation) in *Dresser v. Dresser*, 40 *Id.* 300, 303; *Everts v. Beach*, 31 *Mich.* 136; s. c., 13 *Am. R.* 169; *Crane v. Waggoner*, 27 *Ind.* 52. Followed as not having been criticised or disapproved in *N. Y.*—in *Kean v. Connelly*, 25 *Minn.* 222; s. c., 33 *Am. R.* 458, also citing *Dresser v. Dresser*, 40 *Barb.* 300; *Elwell v. Burnside*, 44 *Id.* 447; *Wilcox v. Wilcox*, 48 *Id.* 327, and *Scott v. Gurnsey*, 60 *Id.* 168. See *Code Civ. Pro.* 1881, § 1666, n.
- Woolf v. Jacobs**, 34 *Super. Ct. (J. & S.)* 509; s. c., with points of counsel, 45 *How. Pr.* 403.
- Woolley v. Constant**, 4 *Johns.* 54; s. c., 4 *Am. Dec.* 246. See *Ex parte Kerwin*. Followed (Liability on instrument executed in blank) in *Stahl v. Berger*, 10 *Serg. & L. (Pa.)* 170; s. c., 13 *Am. Dec.* 666, with note.
- Woolsey v. Brown**, 11 *Hun.* 52. Aff'd in 74 *N. Y.* 82. See *Kelso v. Tabor*; *Yale v. Dederer*.
- *v. Judd*, 4 *Duer.* 379; s. c., 11 *How. Pr.* 49. Approved (Property of recipient in letter) in *Eyre v. Higbee*, 15 *How. Pr.* 45. Thought with *Eyre v. Higbee*, 35 *Barb.* 502, in 2 *High on Inj.* 2 ed. § 1012, n. 2 (cited in 49 *Am. Dec.* 182, n.) to be the only decisions, either English or American, supporting the doctrine laid down in 2 *Story on Eq. Jur.* §§ 946-948 (Jurisdiction of equity to restrain publication of letters).
- *v. Mores*, 19 *Hun.* 273. Explained (Adverse possession by co-tenants) in *Sedgwick & W. on Tr. of Tit. to Land*, § 750.
- Wooster v. Booth**, 5 *Sup'm. Ct. (T. & C.)* 715; s. c., reported 2 *Hun.* 426.
- *v. Chamberlin*, 28 *Barb.* 602. Followed (Setting up in answer failure to join as defendant, one jointly liable) in *Mason v. Wells*, 2 *Hun.* 518.
- *v. Forty-second Street, &c. R. R. Co.* See *Worster v. Same*.
- *v. Sage*, 6 *Hun.* 285. Aff'd in 67 *N. Y.* 67.
- *y. Sherwood*, 25 *N. Y.* 278. Limited and disting'd (Liability in conversion, of purchaser from wrong-doer, without demand and refusal) in *Gillet v. Roberts*, 57 *Id.* 28, 33.
- *v. Woodhull*, 1 *Johns. Ch.* 542. Examined (Relief in equity from consequences of default) in *Walker v. Rogan*, 1 *Wisc.* 644.
- Worden v. Dodge**, 4 *Den.* 159. Included with note (Note payable on a contingency) in *Bigel. on B. & N.* 2 ed. 8; *Reaf. & B. Lead. Cas. on B. of Exch.* 7.
- Wordsworth v. Lyon**, 1 *Coile R. N. S.* 163; s. c., more fully, 5 *How. Pr.* 463.
- Work v. Ellis**, 50 *Barb.* 512. Explained (Terms of sale in assignment for benefit of creditors) in *Burrill on Assign.* § 220, 4 ed. Explained (Hindrance and delay) in *Id.* § 331, n. 1. Collated with other cases in *Bishop on Assign.* § 222.
- World Safe Ins. Co., Matter of**, 40 *Barb.* 499. Commented on (What authorizes insurance company to continue in business) in *People v. Atlantic Mut. Life Ins. Co.*, 74 *N. Y.* 177, 180.
- Worrall v. Judson**, 5 *N. Y.* 229. See *Rosevelt v. Brown*. Approved (Liability as stockholder, of one appearing on books as legal owner) in *Rosevelt v. Brown*, 11 *N. Y.* 148, 153.
- *v. Munn*, 38 *N. Y.* 137. Previous decision in 5 *Id.* 229; s. c., 55 *Am. Dec.* 330, with note containing citations; also in 17 *N. Y.* 475. Decision in 38 *Id.* confirmed on further decision in 53 *Id.* 185. See *Brackett v. Barney*; *Ex parte Kerwin*. Dictum in 5 *N. Y.* explained (Effect of contract for sale of land signed by vendor only) in *Levy v. Brush*, 8 *Abb. Pr. N. S.* 424, and see dissenting opinion of DANIELS, J., in *Burrell v. Root*, 40 *N. Y.* 500. Disting'd in *Justice v. Lang*, 30 *How. Pr.* 430, which was rev'd in 42 *N. Y.* 513, a case of sale of personality. Disapproved in *Gage v. Jaqueth*, 1 *Lans.* 207, 212, a case of bill of lading signed by consignor only. Disting'd in *Badenhop v. McCahill*, 42 *How. Pr.* 195, as not authority for sufficiency of verbal agreement for sale of land. Disting'd (Delivery of deed, &c. when absolute) in *Graves v. Dudley*, 20 *N. Y.* 79; *Brackett v. Barney*, 28 *Id.* 341. Disting'd with *Cocks v. Barker*, 49 *Id.* 107, in *Payne v. Smith*, 28 *Hun.* 104, 106. Reviewed with other cases (Liability on contract executed by agent) in

- Haight v. Sahler*, 30 *Barb.* 223. Applied in *Bellinger v. Bentley*, 1 *Hun.* 565; *Ford v. Williams*, 13 *N. Y.* 585. Disting'd in *Briggs v. Partridge*, 39 *Super. Ct. (J. & S.)* 343, which was aff'd in 64 *N. Y.* 364, which see. Denied in *Fullam v. Inhabitants of West Brookfield*, 9 *Allen (Mass.)* 6. Approved in *Pomeroy on Sp. Perf.* § 79, *n.* Collated with other cases in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 740. Decision in 53 *N. Y.* included (Damages for refusal of vendor to complete contract of sale of realty) in *Sedgwick on Dama.* 40.
- *v. Parmelee*, 1 *N. Y.* 519; *s. c.*, 40 *Am. Dec.* 350, with note, wherein are collected citations. Applied, but disting'd, (Effect of improper admission of evidence) in *Murray v. Smith*, 1 *Duer*, 431, 433. Disting'd in *Logan v. Ogdensburg, &c. R. R. Co.*, 13 *Weekly Dig.* 335.
- Worster v. Forty-second St., &c. R. R. Co.**, 3 *Daly*, 278. Aff'd in 50 *N. Y.* 203. Further action in 6 *Daly*, 528, which was aff'd in 71 *N. Y.* 471, as *Wooster v. Same*. See *Fletcher v. Auburn & Syracuse R. R. Co.* Decision in 50 *N. Y.* followed (Presumption of negligence as arising from existence of defect and consequent injury) in *France v. Erie R'y Co.*, 5 *Sup'm. Ct. (T. & C.)* 12. With decision in 71 *N. Y.* see (Appeal from decision in *N. Y. Marine court*) *Code Civ. Pro.* 1881, § 3195, *n.*
- Wort v. Jenkins**, 14 *Johns.* 352. See *Tillotson v. Cheetham*. Applied as stating a well established principle (Awarding vindictive damages) in *Linsley v. Bushnell*, 15 *Conn.* 225; *s. c.*, 38 *Am. Dec.* 79, 82, with note. Discussed with other cases in 2 *Greenl. on Ev.* 14 ed. § 253, *n.* 2.
- Worth v. Case**, 42 *N. Y.* 362. Aff'g *North v. Case*, 2 *Lans.* 264. Decision in 42 *N. Y.* applied (Sufficiency of consideration for note) in *Earl v. Peck*, 64 *Id.* 599. Approved and applied (Validity of instruments delivered in escrow to take effect on death of maker) in *Giddings v. Giddings Adm'r*, 51 *Vt.* 227; *s. c.*, 31 *Am. R.* 682, 684. Quoted in 2 *Ames Cas. on B. & N.* 711.
- Wotkyns v. Abrahams**. See *Watkins v. Same*.
- Wotten v. Copeland**, 7 *Johns. Ch.* 140. Limited with *Sebring v. Mersereau*, *10pk.* 501; 9 *Cow.* 344; *Harwood v. Kirby*, 1 *Paige*, 469 (Mortgage and judgment creditors as necessary parties in partition) in *Whitton v. Whinton*, 38 *N. H.* 124.
- Wray v. Rhinelander**, 52 *Barb.* 553. Aff'd in 39 *How. Pr.* 299.
- Wren v. Cosmopolitan Gas. Co.**, 2 *Hun.* 666; *s. c.*, 5 *Sup'm. Ct. (T. & C.)* 686. Compared (Injunction against publishing letters) in 2 *High on Inj.* 2 ed. § 1012, *n.* 2.
- Wright, Ex parte**. See *Camp v. Root*; *Larkin v. Robbins*; *Miller v. Van Anken*.
- Wright's Accounting**, 16 *Abb. Pr. N. S.* 429. Rev'd as to denial of application to re-open accounting in 7 *Hun.* 603, as *People ex rel. Wright v. Coffin*. Compare *Code Civ. Pro.* § 2481, subd. 6.
- Wright v. Ames**, 2 *Keyes*, 221; *s. c.*, 4 *Abb. Ct. App. Dec.* 644. Cited (Notice to or by one of firm as notice to or by all) in *Story on Partn.* 7 ed. § 107, *n.*
- *v. Bennett*, 3 *Barb.* 451. Doubtful (Sufficiency of answer of title in third person, in replevin) in *Stowell v. Otis*, 71 *N. Y.* 36, 38.
- *v. Black*, 2 *Wend.* 258. Explained (What is non-residency, as affecting liability for costs) in *Robert v. Methodist Book Concern*, 1 *Daly*, 3.
- *v. Boughton*, 22 *Barb.* 561. Compared (Liability of carrier beyond his line) in *Berg v. Narragansett S. S. Co.*, 5 *Daly*, 395.
- *v. Boyd*. See *Babcock v. Beman*.
- *v. Brown*, 67 *N. Y.* 1. Disting'd (Evidence of fraud in purchaser) in *Ellison v. Bernstein*, 60 *How. Pr.* 145, 148.
- *v. Butler*, 6 *Wend.* 284; *s. c.*, 21 *Am. Dec.* 323, with note containing citations. Aff'g *Butler v. Wright*, 2 *Wend.* 369. See *Butler v. Wright*; *Gardner v. Buckbee*. Decision in 2 *Wend.* disting'd (Implied contract to pay, as between parties to note) in *Woodruff v. Moore*, 8 *Barb.* 173. Both decisions explained and applied in *Barker v. Cassidy*, 16 *Id.* 179. Decision in 6 *Wend.* disting'd (Effect of one action on entire demand as bar to another) in *Bancroft v. Winspear*, 44 *Barb.* 217. See to the contrary *Biyeal on Est.* 520. See also *Abb. Tr. Ev.* 828.
- *v. Delafield*, 23 *Barb.* 498. Rev'd in 25 *N. Y.* 266, because pleadings were insufficient, it being intimated also that on facts, complaint should have been dismissed. Decision in 23 *Barb.* applied (Failure of title, as defense to action for purchase price of land) in *Lewis v. McMillen*, 41 *Id.* 433. Decision in 25 *N. Y.* applied (Affirmative judgment for defendant, when not to be allowed) in *Rust v. Hauselt*, 8 *Abb. N. C.* 148, 156. Followed (Judgment as limited by allegations and proof) in *Carpenter v. Goodwin*, 4 *Daly*, 91. Approved and applied (Amendment of pleadings) in *Ballou v. Parsons*, 11 *Hun.* 605.
- *v. Douglass*, 10 *Barb.* 97. Rev'd in 7 *N. Y.* 564. Prior decision in 3 *Barb.* 554, and that rev'd in 2 *N. Y.* 373. See *Thomas v. Crotuf*. With decision in 3 *Barb.* see (Execution against real property held in trust) *Code Civ. Pro.* 1881, § 1431, *n.* Decision in 2 *N. Y.* reconciled (Relation back of sheriff's deed) in *Reynolds v. Darling*, 42 *Barb.* 422, 425. Followed in *Holman v. Holman*, 66 *Id.* 215, 221. Decision in 10 *Id.* applied and explained as being authority, notwithstanding reversal (Showing want of jurisdiction collaterally) in *Ferguson v. Crawford*, 70 *N. Y.* 265. Decision in 7 *Id.* discussed (Statute of frauds as affecting express trusts) in *Browne on Stat. of Frauds*, § 104, 4 ed.

— **v. Fleming**, 71 *N. Y.* 612. Further proceedings in 3 *Redf.* 325, and in *Id.* 362. Also other proceedings affecting same estate, in 12 *Hun.* 469; which was aff'd in 76 *N. Y.* 517. Further proceedings in 18 *Hun.* 360; and in 19 *Id.* 370. See Tucker *v.* Tucker. Decision in 12 *Hun.* disting'd (Surrogate's power to decide as to validity of release of interest in decedent's estate) in Strong *v.* Strong, 3 *Redf.* 477, 480. With decision in 18 *Hun.* compare (Costs on appeal) *Code Civ. Pro.* §§ 3239, 3251, subd. 4.

— **v. Garlinghouse**, 27 *Barb.* 474. Rev'd in 26 *N. Y.* 539. Decision in *Id.* cited and compared (Rights of sureties between themselves) in 13 *Am. L. Reg. N. S.* 529.

— **v. Hart**, 18 *Wend.* 449. Discussed and favorably commented on (Implied warranty in sales of goods) in 2 *Kent Com.* 489, *n. c.*

— **v. Holbrook**, 18 *Abb. Pr.* 202; *s. c.*, 2 *Robt.* 517. Aff'd in 82 *N. Y.* 587. Decision in *Id.* followed (Remedy of creditor on obligation of decedent secured by mortgage) in Thompson *v.* Sullivan, 60 *How. Pr.* 72.

— **v. Hooker**, 10 *N. Y.* 51. Disting'd (Effect of judgment by default) in Bullard *v.* Sherwood, 85 *Id.* 253, 256.

— **v. Hunter**, 46 *N. Y.* 409. Followed (Appeal to Court of Appeals from order granting new trial) in Sands *v.* Crooke, 46 *N. Y.* 568; Dickson *v.* B'way, &c. R. R. Co., 47 *Id.* 509; Downing *v.* Kelly, 48 *Id.* 434. With this case and Sands *v.* Crooke; Dickson *v.* B'way, &c. R. R. Co., see as to form of decision on such appeal, Arnold *v.* Robertson, 50 *Id.* 683. Applied with Harris *v.* Burdett, 73 *Id.* 136; Snebley *v.* Conner, 78 *Id.* 218, in People *v.* Boas, 92 *Id.* 560, 564.

— **v. Johnson**, 8 *Wend.* 512. Applied (Liability of guarantor) in Bigelow *v.* Benton, 14 *Barb.* 129. Disting'd in Kingsbury *v.* Williams, 53 *Id.* 151.

— **v. Maseras**. See Gibney *v.* Marchay.

— **v. Miller**, 1 *Sandf. Ch.* 103. Rev'd in 4 *Barb.* 600, but latter rev'd and former aff'd in 8 *N. Y.* 9; *s. c.*, 59 *Am. Dec.* 438. Applied (Validity of trust for benefit of grantor) in Foster *v.* Coe, 4 *Lans.* 56. Decision in *Id.* disting'd (Effect of fraudulent disposition of trust property) in Dooper *v.* Noelke, 5 *Daly.* 413, 416. Applied (Setting aside judgment, &c. obtained by fraud) in Hackley *v.* Draper, 60 *N. Y.* 92.

— **v. Moore**, 21 *Wend.* 230. Applied (Tender of deed, as condition precedent to liability for purchase price of land) in Grant *v.* Johnson, 6 *Barb.* 337, 341. Applied (Relief to purchaser in contract for sale of land, in case of inability to pay promptly) in Cythe *v.* La Fontain, 51 *Barb.* 190. Followed with Powers *v.* Ingraham, 3 *Barb.* 576 (Right of vendor to maintain ejectment against purchaser in possession under contract of purchase) in Browning *v.* Estes, 3 *Tex.* 462; *s. c.*, 49 *Am. Dec.* 760, with note, citing also Hatch *v.* Cobb, 4 *Johns. Ch.* 559.

— **v. Mosher**. See Prouty *v.* Prouty.

— **v. Murray**, 6 *Johns.* 286. Cited (Effect of certificate of clerk of court as evidence) in 2 *Whart. Com. on Ev.* § 841.

— **v. N. Y. Central R. R. Co.**, 28 *Barb.* 80. Rev'd in 25 *N. Y.* 562. See Field *v.* Same. Decision in 28 *Barb.* followed with Field *v.* N. Y. Central R. R. Co., 29 *Id.* 176; Johnson *v.* McIntosh, 31 *Id.* 267 (Corporation as a person) in La Farge *v.* Exchange Fire Ins. Co., 22 *N. Y.* 354. Decision in 25 *Id.* applied (Liability of master to servant for injury happening in course of employment) in Spelman *v.* Fisher Iron Co., 56 *Barb.* 155, 165; Haskin *v.* N. Y. Central, &c. R. R. Co., 65 *Id.* 131; Ross *v.* Same, 5 *Hun.* 494; Sizor *v.* Syracuse, &c. R. R. Co., 7 *Lans.* 69; Rose *v.* Boston & Albany R. R. Co., 58 *N. Y.* 221. Reconciled in Brickner *v.* N. Y. Central R. R. Co., 2 *Lans.* 511, 517. Explained and applied in Warner *v.* Erie R'y Co., 39 *N. Y.* 477. Explained in Cone *v.* Delaware, &c. R. R. Co., 15 *Hun.* 177. Disting'd in Stone *v.* Western Transp. Co., 38 *N. Y.* 247; Chapman *v.* Erie R'y Co., 55 *Id.* 579, 586. Followed with Evans *v.* Lake Shore R. R. Co., 12 *Hun.* 289; Gibson *v.* Erie R. R. Co., 63 *N. Y.* 449; De Forest *v.* Jewett, 88 *Id.* 264, and Laning *v.* N. Y. Central R. R. Co., 49 *Id.* 521; Hawley *v.* Northern C. R. R. Co., 82 *Id.* 372, disting'd in Conboy *v.* Donaldson, *N. Y. Daily Reg. Jan.* 26, 1884. Limited and explained in Laning *v.* N. Y. Central R. R. Co., 49 *N. Y.* 521, 528. Followed with Warner *v.* Erie R'y Co., 39 *Id.* 471, in Harper *v.* Indianapolis & St. Louis R. R. Co., 47 *Mo.* 567; *s. c.*, 4 *Am. R.* 353. Followed with Keegan *v.* Western R. R. Co., 8 *N. Y.* 175; Ryan *v.* Fowler, 24 *Id.* 410, in Gibson *v.* Pacific R. R. Co., 46 *Mo.* 163; *s. c.*, 2 *Am. R.* 497, 502, 504. Approved in Columbus, Chicago & Indiana Central R. R. Co. *v.* Troesch, 68 *Ill.* 545; *s. c.*, 18 *Am. R.* 578, 581. Recognized as authority in Davis *v.* Detroit & Milwaukee R. R. Co., 20 *Mich.* 105; *s. c.*, 4 *Am. R.* 364, 372, also relying on McMillan *v.* Saratoga & Washington R. R. Co., 20 *Barb.* 449. Cited at length in 36 *Am. Dec.* 282, *n.* as containing a forcible and succinct statement of principles.

— **v. O'Brien**, 5 *Daly.* 54. Explained (Sales as distinguished from agreements for work and labor) in *Benj. on Sales*, § 109, *n. y* (Bennett's 4 *Am. ed.*).

— **v. Orient Mut. Ins. Co.**, 6 *Bosw.* 289. See to the contrary (Seaworthiness) Pickup *v.* Thames, &c. Ins. Co., *L. R. 3. Q. B. Div.* 594. See *Abb. Tr. Ev.* 497.

— **v. Paige**, 36 *Barb.* 438. Aff'd, adopting opinion given in *Barb.* as that of Ct. of App. in 3 *Keyes*, 581. Decision in 36 *Barb.* questioned (Impeaching witness) in Wood *v.* Rusco, 4 *Redf.* 380, 388. Cited (Liability for words charging indictable offense which involves moral turpitude) in 2 *Kent Com.* 16 Holmes' *ed. n. 1a.*

— **v. Ritterman**, 1 *Abb. Pr. N. S.* 428.

Followed (Right to arrest twice for same offense) in *Townsend v. Nebenzahl*, 8 *Abb. N. C.* 427, 430.

— *v. Rowland*, 36 *How. Pr.* 115. Rev'd (Right to vacate attachment during appeal) in 4 *Abb. Ct. App. Dec.* 649; s. c., 4 *Keyes*, 165.

— *v. Saddler*, 20 *N. Y.* 320. See (Right of aliens to hold real estate) *Ettenheimer v. Heffernan*, 66 *Barb.* 379; *Renner v. Müller*, 57 *How. Pr.* 234. Collated with other cases in *Sharsw. & B. Cas. on Real Prop.* 519. Followed (Conveyances to husband and wife as affected by statutory changes) in *Hemingway v. Scales*, 42 *Miss.* 1; s. c., 2 *Am. R.* 586, 588, also relying on *Farmers' & Mechanics' B'k of Rochester v. Gregory*, 49 *Barb.* 155.

— *v. Saunders*, 65 *Barb.* 214. Aff'd in 36 *How. Pr.* 136; s. c., 3 *Keyes*, 323. See authorities collected (Obstruction of highways) in 20 *Am. L. Reg. N. S.* 350, n.

— *v. Storrs*, 6 *Bosw.* 600. Aff'd in 32 *N. Y.* 691.

— *v. Taylor*, 1 *Edw.* 226. Aff'd in 9 *Wend.* 538.

— *v. Trustees of M. E. Church, Hoffm.* 202. Examined and followed with *Slosson v. Lynch*, 43 *Barb.* 148; *Murdock v. Ward*, 67 *N. Y.* 387; *Luce v. Dunham*, 69 *Id.* 36; *Keteltas v. Keteltas*, 72 *Id.* 312 (Meaning of words "heirs" and next of kin) in *Tillman v. Davis*, 95 *N. Y.* 17. Applied (Requisites of equitable conversion) in *Bondard's Will*, 16 *Abb. Pr. N. S.* 128, 194; *Gourley v. Campbell*, 66 *N. Y.* 173. Quoted (Gifts to charitable uses) in 1 *Jarm. on Wills*, Rand. and T. ed. 467. Commented on in 2 *Perry on Trusts*, 3 ed. § 748, n. See cases collated (Devises to corporations) in 18 *Am. Dec.* 542, n.

— *v. Weeks*, 3 *Bosw.* 372. Aff'd on substantially same grounds, in 25 *N. Y.* 153. Latter decision explained and disting'd (Sufficiency of agreement for sale of land) in *Foot v. Webb*, 59 *Barb.* 39, 52. Disting'd in *Hagan v. Domestic Sew. Mach. Co.*, 9 *Hun.* 73, 76, a case of contract for services. Quoted in 1 *Benj. on Sales*, § 254, n. 50 (Corbin's 4 *Am. ed.*).

— *v. Whiting*. See *Churchill v. Hunt*.

— *v. Wilcox*, 19 *Wend.* 343; s. c., 32 *Am. Dec.* 507, with note wherein are collected citations. See *Richmond Turnpike Co. v. Vanderbilt*. Disting'd (Liability for wrongful acts, &c. of agents or servants) by *Bosworth, J.*, in *Mechanics' B'k v. N. Y. & New Haven R. R. Co.*, 4 *Duer*, 551. Disting'd in *Weed v. Panama R. R. Co.*, 5 *Id.* 196; which was aff'd in 17 *N. Y.* 365, which see; *Mott v. Consumers' Ice Co.*, 73 *Id.* 547. Applied in *Vanderbilt v. Richmond Turnpike Co.*, 2 *Id.* 482; *Mali v. Lord*, 39 *Id.* 383; *Fraser v. Freeman*, 43 *Id.* 569; *Isaacs v. Third Ave. R. R. Co.*, 47 *Id.* 127. Disapproved in *Rounds v. Delaware, Lackawanna & Western R. R. Co.*, 5 *Sup'm. Ct. (T. & C.)* 475, 482. Reviewed

with other cases in *Rounds v. Delaware, &c. R. R. Co.*, 64 *N. Y.* 135. Disting'd with *Vanderbilt v. Richmond T. Co.*, 2 *Id.* 470, in *Goodspeed v. East Lladam Bank*, 23 *Conn.* 530; s. c., 58 *Am. Dec.* 439; also relying on *Bank Comm'rs v. Bank of Buffalo*, 6 *Paige*, 502; *Life and Fire Ins. Co. v. Mechanics' Fire Ins. Co.*, 7 *Wend.* 31. Applied with *Vanderbilt v. Richmond Turnpike Co.*, 2 *N. Y.* 479, in *New Orleans, Jackson & Great Northern R. R. Co. v. Harrison*, 48 *Miss.* 112; s. c., 12 *Am. R.* 356, 366. Shown in 35 *Am. Dec.* 200, n. by a series of cases cited to have been gradually overthrown as an authority in *N. Y.* Cited in 2 *Kent Com.* 260, in connection with *McManus v. Crickett*, 1 *East.* 106. Discussed in *Ang. on Carr.* § 605, 5 ed. Followed (Joint action against master and servant for negligence) in *Phelps v. Wait*, 30 *N. Y.* 79.

— *v. Wright*, 1 *Cow.* 598; s. c., 7 *N. Y. Com. L. Law. ed.* 630, with brief note. See *Coutant v. Schuyler*; *Harris v. Clark*; *Pearson v. Pearson*. Said to be against the weight of authority (Donor's note as subject of gift, *mortis causa*) in *Craig v. Craig*, 3 *Barb. Ch.* 76, 118; *Whitaker v. Whitaker*, 52 *N. Y.* 368, 373. Followed in *Parker v. Emerson*, 4 *N. Y. Leg. Obs.* 220; *Coutant v. Schuyler*, 1 *Paige*, 318. Disapproved as opposed to the current of authorities,—in *Parish v. Stone*, 14 *Pick. (Mass.)* 198; s. c., 25 *Am. Dec.* 378, 384, with note. Disapproved in *Raymond v. Sellick*, 10 *Conn.* 480; *Holley v. Adams*, 16 *Vt.* 211. Referred to in *Basket v. Hassell*, 107 *U. S.* 602, 611, as overruled in *Harris v. Clark*, 3 *N. Y.* 93, which see; also see as to effect of latter decision *Penfield v. Thayer*, 2 *E. D. Smith*, 311. Applied to gift *inter vivos* in *Grover v. Grover*, 24 *Pick. (Mass.)* 261; s. c., 35 *Am. Dec.* 319, with note. See cases cited in 23 *Am. Dec.* 604, n.

— *v. —*, 59 *Barb.* 505. Aff'd in 54 *N. Y.* 437. See *Curtis v. Brooks*. Decision in *Id.* applied (Action by wife against husband) in *May v. May*, 9 *Neb.* 16; s. c., 31 *Am. R.* 399, 405. Reviewed with other cases in 10 *Alb. L. J.* 273. Cited as not authority (For right of wife to contract with husband) in *Van Order v. Van Order*, 8 *Hun.* 316. Approved (Removal of distinctions between actions at law and suits in equity) in *Pomeroy on Rem.* § 70, n. 1; 1 *Pomeroy on Eq. Jur.* § 354, n. 1, p. 383.

— *v. —*, 41 *Super. Ct. (J. & S.)* 132. Aff'd in 70 *N. Y.* 96. See (Attorney's lien) *Code Civ. Pro.* 1881, § 66, n.

— *v. —*, 7 *Daly*, 55. Aff'd in 72 *N. Y.* 149. **Wrigley, Matter of**, 4 *Wend.* 602. Aff'd in 8 *Id.* 134. See *Heidenbach v. Schland*. Decision in 8 *Wend.* reviewed with other cases (Meaning of terms "residence," &c.) in *Crawford v. Wilson*, 4 *Barb.* 520. Applied in *Union Hotel Co. v. Hersec*, 79 *N. Y.* 461. Explained in *Burrill v. Jewett*, 2



*Robt.* 701, 704. Collated with *Crawford v. Wilson*, 4 *Barb.* 522, and other cases in 59 *Am. Dec.* 112, *n.* Decision in 4 *Wend.* collated with other cases in *Thomps. on Prov. Rem.* 357. Both decisions examined in *Isham v. Gibbons*, 1 *Bradf.* 80. Applied in *Frost v. Bristin*, 19 *Wend.* 13.

**Wyatt v. Benson**, 4 *Abb. Pr.* 182; *s. c.*, 23 *Barb.* 327. Qualified (Power to mortgage or sell real estate of religious corporation) in *Matter of St. Ann's Church*, 14 *Abb. Pr.* 425. Explained in *Mad. Ave. Ch. v. Baptist Ch. in Oliver St.*, 1 *Abb. Pr. N. S.* 214, 223; 11 *Id.* 138.

**Wyckoff v. Meyers**, 44 *N. Y.* 143. See *Smith v. Brady*. Disting'd (Effect of architect's decision on performance of building contract) in *Glacius v. Black*, 50 *Id.* 145, 151. Applied, and effect of *Glacius v. Black* explained in *Weeks v. Little*, 47 *Super. Ct. (J. & S.)* 1, 14, 30.

— **v. Queens County Ferry Co.**, 52 *N. Y.* 32; *s. c.*, 11 *Am. R.* 650, with note. Thought in 47 *Am. Dec.* 654, *n.*, to hold an opinion better than that of other cases there cited (When liability of common carrier attaches to ferryman).

**Wylie v. Kelly**. See *Shindler v. Houston*.

— **v. Lockwood**, 20 *Hun.* 377. Rev'd in part in 86 *N. Y.* 291. Decision in *Id.* disting'd (Provision for "remaining" or "surviving" children) in *Kingsland v. Leonard*, 65 *How. Pr.* 7.

— **v. Marine Nat. B'k**, 61 *N. Y.* 415. Applied (Broker's right to commissions) in *Sibbald v. Bethlehem Iron Co.*, 83 *Id.* 378, 381, 383. Followed in *Dolan v. Scanlan*, 57 *Cal.* 261, 265. Followed with *Sibbald v. Bethlehem Iron Co.* in *Hamlin v. Schulte*, 31 *Minn.* 486.

**Wyman v. Mayor, &c. of N. Y.**, 11 *Wend.* 486. See *Matter of Albany St.*; *Huttemeir v. Albroy*; *Livingston v. Mayor, &c. of N. Y.*; *Matter of Mercer St.*; *Matter of Wendell*. Disting'd (Evidence of dedication of land to public use) in *Matter of Fourth Ave.*, 11 *Abb. Pr.* 189, 199. Reviewed and approved with *Underwood v. Stuyvesant*, 19 *Johns.* 186; *Matter of Seventeenth St.*, 1 *Wend.* 270; *Matter of Lewis St.*, 2 *Id.* 472; *Livingston v. Mayor, &c. of N. Y.*, 8 *Id.* 85; *Trustees of Watertown v. Cowen*, 4 *Paige*, 513, and other cases in *Vick v. Vicksburgh*, 1 *How. (Miss.)* 379; *s. c.*, 31 *Am. Dec.* 167, 172.

— **v. Prosser**. See *Wyman v. Wyman*.

— **v. Smead**, 31 *How. Pr.* 1. See dissenting opinion of *MILLER, J.*, *Id.* 353.

— **v. Wyman**, 26 *N. Y.* 253. Aff'g *Wyman v. Prosser*, 36 *Barb.* 368. See *Hoffman v. Aetna Ins. Co.* Decision in 26 *N. Y.* disting'd (Effect of change of interest as avoiding policy) in *Sherwood v. Agricultural Ins. Co.*, 73 *Id.* 447, 451. Decision in 36 *Barb.* opposed (Right to proceeds of policy) in *Culbertson v. Cox*, 29 *Minn.* 309, 315.

**Wynhamer v. People**. See *Wynhamer v. Same*.

**Wynhamer v. People**, 20 *Barb.* 567; *s. c.* as *Wynhamer v. People*, 2 *Park.* 377, where proceedings on trial are more fully stated, but points of counsel omitted; *s. c.*, less fully, as *Wynhamer v. People*, 11 *How. Pr.* 530. Rev'd in *Wynhamer v. People*, 13 *N. Y.* 373; *s. c.*, 2 *Park.* 421, where argument of counsel is fully reported. Decision of Sup'm Ct. as to office of writ of error, was not disturbed. See *Hand v. Ballou*; *People v. Toynbee*. Decision in 13 *N. Y.* disting'd (Right of trial by jury) in *Crouse v. Walrath*, 41 *How. Pr.* 86, 89. Compare *People ex rel. Comaford v. Dutcher*, 83 *N. Y.* 240, 242. Cited with other cases in *Copp v. Henniker*, 55 *N. H.* 179; *s. c.*, 20 *Am. R.* 194, 197. Cited with *People v. Kennedy*, 2 *Park.* 312, in 48 *Am. Dec.* 187, *n.*, as maintaining a just and rational view. Disting'd (Validity of statute authorizing destruction of property) in *Blazier v. Miller*, 10 *Hun.* 435, 436. Applied in *Lowry v. Rainwater*, 70 *Mo.* 152; *s. c.*, 35 *Am. R.* 420, 423. Disting'd (Validity of statute restricting use of property) in *People v. Hoym*, 20 *How. Pr.* 83. Criticised and disting'd in *Munn v. People*, 69 *Ill.* 80. Disting'd (Statute, when invalid, as tending to deprive one of vested rights) in *Phelps v. Racey*, 5 *Daly*, 235, 239, which was aff'd in 60 *N. Y.* 10, 13, which see. Dicta disapproved and limited (Validity of statute regulating sale of liquor) in *Metropolitan B'd of Excise v. Barrie*, 34 *N. Y.* 668. Followed with *Metropolitan B'd of Excise v. Barrie*, in *State v. Ah Chew*, 16 *Nev.* 50. Cited with other cases in 10 *Am. L. Reg. N. S.* 772. Referred to in 35 *Am. Dec.* 335, *n.*, as the only case found supporting the doctrine that intoxicating liquors, to be used as a beverage, are as property entitled to constitutional protection, like other property. Approved with *People v. Toynbee*, 20 *Barb.* 168; 2 *Park.* 490 (Bad repute of place as evidence of illegal sale of liquor) in *State v. Beswick*, 13 *R. I.* 211; *s. c.*, 12 *Reporter*, 347; 36 *Am. R.* 102, *n.*, in preference to *Commonwealth v. Williams*, 6 *Gray (Mass.)* 1; *State v. Hurley*, 54 *Me.* 562. Examined with *Taylor v. Porter*, 4 *Hill*, 140; *Embury v. Connor*, 3 *N. Y.* 511, and other cases (Meaning of term "due process of law") in *Rowan v. State*, 30 *Wis.* 129; *s. c.*, 11 *Am. R.* 559, 564. Applied with *People v. Kerr*, 37 *Barb.* 357, 399 (What is taking of private property within constitutional meaning of term) in *Eaton v. Boston, Concord & Montreal R. R.*, 51 *N. H.* 504; *s. c.*, 12 *Am. R.* 147, 152. Quoted (Powers of legislative department) in *Cooley on Const. Limit.* 5 ed. 107.

**Wynkoop v. Holbert**, 25 *How. Pr.* 158. Aff'd as *Wynkoop v. Halbut*, 43 *Barb.* 266. Compare (Notice of appeal from justice's decision) in *Pike v. Johnson*, 47 *N. Y.* 1; *Younghans v. Fingar*, *Id.* 99; 43 *How. Pr.* 259; *Gray v. Hannah*, 1 *Abb. Pr. N. S.* 43. Decision in 43 *Barb.* 266, approved, and

Doron v. McLoughlin, 14 *Tun.* 628; Chamberlain v. Chamberlain, 25 *Id.* 199, criticised and disregarded, in Garling v. Ladd, 27 *Id.* 112. See *Code Civ. Pro.* 1881, § 3070, n.

— v. Shardlow, 44 *Barb.* 84; s. c., 29 *How. Pr.* 368. Explained (Compensation of assignee for benefit of creditors) in *Burrill on Assign.* § 145, n. 7, 4 ed.

Wynn v. Alden, 4 *Den.* 163. Questioned but followed (Insufficiency of notice of protest) in De La Hunt v. Higgins, 9 *Abb. Pr.* 423.

Wysham v. Rossen, 11 *Johns.* 72. Explained and disting'd (Seaman's right of action for wages against substituted master) in Fitzsimmons v. Baxter, 3 *Daly*, 85.

## X.

Xenia Branch B'k v. Lee, 7 *Abb. Pr.* 372; s. c., 2 *Bosw.* 372. See Mr. Pomeroy's analysis commented on (What is the "subject of the action") in 2 *South. L. Rev. N. S.* 415.

## Y.

Yager v. Haunah, 6 *Hill*, 631. Re-aff'd (Jurisdiction of justice's court of Hudson) in Bryan v. Cain, 1 *Den.* 507.

Yale v. Baker, 2 *Hun.* 468. Compare (Surrogate's power to open decree) *Code Civ. Pro.* § 2481, subd. 6.

— v. Dederer, 21 *Barb.* 286. Rev'd in 18 *N. Y.* 265; s. c., imperfectly reported, 17 *How. Pr.* 165. Further decision in 31 *Barb.* 525; s. c., 19 *How. Pr.* 146; which was rev'd in 22 *N. Y.* 450; s. c., in part, 20 *How. Pr.* 242. Further decision in 68 *N. Y.* 329. See Jaques v. Methodist Episcopal Church. Decision in 18 *N. Y.* disting'd (Liability of separate estate of married woman) in Francis v. Ross, 17 *How. Pr.* 563. Followed in Willard v. Eastham, 15 *Gray (Mass.)* 328, 333. Cited as a leading case and applied in Dale v. Robinson, 51 *Vt.* 20; s. c., 31 *Am. R.* 669. Discussed in *Schouler on Dom. Rel.* 3 ed. § 143, and n. 1, *et seq.* Decision in 22 *N. Y.* applied in Coakley v. Chamberlain, 8 *Abb. Pr. N. S.* 43; Owen v. Cawley, 13 *Abb. Pr.* 19; White v. Story, 43 *Barb.* 129; Eustaphie v. Ketchum, 6 *Hun.* 623; Eisenlord v. Snyder, 71 *N. Y.* 47. Explained and applied in Brown v. Hermann, 14 *Abb. Pr.* 390; McVey v. Cantrell, 70 *N. Y.* 297. Followed with Manhattan Co. v. Thompson, 58 *N. Y.* 84; Woolsey v. Brown, 11 *Hun.* 52; Second Nat. Bank of Watkins v. Miller, 63 *N. Y.* 639; Coulin v. Cantrell, 64 *Id.* 217, in *Hershiser v. Florence*, 39 *Ohio St.* 516, 532. Cited with Methodist Epis. Church v. Jaques, 3 *Johns. Ch.* 77; Jaques v. Methodist Epis. Church, 17 *Johns.* 548, and Nash v. Mitchell, 3 *Abb. N. C.* 171 applied in Elliott v. Gower, 12 *R. I.* 79; s.

c., 34 *Am. R.* 600. Reviewed at length, and strongly disapproved, in Todd v. Lee, 15 *Wis.* 365. Denied in Phillips v. Graves, 20 *Ohio St.* 371; s. c., 5 *Am. R.* 675, 682, as in conflict with the English doctrine, and perhaps with the decisions of every other State in the Union. Reviewed with other *N. Y.* cases in *Tyler on Inf. & Cov.* 2 ed. § 317. Collated with Owen v. Cawley, 36 *N. Y.* 600; Robinson v. Rivers, 9 *Abb. Pr.* 144, and authorities from other States, in 17 *Cent. L. J.* 5. Decision in 68 *N. Y.* disting'd in Husted v. Mathes, 77 *Id.* 390. Compared with conflicting authorities in Orange Nat. B'k v. Traver, *U. S. Cir. Ct. Dist. Oreg.* 24 *Abb. L. J.* 116. Reviewed with other cases in 1 *Id.* 225. Decisions in 18 *N. Y.*; 22 *Id.* applied, in Deck v. Johnson, 1 *Abb. Ct. App. Dec.* 498; Corn Exchange Ins. Co. v. Babcock, 8 *Abb. Pr. N. S.* 249; which was rev'd in 9 *Id.* 174, which see; Ledlie v. Vrooman, 41 *Barb.* 113; Gosman v. Cruger, 7 *Hun.* 60; which was aff'd in 69 *N. Y.* 80, which see. Examined in Cashman v. Henry, 5 *Abb. N. C.* 234; Ledelley v. Powers, 39 *Barb.* 559. Disting'd in Southwick v. Southwick, 9 *Abb. Pr. N. S.* 123; Quassaic Nat. B'k of Newburgh v. Waddell, 1 *Hun.* 128; Maxon v. Scott, 55 *N. Y.* 250. Disting'd and followed in Kelso v. Tabor, 52 *Barb.* 128. Reviewed with Corn Exchange Ins. Co. v. Babcock, 42 *N. Y.* 613; Loomis v. Ruck, 56 *Id.* 462; Maxon v. Scott, 55 *Id.* 251, in Burchard v. Dunbar, 82 *Id.* 457; s. c., 25 *Am. R.* 334, 337, 338. Relied on in Williams v. Hugunin, 69 *Id.* 214; s. c., 18 *Am. R.* 607, 612. Disapproved in Deering v. Boyle, 8 *Kans.* 525; s. c., 12 *Am. R.* 480, 482, 483, and said to have been shaken by Owen v. Cowley, 36 *N. Y.* 600; Ballin v. Dillaye, 37 *Id.* 85; Corn Exchange Ins. Co. v. Babcock, 42 *Id.* 613. Doubted in 1 *Am. L. Reg. N. S.* 666. Decisions in 18 *N. Y.*; 22 *Id.*; 68 *Id.* discussed with Merchants' B'k v. Hall, 83 *Id.* 347, and Jaques v. M. E. Church, 17 *Johns.* 577; M. E. Church v. Jaques, 3 *Johns. Ch.* 73, in Cartan v. David, 18 *Nev.* 310, 319. Compare 7 *South L. J. N. S.* 90.

— v. Gwinits, 4 *How. Pr.* 253. Disting'd (Effect of irregularity in referee's conduct) in Gray v. Fisk, 12 *Abb. Pr. N. S.* 214. Applied in Dorton v. Lewis, 9 *How. Pr.* 4. Yates, Case of, 4 *Johns.* 317; s. c., Yates Sel. Cas. 1. Rev'd in Yates v. People, 6 *Johns.* 337. Subsequent proceedings as Yates v. Lansing, 5 *Id.* 282; and that aff'd in 9 *Id.* 395; s. c., 4 *N. Y. Com. L. Law. ed.* 815, with brief note. See Cable v. Cooper; Clark v. Holdridge; Yates v. Lansing. Decisions in 5 *Johns.*; 9 *Id.*; disting'd (Judicial responsibility) as inapplicable to commissioners of excise, in People v. Norton, 7 *Barb.* 480; but applied to supervisors, in People v. Stocking, 50 *Id.* 577. Explained and applied in Cunningham v. Bucklin, 8 *Cow.*

181. Applied in *Lange v. Benedict*, 8 *Hun.* 367; which was aff'd in 73 *N. Y.* 32, which see. Applied with *Weaver v. Devendorf*, 3 *Den.* 117; *Wilson v. Mayor, &c. of N. Y.*, 1 *Id.* 597, in *Rains v. Simpson*, 50 *Tex.* 495; s. c., 32 *Am. R.* 609. Cited as authority and approved in *Hamilton v. Williams*, 26 *Ala.* 529. Referred to with approval in *Pratt v. Gardner*, 2 *Cush. (Mass.)* 63; s. c., 48 *Am. Dec.* 652, with note. Approved in *Scott v. Stansfield*, *L. R.* 3 *Exch.* 224, and see cases reviewed in 15 *Am. Law. Rev.* 431, 433. Decision in 5 *Johns.* applied with *Cunningham v. Bucklin*, 8 *Cow.* 178; *Bigelow v. Stearns*, 19 *Johns.* 39, in *Jordan v. Hanson*, 49 *N. H.* 199; s. c., 6 *Am. R.* 508. Approved and applied in *Busteed v. Parsons*, 54 *Ala.* 393; s. c., 25 *Am. R.* 683. Disting'd with *Skinner v. Dayton*, 5 *Johns.* 352, in *Kelly v. Rembert*, *Harp. (So. Car.)* 33; s. c., 18 *Am. Dec.* 643, with note. Followed with *Cunningham v. Bucklin*, 8 *Cow.* 178, in *Stone v. Graves*, 8 *Mo.* 148; s. c., 40 *Am. Dec.* 131, with note. Followed with approval in *Bailey v. Wiggins*, 5 *Harr. (Del.)* 462; s. c., 60 *Am. Dec.* 650. Decisions in 4 *Johns.*; 6 *Id.*; explained and applied (Inquiry into jurisdiction on *habeas corpus* proceedings) in *Devlin's Case*, 5 *Abb. Pr.* 304. Decision in 6 *Johns.* explained in *People v. Norton*, 1 *Hill*, 166. The various decisions herein explained and disting'd in *People ex rel. Tweed v. Liscomb*, 60 *N. Y.* 570. Decision in 4 *Johns.* cited approvingly in 2 *Kent Com.* 31, n. d., as to the same effect as Commonwealth v. Keeper of Debtor's Apartment, 1 *Ashm. (Penn.)* 10, and supported in *Commonwealth v. Lecky*, 1 *Watts. (Pa.)* 63. Decision in 5 *Johns.* followed (Allowance of writ of *habeas corpus* is ministerial act) in *Matter of Nash*, 16 *Abb. Pr.* 284; *Nash v. People*, 36 *N. Y.* 617; *Matter of Hopson*, 40 *Barb.* 57; but see *People ex rel. Ryan v. Russel*, 1 *Abb. Pr. N. S.* 231. Held not applicable to summary proceedings in *People ex rel. Smith v. Russel*, 19 *Abb. Pr.* 138. Decisions in 5 *Johns.*; 6 *Id.*; cited with other authorities in 2 *Kent*, 30, n. a. Decision in 4 *Johns.* applied (Effect of change of phraseology in statute) in *Hoffman v. Delihanty*, 13 *Abb. Pr.* 392; *James v. Patten*, 8 *Barb.* 348; *Hall v. Western Transp. Co.*, 34 *N. Y.* 287; *Douglas v. Howland*, 24 *Wend.* 47. Decision in 6 *Johns.* explained as not authority, and that in 9 *Id.* explained and applied (Review of commitment for contempt) in *Mitchells' Case*, 12 *Abb. Pr.* 251. Decision in 6 *Johns.* doubted (Review of decision in *habeas corpus* proceedings) in *Yarbrough v. State*, 2 *Tex.* 527; *Holmes v. Jennison*, 14 *Pet.* 567. Decision in 4 *Johns.* followed in *Adams Ex parte*, 25 *Miss.* 883; s. c., 59 *Am. Dec.* 234. Decisions in 9 *Johns.*; 4 *Id.*; recognized as authority in *Tyler v. Hammersley*, 44 *Conn.* 393; s. c., 26 *Am. R.* 471. Decision in 9 *Johns.* applied (Presumption as to jurisdiction of courts) in

*Foot v. Stevens*, 17 *Wend.* 485; *Chemung Canal B'k v. Judson*, 8 *N. Y.* 260. Explained as not authority (Sufficiency of proceedings to punish for contempt) in *Pitt v. Davison*, 37 *Barb.* 107. Decisions in 4 *Johns.*; 6 *Id.*; followed and approved with *Matter of De Costa*, 1 *Park.* 129; *Mercein v. People ex rel. Barry*, 25 *Wend.* 64 (Person discharged on *habeas corpus* cannot be re-imprisoned for same offense) in *Ex parte Jiltz*, 64 *Mo.* 205; s. c., 27 *Am. R.* 218, 223.

Yates v. Alden. See *Mead v. Bunn*.

— v. Fassett, 5 *Den.* 21. See *Carpenter v. Stevens*. Approved (Effect of judgment in replevin) in *Angel v. Hollister*, 38 *N. Y.* 378, 380. Disting'd with *Kelsey v. Ward*, 38 *N. Y.* 83; *Brown v. Gallaudet*, 80 *Id.* 413; *Morgan v. Powers*, 66 *Barb.* 35 (Duty of defendant to assert claims existing in his favor against plaintiff) in *Nemetty v. Naylor*, 63 *How. Pr.* 387, 389.

— v. Foot, 12 *Johns.* 1; s. c., 5 *N. Y. Com. L. Law. ed.* 279, with brief note. See *Vischer v. Yates*. Disapproved with *McKeon v. Caherty*, 3 *Wend.* 494; and *Vischer v. Yates*, 11 *Johns.* 23, followed (Recovery of money paid or deposited on bet) in *Stacy v. Foss*, 19 *Me.* 335; s. c., 36 *Am. Dec.* 755, with note. Followed and approved in *Johnston v. Russell*, 37 *Cal.* 670. Approved and applied (Invalidity of election bets) in *Jeffrey v. Ficklin*, 3 *Ark.* 227; s. c., 36 *Am. Dec.* 456.

— v. Joyce, 11 *Johns.* 136. Disting'd (Right of judgment creditor respecting property subject to his execution) in *Barker v. Mathews*, 1 *Den.* 335. Relied on (When merely inchoate right to land will sustain action for injury thereto) in *Stout v. Keyes*, 2 *Doug. (Mich.)* 184; s. c., 43 *Am. Dec.* 465, 467, with note. Followed (Action by judgment creditor for injury causing loss of benefit of judgment) in *Findlay v. McAllister*, 113 *U. S.* 104, 113; s. c., 19 *Reporter*, 609.

— v. Lansing. See case of Yates.

— v. Lyon, 61 *Barb.* 205. Rev'd in 61 *N. Y.* 344. Decision in *Id.* explained (Assignment by infant for benefit of creditors) in *Burrill on Assign.* § 60, n. 1, 4 ed. Colated with other cases in *Bishop on Assign.* § 138. Decision in 61 *Barb.* explained in *Wait on Fraud. Conv.* § 456.

— v. North, 44 *N. Y.* 271. Explained with *Steuben Co. Bank v. Alberger*, 73 *Id.* 252 (Statements in affidavit on application for attachment) in *Bennett v. Edwards*, 27 *Hun.* 352. Compare (Affidavits on motion to vacate or modify attachment) *Code Civ. Pro.* 1881, § 682; *Id.* ch. VII, tit. III, art. 2, n.

— v. Olmsted, 65 *Barb.* 43. See dissenting opinion *Id.* 462. Modified in 56 *N. Y.* 632. See *Milliman v. Neher*. See (Privileged communications as between attorney and client) *Code Civ. Pro.* 1881, § 835, n.

— v. People, 6 *Johns.* 335. See Case of Yates.

- **v. —**, 32 *N. Y.* 509. Applied (Necessity of proof of premeditated design to kill) in *People v. Perry*, 8 *Abb. Pr. N. S.* 35. Disting'd (Evidence as to condition of thing at a time other than that in issue) in *King v. N. Y. Central, &c. R. R. Co.*, 72 *N. Y.* 610. Commented on and collated with other cases (Liability for killing in self-defense) in *Horrigan & T. Cas. on Self-Def.* 718. Compare (Burden of proving knowledge of official character) 17 *Am. L. Rev.* 917.
- **v. St. John.** See *Carter v. Simpson*.
- **v. Yates**, 9 *Barb.* 324. Commented on with *Ayres v. Trustees of Meth. Episc. Ch.*, 3 *Sandf.* 351; *Andrew v. N. Y. Bible & C. P. Soc.*, 4 *Id.* 156; *Kniskern v. Lutheran Churches*, 1 *Sandf. Ch.* 439; *Shotwell v. Mott*, 2 *Id.* 46 (Charitable use) in *Williams v. Williams*, 8 *N. Y.* 525, 551, 557. Approved in *Beckman v. People*, 27 *Barb.* 260, 272; *McCaughal v. Ryan*, 27 *Id.* 376, 398; *Bascom v. Albertson*, 34 *N. Y.* 584, 608, 610. Collated with other cases in *Gerard Tit. to Real Est.* 2 ed. 293.
- Yeomans v. Chatterton**, 9 *Johns.* 295. See *Callagan v. Hallett*.
- Yerkes v. Salomon**, 11 *Hun.* 471. See *Harris v. Tumbidge*. Applied (Validity of agreement to pay differences on stock transaction) in *Gregory v. Wendell*, 39 *Mich.* 337; s. c., 33 *Am. R.* 395.
- Yertore v. Wiswall**, 16 *How. Pr.* 8. Disapproved (Effect of statute giving right of action for wrongfully causing death to create property interest in life of deceased) in *Russell v. Sunbury*, 37 *Ohio St.* 372; s. c., 41 *Am. R.* 523.
- Yuguanzo v. Solomon**, 3 *Daly*, 153. Disapproved (Pleading in action for fraud) in *Cohn v. Goldman*, 76 *N. Y.* 285.
- Yorks v. Peck**, 14 *Barb.* 644. Questioned (Liability of deceased partner's estate) in *Stahl v. Stahl*, 2 *Lans.* 60. Disting'd (Liability when joint and not several) in *Tannenbaum v. Cristalar*, 5 *Daly*, 141, 143.
- **v. —**, 17 *How. Pr.* 192. Disting'd (Notice of judgment to limit time to appeal) in *Devlin v. Mayor, &c. of N. Y.*, 62 *Id.* 167.
- Youmans v. Simmons**, 7 *Hun.* 466. As to effect of subsequent legislation, see (Relief against wrongful assessment) *People ex rel. Ulster & Del. R. R. Co. v. Smith*, 24 *Id.* 67.
- Young v. Brush**, 38 *Barb.* 294; s. c., 24 *How. Pr.* 70. Rev'd in 28 *N. Y.* 667; s. c., 18 *Abb. Pr.* 171.
- **v. Bush**, 36 *How. Pr.* 240. Approved (Right to discontinue) in *Matter of Davis*, 7 *Daly*, 1, 7.
- **v. Catlett**, 6 *Duer*, 437. Disting'd (Sufficiency of denial in answer) in *Meehan v. Harlem Savings Bank*, 5 *Hun.* 440.
- **v. Covell**, 8 *Johns.* 23; s. c., 5 *Am. Dec.* 316. See *Upton v. Vail*. Regarded as uncontradicted in the American courts (Ground of action for deceit)—in *Lord v. Goddard*, 18 *How. (U. S.)* 198.
- **v. Dake**, 5 *N. Y.* 463. Applied (Validity of parol lease) in *Becar v. Flues*, 64 *Id.* 520. Applied to contract to surrender lease,—in *Allen v. Devlin*, 6 *Bosw.* 6. Approved as a well considered case, and followed, in *Whiting v. Oblert*, 52 *Mich.* 463; 23 *Am. L. Reg. N. S.* 384, with note. Compare *Brown v. Kayser*, 60 *Wis.* 1. Followed with *Wilson v. Martin*, 1 *Den.* 602 (Validity of contracts concerning real estate,—not to be performed within a year) in *Fall v. Hazelregg*, 45 *Ind.* 576; s. c., 15 *Am. R.* 278. Cited as authority in *Railsback v. Walke*, 81 *Ind.* 412. Cited as overruling *Crosswell v. Crane*, 7 *Barb.* 191,—in *Browne on Stat. of Frauds*, § 34, 4 ed.
- **v. Divine**, 12 *Weekly Dig.* 18. From mem. s. c., 24 *Hun.* 133, it seems, that opinion was delivered by BOARDMAN, J.
- **v. Gori**, 13 *Abb. Pr.* 13, n. Explained (Liability of married woman on contract) in *Brown v. Hermann*, 14 *Id.* 395.
- **v. Gay**, 12 *Hun.* 325. Further decision in 28 *Id.* 1. Aff'd in 87 *N. Y.* 457.
- **v. Harmaus**, 5 *Hun.* 121. Modified in 66 *N. Y.* 374. Decision in *Id.* discussed (Fraud *per se*) in *Wait on Fraud. Cono.* § 10. Commented on in *Id.* § 11.
- **v. Hill**, 6 *Hun.* 613. Rev'd in 67 *N. Y.* 162; s. c., 23 *Am. R.* 99. Decision in *Id.* applied (Interest on interest) in *Jones v. Eunis*, 18 *Hun.* 454. Cited as a leading case, but distinguished, in *Hovey v. Edmison*, *Sup'm. Ct. Dak.* 1885, 22 *Northw. Rep.* 594, 600. Considered in 6 *Am. Dec.* 199, n., to be at variance with *Camp v. Bates*, 11 *Conn.* 487. See cases cited in 34 *Am. R.* 101, n. See to the contrary (Impeaching account) *Phillips v. Belden*, 2 *Edw.* 1, 17; *Ogden v. Astor*, 4 *Sandf.* 336. See also *Abb. Tr. Ev.* 463. Cited as weighty authority, in *Wharton v. Anderson*, 28 *Minn.* 301, 305.
- **v. Langbein**, 7 *Hun.* 151. Further decision arising under same will,—in *Muller v. Struppman*, 6 *Abb. N. C.* 343.
- **v. Miller**, 3 *Hill*, 21. See *Brooker v. Coffin*. Collated with other cases (Slenderous charge of crime) in *Bigel. Cas. on Torts*, 103; 1 *Hare & W. Am. Lead. Cas.* 5 ed. 99.
- **v. N. Y. Central R. R. Co.** See *Gourdier v. Cormack*.
- **v. N. Y. & Liverpool Steamship Co.**, 10 *Abb. Pr.* 229. Aff'd in 15 *Id.* 69. Both decisions disting'd (Joinder of parties) in *Pfohl v. Simpson*, 74 *N. Y.* 137, 144.
- **v. Remer**, 4 *Barb.* 442. Overruled (Lien of justice's judgment) in *Waltermire v. Westover*, 14 *N. Y.* 16.
- **v. Rummell**, 2 *Hill*, 478. See *Miller v. Manice*. Applied (Evidence of former recovery) in *Calkins v. Allerton*, 3 *Barb.* 173; *Niles v. Totman*, *Id.* 595; *Dunkle v. Wiles*, 6 *Id.* 529; *Royce v. Burt*, 42 *Id.* 352; *White v. Coatsworth*, 6 *N. Y.* 142; *Pierce v. Tuttle*, 53 *N. Y.* 651. Examined with other cases in *Davis v. Talcott*, 14 *Barb.*

620. Explained (What must be specially pleaded) in *Barber v. F. & M. Ins. Co.*, 16 *W. Va.* 672. Cited in *Oscanyan v. Arms Co.*, 103 *U. S.* 261, 267.
- *v. Scott*, 3 *Hill*, 32. See (Discontinuance of proceeding before justice who is material witness) *Code Civ. Pro.* 1881, § 3152, *n.*
- *v. Western Union Teleg. Co.*, 34 *Super. Ct. (J. & S.)* 390. Rev'd in 65 *N. Y.* 163. Decision in *Id.* relied on with *Breese v. U. S. Tel. Co.*, 48 *N. Y.* 132 (Right of telegraph company to limit its liability) in *Western Union Tel. Co. v. Jones*, 95 *Ind.* 223; *s. c.*, 48 *Am. R.* 7, 13. Applied in *Heimann v. Western Union Tel. Co.*, 57 *Wis.* 562, 566. See cases cited in 31 *Am. R.* 511, *n.* Decision in 65 *N. Y.* collated with *Rose v. U. S. Tel. Co.*, 3 *Abb. Pr. N. S.* 408; *McColl v. Western Union Tel. Co.*, 7 *Abb. N. C.* 151, 154, *n.*; *Sprague v. Western Union Tel. Co.*, 6 *Daly*, 200; 67 *N. Y.* 590; *Hart v. Direct U. S. Cable Co.*, 86 *N. Y.* 633, and many other cases (Liability of telegraph companies) in 45 *Am. R.* 486, *n.*
- *v. Willet*, 8 *Bosw.* 486. Explained (Damages in replevin) in *Twinam v. Swart*, 4 *Lans.* 263, 271.
- *v. Young*, 80 *N. Y.* 422; *s. c.*, 36 *Am. R.* 634. Previous decision in 5 *Weekly Dig.* 109. Decision in 80 *N. Y.* followed and approved (Necessity of delivery in order to make a valid gift) in *Brumm v. Schuett*, 59 *Wis.* 261; *s. c.*, 48 *Am. R.* 499. Followed (What is necessary to render voluntary settlement effectual as trust) in *Pope v. Burlington Savings Bank*, 56 *Vt.* 294; *s. c.*, 48 *Am. R.* 781. Decision in 5 *Weekly Dig.* applied (Surrogate's authority to determine ownership, on application to amend inventory of decedent's property) in *Greenough v. Greenough*, 5 *Relif.* 191, 193.
- Younghanse v. Fingar**, 43 *How. Pr.* 259. Aff'd in effect in *Younghanse v. Fingar*, 63 *Barb.* 299. Prior decision in 47 *N. Y.* 99. Decision in *Id.* followed (Sufficiency of notice of appeal from justice's judgment) in *Bigsby v. Warden*, 62 *Id.* 27; *Bixby v. Worden*, 66 *Barb.* 520, 522; *Kirkwood v. Griffin*, 64 *Id.* 566. Collated with other cases in *Throop Justice's Man.* 2 ed. 91. See *Code Civ. Pro.* 1881, § 3070, *n.*
- Younghause v. Fingar**. See *Younghanse v. Fingar*.
- Youngs v. Carter**, 50 *How. Pr.* 410; *s. c.*, 1 *Abb. N. C.* 136, *n.* Aff'd in 10 *Hun.* 194. Decision in 50 *How. Pr.* approved (Effect of conveyance before marriage, in fraud of dower) in *Pomeroy v. Pomeroy*, 54 *Id.* 228, 233.
- *v. Kent*, 2 *Sweeny*, 248. Rev'd in 46 *N. Y.* 672. Decision in *Id.* followed (Sufficiency of denial in answer coupled with admissions) in *Haines v. Herrick*, 9 *Abb. N. C.* 379, 384.
- *v. Lee*, 18 *Barb.* 187. Aff'd in 12 *N. Y.* 551. See *Coddington v. Davis*; *Williams v. Smith*. Decision in 12 *N. Y.* applied (Surrender of note, &c. as constituting one holder for value) in *Day v. Saunders*, 1 *Abb. Ct. App. Dec.* 496; *Stettheimer v. Meyer*, 33 *Barb.* 217; *Bromley v. Walker*, 51 *Id.* 207; *Meads v. Merchants' B'k of Albany*, 25 *N. Y.* 149; *Essex Co. B'k v. Russell*, 29 *Id.* 682; *B'k of N. Y. v. Vanderhorst*, 32 *Id.* 558. Disting'd in *Phoenix Ins. Co. v. Church*, 81 *Id.* 218, 223; *Farrington v. Frankfort B'k*, 31 *Barb.* 183, 193. Explained (Effect of payment of debt to make one holder for value) in *Wright v. Delafield*, 23 *Barb.* 520; *Cardwell v. Hicks*, 37 *Id.* 464; *Tiffany v. Warren*, *Id.* 576; *Bright v. Judson*, 47 *Id.* 37; *Hoyt v. Hoyt*, 8 *Bosw.* 527. Applied in *Purchase v. Mattison*, 3 *Id.* 312; *Gould v. Segee*, 5 *Duer*, 270. Collated with other cases in 1 *Hare & W. Am. Lead. Cas.* 5 ed. 423. Followed (Sufficiency of notice of protest) in *Artisan's B'k v. Backus*, 37 *N. Y.* 441; *Davenport v. Gilbert*, 4 *Bosw.* 535; 6 *Id.* 180; *B'k of Cooperstown v. Woods*, 28 *N. Y.* 558; *Gates v. Beecher*, 60 *Id.* 527; *First Nat. B'k of Groton v. Chittenden*, 2 *Sup'm. Ct. (T. & C.)* 123. Compared with other cases in *Arnold v. Kinloch*, 50 *Barb.* 44, 50. Disting'd in *Home Ins. Co. v. Green*, 19 *N. Y.* 518, 520.
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## Z.

**Zabriskie v. Smith**, 13 *N. Y.* 322; *s. c.*, 64 *Am. Dec.* 551, with notes. See *Byxbie v. Wood*. Explained and qualified (Assignability of right of action for deceit) in *Johnston v. Bennett*, 5 *Abb. Pr. N. S.* 331. Explained and applied in *Lamphere v. Hall*, 26 *How. Pr.* 512. Disting'd in *Graves v. Spier*, 58 *Barb.* 384; *Sheldon v. Wood*, 2 *Bosw.* 277; *Westcott v. Keeler*, 4 *Bosw.* 572; *Byxbie v. Wood*, 24 *N. Y.* 610; *Hyde v. Tufts*, 45 *Super. Ct. (J. & S.)* 60. Disapproved in *Jackson v. Daggett*, 24 *Hun.* 205. Referred to in *Pomeroy on Rem.* § 152, as a well considered case, but thought to have been very much shaken though not expressly

- overruled. Explained and applied (Assignability of right of action for injury affecting property) in *Smith v. N. Y. & New Haven R. R. Co.*, 28 *Barb.* 606. Applied in *Drake v. Smith*, 12 *Hun.* 533. Applied but criticised in *Fried v. N. Y. Central R. R. Co.*, 25 *How. Pr.* 285. Quoted in 2 *Chitty on Contr.* 1364, n. i, 11 Am. ed. See *Code Civ. Pro.* 1881, § 1910, n. Applied (Survival of right of action for personal injury) in *Best v. Vedder*, 58 *How. Pr.* 188; *Cox v. N. Y. Central, &c. R. R. Co.*, 11 *Hun.* 623. Explained and applied (Survival of right of action for breach of promise to marry) in *Wade v. Kalbfleisch*, 58 *N. Y.* 284. Explained (Liability for fraudulent representations) in *Marsh v. Falker*, 40 *Id.* 573. Applied (Effect of false representations as to solvency when question of fact) in *Von Bruck v. Peyser*, 28 *How. Pr.* 297. Applied (Sufficiency of pleading intended to set up deceit) in *Star Steamship Co. v. Mitchell*, 1 *Abb. Pr. N. S.* 402; *Barber v. Morgan*, 51 *Barb.* 133; *Morrison v. Lewis*, 49 *Super. Ct. (J. & S.)* 178, 181. Applied (Construing allegations of pleading liberally) in *Dempsey v. Willett*, 16 *Hun.* 265; *Conaughty v. Nichols*, 42 *N. Y.* 86; *Marie v. Garrison*, 83 *Id.* 14, 23. Compared with contrary decisions (Setting up matter in abatement in answer containing matters in bar) in *Van Buskirk v. Roberts*, 14 *How. Pr.* 63. Applied (Remedy, when to be had by demurrer, and not by answer) in *Depuy v. Strong*, 37 *N. Y.* 373. Applied (Remedy for mis-joinder) in *Wells v. Cone*, 55 *Barb.* 589; *Eaton v. Balcom*, 33 *How. Pr.* 82; *Merritt v. Walsh*, 32 *N. Y.* 690; *Rhodes v. Dymock*, 33 *Super. Ct. (J. & S.)* 144. Followed (Remedy for non-joinder of party. Apportionment of damages) in *Abbe v. Clark*, 31 *Barb.* 239; *Patchin v. Peck*, 38 *N. Y.* 40. Disting'd (Sufficiency of exception to charge) in *Betz v. Conner*, 7 *Daly*, 554.
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- Zborowski, Matter of**, 68 *N. Y.* 88. Followed (Power of department of public works in N. Y. city to order construction of sewer) in *Matter of De Peyster*, 80 *Id.* 565, 569, 571, 573. Explained (Authority of common council in N. Y. city as to local improvements) in dissenting opinion in *Matter of Deering*, 85 *Id.* 1, 18. Followed (Act when not unconstitutional as causing illegal delegation of taxing power) in *Matter of Roberts*, 17 *Hun.* 560.
- Zeregal v. Benoist**, 7 *Robt.* 199; s. c., 33 *How. Pr.* 129. See (Vacation of warrant of attachment) *Code Civ. Pro.* 1881, § 682, n.
- Zimmer v. N. Y. Central, &c. R. R. Co.**, 7 *Hun.* 552. Aff'd on the facts in 67 *N. Y.* 601, but without opinion.
- Zimmerman v. Erhard**, 8 *Daly*, 311; s. c., 58 *How. Pr.* 11. Aff'd in 83 *N. Y.* 74; s. c., 60 *How. Pr.* 163; 38 *Am. R.* 396. Decision in 3 *Daly* disapproved (Partnership between husband and wife) in *Fairlee v. Bloomingdale*, 14 *Abb. N. C.* 341. Cited with *Hamilton v. Douglas*, 46 *N. Y.* 218; *Shuler v. Douglas*, 61 *Id.* 637; *Scott v. Conway*, 58 *Id.* 619, in *Tyler on Inf. & Con.* 2 ed. § 464, as indicating what is there thought to be the better opinion.
- Zink v. Attenburg**, 18 *How. Pr.* 108. Overruled (Costs in case of several defendants) in *Allis v. Wheeler*, 56 *N. Y.* 51.
- **v. People**, 16 *Hun.* 396. Rev'd in 77 *N. Y.* 114; s. c., 6 *Abb. N. C.* 413; 33 *Am. R.* 589. See *Collins v. Ralli*.
- Zinn v. N. J. Steamboat Co.**, 49 *N. Y.* 442. See *Fenner v. Baltimore, &c. R. R. Co.* Relied on with *Witbeck v. Holland*, 45 *N. Y.* 13 (Duty of carriers by water as to delivery) in *The Drew, U. S. Cir. Ct. S. D. N. Y.* 27 *Abb. L. J.* 510.
- Zinsser v. Seiler**, 7 *Daly*, 464. See (Appeal from decision in N. Y. district court) *Code Civ. Pro.* 1881, § 3213, n.
- Zogbaum v. Parker**, 66 *Barb.* 341. Aff'd in 55 *N. Y.* 120, without passing on question of set-off. Decision in *Id.* disting'd (Equitable set-off) in *Davidson v. Alfaro*, 16 *Hun.* 353, 359.
- Zule v. Zule**, 24 *Wend.* 76; s. c., 35 *Am. Dec.* 600. Reviewed with other cases (When rent cannot be apportioned) in *Nicholson v. Munigle*, 6 *Allen (Mass.)* 215, 217.
- Zulick v. Markham**, 6 *Daly*, 129. Explained (Liability for conversion) in *Moak's Underhill's Torts*, 1 Am. ed. 575.

## SUPPLEMENTARY TABLE.

[In order at once to bring the entire work into one volume, and give the reader fuller information of the later criticisms than would otherwise be practicable, criticisms and citations which have appeared while this work was passing through the press, together with all others exhibited in the pages of *Annals* issued in continuation of Abbott's *New York Digest*, down to date, are indexed here by the name of the case noted, and a reference to the volume, subject and paragraph in the *Annals*, where the case will be found commented on. Thus *Abbot v. Am. Hard Rubber Co.*, '84; corp. 46 n.; '85; corp. 16; trusts, 43, means that that case will be found cited or commented on in the *Annual* of 1884, under the title of "Corporations," at paragraph 46 n., and in the *Annual* of 1885 under the title of "Corporations," at paragraph 16, and under the title of "Trusts," at paragraph 43. This method, beside saving space, and bringing the work into one volume, has these additional advantages: It gives the reader ready access to other cases on the same subject where the principal case has not been cited, and it includes all citations which have any significance for the practitioner, thus making the work a table not only of cases criticised, but also, in respect of the period from July 1, 1882, to 1887, a complete Table of Cases Cited, with information as to the subject on which it was cited.]

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- *v. Fox*, '83; att'y & c. 51; pl. 38.
- *v. Greenwich Ins. Co.*, '86; wit. 47 n.
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- Appleby v. Astor Fire Ins. Co., '83; ins. 7; '86; appeal, 19.
- v. Erie Co. Savings Bank, '85; sav'gs b'ks, 5; '86; sav'gs b'ks, 10 n.
- Appleton v. Water Commissioners of N. Y., '83; villages, 2; '84; off'r, 19; '86; munc. corp. 45 n. '53; off'r, 7 n.
- Apthorp v. Comstock, '83; appeal, 42.
- Arbogast, Estate of. See Vogel v. Arbogast 86.
- Archer v. Hubbell, '83; marine ct. 7.
- v. O'Brien, '84; fraud. conv. 5; '86; fraud. conv. 8 n.
- Arctic Fire Ins. Co. v. Austin, '85; juris. 14.
- Arcularius v. Geisenhainer, '83; wills, 179; '84; ev. 84; '85; wills, 126 n.
- Arden v. Patterson, '86; att'y & c. 3; champerty & main. 2 n.
- Arent v. Squire, '83; bailment, 3.
- Areson v. Areson, '84; wills, 104.
- Argall v. Bryant, '85; lim. of a. 42, 43 n.
- v. Jacobs, 87 *N. Y.* 110; s. c. 41 *Am. R.* 357, and 13 *Weekly D.* 409; aff'g 21 *Hun.* 114; which aff'd 56 *How. Pr.* 167; '83; bankruptcy, 10 n.
- v. Pitts, '85; receiver, 1; '86; judgm. 23.
- v. Raynor, '83; judicial sale, 6; spec. perf. 6, 8; trusts, 61 n.; '85; judicial sale, 5, 7.
- v. Smith, '86; partn. 32 n. 40 n.
- Argus Co. v. Mayor, etc. of Albany, '86; munc. corp. 31.
- Armitage v. Mace, 48 *Super. Ct. (J. & S.)* 107. Aff'd in 96 *N. Y.* 538; '85; gift, 4.
- v. Pulver, '85; judgm. & decree, 13.
- Armour v. Michigan Cent. R.R. Co., '83; bills of lading, 6 n.; '85; bills of lading, 4 n.; principal & a. 3; '86; principal & a. 14 n.
- v. Transatlantic Fire Ins. Co., 90 *N. Y.* 450; s. c. 16 *Weekly D.* 102; aff'g 47 *Super. Ct. (J. & S.)* 352.
- Armstrong v. Craig, '86; justices' courts, 18.
- v. Cummings, 4 *Month. L. Bul.* 4. Further decisions in proceedings between same parties in 20 *Hun.* 313; 22 *Id.*, 570, and 17 *Weekly D.* 165; '83; att'y & c. 62, 64; inj. 39; '84; inj. 33.
- v. Cushney, '86; assignment, 5; attachment, 43.
- v. Du Bois, 90 *N. Y.* 95; s. c. 15 *Week. D.* 553; Cited as to referee's findings in 37 *Hun.* 563.
- Garrow, '83; exec. 46.
- v. Moran, '85; legacies, 13.
- v. N. Y. Central, & E. R.R. Co., '85; exceptions, 8 n.; negl. 55 n.
- v. People, '84; seduction, 2; 85; trial, 99; '86; trial, 120, 121.
- v. Percy, '86; damages, 15 n.
- Arnhout, Matter of, '83; insane per. 23.
- Arnold v. Arnold, 90 *N. Y.* 580;

- s. c., 16 *Weekly D.* 38; aff'g 11 *Id.* 227.
- v. Clark, '84; landl. & t. 12 n.; negl. 5.
- v. Foot, '85; waterc. 1.
- v. Gilbert, '83; ex. & ad. 172; wills, 178; '85; susp. of power of a. 16; '86; legacies, 17 n.
- v. Hudson River R.R. Co., '83; compensation, 10.
- v. Nichols, '84; parties, 47; '86; promise, 3 n.
- v. Oliver, 2 *Civ. Pro. R. (Broune)* 457; s. c., 64 *How. Pr.* 452; 16 *Weekly D.* 280, and *N. Y. Daily Reg. Jan.* 5, 1883; aff'g 4 *Month. L. Bul.* 50; '84; judgm. & decree, 32; '86; bankruptcy, 1 n.
- v. Parmelee, 97 *N. Y.* 652; '85; special pro. 2; '86; certiorari, 23.
- v. Patrick, '85; deeds, 3.
- v. People, '83; r. r. co. 19; '86; new trials, 4 a.
- v. Sanford, '83; wills, 104; '85; surr. ct. 36.
- v. Shapiro, '85; attachment, 58.
- v. Steeves, '84; escapes, 2; '86; arrest, 16 n.
- v. Suffolk Bank, '84; dam. 16.
- Arnot v. Erie R'way Co., '84; bills, n. & c. adden. 3 a.
- v. Gilbert, '86; wills, 59 n.
- v. McClure, '83; forec. 3.
- v. Pittston & Elmira Coal Co., '84; sales, 25; '85; contracts, 54, 69; '86; contracts, 56.
- v. Post, '85; forec. 14.
- Arnstadt v. Blumenfeld, 23 *Weekly D.* 31. Subsequent decision in *N. Y. Daily Reg.* June 17, 1884.
- Arosemena v. Hinckley, '85; parties, 41.
- Arrowsmith v. Arrowsmith, '83; forec. 5.
- Artcher v. Whalen, '86; deeds, 6 n.
- Arteaga v. Conner, 88 *N. Y.* 403; s. c. as Arteaga v. Flack, 14 *Weekly D.* 278; and 2 *Civ. Pro. R. (Broune)* 152; aff'g 47 *Super. Ct. (J. & S.)* 494.
- Arthur v. Homestead Fire Ins. Co., '85; ins. 22.
- v. Griswold, '86; appeal, 78; deceit, 5.
- Ash v. Putnam, '83; pl. 100; '86; sales, 33 n.
- Ashburner v. Balchen, '83; charter-party, 1.
- Aspinwall v. Sacchi, '84; estoppel, 3 n.; '85; contribution, 1 n.; '86; corp. 35 n.; lim. of a. 8 n.
- Association for Relief of Respectable, &c. Females v. Eagleson, '83; usury, 16.
- Association, &c. of Colored Orphans v. Mayor, &c., of N. Y., '86; taxes, 31 n.
- Astor v. Hoyt, '83; judgm. & decree, 16; munc. corp. 126; '85; lien, 3.
- v. Mayor, &c. of N. Y., '84; const. law, 33; '86; munc. corp. 83.
- v. Miller, '83; judgm. & decree, 16; '85; lien, 3.
- v. Turner, '84; receivers, 7 n.
- Atcheson v. Mallon, '83; contracts, 63; '85; contracts, 53 n.; '86; contracts, 54 n.
- Atchison v. Bruff, '83; infants, 7 n.
- Atkins v. Elwell, '83; deceit, 2; '85; trial, 28; '86; ev. 116 n.
- v. Kinnan, '86; ex. & ad. 180.
- v. Saxton, '83; exec. 28 n.; '85; exec. 9 n.
- Atkinson v. Manks, '83; guaranty, 11 n.; interp. 6.
- Atlantic & Pacific Tel. Co. v. Baltimore & O. R. R. Co., 87 *N. Y.* 353; s. c., 14 *Weekly D.* 365; aff'g in part 46 *Super. Ct. (J. & S.)* 377; abridg't s. c., 11 *Weekly D.* 122. Cited as to injunction in 51 *Super. Ct. (J. & S.)* 248; but the latter rev'd in *Id.* 482.
- v. Barnes, '83; principal & s. 11.
- Atlantic Dock Co. v. Leavitt, '84; covenants, 5 n.; mort. 17; '86; deeds, 29 n.; partn. 9 n.
- v. Libby, '83; costs, 80 n.; '85; costs, 25.
- v. Mayor, &c. of N. Y., '83; paym. 1; '84; joint debtors, 4 n.; '85; paym. 8 n.; '86; paym. 5 n.
- Atlantic State Bank v. Savery, '83; banking, 1 n.; bills n. & c. 26; teleg. 3 n.; '85; corp. 14; '86; banking, 4 n.; bills, n. & c. 17 n.
- Attorney, Matter of an, '83; sup. pro. 1.
- Attorneys, Matter of. See Oaths of Attorneys.
- Attorney General v. Atlantic Mut. Life Ins. Co., 2 *How. Pr. N. S.* 146. Further decision in 1 *Centr. Rep.* 518; s. c., 2 *Eastern Rep.* C89; and 100 *N. Y.* 279.
- v. Bank of Niagara, '86; receivers, 9.
- v. Chenango County Mut. Ins. Co., '84; receivers, 35; '86; receivers, 12 n.
- v. Cohoes Co., '84; parties, 39.
- Attorney General v. Continental Life Ins. Co. See list of various decisions made in the course of these litigations on p. 27. The following are additional:
- v. —, 15 *Weekly D.* 247; '83; ins. 93.
- v. —, 16 *Weekly D.* 164; '83; ins. 87.
- v. —, 27 *Hun.* 524; s. c., 15 *Weekly D.* 239. Appeal dismissed in 93 *N. Y.* 45 (Fees of referee).
- v. —, 68 *N. Y.* 343; '83; corp. 79.
- v. —, 88 *N. Y.* 571; s. c., 14 *Weekly D.* 163. Followed in 11 *Abb. N. C.* 304; '83; att'y gen. 3; costs, 120.
- v. —, 90 *N. Y.* 45; dismissing appeal from 27 *Hun.* 195; s. c., 63 *How. Pr.* 129; s. c., 14 *Weekly D.* 450; which rev'd 62 *How. Pr.* 130 (Allowance to counsel for creditors).
- v. —, 93 *N. Y.* 70.
- v. —, 93 *N. Y.* 630; '84; contr. 34.
- v. —, 94 *N. Y.* 199.
- v. —, 19 *Weekly D.* 385.
- v. —, 33 *Hun.* 138.
- v. —, 38 *Hun.* 521.
- The citations of these various decisions are as follows:
- '83; assignment, 5, 6, 7, 7 n. 16; corp. 65, 79; costs, 120; '84; sup. pro. 26; '85; bills of lading, 24; contracts, 95; ins. 60 n. 79; '86; assignment, 5; attachment, 43; counties, 2; ins. 63 n. 96; receivers, 12 n.; ref. 25.
- v. Empire Mut. Life Ins. Co., 28 *Hun.* 358. Aff'd as People v. Empire Mut. Life Ins. Co., 92 *A. Y.* 105.
- v. Guardian Mut. Life Ins. Co., 14 *Weekly D.* 328. Aff'd, it seems, in 91 *N. Y.* 659, without opinion; '83; ins. 95; place of tr. 3; receivers, 1, '84; inj. 30; receivers, 34, 35; stay of pro. 3 n.; '85; pl. 130; receivers, 12, 22 n.; '86; ins. 61, 96.
- v. North Am. L. Ins. Co., 89 *N. Y.* 94; s. c., 15 *Weekly D.* 53, modifying 26 *Hun.* 294. Other proceedings in 91 *N. Y.* 57; 92 *A. Y.* 654; aff'g 15 *Weekly D.* 514, and also 93 *N. Y.* 387; '83; ex. & ad. 200; ins. 47, 55; place of trial 3; receivers, 19; '84; costs, 71; ins. 41 n.; motion & o. 24; receivers, 37; '86; ins. 63 n.; receivers 12 n.
- v. Utica Ins. Co., '85; inj. 14; '86; receivers, 9.
- Atrill v. Rockaway Beach Imp. Co., '84; appeal, 2; receivers, 9, 12.
- Atwater v. Atwater, '83; alimony, 2; husb. & w. 27; '84; divorce, 7; '85; divorce, 4 n.
- Auburn and Cato Plank Road v. Douglass, '83; r. r. co. 106; '85; franchise, 1.
- Auburn City Bank v. Hunsiker, '86; ref. 18.

- v. Leonard, '83; ev. 130; '84; ev. 67.
- Auburn Exchange Bank v. Fitch, '84; fraud. conv. 5; '85; fraud. conv. 1 n. 4; '86; fraud. conv. 8 n. 9.
- Auburn Theol. Seminary v. Calhoun, '84; wills, 26 n. 27, 59 n.; wit. 41.
- Audubon v. Excelsior Fire Ins. Co., '86; former adj. 9.
- Auerbach v. N. Y. Central, etc. R.R. Co., 89 N. Y. 281; s. c., 14 *Weekly D.* 469 and 21 *Am. L. Reg.* 790, with note, rev'g 60 *How. Pr.* 382; s. c., 11 *Weekly D.* 382; '83; r. r. co. 3.
- Austin v. Dye, '83; sales, 14, 17; '84; conversion, 12 n.; '85; sales, 27.
- v. Field, '85; lease, 7 n.
- v. Goodrich, '86; pl. 163.
- v. Hinkley, '84; place of tr. 14.
- v. Holland, '83; partn. 30.
- v. Munro, '83; parties, 24 n.; '84; ex. & ad. 39, 40; '85; att'y & c. 5 n.; ex. & ad. 41, 47, 83; trusts, 39; '86; assignment, 8; ex. & ad. 56 n. 66; juris. 7 n.; parties, 15.
- v. Rawdon, '83; pl. 16.
- v. Searing, '83; associations, 2 n.
- Averill v. Loucks, '83; judgm. & decree, 20.
- v. Patterson, '84; discont. 7; '85; election of rights, 8 n.
- v. Taylor, '84; forec. 8; '85; adv. poss. 1 n.; lien, 3.
- v. Williams, '83; att'y & c. 31; '86; copyright, n.
- Avery, Matter of, '85; lim. of a. 53.
- Avery v. Lathrop, '83; costs, 124 a.
- v. Slack, '84; justices' ct. 16; '85; judgm. & decree, 1.
- v. Willis, '83; county ct. 1.
- v. Willson, '83; sales, 13; '85; sales, 22 n.
- Ayers v. Ayers, '83; wills, 32 n.
- v. Lawrence, '83; towns, 3; '85; munc. corp. 82, 121 n.; statutes, 3 n. 8; '86; munc. corp. 94.
- v. Western R.R. Co., '83; costs, 38, 40.
- Aymar v. Sheldon, '86; bills, n. & c. 22 n.
- Ayrault v. Pacific Bank, '85; exceptions, 8; '86; banking, 17 n.; exceptions, 3.
- Ayres v. Covill, '85; indict. 9.
- v. O'Farrell, '85; pl. 8.
- v. Scribner, '83; bankruptcy, 16.
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- Babbett v. Young, '83; ev. 130.
- Babbott v. Thomas, '83; wit. 48.
- Babcock v. Babcock, '85; subr. 3.
- v. Bonnell, '83; sales, 29 n.; '84; ins. 24; '85; ins. 58.
- v. Booth, '85; cred. s. 5 n.; receiver, 14; '86; pl. 138 n.
- v. Clark, '86; depositions, 17.
- v. Eckler, '83; fraud. conv. 7.
- v. Gifford, '86; towns, 6.
- v. Luke S. & M. S. R. Co., '83; bills of lading, 4.
- v. Lillis, '83; surr. ct. 22.
- v. Stoddard, '83; legacies, 22, 34 a. n.; wills, 147; '85; ex. & ad. 120 n.; '86; legacies, 20; wills, 47.
- v. Utter, '83; deeds, 16, 18.
- Baccio v. People, '85; ev. 315, 316; '86; ev. 272.
- Bach v. Levy, 50 *Super. Ct. (J. & S.)* 519. Aff'd in 101 N. Y. 511.
- Bache v. Doscher, '83; ev. 305.
- Bachman v. Goldmark, '84; arrest, 14.
- Backer, Matter of, '83; assignment for b. of c. 40; bankruptcy, 1; discharge, 4; '84; assignment for b. of c. 28.
- Backer v. Board of Supervisors of Schuylcr Co., '83; counties, 2.
- Bacon v. Burnham, '84; pl. 103.
- v. Cropsey, '84; ev. 124 n.; '85; exec. 17 n.
- v. Frisbie, '83; wit. 22, 26; '85; wit 7 a.
- v. Gilman, '86; sales, 31.
- v. Van Schoonhoven, 87 N. Y. 446; s. c., 14 *Weekly D.* 17; aff'g 19 *Hun.* 158; s. c., 9 *Weekly D.* 84; '84; mort. 23.
- Badeau v. Niles, '86; attachment, 27.
- Badger v. Badger, 88 N. Y. 546; s. c., 14 *Weekly D.* 397; rev'g 13 *Id.* 35; '86; ev. 244 n.
- Badgley v. Decker, '83; dam. 18 n.
- Bagg v. Jefferson, '83; set-off, 6.
- Baggott v. Boulger, cited as to sureties in 1 *How. Pr. N. S.* 204; '83; surr. ct. 26; '84; ex. & ad. 68.
- Bagley v. Peddie, '83; contracts, 26; '85; contracts, 34.
- v. Smith, '86; damages, 4, 9 n.
- Bailey, Matter of, 31 *Hun.* 608; s. c., 5 (*v. Pro. R.* 253; aff'g 4 *Id.* 140; s. c., 66 *How. Pr.* 64; '84; att'y & c. 23, 24.
- Bailey v. Bailey, 28 *Hun.* 603. Further decision in 97 N. Y. 460.
- v. Bancker, '84; ex. & ad. 81.
- v. Bergen, '84; assignment for b. of c. 86.
- v. Briggs, '83; wills, 234; '86; wills, 80 n.
- v. Buell, '83; tax. 82.
- v. Buffalo Crosstown R. Co., '85; att'y & c. 5.
- v. Burton, '83; chat. mort. 7 n.
- v. Dean, '83; depositions, 26; '84; depositions, 22, 30.
- v. Freeman, '83; guaranty, 17.
- v. Hilton, '85; former adj. 31.
- v. Hudson River R. R. Co., '83; bills, n. & c. 41; sales, 24.
- v. Ingles, '85; joinder of a. 1 n.; parties, 21; '86; parties, 40 n.
- v. Johnson, '83; amend. 17.
- v. Mayor, &c. of N. Y., 83; negl. 92; villages, 2; '84; interest, 7 n.; munc. corp. 14, 14 n.; off'r, 19; '86; munc. corp. 45 n. 53.
- v. Ogden, '83; guaranty, 6.
- v. Park, '83; costs, 45.
- Bailey v. Richmond, 49 *Super. Ct. (J. & S.)* 519. Further decision in N. Y. *Daily Reg.* August 17, 1883.
- v. Ryder, '86; juris. 9 n.
- v. Southwick, '84; parties, 32.
- v. Spofford, '86; ev. 140 n.
- Bain v. Matteson, '83; ex. & ad. 29, 57, 58 n.; powers, 3; '85; trusts, 12.
- Bainbridge v. Richmond, '85; ev. 279.
- Baine v. City of Rochester, '84; costs, 66, 66 n.; '85; costs, 58; '86; costs, 94, 95.
- Baird v. Daly, '84; ev. 210; '85; ev. 65.
- v. Gillett, '85; new tr. 6; '86; new tr., 32.
- v. Mayor, &c. of N. Y., 96 N. Y. 597; rev'g 18 *Weekly D.* 39; '83; munc. corp. 58; '85; munc. corp. 43; stipulation, 2 n.; '83; judgm. 10 n.; stipulations, 1 n.
- Bajus v. Syracuse, &c. R. R. Co., 16 *Weekly D.* 139. Further decision in 34 *Hun.* 153.
- Baker, Matter of, '85; affi. 25.
- Baker v. Baker, 21 *Weekly D.* 64. Aff'd, it seems, but without opinion, in 99 N. Y. 133; '84; contempt, 11 n.; '85; contempt, 5, 7; '86; husb. & w. 27 n.
- v. Barney, '83; husb. & w. 24.
- v. Bliss, '83; fraud. conv. 3 n. 4; '85; trusts, 14 n.
- v. City of Utica, '83; munc. corp. 129 n.; '85; munc. corp. 45; '86; munc. corp. 63.
- v. Drake, '83; brokers, 7 n.; corp. 8; dam. 19, 20;

- '84; brokers, 7 n.; dam. 6, 7; '85; assignment for b. of c. 13 n.; attachment, 39; dam. 31 n.; '86; dam. 23, 23 n. 24 n.
- v. Higgins, '85; sales, 22 n.
- v. Hoag, '86; replev. 2.
- v. Hunt, '86; paym. into ct. 1 n.
- v. Johnson, '84; canals, 4 n.
- v. Kenworthy, '83; assignment, 5; '85; sales, 4 n.
- v. Kingsland, '86; judgm. & decree, 6 n.
- v. Lamb, '84; husb. & w.; 12 n.
- v. Lorillard, '86; infants, 4 n.
- v. Ludlow, '85; covenants, 2.
- v. McDuffie, '86; ejectment, 7.
- v. N. Y. National Exch. B'k, *N. Y. Daily Reg.* April 3, 1883; abstr. s. c., 16 *Weekly D.* 531. Aff'd in 16 *Abb. N. C.* 458.
- v. People, '84; offir. 3 n.; '85; const. law, 7 n.
- v. Remington, '86; appeal, 96.
- v. Simmons, '83; new tr. 27.
- v. Star Printing Co., '86; pl. 33, 125, 127.
- v. Union Life Ins. Co., '84; pl. 155; '86; ins. 6 n. 70.
- v. Village of Oneonta, '83; munc. corp. 75 n.
- v. Wheeler, '83; dam. 30 n.
- Balbo v. People, '83; trial, 103, 113; '84; appeal, 130; trial 72; '86; trial, 107 n. 110.
- Balch v. N. Y. & Oswego Midland R. R. Co., '83; mfg. co. 19.
- Baldwin v. Brown, '83; justices' ct. 19; '86; deeds, 14.
- v. Calkins, '85; associations, 3; '86; r. r. co. 65.
- v. City of Oswego, '83; munc. corp. 129 n.
- v. Humphrey, '85; contracts, 3.
- v. Kimmel, '86; judgm. 14 n.
- v. Latson, '86; att'y & c. 3.
- v. Mayor, etc. of New York, '83; const. law, 55 n.; '86; em. dom. 9 n.
- v. Moffett, 94 *N. Y.* 82; aff'g 26 *Hun.* 209.
- v. Munn, '84; dam. 9 n.; '86; dam. 17 n.
- v. Roberts, '86; judgm. 16.
- v. U. S. Teleg. Co. See Griffin v. Colver. '86; dam. 17 n.; teleg. co. 3 n.
- v. Van Deusen, '83; bills, n. & c. 22 n.; '85; contracts, 86 n.
- Bailey v. Homestead Fire Ins. Co., '83; ins. 20, 34.
- Balja v. Rawley, '86; justices' ct. 2.
- Ball v. Bullard, '85; husb. & w. 3 n.
- v. Evening Post Publishing Co., 38 *Hun.* 11. Appeal dismissed, it seems, but without opinion, in 101 *N. Y.* 641.
- v. Gardner, '83; undert. 11; '86; justices' ct. 7 n.
- v. Liney, '85; former adj. 44; receivers, 11.
- v. Miller, '84; ex. & ad. 153.
- v. Slafter, 26 *Hun.* 353. Aff'd in 98 *N. Y.* 622; '85; partn. 17 n.
- Ballard v. Ballard, '83; appeal, 117.
- v. Burgett, '33; action, 1; sales, 12 a, 14; '84; conversion, 12 n.; estoppel, 10 n.; '85; principal & a. 7 n.; sales, 27.
- v. Burrowes, '83; surr. ct. 6; '85; pl. 35.
- Ballin v. Dillaye, '83; rec. deeds, 6 n.
- Ballou v. Ballou, '85; appeal, 163; '86; em. dom. 3.
- v. Jones, '84; cred. s. 8.
- v. Parsons, '86; ref. 16.
- Ballouhey v. Cadot, '85; attachment, 36 n.
- Ballow v. Cunningham, '83; chat. mort. 7 n.
- Baltimore & Ohio R.R. Co. v. Arthur, 90 *N. Y.* 234; s. c., 15 *Weekly D.* 374; rev'g 13 *Id.* 333. Further decision, as it seems, in 17 *Id.* 388; '86; interpl. 3, 5.
- Baltes v. Ripp, '83; chat. mort. 7 n.
- Baltzer v. Nicolay, '86; contracts, 7 n.; officers, 18; principal and a. 15.
- Bamber v. City of Rochester, '86; munc. corp. 51 n.
- Bame v. Neuss, '85; ref. 14.
- Bancker v. Mayor, &c. of N. Y., '85; munc. corp. 81.
- Bancroft v. Wardwell, '86; use & occupation, 3 n.
- v. Winspear, '85; former adj. 24.
- Bangs v. McIntosh, '83; insane per. 19; '85; justices' ct. 3.
- v. Mosher, '85; principal and s. 1.
- v. Ocean Nat. Bk., '86; bills of par. 4.
- v. Strong, '85; paym. 8; principal and s. 1.
- Bank Comm'rs v. St. Lawrence Bank, '86; bills, n. & c. 2.
- Banker v. Banker, '85; ev. 164 n.; former adj. 36 n.
- v. Braker, '86; lease, 17 n.
- Bank for Savings v. Frank, '86; mort. 21, 22.
- Bank for Savings in N. Y. v. Grace, 102 *N. Y.* 313; aff'g *N. Y. Daily Reg.* Feb. 2, 1886.
- Bank of Albion v. Smith. See Hall v. Newcomb; '85; cv. 101.
- Bank of Attica v. Manufacturers', etc. Bank, '86; mand. 1 n.
- v. Wolf, '84; costs, 19.
- Bank of Auburn v. Roberts, '83; chat. mort. 1.
- v. Weed, '84; pl. 114 n.
- Bank of Beloit v. Beale, '83; former adj. 32 n.; '84; election of rights, 4; sales, 28 n.; '85; attachment, 52; election of rights, 8 n. 10, 11.
- Bank of British North America v. Merchants Nat. Bk. of N. Y., 91 *N. Y.* 106; aff'g 48 *Super. Ct. (J. & S.)* 1; s. c., 13 *Weekly D.* 394; '84; lim. of a. 26 n.; '86; lim. of a. 15.
- Bank of Buffalo v. Boughton, '86; bail, 3 n.
- Bank of California v. Collins, '8; abate. & r. 5; '86; abate. & r. 3 n.
- v. Webb, 48 *Super. Ct. (J. & S.)* 175. Aff'd in 94 *N. Y.* 467.
- Bank of Chenango v. Brown, '83; const. law, 22; tax. 1; '85; const. law, 22, 59.
- v. Hyde, '83; former adj. 33.
- v. Osgood, '85; principal & s. 9 n.
- Bank of Chillicothe v. Dodge, '83; ev. 27.
- Bank of Columbia v. Sutherland, '86; paym. into ct. 1 n.
- Bank of Commerce v. Bissell, '85; carriers, 2.
- v. Michel, '86; depositions, 4.
- v. Union Bank, '86; banking, 7.
- Bank of Commonwealth v. The Mayor, etc. of N. Y., '83; money p'd, 14 n.; villages, 5; '84; lim. of a. 19; money paid, etc. 14 n.; '86; money paid, etc. 11 n.; taxes, 58, 60 n.
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- v. Mott, '84; offir. 5 n.
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- v. Harris, '86; justices' ct. 4 n.
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- v. Morgan, '83; sup. pro. 14 n.
- v. Mott, '83; mort. 32, 57; '84; mort. 16; '85; subr. 2 n. 8 n.; '86; judgm. 9 n.; mort. 7 n.; subr. 2, 3.
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- *v. Richard*, '83; covenants, 5; '84; covenants, 5 n.; '85; nuis. 3; '86; covenants, 5 n.
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- Bockes v. Hathorn. Cited as to costs in 39 *Hun.* 569; '83; costs, 70; '84; costs, 36.
- v. Lansing, '85; pl. 27 n. 28 n.; '86; amend. 17 n.; pl. 111.
- Bodine v. Exchange Fire Ins. Co., '83; ins. 56; '85; ins. 7, 23; principal & a. 6; '86; ins. 24.
- v. Killeen, '85; husb. & w. 12; '86; husb. & w. 2 n. 17.
- Boehen v. Williamsburgh City Ins. Co., '85; ins. 7.
- Boerum v. Betts, '84; surr. ct. 37.
- v. Schenck, '83; election of rights, 3; ex. & ad. 77 n.; '85; assign. for b. of c. 20.
- Boese v. King, '83; assign. for b. of c. 5.
- Bogardus v. Clark, '83; wills, 101 n.; '84; devise, 3; '85; former adj. 31.
- Bogart, Matter of, 28 *Hun.* 466. Aff'd in 20 *Weekly D.* 141; '85; wills, 55.
- Bogart v. Burkhalter, '83; v. & p. 4.
- v. Dart, '83; attach. 11; '85; attach. 4; '86; attach. 1.
- v. Van Velsor, '84; ex. & ad. 62.
- Bogert, Matter of 2 *Dem.* 117; s. c., 4 *Civ. Pro.* 441; 67 *Hov. Pr.* 313. Aff'd in 6 *Civ. Pro.* R. 128.
- Bogert v. Gulick, '84; husb. & w. 4 n. 12 n.
- v. Haight, '85; assign. for b. of c. 35.
- v. Hertell, '83; join. of a. 1; wills, 178, 178 n.; '84; powers, 5; '85; ex. & ad. 40; '86; wills, 58.
- Bold v. O'Brien, 17 *Weekly D.* 466; rev'g *N. Y. Daily Reg.* Oct. 31, 1882.
- Boldt v. N. Y. Central, &c. R. R. Co., '83; master & s. 22.
- Bolen v. Crosby, '85; abate. & r. 5; assign. 17; '86; abate. & r. 3 n.
- Boller v. Mayor, etc. of N. Y., '85; sum, pro. 6.
- Bollerman v. Blake, '85; aliens, 3; '86; aliens, 1.
- Bolles v. Duff, '83; mort. 28; surr. ct. 35 n.; '86; juris. 9 n.; redemption, 1 n.
- Bolt v. Keyhoe, '84; sup. pro. 22.
- Bolton v. De Peyster, '83; powers, 1.
- v. Jacks, '83; accumulations, 5 n.
- v. Lawrence, 9 *Wend.* 439. Disting'd (sheriff's fees) in *Flack v. State*, 95 *N. Y.* 471.
- Bolz v. Ridder 12 *Daly*, 329; s. c., *N. Y. Daily Reg.* Aug. 7, 1884, and less fully 19 *Weekly D.* 463.
- Bommer v. American Spiral Spring Co., '83; trials, 19; '86; partn. 9 n.
- Bond v. Mitchell, '85; pl. 102.
- v. Smith, '83; abate. & r. 11; ev. 306.
- v. Willett, '83; exec. 32; '86; city ct. of N. Y. 2.
- Bonesteel v. Lynde, '85; wit. 2 n.
- v. Mayor, etc. of N. Y., '86; munc. corp. 30 n.
- Bonfanti v. Deguerre, '83; surr. ct. 22 n.; '84; ex. & ad. 110.
- Bonnell v. Griswold, 89 *N. Y.* 122. Further decision in action by same parties in 8 *Civ. Pro.* R. 280; s. c., 15 *A'b. N. C.* 470; s. c., 2 *Hov. Pr.* A. S. 451; '83; mfg. co. 26; pl. 40; '84; mfg. co. 10 n.; pl. 32 n.; '85; appeal, 33; '86; mfg. co. 7; partn. 43; pl. 38.
- v. Rome, etc. R. R. Co., '84; outlawry, 2 n.
- v. Wheeler, '84; mfg. co. 21.
- Bonner, Matter of, '83; assign. for b. of c. 51.
- v. McPhail, '83; marine ct. 9.
- Bonney v. Seely, '86; lim. of a. 20 n.
- Bonyng v. Waterbury, '86; costs, 39.
- Bookstaver v. Jayne, '83; bills, n. & c. 9; ev. 139 n.; guaranty, 4; '84; contracts, 21; '86; bonds, 2 n.
- Bool v. Mix, '83; infants, 2.
- Boone v. Citizens' Savings Bk. N. Y., '83; trusts, 8, 26; '84; lim. of a. 23; '85; sav'gs bks. 9, 10 n.
- Boorman v. Atlantic & Pacific R. R. Co., '83; depositions, 21.
- v. Johnson, '86; ev. 71; trials, 43.
- Boos v. World Mut. Life Ins. Co., '85; appeal, 23, 78; '86; appeal, 32.
- Booth v. Amerman, '83; assign. 4; ex. & ad. 217; '84; annuities, 1; legacies, 18.
- v. Boston & Albany R. R. Co., '83; master & s. 24, 25, 34 n.; '84; master & s. 23 n. 28 n.; '85; master & s. 16, 17; trial, 78 n.; '86; negl. 56 n.
- v. Cleveland Rolling Mill Co., '83; contract, 39; '84; contracts, 52 n.; '86; contracts, 27; mort. 15.
- v. Farmers & Mechanics' Bank, '84; joinder of a. 4; '86; jul. n. 9 n.; pl. 13 n.
- v. Jarrett, '83; tradem. 16 n.
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- v. Powers, '85; bonds, 5; '86; banking, 5; bills, n. & c. 8; conversion, 14.
- v. Spuyten D. R. Mill Co., '83; contracts, 111; dam. 5 n.; '84; pl. 134; '85; contracts, 87.
- v. Swezey, '83; ev. 206.
- Boots v. Washburn, '84; towns, 1; '85; county treas. 4.
- Borden v. Fitch, '83; divorce, 29; '84; divorce, 9 n.; '85; judgm. & decree, 7 n.; '86; divorce, 21 n. 25 n.
- Bordewell v. Colie, '83; sales, 31; '86; sales, 37.
- Boreel v. Lawton, '84; appeal, 96; landl. & t. 6; '84; landl. & t. 12 n.; '85; forec. 7 n.; '86; covenants, 2 n.
- v. Mayor, '83; deeds, 2.
- Borell v. Newell, '85; election of r. 11.
- Bork v. People, 91 *N. Y. 5*; s. c., 16 *Weekly D.* 153, and 1 *N. Y. Crim. R.* 379; aff'g *Id.* 368; '85; indict. 6.
- Borland v. Stewart, '84; exec. 23 n.
- Borries v. Horton, '86; highw. 16 n.
- Borst v. Corey, '84; lim. of a. addend. 10 a; '85; contribution, 1 n.; ex. & ad. 128 n.; lim. of a. 11, 19, 20.
- v. Crommie, '86; legacies, 10.
- v. Griffin, '83; mech. l. 8.
- v. Spelman, '83; husb. & w. 20 n.
- Bort v. Smith, '86; parties, 4 n.
- Bortle v. Mellen, '84; exceptions, 6.
- Boston & Albany R. R. Co., Matter of, '83; const. law, 35 n.; def. 108; '85; em. dom. 4, 5.
- Boston, Hoosac Tunnel & W. R. R. Co., Matter of, '83; r. r. co. 66, 94, 102; '85; r. r. co. 41.
- Boston Road, Matter of, '83; r. r. co. '85; r. r. co. 50 n.
- Boston Silk Mills v. Eull, '84; costs, 12; '86; costs, 7.
- Bostwick, Matter of, '83; legacies, 29 n.; '84; parent & c. 2; '85; former adj. 10 n.; guardian & w. 8; '86; ex. & ad. 120 n.
- Bostwick v. Atkins, '84; infants, 5 n.
- v. Balt. & Ohio R. R. Co., '86; carriers, 18.
- v. Barlow, '85; appeal, 78 a; '86; towns, 4.
- v. Burnett, '85; assign. for b. of c. 35.
- v. Brown, '83; costs, 114, 115.
- v. Champion, '83; carriers, 6 n.
- v. Dry Goods Bank, '86; pl. 123.
- v. Frankfield, '83; dower, 8; '84; v. & p. 9; '86; lease, 23 n. 25 n.
- v. Menck, '83; sup. pro. 18; '84; assign. for b. of c. 89; exec. 11; pl. 57; sup. pro. 34; '85; fraud. conv. 21; receiver, 13; '86; sup. pro. 7 n.
- Boswell v. Welshoefer, '84; pl. 108 n.
- Dosworth v. Vandewalker, '83; ev. 24; '84; service & p. 14 n.
- Botsford v. Burr, '83; contracts, 81; '85; trusts, 14.
- v. McLean, '83; negl. 50 n.; reformation of inst. 2.
- Boucher v. Pia, '83; sec. for costs, 12.
- Boucicault v. Boucicault, '83; arrest, 23.
- Boughton v. Flint, '83; ex. & ad. 136, 187; lim. of a. 9 n. 22; surr. ct. 22 n. 31; '84; ex. & ad. 114; lim. of a. 23, 24; '85; former adj. 10 n.; legacies, 13; lim. of a. 34; '86; lim. of a. 13; surr. ct. 11 n.
- v. Otis, '83; mfg. co. 31 n.
- Boulle v. Tompkins, '84; ex. & ad. 130.
- Bours v. Tuckerman, '83; wit. 2 n.
- Bouton v. Bouton, '83; appeal, 12; partn. 15; '86; ref. 20 n.
- v. City of Brooklyn, '86; ev. 25; inj. 33 n.
- Boutwell v. O'Keefe, '85; sales, 25 n.
- Bovee v. King, '85; offr. 22 n.
- Bowditch v. Salisbury, '85; justices' ct. 1 n.
- Bowdoin v. Colman, '83; assign. 12.
- Bowe v. Arnold, 31 *Hun*, 256. Cited (Creditors' suits) in 33 *Hun*, 59. '84; cred. s. 2 n.
- v. Campbell, '84; sher. 3 n.
- v. Gano, 85; lim. of a. 29.
- v. U. S. Reflector Co., 4 *Civ. Pro. R.* 154; s. c., 66 *How. Pr.* 41. Aff'd in 36 *Hun*, 407; s. c., 2 *How. Pr. N. S.* 440, and 8 *Civ. Pro. R.* 33.
- Bowen v. Argall, '86; partn. 40 n.
- v. Beck, '85; mortgages, 18; '86; deeds, 29 n.
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- v. Bowen, '83; services, 5; '84; contracts, 2 n.; ex. & ad. 66.
- v. Clarke, '86; appeal, 11 a.
- v. First Nat. Bank of Medina, 34 *How. Pr.* 408. See 6 *South. L. Rev. N. S.* n. 6.
- v. Idley, '85; surr. ct. 19; '86; wills, 33 n.
- v. Irish Presbyterian Church, '84; defenses, 3; '86; account & accounting, 1.
- v. Lease, '83; corp. 10, n.; mech. l. 2, '86; wills, 10 n.
- v. Mandeville, 95 *N. Y.* 237; aff'g 29 *Hun*, 42; '85; election of r. 2; '86; amend. 2; fraud, 9.
- v. Newell, '86; bills, n. & c. 22 n.
- v. N. Y. Central R. R. Co., '86; negl. 78 n.
- v. Widner, '85; appeal, 112.
- Bowers v. Smith, '83; wills, 234, 236, 238; '85; equity, 1.
- Bowery National Bank of N. Y. v. Mayor, etc., of N. Y. '83; contracts, 89; '84; contracts, 27 n.; '85 munc. corp. 81 n.; '86 munc. corp. 29 n.
- Bowes v. N. Y. Christian, &c. Home, '86; mech. l. 3.
- Bowie v. Brahe, '83; exec. 4.
- Bowker v. Wells, '86; wills, 56 n.
- Bowling Green Sav. Bank v. Todd, '83; atty. & c. 44; '84; atty. & c. 18 n.; '85; atty. & c. 16 n.; fraud. conv. 3 n.
- Bowman v. Agricultural Ins. Co., '85; ev. 9; '86; ins. 10.
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- v. Sheldon, '85; pl. 92.
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- v. Travis, '86; animals, 4 n.
- Bown v. Catholic Mut. Ben. Assoc., '85; ex. & ad. 21; '86; ex. & ad. 39.
- Bowne v. Joy, '83; defenses, 4; '85; defenses, 2.
- v. Lynde, 91 *N. Y.* 92; s. c. 16 *Weekly D.* 248; aff'g 13, *Id.* 97.
- v. Underhill, '83; wills, 180 n.
- Boyce v. Bates, '83; atty. & c. 18.
- v. Brockway, '86; conversion, 1, 7; trusts, 31.
- v. Brown, '85; crim. law, 3.
- v. People, '84; seduction, 2.
- v. Russell, '86; paym. 1 n.
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- Boyd v. Colt, '84; wit. 29; '86; appeal, 93.
- v. Commings, '83; bills, n. & c. 25.
- v. De La Montagnie, '86; fraud, 3.
- v. Dunlap, '83; fraud. conv. 19; '85; fraud. conv. 10.
- v. Gray, '84; taxes, 30; '85; ev. 52; tax, 52; '86; taxes, 60 n.
- v. Hoyt, '85; joinder of a. 1 n.
- v. Vanderkempt, '84; amend. 19 n.
- Boyer v. Scofield, '86; former adj. 31.
- Boylan v. Mathews, '83; sec. for costs, 11 n.

- Boylard v. Mayor, etc. of N. Y., '86; munc. corp. 46 n.
- Boyle v. City of Brooklyn, '85; munc. corp. 111 n.; pl. 110 n.
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- Boynton v. Andrews. Cited (mfg. co's.), in 40 *Hun*, 487; '84; mfg. co. 10.
- v. Clinton and Essex Mut. Ins. Co., '83; parties, 34.
- v. Hatch, '83; mfg. co. 16; '84; mfg. co. 10 n.
- v. Hoyt, '83; accumulation, 1, n. 5 n.; ev. 306; accumulations, n.
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- v. Jackway, '85; assistance, 1.
- Brace v. Gould, '85; husb. & w. 17.
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- Brackett v. Barney. Cited (executing and delivering contracts) in Whitford v. Linder, 94 *N. Y.* 152.
- v. Harvey, 91 *N. Y.* 214; s. c., 16 *Weekly D.* 257; rev'g 25 *Hun*, 502; s. c., 13 *Weekly D.* 326; '83; chat. mort. 8; '85; chat. mort. 3; partn' 17 n.
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- Bradish v. Gibbs, '83; powers, 6; '84; marr. settlement, 1.
- Bradley v. Aldrich, 40 *N. Y.* 504. Cited (specific performance) in 36 *Hun*, 477; '86; pl. 35.
- v. Amidon, '83; trusts, 23; '84; parties, 26.
- v. Angel, '83; set-off, 1.
- v. Bishop, '83; sher. 27.
- v. Bosley. Cited (relief in equity) 102 *N. Y.* 561.
- v. Bradley, '86; ex. & ad. 33.
- v. Burwell, '83; costs, 113.
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- v. Root, '83; assign. 5; '86; money paid, 17.
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- Bradner v. Faulkner, 93 *N. Y.* 515; rev'g 16 *Weekly D.* 240; '83; legacies, 28; '85; joinder of a. 3; legacies, 35 n. 36, 39; '86; ex. & ad. 54 n.; legacies, 21; pl. 149.
- v. Strang, 89 *N. Y.* 299; s. c., 15 *Weekly D.* 162; aff'g 23 *Hun*, 445; s. c., 11 *Weekly D.* 504; '84; discharge, 2; '86; ev. 48 a n.
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- Bradstreet v. Clarke, '83; wills, 215, n.; '85; ev. 185; spec. perf. 12 n.
- Bradt v. Benedict, '83; corp. 61.
- Brady, Matter of, '83; impris. 1, 11, 24; '84; impris. 5; '85; impris. 2; '86; impris. 13 n.
- Brady v. Bissell, '83; arrest, 22.
- v. Donnelly, '84; appeal, 15.
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- v. McCrosson, '86; wills, 11 n.
- v. Mayor etc. of N. Y., '83; munc. corp. 58, 117, 118; '85; munc. corp. 48; '86; estoppel, 8; munc. corp. 30 n.
- v. Rensselaer, etc., R.R. Co., '85; r. r. co. 11 n.
- v. Smith, '84; service & p. 12.
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- Bragelman v. Daue, '84; ins. 23.
- Braque v. Lord, 2 *Abb. N. C.* 1. Qualified (competency of witness) in Holcomb v. Holcomb, 95 *N. Y.* 325.
- Brainard v. Cooper, '83; attach. 42; mort. 28; parties, 28; '84; forec. 11; '85; forec. 14 n.
- v. Jones, '84; int. 4.
- Brainerd v. Heydrick, '83; summons, 4.
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- Braman v. Bingham, '86; deeds, 6.
- Bramhall v. Ferris, '83; wills, 178; '85; trusts, 30.
- Brandon v. Avery, '84; const. law, 59.
- v. People, '83; wit. 78, n.; '84; wit. 58; '86; wit. 3 n.
- Brandon Mfg. Co. v. Bridgman, '83; depositions, 26; '84; depositions, 30.
- Brandt v. Klein, '83; atty. & c. 14.
- v. Mayor, &c. of N. Y. Cited in a further decision in the same cause, 48 *Super. Ct. (J. & S.)* 293.
- v. Ogden, '84; adv. poss. 12 n.; deeds, 6 n.
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- Brasher v. Van Cortlandt, 2 Johns. Ch. 242. Cited (proceedings by petition) in 34 *Hun*, 544; '86; insane per. 7.
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- Brauneck v. Knickerbocker Life Ins. Co., '83; juris. 9; '84; juris. 8 n.
- Brazill v. Isham, '83; pl. 2; '84; pl. 132.
- Breasted v. Farmers' Loan and Trust Co., '83; ins. 60 n.; '86; ins. 67 n.
- Breck v. Cole, '83; debtor & cred. 10; '85; corp. 26 n.
- Breese v. United States Telegraph Co., '84; teleg. 1.
- Breiman v. Paasch, '85; husb. & w. 22; '86; husb. & w. 27 n.
- Brennan v. Lane, '86; trusts, 42.
- v. Mayor, etc., of N. Y. Disting'd (What is an officer) in MacDonald v. Mayor, etc. of N. Y., 32 *Hun*, 92; '83; ev. 217, 230; munc. corp. 16.
- v. Willson, '83; assign. for b. of c. 9; trusts, 51; '84; assign. for b. of c. 12, 22, 88; powers, 4; '86; assign. for b. of c. 11, 35; '86; assign. for b. of c. 13.
- Brett v. Brett, 33 *Hun*, 547. Aff'd, it seems, but without opinion in 98 *N. Y.* 619.
- v. Bucknam, '85; wit. 2 n.
- Breunich v. Weselman, 100 *N. Y.* 609; s. c. more fully, 1 *Central Rep.* 11; s. c., 1 *Eastern Rep.* 752; aff'g 49 *Super. Ct. (J. & S.)* 31; s. c., 16 *Weekly D.* 556.
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 — v. Palmer, '85; assign. for b. of c. 12.  
 — v. Partridge, '83; ev. 154; mort. 37; partn. 31; '84; ev. 68, 77; parties, 35; principal & a. 11 n.; '85; associations, 10; ev. 80; '86; contracts, 6, 70; parties, 7.  
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- Cashman v. Henry, '83; husb. & w. 38; '86; husb. & w. 17.
- Casoni v. Jerome, '83; ex. & ad. 24; '84; cv. 235; '85; bonds, 5.
- Cass v. Higenbotam, 100 *N. Y.* 248; s. c., 8 *Civ. Pro.* 329; 1 *Centr. Rep.* 315; 2 *Eastern Rep.* 680; rev'g 27 *Hun.* 406; s. c., 15 *Weekly D.* 135; and *N. Y. Daily Reg.* Sept. 14, 1882.
- Cassard v. Hinman, '83; disc. &

- insp. 3 n.; '85; depositions, 26; '86; ev. 86 n.
- Cassell v. Fisk, 2 *Civ. Pro. R.* (Broune) 94; s. c., 2 *Civ. Pro. R.* (McCarthy) 241; and 15 *Weekly D.* 255. Subsequent proceedings in 16 *Id.* 112; '84; inj. 33.
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- v. Tobias, '83; contracts, 107.
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- Caton v. Southwell, '86; sup. pro. 25, 29.
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- Caujolle v. Ferrié, '83; ev. 5; surr. ct. 27, '86; ev. 244 n.
- Caulfield v. Baltimore & Ohio R.R. Co., '84; master & s. 23 n.
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- Cesar v. Karutz. Cited (Landlord's liability) in 53 *Super. Ct. (J. & S.)* 479. '84; landl. & t. 15 n.; '85; landl. & t. 9.
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- Chadsey v. Guion, 48 *Super. Ct. (J. & S.)* 267. Aff'd in 97 *N. Y.* 333; '86; ins. 31, 36 n.
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- v. Jones, '83; covenants, 5; lease, 17, 41; sales, 12.
- v. Lake Shore & M. S. Ry. Co., 94 *N. Y.* 217; aff'g 14 *Weekly D.* 177.
- v. Leupp, '83; trusts, 15 a; '84; legacies, 13; wills, 87 n.; '85; wills, 108 n. 126 n.
- v. Mackin, 30 *Hun*, 411. Modified in 95 *N. Y.* 346. Subsequent decision in 34 *Hun*, 345; '85; subr. 2 n.
- v. Marsiglia, '83; contracts, 96; '84; contracts, 101; '85; lease, 6 n.
- v. Mauran, '83; bills, n. & c. 41.
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- v. Mechanics' Nat. Bank, '84; trials, 57; '86; appeal, 88.
- v. Meigs, '84; appeal, 15.
- v. Merchant's Exch. Bank, '83; bills, n. & c. 29.
- v. Metropolitan Bank, '83; brokers, 1.
- v. Miller, '85; off'r, 17; '86; off'r, 18.
- v. Montgomery, '83; guardian & w. 7; infants, 7 n.
- v. N. Y. Life Ins. & Trust Co., '83; inj. 23.
- v. Norton, '83; superv. 4; tax, 41, 48, 54, 55, 66; '84; tax, 30, 40; '85; munc. corp. 126; tax, 52; '86; em. dom. 3.
- v. People, '86; ev. 335.
- v. Pinckney, '86; appeal, 7.
- v. Pinney, '83; defenses, 6; exec. 57, 57 n.
- v. Rowling, '83; bankruptcy, 15 n.; discharge, 3 n.; estoppel, 2; forec. 32; judgm. & decree, 52 n.; '85; discharge, 3 n.; '86; bankruptcy, 1 n.; merger, 1 n.
- v. Sickler, '83; bills, n. & c. 28; guaranty, 15, tender, 2.
- v. Taylor, '86; ev. 48a n.
- v. Tucker, '85; sales, 7 n.
- v. Van Amburgh, '84; ex. & ad. 112.
- v. Van Vranken, '86; pl. 15, 165.
- v. Village of Dunkirk, '86; munc. corp. 77 n.
- v. Vorce, '86; ev. 100 n.
- v. Woodruff, '84; off'r, 13; '85; ev. 274.
- Clarke v. Blackmar, 47 *N. Y.* 152. Cited as to injunctions in dissenting opinion in 33 *Hun*, 164; '86; inj. 14 n.
- v. Bogardus, '83; ex. & ad. 148.
- v. Cummings, '83; forfeiture, 2 n.
- v. Dutcher, 9 *Cow.* 674. See Mowatt v. Wright, in principal table. Disting'd (ratification by principal) in Whitemore v. Hamilton, 51 *Cann.* 153, 158; s. c., 19 *Reporter*, 7.
- v. Gibbons, '86; devise, 2 n.
- v. Sawyer, '83; trials, 1.
- v. Sheehan, 47 *N. Y.* 188. Applied (Usury in mortgage contract) in Hall v. Ditson, 5 *Abb. N. C.* 198, 208; '86; usury, 1.
- Clarkson v. Clarkson, '83; ex. & ad. 232; ten. for l. 3, 5; '85; ex. & ad. 134 n.; ten. for l. n.; '86; corp. 9 n.
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- v. Skidmore, '86; forec. 21.
- Clason v. Bailey, '86; contracts, 7 n.
- v. Morris, '86; lim. of a. 14 n.
- Clausen v. Baltimore & Ohio R. Co., '85; highw. 3 n.
- Clay v. Baker, 41 *Hun*, 58; s. c., 11 *Civ. Pro. R.* 1; and as Caly v. Baker, 2 *N. Y. State Rep.* 275.
- v. Clay, '83; parties, 53.
- Clayes v. Hooker, '83; bills, n. & c. 54; var. 1.
- Clayton v. Wardell, '83; ev. 335; marr. 2; '85; ex. & ad. 8 n.; '86; ev. 244 n.
- v. Wolven. See People ex rel. Clayton v. Wolven.
- Clearwater v. Brill, '85; off'r, 22 n.
- Clegg v. Cramer, 3 *How. Pr. N. S.* 128; s. c. as Clegg v. Chicago Newspaper Union, 8 *Civ. Pro. R.* 401.
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- Clemens v. Clemens, '84; former adj. 1, 30 n.; '86; ev. 19; former adj. 35.
- Clement v. Cash, '83; contracts, 30.
- Clementi v. Jackson, '85; ev. 23; mand. 11; '86; mand. 9.
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- Clements v. Village of West Troy, '85; easements, 11; munc. corp. 56 n.
- v. Yturria, '86; conversion, 11.
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- v. N. J. Steamboat Co., 68 *N. Y.* 306. Subsequent decision in 89 *Id.* 627.
- Cleves v. Willoughby, '84; ev. 82; '86; ev. 85.
- Clewes v. Bank of N. Y. Nat. B'k Assoc., 89 *N. Y.* 418; s. c., 15 *Weekly D.* 196; rev'g in effect 8 *Daly*, 476.
- Clifford v. Dam, '83; ev. 85; lim. of a. 14; negl. 33; nuis. 13; '84; inj. 19 n.; '85; negl. 29 n.; '86; ev. 209; inj. 15 n.; negl. 23 n. 24.
- Clift v. White, '83; mort. 55.
- Clifton v. Brown, 27 *Hun*, 231; s. c., 2 *Civ. Pro. R. (Browne)* 44; *Id. (McCarty)* 136; and as Clifton v. Lawrence, 14 *Weekly D.* 454.
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- Close v. Van Husen, '83; ex. & ad. 148.
- Clough v. Murray, '83; acc. & sat. 1; '85; lease, 7 n.
- Clow v. Borst, '85; paym. 8 n.; '86; paym. 5 n.
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- Clute v. Clute, '85; new promise, 1.
- v. Emmerich, 26 *Hun*, 10. Aff'd in 99 *N. Y.* 342; '85; subr. 8 n.
- v. Emmerick, '83; marine ct. 7; '84; new tr. 36.
- v. Fitch, '83; fraud. conv. 1.
- v. Robinson, 21 *Weekly D.* 120. Subsequent decision in 38 *Hun*, 283.
- v. Small, '84; ev. 140; '85; bonds, 5.
- v. Voris, '85; ev. 28 n.
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- v. First Nat. B'k of Emporia, 91 *N. Y.* 20; rev'g 47 *Super. Ct. (J. & S.)* 322; '85; bills of lading, 24.
- v. Goddard, '83; costs, 81.
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- v. Hatfield, '85; fraud, 9.
- v. Knapp, '83; principal & a. 11; '84; brokers, 2; principal & a. 10; '85; parties, 41; '86; principal & a. 11.
- v. Titus, '83; bills, n. & c. 4; usury, 12.
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- Cockerill v. Loonan, 36 *Hun*, 353. Rev'd on reargument in *Id.* 353 n.
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- Cocks v. Barker, '83; ev. 149; partn. 31; '85; ev. 104; ins. 6 n.; '86; deeds, 6 n.
- v. Weeks, '83; ev. 71; '85; new promise, 4.
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- v. Rathbone, '83; pl. 123.
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- Coddington v. Bay, '83; pledge, 3 n.; '86; bills, n. & c. 24 n.
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- v. McLean, '85; ex. & ad. 121 n.; set-off, 1; '86; legatees, 3 n.
- v. Reynolds, '83; mfg. co. 19, 21; munc. corp. 38; '84; services, 5; '85; const. law, 37 n.; defin. 14.
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- v. Dry Dock, East Broadway, etc., R. R. Co., '83; master & s. 13 n.; '86; master & s. 7 n.; trials, 68.
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- Cohn, Matter of, 20 *Alb. L. J.* 352. Cited (Qualification of assignee) in Matter of Schang, 66 *How. Pr.* 201. '83; assign. for b. of c. 51; '85; ex. & ad. 5 n.
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- Coit v. Campbell, '83; abate. & r. 5.
- v. McReynolds, '85; ex. & ad. 176 n.; '86; surr. ct. 19 n.
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- v. Stewart, '84; countercl. 7.
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- Colburn v. Morton, '85; trusts, 43.
- Cole v. Goodwin, '84; carriers, 6 n.
- v. Hughes, '83; covenants, 12; '85; covenants, 8; '86; covenants, 4; party walls, 2 n.
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- v. Moffitt, '84; forec. 1.
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- v. Terpenning, '83; lim. of a. 1; '85; ex. & ad. 125, 128 n.; '86; appeal, 92a n.
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- v. Bean, '83; mech. l. 10; undert. 13.
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- v. Chauncey, '84; costs, 34.
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- v. Crump, '83; tradem. 12; '86; tradem. 1.
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- v. First Nat. Bank of Elmira, '83; ev. 129.
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- v. Van Rensselaer, '83; mort. 8; '84; mort. 1.
- v. Wade, '83; award, 5, '84; arbitration, 3 n.
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- s. c. 13 *Weekly D.* 345; aff'g 22 *Hun.* 72; s. c., 10 *Weekly D.* 532.
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- v. Hasbrouck, '83; forfeiture, 2 n.; '85; lease, 14; '86; lease, 23 n.
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- v. Torry, '83; dower, 2; '85; subr. 2 n.; '86; countercl. 1.
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- Commissioners of Pilots v. Spofford, '83; costs, 38.
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- v. Wood, '84; mech. 1. 10 n.
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- v. Gandall, '83; pl. 6, 7.
- v. Secor Sewing Machine Co., '85; inj. 31.
- v. Shelley, '83; chat. mort. 11, 13, 16, 18a; chat. mort. addenda; '84; chat. mort. 2.
- Connah v. Hale, '83; chat. mort. 7.
- v. Sedgwick, '85; assign. for b. of c. 44 n.
- Connecticut v. Jackson, 1 Johns. Ch. 13. Followed (Computation of interest in case of partial payment of debt) in Hill v. Durand, 58 W. s. 160, 166; s. c., 15 Northw. Rep. 393.
- Connecticut Fire Ins. Co. v. Erie R. R. Co., '83; parties, 34 n.
- Connelly v. N. Y. Central, & C. R. R. Co., '86; negl. 100.
- Conner v. City of New York, '85; munc. corp 35 n.; '86; off'r, 8 n.
- v. Mayor, etc., of N. Y., '83; off'r, 4 n. 18; '86; const. law, 11, 24; off'r, 8 n.
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- Conner v. Keese, 32 Hun, 98. Subsequent proceedings in 38 Id. 124, and 23 Weekly D. 478.
- Connors v. Adams, '85; off'r, 21.
- v. People, '84; const. law, 2 n.; '86; appeal, 106.
- Conover v. Devlin, '83; case, 6.
- v. Mutual Ins. Co. of Albany, '83; ins. 37, 77; '84; ins. 23; '86; ins. 3 n.
- Conrad v. Trustees of Ithaca, '83; munc. corp. 61, 87; '84; munc. corp. 53 n. 67; '85; ev. 55; munc. corp. 60 n.; '86; munc. corp. 51 n.; 55; villages, 1.
- v. Williams, '84; trials, 57.
- Conro v. Gray, '85; parties, 9 n.
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- Conroe v. National Protection Ins. Co., '83; place of tr. 6; '86; district ct. 3.
- Conroy v. Twenty-third St. R. R. Co., '83; negl. 35.
- v. Warren, '85; bills of lading, 24.
- Consalus, Matter of, 14 Weekly D. 92. Aff'd in 95 N. Y. 340; '86; usury, 2.
- Considerant v. Brisbane, '83; parties, 41; trusts, 26; '84; lim. of a. 7; pl. 12; '85; parties, 41; '86; parties, 4 n.
- Consolidated Fruit Jar Co. v. Burrell, '83; tradem. 3.
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- v. Kellogg, '83; wills, 185; '86; contracts, 9 n.
- v. McArthur, '83; surr. ct. 3; '86; legacies, 10.
- v. Walker, '86; wharves, 1.
- Converseville Co. v. Chambersburgh Woolen Co., '83; assign. for b. of c. 33.
- Conway v. Mayor, etc., of N. Y., '86; amend. 17 n.
- v. Moulton, '86; wit. 22.
- Cook v. Allen, '83; contracts, 2.
- v. Barr, '84; trials, 32; '86; pl. 82 n.
- v. Champlain Transportation Co., '86; fixtures, 2 n.; negl. 107.

— v. Dickerson, '83; att'y & c. 30; ev. 305.  
 — v. Freudenthal, '85; bonds, 6; '86; bail, 3 n.; bastardy, 1; undert. 1.  
 — v. Genesee Mut. Ins. Co., '83; defenses, 3.  
 — v. Harris, '85; highw. 11; munc. corp. 56 n.; '86; highw. 8 n. 9.  
 — v. Hill, '83; libel, 5 n.; '85; slander, 3 n.  
 — v. Holt, '84; conversion, 10 n.  
 — v. Husted, '83; gift, 9.  
 — v. Kroemeke, '86; brokers, 4 n.  
 — v. Leonard, '85; appeal, 23.  
 — v. Litchfield, '84; pl. 104; '85; defenses, 2; '86; defenses, 1.  
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 — v. McClure, '85; accretion, 1, 3 n.; '86; deeds, 19 n.  
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 — v. People, '86; trials, 121.  
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 — v. Starkweather, '85; trade-m. 4.  
 — v. Staats, '83; aff'd. 1.  
 — v. Wardens, etc. of St. Paul's Church, '83; pl. 103.  
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 — v. Whipple, '85; amend. 6.  
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 — v. Meeker, '84; legacies, 18; wills, 109; '85; legacies, 35 n.; 42; '86; legacies, 21.  
 — v. Millard, '85; sales, 1 n. 7 n.; '86; sales, 7 n.  
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 Cooley v. Betts, 24 *Wend.* 203. Followed (Maintaining action for money received by agent without demand) in

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 — v. Lawrence, '84; motion & o. 21; '85; sup. pro. 3  
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 — v. Reed, '85; contracts, 99.  
 — v. Syracuse, etc. R.R. Co., '86; master & s. 44.  
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 — v. Eastern Transportation Co., '83; negl. 8 n.; '85; appeal 23.  
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 — v. Remsen, '85; legacies, 15 n.  
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 — v. Milton, '83; costs, 19.  
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- Cortelyou v. Lansing*, '86; mort. 8; pledge, 1 n.
- *v. Van Brunt*, '84; adv. poss. 11 n.; '85; covenants, 7.
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- *v. Peters*, '83; appeal, 50; ejectment, 9.
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- *v. Richmond*, '85; bills of lading, 17 n.
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- Dent v. North American Steamship Co., '85; contracts, 3.
- Denton, Matter of, 33 *Hun*, 317. Aff'd in 102 *N. Y.* 200.
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— v. Stillwell, '83; wills, 223; '84; wills, 89; '86; deposition, 7.  
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— v. Satterlee, '85; ex. & ad. 40; '86; ex. & ad. 54.  
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— v. O'Brien, '84; husb. & w. 12.  
— v. Smith, '83; ex. & ad. 36.  
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— v. Kidder, '84; bail, 6; '86; money paid, 14.  
— v. McMichael, '85; former adj. 18, 40 n.  
— v. Morewood, '83; app. of paym. 2; '84; defenses, 5.  
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— v. Russell, '85; joinder of a. 3.  
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- *v. Pell*, '83; wills, 127, 229, 230; '84; distribution, 2 n.; '84; wills, 116.
- *v. Price*, '83; ex. & ad. 145, 197, 217; trusts, 74, 75 n.; '84; ex. & ad. 125 n.; trusts, 28, 33 n.
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- *v. Thayer*, '86; bills of par. 4.
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- *v. Commercial Ins. Co.*, '85; ins. 40.
- *v. Snow*, '83; guaranty, 17.
- *v. Stouvenel*, '85; husb. & w. 15 n.; '86; husb. & w. 2 n.
- *v. Town of Springport*, '83; pl. 50 n.; '85; costs, 58; munc. corp. 52 n.; '86; costs, 95.
- Dresser v. Brooks*, '83; bankruptcy, 15 n.; '84; former adj. 26 n.; '86; merger, 1 n.
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- *v. Swift*, '83; ev. 152; '85; nuis. 1 n.; '86; deeds, 14.
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- *v. Cassidy*, '84; ev. 124 n.; sup. pro. 19; '86; sup. pro. 23.
- *v. Delaware & Hudson Canal Co.*, '83; lease, 32; '86; parties, 7.
- *v. Dubois*, '83; ev. 305; '84; ex. & ad. 84.
- *v. Kelly*, '85; license, 1; '86; fixtures, 2 n.
- *v. Miller*, '83; civil damage act, 2.
- *v. Webster*, '84; tax, 25; '85; munc. corp. 81 n.
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- *v. Griswold*, '86; countercl. 4.
- *v. Hawley*, '83; chat. mort. 7 n.; conversion, 1.
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- Duel v. Spence*, '83; bills, n. & c. 61; var. 1.
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- *v. Duncan*, '84; receivers, 27; '86; trusts, 34 n.
- *v. Donovan*, '85; sales, 14; spec. perf. 14.
- *v. People*, '85; undert. 17; '86; questions of l. & f. 1.
- *v. Wunsch*, '83; guaranty, 17; '84; guaranty, 10 n.; '86; guaranty, 8.
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- Duguid v. Edwards*, '86; arrest, 6, 7.
- *v. Ogilvie*, '84; ev. 27 n.
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- *v. Lyon*, '86; appeal, 19 n.; set-off, 5 n.
- *v. Kay*, '86; bills of par. 17.
- *v. Sun Fire Ins. Co.*, '83; stay of pro. 6.
- Dunckel v. Wiles*, '85; trials, 72; '86; former adj. 4.
- Dunkle v. Kocker*, '86; pl. 15, 165.
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- *v. Countryman*, '86; paym. 4.
- *v. Cudlipp*, '84; usury, 4; '85; usury, 1.
- *v. Mercantile Mut. Ins. Co.*, '83; depositions, 25.
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- *v. Hawkins*, '84; ev. 31; '85; cred. s. 5.
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 — *v. Hewitt*, '86; trials, 43.  
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 — *v. James*, '83; ev. 238.  
 — *v. Meserole*, '86; motions & o. 6.  
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*Dupre v. Rein*, '85; parties, 19; '86; husb. & w. 5, 8; parties, 36.  
*Dupuy v. Wurtz*, '83; surr. ct. 33; wills, 70; '85; attach. 8; '85; judgm. & decree, 7 n.; wills, 16; '86; attach. 7.  
*Durando v. Durando*, '86; infants, 4 n.  
*Durant v. Abendroth*, 97 *N. Y.* 132. Subsequent decision in 8 *Civ. Pro. R.* 87; which was aff'd in 53 *Super. Ct. (J. & S.)* 15. *Id.* aff'd, it seems, but without opinion, 101 *N. Y.* 641; '83; partn. 39, 39 n.; '84; appeal, 103; '85; partn. 28, 30; paym. 2; undert. 12; '86; debtor & cred. 11 n.; estoppel, 1; partn. 32, 32 n. 35, 36, 36 n. 40 n.; r. r. co. 19.  
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 — *v. S. & W. K. R. Co.*, '86; pl. 18 n.  
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 — *v. Keiley*, '85; false impris. 3; joinder of a. 3.  
 — *v. Mutual Tel. Co.*, '84; dam. 35 n.; inj. 20; '85; highw. 3 n.  
 — *v. McAndrew*, '84; brokers, 11.  
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 — *v. Ewing*, 2 *Dem.* 160. Followed (Reference to extraneous paper) in *Webb v. Day*, *Id.* 459.  
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## E.

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 — *v. Moore*, '84; judgm. & decree, 24; '85; amend. 6.  
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 — *v. Pell*, '83; mort. 13; '85; mort. 15 n.  
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 — *v. Camp*, '83; false impris. 2; '84; off'r, 24 n.  
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 — *v. Van Alstine*, '86; animals, 2.  
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- Eastburn v. Kirk, 2 *Johns. Ch.* 317. Cited as to appeal in 97 *N. Y.* 609; '83; costs, 120.
- Easterly v. Barber, '83; bills, n. & c. 19. ev. 139 n.; '84; mfg. co. 16; '85; former adj. 7; mfg. co. 9, 17 n.; parties, 7; '86; judgm. 2.
- East Hampton v. Kirk, '86; real prop. 2.
- Eastman v. Shaw, '83; ev. 127 n.
- Easton v. Calendar, '83; off'r, 25.
- v. Pickersgill, '83; statutes, 12; '85; former adj. 7.
- v. Smith, '83; costs, 13.
- East River Bridge & Coney Island Steam Transit Co., Matter of, 92 *N. Y.* 644; dismissing appeal, it seems, from 26 *Hun.* 490; s. c., 10 *Abb. N. C.* 245; and 62 *Hou. Pr.* 404; but without opinion.
- East River Gas-light Co. v. Donnelly, 93 *N. Y.* 557; aff'g 25 *Hun.* 614.
- East River Nat. Bank v. Gove, '83; new tr. 13.
- v. McCaffrey, '83; ex. & ad. 245.
- Eastwood v. People, '83; appeal, 47.
- Eaton v. Alger, 47 *N. Y.* 345. Cited as to parties in 97 *N. Y.* 544; '83; discount, 3; ev. 129.
- v. Aspinwall, '84; corp. 63; estoppel, 8 n.; '86; corp. 35 n.
- v. Delaware, Lackawanna & Western R.R. Co., '86; negl. 73 n. 111 n.
- v. Erie R.R. Co., '85; negl. 70; '86; negl. 64 n.
- v. North, '84; depositions, 1; '86; justices' ct. 9.
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- Eaton, C. & B. Co. v. Avery, '84; arrest, 3; deceit, 3, 4; ev. 4; '85; deceit, 11.
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- Edgell v. Hart, '83; chat. mort. 11, 21; fraud. conv. 7; mort. 1; '84; fraud. conv. 9.
- Edgerly v. Bush, '83; attach. 69; '84; chat. mort. 9; conflict of l. 2.
- Edgerton v. N. Y. & Harlem R. Co., '84; ev. 41 n. 212, 212 n.; '86; pl. 67 n.
- v. Page, '83; lease, 6; pl. 172; '84; landl. & t. 12; '85; lease, 4; '86; covenants, 2 n.
- v. Peckham, '83; v. & p. 15 n.
- v. Ross, '83; replevin, 2.
- Eddington v. Aetna Life Ins. Co., 17 *Weekly D.* 565. Aff'd in 100 *N. Y.* 536; s. c., 1 *Centr. Rep.* 524; aff'g 30 312; '83; wit. 26, 27, 27 n.; '85; wit. 8.
- v. Mutual Life Ins. Co., '83; wit. 22, 26, 27; '34; wit. 3; '85; wit. 8.
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- Edmonston v. McLoud, '83; sup. pro. 29; '84; sup. pro. 2; '86; sup. pro. 7 n.
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- Edsall v. Waterbury, '83; wills 139.
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- v. Campbell, '85; pl. 105 n.
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- v. Varick, '83; assign. 4 n.
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- Egberts v. Wood, '83; ex. & ad. 165; partn. 28; '84; assign. for b. of c. 14; '85; partn. 23; '86; assign. for b. of c. 1 n. 41; partn. 29.
- Eggert v. Bonnett, '83; surr. ct. 35 n.
- Eggler v. People, '85; trials, 119.
- Egglessen, Matter of, '83; forec. 5.
- Eggleston v. Columbia Turnpike Co. Road, '84; ev. 112 n.; '85; munc. corp. 69 n.
- v. Smiley, '84; const. law, 60.
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- v. Judson, '83; guaranty, 5 n.
- v. Purdy, '84; parties, 43.
- v. Quackenboss. Cited in 101 *N. Y.* 160; '83; justices' ct. 4; '84; costs, 15.
- Ehrgott v. Mayor, etc. of N. Y., 96 *N. Y.* ; rev'g 66 *Hou. Pr.* 161; '84; off'r, 8; dam. 5 n. 20; munc. corp. 60 n. 63 n.; off'r. 17 n.; '86; munc. corp. 33, 45 n. 51; negl. 7 n.; off'r, 7 n.; pl. 69 n.
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- Eighmie v. Taylor, 98 *N. Y.* 288. Subsequent decision on motion to amend complaint in 39 *Hun.* 366; '85; ev. 104; '86; contracts, 2 n.; ev. 75, 81 n. 82.
- Eighmy v. People, '83; error, 3; '84; bills of par. 16; ev. 248 n.; '85; bills of par. 8; '86; wills, 35.
- Eisner v. Avery, '86; atty. & c. 20.
- Elder v. Morrison, '84; resistance, 1 n.
- v. Rouse, '83; mort. 8; pledge, 4 n.; '84; mort. 1.
- Eldridge v. Hill, '86; inj. 13 n.
- v. Strenz, '83; costs, 68; '84; costs, 23.
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- v. N. Y., Lake Shore, etc. Ry. Co., '84; master & s. 16 n.; '85; master & s. 39a n.; '86; master & s. 9, 10 n. 17, 29 n. 41.
- v. Phoenix National B'k, 17 *Weekly D.* 475. Aff'd in 19 *Id.* 183; s. c., 12 *Duty*, 177.
- v. Rice, '83; atty. & c. 19.
- v. Willard, '85; bills of lading, 3; ev. 83.
- Ellison v. Bernstein, '84; ev. '85; '85; attach. 19.
- v. Smoller, '83; partn. 12 n.
- Ellsworth v. Etna Ins. Co., 89 *N. Y.* 186; s. c., 15 *Weekly D.* 120. Further decision in action by the same parties in 21 *Id.* 469.
- v. Lockwood, '83; attach. 42; '85; assign. 5 n.; subr. 2 n.
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- v. St. Louis, Alton & Terre Haute R. R. Co., 98 *N. Y.* 553; aff'g Ellsworth v. Same, 33 *Hun*, 7; '86; corp. 14.
- Elmendorf v. Harris, '85; arbitration, 2.
- v. Lansing, '85; assign. 11; '86; bonds, 4.
- v. Lockwood, '83; dower, 6, 8; '85; dower, 11 n.; 86; dower, 5.
- v. Mayor, etc. of N. Y., '85; munc. corp. 6 n.
- Elmore v. Hyde, '83; depositions, 23; disc. & insp. 3; '84; depositions, 20; '85; depositions, 6 n.
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- v. Gardner, '84; exec. 20.
- v. Western Union Telegraph Co., '83; questions of l. & f. 1, 4, 6; wit. 65; '84; appeal, 78; ev. 130 n.; '85; money paid, 12 n.; wit. 46; '86; assign. for b. of c. 52; trials, 80 n.; wit. 40.
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- v. Carnley, '83; chat. mort. 26 n.; '86; chat. mort. 4 n.
- v. City of Rochester, '84; dam. 34 n.
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- v. Ehle, '83; pl. 191; '85; election of r. 8 n.
- v. Holton, '83; const. law, 75; mfg. co. 7; munc. corp. 146; statutes, 15, 16; '84; munc. corp. 102; '85; statutes, 12, 14 n.
- v. Kilborn, '83; ev. 139 n.
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- v. Pease, '83; pl. 3, 194; '84; pl. 169.
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- Emrich v. White, 66 *Hov. Pr.* 154. Aff'd, it seems, in 102 *N. Y.* 657.
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- Engel v. Fischer, 15 *Abb. N. C.* 72; s. c., 51 *Super. Ct. (J. & S.)* 71; and 1 *Hov. Pr. N. S.* 147. Rev'd in 102 *N. Y.* 400; s. c., as Engle v. Fischer, 9 *Civ. Pro. R.* 318; '85; munc. corp. 5 n.
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- Gibbes v. Jenkins, '84; leases, 5.  
 — v. New York Life Ins. Co.  
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- Goldstein v. People, '83; husb. & w. 29; '85; husb. & w. 9.
- Gombault v. Public Administrator. See Jackson v. Van Dusen, '83; wills, 79.
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- Goodale v. Lawrence, 88 *N. Y.* 513; s. c., 15 *Weekly D.* 242; rev'g Goodale v. Brockner, 25 *Hun.* 621.
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- Grangiac *v. Arden*, '83; assign. 7; gift, 4 n. 9.
- Grant *v. Chester*, '83; atty. & c. 37.
- *v. City of Brooklyn*, '83; dam. 34; '84; ev. 169.
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- Graser *v. Stellwagen*, '83; part. r. 19; '86; assign. for b. of c. 1 n.
- Grattan *v. Metropolitan Life Ins. Co.*, 92 *N. Y.* 274; aff'g 28 *Hun*, 430; s. c., 16 *Weekly D.* 50; '83; ins. 51 n.; wit. 22, 26, 27; '84; wit. 3, 4; '85; ben. assoc. 7; ev. 146; ins. 21, 22; wit. 8; '86; ins. 20.
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- v. Burrows, '86; appeal, 99.
- v. Kennedy, '83; corp. 14; '86; deeds, 29 n.
- Iandley v. Quick, '84; service & p. 14 n.
- Iandy v. Chatfield, '86; pl. 18 n.
- v. Draper, 89 *N. Y.* 334; s. c., 14 *Weekly D.* 473; rev'g 23 *Hun*, 256; s. c., 11 *Weekly D.* 256.
- Hanc'l v. Baare, '83; costs, 92.
- Hanford v. McNair, '86; partn. 9 n.
- Hangen v. Hachmeister, 49 *Super. Ct. (J. & S.)* 34; s. c., 16 *Weekly D.* 552. Further decision in 53 *Super. Ct. (J. & S.)* 532.
- Hankins v. Mayor, etc. of N. Y., '84; statutes, 5, 6.
- Hanna v. Curtis, '84; inj. 13; ev. 105a.
- v. Dexter, '83; costs, 58, 98.
- Hannahs v. Hannahs, '84; ex. & ad. 45.
- Hannan v. Osborn, '86; ten. in com. 3.
- Hannay v. Pell, '86; wit. 16.
- Hannon v. Agnew, 1 *City Ct. Supp.* 64, with decisions in *Com. Pl.* and *Ct. of App.*; latter also in 96 *N. Y.* 439.
- Hanover Fire Ins. Co. v. Tomlinson, '83; ev. 305; forec. 32.
- Happy v. Mosher, '85; ex. & ad. 170.
- Harbeck v. Harbeck, 4 *Month. L. Bul.* 43. Aff'd in 18 *Weekly D.* 525, and the latter aff'd in 102 *N. Y.* 714.
- v. Mayor, etc. of N. Y., '86; const. law, 1 n.
- v. Vanderbilt, '83; atty. & c. 21; contracts, 15; exec. 6; mort. 34, 56; '86; subr. 3 n.
- Harbinson v. Von Volkenburgh, '83; disc. & insp. 8 n.
- Hard v. Shipman, '84; juris. 1 n.
- Harden v. Palmer, '85; lim. of a. 28 n.
- Hardenburgh v. Crary, '85; trials, 8 n.
- Hardin v. Kretsinger, '85; contracts, 86 n.
- Harding v. Harding, '83; divorce, 3 n.; '86; divorce, 7.
- v. Tift, '84; app. of paym. 1.
- Hardmann v. Bowen, '84; assign. for b. of c. 5; '85; assign. for b. of c. 11; '86; assign. for b. of c. 3 n. 6, 7 n.
- Hardt v. Schulting, '86; ev. 48a n.; new tr. 21 n.; set-off, 6.
- Hardy v. Ames, '86; ex. & ad. 75.
- v. City of Brooklyn, '83; munc. corp. 69 n.; '84; munc. corp. 77; '86; ev. 262; munc. corp. 50.
- Harger v. McCullough, '86; mfg. co. 2.
- v. Worrall, '86; bills, n. & c. 12.
- Hargous v. Ablon, '85; sales, 15.
- Harker v. Anderson, '83; pl. 108.
- Harland v. Lilienthal, '86; services, 4.
- Harley v. Eleventh Ward Bk., '83; banking, 8; '84; ev. 96 n.; '86; acc't st. 5.
- Harlinger v. N. Y. Central, etc. R. R. Co., '83; ev. 293; '85; dam. 37 n.
- Harman v. Brotherson, '84; false impris. 1.
- Harmony v. Bingham, '83; money paid, 11 n., 12; '84; pl. 160.
- Harnett v. Garvey, '83; wit. 96.
- Harp v. Osgood, '86; bail, 3 n.
- Harpell v. Curtis, '83; negl. 60.
- Harpending v. Arnot, 16 *Weekly D.* 392. Aff'd in 19 *Id.* 418.
- v. Shoemaker, '85; ev. 58.
- Harper v. Albany Mut. Ins. Co., '83; contracts, 18; '85; ins. 39 n.; '86; ins. 56 n.
- v. Fairley, '83; lim. of a. 44, 47, 48, 49.
- v. Harper, '83; divorce, 3 n.
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- Harring v. Coles, '86; ex. & ad. 96 n.
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- v. Erie County Savings Bk., 16 *Weekly D.* 294. Aff'd in 101 *N. Y.* 257.
- v. Keteltas, 92 *N. Y.* 40; s. c., 16 *Weekly D.* 494, and *N. Y. Daily Reg.*, Apr. 13, 1883; aff'g *Id.* Oct. 6, 1882; '84; ex. & ad. adden. 48 a.
- v. People, '84; discharge, 6 n.; '85; sup. pro. 13.
- v. Snyder, '86; chattels, 3 n.
- v. Trustees of Rochester, '86; r. r. co. 33; surr. ct. 1 n.
- Hariott v. New Jersey R. R. Co., '84; ct. of com. pl. 3 n.; '84; juris. 8 n.
- Harris v. Am. Bapt. Home Miss. Soc., '85; wills, 132 n.
- v. American Bible Society, '83; wills, 29 n.; '84; wills, 21.
- v. Brown, 29 *Hun*, 477. Aff'd in 93 *N. Y.* 390.
- v. Burdett, '83; appeal, 168; city ct. of N. Y. 9; '84; appeal, 66; negl. 48 n. 50; '85; appeal, 130.
- v. Clark, '83; accumulations, 1 n. 5 n.; assign. 5, 7; gift, 13 n.; gift, addend.; '84; appeal, 126; wills, 97; '85; bills of lading, 24; '86; deeds, 23; wills, 59.
- v. Durkee, '84; aff'd. 3 n.; '85; aff'd. 2 n. 3; '86; aff'd. 2, 4.
- v. Ely, '83; surr. ct. 22 n.; '86; ex. & ad. 98; surr. ct. 10.
- v. Equitable Life Assur. Soc'y of U. S., '83; sales, 37.
- v. Fly, '83; legacies, 22, 23; '86; legacies, 12 n.
- v. Hammond, '84; counter-cl. 1 n.; '85; munc. corp. 116 n.
- v. Hanover Nat. Bk., '83; bills, n. & c. 22 n.
- v. Harris, '83; wills, 95; '84; former adj. 30; wills, 65; '85; former adj. 40 n.
- v. Hiscodck, 91 *N. Y.* 340; s. c., 16 *Weekly D.* 300; rev'g 14 *Id.* 219.
- v. Jex, '83; chat. mort. 2; mort. 52.
- v. Moody, '85; dam. 6 n.
- v. Palmer, '83; set-off, 6; '86; appeal, 50.
- v. Panama R. R. Co., '85; ev. 341.
- v. People, 59 *N. Y.* 599. Cited in *Cregier v. Mayor, etc. of N. Y.*, 11 *Daly*, 175.
- '83; const. law, 59 n. 64 n.; '84; const. law, 34 n.; '86; const. law, 28 n.
- v. Perry, 89 *N. Y.* 308; s. c., 15 *Weekly D.* 44; rev'g 23 *Hun*, 244.
- v. Schultz, '83; conversion, 4.
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- v. Super's of Niagara Co., '85; const. law, 47; '86; const. law, 27 n.
- v. Taylor, 20 *Weekly D.* 379. Appeal dismissed, it seems, but without opinion, in 97 *N. Y.* 647.
- v. Thompson, '83; munc. corp. 104; '84; corp. 25.
- v. Troup, '84; paym. 4.
- v. Tumbridge, '83; amend. 32; '85; ref. 10; '86; amend. 6 n.
- v. Waite, '86; new tr. 22 n.
- v. White, '83; cv. 21; '84; contracts, 64 n.; judgm. & decree, 15; '85; betting & g. 1; pl. 137 n.
- v. Whitney, '83; case, 6.
- Harrison v. Brooklyn Bath & C. I. R. R. Co., 10 *N. Y.* 621; s. c., 1 *Centr. Rep.*, 512; and 2 *East. Rep.* 661; aff'g mere mem. 29 *Hun*, 674. Previous decision in 15 *Weekly D.* 362.
- v. Clark, '84; false impris. 1; '85; former adj. 47; surr. ct. 34.
- v. Close, '85; principal & s. 9 n.
- v. Gibbons, '85; confess. of judgm. 1.
- v. Harrison, '83; susp. of power of a. 22; trusts, 35; '84; susp. of power of a. 7; '85; susp. of power of a. 6 n.; wills, 120.

- *v. McMahon*, '84; ex. & ad. 161 n.
- *v. N. Y. Elevated R. R. Co.*, 89 *N. Y.* 628; aff'g 24 *Hun.* 184; s. c. 11 *Weekly D.* 552; '83; disc. & insp. 9.
- *v. Peck*, '85; dower, 4.
- *v. Simons*, '85; receivers, 22 n.
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- Harsha v. Reid*, '86; covenants, 4 n.
- Hart v. Britton*, '86; covenants, 6.
- *v. City of Brooklyn*, '86; ev. 7.
- *v. Cleis*, '85; pl. 143.
- *v. Floating Dry Dock Co.*, '84; master & s. 13; '86; master & s. 38.
- *v. Hoffman*, '86; brokers, 4 n.
- *v. Hudson River Bridge Co.*, '83; husb. & w. 18; negl. 9, 58; questions of l. & f. 13, 14; '84; ev. 43 n.; landl. & t. 5 n.; negl. 38, 43, 44 n. 54; questions of l. & f. 5 n.; '85; deceit, 1; ev. 46; lien, 5; munc. corp. 56 n.; negl. 54 n.; questions of l. & f. 10; trials, 52; '86; negl. 84, 90.
- *v. Lyon*, 90 *N. Y.* 663; s. c. 15 *Weekly D.* 462; aff'g 12 *id.* 258. '85; covenants, 11 n.; '86; party-walls, 2 n.
- *v. Mayor, etc. of Albany*, '83; munc. corp. 46 n. 47 n.; '86; inj. 39.
- *v. Rensselaer & Saratoga R. R. Co.*, '83; carriers, 6 n. 22 n.; '86; carriers, 15a.
- *v. Seixas*, '83; ev. 28.
- *v. Ten Eyck*, '86; chat. mort. 2 n.
- *v. Vose*, '85; ev. 27 n.
- *v. Wandle*, '85; forec. 6.
- *v. Wheeler*, '85; mech. l. 2.
- *v. Wright*, '83; sales, 11 n.; '86; sales, 14 n.
- Hartfield v. Roper*, '83; negl. 85, 86 n.; '85; negl. 2; '86; negl. 119 n. 122, 128 n.
- Hartford Life, etc. Ins. Co.*, Matter of. See *People ex rel. Hartford Life Ins. Co. v. Fairman*.
- Hartley v. Harrison*, '83; forec. 13 n.; '84; deeds, 26 n.
- *v. James*, '83; spec. perf. 8; '85; spec. perf. 12; '86; spec. perf. 8 n.
- *v. Tatham*, '83; deeds, 31.
- Hartnett v. Wandell*, '83; surr. ct. 5; '84; tax, 29; forec. 1.
- *v. Harvey*, '83; inj. 17; '85; relig. corp. 7 n.
- Hartung v. People*, '83; judgm. & decree, 3; statutes, 15 n.; '84; appeal, 34; '85; const. law, 3 n.; new tr. 33; sentence, 5.
- Hartwell v. Bissel*, '84; cred. s. 1 n.
- *v. McMaster*, '84; surr. ct. 39; '85; surr. ct. 27; '86; surr. ct. 11 n.
- *v. Root*, '83; ev. 33; '84; ev. 18 n.
- Harty v. Central R. R. Co. of N. J.*, '86; r. r. co. 14 n.
- Harvey, Matter of*, '83; ex. & ad. 69.
- Harvey v. Cherry*, '85; ins. 47.
- Harway v. Mayor, etc. of N. Y.*, '84; countercl. 5.
- Harwood v. Keech*, '83; pl. 184; '85; ev. 20 n.; slander, 6.
- *v. Kirby*, '86; ten. in com. 6 n.
- Hasbrook v. Paddock*, '83; guaranty, 1.
- Hasbrouck v. Bunce*, '86; abate. & r. 1.
- *v. Childs*, '84; partn. 7.
- *v. Lounsbury*, '83; sales, 14.
- *v. Shuster*, '83; pl. 67.
- *v. Tappen*, '83; sales, 1.
- Haskin v. Teller*, '83; legacies, 37 n.; legatees, 1; surr. ct. 22 n.; '86; ex. & ad. 113 n.
- Haskins, Matter of*, '83; atty. & c. 10 n. 37.
- Haskins v. People*, '86; indict. 16.
- Hassan v. City of Rochester*, '85; munc. corp. 99 n. 111 n.; '86; munc. corp. 81 n.
- Hastings v. Drew*, '85; lim. of a. 33.
- *v. Lusk*, '86; libel, 6, 9.
- *v. McKinley*, '85; abate. & r. 14 n.; parties, 34.
- *v. Palmer*, '84; wills, 51.
- *v. Westchester Fire Ins. Co.*, 73 *N. Y.* 141. Cited in 99 *N. Y.* 41. '83; ins. 45.
- Haswell v. Mayor, etc. of N. Y.*, 9 *Daly*, 1. Aff'd in 81 *N. Y.* 255.
- Hatch, Matter of*, '83; munc. corp. 129 n.; '86; costs, 9.
- Hatch v. American Union Teleg. Co.*, '83; teleg. 4.
- *v. Bassett*, '85; wills, 66 n.
- *v. Benton*, '84; countercl. 1 n.
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- *v. City of Buffalo*, '86; cloud on title, 4 n.
- *v. Elkins*, '85; ev. 115.
- *v. Mann*, '86; contracts, 60.
- *v. Mayor, etc. of N. Y.*, '83; munc. corp. 126; '84; deeds, 10; '85; munc. corp. 97.
- *v. Peugnet*, '85; trials, 87.
- *v. Pryor*, '86; trials, 43.
- Hatfield v. Lasher*. Cited in 52 *Super. Ct. (J. & S.)* 89; '84; ev. 201 n.
- *v. Secor*, '83; amend. 17.
- *v. Sneden*, '83; wills, 218.
- Hathaway, Matter of*, '84; off'r, 6 n.
- *v. Brayman*, '83; exec. 24; 84; exec. 4; '85; lien, 2 n.
- *v. Howell*, '85; mfg. co. 16; '86; exec. 6.
- *v. Johnson*, '83; arrest, 16; '84; arrest, 1; '85; arrest, 3; bills of lading, 20.
- *v. Payne*, '85; deeds, 7; '86; gift, 1; lease, 23 n.
- *v. Power*, '84; deeds, 6 n.; '86; deeds, 12 n. 14.
- *v. Town of Cincinnati*, '83; parties, 37; '85; forec. 24 n.; parties, 28; '86; money paid, 17.
- *v. Town of Homer*, '83; parties, 36.
- Hathorn v. Ely*, '83; carriers, 12, 13.
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- *v. Hodges*, '84; pl. 136.
- Haths v. Hathis*, 18 *Weekly D.* 544. Cited in 33 *Hun.* 414.
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- Hauenstein v. Kull*, '85; ten. in com. 3; '86; guardian & w. 7.
- Hauptman v. Catlin*, '83; wit. 11; '86; mech. l. 6 n.
- Hauselt v. Vilmarr*, '85; assign. for b. of c. 37; fraud. conv. 7; '86; costs, 18 n.; ev. 48a, n.; surr. ct. 29.
- Hauteman v. Gray*, '84; pl. 43.
- Havemeyer v. Havemeyer*, '84; costs. 51; '85; contracts, 59; '86; costs, 35.
- Havens v. Havens*, '85; defin. 27; wills, 97.
- *v. Huntington*, '83; pl. 117.
- *v. Hussey*, '86; assign. for b. of c. 1 n.
- *v. Patterson*, '85; contracts, 99.
- *v. Sherman*, '85; ex. & ad. 171.
- *v. Willis*, 17 *Weekly D.* 372. Aff'd in 100 *N. Y.* 482; s. c. 3 *Eist. Rep.* 125; s. c. 3 *Northeast. Rep.* 313.
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- *v. Haviland*, '85; bills of lading, 17 n.
- *v. White*, '83; certiorari, 7.
- Hawk v. Thorn*, '84; joinder of a. 4.
- Hawker v. People*, '83; indict. 11; trials, 102; '85; trials, 99; '86; indict. 8; trials, 120, 121.
- Hawkins v. Hoffman*, '84; conversion, 1 n.
- *v. Pemberton*, '83; contracts, 111; sales, 20; '86; chattels, 3 n.; sales, 28.
- Hawks v. Munger*, '85; pl. 53 n.
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- *v. Bennett*, '85; contempt, 15.
- *v. Bradford*, '84; dower, 2 n.; '85; subr. 3 n.
- *v. Cramer*, '83; atty. & c. 36; lim. of a. 6; '85; trusts, 43.
- *v. Davis*, '85; costs, 14.
- *v. Foote*, '83; acc. & sat. 1 n.
- *v. James*, 16 *Wend.* 62. Restated (Suspension forbidden) in *Hobson v. Hale*, 95 *N. Y.* 611. '83; accumulations, 1 n. 3; remainders, 2; susp. of power of a. 2; '85; susp. of power of a. 3, 6 n.; '86; accumulations, n.; dower, 11 n.; ex. & ad. 58 n.; wills, 59.
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- *v. Morton*, '84; contracts, 40; '86; legacies, 10.
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- Hay v. Cohoes Co.*, '83; negl. 34; '84; dam. 34 n.; '86; nuis. 2.
- *v. Star Fire Ins. Co.*, '83; appeal, 4; ins. 21; '84; reformation of inst. 2; '85; ins. 30 n.
- Haycroft v. Lake Shore & Mich. Southern R. R. Co.*, '85; negl. 73; '86; infants, 1 n.
- Hayden v. Bucklin*, '83; defin. 106; munc. corp. 10.
- *v. Florence Sewing Machine Co.*, '84; landl. & t. 4.
- Haydock v. Coope*, '85; assign. for b. of c. 20.
- Hayes v. Ball*. Cited (Import of alleged slanderous words for jury) in 39 *Hun*, 15.
- *v. Bement*, '85; assign. for b. of c. 37.
- *v. Bush & Denslow Mfg. Co.*, 19 *Weekly D.* 436. Rev'd in 102 *N. Y.* 648. Subsequent decision in 41 *Hun*, 407.
- *v. Davidson*, 98 *N. Y.* 19; s. c., 1 *How. Pr. N. S.* 310, and 7 *Civ. Pro. R.* 46; rev'g 34 *Hun*, 243; s. c., 6 *Civ. Pro. R.* 377. Previous decision in *Id.* 330; s. c., 15 *Abb. N. C.* 85, and 33 *Hun*, 446.
- *v. Forty-second St.*, etc. *R. R. Co.*, 14 *Weekly D.* 28. Rev'd in 97 *N. Y.* 259.
- *v. Heyer*, '85; assign. for b. of c. 37; former adj. 11.
- *v. O'Reilly*, '86; costs, 7.
- *v. Phelan*, '83; civil damage act, 2; '85; abate. & r. 2 n.
- *v. Reese*, '85; former adj. 40 n.
- *v. Second Ave. R. R. Co.*, '85; costs, 1.
- *v. Symonds*, '85; poor, 3.
- *v. Thompson*, '85; trials, 8 n.
- *v. Ward*, '83; forec. 32; principal & s. 19; '84; principal & s. 9; '85; assign. for b. of c. 28 n.; '86; inj. 21 n.
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- *v. James*, '86; depositions, 17; '85; statutes, 17 n.
- Haynes, Ex parte*, '83; exec. 14.
- Haynes v. Brooks*, '86; assign. for b. of c. 1 n.
- *v. Hunt*, '84; leases, 11.
- *v. Mosher*, '83; costs, 92.
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- *v. Hibbard*, '85; advancement, 2.
- *v. Miller*, '83; ev. 110; '85; ev. 54; '86; lease, 23 n.
- *v. People*, '84; assault & b. 1 n.; '86; assault & b. 3, 3 n.
- *v. Riddle*, '86; conversion, 14 n.
- *v. Thomas*, '85; receivers, 22 n.
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- *v. Place*, 4 *Dem.* 487; s. c., as Estate of Place, 9 *Civ. Pro. R.* 435.
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- *v. Nooney*, '85; judgm. & decree, 2.
- Hazard v. Caswell*, 93 *N. Y.* 259; rev'g 46 *Super. Ct. (J. & S.)* 559. '86; inj. 34 n.
- *v. Fiske*, '85; factors, 1.
- *v. Hefford*, '86; undue infl. 1.
- *v. Wilson*, '84; stay of pro. 4.
- Hazewell v. Coursen*, '85; trials, 79.
- Hazlett v. Gill*, '83; atty. & c. 33 n.
- Heacock v. Sherman*, 14 *Wend.* 59. Followed (Admission of judgment against corporation as evidence against trustees) in *Chase v. Curtis*, 113 *U. S.* 452; s. c., 19 *Reporter*, 420; '83; munc. corp. 84.
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- Heady's Will*, '83; wills, 34, 44.
- Healey v. Dudley*, '85; atty. & c. 5 n.
- *v. McManus*, '84; leases, 10.
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- *v. Purdon*, *N. Y. Daily Reg.* Dec. 1, 1883. Aff'd in 61 *Super. Ct. (J. & S.)* 10; and the latter aff'd in 99 *N. Y.* 237.
- *v. Van Cott*, *N. Y. Daily Reg.* June 11, 1884; s. c., with affirmance, 51 *Super. Ct. (J. & S.)* 413.
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- Heard v. Case*, '83; legacies, 29a, 30; wills, 232.
- *v. City of Brooklyn*, '84; r. r. co. 20; '85; compensation, 16 n.; '86; r. r. co. 29 n.
- *v. Horton*, '85; wills, 104 n.; '86; devise, 2 n.
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- Heath, Ex parte*, '83; election of off'r 3.
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- *v. Cole*, '83; wills, 39; '84; wills, 27.
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- Heather's Estate*, 15 *Abb. N. C.* 194; s. c., as *Shields v. Sullivan*, 3 *Dem.* 296.
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- Hebbard v. Haughian*, '86; wit. 5, 7 n.
- Hebrew Ben. Orphan Asylum*, Matter of, '83; munc. corp. 151; '84; tax. 46; '85; munc. corp. 111 n.
- Hebrew Free School Assoc. v. Mayor*, etc. of *N. Y.*, '86; tax. 28.
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 — v. Woolverton, '83; lim. of a. 9 n.; '85; bills, n. & c. 18a n.; '86; lim. of a. 14.  
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- Hewitt v. Hewitt, '86; ex. & ad. 137.
- v. Mason, '83; pl. 178.
- v. Northrup, '83; partn. 41; '85; partn. 17 n.
- v. Prime, '85; parent & c. 2.
- Hewlett v. Cook, '83; ev. 34.
- v. Elmer, 17 *Weekly D.* 468. Aff'd in 4 *Centr. Rep.* 351.
- v. Wood, '83; ev. 112, 114; '84; ev. 58; '85; ev. 64; '86; judgm. 20; partition, 5 n.
- Heydecker v. Lombard, '85; contracts, 102.
- Heyer v. Burger, '86; husb. & w. 8.
- Heyward v. Mayor, etc. of N. Y., '83; em. dom. 4, 5; '86; compensation, 9 n.; r. r. co. 29 n.
- Heywood v. City of Buffalo, '86; cloud on title, 3 n.; inj. 33 n.
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- Hickey v. Monell. See Hickey v. Morrell.
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- v. Taaffe, 99 *N. Y.* 204; rev'g 32 *Hun.* 7. '86; children, 3; impris. 5.
- Hickok v. Hickok, '83; lim. of a. 20.
- Hicks v. Brennan, '84; discount. 7.
- v. Cleveland, '84; contracts, 69 n.
- v. Marshall, '85; insane per. 6.
- v. Williams, 17 *Barb.* 523. Cited (Vessels) in 34 *Hun.* 188.
- Hides v. Hides, '83; ev. 25 n.
- Hier v. Abrahams, '83; trade-m. 2, 5 n.; '84; trade-m. 1; '85; trade-m. 1, 4.
- v. Grant, '83; wit. 56.
- Higbie v. Heath, '85; appeal, 103.
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- Higenbotam v. Green, '84; bills of par. 4.
- Higgins, Matter of, '86; wills, 14 n.
- Higgins v. Callahan, 2 *Civ. Pro. R.* (Browne) 302; s. c., 15 *Weekly D.* 113; aff'g 1 *City Ct.* 354.
- v. Chrichton, 63 *How. Pr.* 354; s. c., 2 *Civ. Pro. R.* (Browne) 317; *Id.* (McCarthy) 78; 15 *Weekly D.* 248; and 11 *Daly*, 114. Aff'd in 98 *N. Y.* 266. '84; pl. 19.
- v. Delaware, L. & W. R. R. Co., '83; sales, 12; '86; contracts, 98.
- v. Freeman, '84; appearance, 3.
- v. Healy, 89 *N. Y.* 636; aff'g, it seems, 22 *Hun.* 444.
- v. Murray, '84; sales, 6, 7; '86; contracts, 88; sales, 7.
- v. Newtown & F. R. R. Co., pl. 78.
- v. People, '85; ev. 315 n. 317; '86; ev. 272.
- v. Phoenix Mut. Life Ins. Co., '83; ins. 33.
- v. Reynolds, '85; accretion, 3 n.
- v. Watervliet Turnpike Co., '83; assault & b. 1; master & s. 14; r. r. co. 5; '86; master & s. 7 n.
- v. Whitson, '83; trusts, 87.
- High v. Wilson, '86; ev. 286 n.
- Higinbotham v. Stoddard, '85; adv. poss. 1; '86; deeds, 12 n. 14.
- Hildebrand v. People, '83; larceny, 2; '85; defin. 25 n.; larceny, 4 n.
- Hildebrand v. Crawford, '83; costs, 3; wit. 28.
- Hildreth v. City of Troy, 18 *Weekly D.* 156. Rev'd in 101 *N. Y.* 234; s. c., 2 *How. Pr. N. S.* 483.
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- v. Sands, '83; fraud. conv. 6 n.
- v. Shepard, '83; bills, n. & c. 54.
- Hill, Matter of, 17 *Abb. N. C.* 273; s. c., as Quinn v. Hill, 4 *D. M.* 69.
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- v. Beebe, '86; chat. mort. 4 n.; exec. 4; payment, 1 n.
- v. Berry, '84; civil damage act. 1.
- v. Blake, '84; contracts, 7.
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- v. Heermans, '83; set-off, 7; wit. 52.
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- v. Hotchkin, '83; new tr. 3; wit. 29, 37; '84; wit. 13; '85; trials, 88; wit. 18; '86; witn. 16, 37 n.
- v. Miller, '84; covenants, 5; '86; covenants, 5 n.
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- v. Place, '83; tender, 8; '84; bills, n. & c. 15.
- v. Priestly, '85; contracts, 3; gifts, 5.
- v. Spencer, '83; mfg. co. 19.
- v. Supervisors of Livingston, '83; money paid, etc. 16.
- v. Syracuse, Binghamton & N. Y. R. R. Co., '85; bills of lading, 1; ev. 101; '86; carriers, 18.
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- Hillman v. Hillman, '86; joind. of a. 6.
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- v. Miller, '83; covenants, 5, 11; '85; deeds, 25.
- v. Peekskill Savgs. Bk., 26 *Hun.* 161. Further decisions in 30 *Id.* 546; and 101 *N. Y.* 490.
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- v. Bissell, '86; forec. 7 n.; mort. 7 n.
- v. Fonda, '85; stipulation, 2 n.; tax. 66; '86; tax. 45.
- v. Sinsheimer, '85; atty. & c. 20.
- v. Thurston, '86; attach. 41.
- v. Vanderbilt, '86; factors, 1.
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- v. Cooper, '85; tax. 49 n.; '86; tax. 75 n.
- v. Emerson, '86; husb. & w. 20 n.
- v. N. Y. Central, etc. R. R. Co., '84; wit. 59; '85; ev. 104; '86; ev. 81 n.
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- Hindley v. Hindley, '86; dower, 11 n.
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- Hine v. Woolworth, 93 N. Y. 75; aff'g Hine v. Homestead Fire Ins. Co., 29 *Hun*, 84.
- Hines v. City of Lockport, '83; munc. corp. 74 n. 78, 84; '84; munc. corp. 67; '85; munc. corp. 55 n. 63 n.; villages, 1; '86; munc. corp. 47 n.; towns, 6.
- Hinman v. Bergen, '83; costs, 58.
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- v. Judson, '86; money paid, etc. 16.
- v. Moulton, '86; contracts, 15; ev. 23.
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- Hinsdale v. White, '84; landl. & t. 3.
- Hintermister v. First Nat. Bk. of Chittenango, '83; nat. bk. 3 n.; '84; nat. bk. 1 n.; '86; subr. 3 n.
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- Hiscock v. Phelps, '86; partn. 12.
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- v. Linsly, '85; parties, 42.
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- v. Northwestern Ins. Co., '85; ins. 54 n.; '86; ins. 30 n.
- v. Peterson, '85; arrest, 3.
- v. St. John, '86; assign. for b. of c. 1 n.
- v. Skinner, '86; partition, 6.
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- Hitchins v. People, '83; disorderly per. 2.
- Hitchman v. Baxter, 5 *Civ. Pro. R.* 226. Further proceeding in 34 *Hun*, 271.
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- Hoard v. Garner, '83; debtor & cred. 5.
- Hobart v. Hobart, '83; wit. 40, 48, 49; '84; appeals, 51; '85; set-off, 9; wit. 15; '86; witn. 18, 37 n.
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- Hochstetter v. Isaacs, '83; amend. 26; '85; amend. 17; '86; amend. 6 n.
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- v. Gallup, '85; redemption, 1.
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- v. Porter, '83; sec. for costs, 12.
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- Hoe v. Sanborn, '83; appeal, 1; contracts, 111; '84; sales, 18a; '86; sales, 16.
- Hoeft v. Seaman, '83; harbor masters, 3.
- Hoes v. Halsey. See Matter of Halsey.
- v. Van Hoesen, '86; ev. 90.
- Hoff v. Pentz, '86; bills of par. 12.
- Hoffman v. Etna F. Ins. Co., '83; ins. 21; '85; ins. 50 n. 54 n.; '86; ins. 12.
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- v. Shorb, '83; principal & a. 20; '85; banking, 13; principal & a. 10; sales, 46 n.; set-off, 3, 6 n.
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- v. Utica, etc. R. R. Co., '83; bills, n. & c. 12; '85; ev. 46; '86; negl. 114.
- v. Wight, '85; assign. for b. of c. 29; principal & a. 18.
- Holcomb v. Holcomb, '83; mort. 24; wit. 28, 59; '84; forec. 2; wit. 21; '85; ev. 64; forec. 5 n.; trials, 43; wit. 19, 27, 34, 35 n.; '86; wit. 22, 29, 34, 35.
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- Holden v. Gilbert, '85; mort. 7.
- v. N. Y. & E. Bank, 72 N. Y. 286. Cit'd (Notice) in 99 N. Y. 134. '83; wills, 213; '84; corp 34; deceit, 5 n.; ev. 123.
- v. Sackett, '84; forecl. 13; '85; ex. & ad. 176 n.; '86; surr. ct. 19 n.
- Holdrige v. Gillespie, '84; leases, 5.
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- v. Smith, 40 *Hun*, 372; confirming 3 *Hov. Pr. N. S.* 106.
- Hollenbeck v. Donnell, 94 N. Y. 342; rev'g 29 *Hun*, 94. '85; receiver, 1; waste, 2 n.; '86; receivers, 9.
- Holley v. Chamberlain, '84; guardian & w. 9.
- v. Mix, '83; arrest, 34.
- v. Mayor, etc. of N. Y., 59 N. Y. 166. Said to be decided under misapprehension in 32 *Hun*, 92.
- v. Van Dolsen, '83; mech. l. 4.
- Hollis v. Drew Theological Seminary, '85; wills, 1, 132 n.; '86; wills, 10 n. 44 n.
- v. Hollis, '85; wills, 9 n.
- Hollister v. Hopkins, '86; bills, n. & c. 13.
- v. Livingston, '84; amend. 16.
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- Holmes, Ex parte, '86; corp. 33 n.
- Holmes v. Broughton, '83; pl. 198 n.; '85; pl. 137 n.
- v. Bush, '80; judgm. & decree, 4.
- v. Carley, '85; partn. 7 n.
- v. Cock, '86; ex. & ad. 109.
- v. Davis, '84; costs, 15.
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- v. Hubbard, '84; assign. 8; assign. for b. of c. 13.
- v. Mead, '83; uses, 1; wills,

- 62, 64, 227; '85; legacies, 3; wills, 37.
- v. People, '85; indict. 14.
- v. Remsen, '85; assign. 7.
- v. Seely, '83; pl. 103.
- v. Tremper, '85; fixtures, 2 n.
- Holsapple v. Rome, W. & O. R. R. Co., '83; carriers, 26.
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- v. Ross, '83; bills, n. & c. 56.
- Holtsinger v. Nat. Corn Exch. B'k, '83; atty. & c. 29.
- Holyoke v. Adams, '83; pl. 65.
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- Honegger v. Wettstein, 13 *Abb. N. C.* 393; s. c., 94 *N. Y.* 252; rev'g 47 *Super. Ct. (J. & S.)* 125. '84; pl. 108 n.
- Honegsberger v. Second Ave. R. Co., '83; negl. 85.
- Honsee v. Hammond, '85; munc. corp. 72.
- Hood, Matter of, 27 *Hun*, 579; s. c., 15 *Weekly D.* 333. Rev'd in *Id.* 507; s. c., 90 *N. Y.* 512. Subsequent proceedings in 30 *Hun*, 472; and 33 *Id.* 338; which latter was rev'd in 98 *N. Y.* 363; s. c., 7 *Civ. Pro. R.* 257. Other proceedings as Hood v. Hood, 2 *Dem.* 583; 1 *Id.* 392; and 12 *Daly*, 113. '85; former adj. 10; '86; inj. 23.
- Hood v. Hallenbeck, '84; ev. 77.
- v. Hood. See Matter of Hood. '83; ex. & ad. 29, 57, 105, 195; wills, 178 n.; '85; bonds, 11; ex. & ad. 36, 61; trusts, 12; '86; ex. & ad. 17 n. 109.
- Hoodless v. Brundage, '85; justices' ct. 2.
- Hooghkirk v. Delaware & Hudson Canal Co. See Houghkirk v. The Same.
- Hoogland v. Wight, '86; ref. 18.
- Hook v. Pratt, '83; wills, 116; '84; contracts, 10 n.
- Hooker v. Cummings, '83; real prop. 5 n.
- v. Eagle Bank of Rochester, '85; atty. & c. 5 n.
- v. Rogers, '84; depositions, 1.
- v. Utica & Minden Turnpike Co., '86; compensation, 8 n.
- v. Gieve, 9 *Daly*, 104; aff'g 9 *Abb. N. C.* 8; s. c., 11 *Weekly D.* 111. '83; app. of payments, 3; trusts, 9; '84; trusts, 9; '85; assign. for b. of c. 13 n.; trusts, 43 n.; '86; assign. for b. of c. 1 n. 12 n.
- Hooper v. Hudson River F. Ins. Co., '83; ins. 20; '84; ins. 7, 8.
- v. Tuckerman, '86; assign. 7.
- Hoover v. Greenbaum, '83; money paid, etc. 1.
- Hoose v. Sherill, '86; hab. corp. 1 n.
- Hope v. Acker, '83; costs, 133; inj. 61 n.
- v. Balen, '83; ev. 139 n. 146.
- v. People, '85; appeal, 131; '86; indict. 9.
- Hope Mut. Ins. Co. v. Perkins, '83; lim. of a. 37.
- Hopf v. Myers, '83; cause of action, 4; former adj. 4 n.
- Hopfensack v. Hopfensack, 9 *Daly*, 457; s. c., with *Sp. T.* decisions, 31 *Hov. Pr.* 498. '85; const. law, 31; '86; ref. 25.
- Hopkins v. Banks, '83; assign. 23.
- v. Coburn, '84; service & p. 2 n.
- v. Hopkins, '83; wills, 196 n.; '84; dam. 36 n.; wills, 117 n.
- v. Van Valkenburgh, '85; ex. & ad. 177 n.; '86; ex. & ad. 144, 145.
- Hopper v. Hopper, '85; divorce, 10; '86; pl. 54 n.
- Hopping v. Quinn, '83; bills, n. & c. 44.
- Hoppock v. Donaldson, '84; conf. of judgment, 1.
- v. Moses, '83; ev. 210.
- v. Tucker, '83; surr. ct. 19; wills, 217; '84; wills, 90; '85; legacies, 20 n.; wills, 80; '86; device, 2 n.; wills, 67 n. 76 n.
- Hoppough v. Struble, '86; ejectment, 4.
- Horgan v. Krumwiede, '85; lease, 7 n.
- Horn's Case, '84; munc. corp. 92.
- Horn v. Keteltas, '85; ev. 279; '86; deeds, 1; ins. 55.
- v. Pullman, '83; ev. 77, 188 n.; wills, 9, 22, 119, 122; '84; ev. 248 n.; undue inf. 1; wills, 8; '85; wills, 1, 3 n.
- v. Town of New Lots, '83; money paid, 14 n.; munc. corp. 177; '84; money paid, 14 n.; '85; forec. 24 n.; munc. corp. 43; '86; lim. of a. 20 n.; money paid, 11 n.; munc. corp. 92; taxes, 1.
- Hornbeck v. American Bible Society, '83; wills, 144.
- v. Westbrook, '86; bonds, 5 n.
- Horsfall, Matter of, '85; r. r. co. 58.
- Horton v. Borthwick, '85; exec. 17 n.
- v. Carrington. See Horton v. Parsons.
- v. Davis, '83; estoppel, 10.
- v. Fancher, '84; attach. 11; '86; fraud. conv. 1 n.
- v. Garrison, '85; common schools, 4.
- v. Horton, '84; r. r. co. 29 n.
- v. McCoy, '83; ex. & ad. 172.
- v. Morgan, '83; corp. 8.
- v. Parsons, 37 *Hun*, 42; aff'g Horton v. Carrington, 1 *Hov. Pr. N. S.* 129. Subsequent proceedings in 40 *Hun*, 224.
- v. Town of Thompson, '83; inj. 28; munc. corp. 174, 176; reformation of inst. 4 n.
- Hosack v. Rogers, '83; contempt, 5; ex. & ad. 197; '84; contempt, 12; ex. & ad. 125 n.
- Hosford, Matter of, '85; guardian & w. 5.
- Hosford v. Nichols, '83; usury, 2 n.
- v. Merwin, '83; cred. s. 12.
- Hosley v. Black, '84; pl. 7 n. '85; pl. 78.
- Hotaling v. Hotaling, '84; receivers, 7 n.; '86; ejectment, 1 n.
- v. Marsh, '83; costs, 120.
- Hotchkiss v. Elting, '85; susp. of power of a. 16.
- v. Germania Ins. Co. '83; wit. 72, 73; '86; wit. 47 n.
- v. Mosher, '86; ev. 86 n.
- Hough v. Brown, '96; ins. 3.
- Houghkirk v. Delaware & Hudson Canal Co., 20 *Weekly D.* 558. Aff'd, it seems, but without opinion, in 98 *N. Y.* 633.
- v. —, 92 *N. Y.* 219; rev'g 28 *Hun*, 407; s. c., 15 *Weekly D.* 522; which aff'd Hooghkirk v. Delaware & Hudson Canal Co., 11 *Abb. N. C.* 72; s. c., 63 *Hov. Pr.* 328; and 4 *Month. L. Bul.* 65. '84;

- appeal, 105 n.; '85; dam. 37 n.; death, 5 n.; ev. 293; r. r. co. 8 n.; '86; dam. 30 n.; negl. 65 n.; new tr. 18.
- Houghtaling v. Kelderhouse, '84; ev. 201 n.
- Houghton v. Adams, '83; bills, n. & c. 22 n.
- v. Bachman, '84; replevin, 2.
- v. Kenyon, '83; justices' ct. 9, 23; '84; justices' ct. 17.
- v. McAuliffe, '85; attach. 45; bills of lading, 20.
- House v. Agate, '83; lim. of a. 1; '85; ex. & ad. 125.
- v. Burr, '85; lease, 11 n.; '86; contracts, 79 n.
- v. Eisenlord, 30 *Hun*, 90. Aff'd in 102 *N. Y.* 713.
- v. Raymond, '83; powers, 10; '85; costs, 66.
- Houston Street, etc. R. R. Co. v. Forty-second Street, etc. R. R. Co., '86; inj. 14 n.
- Hover v. Barkhoof, '83; highw. 16; '84; off'r, 15; '85; ev. 55; off'r, 17, 21; pl. 146 n.; '86; towns, 3, 6.
- Hovey v. American Mut. Ins. Co. Followed (Variance) in 49 *Super. Ct. (J. & S.)* 522.
- v. Rubber Tip Pencil Co., '83; atty. & c. 62; inj. 64; '84; juris. 13; '85; undert. 13 n.; '86; inj. 49 n.; juris. 5.
- v. Starr, '83; husb. & w. 41.
- v. Ten Broeck, '83; mfg. co. 19, 20.
- Howard v. Albany Ins. Co., '84; ins. 8.
- v. Daly, '83; contracts, 99 n.; '84; contracts, 101; '85; contracts, 24 n.; ev. 238; '86; ev. 210 n.; master & s. 3, 4 n.
- v. Doolittle, '83; landl. & t. 4 n.; lease, 3.
- v. Dougherty, '83; ex. & ad. 31.
- v. France, '83; lim. of a. 9 n.; '85; lim. of a. 34.
- v. Hayes, 90 *N. Y.* 643; aff'g, it seems, 47 *Super. Ct. (J. & S.)* 89.
- v. Johnston, '86; amend. 17 n.
- v. McDonough, '86; wit. 52.
- v. Moot, '85; const. law, 19.
- v. Orient M. Ins. Co., '85; ins. 40.
- v. Sexton, '83; arbitration, 2, 2 n.; '85; slander, 3 n.; trial, 8 n.; waiver, 1.
- v. Thompson, '85; ev. 20 n.; slander, 3 n.
- v. Tiffany, '85; crim. 1, 3.
- Howard Ins. Co. v. Halsey, '83; notice, 2 n.; rec. deeds, 82.
- Howard Nat. Bank v. King, '85; conflict of laws, 3 n.
- Howe, Matter of, '86; banking, 14.
- Howe v. Howe, '85; contempt, 5.
- v. Howe Machine Co., '86; trade-m. 3 n.
- v. Searing, '83; good will, 1 n.; partn. 34; '85; good will, n.
- v. Welch, 2 *How. Pr. N. S.* 507. Rev'd in 17 *Abb. N. U.* 397; s. c., 3 *How. Pr. N. S.* 465; and that aff'd by *N. Y. Com. Pleas, Gen. Term*, Dec. 6, 1886. See 17 *Abb. N. U.* 513 n.
- v. Willson, '86; pl. 15, 165.
- Howe Machine Co. v. Avery, '85; ev. 183.
- v. Farrington, '84; principal & a. 11.
- v. Pettibone, '84; service & p. 12; '86; ev. 37 n.; service & p. 7.
- Howell, Matter of, 61 *How. Pr.* 179. We are informed that this was reversed on another point by the *N. Y. Com. Pleas*.
- Howell v. Adams, '83; banking, 12; '84; lim. of a. 24; '86; lim. of a. 13.
- v. Baker, '86; judicial sale, 9 n.
- v. Biddecom, '84; pl. 64 n.
- v. Chicago & N. W. R. R. Co., '83; corp. 10 n.; '86; corp. 32 n.; juris. 8.
- v. City of Buffalo, '84; const. law. 43 n.; '86; inj. 33 n.
- v. Gould, '83; nons. 1 n.
- v. Knickerbocker Ins. Co., '86; ins. 63 n.
- v. Leavitt, 90 *N. Y.* 238; s. c., 2 *Civ. Pro. R. (Browne)* 447; 15 *Weekly D.* 377. Further decision in 95 *N. Y.* 617; '86; ejectment, 3.
- v. Mills, '83; contracts, 63; partition, 5; '84; city ct. of *N. Y.* 5; '85; infants, 7; partition, 1.
- v. People, '86; questions of l. & f. 1.
- v. Ransom, '85; duress, 1.
- v. Ripley, '83; forec. 18 n.; sup. pro. 23; '84; receivers, 7 n.; '85; receivers, 1, 5 n.
- v. Van Siclen, '83; costs, 38, 38 n. 40, 131; '85; wit. 33.
- Hoves v. Davis, '83; ex. & ad. 199; '85; ex. & ad. 147 n.
- Howland v. Cuykendall, '86; lim. of a. 13 n.
- v. Edmonds, '83; lim. of a. 24; '85; bills, n. & c. 18a n.; '86; contracts, 38; lim. of a. 13 n.; pl. 161 n.
- v. Eldredge, '84; mand. 3 n.; '85; munc. corp. 117 n.; '86; supervisors, 2 n.
- v. Heckscher, '86; dower, 11 n.
- v. Howland, '83; husb. & w. 40; '85; appeal, 103.
- v. Taylor, '85; wills, 48.
- v. Willetts, '83; chat. mort. 7 n.; '84; attach. 39.
- v. Woodruff, '83; case, 2.
- Howlett v. N. Y., West Shore, etc. Ry. Co., '84; r. r. co. 35.
- Hoyle v. Plattsburgh, etc. R. R. Co., '83; contracts, 63; '84; corp. 51; r. r. co. 40; trusts, 26 n.; '86; contracts, 57 n.; corp. 22.
- Hoysradt v. Kingman, '84; wills, 29; '85; wills, 14 n. 15 n. 22; '86; wills, 18 n.
- Hoyt, Estate of. See Hoyt v. Jackson. '86; wills, 31.
- Hoyt v. Am. Exch. Bank, '83; disc. & insp. 8 n.
- v. Bonnett, '85; ex. & ad. 82; '86; ex. & ad. 122.
- v. Carter, '83; inj. 61 n.
- v. Commissioners of Taxes, '83; tax. 10; '86; taxes, 4 n.
- v. Godfrey, 88 *N. Y.* 669; s. c., 15 *Weekly D.* 45. Subsequent decision in 16 *Id.* 91; s. c., 11 *Daly*, 278; and 3 *Civ. Pro. R.* 118. '86; arrest, 14; atty. & c. 27; set-off, 7 n.
- v. Hartford Fire Ins. Co., '85; partn. 17 n.
- v. Hilton, '83; ex. & ad. 144; surr. ct. 18.
- v. Hoyt, '83; wills, 146 n. 147; '85; arrest, 3; set-off, 9; '85; legacies, 24; '86; legacies, 12 n. 13.
- v. Hudson, '83; exec. 46.
- v. Jackson, 1 *Dem.* 553. Further proceedings in 2 *Dem.* 443; s. c., as Matter of Hoyt, 67 *Law. Pr.* 57; and 3 *Dem.* 388; s. c., as Estate of Hoyt, 7 *Civ. Pro. R.* 374. '85; wills, 48.
- v. Long Island R. R. Co., '86; exceptions, 3.
- v. Martense, '86; debtor & cred. 5; ex. & ad. 84.
- v. Shelden, '86; statutes, 2 n.
- v. Story, '83; bills, n. & c. 41.
- v. Thompson, '83; corp. 31; munc. corp. 162; '84; chat. mort. 9; corp. 46 n.; discharge, 5; ev. 234 n.; '85; assign. 7; corp. 29; '86; corp. 34 n.; statutes, 2 n.
- Hoxie v. Greene, '85; trial, 15.
- v. Hoxie, '84; wills, 112.
- Hubbard v. Briggs, 31 *N. Y.* 518. Cited in 36 *Hun*, 465. '83; mort. 26.
- v. Gurney, '83; bills, n. & c. 6; mort. 46; pl. 90; '84; ev. 77 n.; ex. & ad. 60; '85; principal & s. 1; rec. deeds, 6; '86; payment, 4.
- v. National Protection Ins. Co., '83; place of tr. 6; '86; district ct. 3.
- Hubbell v. Blakeslee, '83; merger, 2 n.; mort. 44.
- v. Carpenter, '86; mort. 17; release, 3 n.
- v. Dana, '86; receivers, 5 n.



- *v. Great Western Ins. Co.*, '86; freight, 1; ins. 46 n.
- *v. Livingston*, '86; pl. 3.
- *v. Medbury*, '84; lim. of a. 31; '85; parties, 19; '86; parties, 4.
- *v. Meigs*, '84; joind. of a. 4; '85; joinder of a. 7; '86; fraud. 8.
- *v. Moulson*, '83; receivers, 2.
- *v. Schreyer*, '84; mech. 1. 4; '86; new trials, 7.
- *v. Sibley*, '86; adv. poss. 6.
- *v. Van Schoening*, '83; lease, 38 n.; v. & p. 15, 15 n.; '85; mort. 12; spec. perf. 10; v. & p. 6; '86; contracts, 98 n.
- Huber *v. Ely*, '83; contracts, 79.
- *v. People*, 49 *N. Y.* 132. Cited in *Creiger v. Mayor*, etc. of *N. Y.*, 11 *Daly*, 174. '83; tax. 8.
- Hudler *v. Golden*, '83; lien, 8; '86; health, 1 n.
- Hudson *v. Caryl*, '84; trials, 6.
- *v. Guttentberg*, '83; costs, 25.
- *v. Hudson*, '84; husb. & w. 12 n.
- *v. Plets*, '84; sup. pro. 23.
- *v. Swan*, '83; pl. 2.
- Hudson Iron Co. *v. Alger*, '86; com. schools, 1; costs, 31 n.
- Huebner *v. Rosevelt*, '84; new tr. 86; '85; lim. of a. 30 n.
- Huestis, Matter of, '86; wit. 17.
- Huff *v. Wagner*, '83; bills, n. & c. 41 n.; '85; subr. 8 n.
- Huffstater *v. People*, '83; indict. 24.
- Huggans *v. Fryer*, '85; ev. 221 n.
- Huggins *v. King*, '86; judgm. 15 n.
- Hughes, Matter of. See *Carroll v. Hughes*. '85; money paid, 13; munc. corp. 103 n. 105 n.
- *v. Hughes*, 11 *Abb. N. C.* 37; s. c., 63 *How. Pr.* 408; 2 *Civ. Pro. R. (Broune)* 139, and *Id. (McCarty)* 100. Aff'd in 30 *Hun*, 349. '86; partition, 3.
- *v. Mulvey*, '86; justices' ct. 4 n.
- *v. New York & New Haven R.R. Co.*, '83; master & s. 12.
- *v. Sun Mutual Ins. Co.*, 12 *Daly*, 45. Aff'd in 100 *N. Y.* 58; s. c., 1 *Centr. Rep.* 319; and 2 *East. Rep.* 462.
- *v. Vermont Copper Mining Co.*, '84; corp. 12.
- *v. Wheeler*, '84; debtor & cred. 3 n.; '85; ev. 201.
- Huguenot Nat. B'k *v. Studwell*, '83; mfg. co. 29.
- Hulbert, Matter of, 10 *Abb. N. C.* 284; rev'g 9 *Id.* 132. '86; assign. for b. of c. 28; receivers, 12 n.
- Hulbert *v. Hope Mut. Ins. Co.*, '83; judgm. & decree, 7.
- *v. N. Y. Central R. R. Co.*, '86; negl. 71 n.
- *v. Nichol*, '84; lim. of a. 28.
- Hulburt, Matter of. See *Matter of Hurlburt*.
- Hulett *v. Whipple*, '83; judgm. & decree, 24.
- Hull *v. Burns*, 17 *Abb. N. C.* 317; rev'g *N. Y. Daily Reg.*, May 16, 1885.
- *v. Carnley*, '83; exec. 21, 24, 26; '86; chat. mort. 1; ins. 46 n.
- *v. Halsted*, '86; costs, 79 n.
- *v. Hull*. Cited (*Accumulations*), in 95 *N. Y.* 109, 110. '83; susp. of power of a. 18; '85; ex. & ad. 113; '86; aliens, 1.
- *v. Ruggles*, '83; indict. 15 n.; lotteries, 2; '84; sales, 25; '86; lotteries, 1 n. 2.
- *v. Supervisors of Oneida*, '86; supervisors, 2 n.
- Hulse, Matter of, 35 *Hun*, 331; aff'g *Hulse v. Reeves*, 3 *Dem.* 486.
- Hulse *v. Reeves*. See *Matter of Hulse*.
- Hulsen *v. Walter*, '83; chat. mort. 7, 7 n.
- Humbert *v. Trinity Church*, '84; lim. of a. adden. 10a; '85; lim. of a. 11, 12; '86; dower, 11 n.
- Hume *v. Mayor, &c. of N. Y.*, '83; munc. corp. 76 n. 81; '85; munc. corp. 68, 69 n.; '86; ev. 7, 249.
- Humerton *v. Hay*, '86; justices' courts, 7 n.
- Humiston *v. Ballard*, '83; costs, 22.
- Humphrey *v. Persons*, '85; attach. 5; '86; attach. 3.
- Humphreys *v. Chamberlain*, '83; amend. 7; '84; bail, 4 n.
- Hun *v. Cary*, '84; ev. 130 n.; '86; corp. 34 n.
- *v. Salter*, '85; costs, 31.
- *v. Van Dyck*, '84; pl. 64 n.
- Hunn *v. Bowne*, '85; partn. 17 n.
- *v. Norton*, '86; costs, 15 n.
- Hunnier *v. Rogers*. See *Kinnier v. Rogers*.
- Hunt's Estate, '83; atty. & c. 33.
- Hunt *v. Amidon*, '83; forec. 32; '85; forec. 7 n.; '86; covenants, 2 n.
- *v. Bennett*, '83; dam. 31; pl. 175.
- *v. Bloomer*, '83; ev. 139 n.; '85; case, 6.
- *v. Chapman*, '84; costs, 36; '86; costs, 53.
- *v. City of Utica*, '83; munc. corp. 129 n.; '86; munc. corp. 63.
- *v. Fish*, '84; former adj. 6.
- *v. Hunt*, '83; divorce, 29 n.; pl. 5 tr. 1; towns, 3; '85; judgm. & decree, 1 n. 7 n.; '86; divorce, 24 n.; em. dom. 9 n.; judgm. 13.
- *v. Johnson*, '85; deeds, 29 n.; husb. & w. 7.
- *v. Middlebrook*, '83; costs, 10; '85; surr. ct. 30 n.
- *v. Mootrie*, '84; wills, 26 n.
- *v. Purdy*, '83; guaranty, 15; principal & s. 23; '85; principal & s. 11.
- *v. Roberts*, '84; principal & s. 5.
- Hunter, Ex parte, '83; lease, 38 n.; '86; contracts, 7 n.; ex. & ad. 17 n.
- Hunter *v. Burtis*, '83; justices' ct. 3.
- *v. Herrick*, '83; wit. 34.
- *v. Hudson Iron & M. Co.*, '83; pl. 100, 131.
- *v. Hunter*, '85; costs, 56; deeds, 6 n.; '86; ev. 238 n.
- *v. Powell*, '84; joinder of a. 4.
- *v. Starin*, '85; adv. poss. 2 n.
- *v. Trustees of Sandy Hill*, 6 *Hill*, 407. Followed (*Proof of dedication of land to public*) in *Davidson v. Reed*, *Super. Ct. Ill.*, 1884, 19 *Reporter*, 335.
- *v. Wetsel*, '85; sales, 9; '86; sales, 11.
- Huntingdon *v. Claffin*, '83; county ct. 2; master & s. 3.
- Huntington *v. Asher*, 96 *N. Y.* 604; rev'g 26 *Hun*, 496.
- *v. Conkey*, '83; insane per. 23; trials, 24.
- *v. Forkson*, '83; eject. 9; '84; discount. 7.
- Huntley *v. Baker*, '85; juris. 2 n.
- Hurd *v. Cook*, '86; sales, 31.
- *v. Davis*, '84; motion & o. 1.
- *v. Farmers' Loan & Trust Co.*, 63 *How. Pr.* 314; s. c., 4 *Month. L. Bul.* 50. Other proceeding in 16 *Weekly D.* 480. '86; costs, 44 n.
- *v. Green*, '83; sav'gs bks. 5.
- *v. Hannibal & St. Joseph R.R. Co.*, 33 *Hun*, 109; s. c., 67 *How. Pr.* 516; and 6 *Civ. Pro. R.* 386. Other proceeding in 18 *Weekly D.* 239.
- *v. Kelly*, '83; sav'gs bks. 5.
- *v. Peaks*, '84; infants, 8.
- *v. Tallman*, '83; mfg. co. 5 n. 32.
- *v. Warren*, '83; ex. & ad. 226; surr. ct. 43.
- *v. West*, '85; exec. 12.
- Hurlbert *v. Dean*, '85; assign. for b. of c. 36.
- Hurlburt, Matter of, 89 *N. Y.* 259; s. c., as *Matter of Hulbert*, 10 *Abb. N. C.* 452. '83; assign. for b. of c. 43.

- Hurlburt v. Banks, '85; const. law, 49 n.
- v. Durant, '83; trusts, 71, 74, 75, 77, 78; '84; ex. & ad. 92, 120, 125 n.; surr. ct. 24; trusts, 33 n. 35, 47; '85; ex. & ad. 36 n. 84, 111, 116; '86; ex. & ad. 12, 108; trusts, 37 n. 41.
- Hurley v. Van Wagner, '83; election of off's, 12; '86; contracts, 68.
- Hurst, Matter of, '84; corp. 25.
- Hurst v. Litchfield, '84; pl. 7 n.; '85; pl. 78; '86; contracts, 26 n.
- Hurtin v. Proal, '83; surr. ct. 27; '84; surr. ct. 23.
- Hussner v. Brooklyn City R.R. Co., 30 *Hun.*, 409. Aff'd in 96 *N. Y.* 18. '86; deeds, 14.
- Husson v. Oppenheimer, 66 *How. Pr.* 306. Further decision in 23 *Weekly D.* 237.
- Hussy v. People, '83; assault & b. 3.
- Husted v. Craig, '85; sales, 22 n.
- v. Ingraham, '86; husb. & w. 12 n.
- v. Mathes, '83; mech. 1. 3; '84; ev. 190; '86; mech. 1. 6 n.
- Hutcheson v. Peck, '86; husb. & w. 28.
- Hutchings v. Miner, '83; corp. 44; pl. 38.
- Hutchins v. Hebbard, '83; ev. 127 n. 139 n.
- v. Hutchins, '83; conspiracy, 1; parties, 57; '86; ev. 88, 136.
- v. Smith, '84; trials, 6; '85; contracts, 74 n.; pl. 28 n.
- Hutchinson v. Brand, '85; exec. 23 n.
- Hutchinson v. Chamberlain, '83; ev. 10.
- v. Lawrence, 29 *Hun.* 450; s. c., 3 (*v. Pro. R.* 98; aff'g 5 *Month. L. Bul.* 26. Subsequent proceeding in 67 *How. Pr.* 38. '84; clubs, 7 n.; '85; assoc. 7.
- v. Reed, '83; principal & a. 19; '86; parties, 40 n.
- v. Smith, '86; assign. for b. of c. 1 n. 41.
- Hutson v. Mayor, etc. of N. Y., '83; statutes, 19 n.; '85; munc. corp. 55 n.
- v. Morrisania Steamboat Co., '84; former adj. 6.
- Huttemeir v. Albro, '83; deeds, 24 n.; '84; easements, 6 n.; '85; deeds, 23, 24; easement, 6 n.
- Hutton v. Benkard, 92 *N. Y.* 295; aff'g 16 *Weekly D.* 75. '84; accumulations, adden. 2.
- Huwer v. Dannenhoffer, '83; partn. 34; trade-m. 14.
- Hyatt v. Allen, '83; ex. & ad. 232.
- v. Ingalls, '84; election of r. 2.
- v. Village of Rondout, '84; munc. corp. 67; '86; munc. corp. 46.
- v. Wait, '83; ben. assoc. 5.
- Hyde v. Goodnow, '85; conflict of laws, 3; ins. 8 n.
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- v. Frew, '86; election of r. 5 n.
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- v. Hart, '86; bills, n. & c. 17 n.; ins. 30 n.
- v. Hartshorne, '84; acct. st. 1 n.
- v. Harvey, '83; guaranty, 12; '84; joint debtors, 3 n.
- v. Hathorn, '83; ev. 139 n.
- v. Hicks, '83; appeal, new tr. addend.; '84; wit. 9 n.; '86; new tr. 28 n.
- v. Hudson R. R. Co., '83; ev. 343 n.; '85; const. law, 37 n.; defin. 14; negl. 54 n.; trials, 66; '86; assign. for b. of c. 7 n.; com. schools, 1; ev. 264 n.; r. r. do. 62.
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- v. Jennins, '83; dam. 18 n.
- v. Johnson, '84; alimony, 10; '85; divorce, 7 n.; '86; pl. 28 n.
- v. Lawrence, '84; surr. ct. 24; trusts, 34; '85; ex. & ad. 36, 156, 158; '86; ex. & ad. 8, 111; trusts, 30 n. 37 n.
- v. Learn, '86; tax. 49.
- v. McIntosh, '83; ev. 139 n.
- v. Mallory, '83; bills of par. 1.
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- v. Miln, '86; contracts, 2 n.
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- v. New York Central, etc. R.R. Co., '84; carriers, 9.
- v. Oppenheim, '83; lease, 3; '85; ev. 74; lease, 7 n.
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- v. Spies, '83; gift, 9; '85; wit. 35 n.
- v. Underhill, '83; corp. 10 n.; mfg. co. 5; '84; mfg. co. 11 n.
- v. Valentine, '83; wills, 196 n.; '84; wills, 117 n.
- v. Weed, '83; paym. 4; '86; paym. 2 n.
- v. White, '83; chat. mort. 1.
- v. Whitman, '83; arrest, 14.
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- Johnston v. Brannan, '83; paym. 6.
- v. Catlin, '83; justices' ct. 19.
- v. Columbian Ins. Co., '86; paym. into ct. 1 n.
- v. Fellerman, '86; amend. 23 n.
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- v. Baker, '83; amend. 13; '84; pl. 76.
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- v. Brooklyn Life Ins. Co., '83; ev. 73; '86; trials, 38 n.
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  - v. Hausmann, '84; assign. for b. of c. 18 n.
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  - v. Mayert, '85; subr. 2 n.
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  - v. Sheldon, '85; animals, 10; statutes, 9.
  - v. Smith, '86; deeds, 8.
  - v. Sparks, 1 *N. Y. State Rep.* 476. Another decision in 2 *N. Y. State Rep.* 139.
  - v. Terre Haute, etc. R. R. Co., '83; corp. 10 n.
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  - v. U. S. Slate Co., '83; affid. 1; ref. 33; '85; amend. 6.
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- Joy v. Hopkins, '85; ev. 58.
- v. Schloss, 12 *Daly*, 533; s. c., *N. Y. Daily Reg.*, April 22, 1885; rev'g 15 *Abb. N. C.* 373.
- Joyce v. Adams, '86; sales, 32.
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- J. Russell Mfg. Co. v. N. H. Steamboat Co., '84; ev. 41 n.
- Judd v. O'Brien, '83; trials, 19.
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- v. Gibbons, '83; trust, 17; '85; ex. & ad. 1.
- v. Gray. Cited (Action by third party) in Todd v. Weber, 95 *N. Y.* 193. '83; atty. & c. 2 n.; '84; atty. & c. 1 n.; parties, 8 n.; '86; promise, 7 n.
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- Kayser v. Sichel, '83; debtor & cred. 1.
- Kearney v. McKeon, '84; ex. & ad. 66, 114.
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- Keating v. N. Y. Central, etc. R. R. Co., '85; negl. 47.
- v. Price, '83; sales, 1; '84; debtor & cred. 3 n.
- Keator v. Smith, '85; banking, 13.
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- Kedian v. Hoyt, 33 *Hun*, 145; s. c., with opinion in full, in *N. Y. Daily Reg.*, Oct. 4, 1884.
- Kee v. McSweeney, '85; bills of par. 12.
- Keefe v. People, '83; indict. 28.
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- Keeler v. Belts, '86; attach. 36 n.
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- v. Tupper, '83; sales, 23; '86; sales, 32.
- Keiny v. Ingraham, '85; costs, 8 n.
- Keirsted v. Avery, '85; trusts, 4 n.
- Kelaber v. McCahill, '84; guardian & w. 11; '85; guardian & w. 9 n.
- Keller v. Strasburger, 90 *N. Y.* 379; s. c., 15 *Weekly D.* 437; aff'g 23 *Hun*, 625; s. c., 11 *Weekly D.* 349. '85; trial, 58.
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- Kellett v. Rathbun, '83; appeal, new trial, addend.; '84; ex. & ad. 118; receivers, 27; '85; ex. & ad. 146; surr. ct. 32; '86; former adj. 22.
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- Kenada v. Gardner, '85; landl. & t. 3 n.; adv. poss. 7.
- Kendall, Matter of, '83; off'r, 9 n.; '84; off'r, 6 n.; '86; ex. & ad. 94 n.
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- *v. Woodruff*, 87 *N. Y.* 1; s. c., 13 *Weekly D.* 486; aff'g Kendall *v. Niebuhr*, 46 *Super. Ct. (J. & S.)* 544; which aff'd 45 *Id.* 542; s. c., 58 *How. Pr.* 156, on opinion below.
- Kendrick's Estate, '86; ex. & ad. 86.
- Kennedy *v. Kennedy*, '83; pl. 151; '84; divorce, 3, 6; '86; divorce, 3 n.; 17, 20.
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- *v. Mayor, etc. of N. Y.*, '83; negl. 2 n. 35; '85; munc. corp. 60 n. 63 n.; negl. 11 n.
- *v. N. Y. Life Ins. & Trust Co.*, 32 *Hun.* 35. Aff'd in part, and rev'd in part, in 101 *N. Y.* 487. '85; service & p. 6; '86; judgm. 30; service & p. 5.
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- *v. Town of Palmer*, '83; wills, 64.
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- *v. Friedman*, 17 *Weekly D.* 484. Aff'd, it seems, but without opinion, in 101 *N. Y.* 616.
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- Kiefer *v. Webster*, '83; attach. 33; '84; attach. 20, 21.
- Kiernan *v. Manhattan Quotation Teleg. Co.*, '86; inj. 37.
- Kierstedt *v. Orange & Alexandria R.R. Co.*, '83; mort 37; '84; parties, 35; principal & a. 11 n.; '86; dam. 28.
- Kiff *v. Youmans*, 86 *N. Y.* 321; s. c., 40 *Am. R.* 543, and 13 *Weekly D.* 273; rev'g 20 *Hun.* 123; s. c., 9 *Weekly D.* 461. '84; dam. 15 n.
- Kilbourne *v. St. John*, '85; equity, 2.
- Kilburn *v. Lowe*, '86; costs, 14 n.
- *v. Woodworth*, '85; judgm. & decree, 7 n.
- Kilfoy *v. Powers*, 6 *Dem.* 198; s. c., as Matter of Powers, 6 *Civ. Pro. R.* 326.
- Killmer *v. N. Y. Central, etc. R. R. Co.*, 100 *N. Y.* 395; s. c., 1 *Centr. Rep.* 525; aff'g 30 *Hun.* 80.
- Killmore *v. Culver*, '85; pl. 105 n.
- Kilmer *v. Hathorn*, '83; appeal, 115; '86; notice, 5, 6 n.
- *v. O'Brien*, '83; usury, 27; '86; ev. 14 a.
- *v. Smith*, '83; mort. 40; negl. 56 n.; reformation of inst. 2.
- Kilpatrick *v. Johnson*. Cited (*Accumulations*) in 95 *N. Y.* 110. '83; susp. of power of a. 18; '85; legacies, 1; '86; accumulations, n.
- Kimball *v. Brown*, lim. of a. 30 n.
- *v. Huntington*, '86; ev. 86 n.
- *v. Mapes*, 19 *Weekly D.* 481. Aff'd, it seems, in 99 *N. Y.* 629, but no opinion.
- *v. Munger*, '84; exec. 23 n.
- Kimberly *v. Patchin*, '83; ins. 18; '85; contracts, 43 n.; ev. 41; sales, 33 n.; '86; sales, 16 n.
- Kimpton *v. Bronson*, '84; assign. for b. of c. 52 n.
- Kincaid *v. Archibald*, '85; lim. of a. 50.
- *v. Dwinelle*, '83; corp. 67, 69; lim. of a. 26; mfg. co. 20.
- *v. Richardson*, '83; judgm. & decree, 32; '84; costs, 9; '86; judgm. 16.
- King *v. Arnold*, '86; arrest, 7.
- *v. Baldwin*, '83; principal & s. 8 n. 18, 19; '85; divorce, 7 n.
- *v. Bardeau*, '84; spec. perf. 7.



- v. Brown, '83; husb. & w. 23; '86; dam. 16 n.
- v. City of Brooklyn, '83; munc. corp. 129 n.
- v. Despard, '83; contracts, 79.
- v. Donnelly, '83; trusts, 51 n.
- v. Duntz, '84; forecl. 1.
- v. Fitch, '84; ev. 1; '86; lien, 7 n.
- v. Greenway, '85; shipping, 3.
- v. Havens, '85; costs, 8 n.
- v. Knapp, '84; contracts, 85 n.; '86; judicial sale, 8.
- v. McVicker, '83; rec. deeds, 8.
- v. N. Y. Central, etc. R. R. Co., '83; negl. 8, 15, 18, 20; '84; master & s. 6 n.; '85; munc. corp. 52 n.; '86; animals, 4 n.; negl. 30.
- v. Paddock, '83; ev. 17.
- v. Parks, '83; partn. 13.
- v. People, '83; exceptions, 2.
- v. Poole, '83; costs, 22; '84; costs, 1.
- v. Root, '85; dam. 28 n.; '86; libel, 11 n.
- v. Strong, '84; legacies, 7; '85; costs, 65.
- v. Talbot, '83; ex. & ad. 64, 112, 114, 191; legacies, 37 n.; trusts, 54, 57, 86, 91, 108; '84; ex. & ad. 62; trusts, 21; '85; ex. & ad. 57; legacies, 42; '86; trusts, 34 n.
- v. Whaley, '83; appeal, 42.
- v. Whitely, '83; mort. 35; '86; contracts, 7 n.; sub. 3.
- v. Wilcomb, '85; waste, 2 n.
- v. Woodhull, '84; wills, 110.
- Kingman v. Frank**, 64 *How. Pr.* 520; s. c., *N. Y. Daily Reg.* March 6, 1883, and 5 *Month. L. Bul.* 34. Subsequent decision in action by the same parties in 33 *Hun.* 471; s. c., 24 *Am. L. Reg. N. S.* 468; rev'g 9 *Crim. L. Bul.* 147.
- v. Sparrow, '85; grants, 2 n.; patents for l. 1 n.; waterc. 9 n.
- Kingsbridge Road**, Matter of, '85; r. r. co. 56.
- Kingsbury v. Kirwan**, '86; contracts, 62.
- v. Westfall, '83; guaranty, 1.
- Kings County Elevated Ry. Co.**, Matter of, '85; r. r. co. 60.
- Kings County Fire Ins. Co. v. Stevens**, 87 *N. Y.* 287; s. c., 41 *Am. R.* 361, and 13 *Weekly D.* 534. Subsequent appeal in 101 *N. Y.* 411. '84; deeds, 7 n.; '85; deeds, 18, 20 n.; '86; deeds, 15.
- Kingsland v. Braisted**, '83; partn. 17; '84; pl. 91; '85; associations, 10; pl. 58 n.
- v. Roberts, '84; lim. of a. 4.
- Kingsley v. City of Brooklyn**, '84; ev. 188.
- v. Vernon, '85; principal & s. 11.
- Kingston Bank v. Eltinge**, '83; receipts, 1; '85; money paid, 3 n.; '86; money paid, 10.
- Kinnah v. Guernsey**, 64 *How. Pr.* 253. Aff'd, it seems, in 19 *Weekly D.* 410; s. c., with opinion in full, in *N. Y. Daily Reg.*, July 31, 1884.
- Kinne v. Johnson**, '83; wills, 4, 17, 18, 68 n., 119.
- v. Kinne, '85; wills, 22 n. 23 n. 55, 56; '86; wills, 14 n.
- Kinney v. Kiernan**, '83; sales, 35; '85; election of r. 8 n.
- v. Nash, '86; libel, 2.
- v. Roberts & Co., 26 *Hun.* 166; s. c., 13 *Weekly D.* 541. Appeal dismissed in 89 *N. Y.* 601; but without opinion. Subsequent appeal in 17 *Weekly D.* 75. '83; depositions, 29; '84; depositions, 30, 33; '85; depositions, 6 n.; '86; depositions, 17.
- v. Schmitt, '85; bonds, 5.
- Kinnier v. Kinnier**, 45 *N. Y.* 535. Cited (Former judgment) in 36 *Hun.* 421. '83; canals, 3; pl. 40; '84; former adj. 12; judgm. & decree, 20; pl. 32 n.; '86; divorce, 24 n. 25 n.; former adj. 10 n.; wills, 27.
- v. Rogers, '83; legacies, 22; wills, 147; 85; powers, 8; '86; powers, 2.
- Kinsey v. Leggett**, '85; factors, 1.
- Kinsman v. Birdsall**, '85; bills of lading, 24.
- v. N. Y. Mut. Ins. Co., '84; ev. 187.
- Kip**, Matter of, '86; ins. 58 n.
- Kip v. Bank of New York**, '85; assign. for b. of c. 13 n.
- v. Deniston, '83; ex. & ad. 80 n. 94.
- v. N. Y. & Harlem R. R. Co., '85; r. r. co. 33.
- v. Van Cortlandt, '86; wills, 44 n.
- Kipp v. Rapp**, 2 *How. Pr. N. S.* 169; s. c., 7 *Civ. Pro. R.* 335. Another decision in *Id.* 316. atty. & c. 22.
- Kirby v. Kirby**, '83; contracts, 9.
- v. Lake Shore, etc. '83; lim. of a. 11 n.
- v. Schoonmaker, '83; arrest, 19; '85; assign. for b. of c. 30; partn. 17 n.; '86; assign. for b. of c. 40.
- v. Taylor, '83; guardian & w. 8 n.; '85; guardian & w. 14.
- v. Turner, '83; ex. & ad. 89 n.
- Kirk v. Cashman**, '86; wills, 73.
- Kirkland v. Aiken**, '33; verif. 5.
- v. Kille, 16 *Weekly D.* 227. Rev'd in 99 *N. Y.* 390.
- Kirkpatrick v. Stainer**, '86; principal & a. 15 n.
- Kirschmann v. Lediard**, '84; dam. 16.
- Kissenger v. N. Y. & Harlem R. Co.**, '86; r. r. co. 14.
- Kissock v. Grant**, '83; defenses, 6.
- Kitchen v. Lee**, '84; infants, 3.
- v. Place, '86; bills, n. & c. 4, 9 n.
- Kitts v. Massasoit Ins. Co.**, '85; ins. 54 n.
- Klein v. Wolfsolm**, '83; marr. 6.
- Kleinpeter v. Enell**, '85; costs, 1.
- Klinck v. Colby**, '84; libel, 9; slander, 1, 2; '85; ev. 20 n.; '86; libel, 4 n. 6.
- Kline v. L'Amoureux**, '83; infants, 7 n.
- Klock v. Buell**, '86; taxes, 77 n.
- v. People, '84; ev. 254 n.
- v. Robinson. Cited (Nature of judgment) in 95 *N. Y.* 438, 440.
- Kloppenbergh v. Neefus**, '83; exec. 49.
- Knapp**, Matter of, '83; atty. & c. 43, 44, 46, 57 n.; '85; fraud. conv. 3 n.; '86; assign. 8; atty. & c. 27.
- Knapp v. Anderson**, '83; appeal, 117; undert. 6.
- v. Brown, '83; mech. l. 5; '84; mech. l. 1 n.; '85; appeal, 11, 13 n. 15; counties, 1 n.; '86; appeal, 18; supervisors, 2 n.
- v. City of Brooklyn, 28 *Hun.* 500. Aff'd in 97 *N. Y.* 520.
- v. Curtis, '85; ex. & ad. 106.
- v. Fowler, 26 *Hun.* 200; s. c., 13 *Weekly D.* 517. Further decision in 30 *Hun.* 512; s. c., less fully, 18 *Weekly D.* 230. '83, motions & o. 2; '86; amend. 6 n. 17 n.
- v. Hyde, '86; duress, 2 n. 3.
- v. Knapp, '83; wills, 48; '84; ev. 248 n.; '86; wills, 19, 35.
- v. McGowan, '85; fraud. conv. 4.
- v. Maltby, '85; contracts, 76.
- v. Roche, '84; damages, 18.
- v. Simon, 96 *N. Y.* 284; s. c., 6 *Civ. Pro. R.* 1; rev'g 49 *Super. Ct. (J. & S.)* 17. '84; mech. l. 1 n.; '85; parties, 41; principal & a. 13 n.; '86; trials, 38.
- v. Smith, '85; husb. & w. 12, 15 n.; '86; husb. & w. 2 n.
- v. Warner, '84; patents for l. 2 n.
- Knauer v. Globe Mut. Life Ins. Co.**, '84; receivers, 1.
- Kneettle v. Newcomb**, '84; ex. & ad. 30.
- Knickerbocker v. Colver**, '85; release, 2.
- Knickerbocker v. People**, '83; const. law, 32; indict. 12.

- Knickerbocker Life Ins. Co. v. Clark, '84; pl. of tr. 5 n.
- v. Ecclesine, '84; pl. 142 n.
- v. Nelson, '83; amend. 30; forecl. 13 n.; '84; deeds, 26 n.; v. & p. 8; '85; promise, 2 n.
- Kniffen v. McConnell, '85; ev. 313, 314.
- Knight v. Beach, '83; tender, 9.
- v. N. Y., Lake Erie, etc. R. R. Co., 30 *Hun*, 415. Rev'd in 99 *N. Y.* 25; '85; r. i. co. 11 n.; '86; r. r. co. 9.
- v. Wilcox, '83; dam. 18 n.; '84; seduction, 1.
- Knowles v. Cuddeback, '83; guaranty, 12.
- v. Gee, '85; crim. law, 3.
- v. Toone, 96 *N. Y.* 534; rev'g 10 *Daly*, 388; '86; gift, 3 n.; hnsb. & w. 17.
- Knowlton v. Bannigan, 11 *Abb. N. C.* 419; s. c., 2 *Civ. Pro. R. (McCurty)* 317; and 5 *Monih. L. Bul.* 7. Subsequent decision in 51 *Super. Ct. (J. & S.)* 521; '84; depositions, 14.
- v. Congress and Empire Spring Co., '85; contracts, 64 n. 69.
- v. Fitch, '84; brokers, 7 n. 8.
- Knox v. Baldwin, '83; mfg. co. 7; '84; mfg. co. 16; '85; corp. 37; mfg. co. 17; parties, 7; statutes, 14 n.
- v. Hexter, '83; former adj. 4 n.; '86; accord. & sat. 1.
- v. Jones, '83; real prop. 8; wills, 139; '85; susp. of power of a. 4, 6 n.; wills, 120; '86; wills, 78 n.
- v. McDonald, '83; inj. 39; '84; inj. 33; '86; prohibition, 2.
- v. Mayor, etc. of N. Y., '83; const. law, 35 n.; '84; equity, 2; '85; highw. 3 n.; parties, 21; pl. 28 n.; '86; ev. 60.
- Knupfle v. Knickerbocker Ice Co., '83; cause of action, 3; '84; ev. 222; '85; ev. 293 n.
- Koch's Estate. See Koch v. Woehr.
- Koch v. Woehr, 3 *Dem.* 282; s. c., as Koch's Estate, 15 *Abb. N. C.* 139 n.
- Koehler v. Adler, '83; questions of l. & f. 6; '84; appeal, 78; wit. 20; '85; appeal, 90; ev. 32; money paid, 12 n.; wit. 19, 35 n.
- Koelges v. Guardian Life Ins. Co., '86; trials, 56 n. 57.
- Koenig v. Nott, '86; action, n.
- v. Steckel, '83; sher. 16; '84; sher. 3 n.; '85; chattels, 4.
- Kohler v. Matlage, '85; guaranty, 2; undert. 10; '86; contracts, 87.
- Kohn v. Koehler, '83; lotteries, 2; '86; lotteries, 2, 2 n.
- Koon v. Mazuzan, '86; former adj. 31; justices' courts, 1 n.
- Koonz, Matter of, '85; assign. for b. of c. 27.
- Koppel v. Heinrichs, '85; city ct. of N. Y. 4.
- Kopper v. Willis, '83; innk. 5; '86; innk. 1.
- Kortright v. Buffalo Commercial Bank, '83; banking, 6 n.
- v. Cady, '83; mort. 13 n.; receivers, 2; tender, 8, 10 n.; '84; mort. 2 n.; trusts, 7; '85; pl. 156 n.; '86; tender, 4 n. 8 n.
- Kowing v. Manly. Cited (Husband & wife) in 33 *Hun*, 656. '83; arrest, 20; bailment, 4; '84; parties, 30 n.
- Kraft v. Freeman Printing, etc. Assoc., '86; corp. 13.
- Kramer v. Police Dept. of N. Y., 35 *Super. Ct. (J. & S.)* 492; rev'g *N. Y. Daily Reg.* Nov. 24, 1885.
- Krauser v. Ruckel, '83; mfg. co. 19.
- Kraushaar v. Meyer, '84; wit. 23.
- Krekeler v. Ritter, '84; pl. 131; '86; former adj. 17; judgm. 4.
- Krohn v. Sweeney, '83; innk. 4.
- Kromer v. Heim, '83; accord. & sat. 1 n.; debtor & cred. 10; '84; accord. & sat. 2 n.; '85; accord. & sat. 1.
- Krulder v. Ellison, '83; sales, 23, 24; '86; sales, 29.
- Krumm v. Beach, '85; fraud, 8.
- Kuhn v. Stevens, '85; lease, 7 n.
- Kuhne v. Daily, 89 *N. Y.* 631, dismissing appeal, it seems, from 23 *Hun*, 282; s. c., 11 *Weekly D.* 247.
- Kundolf v. Thalheimer, '85; justices' ct. 16.
- Kuney v. Amazon Ins. Co., '86; principal & a. 1.
- Kunz v. Stuart, 85; master & s. 33 n.
- Kupfer v. Frank, 30 *Hun*, 74; s. c., as Cupfer v. Frank, 64 *Hov. Pr.* 396; 4 *Civ. Pro. R.* 53.
- Kurst v. Paton. See Matter of Paton.
- Kyle v. Kyle, '83; appeal, 144a; assign. for b. of c. 31; ex. & ad. 136; surr. ct. 22 n.; '84; divorce, 6; ex. & ad. 114; '86; dower, 9.
- L.
- Labar v. Koplin, '85; trial, 83 n.
- La Bau v. Vanderbilt, '83; ex. & ad. 139; legacies, 31; wills, 15, 21, 4b; '84; ex. & ad. 93; '85; wills, 3 n.
- La Beau v. People, '85; ev. 72.
- Lablache v. Kirkpatrick, 8 *Civ. Pro. R.* 256. Another decision in action by the same parties in *Id.* 340; s. c., in part, 3 *Hov. Pr. N. S.* 61.
- La Bussiere v. N. Y. and New Haven R.R. Co., '85; r. r. co. 11 n.
- Lace's Case, '85; munc. corp. 6 n.
- Lachaise v. Libby, '84; parties, 37.
- Lachenmeyer v. Lachenmeyer, 26 *Hun*; 542; s. c., 14 *Weekly D.* 488. Appeal dismissed, it seems, in 89 *N. Y.* 632, but without opinion. Subsequent proceeding in 65 *Hov. Pr.* 422. '85; abate. & r. 1; '86; atty. & c. 27.
- Lacustrine Fert. Co. v. Lake Guano, &c. Co., '86; inj. 39.
- Lacy v. Getman, 3 *Hov. Pr. N. S.* 250. Rev'd in 35 *Hun*, 46. Subsequent decision in 23 *Weekly D.* 264.
- Ladd v. Moore, '83; sales, 33 n.
- Ladue v. Griffith, See McDonald v. Western R.R. Co., in this table.
- La Farge v. Exchange Fire Ins. Co., '84; fish & fisheries, 1.
- v. Herter, '83; usury, 25, disc. & insp. 4 n.
- v. Kneeland, '86; principal & a. 18.
- v. La Farge Ins. Co., '83; 34 n.
- Lafferty v. Lafferty, '84; surr. ct. 25.
- Lafin v. Griffiths, '83; chat. mort. 1.
- Lafonde v. Deems, '84; ben. assoc. 17 n. 21; '85; equity, 3; '86; clubs, 5.
- La Forge v. Chilson, '86; costs, 24 n.
- La Frombois v. Jackson, '84; adv. poss. 1 n.; '85; ev. 185.
- Lake v. People, '85; wit. 55.
- v. Ranney, '83; wills, 117, 118.
- v. Tysen, '84; ev. 27 n.
- Lake Kenka Nav. Co. v. Holmes, 20 *Weekly D.* 32. Confirmed on dismissal of appeal as Kenka Nav. Co. v. Holmes, in 98 *N. Y.* 655.
- Lake Ontario Shore R.R. Co. v. Curtiss, '83; r. r. co. 37.
- v. Mason, '86; contracts, 38.
- Lake Shore & Michigan South-

- ern R.R. Co. v. Roach, '83; const. law, 58; tax, 64; '84; fish & fisheries, 1; '86; const. law, 17.
- Lake Superior Iron Co. v. Drexel, 90 *N. Y.* 87; s. c., 15 *Weekly D.* 341; aff'g 12 *Weekly D.* 309; '83; mfg. cos. 17; '84; business corp. 1; '86; mfg. co. 4.
- Lamb v. Camden & Amboy R.R. Co., '83; carriers, 23; ev. 82; trial, 75; '84; ev. 39, 211.
- Lambert v. Craft, '86; ex. & ad. 82, 122; surr. ct. 10.
- v. People, '85; notaries, 1.
- v. Staten Island R.R. Co., '83; harbor masters, 4.
- Lament v. Haight, '86; towns, 6.
- Lamkin v. Douglass, 27 *Hun*, 517; s. c., 15 *Weekly D.* 314; rev'g 63 *How. Pr.* 47; '85; attach. 31 n. 36 n. 37; '86; attach. 29, 33.
- Lamont v. Cheshire, '84; cloud on title, 3; '85; attach. 43 n.
- Lamoure v. Caryl, '84; costs, 11; '86; costs, 7; justices' ct. 1 n.
- L'Amoureux v. Crosby, '85; ev. 164 n.
- v. Gould, '84; contract, 52 n.; '85; bills, n. & c. 15.
- Lampert, Matter of, '83; arrest, 6, 28.
- Lampman v. Milks, '83; deeds, 24 n.; easements, 6, 6 n.; '84; easements, 6 n.; '85; deeds, 24; easements, 6 n.
- Lampmann v. Hammond, '84; seduction, 1.
- Lande v. Smith, '85; husb. & w. 3 n.
- Landers v. Bartle, '84; legacies, 4.
- v. Frank Street, etc. Church, '86; relig. corp. 7 n.
- v. Staten Island R.R. Co., '83; city ct. of N. Y. 1; juris. 9; '85; juris. 11; pl. 35.
- v. Watertown Fire Ins. Co., 86 *N. Y.* 414; s. c., 49 *Am. R.* 554; rev'g 19 *Hun*, 174; '83; ins. 13 n.
- Lands in Town of Flatbush, Matter of, '85; const. law, 46, 54.
- Landt v. Hiltz, '84; false impris. 2 n.; '85; false impris. 3.
- Lane v. Arnold, 63 *How. Pr.* 40. Rev'd in 11 *Daly*, 293; s. c., 13 *Abb. N. C.* 73; and that rev'd, it seems, but without opinion, in 99 *N. Y.* 648. '83; partn. 12 n.; '84; partn. 5; '86; names, 1.
- v. Bailey, '83; banking, 15; pledge, 2.
- v. Brown, '85; wills, 118.
- v. Doty, '86; ev. 140 n.; partn. 27.
- v. Hitchcock, '86; lim. of a. 8a. See addenda.
- v. King, '85; waste, 2 n.
- v. Lane, '85; wills, 28, 56.
- v. Lewis, 4 *Dem.* 468; s. c., as Estate of Brick, 9 *Civ. Pro. R.* 397.
- v. Morse, '83; aff'd. 1.
- v. Salter, '85; defenses, 2; ex. & ad. 69; pl. 9.
- v. Schermerhorn, '86; insane per. 4; taxes, 4.
- v. Van Orden, '86; costs, 18 n.
- v. Wheeler, 35 *Hun*, 606. Appeal dismissed, as it seems, in 101 *N. Y.* 17.
- v. Williams, 20 *Weekly D.* 16. Subsequent decision in action by the same parties in 37 *Hun*, 388.
- Lanergan v. People, '84; ev. 96 n.
- Lang v. Brown, '85; inj. 6 n.; '86; inj. 45 n.
- v. Marks, '85; district ct. 4.
- v. Ropke, '83; accumulation, 5 n.; susp. of power of a. 19; trusts, 44; '85; powers, 5.
- v. Wilbrahame, '85; former adj. 43; '86; indians, 1 n.
- Langdon v. Astor, '83; legacies, 16, 34; '85; devise, 7 n.
- v. Buel, '83; chat. mort. 7 n.; pledge, 4 n.; '85; assign. 17; mort. 24 n.
- v. Guy, '86; pl. 18 n.
- v. Mayor, etc. of N. Y., 92 *N. Y.* 427; s. c., 16 *Weekly D.* 513; aff'g 27 *Hun*, 288; s. c., 15 *Weekly D.* 101; which aff'd in effect 63 *How. Pr.* 134.
- v. —, 93 *N. Y.* 129; aff'g 28 *Hun*, 158; s. c., 16 *Weekly D.* 289, and *N. Y.* *Daily Reg.*, Nov. 29, 1882; which rev'd 6 *Abb. N. C.* 314. '83, highw. 37; '84; patents for l. 2 n.; grants, 1; '85 deeds, 15, 36; grants, 1; munc. corp. 39 n.; '86; real prop. 7.
- Lange, Estate of. See Bowne v. Lange, '86, munc. corp. 67, 78, 90.
- Lange v. Benedict, '83; judgm. & decree, 2; '84; false impris. 1; '85; munc. corp. 117 n.; trial, 88.
- Langley v. Wadsworth, 18 *Weekly D.* 138. Aff'd, it seems, in 99 *N. Y.* 61. '86; trials, 38.
- v. Warner, '86; atty. & c. 2; receivers, 6; trials, 99 n.
- Langworthy v. Broomley, '85; pl. 137 n.
- Lanigan v. N. Y. Gas-light Co., '83; negl. 62; '85; trials, 56.
- Laning v. N. Y. Central R. R. Co., '83; master & s. 20, 22, 24, 25, 33; '84; appeal, 46; master & s. 13, 18, 28, 28 n.; '85; appeal, 89; master & s. 13, 16, 28 n. 37, 42 n.; '86; master & s. 16 n. 20, 29 n. 30 n.; negl. 56 n.; pl. 67 n.
- Lanning v. Carpenter, '83; reformation of inst. 4 n.
- v. Streeter, '83; attach. 55; '84; attach. 27.
- Lanphire v. Slaughter, '83; ev. 137; '86; contracts, 2 n.
- Lansing v. Blair, '83; lim. of a. 48.
- v. Capron, '85; lim. of a. 45.
- v. Easton, '85; contempt, 15.
- v. Eddy, '84; judgm. & decree, 27.
- v. Goelet, '86; juris. 9 n.
- v. Hadsall, '83; wit. 52; '85; disc. & insp.; pl. 65.
- v. Lansing, '83; ex. & ad. 64 n. 197, 217; trusts, 75 n.; '84; contempt, 11 n.; receivers, 27; trusts, 28, 33 n.; '85; contempt, 5; trusts, 31 n.
- v. McKillup, 1 *Cow.* 33. Cited (Execution) in 36 *Hun*, 635.
- v. Montgomery, '86; trials, 95 n.
- v. Russell, '85; trial, 87 n.
- v. Smith, '83; compensation, 10; grants, 1 n.; waterc. 3 n.; '84; waterc. 3; '85; inj. 12 n.
- v. Starr, '85; depositions, 5.
- Lantz v. Buckingham, '85; cemeteries, 2.
- Lanz v. Trout, '84; corp. 14.
- Lapeous v. Hart, '83; stay of pro. 4.
- Lapham v. Rice, '84; bridges, 1.
- Lappin v. Charter Oak Fire Ins. Co., '83; ins. 36; '85; ins. 55 n.
- Laraway v. Perkins, '83; pl. 2.
- Larkin v. Hardenbrook, 90 *N. Y.* 333; s. c., 15 *Weekly D.* 472; aff'g 11 *Id.* 550.
- v. Mann, '83; wills, 150; '85; guardians ad l. 2.
- v. Robbins, '84; arbitration. 3 n.; '86; discount. 5 n.
- v. Steele, '86; depositions, 17; motions & o. 3.
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- *ex rel. Negus v. Dwyer*, 90 *N. Y.* 402; s. c., 2 *Civ. Pro. R. (Broune)* 379; 15 *Weekly D.* 494; aff'g 27 *Hun*, 548; s. c., 15 *Weekly D.* 207; 63 *How. Pr.* 115. '85; contempt, 17; '86; contempt, 1; munc. corp. 4.
- *ex rel. Valiente v. Dyckman*, '85; wit. 2 n.
- *v. Doyle*, '83; trials, 131; '84; ev. 160; trials, 49 n.; '85; ev. 305 n.; '86; trials, 61.
- *ex rel. Dietz v. Easton*, '84; const. law, 8 n.
- *v. Eastwood*, '83; ev. 111 n.; '84; ev. 63; '85; ev. C9.
- *ex rel. Roosevelt v. Edson*, 51 *Super. Ct. (J. & S.)* 238; s. c., 1 *How. Pr. N. S.* 231, and 7 *Civ. Pro. R.* 5. Rev'd in 52 *Super. Ct. (J. & S.)* 53; s. c., 1 *How. Pr. N. S.* 482.
- *Ellis v.* See *Randolph v. Loughlin*.
- *v. Empire Mut. Life Ins. Co.*, 92 *N. Y.* 105; s. c., 12 *Ins. L. J.* 355; aff'g *Attorney-General v. Empire Mut. Life Ins. Co.*, 28 *Hun*, 358; which rev'd *Matter of Empire Mut. Life Ins. Co.*, 64 *How. Pr.* 51. Other proceedings in *N. Y. Duty Reg.*, Oct. 19, 1883; and further decision of latter in *Id.*, Nov. 5, 1883. '84; ins. 44 n.; '85; ins. 61; '86; pl. 113.
- *v. Enoch*, '84; commitment, 2; '85; indict. 17.
- *v. Equitable Trust Co. of New London*, '85; const. law, 10, 11 n.; tax. 9; teleg. 3; '86; tax. 9 n.
- *v. Erwin*, '83; embezzlement, 3; '85; accessory, 1; ev. 254 n.; '86; bawdy house, n.
- *v. Evans*, '85; trials, 115 n.
- *v. Faber*, 92 *N. Y.* 146; s. c., 1 *N. Y. Crim. R.* 117, and 15 *Reporter*, 604; rev'g 29 *Hun*, 320; s. c., 1 *N. Y. Crim. R.* 115. '85; distribution, 1; marr. 4; '86; divorce, 24 n.
- *ex rel. Hartford Life, etc. Ins. Co. v. Fairman*, 91 *N. Y.* 385; s. c., 16 *Weekly D.* 222; and 12 *Abb. N. C.* 261; where decisions below are reported also. '85; mand. 14.
- *ex rel. Phelps v. Fancher*, 2 *Hun*, 226. Cited (*Habeas corpus*) in *People ex rel. Macdonald v. Keeler*, 32 *Hun*, 570 n.
- *ex rel. Nash v. Faulkner*, 31 *Hun*, 317. Subsequent decision in 38 *Id.* 607.
- *v. Feeter*, '86; costs, 11.
- *ex rel. Glen Falls Ins. Co. v. Ferguson*, '83; tax. 13, 57.
- *ex rel. Faile v. Ferris*, '83; mand. 3; off'r, 11; parties, 38; '86; off'r, 8 n. 76 n.
- *v. Fields*, '84; const. law, 46; '86; fraud, 1.
- *v. Finn*, '85; ev. 254 n.
- *ex rel. Loughlin v. Finn*, 87 *N. Y.* 533; s. c., 14 *Weekly D.* 16; aff'g 26 *Hun*, 55; s. c., 13 *Weekly D.* 463.
- *v. Finnegan*, '86; wit. 47 n.
- *v. Fire Association of Philadelphia*, '84; costs, 1.
- *ex rel. Donovan v. Fire Commissioners of N. Y.*, '84; munc. corp. 23.
- *ex rel. Dumahaut v. Fire Commissioners of N. Y.*, 96 *N. Y.* 672; rev'g 49 *Super. Ct. (J. & S.)* 369. '85; munc. corp. 20.
- *ex rel. Emerick v. Fire Commissioners of N. Y.*, '86; munc. corp. 13.
- *ex rel. Hart v. Fire Commissioners of N. Y.*, '83; appeal, 92; certiorari, 6; police, 1; '84; certiorari, 8; '86; certiorari, 16 n. 22.
- *ex rel. Munday v. Fire Comm'rs of N. Y.*, '83; munc. corp. 30, 33, 35; '84; certiorari, 10; '85; munc. corp. 16, 17 n. 20; '86; off'r, 3.
- *ex rel. Sims v. Fire Comm'rs*, '83; nor. sch. 1; off'r, 5; '84; munc. corp. 19; '86; certiorari, 14; com. schools, 2.
- *v. Fishkill, etc. Plank Road Co.*, '83; carriers, 2 n.
- *ex rel. Central Nat. Bk. v. Fitzgera'd*, '84; off'r, 11.
- *v. Fitch*, '85; forgery, 3.
- *v. Fitzpatrick*, 30 *Hun*, 493; s. c., 1 *N. Y. Crim. R.* 426; rev'g *Id.* 307; s. c., 65 *How. Pr.* 365. '84; appeal, 129.
- *ex rel. McLean v. Flagg*, '85; const. law, 59; '86; tax. 1.
- *ex rel. Chamberlain v. Forrest*, 30 *Hun*, 240. Aff'd in 96 *N. Y.* 544. '85; munc. corp. 126.
- *ex rel. Mills Water Works Co. v. Forrest*, 29 *Hun*, 548. Aff'd in 97 *N. Y.* 97.
- *ex rel. Sayre v. Franklin*, 5 *Lans.* 129. Cited in 99 *N. Y.* 333.
- *ex rel. Buffalo, etc. R. R. Co. v. Fredericks*, '84; tax. 36 n.; '85; juris. 11; '86; certiorari, 2.
- *v. Freer*, '85; contempt, 14 n.
- *v. French*, '84; mand. 22; '85; lim. of a. 10.
- *ex rel. McCarthy v. French*, '86; certiorari, 13.
- *ex rel. Murphy v. French*, '83; certiorari, 5; '84; munc. corp. 23.
- *ex rel. Ryan v. French*, 91 *N. Y.* 265; s. c., 14 *Weekly D.* 173; 16 *Id.* 203; 13 *Reporter*, 599, and *N. Y. Daily Reg.*, Feb. 12, 1883; rev'g 24 *Hun*, 263; s. c., 12 *Weekly D.* 456. '83; munc. corp. 20, 21; off'r, 19; '84; off'r, 8, 10; '86; const. law, 11 n.; off'r, 13.
- *v. Fulton Fire Ins. Co.*, '83; real prop. 5 n.
- *ex rel. King v. Gallagher*, 11 *Abb. N. C.* 187. Aff'd in 93 *N. Y.* 438.
- *v. Galloway*, '85; indict. 12 n.; '86; indict. 11.
- *ex rel. Masterson v. Gallup*, 96 *N. Y.* 628; aff'g 30 *Hun*, 501; which rev'd 12 *Abb. N. C.* 64; s. c., 65 *How. Pr.* 108.
- *v. Gardiner*, '83; exceptions, 2.
- *ex rel. Davis v. Gardner*, '84; const. law, 60; '85;

- '85; munc. corp. 6 n.; surr. ct. 3 n.
- *ex rel.* Jefferson v. Gardner, '83; attach. 69; tax. 10; '80; tax. 4 n.
- *v.* Gates, '86; ev. 235.
- *ex rel.* Barbour v. Gates, '86; apprentices, 2 n. 3.
- *v.* Gay, '83; removal of causes, 4; '86; wit. 45.
- *ex rel.* Hasbrouck v. General Sessions of N. Y., '83; removal of causes, 4.
- *v.* Genesee Valley Canal R. Co., 30 *Hun.* 565. Aff'd in 95 *N. Y.* 666. '85; costs, 29.
- *v.* Genet, '83; appeal, 7 n.; '85; crim. law, 7 n.
- *v.* Genung, '86; indict. 11.
- *ex rel.* Dicher v. German Church, '83; certiorari, 3 n.
- *v.* Gibbs, '85; abate. & r. 2; ev. 254.
- *ex rel.* Bork v. Gilbert, '85; hab. corp. 1.
- *ex rel.* Society for the Prevention of Cruelty to Children v. Gilmore, 88 *N. Y.* 626; s. c., 14 *Weekly D.* 206; rev'g, as to costs, 26 *Hun.* 1. '83; contempt, 26; '86; contempt, 12, 38; hab. corp. 7, 8.
- *v.* Globe Mut. Life Ins. Co., 91 *N. Y.* 174; s. c., 64 *Hov. Pr.* 485; 16 *Weekly D.* 225; and 15 *Reporter*, 278; aff'g 64 *Hov. Pr.* 240. Previous decision in 27 *Hun.* 539. Other proceedings in 65 *Hov. Pr.* 239; s. c., as Matter of Booth, 11 *Abb. N. C.* 145. '83; corp. 69; '84; contracts, 34; '85; contracts, 95, 98 n.; trials, 8 n.
- *ex rel.* Oswald v. Goff, '83; const. law, 57; tax. b.
- *v.* Gold & Stock Tel. Co., 32 *Hun.* 491. Aff'd in 98 *N. Y.* 67; motion for re-argument denied in *Id.* 80; s. c., 21 *Weekly D.* 57.
- *v.* Gonzales, '83; ev. 121; '85; new tr. 27.
- *v.* Goodwin, '85; const. law, 7 n.; surr. ct. 3 n.
- *v.* Graves, '85; sentence, 4.
- *v.* Gray. See Matter of Gray.
- *v.* Green, '85; former adj. 54 n.; surr. ct. 3 n.
- *ex rel.* Navarro v. Green, '84; mand. 3.
- *ex rel.* Ryan v. Green, '83; off'r, 4 n.
- *ex rel.* Schanck v. Green, '86; const. law, 35.
- *ex rel.* Seaver v. Green, '83; munc. corp. 135.
- *v.* Greene, '83; bail, 2; '85; bonds, 10; '86; bonds, 6.
- *v.* Greenfield, '83; trials, 116; '84; wit. 58 n.
- *v.* Griffin, '86; assault & b. 3.
- *v.* Groat, '84; parties, 41 n.
- *v.* Gunn, 93 *N. Y.* 317; aff'g 30 *Hun.* 322.
- *v.* Gutches, '83; nuis. 10; '85; patents for l. 1 n.; waterc. 9 n.
- *v.* Hackley, '86; contempt, 19 n.
- *ex rel.* Supervisors of Westchester v. Hadley, '84; certiorari, 12; '86; tax. 36.
- *v.* Hagadorn, '86; tax. 75 n.
- *v.* Haggerty, '83; sentence, 2.
- *ex rel.* Williams v. Haines, '85; contracts, 86 n.; drainage, 2 n. 3 n.; ev. 24.
- *v.* Hale, '86; assault & b. 3.
- *ex rel.* Hatzel v. Hall, '84; former adj. 24 n.; statutes, 20 n.; '85; certiorari, 12; ev. 254 n.; munc. corp. 5 n.
- *ex rel.* Stephens v. Halsey, '83; carriers, 2 n.; '85; mand. 1, 5 n.
- *ex rel.* Hubbard v. Harris, '81; certiorari, 9.
- *v.* Harrison, '85; forgery, 3; indict. 12 n.
- *v.* Hartung, '83; new. tr. 27, 30.
- *ex rel.* N. Y. & Harlem R. Co. v. Havemeyer, '83; const. law, 35 n.; off'r, 12; '85; const. law, 49 n.
- *v.* Hawkins, '84; mand. 11 n.
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- *ex rel.* Utley v. Hayden, '83; const. law, 42; munc. corp. 129 n.; '84; canals, 4 n.; const. law, 21.
- *v.* Hayes, '83; costs, 124.
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- *v.* Hazard, '84; statutes, 20 n.
- *v.* Hektograph Co., '84; default, 2.
- *v.* Henderson, '83; indict. 8.
- *v.* Herkimer, '86; mand. 11 n.
- *v.* Higbie, '86; indict. 11.
- *ex rel.* Cole v. Hill, '86; mand. 8.
- *ex rel.* Davis v. Hill, '86; appeal, 52; former adj. 6.
- *v.* Hills, 35 *N. Y.* 449. Cited (Constitutional law) in Cregier v. Mayor, etc. of N. Y., 11 *Dalb.* 173. '86; const. law, 28.
- *v.* Hillsdale, etc. Turnpike Co., '83; carriers, 2 n.; munc. corp. 42; turnpike co. 1.
- *v.* Holmes, '83; trials, 27.
- *ex rel.* Slunter v. Holstein-Friesian Assoc., 41 *Hun.* 439; aff'g 16 *Abb. N. C.* 307.
- *v.* Home Ins. Co., '84; const. law, 29, 30; '85; const. law, 10; tax. 9; teleg. 3.
- *v.* Hooghkerk, '85; ev. 322.
- *ex rel.* Supervisors of Richmond v. Hopkins, '85; citizens, 1 n.; defin. 34.
- *v.* Hopson, '83; sher. 16; '84; attach. 39; cred. s. 1 n.; sher. 6; '85; off'r, 14.
- *v.* Horton, '83; nuis. 3; '86; negl. 43.
- *v.* Hovey, 92 *N. Y.* 554; s. c., 1 *N. Y. Crim. R.* 283; aff'g 29 *Hun.* 332; s. c., 1 *N. Y. Crim. R.* 180. Further proceedings in *Id.* 477; aff'g *Id.* 324; s. c., 30 *Hun.* 354. '83; bigamy, 1; '84; sentence, 1 n.; '85; appeal, 56; homicide, 2 n.; wit. 5; '86; appeal, 100, 205; divorce, 24 n.
- *ex rel.* Ainslee v. Howlett, former adj. 27.
- *v.* Hudson River R. R. Co., 31 *Barb.* 138. Applied (Corporation, where located) in 1 *Hov. Pr.* N. S. 54.
- *ex rel.* McIntyre v. Hulbert, 67 *Hov. Pr.* 356. Further proceedings in *Id.* 362.
- *ex rel.* Freeman v. Hulburt, '83; certiorari, 1 n.; insane per. 17.
- *v.* Hulse, '86; wit. 45.
- *v.* Humphrey, '85; ev. 282.
- *ex rel.* Gilmour v. Hyde, 89 *N. Y.* 11; s. c., 13 *Weekly D.* 395; rev'g 13 *Id.* 344.
- *v.* Infield, '84; indict. 11.
- *v.* Ingersoll, '84; const. law, 46, '86; fraud, 1.
- *ex rel.* Harnett v. Inspectors of Common Schools, '84; mand. 3.
- *v.* Irving, 95 *N. Y.* 541; s. c., 2 *N. Y. Crim. R.* 171; aff'g 31 *Hun.* 514; s. c., 2 *N. Y. Crim. R.* 47. '84; wit. 38; '85; ev. 322; '86; wit. 60 n. 62.
- *v.* Isaacs, '85; crim. law, 3.
- *v.* Jackson, '83; ev. 250 n.; indict. 8.
- *ex rel.* Burnet v. Jackson, '83; off'r, 20.
- *ex rel.* Woolf v. Jacobs, '83; sentence, 3 n.; '84; contempt, 20; '85; contempt, 5, 21 n.; '86; contempt, 30; hab. corp. 1.
- *v.* Jaehne, 4 *N. Y. Crim. R.* 161. Subsequent proceedings in *Id.* 478; s. c., 4 *Centr. Rep.* 165.
- *v.* James, '84; intoxication, 2.
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- *v.* Jewett, '83; new tr. 2 n.

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- v. Jillson, '86; carriers, 15 n.
- v. Johnson, '86; i.r. dict. 11.
- *ex rel.* Wyman v. Johnson, '85; judgm. & decree, 1.
- v. Jones, 99 N. Y. 667; s. c., 3 N. Y. *Crim. R.* 252; aff'g 34 *Hun.* 620. '83; innk. 4 n.
- *ex rel.* Riley v. Jourdan, '84; munc. corp. 23.
- v. Judges of Albany Mayor's Court, '83; costs, 114.
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- *ex rel.* Tremper v. Judges of Ulster, '86; mand. 11 n.
- *ex rel.* Knapp v. Judges of Westchester, '83; trials, 25; '86; mand. 11 n.
- *ex rel.* Henderson v. Justices of Special Sessions. See Justices of Special Sessions v. People *ex rel.* Henderson.
- *ex rel.* Murray v. Justices of Special Sessions, '84; const. law, 14; '86; munc. corp. 22.
- v. Katz, '85; ev. 254.
- *ex rel.* Wallkill Valley R. R. Co. v. Keator, 67 *How. Pr.* 277. Aff'd in 36 *Hun.* 592; appeal from latter dismissed for not having been taken in time, in 101 N. Y. 610; s. c., 3 *How. Pr. N. S.* 210; 3 *Northeast. Rep.* 432; 3 *Last. Rep.* 432. Another decision in 17 *Abb. N. C.* 369. '85; tax, 30, 31 n.; '86; tax, 12 n. 13.
- v. Keeler, '84; election of off'r, 5; '86; surr. ct. 1 n.
- *ex rel.* McDonald v. Keeler, 32 *Hun.* 533; s. c., 2 N. Y. *Crim. R.* 141; s. c., as Matter of McDonald, 66 *How. Pr.* 487. Rev'd in 99 N. Y. 463; s. c., 3 N. Y. *Crim. R.* 348. '86; contempt, 37 n.
- *ex rel.* McEwan v. Keeler, '85; const. law, 40.
- v. Kelly, 94 N. Y. 526; s. c., 2 N. Y. *Crim. R.* 15; aff'g 31 *Hun.* 225.
- *ex rel.* Caldwell v. Kelly, '83; arrest, 19.
- *ex rel.* Devoe v. Kelly, 97 N. Y. 212; s. c., 2 N. Y. *Crim. R.* 428; aff'g, in part, 32 *Hun.* 536. '84; hab. corp. 7; '85; hab. corp. 4; '86; sentence, 1.
- *ex rel.* Hackley v. Kelly, '84; verif. 1 n.; wit. 58 n.
- *ex rel.* Jessup v. Kelly, 33 *Hun.* 389; aff'd, it seems, but without opinion, 98 N. Y. 653, max. 4.
- *ex rel.* Murphy v. Kelly, '83; negl. 15; '84; corp. 3; '85; const. law, 54; '86; off'r, 7 n.
- v. Kerin, '86; dairy products, 3.
- v. Kerr. Commented on in 11 *Abb. N. C.* 281 n. '83; const. law, 35, 35 n.; highw. 5; '84; dam. 34 n.; munc. corp. 1; '85; r. r. co. 21, 50 n.; '86; compensation, 4 n. 9 n.; highw. 4.
- *ex rel.* Morgan v. Keteltas, '86; sum. pro. 3.
- *ex rel.* Eagle v. Keyser, '84; principal & a. 9 n.
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- *ex rel.* McCann v. Kilbourn, '85; munc. corp. 6 n.
- *ex rel.* Williams v. Kingman, '83; highw. 22; '85; munc. corp. 56 n.; '86; highw. 8 n.
- v. Kingsley, '85; indict. 15.
- *ex rel.* Bishop v. Kingston, etc. Turnpike Co., '85; carriers, 2 n.
- v. Knapp, '83; new tr. 30.
- v. Knickerbocker Ice Co., 31 *Hun.* 475. Aff'd in 99 N. Y. 181. '86; ins. 95, 96.
- *ex rel.* Wood v. Lucomb, 99 N. Y. 43; aff'g 34 *Hun.* 401. '86; r. r. co. 4 n.
- v. Lake, '83; ev. 113.
- *ex rel.* Haton v. Lake Shore, etc. R. R. Co., '84; mand. 16.
- v. Lamb, '83; trials, 132.
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- v. Lane, 31 *Hun.* 13; s. c., more fully, 1 N. Y. *Crim. R.* 548. '84; mand. 12; '86; off'r, 8 n.
- *ex rel.* Crowell v. Lawrence, 36 *Barb.* 177. Cited (title of local act) in Cregier v. Mayor, etc. of N. Y., 11 *Daly*, 175. '83; const. law, 41; '86; const. law, 24.
- *ex rel.* Merritt v. Lawrence, '84; money paid, etc. 7; '85; atty. & c. 5 n.; town, 7; '86; payment, 1 n.
- *ex rel.* Mitchell v. Lawrence, '83; highw. 27.
- v. Learned, '84; contempt, 28; '85; const. law, 20.
- *ex rel.* Owen v. Leary, '86; villages, 10.
- *ex rel.* Gass v. Lee, 28 *Hun.* 469. Another decision in 15 *Weekly D.* 449. '84; const. law, 41.
- v. Leighton, '85; homicide, 1; '86; homicide, 6.
- v. Lewis, '83; costs, 100.
- *ex rel.* Tweed v. Liscomb, '83; hab. corp. 1; sentence, 2; '84; contempt, 28; juries, 1 n.; sentence, 1 n.; '85; hab. corp. 5; sentence, 1 n.; '86; hab. corp. 1, 1 n. 1; indict. 26; sentence, 1 n.
- v. Livingston, '85; exec. 2 n.
- *ex rel.* Dailey v. Livingston, '84; trials, 52 n.
- v. Lockwood, '85; ev. 122 n.
- v. Loew, 102 N. Y. 471; aff'g 39 *Hun.* 490.
- *ex rel.* Wheeler v. Long Island R. R. Co., '86; r. r. co. 4 n.
- v. Loomis, '83; indict. 19; '84; larceny, 1; '86; larceny, 1.
- *ex rel.* Flagg v. Lowber, '33; munc. corp. 103.
- *ex rel.* Comstock v. Lucas, 93 N. Y. 585; rev'g 25 *Hun.* 610. '84; bonds, 7 n.; '85; costs, 51 n.
- *ex rel.* Pugsley v. Luther, '83; mech. 1. 8.
- v. Lyon, 1 N. Y. *Crim. R.* 400. Aff'd in 2 *Id.* 484; s. c., 33 *Hun.* 623; and the latter rev'd in 99 N. Y. 210; s. c., 3 N. Y. *Crim. R.* 161. '85; const. law, 13 n. 19; '86; adultery, 1; homicide, 5 n.
- *ex rel.* Commissioners of Charities v. Lyons, '83; mech. 1. 10.
- *ex rel.* Brown v. McAdam, '86; prohibition, 2.
- *ex rel.* Higgins v. McAdam, '85; prohibition, 2 n.; '86; champerty & main. 4 n.; ex. & ad. 129.
- *ex rel.* Newcomb v. McCall, 65 *How. Pr.* 442; s. c., 5 *Month. L. Bul.* 84. Subsequent decision in 94 N. Y. 587. '86; receivers, 12 n.
- v. McCann, '83; ev. 317 n; exceptions, 2; '85; crim. law, 7 n.; ev. 232.
- v. McCarty, '84; const. law, 14.
- *ex rel.* Shaw v. McCarty, '83; sum. pro. 7.
- *ex rel.* Mason v. McClave, 102 N. Y. 468; aff'g 39 *Hun.* 511; which rev'd 3 *How. Pr. N. S.* 8; '86; district ct. 1; receivers, 9; surr. ct. 1 n.
- v. McCoy, '83; bail, 2.
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- v. McDonald, '83; larceny, 2; '85; larceny, 4 n.
- *ex rel.* Kilmer v. McDonald, '85; const. law, 33.
- v. McGarren, '85; larceny, 3 n.; '86; larceny, 9 n.
- v. McGee, '85; ev. 315 n.; '86; ev. 272.
- v. McGeary, '83; indict. 5.
- v. McGloin, 91 N. Y. 241; s. c., 12 *Abb. N. C.* 172; 16 *Weekly D.* 255; and 1 N. Y. *Crim. R.* 154; aff'g 28 *Hun.* 150; s. c., 16 *Weekly D.* 138; and 1 N. Y. *Crim. R.* 105; '84; statutes, 4.



- *v. McGowan*, '84; chattels, 4; '86; indict. 10 n.
- *v. McKinney*, 3 *Parlc.* 510. Applied (Perjury) in 38 *Hun.* 177.
- *ex rel. Marshall v. McKinney*, '85; associations, 5.
- *ex rel. Williamson v. McKinney*, '86; quo warranto, 1.
- *ex rel. Bay State, &c. Co. v. McLean*, '83; tax. 13; '86; certiorari, 7 n.
- *v. McLeod*, '83; warrants, 1 n.; '85; homicide, 1.
- *v. McMahon*, '83; ev. 180; new tr. 24.
- *v. McWhorter*, '81; trials, 49 n.
- *v. Macy*, '84; parties, 39.
- *v. Majone*, 91 *N. Y.* 211; s. c., 16 *Weekly D.* 199, and 1 *N. Y. Crim. R.* 94; aff'g 12 *Abb. N. C.* 187; s. c., 1 *N. Y. Crim. R.* 86. '85; homicide, 1, 2 n.; '86; homicide, 6.
- *ex rel. Kennedy v. Manhattan Gas-light Co.*, '86; r. r. co. 4 n.
- *ex rel. Lawrence v. Mann*, 32 *Hun.* 440; aff'g 66 *Hov. Pr.* 337.
- *v. Manning*, '86; costs, 4.
- *ex rel. Brownson v. Marine Court*, '85; city ct. of N. Y. 4; '86; city ct. of N. Y. 1.
- *v. Martin*, 36 *Hun.* 462; s. c., 3 *N. Y. Crim. R.* 122. Previous decision in 2 *Id.* 51.
- *v. Marx*, 99 *N. Y.* 377; s. c., 3 *N. Y. Crim. R.* 200; rev'g *Id.* 11; s. c., 35 *Hun.* 528. '84; adultery, 1; '86; adultery, 1; const. law, 1 n.; dairy products, 3.
- *v. Mather*, '84; conspiracy, 1; '85; conspiracy, 1 n.; wit. 66 n.; '86; wit. 28.
- *v. Mattier*, '85; inj. 18; relig. corp. 7 n.
- *v. Mauran*, '85; waters. 13.
- *ex rel. Griffing v. Mayor, &c. of Brooklyn*, '83; const. law, 41; tax. 1; '84; const. law, 30, 43 n.; '85; compensation, 1; drainage, 2 n.; forec. 24 n.; munc. corp. 98; tax. 3; '86; const. law, 19, 32; tax. 1.
- *v. Mayor, etc. of N. Y.*, '83; inj. 8; munc. corp. 50; '84; inj. 19 n.; '85; fires & fire-esc. 1 n.; inj. 42.
- *ex rel. Agnew v. Mayor, etc. of N. Y.*, '86; certiorari, 7 n.
- *ex rel. Houston v. Mayor, etc. of N. Y.*, '86; munc. corp. 24.
- *ex rel. Moulton v. Mayor, etc. of N. Y.*, '84; mand. 11 n.
- *ex rel. O'Reilly v. Mayor, etc. of N. Y.*, '84; mand. 7,
- 13; '86; ev. 225; munc. corp. 26.
- *ex rel. Fiedler v. Mead*, '83; ev. 95; '85; bonds, 6; county treas. 8; munc. corp. 125 n.; '86; mand. 6.
- *ex rel. Sherwin v. Mead*, 92 *N. Y.* 415; s. c., 1 *N. Y. Crim. R.* 417; aff'g 28 *Hun.* 227; s. c., 64 *Hov. Pr.* 41; and 15 *Weekly D.* 552. Another proceeding in 64 *Hov. Pr.* 252. '83; embezzlement, 3; '86; const. apt, 38.
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- *ex rel. Bartlett v. Medical Society of Erie*, '83; mand. 20.
- *v. Meighan*, '86; bail, 3 n.
- *v. Menken*, '86; indict. 8.
- *v. Mercein*, '83; husb. & w. 25.
- *v. Merchants' Bank*, 35 *Hun.* 97. Aff'd, it seems, but without opinion, 99 *N. Y.* 642.
- *v. Merchants' and Mechanics' Bank*, '84; bail, 6; pl. 145; '86; banking, 13.
- *v. Merrill*, '83; error, 1.
- *v. Metropolitan Telephone, etc. Co.*, 11 *Abb. N. C.* 304; s. c., 64 *Hov. Pr.* 66; and 2 *Civ. Pro. R. (McCarty)* 304. Further proceedings in 31 *Hun.* 496. '84; munc. corp. 1; '85; compensation, 16 n.; parties, 21.
- *v. Metropolitan Telephone Co.*, '85; highw. 3 n.; '86; trials, 3.
- *v. Miller*, '86; indict. 11.
- *ex rel. Van Aken v. Millham*, 29 *Hun.* 151. Rev'd in 100 *N. Y.* 273; s. c., 4 *N. Y. Crim. R.* 127; 1 *Centr. Rep.* 515; and 2 *Eastern Rep.* 684.
- *v. Moett*, '86; trials, 129.
- *ex rel. Haggert v. Moffit*. See 30 *Moak Eng.* 514 n.
- *v. Molyneux*, '83; statutes, 10; '85; statutes, 3 n. 8, 9.
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- *v. Morgan*, '84; certiorari, 12 n.
- *v. Morrell*, '83; mand. 6; '84; const. law, 1 n.
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- *ex rel. Steiner v. Morrison*, '85; munc. corp. 5 n.
- *v. Morse*, 99 *N. Y.* 662; s. c., 3 *N. Y. Crim. R.* 321; aff'g *Id.* 104.
- *ex rel. Larrabee v. Mulholland*, '86; munc. corp. 24.
- *v. Murphy*, 3 *N. Y. Crim. R.* 338. Rev'd in 4 *Id.* 95; s. c., 101 *N. Y.* 126; and 3 *Hov. Pr.* N. S. 469.
- *v. Murphy*. See *Murphy v. People*. '84; appeal, 126; '86; indict. 22.
- *ex rel. Gilchrist v. Murray*, '83; off'r. 21.
- *v. Mutual Gas-light Co.*, '83; depositions, 21; '84; depositions, 10.
- *v. Muzzy*, '85; bonds, 5.
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- *ex rel. Douglass v. Naehr*, '84; disorderly per. 1; '85; certiorari, 18 n.; '86; disorderly per. 4 n.
- *ex rel. Welch v. Nash*, '83; contracts, 10.
- *v. National Fire Ins. Co. of Hartford*, '83; def. 39.
- *v. National Trust Co.*, '83; ins. 90; '86; insane per. 7.
- *v. Naughton*, '86; bills of par. 13.
- *ex rel. Blossom v. Nelson*, '83; corp. 60 n.
- *v. Newell*, 1 *Hov. Pr. N. S.* 8. Aff'd in 38 *Hun.* 78.
- *v. Newman*, '85; const. law, 7, 16 n.
- *v. N. Y. & Staten Island Ferry Co.*, '83; costs, 83, 85; grants, 1 n.; '85; ev. 27 n. 332.
- *ex rel. Van Heck v. N. Y. Catholic Protective*, 101 *N. Y.* 195; s. c., 3 *Hov. Pr. N. S.* 393; and 4 *N. Y. Crim. R.* 79; aff'g 38 *Hun.* 127.
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- *ex rel. Thacher v. N. Y. Commercial Assoc.*, '83; ben. assoc. 10; '84; const. law, 13.
- *ex rel. Baker v. N. Y. Common Pleas*, '86; verif. 1 n.
- *ex rel. Fryer v. N. Y. Common Pleas*, '85; costs, 8 n.
- *ex rel. Lownds v. N. Y. Common Pleas*, '85; costs, 9 n.
- *v. N. Y. Floating Dry Dock Co.*, 92 *N. Y.* 487; aff'g, in effect, 11 *Abb. N. C.* 40; s. c., 63 *Hov. Pr.* 451; and

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- *ex rel. Roddy v. N. Y. Juvenile Asylum*, '85; hab. corp. 1 n.
- *v. N. Y., Lake Erie, etc. R. R. Co.*, 40 *Hun*, 570; aff'g 17 *Abb. N. C.* 304; r. r. co. 4, 5, 6.
- *ex rel. Ohlen v. N. Y., Lake Erie, etc. R. R. Co.*, '83; carriers, 2 n.
- *v. N. Y., New Haven, etc. R. R. Co.*, 89 *N. Y.* 266; s. c., 15 *Wesley D.* 50; aff'g 12 *Id.* 434.
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- *ex rel. Mayor, etc. of N. Y. v. Nichols*, '83; munc. corp. 32; off'r, 5; ref. 43; stay of pro. 5; '84; munc. corp. 20; prohibition, 2; '85; munc. corp. 17 n.; prohibition, 2 n.; '86; com. schools, 2; ev. 160 n.; motions, etc. 4.
- *ex rel. Washington v. Nichols*, '85; munc. corp. 23.
- *v. Nobles*, '86; crim. law, 3.
- *v. Noelke*, 1 *N. Y. Crim. R.* 495; aff'g *Id.* 252; s. c., 29 *Hun*, 461, and 16 *Weekly D.* 528; '84; wit. 37, 38, 39 n.; '85; wit. 55; '86; lotteries, 1 n.; wit. 60 n.
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- *ex rel. Conliss v. North*, '83; munc. corp. 5.
- *v. Northern R. R. Co.*, '84; pl. 38 n.; '85; pl. 4.
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- *v. Oakes*, '83; costs, 100.
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- *ex rel. Robinson v. O'Keefe*, 17 *Weekly D.* 536. Aff'd in 100 *N. Y.* 572; s. c., 2 *Eas. Rep.* 181.
- *ex rel. Van Cortlandt v. Onondaga Common Pleas*, '84; arbitration, 3 n.; '86; discount, 5 n.
- *v. Open Board of Stock Brokers' Building Co.*, 92 *N. Y.* 98; s. c., 15 *Reporter*, 532, and *N. Y. Daily Reg.*, Oct. 7, 1883; rev'g, in part, 28 *Hun*, 274; s. c., 15 *Weekly D.* 527. '86; judicial sale, 7.
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- *ex rel. Manhattan Sav'gs Inst'n of N. Y. v. Otis*, 90 *N. Y.* 48; s. c., 15 *Weekly D.* 305; aff'g 24 *Hun*, 519. '85; appeal, 89; const. law, 11 n.
- *v. Otto*, 101 *N. Y.* 690; s. c., more fully, 4 *N. Y. Crim. R.* 155; aff'g *Id.* 150; s. c., 38 *Hun*, 97.
- *ex rel. Phelps v. Oyer and Terminer*, '83; false pre. 1; trials, 106, 107; wit. 79; '85; bail, 1; '86; trials, 107 n. 110; wit. 62 n.
- *ex rel. Kingsland v. Palmer*, '83; ex. & ad. 14.
- *v. Park*, '85; ev. 254 n.; felony, 1.
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- *ex rel. Jenkins v. Parker Vein Coal Co.*, '84; mand. 16.
- *v. Paulding*, '83; sum. pro. 5.
- *v. Payne*, '83; indict. 14, 15 n.
- *v. Peabody*, '83; case, 6; '84; ev. 157 n.
- *v. Pease*, '85; pl. 81; '86; ev. 3 n.
- *v. Peck*, '86; indict. 27.
- *ex rel. Hoag v. Peck*, 4 *Lans.* 528. Cited (Withdrawal of consent) in 99 *N. Y.* 333. '84; munc. corp. 103.
- *ex rel. Smith v. Peck*, '83; election of off'r, 11; '86; relig. corp. 4.
- *v. Pennock*, '85; principal & s. 12, 13.
- *ex rel. Van Allen v. Perry*, '83; certiorari, 3.
- *ex rel. Mann v. Peterson*, 21 *Hun*, 421; rev'g, in part, 16 *Weekly D.* 70.
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- *v. Petrea*, 92 *N. Y.* 128; s. c., 1 *N. Y. Crim. R.* 233; 65 *Hov. Pr.* 59; aff'g 30 *Hun*, 98; s. c., 64 *Hov. Pr.* 139; 1 *N. Y. Crim. R.* 198, and 16 *Weekly D.* 6. '83; grand jury, 11; '84; appeal, 129; grand jury, 1; '85; appeal, 125; highw. 12; '86; grand jury 3 n.
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- *v. Pinckney*, '83; off'r, 1; '86; off'r, 7 n.
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- *ex rel. Mohr v. Police Commissioners of N. Y.*, '84; munc. corp. 17.
- *ex rel. Sibert v. Police Commissioners of N. Y.*, '83; certiorari, 1 n.; '84; munc. corp. 23.
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- *v. Porter*, '86; hab. corp. 1 n.
- *ex rel. Townsend v. Porter*, 90 *N. Y.* 68; s. c., 15 *Weekly D.* 409; aff'g 26 *Hun*, 622; s. c., 14 *Weekly D.* 481.
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- *v. Poucher*, 30 *Hun*, 576; s. c., 1 *N. Y. Crim. R.* 544. Appeal dismissed in 3 *Id.* 560; s. c., 99 *N. Y.* 610.
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- *ex rel. Kingsley v. Pratt*, '83; arrest, 41.
- *v. Quant*, '85; ev. 195.
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- *ex rel. Morris v. Randall*, '83; inj. 67; sup. pro. 35.
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- *v. Rathburn*, '83; contempt, 2 n.
- *ex rel. Stetzer v. Rawson*, '83; larceny, 5; '85; ev. 254 n.
- *v. Raymond*, 96 *N. Y.* 38; aff'g 32 *Hun*, 123; s. c., 2 *N. Y. Crim. R.* 295. '83; const. law, 46.

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- *ex rel. Raplee v. Reddy*, '83; certiorari, 8; '84; costs, 54; '86; certiorari, 2, 7 n.
- *ex rel. Knapp v. Reeder*, '84; attach. 39.
- *ex rel. Brack v. Reilly*, '86; exec. 19.
- *ex rel. Fischer v. Reilly*, '84; false impris. 2 n.
- *v. Restell*, '86; contempt, 19 n.
- *ex rel. German Am. Loan, etc. Co. v. Richards*, '86; mand. 7, 15.
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- *ex rel. Fries v. Riley*, '83; contempt, 5; '84; contempt, 11 n.; '85; contempt, 5; '86; contempt, 7, 38.
- *v. Robinson*, '86; ev. 101 n.
- *ex rel. Garbutt v. Rochester and State Line R. R. Co.*, '83; carriers, 2 n.; '84; spec. perf. 3; '85; contempt, 21 n.; costs, 43; '86; r. r. co. 4 n. 10.
- *v. Rockaway Beach Imp. Co.*, '86; costs, 85.
- *v. Rogers*, '83; crim. 1. 3 n.; exceptions, 2; '84; crim. 1. 1 n.; '85; trials, 105 n.
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- *v. Roper*, '83; grants, 1 n.; '86; const. law, 11.
- *v. Rowland*, '86; ex. & ad. 17 n.
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- *ex rel. Bean v. Russell*, '86; prohibition, 2.
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- *ex rel. Crane v. Ryder*, '83; parties, 39; pl. 198; '84; pl. 7 n.; '85; pl. 110 n.
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- *v. Rynders*, '85; indict. 14.
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- *v. Safford*, '85; wit. 60.
- *ex rel. Newman v. Sailor's Snug Harbor*, '83; mand. 20.
- *ex rel. Schmitt v. St. Francis Benev. Soc.*, '83; ben. assoc. 10.
- *v. Sammis*, '86; place of trial, 7.
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- *ex rel. Lincoln v. Saratoga Common Pleas*, '83; district ct. 11.
- *v. Satterlee*, '84; wit. 37; '85; wit. 55; '86; trials, 121.
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- *ex rel. Smith v. Schiellain*, '86; const. law, 15.
- *v. Schryver*, '85; ev. 232.
- *ex rel. Kellogg v. Schuyler*, '83; dam. 8; '84; bonds, 8 n.; '86; attach. 45.
- *v. Seaman*, '85; associations, 5.
- *ex rel. Attorney-General v. Security Life Ins. Co.*, '85; ins. 80 n.
- *v. Security Life Ins. etc. Co.*, '83; corp. 79; ins. 83, 88, 89, 91 n. 94 n. 95, 96 n.; receivers, 21; savgs. bks. 2 n.; '84; ins. 32; '85; ins. 79, 80 n.; '86; ins. 61, 96.
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- *v. Sessions*, '83; indict. 33; warehousing, 2; '86; removal of c. 1.
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- *v. Smith*, '83; indict. 23; '84; larceny, 3 n.; '86; indict. 7.
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- *ex rel. Cox v. Special Sessions*, '85; const. law, 13; '86; legislature, 2.
- *ex rel. Engel v. Special Sessions*, '84; assault & b. 4.
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- *ex rel. Collins v. Spicer*, 34 *Hun*, 584. Previous decision in 99 *N. Y.* 225.
- *v. Starkweather*, '85; ex. & ad. 128 n.
- *v. Stearns*, '83; indict. 8; '85; forgery, 3; indict. 14.
- *v. Steele*, '86; appeal, 16 n.
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- *v. Stowell*, '85; off'r, 3 n.
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- *v. Sturdevant*, '83; const. law, 9; inj. 7, 8; lotteries, 3; '84; costs, 1; '85; contempt, 17; inj. 21; '86; former adj. 21 n.; munc. corp. 4.
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- *ex rel. Mygatt v. Supervisors of Chenango*, '83; tax. 66; '85; equity, 2; '86; judgm. 14.
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- *ex rel. Van Lassel v. Supervisors of Columbia*, '86; money paid, etc. 11 n.
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- *ex rel. First Nat. Bank v. Supervisors of Herkimer*, '83; statutes, 19 n.; '86; superv. 2 n.
- *ex rel. Hoyt v. Supervisors of Kings*, '86; compensation, 5 n.
- *ex rel. Conway v. Supervisors of Livingston*, '84; statutes, 12; '85; r. i. co. 24, 25 n.
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- *ex rel. Phoenix v. Supervisors of New York*, '86; superv. 2 n.
- *ex rel. Canajoharie Nat. Bank v. Supervisors of Montgomery*, '85; statutes, 14 n.; tax. 3, 11.
- *ex rel. Ransom v. Supervisors of Niagara*, '86; atty. & c. 10.
- *ex rel. Brown v. Supervisors of Onondaga*, 3 *Hov. Pr. N. S.* 1; s. c., 4 N. Y. *Trim. R.* 102. Aff'd in 102 N. Y. 691, on opinion below.
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- *ex rel. Otsego County Bank v. Supervisors of Otsego*, '83; statutes, 19 n.; '84; munc. corp. 59 n.; '85; r. i. co. 24, 25 n.; '86; superv. 2 n.
- *ex rel. McDonough v. Supervisors of Queens*, '86; superv. 2 n.
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- *ex rel. Thompson v. Supervisors of Schenectady*, '83; towns, 3; '84; superv. 3; '85; former adj. 13.
- *ex rel. Cagger v. Supervisors of Schuyler*, '83; costs, 121.
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- *ex rel. Hermance v. Supervisors of Ulster*, '83; tax. 5.
- *ex rel. Lefever v. Supervisors of Ulster*, '83; superv. 3.
- *ex rel. McKenzie v. Supervisors of Ulster*, 94 N. Y. 263; aff'g 30 *Hun*, 148; towns, 5, 6.
- *ex rel. Fells v. Supervisors of Ulster*, '83; tax. 2.
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- *ex rel. James v. Surrogate of Putnam*, '86; surr. ct. 6.
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- *ex rel. Salke v. Talcott*, '85; prohibition, 2 n.
- *v. Taylor*, '83; indict. 14, 15 n.; '84; sentence, 1 n.; trials, 86; '85; trials, 114 n.
- *ex rel. Smith v. Taylor*, '85; waiver, 1.
- *ex rel. Teed v. Teed*, '84; sum. pro. 4.
- *ex rel. Judson v. Thacher*, '83; appeal; 71; '85; munc. corp. 5 n.; '86; quo warranto, 2.
- *ex rel. Jermain v. Thayer*, '85; canals, 7.
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- *v. Thompson*, '86; appeal, 106; ev. 236; trials, 128.
- *ex rel. Dowdney v. Thompson*, 19 *Weekly D.* 455; s. c., with opinion in full, N. Y. *Daily Reg.*, Aug. 13, 1884. Appeal dismissed in 99 N. Y. 641.
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- *ex rel. McManus v. Thompson*, 65 *Hov. Pr.* 407; s. c., 5 *Month. L. Bul.* 85. Aff'd in 32 *Hun*, 93. '85; highw. 3 n.; wit. 49.
- *ex rel. Stranahan v. Thompson*, 98 N. Y. 6; rev'g 67 *Hov. Pr.* 491.
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- *v. Throop*, '86; appeal, 16 n.
- *v. Tibbetts*, '83; em. dom. 2; waterc. 3 n.; '84; patents for l. 2 n.; waterc. 3 n.; '85; navig. 1; waterc. 12 n. 13.

- *ex rel.* Morton v. Tieman, '86; off'r, 8 n.
- v. Tighe, '84; excise, 2, 4.
- *ex rel.* Stanton v. Tioga Common Pleas, '83; assign. 9, 15; '85; abate. & r. 2.
- v. Tompkins, '83; false pre. 2; fraud, 1.
- v. Townsend, '83; ex. & ad. 89 n.; '84; parties, 41 n.
- *ex rel.* Spahn v. Townsend, '86; certiorari, 8a.
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- *ex rel.* Faulkner v. Trustees of Dansville, '85; const. law, 49 n.; '86; const. law, 27.
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- *ex rel.* Garling v. Van Allen, '84; const. law, 11.
- *ex rel.* Van Rensselaer v. Van Alstyne, '86; highw. 8 n.
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- v. Vane, '86; wit. 47 n.
- *ex rel.* Simpson v. Van Horne, '83; def. 106; munc. corp. 10; '85; munc. corp. 6 n.
- *ex rel.* Navarro v. Van Nort, '84; mand. 3.
- v. Van Rensselaer, '83; patents for l. 1; real prop. 5 n.; '85; water. 12 n.
- v. Van Santvoord, '84; indict. 18 n.
- v. Van Steenburgh, '85; ev. 254 n. felony, 1.
- v. Van Wyck, '85; contempt, 14 n.
- v. Vedder, 98 *N. Y.* 630;
- s. c., 3 *N. Y. Crim. R.* 32; aff'g *Id.* 23; s. c., 34 *Hun*, 280.
- v. Vermilyea, '84; depositions, 1; '86; certiorari, 19 n.; place of trial, 7.
- v. Vilas, '83; principal & s. 10; '84; bonds, 8 n.; trespass, 1; '85; munc. corp. 5 n.; off'r, 11; principal & s. 12.
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- *ex rel.* Johnson v. Village of Whitney's Point 32 *Hun*, 508. Aff'd in 102 *N. Y.* 81.
- *ex rel.* Weatherhead v. Waldron, '86; surr. ct. 6.
- *ex rel.* Hawes v. Walker, '84; assign. for b. of c. & pl. 7 n.
- *ex rel.* Kehlbeck v. Walsh, '83; certiorari, 1 n.
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- *ex rel.* Frey v. Warden of N. Y. County Jail, 34 *Hun*, 393. Rev'd in 100 *N. Y.* 20; s. c., 3 *A. Y. Crim. R.* 545, 1 *Centr. Rep.* 173; 2 *East. Rep.* 308; 2 *Northeast. Rep.* 870.
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- v. Wheeler, '86; off'r, 5; tax, 39.
- v. White, '83; judges, 2; '84; canals, 4 n.; '85; notaries, 1; '86; off'r, 9.
- *ex rel.* Gere v. Whitlock, '84; const. law, 38; '86; com. schools, 2; const. law, 27 n.
- v. Whitwell, '84; pl. 55.
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- s. c., 1 *N. Y. Crim. R.* 296; aff'g *Id.* 290; s. c., 28 *Hun*, 308, and 16 *Weekly D.* 141.
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- v. Mitchell, '83; legacies, 24; sales, 13.
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- v. Stout, '83; off'r, 21; '84; pl. 7 n.
- v. Townsend, '84; pl. 22.
- Platz v. City of Cohoes, 89 *N. Y.* 219; s. c., 15 *Weekly D.* 61; aff'g 24 *Hun*, 101; s. c., 12 *Weekly D.* 106. '84; appeal, 15; negl. 39; '85; appeal, 15.
- Plestoro v. Abraham, '85; conflict of l. 3 n.
- Plimpton v. Bigelow, 13 *Abb. N. C.* 173; rev'g 12 *Id.* 202; s. c., 29 *Hun*, 362; 3 *Civ. Pro. R.* 182, and 2 *Id.* (McCarthy) 421; which rev'd Plimpton v. Bigelow, 11 *Abb. N. C.* 180; s. c., 63 *How. Pr.* 484. 2 *Civ. Pro. R.* (McCarthy) 131. '85; attach. 42.
- Plumb v. Tubbs, '84; deeds, 15; '85; deeds, 32 n.
- Plympton v. Bigelow. See Plimpton v. The Same.
- Poerschke v. Kedenburg, '83; mech. 1. 8; oil wells, 1.
- Poillon v. Lawrence, '84; discharge, 4; lim. of a. 13; '85; discharge, 3 n.; lim. of a. 23 n.; '86; lim. of a. 10 n.
- v. Martin, '86; trusts, 23 n.
- v. Secor, '83; partn. 8; '84; partn. 3 n.

- Polar Star Mut. Benefit Assoc. of N. Y. v. Boniface, 2 *Weekly D.* 522; s. c., with opinion in full, in *N. Y. Daily Reg.*, Feb. 3, 1885.
- Polinsky v. People, '83; indict. 5; '85; const. law, 13; '86; indict. 8, 26.
- Pollack, Matter of, '84; ex. & ad. 130.
- Pollen v. Le Roy, '84; brokers, 13; sales, 32, 35; '85; sales, 24.
- Pollett v. Long, '83; ice, 1; negl. 2 n.; '85; negl. 84; '86; negl. 7.
- Polley v. Wilkinson, '86; joinder of a. 5.
- Pollock, Matter of, '86; tenants for life, 2 n.
- Pollock v. National Bank, '84; juris. 5.
- v. Pollock, '83; divorce, 3 n.; wit. 84 n.; '84; ev. 53; '85; wit. 60; '86; appeal, 34; ev. 42.
- Pomeroy v. Ainsworth, '84; conflict of l. 5; '85; ev. 47.
- v. Moss, 15 *Weekly D.* 25; aff'g 4 *Month. L. Bul.* 19.
- v. Ricketts, '83; att. ch. 34; '84; attach. 18, 20; '85; attach. 21; '86; attach. 40 n.
- v. Tanner, '85; principal & s. 1.
- Pomfrey v. Village of Saratoga, '86; munc. corp. 42 n.
- Pond v. Bergh, '83; wills, 127.
- v. Comstock, 87 *N. Y.* 627; aff'g 20 *Hun.* 492, but no opinion. '83; fraud. conv. 6; '85; fraud. conv. 5 n.
- v. Curtiss, '85; guardian & w. 4.
- v. Hudson River R. R. Co., '85; juris. 11.
- v. Starkweather, 99 *N. Y.* 411; aff'g 20 *Weekly D.* 265.
- Pontius v. People, '83; ev. 279; '85; appeal, 131; ev. 230, 254 n.
- Poock v. Miller, '85; ev. 224 n.
- Pool v. Pool, '84; contracts, 40.
- Poole v. People, '85; ev. 272.
- Pope v. Cole, '84; partn. 15 n.; '85; partn. 26 n. 27, 29.
- v. Mead, '86; cloud on title, 2.
- v. Porter, 19 *Weekly D.* 103. Rev'd in 102 *N. Y.* 366.
- v. Terre Haute Car, etc. Co., 87 *N. Y.* 137; s. c., 13 *Weekly D.* 317; aff'g 24 *Hun.* 283; s. c., 60 *How. Pr.* 419; and 11 *Weekly D.* 526. '86; divorce, 24 n.
- Popfinger v. Yutte, 49 *Super. Ct. (J. & S.)* 312. Aff'd in 102 *N. Y.* 38. '86; const. law, 47; cred. s. 5.
- Popham v. Cole, '83; tradem. 7.
- v. Spencer, '84; ex. & ad. 94.
- Poppenhusen v. Seeley, '84; undert. 16.
- Port v. Jackson, '83; deeds, 31 n.; '85; covenants, 4; '86; bonds, 5 n.
- Porter v. Bleiler, '85; lease, 2 n.; '86; contracts, 70.
- v. Kingsbury, '83; undert. 17; '86; pl. 151 n.
- v. Knapp, '84; ev. 35.
- v. Lobach, '85; undert. 12.
- v. Parks, '85; trials, 29.
- v. Parmlly, '83; chat. mort. 7 n. 10, 26 n.; '86; exec. 4.
- v. Purdy, '85; munc. corp. 116 n. 117 n.
- v. Smith, '86; case, 2; corp. 8 n.
- v. Talcott, '86; pay. 2 n.
- v. Waring, '83; ev. 1.
- v. Willett, '86; costs, 79 n.
- v. Williams, '83; sup. pro. 18, 23; '84; sup. pro. 34; '86; assign. for b. of c. 35.
- v. Wormser, '85; pl. 60; '86; dam. 24 n.
- Post v. Aina Ins. Co., '86; ins. 24.
- v. Bank of Utica, '83; usury, 36; cancel of wr. instr. 4.
- v. Bernheimer, '86; spec. perf. 12.
- v. Campbell, 83 *N. Y.* 279. Cited (Allowance of payment) in *Gibson v. Lenane*, 94 *N. Y.* 188.
- v. Dart, '84; deeds, 26 n.; usury, 12 n.
- v. Doremus, '83; undert. 2; '84; contracts, 9; undert. 12 n.; '85; undert. 8; '86; undert. 1, 2 n.
- v. Dorr, '84; receivers, 2; '85; receivers, 5 n.
- v. Hover, '83; trusts, 23, 29; wills, 165, 205, 222, 234, 238; '84; susp. of power of a. 6; wills, 88; '85; deeds, 29 n.; susp. of power of a. 3.
- v. Kearney, '85; forec. 16; '86; lease, 25 n.
- v. Kreischer, 4 *Centr. Rep.* 219; s. c., 2 *N. Y. State Rep.* 795; rev'g 32 *Hun.* 49; s. c., 14 *Abb. N. C.* 38.
- v. Martens, '85; lease, 2; '86; contracts, 70.
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- & Neafie, '83; ev. 305.
- v. N. Y. Central R. R. Co., '83; costs, 47.
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- v. Robertson, '86; charter-party, 1.
- v. Weil, '84; deeds, 13, 15; '85; deeds, 32 n.
- Postley v. Cheyne, 4 *Dem.* 432; s. c., as Estate of Sterling, 9 *Civ. Pro. R.* 448.
- Potter v. Bank of Ithaca, '85; corp. 4 n.
- v. Chadsey, '83; ev. 53.
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- v. McPherson, '86; inj. 37.
- v. Merchants' Bk., '84; ev. 124 n.; '85; dam. 6 n.; ev. 319.
- v. Potter, '86; husb. & w. 8.
- v. Bowland, '83; judgm. & decree, 1; '86; mech. l. 3.
- v. Smith, '85; pl. 4.
- v. Tallman, '84; conflict of l. 5; '85; ev. 47.
- v. Town of Greenwich, 92 *N. Y.* 662; aff'g 26 *Hun.* 326; '85; munc. corp. 127.
- v. Van Vranken, '83; abate. & r. l.
- Potts v. Hart, '86; attach. 12; pl. 78.
- v. Mayer, '83; wit. 60.
- Poucher v. Blanchard, '84; atty. & c. 5, 6 n.; '85; former adj. 22 n.
- v. N. Y. Central R. R. Co., '85; carriers, 14.
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- Poughkeepsie, etc. R. R. Co., Matter of, '86; compensation, 8 n.; em. dom. 4 n.
- Poughkeepsie Gas Co. v. Citizens' Gas Co., 89 *N. Y.* 493; s. c., 15 *Weekly D.* 238; aff'g 20 *Hun.* 214; s. c., 9 *Weekly D.* 451.
- Poughkeepsie, Hartford, etc. R. R. Co. v. Simpson, 89 *N. Y.* 636; aff'g, it seems, 23 *Hun.* 43.
- Poulha v. Broadway & Seventh Ave. R. R. Co., '83; negl. 62.
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- Powell v. Jones, '85; new tr. 16.
- v. Myers, '83; carriers, 13; '84; carriers, 7.
- v. Powell, '84; landl. & t. 5 n.; '85; replevin, 4.
- v. Preston, '83; sales, 14.
- v. Smith, '83; covenants, 1; '86; wit. 16.
- v. Tuttle, '84; attach. 28; '85; attach. 48.
- v. Waldron, '84; exchanges, 1; sup. pro. 17; trials, 3; '85; exchanges, 2.
- v. Waters, '83; ev. 410; usury, 16.
- Power v. Cassidy, '83; ex. & ad. 235; wills, 58, 62; '84; wills, 41, 41a, 97 n. 99; '85; wills, 69, 129; '86; ex. & ad. 135 n.; wills, 20, 59.



- *v. Lester*, '85; mort. 8 n.  
 — *v. N. Y., Lake Erie, etc. R. R. Co.*, 32 *Hun*, 415. Rev'd as *Powers v. The Same*, in 98 *N. Y.* 274. '86; master & s. 20, 26 n. 37.  
 — *v. Village of Athens*, 99 *N. Y.* 582; aff'g 26 *Hun*, 282. '83; inj. 67; r. r. co. 60; '84; inj. 19.  
 — *v. Waters*, '83; bills, n. & c. 61.  
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 — *v. Bergen*, '84; const. law, 28.  
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 — *v. Freeman*, '83; bills, n. & c. 48.  
 — *v. Graydon*, '86; assign. for b. of c. 7.  
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 — *v. Rome, Watertown, etc. R. R. Co.*, '85; pl. 51 n. /  
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 — *v. Bogardus*, '83; warrants, 1.  
 — *v. Buffalo City R. R. Co.*, 19 *Hun*, 30. Cited (Eminent domain), in 34 *Hun*, 122. '83; easements, 7.  
 — *v. Collins*, '85; set-off, 3.  
 — *v. Coman*, '83; bills, n. & c. 6, 7, 48; debtor & cred. 2; '85; paym. 3 n.; '86; bills, n. & c. 24.  
 — *v. Eaton*, '84; savgs. bks. 2.  
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 — *v. Gulick*, '83; contracts, 25.  
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 — *v. Price*, '85; perjury, 2.  
 — *v. Ramsdell*, '83; forec. 6.  
 — *v. Short*, '83; corp. addenda; '84; bail, 8 n.; bills, n. & c. 3; sav. bks. 2; '86; savgs. bks. 12.  
 — *v. Stevens*, 26 *Hun*, 229. Rev'd in 94 *N. Y.* 387; '84; mech. l. 10 n.; '85; exec. 16.  
 — *v. Stiles*. Cited (Right to redeem) in 4. *Hun*, 69. '84; ref. 19.  
*Pratt Mfg. Co. v. Jordan Iron, etc. Co.*, 67 *Hov. Pr.* 231: c., 5 *Civ. Pro. R.* 372; and 33 *Hun*, 143. Motion for re-argument denied in *Id.* 544. '84; pl. 41; '85; pl. 98; '86; pl. 48, 52 n.  
*Pray v. Hegeman*, 92 *N. Y.* 508; rev'g 27 *Hun*, 603. Subsequent decision in 33 *Id.* 358; and that aff'd in 98 *N. Y.* 351. '84; accumulations, 1; accumulations, addenda 2; wills 37; '86; accumulations, n.; former adj. 35; judgm. 4.  
*Prentice v. Janssen*, '86; legacies, 17 n.  
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 — *v. Fenn*, '85; surr. ct. 19.  
 — *v. Holman*, 22 *Weekly D.* 473. Appeal dismissed, it seems, but without opinion, in 101 *N. Y.* 683.  
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 — *v. Watkins*, '83; ex. & ad. 17; '84; ex. & ad. 35 n.; tax. 29; '85; ex. & ad. 32.  
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 — *v. Caruthers*, '83; pl. 7, 109; '84; contracts, 90.  
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 — *v. Woolworth*, 90 *N. Y.* 502; s. c., 16 *Weekly D.* 17; aff'g 12 *Id.* 554.  
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- v. Grote, 49 *Super. Ct. (J. & S.)* 502. Further decision in 50 *Super. Ct. (J. & S.)* 275.
- Rankin v. American Ins. Co., '83; ev. 391; '86; ev. 94.
- v. Arndt, '85; cred. s. 5 n.
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- Ranney, Matter of. See Bunnell v. Ranney.
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- Rapely v. Anderson, '83; usury, 18.
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- Rauth, Matter of, '86; assign. for b. of c. 29.
- Raven v. Rubino, 20 *Weekly D.* 124; s. c., with opinion in full, in *N. Y. Daily Reg.*, Jan. 12, 1885.
- Raw. Dalzell v., '86; costs, 57 n.
- Rawley v. Brown, '84; pl. 126.
- Rawls v. American Mut. Life Ins. Co., '83; ins. 46 n.; wit. 12 n.; '84; ins. 24.
- Rawson v. Lampman, '83; contracts, 4.
- v. Pennsylvania R. R. Co., '83; ev. 38, 39; hush. & w. 20 n.; '84; carriers, 8; '85; hush. & w. 17.
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- Raymond, Matter of, '86; surr. ct. 8 n.
- Raymond v. Johnson, '85; assign. 7.
- v. Richmond, 88 *N. Y.* 671; s. c., 14 *Reporter*, 121; aff'g, it seems, 11 *Weekly D.* 536; '85; trials, 69; '86; former adj. 13 n.
- Raynor v. Pacific Nat. Bk. of Boston, 93 *N. Y.* 371; aff'g 49 *Super. Ct. (J. & S.)* 119. Cited (National banks) in 37 *Hun.* 474.
- Rea v. Winkler, '86; covenants, 1 n.
- Reab v. McAllister, '83; ev. 139 n.
- v. French, '83; attach. 34.
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- Rector, etc. of Church of Holy Sepulchre, Matter of, '85; tax. 26.
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- Rector, etc. of Trinity Church v. Higgins, '83; surr. ct. 35 n.; v. & p. 4; '85; covenants, 4; lim. of a. 38.
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- v. Bank of Attica, '84; corp. 2, 25, 29 n.
- v. Chamberlain, '84; negl. 31; off'r, 16; '85; off'r, 17, 21 n.
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- v. Cropsey, '84; r. r. co., 42; '85; mort. 1a.
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- Rockford, Rock Island, etc. R. R. Co. v. Boody, '84; election of r. 3; '85; principal & a. 21 n.
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- Rodee v. Wade, '85; sales, 33 n.
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 — v. Judd, '83; appeal, 48.  
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 — v. Seymour, '85; assign. for b. of c. 31; legacies, 33.  
 — v. Sturges, '83; mfg. co. 9; '84; corp. 36.  
 — v. Van Wyck, '83; wills, 31 n. 48; '84; wills, 28 n.  
 — v. Wilson, '83; fraud. conv. 6; '86; ev. 238 n.; pledge, 2 n.  
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- Shand v. Hanley, '83; fraud. conv. 19; '86; impris. 13 n.
- Shank v. Shoemaker, '83; atty. & c. 70 n.; '85; fraud, 1.
- Shannon v. Comstock, '86; master & s. 3.
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- Shapley v. Abbott, '83; lim. of a. 41, 42; '85; ex. & ad. 150.
- Sharkey v. Mansfield, '84; demand, 1; '86; account stated, 1.
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- v. Fancher, '85; sec. for costs, 10.
- v. Freeman, '83; judgm. & decree, 20.
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- Shaw's Estate, '83; surr. ct. 22 n.
- Shaw, Matter of, '86; wills, 7 n.
- Shaw v. Cock, '83; amend. 12.
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- v. Davis, '84; ex. & ad. 30; sup. pro. 21.
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- Shear v. Van Dyke, '84; ev. 139.
- Shearman v. Henderson, '84; trials, 57.
- v. N. Y. Central Mills, '83; inj. 27; '84; appeal, 28; pl. 45.
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- Sheerin v. Public Administrator, '86; ex. & ad. 51 n.
- Sheldon v. Clews, '84; ev. 185.
- v. Dodge, '83; assign. for b. of c. 1; '86; fraud. conv. 22.
- v. Edwards, '83; merger, 2; '85; judgm. & decree, 1.
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- Shelton v. Merchants' Dispatch Transp. Co., '83; carriers, 31.
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- Shepherd v. Watrous, '86; duress, 3.
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- v. Shepherd, '83; divorce, 17 n.; '85; trusts, 31 n.
- Shepherd's Fold, etc. of N. Y. v. Mayor, etc. of N. Y., 96 *N. Y.* 137; rev'g 10 *Duly.* 319.
- Sheppard v. Earles, '83; chat. mort. 23.
- v. Steele, '84; app. of paym. 1.
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- v. Houghton, '83; wills, 48, 115; wit. 23; '86; appeal, 92a n.; wit. 5.
- v. House, '86; wills, 78 n.
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- Sherill Roper Air Engine Co. v. Harwood, '85; attach. 16.
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- v. Wells, '83; amend. 9.
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- v. Wright, '83; forcible e. & d. 2; inj. 39; '84; inj. 33; '85; infants, 7.
- Sherrill v. Hopkins, '83; discharge, 2.
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- v. Gardner, '85; lease, 6 n. 11 n.
- v. Hauser, '84; appeal, 102; '86; ev. 248.
- v. Judd, '83; wills, 114.
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- Shufelt v. Shufelt, '84; usury, 12 n.; '85; usury, 5; '86; former adj. 13 n.
- Shuler v. Maxwell, 38 *Hun*, 240. Appeal dismissed, it seems, but without opinion; in 101 N. Y. 657.
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- Shulters v. Johnson, '83; wills, 147; '85; wills, 60.
- Shults v. Andrews, '83; sup. pro. 33 n.
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- Sibbald v. Bethlehem Iron Co., '83; brokers, 3; '84; brokers, 4, 4 n.; '86; brokers, 5.
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- Simonton v. Barrell, '83; alimony, 8; sher. 16.
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- Simpson, Matter of, '84; wills, 66, 68; '86; appeal, 92a n.
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- Simon v. Brown, '86; promise, 3 n.
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- Sindram v. People, 88 *N. Y.* 196; s. c., 14 *Weekly D.* 202; aff'g 1 *N. Y. Crim. R.* 448. '83; ev. 309; '85; homicide, 2 n.; trial, 119; '86; tr. 132.
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- v. McDonald, '85; wit. 2 n.
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- v. Pettée, '86; parties, 4 n.
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- v. Post, '85; assign. 6 n.; 221 n.; wills, 66 n.
- v. Proctor, '86; amend. 1 n.
- v. Randall, '86; tax. 61.
- v. Rathbun, 88 *N. Y.* 660; s. c., 14 *Weekly D.* 318. Further decision in 15 *Id.* 403. '83; amend. 32; '85; pl. 130; '86; amend. 6 n.; appeal, 1, 17, 40.
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- v. Rowley, '85; duress, 2.
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- v. Scholtz, '83; wills, 25 n.; '86; wills, 78 n.
- v. Schulting, '84; pl. 19.
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- v. Sixbury, '83; tradem. 1 n.
- v. Slade, '83; exec. 30; '84; sup. pro. 21.
- v. Smith, 35 *Hun*, 378. Aff'd it seems, but without opinion, in 99 *N. Y.* 639. '83; discharge, 2; ev. 222; trials, 93; wills, 57; '84; former adj. 30 n.; '85; costs, 65; former adj. 3. 30 n. 40 n.; mal. pros. 2 n.; slander, 7; '86; divorce, 2 n.; former adj. 35; partition, 7 n.; pl. 28 n.
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- v. Townsend, '85; principal & s. 1.
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- Smyles v. Hastings, '84; easements, 6 n.
- Smyth, Matter of, '84; ex. & ad. 140; tax. 1 n.; '85; ins. 81 n.; '86; tax. 60 n.
- Smyth v. Knickerbocker Life Ins. Co., '86; estoppel, 12.
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- v. Monroe, '86; estoppel, 12.
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- Snook v. Fries, '85; sales, 25 n.
- v. Lord, '84; ev. 110.
- Snow v. Roy, 22 *Wend.* 602. Followed (Damages in replevin) in McBrian v. Morrison, 55 *Mich.* 351; s. c., 19 *Reporter*, 84.
- Snowdon v. Guion, 50 *Super. Ct. (J. & S.)* 137. Rev'd in 101 *N. Y.* 458.
- Snyder, Matter of, 34 *Hun*, 302. Appeal dismissed in 4 *Centr. Rep.* 210; s. c., 2 *N. Y. State Rep.* 758. '86; contempt, 3; ex. & ad. 85.
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- Southard v. Benner, '83; assign. for b. of c. 7, 52; chat. mort. 13, 18a, 21, 22; cred. s. 2, 10; forec. 7, 15; fraud. conv. 10; '84; chat. mort. 11 n.; pl. 121; '85; chat. mort. 3; cred. s. 5 n.; partn. 17 n.; receivers, 14; '86; cred. s. 11; ev. 26; fraud. conv. 6; parties, 18; surr. ct. 8 n.
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- Staats *v.* Garrett, 21 *Weekly D.* 33. Aff'd, it seems, but without opinion, in 98 *N. Y.* 630.
- Stackpole *v.* Robbins, '86; lim. of a. 5.
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- Steen *v. Niagara Fire Ins. Co.*, 89 *N. Y.* 315; s. c., 15 *Weekly D.* 41; aff'g 12 *Id.* 3. '85; ins. 30 n.; stipulation, 2 n.; '86; ins. 22.
- Steere *v. Steere*, '83; contracts, 81; '85; trusts, 14.
- Steers *v. City of Brooklyn*, 4 *Northeast. Rep.* 7; s. c., 3 *East. Rep.* 439; aff'g mem. 29 *Hun*, 278.
- *v. Liverpool, N. Y. & P. S. Co.*, '84; ev. 6 n.; '85; carriers, 14.
- Steffan *v. Lockwood*. See *Steffan v. Steffan*.
- Steffin *v. Steffin*, 4 *Civ. Pro. R.* 179, 180; s. c., as Steffin *v. Lockwood*, 17 *Weekly D.* 418.
- Stein *v. Wilzinski*, '83; wills, 39 n. 109 n.
- Steinbach *v. Lafayette Fire Ins. Co.*, '85; ev. 93; '86; ins. 56 n.
- *v. Relief Fire Ins. Co.*, '84; former adj. 20 n.
- Steinberg *v. Lasker*, '85; cause of a. 1 n.
- *v. Manhattan Railway Co.*, '85; costs, 1.
- Steinert, Matter of, '83; atty. & c. 36; contempt, 38; '86; contempt, 4.
- Steinle *v. Bell*, '83; service & p. 25; '84; service & p. 14 n.; '86; notice, 3.
- Steinweg *v. Erie Ry. R. Co.*, '84; carriers, 4.
- Stent *v. Continental Nat Bank*, '84; pl. 43, 44, 105; '86; pl. 52 n.
- Stenton *v. Jerome*, '83; brokers, 7 n.; '84; brokers, 7 n.; '85; account stated, 2; '86; account stated, 1.
- Stephens *v. Board of Education*, '83; counties, 2; '85; banking, 13; money paid, 3 n. 12 n.; '86; trusts, 31.
- *v. Buffalo & N. Y. City R. R. Co.*, '83; deeds, 3 n.
- *v. Ely*, '84; discharge, 6 n.
- *v. Fox*, '84; corp. 37; '85; lim. of a. 33; mfg. co. 25.
- *v. Reynolds*, '85; contracts, 71 n.
- *v. Santee*, '85; sales, 1 n. 7 n.; '86; sales, 31.
- Stephenson *v. Clark*, '83; costs, 109.
- *v. Hanson*, '85; sec. for costs, 5.
- *v. Ontario Orphan Asylum*, 27 *Hun*, 386; s. c., 15 *Weekly D.* 215. Aff'd as *Stephenson v. Short*, 92 *N. Y.* 433.
- *v. Short*. See *Stephenson v. Ontario Orphan Asylum*.
- '84; wills, 23 n.; '85; wills, 9 n.; '86; wills, 10 n.
- *v. Stephenson*, '86; verif. 1 n.
- Sterling, Estate of. See *Postley v. Cheyne*.
- Stern *v. Knapp*, '86; amend. 3a.
- Sternberger *v. McGovern*. Cited (Retaining action to give legal relief) in *Hencken v. U. S. Life Ins. Co.*, 11 *Daly*, 291. '83; action, 2; spec. perf. 1; '84; can. of wr. instr. 3; cred. s. 10; '86; pl. 38; trials, 8.
- Sternbergh *v. Schoolcraft*, '84; insane per. 16.
- Sternhaus *v. Schmidt*, '84; undert. 6.
- Serry *v. Arden*, '85; contracts, 79 n.; '86; fraud. conv. 6 n.
- Stettheimer *v. Killip*, '83; negl. 56 n.; '84; mistake, 2 n.
- *v. Meyer*, '83; bills, n. & c. 48.
- Steuben Co. Bank *v. Alberger*, '83; attach. 27, 28, 30, 31, 36, 77, 79; '85; attach. 28 n.
- 33 n. 36 n. 59; '86; attach. 46.
- Stevens *v. Benton*, '86; justices' ct. 2.
- *v. Brennan*, '85; ev. 55; '86; pledge, 2 n.; trials, 25.
- *v. Commercial Ins. Co.*, '81; ins. 16.
- *v. Hauser*, '83; eject. 5; '84; champerty & m. 4.
- *v. Hyde*, '84; appeal, 20; '85; election of r. 8 n.; sales, 40 n.
- *v. Lockwood*, '83; cause of a. 4; contracts, 34; former adj. 4 n.
- *v. Mayor, etc. of N. Y.*, '83; mort. 8; '84; pl. 20.
- *v. Middleton*, 26 *Hun*, 470; s. c., 14 *Weekly D.* 126; aff'g 4 *Month. L. Bul.* 1. '84; attach. 37; '86; attach. 32.
- *v. Rodger*, '84; pl. 30 n.
- *v. Stevens*, '83; assign. 7; gift, 4 n.; '84; ex. & ad. 28.
- *v. Veriane*, '83; ref. 31; '81; inj. 43; '86; appeal, 89; costs, 44 n.
- *v. Watson*, '83; mort. 1.
- *v. Webb*, 12 *Daly*, 88; s. c., 4 *Civ. Pro. R.* 64. Case of same name aff'd, but without opinion, in 102 *N. Y.* 691. '86; bills of par. 4.
- Stevenson, Matter of, '83; parties, 25.
- Stevenson *v. Beecker*, '83; divorce, 3 n.
- *v. Lesley*, '83; remainders, 4; susp. of power of a. 9a; wills, 196 n.; '84; legacies, 6, 21; susp. of power of a. 1; trusts, 27; wills, 117 n.; '85; wills, 131; '86; trusts, 30 n.; wills, 78 n.
- *v. Maxwell*, '84; spec. perf. 14 n.; '86; tender, 1.
- Steves *v. Oswego & S. R. R. Co.*, '83; ev. 352.
- Steward *v. Green*, '83; estoppel, 2.
- *v. Hotchkiss*, '86; pl. 88 n.
- *v. Lamoreaux*, '83; costs, 10.
- Stewart's Case, '85; hab. corp. 5.
- Stewart, Estate of. See *Billings v. Stewart*.
- Stewart *v. Ahrenfeldt*, '86; account stated, 3.
- *v. Beale*, '84; chat. mort. 10; cred. s. 1 n. 7 n.
- *v. Brooklyn & Cross-town R. R. Co.*, '85; costs, 13; false inpris. 7; master & s. 8; negl. 36, 50 n.
- *v. Brown*, '84; sup. pro. 21; '86; attach. 34; exec. 5 n.
- *v. Chambers*, '86; annuities, 1.

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- v. Chrysler, 100 *N. Y.* 378; s. c., 1 *Centr. Rep.* 549; rev'g 21 *Hun.* 285.
- v. Eden, '86; lim. of a. 14 n.
- v. Hawley, '83; negl. 8; '84; false impris. 1; '85; false impris. 6 n.
- v. Keteltas, '83; contracts, 100, 102.
- v. Lisenard, '83; wills, 4; '86; wills, 8 n.
- v. McCready, '83; boarding-house keepers, 1.
- v. McMartin, '83; dower, 6.
- v. Marvel, *N. Y. Daily Reg.*, Sept. 18, 1883. Rev'd in 101 *N. Y.* 357.
- v. N. Y. Common Pleas, '83; district. ct. 13
- v. Orvis, '83; bills, n. & c. 22 n.
- v. Smithson, '86; tradem. 2 n.
- v. Turner, '84; const. law, 28; '86; wit. 56.
- Stehling v. Lockhaus, '83; bills of par. 7, 8.
- Stief v. Hart, '83; exec. 21; '85; munc. corp. 45; '86; tax. 63.
- Stiles v. Burch, '83; ex. & ad. 77 n. 156.
- v. Hooker, '85; waterc. 12 n.
- v. Howland, '86; lien, 7 n.
- Still v. Little, '83; pl. 14.
- Stillman v. Van Beuren, 100 *N. Y.* 439; s. c., 3 *East. Rep.* 190; 3 *Northeast. Rep.* 671; aff'g 49 *Super. Ct. (J. & S.)* 86.
- Stillwell v. N. Y. Central, etc. R. R. Co., '83; negl. 77 n.; '85; negl. 83 n.
- v. Staples, '85; justices' ct. 2.
- Stillwell v. Carpenter, '83; ex. & ad. 142; set-off, 4; surr. ct. 22 n. 28 n.; '84; judgm. & decree, 15; surr. ct. 17; '85; forec. 1; former adj. 10 n.; money paid, 12 n.; pl. 10; set-off, 9; '86; ex. & ad. 81; surr. ct. 11 n.
- v. Hubbard, '86; deeds, 6 n.
- v. Mills, '83; ex. & ad. 105; '86; ex. & ad. 17 n.
- v. Mutual Life Ins. Co., '85; principal & a. 9; '86; corp. 34 n.; ins. 28, 72.
- v. Swarthout, '83; insane per. 17, 18; '85; ex. & ad. 170.
- Stimson v. Wrigley, '85; partn. 17 n.
- Stinson v. N. Y. Central R. R. Co., '84; negl. 16.
- Stitt v. Rowley, '86; costs, 39.
- Stockwell v. Veitch, '83; const. law, 58.
- Stoddard v. Clark, '85; costs, 2, 3, 4, 7, 9 n.; '86; costs, 82 n.
- v. Denison, '83; chat. mort. 7 n.; '86; chat. mort. 3.
- v. Gailor, 90 *N. Y.* 575; s. c., 16 *Weekly D.* 40; modifying 12 *Weekly D.* 244.
- v. Hart, '83; mort. 44; '86; forec. 2.
- v. Onondaga Annual Conference, '83; ev. 271; '84; pl. 35 n.
- v. Whiting, '83; forec. 9; '85; adv. poss. 1 n.
- Stokes, Estate of. See Stokes v. Dale; Dale v. Stokes.
- Stokes, Matter of, 28 *Hun.* 564; aff'g Dale v. Stokes, 5 *Redf.* 586.
- v. Dale, 1 *Dem.* 260; s. c., as Estate of Stokes, 3 *Civ. Pro. R.* 384. '85; ex. & ad. 91; surr. ct. 28.
- v. Johnson, '86; trials, 39.
- v. People, '83; grand jury, 1; wit. 114; '85; ev. 145, 232; trials, 61; '86; homicide, 6 n.; new tr. 36; trials, 128, 135.
- v. Stackney, 5 *Month. L. Bul.* 55. Seems to have been aff'd by Gen. Term, but no opinion reported, and the latter aff'd in 96 *N. Y.* 323. Decision in *Id.* followed (Nature of liabilities of trustees of corporation for its debts) in Chase v. Curtis, 113 *U. S.* 452, 457; s. c., 19 *Reporter*, 420. '85; abate. & r. 2, 5; mfg. co. 17 n.; '86; abate. & r. 3 n.
- Stoll v. King, '86; arrest, 7.
- v. Browning, '83; contracts, 74; '85; contracts, 82 n.; sales, 7 n. 35; '86; sales, 30 n.
- v. Cooper, '85; pl. 134.
- v. De Puga, '84; pl. 151; '86; pl. 159.
- v. Frost, '85; parties, 8.
- v. Morgan, '83; appeal, 135.
- v. Seymour, '84; app. of paym. 1.
- v. Sprague, '83; sales, 1; '86; ev. 8 n.
- v. Wood, '83; principal & a. 15; '84; principal & a. 11 n.
- Storey v. Brennan, '83; trials, 76; '86; pl. 9 n.
- Storm v. Badger, '86; cred. s. 19 n.
- v. Davenport, '83; cred. s. 3 n.
- v. Waddell, '86; cred. s. 19 n.; supp. pro. 7 n.
- Storring v. Borren, '83; ex. & ad. 214.
- Storrs v. Barber, '83; ev. 27 n.
- v. Barker, '84; mistake, 3; '86; estoppel, 9 n.
- v. City of Utica, '83; highw. 21 n.; munc. corp. 69 n. 76; '84; munc. corp. 64; '85; munc. corp. 52 n.
- Story v. Dayton, '85; surr. ct. 30 n. 32.
- v. Furman, '83; ben. assoc. 6; mfg. co. 5 n.; 14, 24, 32; '85; mfg. co. 23 n.
- v. N. Y. Elevated R. R. Co., 11 *Abb. N. C.* 236; s. c. with dissenting opinion, 90 *N. Y.* 122; rev'g 3 *Abb. N. C.* 478. Opinion of Danforth, J., in 90 *N. Y.* approved in 17 *Am. L. R. v.* 719. '83; compensation, 10; highw. 7; '84; const. law, 23, 55; dam. 34 n. 35; inj. 27; munc. corp. 1; '85; compensation, 16; deeds, 20; easements, 1, 4; highw. 2, 3 n.; inj. 25, 27; r. r. co. 50 n. 51; '86; compensation, 3, 4 n. 8 n.; covenants, 1 n.; deeds, 16; easements, 6; em. dom. 2; highw. 1, 2 n. 5 n. 6; r. r. co. 27, 29 n. 30.
- v. Salamon, '86; pl. 9 n.
- v. Williamsburgh Masonic Mut. Ben. Assoc., 16 *Weekly D.* 473. Aff'd in 95 *N. Y.* 474. '85; ben. assoc. 2; '86; ins. 99.
- Stout v. Ryder, '83; trusts, 113.
- Stoutenberg v. Dunbar Box Co., '86; master & s. 34.
- Stouvenel, Matter of, '86; ex. & ad. 16.
- Stouvenal v. Stephens, '85; ev. 13 n.
- Stover v. Eyclshimer, '86; guaranty, 2 n.
- v. Flack, '84; bail, 8 n.
- v. People, '83; indict. 12; '85; ev. 254 n.; trials, 111.
- Stow v. Hamlin, '83; costs, 13; '86; atty. & c. 11.
- v. Tiff, '85; ex. & ad. 97 n.
- Stowell v. Chamberlain, '83; former adj. 6; '85; former adj. 3; '86; former adj. 27.
- v. Haslett, '84; cred. s. 7 n.
- v. Otis, '85; defenses, 5; pl. 122; '86; pl. 70.
- Straiton v. N. Y. & New Haven R. R. Co., '86; carriers, 15a.
- Strang v. N. Y. Rubber Co., '84; r. r. co. 32
- v. Whitehead, '83; dam. 18 n.
- Stratford v. Jones, 48 *Super. Ct. (J. & S.)* 185. Aff'd in 97 *N. Y.* 586. '86; ins. 63 n.; trials, 26.
- Straus v. Schwarzwaelden, '85; cause of a. 1 n.
- Strauss v. Parker, '85; pl. 96.
- Streat v. Rothschild, 12 *Da'y*

- 95; s. c., 12 *Abb. N. C.* 383.  
In case of same name appeal was dismissed, but without opinion, in 101 *N. Y.* 635. '86; ref. 5.
- Strebe v. Albert, '84; assocns. 2; cty. ct. of N. Y. 1; '86; joint-stock co. 4.
- Streety v. Wood, '85; slander, 3 n. 6.
- Striker, Matter of, '85; lim. of a. 22.
- Striker v. Kelly, '83; ev. 30; insane per. 14.
- v. Mo t, '83; wills, 215 n.; '86; justices' ct. 10 n.
- Stringfield v. Fields, '86; attach. 9.
- Stringham v. Stewart, 27 *Hun.* 562; s. c., 64 *How. Pr.* 5; 15 *Weekly D.* 338; and *N. Y. Daily Reg.*, Sept. 29, 1883. Further decision in 100 *N. Y.* 516.
- Strobridge v. Strobridge, '83; contempt, 14; '84; contempt, 11 n.
- Stroher v. Elting. See Stroker v. Elting.
- Strohm v. N. Y., Lake Erie, etc. R. R. Co., 96 *N. Y.* 305; rev'g 32 *Hun.* 20; '85; dam. 21; '86; ev. 52, 56 n. 62, 217.
- Strohn v. Epstein. See Strong v. The Same.
- Stroker v. Elting, 15 *Weekly D.* 203. Aff'd as Stroher v. The Same, 97 *N. Y.* 102. '86; animals, 4 n.; negl. 4 n.
- Strong v. Brooklyn Cross-town R. R. Co., '84; corp. 17.
- v. Campbell, '84; off'r, 15.
- v. City of Brooklyn, '84; r. r. co. 20; '85; compensation, 16; '86; dedication, 4; r. r. co. 29 n.
- v. Epstein, 14 *Abb. N. C.* 322; s. c., as Strohn v. Epstein, 6 *Civ. Pro. R.* 36.
- v. Grannis, '85; duress, 2 n.
- v. Jones, '84; costs, 6; '86; costs, 43.
- v. National Mech. Bank's Assoc., '83; pledge, 3 n.; '86; conversion, 1.
- v. Sproul, '84; pl. 87; '85; mfg. co. 8, 15.
- v. Stewart, '86; ins. 55.
- v. Strickland, '83; assign. for b. of c. 22.
- v. Strong, 19 *Weekly D.* 491. Aff'd in 102 *N. Y.* 69.
- '83; alimony, 1; depositions, 23; disc. & insp. 3; ref. 33; surr. ct. 22 n.; '84; ten. in com. 3; '86; surr. ct. 21.
- v. Taylor, '83; sales, 14.
- Stroud v. Tilton, '85; ev. 186 n.
- Strusburgh v. Mayor, etc. of N. Y., 87 *N. Y.* 452; rev'g 45 *Super. Ct. (J. & S.)* 508; '83; cloud on title 2; pl. 124; '84; money paid, 12; '85; munc. corp. 112; '86; munc. corp. 92.
- Struthers v. Pearce, '83; costs, 80 n.
- Stryker v. Cassidy, '83; mfg. co. 21.
- Stuart v. Foster, '85; lim. of a. 53.
- v. Palmer, '83; const. law. 41, 55; money paid, 14 n.; '84; const. law, 20; money paid, etc. 14 n.; '85; const. law, 11 n.; forec. 24 n.; '86; const. law, 8 n.; tax 2.
- Stubbs v. Ripley, 39 *Hun.* 626. Appeal dismissed, it seems, but without opinion, in 102 *N. Y.* 734.
- v. Stubbs, '83; ex. & ad. 217. '84; ex. & ad. 121.
- Studwell v. Baxter, '86; costs, 25.
- v. Charter Oak Ins. Co., '83; pl. 137.
- v. Terrett, '83; deeds, 17.
- Stull v. Westfall, '83; inj. 39.
- Sturges v. Allis, '83; exec. 57.
- v. Vanderbilt, '83; cred. s. 1; '85; corp. 27 n.; lim. of a. 33.
- Sturgis v. Hendricks, '85; ev. 213.
- v. Spofford, '83; costs, 38; '84; costs, 14; '85; appeal, 43; mfg. co. 17 n.
- Sturm v. Atlantic Mut. Ins. Co., '83; depositions, 7.
- Sturtevant v. Orser, '85; sales, 34.
- Stutzer, Matter of. See Schultz v. Stutzer.
- Stuyvesant, Matter of, '85; trusts, 56; '86; trusts, 36 n.
- Stuyvesant v. Davis, '83; forfeiture, 2 n.; lease, 17.
- v. Mayor, &c. of N. Y., '84; deeds, 14; '85; spec. perf. 6.
- v. Neil, '85; wills, 86.
- v. Pearsall, '85; inj. 21; munc. corp. 84.
- Suburban Rapid Transit Co., Matter of, 16 *Abb. N. C.* 152. Aff'd in 38 *Hun.* 53.
- Sudlow v. Knox, '84; contempt, 17 n.; '85; contempt, 20, 21 n.
- Sullivan v. Alexander, '86; bail, 3 n.
- v. Bonesteel, '85; ex. & ad. 49; '86; bills, n. & c. 17, 17 n.
- v. Frazee, '85; judgm. & decree, 1; pl. 35.
- v. Judah, '85; contempt, 17.
- v. Mayor, etc. of N. Y., 53 *N. Y.* 652. Cited (Distinction between officer and employee of government) in 99 *N. Y.* 296.
- v. N. Y. & New Haven R. R. Co., 61 *How. Pr.* 470. Cited as to pleadings in 7 *Civ. Pro. R.* 63. '84; pl. 19.
- v. Presdee, '85; district ct. 4.
- v. Sullivan, '83; divorce, 3 n. 5; partition, 5; '85; partition, 1; '86; contracts, 1; divorce, 1, 7; partition, 2, 3; stipulations, 1 n.
- Sulzbacher v. Dickie, '85; lease, 7 n.
- Summers v. Jarvis, '86; costs, 79 n.
- Sunderland v. Loder, '85; chattels, 4.
- Sunderlin v. Bradstreet, '85; libel, 3 n.; '86; libel, 4 n.
- Sun Mut. Ins. Co. v. Mayor, &c. of N. Y., '83; const. law, 52; '84; const. law, 40; tax. 19; '86; const. law, 23.
- Superintendents of Poor of Ontario v. Moore, '84; bastardy, 2.
- Supervisors of Albany v. Dorr, '85; parties, 33; principal & s. 4; '86; surr. ct. 4 n.
- Supervisors of Chenango v. Birdsall, '83; bonds, 7; '85; former adj. 13.
- Supervisors of Galway v. Stimson, '83; parties, 36; '85; parties, 26.
- Supervisors of Livingston v. White, '86; parties, 3.
- Supervisors of Monroe v. Otis, '83; bills, n. & c. 28; principal & s. 11; '85; undert. 9.
- Supervisors of Onondaga v. Briggs, '83; costs, 9; money paid, 12; '84; former adj. 24 n.; money paid, 6 n. 7; receivers, 34; former adj. 13; munc. corp. 83; surr. ct. 30 n.
- Supervisors of Orleans v. Bowen, '85; munc. corp. 5 n.
- Supervisors of Rensselaer v. Bates, '84; auction, 4.
- Supervisors of Richmond v. Ellis, '85; towns, 7; '86; fraud, 1; supervisors, 2 n.
- Supervisors of Saratoga v. Deyoe, '83; interp. 2 n.; '85; joinder of a. 1 n.
- Supervisors of Seneca v. Allen, 99 *N. Y.* 532; rev'g 33 *Hun.* 220.
- Susquehanna Bk. v. Loomis, '84; bills, n. & c. 2 n.; '86; banking, 5.
- Sussdorf v. Schmidt, '86; brokers, 6; costs, 78.
- Sutherland v. Brush, '83; ex. & ad. 89 n. 99.
- v. Carr, '83; trusts, 106; '84; bonds, 4; '85; parties, 23, 28.
- v. Olcott, 29 *Hun.* 161. Rev'd in 95 *N. Y.* 93. '86; partn. 40 n.
- Sutphen v. Fowler, '86; juris. 9 n.
- v. Lash, '85; costs, 18.

- Sutphin v. Seebas, 12 *Daly*, 139; s. c., as Sutphen v. Seebas, 14 *Abb. N. C.* 67 n.; '84; landl. & t. 5 n. 25, 29 n. 30 n.; '86; lease, 3.
- Sutton v. De Camp, '86; arrest, 7.
- v. Newton, 15 *Abb. N. C.* 452; s. c., 2 *How. Pr. N. S.* 56, and 7 *Civ. Pro. R.* 333. Rev'd in 22 *Weekly D.* 140. '85; costs, 51 n.
- v. N. Y. Central R. R. Co., '84; negl. 34.
- v. Ray, '85; appeal, 119; '86; new tr. 28 n.
- Suydam v. Barber, '84; joint debtors, 1 n. 3 n.; '86; judgm. 18 n.
- v. Bartle, '83; parties, 29.
- v. Belknap, '85; impris. 2.
- v. Jackson, '83; lease, 9.
- v. Jenkins, '83; replevin, 6 n.
- v. Moore, '83; master & s. 16.
- Swaine v. Perine, '85; subr. 2 n.
- Swan, Matter of, 97 *N. Y.* 492; rev'g 33 *Hun.* 200. Another decision in 35 *Id.* 625. '85; munc. corp. 72.
- Swan v. People, '85; trials, 44.
- v. Saddlemire, '83; abuse of process, 1.
- v. State of N. Y., 89 *N. Y.* 52; s. c., 14 *Weekly D.* 548; rev'g 26 *Hun.* 508; s. c., 14 *Weekly D.* 176.
- Swart v. Boughton, '85; motions & o. 6.
- Sweatman, Matter of, '83; sentence, 2.
- Sweeney v. Sturgis, 24 *Hun.* 162. Cited (Examination of party) in 37 *Hun.* 287. '83; depositions, 18.
- Sweet v. Buffalo, N. Y. & Phil. R. R. Co., '84; statutes, 13.
- v. Chapman, '83; usury, 16.
- v. Chase, '83; legacies, 4 n.; '85; legacies, 5 n.; wills, 126 n.
- v. Ingerson, '84; joinder of a. 4; '85; joinder of a. 7.
- v. Low, '85; wit. 40.
- v. Tuttle, '85; appearance, 2; pl. 35.
- v. Village of Gloversville, '84; munc. corp. 64.
- Swerarton, Matter of, 20 *Weekly D.* 378. Appeal dismissed, it seems, but without opinion, in 99 *N. Y.* 672. Further decision in 40 *Hun.* 41; s. c., 9 *Civ. Pro. R.* 402. '86; contempt, 13.
- Swett v. City of Troy, '86; inj. 3.
- v. Colgate, '83; sales, 11a n.; '86, pl. 135.
- Swettenham v. Leary, '86; ev. 138; spec. perf. 8 n.
- Swezey, Matter of, 64 *How. Pr.* 353; aff'g 62 *Id.* 215. '83; assign. for b. of c. 27; '85; assign. for b. of c. 27.
- Swezey v. Lott, '84; attach. 39; dam. 37.
- Swift v. City of Poughkeepsie, '83; villages, 5; '85; forec. 24 n.; '86; money paid, 11 n.; tax. 58.
- v. Hart, '85; chat. mort. 6; '86; chat. mort. 4 n.
- v. Massachusetts Mutual Life Ins. Co., '83; ev. 175; '84; ev. 95 n.
- v. Mayor, & c. of N. Y., '84; munc. corp. 36.
- Swinburne v. Stockwell, '85; pl. 54 n.; '86; pl. 52 n.
- Swinnerton v. Columbian Ins. Co., '83; ev. 4; '84; munc. corp. 36.
- Swords v. Edgar, '83; munc. corp. 91; negl. 37, 58; '84; negl. 23; '85; landl. & t. 4; lease, 3 n.; '86; negl. 23 n. 78a.
- v. Owen, '83; partn. 12, 13.
- Sykes v. Delaware, Lackawanna, & c. R. R. Co., '86; negl. 100.
- Sylvester v. Ralston, '83; parent & c. 8 n.; '86; use & o. 1.
- Symonds v. Craw, '83; bills of par. 12.
- Symson v. Silheimer, '86; confess. of judgm. 2.
- Syracuse, B. and N. Y. R. R. Co., Matter of, '83; r. r. co. 98.
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- Valentine*, Case of, '83; ex. & ad. 224; insane per. 19.
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- Valentine v. Belden*, '83; parties, 28; '84; ex. & ad. 33; '85; ex. & ad. 137; '86; ex. & ad. 108.
- *v. Conner*, '85; appeal, 96.
- *v. Jackson*, '84; tax. 29 n.
- *v. McCue*, '84; corp. 67.
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- *v. Sulzbacher*, '85; assign. for b. of c. 45 n.
- *v. Valentine*, '83; ex. & ad. 29, 196; trusts, 74, 75 n. 80; '84; ex. & ad. 125 n.; trusts, 33 n.; '86; ex. & ad. 8.
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- *v. Cook*, '84; sup. pro. 27.
- *v. Erwine*, '85; shipping, 5.
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- Van Court v. Armstrong*, '84; cloud on title, 3.
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- *v. Sweet*, '85; insane per. 6.
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- Vowles v. Murray, '85; costs, 3.
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- v. Van Horne, '83; ex. & ad. 17; '84; ex. & ad. 35 n.; tax. 29 n.
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- v. Lawyer, '85; animals, 5.
- v. Turner, '83; corp. 44; mort. 35, 35 n.; '84; covenants, 6 n.; '85; promise, 2 n.; '86; covenants, 4 n.; mort. 15; subr. 3.
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- Wacher, Matter of, '83; receivers, 16; statutes, 29.
- Wachtel v. Noah Widows, etc. Benev. Assoc., 9 *Daly*, 476. Aff'd in 81 *N. Y.* 28; s. c., 98 *Am. R.* 478; 60 *How. Pr.* 424; 23 *Alb. L. J.* 194; and 11 *Weekly D.* 457. '83; mand. 20; '84; ben. assoc. 17 n.; '85; assoc. 6 n.
- Wachter v. Quenzer, 'c6; pl. 149, 150.
- Waddell v. Cook, '84; exec. 6 n.
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- v. Lyon, '85; mort. 18; '86; deeds, 23; release, 2.
- v. Pacific Ins. Co., '85; ins. 39 n.; '86; ins. 36 n.
- v. Wadsworth, '85; aliens, 1.
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- v. Goble, '83; city ct. of *N. Y.*, 4; '84; service & p. 14 n.; '86; attach. 40 n.
- Wager v. Schuyler, '83; death, 4; ev. 241 n.
- v. Troy Union R. R. Co., '83; trespass, 4; '86; compensation, 8 n.; highw. 2 n. 4.
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- Wagner v. Jones, '83; chat. mort. 21; '84; exec. 4.
- v. People, 'c5; crim. law, 7 n.
- Wagstaff v. Lowerre, '83; trusts, 64, 79; '84; ex. & ad. 125 n.; '85; ex. & ad. 147 n.; '86; trusts, 30 n.
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- Wakefield v. Fargo, '84; mfg. co. 11 n.; '85; children, 6.
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- v. Granite Bank, '83; disc. & insp. 8 n.; '85; depositions, 26; pl. 92; '86; appeal, 6 n.
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- v. Hubbard, '83; aff'd. 1.
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- v. Johnson, '85; costs, 14.  
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## NOTE.

For the cases beginning with the following names and which may be cited under either name, look in the foregoing Supplementary Table under the name directed.

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| <i>Agreda</i> . See <i>Sanchez de Agreda</i> .         | See <i>Presbyterian Church</i> , &c.                       | <i>Dalzell v.</i>   |
| <i>Belden v. Slade</i> . See also <i>Slade</i> .       | <i>Broadway National Bank</i> . See <i>National Bank</i> . | <i>Ellis v. People</i> . See <i>People</i> , <i>Ellis v.</i>        |
| <i>Berkshire Woolen Co.</i> See also <i>Woolen Co.</i> | <i>Cross v. Jackson</i> . See <i>Trustees v. Jackson</i> . | <i>Emigrant Industrial Savings Bank</i> . See <i>Savings Bank</i> . |
| <i>Brick Presbyterian Church</i> .                     | <i>Dalzell v. Raw</i> . See also <i>Raw</i> ,              | <i>Industrial Savings Bank</i> . See <i>Savings Bank</i> .          |















